

GLOBAL REPORT
SEPTEMBER 2020

Enhancing Government Effectiveness and Transparency

The Fight Against Corruption



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List of Abbreviations

1MDB	1 Malaysia Development Berhad	EACC	Ethics and Anti-Corruption Commission (Kenya)
ABMS	Anti-Bribery Management System	EEEB	Empresa de Energia Electrica de Bogota
ACA	Anti-Corruption Agency	e-GP	Electronic Government Procurement
ACC	Anti-Corruption Commission	EIC	Economic Intelligence Council (India)
ACCC	Auditing in Complex and Challenging Contexts	EICE	Empresas Municipales de Cali
ACD	Afghanistan Customs Department	EITI	Extractive Industries Transparency Initiative
ACE	Anti-Corruption Evidence Research Program	EIU	The Economic Intelligence Unit
ACGA	The Asian Corporate Governance Association	ENCCCLA	Brazil's National Strategy Against Corruption and Money Laundering,
ACT	Anti-Corruption Organization of Thailand	EOCO	Economic and Organized Crime Office
ADELE	Analysis of the Dispute in Electronic Bids	EPM	Empresas Públicas de Medellin
AEOI	Automatic Exchange of Information	ERP	Enterprise Resource Planning
AfDB	African Development Bank	ESAP 2	Ethiopia Social Accountability Program 2
AG	Auditor General	ESG	Environmental, Social and Governance
AI	Artificial Intelligence	EU	European Union
AID	Asset and Interest Disclosure	FATF	Financial Action Task Force
AI-ML	Artificial Intelligence-Machine Learning	FBI	Federal Bureau of Investigation (USA)
ALICE	Analysis of Bids, Contracts and Public Calls	FCPA	Foreign Corrupt Practices Act
AML	Anti-Money Laundering	FCV	Fragile, Conflict and Violence
AMLD5	Fifth Anti-Money Laundering Directive	FEC	Financial Expertise Centre (Netherlands)
ANI	National Integrity Agency (Romania)	FELDA	Federal Land Development Authority
AP	Andhra Pradesh (India)	FGC	Financial Governance Committee (Somalia)
APIs	Application Programming Interfaces	FIC	Financial Intelligence Centre
ASYCUDA	Automated System for Customs Data	FIFA	Fédération Internationale de Football Association
AUSTRAC	Australian Transaction Reports and Analysis Centre	FinCEN	Treasury Department's Financial Crimes Enforcement Network
BIAC	Business and Industry Advisory Committee	FIU	Financial Intelligence Unit
BODS	Beneficial Ownership Data Standard	FMIS	Financial Management Information System
CAC	Corporate Affairs Commission (Nigeria)	FOI	Freedom of Information
CAG	Comptroller & Auditor General	FSDEA	Fundo Soberano de Angola
CBi	Convention on Business Integrity	GAS	Ghana Audit Service
CCAGG	Concerned Citizens of Abra for Good Government	GDP	Gross Domestic Product
CCE	Colombia Compra Eficiente (National Public Procurement Agency)	GDPR	General Data Protection Regulation
CCS	Account Register of National Financial System	GEIU	Grey Economy Information Unit (Finland)
CCTV	Closed-circuit television	GIACC	National Centre for Governance, Integrity and Anti-Corruption
CDD	Community Driven Development	GIH	Global Infrastructure Hub
CEIB	Central Economic Intelligence Bureau (India)	GIS	Geographic Information System
CEO	Chief Executive Officer	GLC	Government-Linked Companies
CEP	Center of Public Studies	GovTech	Government Technology
CGD	Comptroller General's Department (Thailand)	GPS	Global Positioning System
CGPAR	Corporate Governance and Property Administration	GRECO	The Group of States against Corruption
CHRAJ	Commission on Human Rights and Administrative Justice	GTF	Government-Tenderers' Forum
CNJ	National Council of Justice	IAD	Income and Asset Declaration
CODELCO	National Copper Corporation	IAS	Internal Audit Service
COE	Council of Europe	IBP	International Budget Partnership
CONGRES	National Congress of Chile	ICJA	Internal Criminal Judicial Assistance (China)
CoST	Infrastructure Transparency Initiative	ICT	Information and Communications Technology
CPI	Corruption Perception Index	ICU	International Corruption Unit (UK)
CPS	Crown Prosecution Service (UK)	IDD	Integrity Due Diligence
CPTU	Central Procurement Technical Unit (Bangladesh)	IEG	Independent Evaluation Group
CSO	Civil Society Organizations	IEM	Independent external monitor
CVM	Cooperation and Verification Mechanism	IFC	International Finance Corporation (World Bank Group)
DFID	Department for International Development (UK)	IFFs	Illicit financial flows
DIAL	Digital Impact Alliance	IGAPE	The Institute of Assets Management and State Holdings (Angola)
DNA	National Anti-Corruption Directorate (Romania)	IGEA	Inspectorate-General of the Public Administration
DT	Disruptive Technology		

IIM	Malaysian Institute of Integrity
IMF	International Monetary Fund IMF
INTEGRITI	Malaysian Institute of Integrity
INTOSAI	International Organization of Supreme Audit Institutions
INVIAS	Public Roads Agency (Colombia)
IoT	Internet of things
IPCMC	Independent Police Complaints and Misconduct Commission
ISSAI	The International Standards of Supreme Audit Institutions
ITU	International Telecommunication Union
JKKMAR	Jawatankuasa Khas Kabinet Mengenai Anti-Rasuah
KPK	Corruption Eradication Commission (Indonesia)
KWAP	Kumpulan Wang Persaraan
KYC	Know Your Customer
LAPOP	Latin American Public Opinion Project
M&E	Monitoring and Evaluation
MACC	Malaysian Anti-Corruption Commission
MACN	Maritime Anti-Corruption Network
MAPS	Methodology for Assessing Procurement Systems
MAT	Multi-agency Team
MDA	Ministries, Departments and Agencies
MLA	Mutual Legal Assistance
MOH	Ministry of Health
MOI	Ministry of Infrastructure (Ukraine)
MONICA	Integrated Monitoring for Acquisition Control
MOU	Memorandum of Understanding
MP	Member of Parliament
MPLA	The People's Movement for the Liberation of Angola
MSG	Multi-stakeholder working group
MTMC	Ministry of Transparency, Monitoring and Control (Brazil)
NACAP	National Anti-Corruption Action Plan (Ghana)
NACP	National Anti-Corruption Plan (Malaysia)
NACS	National Anti-Corruption Strategy
NCA	National Crime Agency (UK)
NEITI	Nigeria's EITI multi-stakeholder group
NFCC	National Anti-Financial Crime Centre
NGO	Non-governmental Organization
NHSU	National Health Service of Ukraine
NIC	News flow indices of corruption
NIP	National Integrity Plan (Malaysia)
NOC	National Oil Companies
NPA	National Prosecuting Authority (South Africa)
NRRET	National Revenue Recovery Enforcement Team (Malaysia)
NTCA	National Tax and Customs Administration (Netherlands)
O&M	Operation and Maintenance
OACP	Organisational Anti-Corruption Plan (Malaysia)
OC4IDS	Open Contracting for Infrastructure Data Standard
OCDS	Open Contracting Data Standard.
OCP	Open Contracting Partnership
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OIA	Official Information Act
OOP	Out-of-pocket Payments
PEFA	Public Expenditure and Financial Accountability
PEPs	Politically Exposed Persons
PETS	Public Expenditure Tracking Survey
PFM	Public Financial Management
PNLD	National Anti-Corruption and Money Laundering Training Program
PPP	Public-private Partnership
PSC	Person of Significant Control
QR	Quick Response
RAA	State Audit Institution (Bhutan)
RBLs	Resource-based Loans
Red-LAB	National Network of Money Laundering Laboratories
REIC	Regional Economic Intelligence Council (India)
RFID	Radio Frequency Identification Trackers
RIA	Regulatory Impact Assessment
RNRA	Rwanda Natural Resources Authority
RTI	Right to Information
SAI	Brazilian Supreme Audit Institution
SAN	Senior Advocate of Nigeria
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South Africa Revenue Services
SCI	Society of Engineers (Colombia)
SECOP	Sistema Electrónico para la Contratación Pública
SFO	Serious Fraud Office (UK)
SISOCS	Information and Monitoring System for Works and Supervision Contracts (Honduras)
SLA	Service Level Agreement
SLPs	Scottish Limited Partnerships
SOE	State-owned Enterprise
SOFIA	Guidance System on Facts and Evidence for the Auditor
SOP	Standard Operating Procedure
StAR	Stolen Asset Recovery Initiative (World Bank)
STT	Special Investigation Service (Lithuania)
TABUNG HAJI	Haji Pilgrims Fund Board
TCU	Tribunal de Contas da União
TI	Transparency International
TI-CPI	Transparency International's Corruption Perceptions Index
TIEA	Tax Information Exchange Agreements
UAVs	Unmanned Aerial Vehicles
UK	United Kingdom
ULB	Urban Local Bodies
UNCAC	United Nations Convention Against Corruption
UNCITRAL	The United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
USA	United States of America
UTIP	Technical Unit for Private Investment
UWOs	Unexplained Wealth Orders
WCO	World Customs Organization
WDR	World Development Report
WGI-CC	Worldwide Governance Indicators- Control of Corruption
WHO	World Health Organization
WSJ	The Wall Street Journal

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Preface

Achieving economic growth and shared prosperity in a nation requires public sector interventions across a range of domains. And yet corruption – the abuse of entrusted power for private gain – frequently undermines those efforts in many of the countries in which the World Bank operates. Although anti-corruption initiatives are often a part of a country’s public administration landscape, many of them are insufficient to overcome deep-seated corruption as well as public perceptions of corruption.

Though an abundance of literature exists on the subject of corruption, the World Bank has undertaken a fresh assessment of challenges faced by governments in tackling corruption, with a focus on instruments and policies that have been effective and why, and how incremental progress is being achieved in specific country contexts. In many cases, the instruments and policy responses are not new, but merit a fresh look at what impacts policy design and implementation of such measures. The report also discusses the role of selected institutions and their impact in the fight against corruption, also demonstrated through country cases.

This “compendium” of case studies and country examples is intended as a reference guide to practitioners and civil society organizations working to shape their country’s approach to anti-corruption. It builds on the existing body of literature, the experiences of World Bank staff around the globe, and the initiatives undertaken in international fora. The report is not intended to be read from cover to cover and has been structured in a manner that allows the reader to easily identify and focus on a thematic area of interest.

Corruption is still rampant in many of the countries featured in the report, and examples presented in the report are limited because they do not fully resolve corruption risks. The endeavor is to present a candid picture of the progress and to highlight the limitations and risks of policy reversal. The cases are not “best practice”, but merely a “palette” of examples and approaches that are being tried, and which may be illustrative for other policy makers with similar challenges. While countries that are fragile and conflict-afflicted face persistent challenges in addressing corruption, middle-income countries are not free from their own political economy challenges.

Emergency responses to the COVID-19 pandemic have resulted in huge expenditures by governments circumventing the standard operating procedures and approval processes. This may create new vulnerabilities and leakages that may only come to light after the initial containment phase has passed. In the short term, procedures that strengthen accountability will have to be balanced with the urgent need for governments to respond to the crisis. Over the medium term, the same policy instruments featured in this report will remain relevant in the recovery and post-recovery phases.

The report is not intended to be read from cover to cover and has been structured in a manner that allows the reader to easily identify and focus on a thematic area of interest.

This reference guide may inspire new innovations and experiences in the fight against corruption and bring to light areas where further work is needed to sharpen the application of traditional anti-corruption tools. What emerges from the cases is that multiple factors contribute to the impact of anti-corruption efforts, including political leadership, institutional capacity, incentives, technology, transparency and collaboration. Enhanced collaboration with stakeholders within and outside of government is a critical success factor in overall government effectiveness. Since such collaboration involves civil society, the media, the private sector and the country’s citizens, it is clear that strengthening the fight against corruption is a collective responsibility.



Executive Summary



Introduction

News headlines over the last few years have been filled with global scandals involving corruption on an unprecedented scale. They touch virtually every continent, from Asia to Africa, Europe, and the Americas. The scale, magnitude, and sophistication of the operations has increasingly risen to levels that many had not considered possible before. Governments are forever in search of new approaches and tools that can help identify loopholes and entry points for corrupt activities. While the containment of COVID-19 and its devastating human and economic impacts have more recently been the focus of government actions, it is almost certain that huge amounts of spending in a short time, circumventing the standard operating procedures, will result in new corruption scandals in the post-COVID years. There are already reports in papers regarding inflated food prices or favored medical contracts to firms from a few countries. In drawing on the past and looking ahead to the future, the time is ripe for the World Bank to take a fresh look at the state of play in tackling corruption and how countries are attempting to address this long-standing scourge on development.

The multi-faceted and complex nature of corruption has shown that while technical solutions and compliance measures are enablers, they are rarely sufficient in themselves to root out corruption. In many societies corrupt behavior is deeply rooted in the historical origins, social norms and political culture. It is not unusual to find strong inter-linkages between power, politics, and money. Political parties and campaigns are often financed on the back of close links with business, which can be corrupt. Entrenched political elites are eager to maintain their grip on power and money. The scope for reformers to make changes is therefore constrained by the limits of their political influence, and any significant impact on corruption usually takes a long time.

While corruption may be entrenched, the case studies in this report demonstrate that progress is possible even in challenging contexts. By design, the report focuses primarily on developing countries, where institutional capacities may be less established than in advanced countries. Impactful anti-corruption measures are often opportunistic, targeting specific areas of vulnerability where and when the political space allows for actions to be taken. Though the actions

initially may have limited impact, they could provide an important foundation for future actions. However, these impacts should be carefully assessed by public officials and civil society as many high-profile anti-corruption strategies have proven to be ineffective and only give a veneer of government action.

The purpose of this report is to equip public sector officials and civil society with a modular set of approaches, entry points and tools that can be drawn upon and adapted to their specific country context. It is informed by international experience in what is and is not working to address corruption and to enhance government effectiveness. Importantly, although the approach is modular, it is not a menu. While the chapters and cases do not analyze the political economy of reform in each country or sector in depth, they do recognize the relevance of political context and elite bargaining that takes place to constrain options. Rather, the report presents successful approaches and policy responses in various country contexts for the lessons they provide for reform-minded leaders and civil society. In so doing, it highlights the importance of institutions for implementing government policies, engaging civil society, and ensuring greater transparency in government operations.

The key messages of this report are the following:

- Progress is not linear and reforms could suffer due to political setbacks and/or institutional weaknesses, yet even basic efforts could provide a foundation on which to build.
- The “how” of reform can be as important as the “what” of reform, as it requires an understanding of how key obstacles could be overcome in a particular context.
- There is no single success factor; impactful reforms usually require a combination of several layered or sequenced interventions (described in the Conclusions chapter). For example, technology can be an enabler for transparency, but is not a full solution on its own.
- Open government reforms can lead to a stronger relationship between government and citizens, increasing levels of trust and social capital.

- Sector and function-specific interventions can be effective and complementary to broader government-wide efforts to enhance transparency, integrity, and good governance.
- It is critical to look beyond the *de jure* of anti-corruption institutions and tools, to the *de facto* impact and to make course corrections so that national anti-corruption strategies and institutions are not mere window-dressing; but are tailored to the needs and contexts of countries.
- Collaboration and information sharing across traditional agency boundaries, and across international boundaries are becoming increasingly important to address corruption.
- It is important to factor the historical, social, economic, and political realities of a country into anti-corruption reform efforts.

single report can expect to address all the sources of corruption and approaches required to combat it.

The report examines the manifestations of corruption and efforts to address them from three perspectives:

- I. Selected key sectors and functions of the government
- II. Policy tools and interventions used to control corruption
- III. Institutions used by government for oversight and accountability

Part I of the report covers issues, challenges and trends in five key thematic areas: public procurement; public infrastructure; state-owned enterprises (SOEs); customs administration; and delivery of services in selected sectors. These are intended to capture a small selection of high-value functions and sectors of public sector activity. **Part II** examines some of the policy responses that government and civil society may employ for corruption prevention and detection, while **Part III** assesses the role of three institutions (Supreme Audit Institutions, Anti-corruption Agencies

Given the wide scope of behaviors considered to be corruption, and the diverse range of approaches, no



and the Justice system) that oversee, implement or contribute to anti-corruption efforts, and draws lessons about their effectiveness (see Figure below). The report also features a brief country case study on Malaysia that traces the history of the country's anti-corruption efforts over the last few decades and the influences on its development. It concludes with a reflection on several key reform characteristics or drivers that were common across the case studies.

The structure and format of the chapters vary by thematic area. In most instances, the chapter starts with an overarching chapeau that highlights key issues and lessons learned, supported by case studies that focus on why and how specific actions were implemented. In some chapters, cases are in-built into the chapeau as

they did not merit a detailed description and instead are cited as examples. The cases are intended to bring out the “how to” of the reform process, while also showing the influence of political economy and institutional capacity constraints. None of the individual cases would be sufficient to demonstrate the broader lessons of international experience, but they do show how some experiences were adapted into a specific context. Moreover, the cases are often incomplete stories of reform – either because implementation is still ongoing or because corruption remains an ongoing and significant challenge. By design, many of the examples are taken from countries and sectors where corruption remains widespread but where public officials and civil society have not given up battling it.

PART I: Confronting Corruption in Sectors and Functions

Public Procurement

Often placed at the epicenter of discussions of corruption, public procurement has wide-ranging ramifications for the economy and delivery of public services. It accounts for anywhere between 10%-25% of public spending globally.¹ Corruption in procurement is rampant, with estimates of the cost of capital investment projects being consumed by corruption ranging from 10% to 30%², with repercussions that go far beyond the price tag of capital projects as it impacts the poorest sections of society disproportionately. Corruption in procurement creates the wrong incentives for firms and distorts competition and economic growth.

There is a vast literature providing guidance on the features of procurement systems that operate with high degrees of integrity. While increasingly, electronic government procurement (e-GP) is identified as a key platform for addressing corruption vulnerabilities, its impact on procurement has differed significantly in countries that have adopted e-GP systems. Variation in changes in the incidence of corruption reflects a combination of factors, including the overall governance environment, the technical aspects of the specific e-GP system used, the capacity of staff responsible for procurement, and

the strength of resistance to reform. The experience with e-GP reflects the experience overall with reducing corruption in public procurement, where technical approaches to governance challenges have had sustained success only when they are understood as enabling change rather than as the primary driver of reform. While the success of anti-corruption reforms in public procurement has varied greatly, the two factors that have been consistently associated with declines in corruption in procurement across different jurisdictions are *transparency* and increased frequency of *audits*.

Reducing corruption in public procurement requires a country-specific approach. Focusing on incentives and the capabilities of the institutions; improving the transparency and efficiency of the procurement system; overcoming opposition to change; and harnessing forces in the private sector and civil society who have a strong interest in improving procurement outcomes are key. The three case studies from Somalia, Bangladesh, and Chile demonstrate the country-specific anti-corruption reforms in public procurement along a governance continuum.

- The **Somalia** case explores an effort to reduce corruption in a limited number of strategic high-value procurement contracts, using a specially

designed mechanism established jointly by development partners and the Government of Somalia. Success was achieved in restricting corruption in a number of transactions and demonstrates the ability to achieve results in even the most challenging of environments.

- The **Bangladesh** case explores an effort to reduce corruption as one dimension of an overall reform of the country's public procurement system featuring the adoption of an e-GP system. The reform has built momentum over a decade of implementation. While intensive work on monitoring progress has demonstrated a substantial reduction in corruption, as measured by key corruption indicators, it has also revealed certain aspects of procurement that are resistant to change. Recognizing corruption upfront as a key issue ensured that the e-GP program factored it in explicitly in the design of the procurement reform.
- In **Chile**, the reform program was driven by a non-political task force that recommended steps to improve the coherence of the public procurement system, within a larger program of reforms aimed at restructuring the role and transparency of private financing of political parties. The Chilean example demonstrates how a well-performing state, with a relatively high degree of capacity and integrity, addressed corruption in public procurement by modifying the incentives and dynamics in an overarching system of governance, in order to confront the causes of corruption and not just its symptoms.

Public Infrastructure

Studies show that the developing world's infrastructure needs are huge and attracting quality private sector investment is critical to closing the gap. As much as \$3-4 trillion annually will be needed globally through 2030 to meet the infrastructure needs of the 1.2 billion people who lack electricity; the 663 million who lack adequate drinking water sources; the 1 billion who live more than two kilometers from an all-weather road; and the many millions who are unable to access work and educational opportunities due to the absence or high cost of transportation services.³ However, the size, complexity and long-run nature of infrastructure projects leaves them vulnerable to corrupt practices. The perception of

corruption also has reputational risks for governments, undermining public trust and disincentivizing public-private cooperation from quality contractors.

Every phase in an infrastructure project involves distinct combinations of institutions and stakeholders, each with their own vulnerabilities to particular types of misconduct. During project identification and selection, some stakeholders may seek to undermine merit-based procedures for project selection, while the subsequent procurement phase tends to be where the most entry points for corruption exist, and the biggest payoffs. The construction phase is vulnerable to ex-post renegotiation of performance requirements in the contract details, and the losses to the public purse can be significant. The estimates of losses to bribery in construction, i.e., downstream from procurement, are as high as 45 percent of construction costs.⁴

For integrity to overcome the forces of corruption, a broad and vigorous alliance is needed, using varied tools to foster transparency and openness. Corruption is a reflection of how things are currently done by certain officials, businesses and politicians in specific situations. This doesn't happen in a vacuum; corruption is enabled by the conventions and approaches that have been allowed to develop over time. In some situations, these practices may not even be considered particularly harmful or wrong by the participants – as illustrated by the oft used term for corruption: *the price of doing business*. This chapter argues that if the political level commits to systematically implementing integrity measures across the infrastructure cycle, it will have an impact at both a systemic and a project level. In addition, and crucially, mobilizing citizens and stakeholders and strengthening their hand through greater project *transparency* and *openness* can build momentum, and change the political economy and cultural considerations that have allowed corrupt practices to happen. Through such a sustained and broad-based movement, country examples demonstrate that change can happen at both the project and society level.

Chapter 2 includes three case study examples of strategies to mitigate corruption risks in the acquisition of public infrastructure.

- **The Infrastructure Transparency Initiative (CoST)** offers a multi-stakeholder approach to strengthening governance in the infrastructure

sector through improved *transparency*, stakeholder *engagement* and *accountability*. The expansion of digital government and open contracting data has created a more enabling environment for multi-stakeholder approaches than would have been possible in the past. Three country examples are presented: **Thailand** shows the evolution of a multi-stakeholder working group. The **Ukraine** case examines the institutional foundations for actionable data disclosure. The **Honduras** example focuses on how international support has been combined with local leadership to strengthen transparency and accountability in infrastructure. Each case represents an evolving story, with no doubt significant hurdles and gaps in implementation yet to be overcome.

- **Public-private partnership (PPP) renegotiation** of infrastructure projects has the potential for abuse, as evidenced in Brazil, which was the epicenter of one of the largest corruption scandals in history. PPPs are renegotiated much more often than similar private contracts. Dishonest contractors make lowball bids to win contracts, knowing that they can later reap windfalls during a less transparent contract renegotiation process. PPP renegotiations can also allow governments to elude spending controls and defer costs to future administrations, while companies can use renegotiations and bribery to build market share. While changes to a long-term PPP contract may be inevitable, this case study offers guidance to reduce the probability of opportunistic renegotiations that are motivated by corruption.
- The third case examines how the Colombia Society of Engineers (SCI) began supporting **Open Contracting**, when they suspected that tender specifications were so narrow that they were being tailored to benefit particular bidders. The case highlights how the government acted upon the SCI findings by making standard documents mandatory for all state governments in 2019, and by updating the country's e-procurement platform to publish data in the open, standardized, and reusable Open Contracting Data Standard (OCDS) format. Utilizing data analytics to assess these reforms, the government is already seeing increases in competition and better value-for-money for the public.

State-Owned Enterprises (SOEs)

Corruption in SOEs has gained prominence in recent years due to high-profile scandals in countries like Brazil, South Africa, Angola, and Malaysia. Corruption risks arise from various sources. SOEs in high-value sectors often enjoy monopoly or quasi-monopoly rights that provide an opportunity for abnormal profit generation, a privileged relationship with the government and state financial support. This creates incentives and opportunities to extract significant rents. Such mechanisms are often used to benefit political groups and party finances in order to sustain the resource diversion over time. Risks also arise from weak legal and regulatory frameworks; corporate governance weaknesses at SOE levels; a lack of transparency and disclosure over SOE finances compounded by poor financial reporting practices; and limited effective government and citizen oversight. These risks are exacerbated by inadequate technology in SOE operations and weak citizen participation in monitoring SOE performance. Corruption can be detrimental to the SOE itself, to the economy, and to the people when SOEs fail to provide critical public goods and services.

Phasing or sequencing of SOE reforms based on their political and institutional feasibility can help overcome entrenched interests and provide confidence to policy makers to take further steps.

The Bank's experience suggests several categories of actions that can contribute to enhancing integrity in SOE governance: (a) opening up markets to greater competition to reduce monopoly power and market share and incentivize financial and fiscal discipline; (b) strengthening SOE legal and regulatory frameworks and practices; (c) building a commitment to good governance and capacity of state-owned entities; (d) professionalizing the SOE board of directors and senior management; (e) establishing effective internal controls, compliance, and risk management functions in the SOE; (f) promoting transparency and full financial disclosure, including of SOE debt; (g) digitalizing financial and service delivery information to improve the accuracy of information available to the public; and (h) facilitating citizen engagement in holding SOEs to account for performance and providing feedback to management on issues of particular relevance to them such as the quality of service delivery for water or energy utilities.

Reforming governance of SOEs alone may not always be enough to prevent corruption and assure

efficiency. Additional measures could include SOE restructuring, which may involve breaking large SOE multi-layered enterprises into smaller business units or bringing opportunities for greater private sector involvement in the operations, management or even ownership of SOEs through PPPs or privatization, when the necessary conditions are being met. Such conditions include reduced or contestable market share and economic dominance; transparency over ownership, operations and finances including SOE debts; increased capacity for monitoring and oversight; and improved efficiency. Especially important is ensuring that transactions occur without special privileges for insiders or other favored buyers, so that there is a level playing field with potential competitors. Where privatization or private sector participation is not a viable option, SOEs can still be exposed to capital market discipline through partial listings.

The three cases presented in this chapter are ongoing stories that highlight the complex challenges that political leaders and citizens face to improve SOE governance:

- In **Brazil**, following the high-profile Lava Jato scandal, the government passed the Law on the Responsibility of Federal State Companies to strengthen the internal control environment in SOEs through the introduction of fiscal councils and internal audit committees. The law also aims to increase transparency around contracting and procurement, which was the main channel of kickbacks exposed by Operation Car Wash. However, effective implementation of the law and deeper sector reforms remain in question and subject to the full support of the political leadership.
- In **Angola**, recent reforms of SOE governance are in the early stages, and like Brazil, are set against a backdrop of massive scandals related to the state oil company. Since mid-2017, actions have included reforming SOEs' public procurement, opening up the income and asset declaration system, implementing a divestiture of SOE non-core assets, increasing the transparency of the privatization process, establishing a new reinforced SOE unit in the Ministry of Finance to collect data and exercise more active oversight, replacing most SOE board of directors, strengthening corporate governance in the state oil company, and prosecuting suspected

corruption cases. The implementation of the privatization program is still unfolding.

- **Colombia** stands out from the other cases, because it reflects a proactive approach by an SOE to make itself accountable to citizens and shareholders through a series of transparency initiatives, digitization, and customer-engagement practices. With a robust legislative framework for corporate responsibility set in place decades earlier, Empresas Públicas de Medellín (EPM) distinguished itself from other SOEs in the country and in the region by emphasizing public transparency and engagement as the core pillars of its integrity drive and of its corporate governance more generally. Citizens in the community are encouraged to see EPM as belonging to them, through the company's approach to service delivery, customer feedback, and even share price.

Customs Administration

Customs administration is vital for its role in trade facilitation and protection of national borders, as well as revenue collection. Collection of trade taxes (tariffs, excises and import value added tax) account for a significant portion of government revenues – commonly 30-50% – in low-income countries and even more in fragile states. Corruption in customs can be a disincentive to foreign investors, especially those who intend to rely on smooth import of inputs and export of goods. A low capacity customs administration also presents challenges for national security in an age of international terrorism. Yet the customs administration is highly vulnerable to corruption because officials often enjoy discretionary powers over important decisions, and risk-based systems of control and accountability are often absent or easily breached. The number of “success” stories in addressing corruption in customs is limited. Georgia and Rwanda traditionally stand out; both countries' reform efforts involved a dismantling of old, discredited agencies and replacement with new ones based on the principles of leaner bureaucracies and administrative simplification, and both were made possible by the emergence of new leaders who broke ties with the old networks.

The chapter argues that legal and technical reforms are necessary but insufficient to disrupt corrupt behavior in customs administrations. Technical measures often include introducing an

upgrade to the legal framework, simplification of processes and rate structures, automation, etc. But laws and regulatory reforms must also be supplemented with other approaches that take into account deeply embedded norms and expectations of political and social life. The report argues for two broad principles: (1) ownership of the reform among the officials involved in reforming the customs administration is a critical issue for sustainability, and (2) opportunities for corruption can be reduced by designing mechanisms that create appropriate incentives, limit discretion by public servants, and include enhanced controls. It concludes that understanding social normative pressures in a given context can help practitioners design interventions to relieve those pressures, allowing collective behavior to change. Reformers should target the informal networks of patronage and social domination, which often determine the behavior of customs officers.

The two country cases show that effective customs administration reforms are possible even in fragile states with limited capacity, when technical reforms are coupled with an understanding of the local political economy surrounding customs agents.

- Customs reforms in **Madagascar** are ongoing, but there have already been signs of significant progress to reduce corrupt practices, facilitate trade, and increase revenue at their major port. Their performance-based pay program has helped incentivize customs inspectors to curb tax evasion and expedite customs clearance. Importantly, the reform was accompanied by extensive data mining and monitoring to detect corrupt individuals and practices.
- **Afghanistan's** government faced the daunting challenge to curtail the parallel or shadow customs regimes that operated beyond government control. For about 15 years now, the Afghanistan Customs Department has been progressively implementing a countrywide computerization of customs clearance operations. The strategy has centered around the automation of procedures to significantly reduce face-to-face contact and the resulting informal negotiations. Though significant vulnerabilities exist, including adaptation to "game" the system, Afghan authorities have witnessed increased revenue, improved clearance time, and improved transparency of trade transactions.

Service Delivery in Sectors (Land, Health, Ports)

Corruption in public services takes many forms and imposes significant costs on the government, citizens, and businesses. Estimates of the magnitude of dollars lost to corruption vary widely across countries and sectors. While these estimates rely on various assumptions, and are subject to critiques, they point to the significant magnitude of the monetary costs of corruption in public services.

Unpacking sector-specific issues is crucial to diagnose the root causes of corruption in public services and design appropriate interventions. Even within a sector, a reform could be narrowly focused on rooting out a particular issue, such as bribery in surgery waiting lists, or adopt a multi-pronged approach to focus on the entire service. The correct diagnostics also allows reformers to assess the feasibility of the program, as well as to identify the loci of leadership and how to build stakeholder coalitions.

Corruption in the three distinctive service delivery sectors of healthcare, land administration, and port services impacts the economy in different ways. The three services are very distinct: healthcare, that affects virtually all citizens, as seen during the current COVID-19 pandemic; land administration, a sensitive service impacting a large proportion of the population; and ports, a specific and narrower government to business service. If the health sector is plagued by pervasive corruption, human development can be impacted; corruption in land administration can undermine land reform and citizens' trust in government as a whole; and corruption in ports directly affects trade and the investment climate in the countries relying on maritime commerce, hampering their development. The case studies describe reforms to address these issues and improve service delivery.

- **Rwanda's** reform of land mapping and titling aimed to modernize the entire sector through enhanced transparency, thus increasing the cost of malfeasance and reducing corrupt incentives in service delivery. It was focused on good management practices in land administration, including the digitization of records.
- **Ukraine's** ongoing health system reform is focused on changing the incentives of healthcare providers to improve outcomes. The reforms initiated so

far have included capitation financing in primary care; raising health professionals' remuneration; designing transparent, merit-based medical staff appointments; and initiating an eHealth digital record-keeping system. These reforms aim to lower out-of-pocket expenditure, reduce the number of acute medical events, and increase patient satisfaction with their care providers. This is an example of a true "ecosystem reform," in which changes to legislation went hand-in-hand with executive implementation and strong civic engagement to serve as a feedback loop.

- **Nigeria's** reform program in ports is an attempt to address corruption in service delivery with the help

of a pro-reform coalition. Such a coalition in Nigeria included private shippers, the United Nations Development Programme (UNDP) and three of the country's anti-corruption agencies. The network worked together with the Nigerian government to develop corruption risk assessments of five ports, followed by standardizing procedures, using an e-governance portal, and establishing a grievance mechanism. Surveys conducted by the network and its partners suggest the measures have had a positive impact in improving the functioning of ports, even though substantial work remains to be done.

PART II: Key Instruments for Fighting Corruption

Open Government Initiatives

Open government reforms aim to promote an ethos of transparency, inclusiveness and collaboration. The aim is to shift norms in a sustainable way by introducing changes that lead to enhanced transparency and promote an environment that is less conducive to corrupt activity, and empowering citizens to demand better services from the government. The impact of these reforms depends on the existence of other enabling factors, such as political will, a free and independent media, a robust civil society, and effective accountability and sanctioning mechanisms.

Openness can lead to a stronger relationship between government and citizens, increasing levels of trust and social capital. An open government involves citizens in oversight of government functions by providing relevant information, creating opportunities for citizen engagement, and implementing mechanisms that strengthen accountability. While it is a challenge to make an empirically-grounded causal link between open government measures and reduced corruption, due to limited evidence, a growing body of case studies and experimental evidence demonstrates that well-designed open approaches can lead to positive change.

While there has been a surge in interest in transparency in recent years, the impact of transparency on improving accountability hinges on several factors. These factors include whether or not stakeholders can easily find and understand the information, and the ability and willingness of the officials to respond to requests for information. Other reasons include lack of civic space, political will and institutional capacity, which results in governments failing to meet the expectations of different stakeholders. Under such circumstances, reform champions, coalitions for change, "infomediaries," such as journalists, an independent media where that exists and watchdog organizations, can play a critical role. Even though about 120 countries have passed a right to information law, evidence of the impact of legal rights to access information on the extent and nature of corruption is inconsistent. Transparency by itself cannot address corruption, although it is often seen as a necessary first step and is certainly key in shifting incentives and nudging behaviors. A broader enabling environment that supports the involvement of a range of stakeholders in accessing, analyzing and responding to information in the public domain helps access to information initiatives lead to more fundamental change.

While measuring the impact of citizens' engagement on corruption is hard, there is evidence that social accountability mechanisms, such as social audits, surveys, citizen report cards, or grievance redress mechanisms, can all be used to address corruption in service delivery. Impactful interventions are effective when they address citizens' private interests, and garner high levels of citizen participation. Important enabling factors include access to information, legislation, policy and practices, an active and independent media, citizens' ability to hold institutions accountable through oversight institutions and political channels, markets and institutions that prevent elite capture, credible sanctions, and the existence of coalitions among multiple actors.⁵

Open government measures can directly or indirectly lead to a reduction in corruption even though the impact can be difficult to measure.

However, if information is increasingly reaching citizens and the media, and officials are acknowledging its accuracy, that is a step in the right direction. Over time, with a holistic approach tailored to the context, open governance may help change behaviors so that public resources are directed not to the pockets of individuals but rather to the common good. Two case studies focus on engaging citizens:

- **Kenya's** experience with open budgeting illustrates that engaging citizenry in the budgeting process can enhance accountability of public officials. 'Participatory budgeting', an approach introduced at the local government level (counties), involved allocating a portion of the budget for citizens' priorities and creating a participatory process where citizens could work together to define and vote on development priorities. While participatory budgeting did not directly target corruption, it nonetheless had an impact on ensuring public funds were spent on citizens' needs, increased citizen oversight of public spending, and in some cases resulted in cost savings.
- **Ethiopia's** Social Accountability Program, an effort to better engage its citizens and improve public service delivery at the local level, led to increased trust between civil society, service providers, and the government. While the program's goals were mostly to increase public participation, build better relations between local governments, citizens, and civil society organizations, and to improve service

delivery, the initiative likely had spillover effects in reducing corruption, even if on a small scale.

GovTech

The broadening and deepening of global digitization of governments and citizens is changing the face of public sector governance and its impact on anti-corruption.

While digitization as a 'foundational' factor is important, other factors like institutional incentives and capacities and strong leadership are key for enhanced efficiency, improved service delivery and fewer opportunities for corruption. Reducing the human interface in service delivery helps governments to curtail the risk of rent-seeking behavior. Yet, the traction of digital technologies in reducing fraud and corruption depends on the institutional context. Any system will only be as good as the practices that complement it. To gain greater traction for addressing fraud and corruption, data needs to be captured and linked with other data. Mandating the use of the system and validating and analyzing data using Artificial Intelligence (AI) or other methods can prove to be effective.

Digital government transitions, coupled with disruptive technological change, offer both opportunities and risks for anti-corruption.

While digitization can help improve transparency, with near real-time feedback helping expose illicit behavior, it can also facilitate a rapid or scaled illicit syphoning of resources. The options for leveraging opportunities that new forms of digital data offer are very different for a country like Singapore (see Box 7.1) than those available to economies reliant on paper-based workflows, and where existing systems are not set up to link to each other, at least in the short run.

Developing countries could leapfrog and deploy new disruptive technologies more widely to address public sector challenges.

Digital technology disruptions are being used in a number of areas, including for revenue, expenditure, regulation, and financial and physical asset management. Framing technology-supported reforms as a public services delivery agenda, rather than in the first instance as an anti-corruption crusade, may also be a more disarming approach in light of the existence of the vested interests benefiting from corruption. However, the impact will be heterogenous and depend on complementary

practices like the degree to which electronic channels are voluntary, and how discretion was used.

Big data, cloud-based platforms, biometrics and fin-tech are all being used, but the full advantage can be realized only by addressing omissions and biases. Greater access to digital data in usable form, alongside technology tools, can empower civil society and reform champions in government to detect fraud and corruption. While big data—and the related application of Artificial Intelligence-Machine Learning (AI-ML)—can enhance detection and limit discretion abuse, the perseverance and skills to link and clean data will be key. Cloud-based platforms and services are providing for on-tap computing, better data management capabilities, and storage capacities. Although biometrics have been used in identity validation, better targeting and access to services, and to improve attendance of public servants, the risk of excluding genuine beneficiaries from government programs needs to be factored in. Finally, while fin-tech innovations have increased the scope and scale for digital payments between governments and citizens, blockchain technology is still evolving, and sensor technology is increasingly gaining momentum. Blockchain technology has the potential to improve trust in digital government in settings where trust is low. The internet of things (IoT) and other sensor technology are increasingly allowing for richer and more dynamic tracking and feedback.

While different technologies have merit in their own right, the full impact lies in breaking technology silos and implementing interlinked approaches across sectors and services. Given the expanse and diverse nature of public sector services, the most productive strategies build on a mix of wider government digitization contexts and intersecting technology developments, rather than focusing excessively on a single technology. The roll-out of the latest ICT systems, including those supported by development partners, may be seen as potentially solving the problem, but this is not necessarily the case. What is essential is that for any country to adopt new technology or ‘leapfrog’, the corresponding analog complements must be in place. In some cases, they may indeed be game-changing, but care must be taken that the next must-have technology does not become an excuse to address persistent challenges, such as poor service delivery and fraud and corruption. The case study on Andhra Pradesh’s

Municipal Reform program demonstrates how the sub-national government progressively leveraged digital government platforms and emerging technologies to improve public services.

- In **Andhra Pradesh**, the government used drones to collect geospatial data and update maps, replaced paper-based systems with digital ones, and trained both staff and citizens on how to use the new platforms. Citizens could access services or lodge grievances through multiple channels: online, by telephone or through a mobile phone application. The reforms significantly reduced opportunities for fraud and corruption in key areas, such as taxation and construction permits, and improved revenue for local governments.

Asset and Interest Declaration (AID)

AID systems have increasingly become a multi-purpose tool aimed at preventing conflicts of interest, detecting unjustified assets and building broader integrity of public service. While many countries have AID systems, there is limited evidence of their effectiveness. Most AID systems have yet to live up to their potential. Cumbersome filing procedures, crucial gaps in the disclosure forms, and lack of transparency and enforcement are limiting the role of AID. Such weaknesses also may make it merely another check-a-box exercise to implement national anti-corruption strategies. Lack of control of submission and ineffective verification of declarations undermine their importance as an anti-corruption tool. The chapter on AID elaborates on what an effective AID system should look like and how it can be relevant in the context of transnational financial flows, new ways of disguising unjustified wealth, as well as domestic typologies of conflict of interest and hidden wealth.

The chapter provides guidance on several critical AID system design questions: Who should file, how frequently to file, paper vs electronic filing, what to declare, how to verify declarations, how to sanction non-compliance, and how much transparency. Though the direct impact of AID systems on anti-corruption will always be difficult to quantify, governments should nevertheless try to assess their effectiveness—public perception surveys, expert opinions, and quantitative review of compliance data are some methods available.

The two case studies highlight the impact of enforcement, digitization, and transparency:

- In **Ukraine**, the asset declaration system put in place in the 1990s had been nothing more than a formality. But in 2014, civil society successfully advocated an overhaul of the country's anti-corruption infrastructure. When the new asset declaration system became operational in September 2016, it was one of the most comprehensive worldwide. By the end of 2019, the system held over 4 million electronic documents, all of which were available for free public access, including in machine-readable format. However, at the end of 2019, due to concerns over effectiveness and impartiality of enforcement, Parliament adopted a law that overhauled the anti-corruption agency in charge of the system and further strengthened provisions on the disclosure and verification of assets and interests.
- **Romania** reversed a long history of inactivity on tackling corruption with the introduction of AID forms for a wide range of public officials, together with a verification mechanism focused on detecting and sanctioning unjustified variations of wealth, conflicts of interest and incompatibilities. Transparency has been critical to the system's effectiveness, as all disclosure forms are published on the website of the National Integrity Agency (ANI) and used by civil society and investigative journalists. ANI uses the system to sanction unjustified changes in wealth, as well as conflicts of interest and incompatibilities. ANI's work is also focused on prevention, most notably through the PREVENT system, which issues early warnings to contracting authorities about potential conflicts of interest in procurement procedures.

Beneficial Ownership Transparency

The release of the Panama Papers and Paradise Papers in 2016 and 2017 shone a spotlight on the extensive use of anonymous companies for concealing corrupt practices and proceeds. The sudden growth in publicly available information on this widespread practice has helped increase pressure on policy makers to address the abuse of anonymously-owned companies and other anonymous financial vehicles, given the role that they play in concealing

illicit practices and proceeds. Addressing the abuse of anonymous corporate entities is a global challenge. Regulatory loopholes in beneficial ownership disclosure requirements in one country have serious consequences because illicit financial flows (IFFs) are not constrained by national borders: illicit funds can find a safe haven in jurisdictions where regulations protect anonymity. Developing countries pay the heaviest price for these practices because of lost revenues or funds that are diverted as a result of fraud, tax evasion, and the illegal exploitation of natural resources.

Though still relatively new, the use of publicly available registers of the beneficial owners of corporate entities (beneficial ownership registers) is beginning to have an impact in two ways: (1) helping enforce illicit enrichment laws,⁶ and (2) helping detect and prevent conflicts of interest in public procurement. Even before the release of the Panama Papers, international bodies like the Financial Action Task Force (FATF)⁷ were emphasizing the value of beneficial ownership disclosure as a tool for law enforcement authorities. Since then, civil society organizations, thinktanks and watchdogs have been contributing ideas to help solve technical challenges associated with establishing credible and effective public disclosure systems. One of the important milestones is the development of the Beneficial Ownership Data Standard (BODS), a framework for representing information about people, companies, and relationships as structured data, in a standardized format that can be replicated across countries and systems.

The path to implementing beneficial ownership transparency reforms is not easy. The report presents three diverse country examples as to how they have approached the adoption of a beneficial ownership transparency policy:

- **Nigeria** is an illustration of how reforms that are politically and technically challenging have been initiated by leveraging international commitments and policy platforms, building on existing institutional frameworks, such as the transparency commitments in the extractives sector. Beneficial ownership requirements were introduced in 2019 as part of a bill to reform the private sector. The Nigerian Corporate Affairs Commission (CAC) is now tasked with collecting beneficial ownership information for all 3.1 million Nigerian companies,

and making that information publicly available.

- In **Slovakia**, companies are required to register as a Partner of the Public Sector through ‘authorized persons,’ (e.g., attorneys, notaries, banks, or tax advisors), who are jointly liable for false information. Free public access is another cornerstone of Slovakia’s approach to verifying data. Slovakia shifted the burden of validating beneficial ownership information to companies through these ‘authorized persons,’ given the technical and administrative challenges inherent in verifying the accuracy of beneficial ownership information.
- The **UK** experience offers an example of how to balance data protection and privacy in a disclosure policy, through: (a) publishing enough personally identifying information to distinguish between beneficial owners and officers, while withholding sensitive information, and (b) allowing beneficial owners with privacy concerns to apply to have their information removed from the register, but only under very strict rules-based criteria. Out of millions of companies registered, only around 300 have applied to have their information removed, and only 30 of these applications have been granted.

Exchange of Tax Information and Collaboration on Tax Crimes

Corruption is intrinsically linked to tax crimes, as corrupt persons do not report their income from corrupt activities for tax purposes. FATF includes tax crimes in the set of designated predicate offenses for money laundering purposes, explicitly recognizing the linkages between tax crimes and money laundering. Moreover, the extensive level of corruption related to tax has serious implications for government revenues and economic development.

The impact of inter-agency cooperation can be significant. In the Brazilian Petrobras investigation, tax auditors supported the transnational corruption investigation by analyzing suspects’ tax and customs data and sharing this with the police and public prosecutor as permitted by law. With that information, officials were able to uncover evidence of money laundering, tax evasion and hidden assets and the investigation has, so far, resulted in criminal fines, tax

penalties, and recovered assets amounting to \$15 billion.

Chapter 10 presents two case study examples on how tax administrations can play a stronger role in the fight against corruption and specifically against illicit financial flows:

- **Exchanging data to detect potential corruption:** While most prosecutions for tax crimes related to corruption can be undertaken by the tax authorities, they often require support in the form of information sourcing or expertise from other agencies. There are multiple obstacles to such information sharing, but an increasing number of countries are creating the legal precedence to overcome them. A starting point is to establish bilateral agreements or memoranda of understanding (MOUs) to share information, while respecting relevant privacy laws within the country. Establishing a national task force to enhance collaboration and improving inter-connectivity among databases are also key steps to be taken by national authorities.
- **Using tax data as evidence in the prosecution of corruption:** The level of cooperation between tax administrations and other domestic law enforcement agencies is critical in countering tax and financial crimes. Tax administrations are granted access to the transactions and records of millions of individuals and entities, but they may be unaware of the typical indicators of possible bribery, corruption, and other financial crimes not related to tax. Moreover, in many countries there are legal barriers to the ability of tax administrations to share information with the police or public prosecutors in non-tax investigations. The ability of tax administrations to be involved in prosecuting financial crimes is often made easier when tax crimes are recognized as predicate offenses to money laundering because it means that a person may be charged with the offense of money laundering and the predicate offense of tax evasion.

PART III: Role of Institutions in Fighting Corruption

Anti-Corruption Agencies

Anti-Corruption Agencies (ACAs) have in recent years received a great deal of attention and criticism because of the high visibility of their work and their seemingly limited impact compared to the resources devoted to them. The existing literature⁸ has highlighted the complexity and variety of these institutions and identified key elements for their effectiveness. Political will and high-level commitment are the cornerstone of every successful anti-corruption effort. Once political support is obtained, the next step is the introduction of a comprehensive and clear legal framework for anti-corruption work. Such a legal framework, although necessary, is not sufficient, and laws and regulations need to be applied to make a difference. Furthermore, inter-agency coordination and cooperation among different jurisdictions is required to enhance the investigative capacity (and effectiveness) of ACAs. Once this is assured, ACAs need an explicit role and mandate, and, as with every public institution, they require adequate resources to operate. ACAs, because of the complexity of their work, must also position themselves clearly within the institutional environment and establish effective inter-agency coordination and cooperation. A lack of clarity about their mandate and position, and unclear political commitment, are two factors that have commonly contributed to the emergence of ineffective ACAs that encompass multiple ill-defined functions. Measures promoting the ACA's accountability and relationship with citizens and the media (including the emerging social media) can be powerful tools to create an enabling environment for ACAs that face faltering political support. ACAs should set an example and make themselves accountable for their work by regularly sharing the outcome of their efforts and initiatives. Investing in programs to establish good relationships and communication with the public, based on visible and relevant indicators of impact, has helped several ACAs to fend off political pressures and survive attacks aimed at undermining them. Clear and comprehensive performance indicators for ACAs are not commonly used by ACA officials, making ACAs less able to track and report on results and impact and even more vulnerable to political pressure and vested interests.

Despite high expectations, ACAs have fallen short of achieving the organizational standards set by the United Nations Convention Against Corruption (UNCAC). ACAs have often been introduced in environments where other key institutions (for example the judiciary) were weak and/or captured by private interests. Moreover, the independence of the institutions (functional, budgetary and appointments), strategic focus, human and financial resources, and mechanisms for collaboration and coordination have not achieved the level that would enable them to be effective. ACAs have therefore not been successful in delivering according to their mandates and in line with citizens' expectations, and in many cases have not had any significant impact on the trends, types, and levels of corruption in their jurisdictions.

The pervasive institutional limitations raise questions as to whether the model of a stand-alone multi-functional ACA is the right one. Corruption has all too often been regarded as a stand-alone issue, with the establishment of an ACA being a stand-alone response. In most cases, countries do not develop a national anti-corruption strategy in advance of establishing an ACA and so do not tailor the design of such an agency to the problem. There is often a lack of clarity over the roles and responsibilities of other key institutions which also play a role in combating corruption, as well as the mechanisms and incentives to ensure the inter-connectedness and inter-dependence of the institutional landscape. Three case studies, the UK, Lithuania, and Bhutan, show three different models of ACAs, each partly effective in its own way.

- The **UK** built its ACA, the International Corruption Unit (ICU) of the National Crime Agency, through a reconfiguration of expertise within existing institutional arrangements. The ICU was given dedicated staff and budget, and its capacity was enhanced, yielding positive results. Success was also due to the flexibility of the parent institution, and the leadership of a senior official with a clear focus and a degree of executive authority that ensured availability of and control over resources necessary to maintain, to date, its organizational development and consolidation.

- **Lithuania** set up a dedicated ACA, the Special Investigation Service (STT), as a unit within the Ministry of Interior. It was able to handpick experienced staff on enhanced terms and benefited from internal and international guidance. The STT was seen as a quasi-law enforcement agency with strong leadership and technical expertise. Its effectiveness can be attributed to the combination of a strategic approach taken on the basis of informed intelligence, specific technical approaches, and continued guidance from international agencies.
- In **Bhutan**, the Anti-Corruption Commission (ACC) was established as part of the 2005 constitutional arrangements, with the aim of rooting out corruption. It was given a disproportionate mandate with respect to its size and capacity, and its staff and activities were quickly ramped up. Furthermore,

despite the very challenging environment, the ACC was set up without an institutional and corruption risk assessment, which could have helped identify institutional gaps and weaknesses that the ACC could have begun to address in its work. This lack of strategic planning had consequences for the agency's impact. Many reforms did not address past cultural heritage issues. As a result, the ACC continues to face challenges as it does not fit entirely into the country's environment and the environment does not fully facilitate its purpose.

These experiences highlight the importance of having a political commitment to tackling the problem of corruption, developing a deep understanding of the nature of the corruption problem, and mapping the existing institutional landscape before establishing a new anti-corruption agency if it is to be effective.



Supreme Audit Institutions

Supreme Audit Institutions (SAIs) can play a useful role in detecting and preventing corruption, when they have the mandate, tools, and trust of the government to take on the fight against corruption.⁹

SAIs are the chief auditors of the government and play a pivotal role in ensuring transparency and accountability. The SAI's independence and operating capacity are important foundations for providing fiscal oversight through presenting credible and timely audit results to legislatures, government, civil society, and the general public. The primary purpose of the SAI is to report on the management of public funds and the quality and credibility of the government's reported financial data. Its recommendations can indicate ways to strengthen institutions. SAIs can contribute to combating corruption by directly reporting on transactions and internal controls; and by assessing ways to improve the accountability and performance of government agencies and anti-corruption bodies. SAIs are not primarily responsible for tackling corruption and fraud. However, given the nature of work performed by SAIs, including checking government accounts, verifying regulatory compliance and assessing the performance of government entities, SAIs are capable of contributing to the anti-corruption agenda.

To be effective in detecting fraud and corruption, SAIs need to build capacity including guidance and training for auditors.¹⁰ They also need to strengthen their relationship with parliaments and anti-corruption agencies. SAIs could establish formal collaboration agreements with law enforcement agencies, where the scope of collaboration extends to information sharing, joint conferences and workshops to share knowledge and experiences, referred case follow-up, staff exchanges and joint agenda setting.

In an environment where corruption is widespread, establishing the integrity of SAIs can be a challenge.¹¹ Top management of the SAI can be expected to lead by example in maintaining high integrity and establishing zero tolerance regarding staff violations, failing which they will not be able to administer or propagate an organizational culture of integrity. This can be complex territory to navigate as auditors are often insiders who are asked to play the role of outsiders. While the effectiveness of an SAI largely depends on its operational and financial independence, it is also influenced by the external

audit model they follow, the country context, and the associated norms of behavior. The two case studies from Ghana and India demonstrate the effectiveness of the SAIs in two different contexts:

- The case study of **SAI Ghana** is an apt example of an overlapping or hybrid model of a Westminster¹² type SAI equipped with sanction powers. It shows the transformation of a marginalized agency to a reform champion in the fight against corruption. This was possible due to a seasoned and charismatic leader, operational autonomy to investigate irregularities, and building alliances with civil society to help communicate the importance of financial integrity. Their work has helped curtail corrupt practices and lend added voice to CSO advocates on a range of other related issues, such as asset disclosure.
- The case study on **India**, also a Westminster model, demonstrates the key role played by the Comptroller and Auditor General in unearthing inappropriate financial transactions costing the government huge sums of money. It revamped the manner in which future awards for the telecom spectrum were allocated. The core mandate allowed for not just examining expenditure programs, but also forgone revenue and potential conflicts of interest in government procedures.

Justice System

For the justice system to perform effectively, the constituent parts – courts, prosecutors, police, and supporting bodies – need to be supported by the political leadership and encouraged to play their role. Without strong political commitment, there is often a gap between the laws on the books and the implementation on the ground. Under-resourcing of the justice system (both financial and human resources) is a long-standing problem in many countries and one that impedes performance, including as it relates to prosecuting corruption cases.

Enhancing the effectiveness of the justice system in the fight against corruption needs to proceed at multiple levels: system-wide, at the criminal justice chain level, and at the institutional level. Governance reforms at the system level need to ensure judicial and prosecutorial independence so decisions are made

without undue interference, while encouraging judges and prosecutors to be accountable to the public for their performance, including for non-compliance with integrity requirements. Reforms at this highest level to increase performance in the fight against corruption should also target the process of selection, evaluation, and promotion of judges, prosecutors, and court staff. Second level reforms should address the criminal justice chain, i.e., how different institutions interact and collaborate on agreed performance targets.

Finally, each institution itself should diagnose its performance bottlenecks as well as the corruption challenges it faces internally (e.g., through court user and multi-stakeholder justice surveys).

Indeed, justice institutions themselves are not exempt from corruption and capture that affect the broader public sector. Police is a common first interface for

citizens with the justice system and surveys worldwide indicate that many citizens in developing countries have experienced police corruption, for example with police stopping or arresting vulnerable people to extort a bribe or other favors. Corruption among judges and court staff often involves the speeding up and slowing down of case processing, or other manipulations of case files. Surveys also indicate that many countries struggle with a lack of integrity among judges and prosecutors, which affects their decision-making.

In an increasingly interconnected world, mutual legal assistance and other forms of international cooperation between jurisdictions are crucial to effectively fight against cross-border corruption.

The Justice chapter highlights two recent examples where such cooperation has been instrumental in exposing large-scale and pervasive corruption.

Malaysia Case

Malaysia's case study highlights both the opportunities and challenges of building and sustaining an effective anti-corruption drive over time. Despite several reform initiatives to address corruption, Malaysia continued to fair badly in global perception surveys on corruption. Indeed, many of the institutions that were set up to detect and sanction corruption became gradually compromised, with increasing concentration of political power. Only when the magnitude and scale of corruption in the 1MDB sovereign wealth fund became widely known to civil society and the global media, did citizens become so outraged that they voted out the political party that had been in power for over 60 years. The new

government – a loosely formed coalition of opposition parties led by the former Prime Minister (PM) – stressed the “rule of law” and took upon itself to revitalize the institutions that were put in place to fight corruption and to re-establish limits on the power of the PM. Yet, without the parliamentary majority needed to make changes in the Constitution, the scale of changes was necessarily limited. The actions taken by the Pakatan Harapan (PH) government during its two years in office boosted Malaysia's ratings in global surveys of corruption perceptions in 2019. With the collapse of the PH government in March 2020, it is unclear whether the momentum on anti-corruption reforms will be sustained.

Conclusions

Corruption is stubborn but not intractable, as demonstrated by the dozens of cases of progress toward combating corruption presented in this report. The progress in the fight against corruption is not necessarily from the large government-wide announcements and initiatives that garner extensive press coverage, but from the more focused efforts

and more subtle changes that governments and communities make that may go unobserved. The cases presented here provide evidence of how opportunities can be seized within a specific sector or function to enhance governance; in many cases, the push to more transparency has been a common theme. However, the impact of the initiatives reviewed here may not always

be measured in quantifiable savings from corruption or a jump in global survey rankings, as perceptions of corruption may be slower to adjust. Indeed, one of the criticisms of the global survey rankings is that they are not actionable, and rather obtusely relate to the nature of the corruption problems being faced.

Effective anti-corruption strategies typically combine multiple measures, often including both sector-specific interventions and transparency and accountability measures that apply to the whole public sector. Corruption manifests itself in specific functions and sectors of government, and the report emphasizes the relevance of this sector-based perspective. Yet, corruption at the sectoral level may flourish because of the existing social norms and a governance ecosystem that encourages opacity or even secrecy, which either tolerates or encourages corruption. Broader governance measures may include strengthening institutions that help to combat corruption on the one hand, and implementing specific tools or policy measures that encourage transparency and make it harder to hide corrupt activity (and the associated proceeds) on the other.

While many factors may contribute to the effectiveness of anti-corruption initiatives, there are six cross-cutting drivers of anti-corruption reforms that can be identified from the case studies. Not every factor is evidenced in every case study, but these six are present in some combination in each of the cases.

- Strong and determined **political leadership** is often needed to provide vision for reform and a commitment to support increased integrity in the face of opposition from vested interests.
- Countries benefit as **institutions** become more capable, providing checks and balances and fostering accountability. Without strong institutions to assure implementation, reforms risk being short-lived or only superficial.
- **Transparency** can promote greater compliance and improve human behavior. Open government policies and access to information help make corrupt actions harder to hide and contribute to their prevention, particularly when they are linked to engaged and empowered communities and official processes.

- **Incentives** (often captured in social norms) drive behavior and the entry points for corruption vary across functions of government. Therefore, one needs to focus on corruption at the micro-level and its manifestation in specific sectors or functions and changing the incentives of the perpetrators.
- **Technology** is enabling countries to standardize processes, minimize human interaction, and capture comprehensive data that helps establish accountability for a wide range of transactions.
- Finally, efforts that foster **collaboration** among multiple stakeholders, including across international borders, to pursue a common goal achieve greater success.

Sustaining the momentum for corruption-mitigating reforms is challenging but could be aided by improving the measurement of their impact. The current tools that are used internationally to measure corruption have the common problem of relying on perceptions of experts. While there is some benefit from such surveys as a broad proxy, they are not a substitute for having a more quantitative or evidence-based set of indicators.

Achieving long-term economic growth and shared prosperity depends upon governments, private sector, and communities working together to address corruption and its corrosive impacts. This report acknowledges that the challenges to confronting corruption are deep-rooted but shows that they are not impossible to overcome. Each case study gives evidence of impact in reducing the risk of corruption, spanning a variety of country contexts: fragile states, low-income, and advanced countries. However, public policy practitioners and civil society advocates must recognize that the success and sustainability of reforms cannot be achieved solely through legislation, technology, or even citizen participation. What is needed above all, is the commitment of all parties to engage proactively in the fight against corruption through collaboration, innovation, and mutual trust. Only then can the war be won, with economic growth no longer being impeded, but rather benefiting the whole of society, especially the poor and vulnerable.

Notes

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Setting the Stage



Rationale and structure of the report

The centrality of corruption for growth and development

Corruption continues to make headlines around the world in both developing and developed countries—billions of dollars stolen from countries, leaks of off-shore databases helping to bring down governments, and mass protests over corruption threatening political stability. New governments come to power on the promise of clean, accountable, and transparent regimes—as in the case of Malaysia, which saw a change in government in 2018 after 61 years. In rich countries, the term “corruption” is routinely hurled at political opponents, sometimes with facts to support the allegations, sometimes not. Relatives of leaders find themselves losing court battles in foreign countries over their unexplained wealth, triggered by the ostentatious consumption of luxuries. Already in 2020, the record for the largest legal settlement for overseas bribery ever was broken when Airbus SE agreed to a settlement of \$4 billion with France, the UK, and the USA.

Recognition of the pernicious effects of corruption helped establish its primacy as a development issue. Since the founding of Transparency International in 1993 and James Wolfensohn’s candid speech on the “cancer of corruption” in 1996, there have been deepening analyses and evolving approaches to tackling corruption. Governments across the world are trying to address this phenomenon, which manifests itself in different ways in different sectors and services. From 1Malaysia Development Berhad (1MDB) to the Fédération Internationale de Football Association (FIFA), from Operation Car Wash to the Luanda Leaks, recent headlines of corruption scandals only serve to highlight the continuing need for attention to the problem of corruption.

Research has long examined the deep and far-reaching impact of corruption on economic growth, management of public resources, and inequality. Early economic studies argued that corrupt practices distort the distribution and utilization of resources, leading to inefficiency.¹ Corruption also affects public welfare when investment decisions are driven by opportunistic, rent-seeking motives, rather than the intrinsic value that such investments can bring to

society. Corruption creates an uneven playing field for firms, distorting competition and innovation.

While corruption impacts everybody, the impact on the poor and most vulnerable is disproportionate, thereby exacerbating poverty and inequality. Empirical studies have shown that corruption hits the poor the hardest. Many studies find that the poor pay a larger share of income in bribes, consistent with the idea that many payments for services are flat charges. Moreover, some have argued that the poor are more likely to be victimized either because they rely more heavily on state services² or because they are seen as having less power. In one study in Mexico, car accidents were staged in an experiment—the traffic police hit up the drivers of old cars for bribes and waved luxury cars along with warnings.³ While the rich gain access to services by paying bribes, the poor and vulnerable are restricted from accessing health, educational, and justice services that, in theory, are open and free.⁴ Likewise, some among the rich and powerful gain from grand corruption, while the poor suffer the consequences when money is siphoned off. Such money could have been put to more productive uses to build human capital and infrastructure, or address issues related to high-quality service delivery, jobs, gender equality, and climate change, to name a few.

Corruption not only undermines credibility and trust in governments but impacts the development of economic, social, and human capital, which is fundamental to long-term progress.⁵ For example, the two key factors that produce human capital, namely education and health, see corruption of various forms. Teacher absenteeism, kickbacks for school meal contracts, nepotism, and false degrees all weaken the efficacy of learning-related spending, and the pernicious effects of corruption do not stop there.⁶ In the health sector, goals can be undermined by corruption in the procurement of pharmaceuticals or medical equipment, and has been associated with problems as wide-ranging as antimicrobial resistance⁷ and HIV infection,⁸ and to child mortality⁹ more generally.¹⁰ In addition to the long-term consequences, corruption in the health sector can have immediate effects as we see now in the ability to efficiently address the COVID-19 pandemic (see box below). Further, corruption in infrastructure,

BOX A

Corruption Risks Stemming from COVID-19

At the time of finalizing this report, all countries are dealing with the crises surrounding the COVID-19 pandemic. Governments are responding not just to contain the disease, but to address the multiple challenges of providing health care, food, and security to people as well as keeping the economy from crumbling due to the closing of businesses and forced lockdowns across the world. This unparalleled crisis has caught most governments unprepared and has led to very large sums of unplanned money being spent on health care, social security and economic stimulus. Speed is key and hence regular or standard operating procedures are often not realistic. Billions of dollars are being raised, borrowed, and spent by countries, circumventing standard procurement and other accountability procedures as they try to control the spread and aftermath of COVID-19.

The large scale of emergency spending by governments exposes them to a variety of corruption risks that may undermine the effectiveness of government responses. The strains placed on the public sector in responding to the current situation present enormous opportunities for corruption to flourish. Corruption can lead to the theft, wastage, and misuse of scarce resources, resulting in unnecessary suffering and death. It can also entrench elite privilege and inequality, and undermine institutions of accountability with lasting consequences. The risks and associated responses in such a situation are of a very different nature to those highlighted in the report, as this situation is unique and unprecedented.

Key risks of corruption from the COVID-19 response in the health sector include those related to corruption in the procurement of emergency supplies and services; supply chain and service delivery; and in the administration of the response to the health crisis. Risks in responding to safety nets, food and livelihood security stem from the theft and capture of emergency funds. The use of these funds could be undermined by distorted targeting, capture by vested interests and inclusion or exclusion of certain populations, as well as by being stolen prior to reaching the intended beneficiaries. Finally, the risks associated with reviving the economy are multi-faceted and include unequal application of emergency powers granted for various economic activities, ranging from distribution of benefits to implementation of policies and decisions taken by the government, and abuse of power.

Minimizing such risks, whether for health sector spending or safety nets or revival of the economy, requires mechanisms for oversight. This would involve defining and activating explicit processes and protocols for documenting emergency spending; tracking delivery of supplies involving central and decentralized authorities; publishing information on emergency spending; and conducting quick reviews. Such reviews would involve undertaking audits of spending as well as receiving feedback from beneficiaries through specific mechanisms, so that responses can take account of identified shortcomings and become more effective as the situation evolves. Use of pre-existing digital platforms both for distribution of benefits, as well as for addressing grievances and fostering partnerships with the private sector and civil society organizations for distribution and oversight, can build greater oversight and trust.

In short, to foster greater accountability it is important that government actions are clearly articulated, rules are enforced, violations are addressed, and problems remedied as quickly as possible in a transparent manner. Follow-up actions include dismantling temporary or emergency powers and provisions, conducting post reviews and bringing perpetrators to task. Communication to the public on all government actions from the allocation of funds to their use, as well as publicly reporting about the measures being taken to prevent corruption and to follow up on violations, will not just deter corrupt behavior in this situation but will help maintain the focus on the broader corruption agenda.

Source: World Bank. 2020. Ensuring Integrity in Governments' Response to COVID-19 (English). Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/801501588782665210/Ensuring-Integrity-in-Governments-Response-to-COVID-19>.

with its effects on road quality, and corruption in the police, with its effects on safety enforcement, are both associated with road fatalities with consequent impact on human capital. Corruption to avoid environmental regulations, kickbacks in procurement, bribes to pass building inspections, and state capture by interests in pharmaceutical companies, all undermine the developmental impact of public sector expenditures.

What makes this report on corruption different?

Since corruption manifests itself in many diverse ways, no single report can expect to address all the sources of corruption and approaches required to combat it. Instead, this report aims to highlight accumulated knowledge on anti-corruption thematically. It curates stand-alone case studies in the fight against corruption, i.e., examples of where public officials have implemented promising initiatives to combat corruption and enhance public sector performance. While a specific intervention or case may be showing signs of impact, it does not mean that these countries have made generalized progress in reducing corruption at the country level. Nonetheless, it may be possible to scale up these limited successes in difficult environments or to apply them to other countries keeping local conditions in mind. There may be learning in these cases. At the same time, as with many anti-corruption efforts, any of these successes runs a risk of reversal due to a policy or political change in the country.

Case selection was done through World Bank staff who have technical expertise in selected areas and countries, and through an extended network of partners, practitioners, and think-tanks known to staff. This process was similar to that used to produce *Improving Public Sector Performance through Innovation and Inter-Agency Coordination*, published in 2018 out of the World Bank's Global Knowledge and Research Hub in Malaysia. This approach implies that there may be other cases across the world that are known to individuals and practitioners, but they may not be documented or disseminated in a way that is accessible to a wider audience. Cases were solicited and selected on the basis of themes and sectors covered in the report rather than their geographical origin. Hence, while there may be several cases from a particular country or none at all, overall there is a broad geographic spread covering almost all regions,

including fragile and conflict-affected countries.

This report is structured to optimize its value and interest to government practitioners, researchers, international developmental organizations, civil society organizations (CSOs), think-tanks and the public at large. Within that sphere, the report should find an audience not only among anti-corruption agencies, but also ministries and institutions performing functions that tend to be most vulnerable to corruption (e.g., public procurement, infrastructure, and customs administration). This report is granular as it slices the issue of corruption into key thematic areas and specific sectors that are prone to corruption. Examples suggest a set of potential entry points and platforms for future engagement in specific areas. The structure along themes and approaches will enable practitioners, policy makers, and other audiences to zero in on sections that may be most relevant for their context. Hence most sections of the report can be read as stand-alone pieces depending on the area of interest. Cases aim to give a detailed account of not only what was done, but "how" the obstacles were addressed to achieve the reform and results.

The report approaches corruption by unpacking it into selected themes and provides examples of successful interventions. Focusing on emerging stories of impact across a range of countries, sectors, and tools challenges the notion that little can be accomplished. To focus on successes is admittedly risky, as reforms can be weakened or even reversed, sometimes quickly and sometimes through a gradual erosion of commitment. Alternatively, there may even be non-observed aspects of the success, making attempted replication fraught with difficulties. However, there is merit in focusing on success; where there is a will and an opportunity to confront the problem of corruption in one's organization, seeing how others have successfully addressed similar challenges can spark ideas and innovation. The case studies also provide examples of reforms driven not necessarily from within government but from civil society and by private sector interests. The cases also contextualize the design of reforms to warn against using those approaches blindly with scant attention to the country context. Given the diverse nature and magnitude of the problem, it is important to understand the tools, policies, and approaches that have worked in specific contexts to achieve goals at defined times. By no means exhaustive, the selected tools, policies, and approaches may help with the design of appropriate interventions within

country contexts. While the chapters and case studies are modular, they do not make up a menu. Though the report does not claim to fully address the complex political or social dimensions in each case, it recognizes the role or lack thereof of political leadership, cultural norms and other key factors in spearheading or putting at risk some of the anti-corruption reforms.

Coverage, limitations and structure of the report

The report is selective about what manifestations of corruption are covered. The overarching criteria for the selection of thematic areas are functions or sectors that are particularly prone to corruption and instruments or institutions that have experienced some success in combating corruption. The report organizes these thematic areas in three broad categories. First, it drills down into selected sectors and functions that are prone to corrupt activity and that have a high impact on development. Second, it zeros in on some of the policy practices and tools that have been effectively used by practitioners in different country contexts; and third it highlights the role of three key institutions in preventing and detecting corruption. Beyond these three categories, the report highlights successes in expanding transparency, citizen engagement, technological adoption, and stakeholder collaboration, which are critical across all sectors. As the report is case-study based, the focus is on the perspective of leaders and practitioners and the sorts of issues that they face in corruption-beset sectors. The chosen themes, instruments and institutions are not exhaustive, nor are they distinct sets as evident from linkages and overlaps discussed briefly below. The final section also has a country-specific focus on Malaysia, a case that traces the history of a country's anti-corruption efforts over the last few decades.

Each thematic area is covered in a separate chapter that generally begins with an overarching chapeau that delves deeper into the sector or instrument-specific issues, supported by case studies. It provides context to the reader about why the sector, instrument or institution is relevant for governments' anti-corruption efforts, possible entry points for engagement, what works, and what is less effective. It then draws on lessons from the two or three country cases that support the issues discussed in the chapeau. In some chapeaus, cases are in-built into the broader write-up, as they did not merit a detailed

description and instead are cited as examples or boxes within the chapter. Cases are used to draw lessons on key elements that drove success and aim to provide hands-on guidance to practitioners and policy makers. In contrast, for one or two thematic areas – such as the use of tax data and collaboration with tax agencies – the focus is on the cases.

The first part of the report covers issues, challenges and trends in five key thematic areas, supported by specific country cases that demonstrate some degree of success or provide valuable lessons.

The five thematic areas include public procurement, infrastructure, state-owned enterprises (SOEs), customs administration, and delivery of public services in selected sectors. These themes were chosen not necessarily because they offer the best possible solutions to address corruption but because of the central role they play in long-term economic and social development. Due to the centrality of these areas for economic systems and the pervasiveness of their interaction with the private sector and the general population, they pose large risks for misappropriation of public funds, the capture of revenues by elites, and collusive networks.

The five thematic areas cover a large canvas but are by no means exhaustive or distinct.

Estimates show that **procurement** accounts for 10-25% of spending globally and anywhere between 10-30% of the cost of capital projects is consumed by corruption. The report cites three cases of which two are from fragile and conflicted countries (Afghanistan and Somalia). The first three thematic areas (procurement, infrastructure and SOEs) are inter-twined as many large corruption scandals in **procurement** are associated with **infrastructure** services, several of which stem from **SOEs**. Case studies from Colombia, Brazil and Angola highlight the importance of transparency, citizens' oversight and integrity to foster greater accountability in the functioning of SOEs. The report also examines the importance of public-private partnerships (PPPs) in this context through examples of poorly designed long-term partnerships that have resulted in renegotiations in several countries. **Customs** administration is another sector prone to both transactional and systemic corruption, where deal-based relationships and political interference are rampant. The report highlights an interesting case from Madagascar wherein 'performance contracts' were used to tackle corruption. Finally, **delivery of services**, which is a key area as it impacts people's day-to-day life, is covered through



three interesting and important sectors: health, land, and ports. Together, they represent a wide spectrum of services with unique approaches used in three country environments: health in Ukraine, land administration in Rwanda and ports in Nigeria.

The second part of the report focuses on cross-cutting themes like transparency, citizen engagement, and GovTech, plus selected tools to build integrity and detect corrupt behavior. The chapeau on **transparency and openness**, a cross-cutting and foundational tool to deter corruption, is supported by case studies from Kenya and Ethiopia that demonstrate the role citizens can play in bringing about greater accountability and integrity in government functions. New technologies and their use to deliver services and detect fraud and corruption are discussed in the **GovTech** chapter. **Asset and interest declarations** with different degrees of sophistication are beginning to show results in building integrity in some countries, as highlighted in the case of Ukraine and Romania. This is followed by a discussion of **beneficial ownership transparency**, another powerful tool to end the corrupt practices and proceeds of anonymous companies. Part II concludes with a focus on two case study examples of how **inter-agency collaboration with tax agencies** can contribute to better detection and prosecution of corruption.

Part III uses a broader institutional lens to consider the role played by oversight institutions to support government-wide reforms to fight corruption. Lessons regarding the role, evolution, structure and effectiveness of **Anti-corruption Agencies** are demonstrated by country cases from Bhutan, Lithuania

and the United Kingdom, three countries with very different histories. A short piece on **Supreme Audit Institutions (SAIs)** and their role in flagging dubious transactions is supported by case studies from Ghana and India. The last chapter discusses the role of **Justice Institutions** in controlling corruption and the challenges they face in strengthening operational effectiveness and independence.

A special country case study on Malaysia traces the evolution of the country's anti-corruption efforts and its political-economy dimensions over several decades. The Malaysian case reviews the efforts, opportunities and challenges faced by a country that had one-party rule for over 60 years until 2018, following a very large corruption scandal at its sovereign wealth fund 1MDB. It also highlights Malaysia's institutional and policy reform efforts to address corruption from the 1950s to the present.

The report concludes with a review of six cross-cutting factors that are common across the case studies, as well as some reflections on the agenda that lies ahead. It notes that while there are no panaceas for confronting corruption, the featured cases exhibit a mix of reform drivers that contribute to their impact. The chapter highlights the importance of political leadership and alignment of incentives, coupled with information technology, to enable greater transparency and accountability in public expenditure. Institutional capacity enables effective and sustainable implementation of reforms, while collaboration across international institutions and countries across the globe is critical to detect and confront illicit flows of funds.

Trends, measurement, and emerging issues

Global trends in implementing policies and tools that help reduce corruption

The tools, policies and mechanisms for controlling corruption have seen improvements in many areas, and are generally moving in the right direction, despite some reversals. Systems of public financial management (PFM), access to information, and mechanisms for accountability have all become more sophisticated with the use of improved technology. Laws prohibiting overseas bribery are becoming more prevalent and more widely enforced. On the other hand, in several countries, the right to information or to participate in public affairs is being curtailed, accountability mechanisms exist in name only, and enforcement is lax. Freedom House, in its annual review, finds steadily declining averages for their Functioning of Government measure, which focuses specifically on measures for controlling corruption. There is a growing need to address the role of secrecy and offshore jurisdictions, concern about the shrinking space for civil society, and distress over repressive means being used to curtail information.

While some of the common foundations for controlling corruption appear to be moving in the right direction, corrupt individuals are also finding it easier to hide their illicit gains. The need to move and hide large sums of illicit funds has contributed to growth in the demand for services that facilitate these movements and for the creation of offshore structures.¹¹ Secrecy-focused jurisdictions provide havens for hiding wealth, whether obtained legally or illegally, and some jurisdictions have competed for such business. While the historical origins are deep, the competition has led to an increasing number of secrecy jurisdictions. There is increasing recognition of the pernicious effects that policies in these jurisdictions and the abuse of anonymous companies and other legal structures have on corruption.¹²

Access to Information. The ability of citizens to make informed choices in their daily life and hold government accountable is directly related to their ability to have access to government information in a meaningful way. When access to information is the default, rather than the exception, the public, the media, and civil society can serve as watchdogs over the government. Countries that have passed access to information laws

often see such laws used by investigative journalists and civil society activists to uncover malfeasance of all sorts. Based on the Global Right to Information Rating (RTI Rating), which uses 61 indicators corresponding to features of a good RTI regime, both the number and quality of access to information laws have been increasing. An indicator that tempers optimism about this trend is provided by the Open Government Partnership (OGP), which tracks implementation of RTI commitments by OGP members. Between 2014 and 2018, the number of OGP members implementing RTI commitments dropped 15 percent and fewer members made such commitments in 2018 than in 2012. Since most OGP members already have RTI laws in place, the concern is over commitment by countries to improve their RTI legal frameworks and ensure quick and effective servicing of information requests.¹³ Access to information systems feature in the chapters on open government (chapter 6), infrastructure, and public-private partnerships (chapter 2), and supreme audit institutions (chapter 12).

Public Financial Management. Strengthening PFM systems can help reduce the risk of some forms of corruption through better accountability, improved spending and greater scrutiny of the budget, both by legislatures and the public, and can help constrain the ability to shift resources towards corrupt purposes. One useful source for tracking progress on PFM is the Public Expenditure and Financial Accountability (PEFA) program, initiated in 2001.¹⁴ The PEFA program provides a framework for assessing and reporting on the strengths and weaknesses of PFM, using evidence-based indicators to measure performance. A recent World Bank study¹⁵ demonstrates the usefulness of matching measures of corruption with measures of the policy and institutional framework. It found that “firms report paying fewer and smaller kickbacks to officials in countries with more transparent procurement systems, effective and independent complaint mechanisms, and more effective external auditing systems.” Overall, for the subset of countries that have undergone the PEFA exercise multiple times, some saw their assessments get worse, but a larger number of countries saw improvements.¹⁶ Studies of PFM remind that reforms require long-term engagement with all stakeholders for successful implementation. Different aspects of public financial management are discussed in the chapters on procurement (chapter 1), public infrastructure

(chapter 2), state-owned enterprises (chapter 3), open government (chapter 6), and supreme audit institutions (chapter 12).

Transparency and Participation in Decision-Making.

Transparency can help strengthen accountability for the implementation of policies. When coupled with mechanisms of participation, transparency can also help limit the degree to which policies are biased in favor of certain groups, firms or individuals. When working in concert, transparency and participation can help limit state capture. Based on a study by the World Bank, between 2001 and 2016, about 60 countries had adopted regulatory impact assessment (RIA) frameworks¹⁷ that were publicly available. As with access to information laws, however, developing systems to implement RIAs as part of the legal and regulatory drafting processes is not trivial. Among the 57 countries whose reforms could be tracked, only 20 had operational and functional systems two years into implementation. The authors noted that public officials may resist RIA systems either because of the disruption to established processes and work patterns or because the associated transparency may expose practices which are not ethical or legal. The study argues that flexibility and patience are needed for the successful building of reform constituencies inside and outside government.

Accountability Mechanisms. Several accountability tools, such as income and asset declarations and conflict of interest disclosures for public officials are being more widely applied across governments. The percentage of jurisdictions with disclosure requirements has grown from 43 percent in the 1990s to more than 90 percent today. Many are taking advantage of electronic means for making and verifying the disclosures.¹⁸ These are discussed in greater detail in the case studies in chapters 8 and 9 of the report. Indeed, technological advances are strengthening mechanisms of accountability in many ways. These include the use of biometrics to eliminate ghost workers, e-GP for efficiency and integrity, public audit tools and beneficiary feedback mechanisms, and the use of drones and remote sensing to monitor progress on infrastructure projects. CivicTech and GovTech are providing promising avenues for accountability and have shown some positive results in conjunction with other tools. Chapter 7 discusses the latest trends in technology and their use to deliver services and detect fraud and corruption.

Enforcement of Stricter Foreign and Domestic Anti-corruption Legislation. While the United States of America was the leader in pursuing its companies for overseas bribery, it is no longer alone. The Foreign Corrupt Practices Act (FCPA) of 1977 made it unlawful for entities to make payments to foreign government officials to assist in obtaining or retaining business.¹⁹ Other countries have since enacted similar legislation, especially following the adoption of the OECD Convention Against Bribery in 1998. The UK Bribery Act is even more stringent, and enforcement has also been increasing. While universal enforcement of such laws is still a long way off, some progress has been made in the past decades.²⁰ The passage in 2003 of the United Nations Convention Against Corruption (UNCAC), which obligated signatory countries to criminalize behaviors widely viewed as “corruption”, was an important milestone. While legal frameworks have moved closer to criminalizing the behaviors widely seen as corruption, data on enforcement is not easily available and most observers see a large gap between de jure provisions and de facto implementation. Internationally, efforts to rein in overseas jurisdictions are bearing fruit, as the chapter on beneficial ownership transparency (chapter 9) explains. Pressure has also been increasing through the debarment processes of the multilateral development banks, including agreements to cross-debar firms and individuals that violate policies related to fraud and corruption. By the end of June 2019, more than 200 firms or individuals had been debarred by the World Bank.²¹

Measuring impact: Does the data help us?

Has the progress in improving policies and institutions for controlling corruption been matched with progress in reducing corruption?

Have the tools and strategies adopted by countries been effective? Have the anti-corruption agencies, tax and audit institutions, CSOs and other institutions of accountability been effective in reducing corruption? The answers are not straightforward as they depend on the availability of indicators that robustly measure trends in different types of corruption over time. While the pros and cons of different measures—surveys on experiences, perceptions of experts, and indexes of both—have been written about before, a brief review may be useful.²²

It is important to distinguish between measures that are based on the perceptions of experts and those that track actual prevalence of corrupt behaviors over time. The former may have limited usefulness in tracking actual levels of corruption over time since perceptions may be biased by perceived correlates, such as poverty or form of political system. In addition, they tend to adjust slowly to changing realities. A range of biases can cloud perceptions of how good or bad things were in the past, making questions about perceived trends (“is corruption getting better or worse?”) poor proxies of actual trends.²³ In contrast, surveys about contemporaneous experiences (“have you paid a bribe in the past year?”), evaluated at different points in time, provide better measures of actual trends. Even if they are well designed, however, surveys on corruption experiences may not always get honest answers, leading to underestimations of the extent of corruption.²⁴

While index-based measures have helped raise general awareness of the magnitude of corruption, they have limited usefulness for tracking changes over time. Two of the most well-known and widely used indexes are Transparency International’s Corruption Perceptions Index²⁵ (TI-CPI) and the Control of Corruption measure in the Worldwide Governance Indicators²⁶ (WGI-CC). Both of these use composites made up of more than one indicator, combining information based on availability. The TI-CPI continues to be influential in raising awareness about corruption, and the WGI-CC is often used for statistical analysis given its long time series and broad country coverage. They both have their limitations,²⁷ however, when it comes to tracking progress over time. One reason has to do with the lack of conceptual clarity of the indexes. Imagine, for example, an index that comprises three sources of data: enterprise survey data on experiences with corruption at customs, expert perceptions of the overall prevalence of “corruption”, and household surveys about informal payments and gifts for services. Such an index would have no natural units, a problem that is exacerbated when the data is patchy. Only one or two of these may be available in some countries, leading to an index with many missing data points and making it inconsistent across countries or even within a country over time.²⁸ In practice, the amount of missing information is huge. For the 210 countries covered by the WGI-CC in 2018, there are 127 different combinations of the sub-indicators—and, one may argue, 127 different definitions of “corruption”. The issue is not a matter of a few missing observations

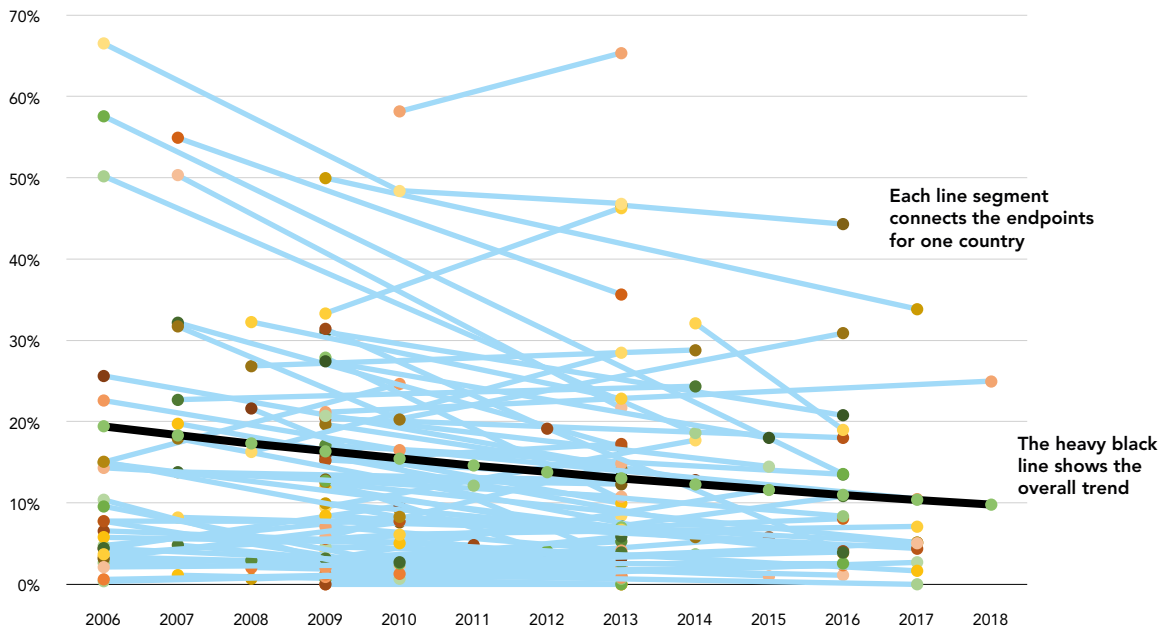
but is much more systemic since 57 percent of the underlying data points are missing. A second reason is more direct. The WGI-CC is rescaled each year to have a mean of zero and this reason alone means that it cannot be used to track progress over time. Using these composite indicators to assess changes over time, while commonly done, should be avoided.

Well-designed surveys, on the other hand, tend to provide a more accurate understanding of corruption trends over time, but they are intentionally narrower in scope. The World Bank’s Enterprise Surveys since the early 2000s have allowed for systematic tracking of direct experiences with corruption in business enterprises, using a consistent methodology (the same questionnaires and sampling). To track and understand trends, one needs to focus on the countries that were in at least two rounds of the Enterprise Surveys. In the Europe and Central Asia region, such surveys have been carried out every three to five years since 1999, and each round has showed generalized reductions in administrative corruption.²⁹ A global approach would need to focus on the years since 2006 when survey questionnaires were harmonized across regions.³⁰

One benefit to working with certain survey data is the ability to focus on specific types of behaviors, rather than the generic term “corruption.” Indeed, speaking too generically about “corruption” not only risks mashing up genuine successes and failures, but makes it hard to learn from either.³¹ The key corruption-related questions on the Enterprise Surveys concern taxes, government procurement, operating licenses, and import licenses. There is also a more subjective question about how much corruption is an obstacle to doing business.

The World Bank’s Enterprise Surveys show a decline, on average, in administrative corruption on the whole, even though the individual country results vary. Global results suggest a decline in corruption on bribes paid to tax officials at an annual rate of decrease of 3.7%. Among firms that made any informal payment for a government contract in the past 12 months, the annual decline was 6.6%. The estimated annual rate of decline in the percentage of firms indicating corruption as a major obstacle is 5.4%. The estimates of the annual rate of change in the various measures of corruption are consistently negative, implying improvement over time, and most of them are highly statistically significant. (Figure A shows the percentage of firms that made

FIGURE A Percentage of Enterprises making Informal Payments (Gifts) to Tax Inspectors, among those with Contact (89 Countries)



Note: Based on the 89 countries that had at least two rounds of the Enterprise Surveys between 2006 and 2018. For each country the implicit annual rate of change was calculated. (The average rate of change is negative and significant.) These were then averaged and applied to respective variables. The year with the most observations was used to benchmark the trend lines, and the growth was projected forward and backward.

informal payments to tax inspectors for all countries with at least two observations. Each line represents one country. The heavy black line is the average trend.)

It is worth noting that while administrative corruption on average is declining, the pace of decline is slow. At these rates of change it would take nearly three decades (27 years) to reach a position at which the average country would have fewer than 5 percent of firms report that corruption is a major problem for doing business. Since the approach used in this thought experiment is to calculate rates of change, rather than absolute change, this approach is, perhaps, biased toward estimates of long convergence periods. Even so, it is clear that while the general trend is in the right direction, the pace is slow and progress is not universally present in all countries.

Some forms of corruption, particularly corruption that is less frequent but of large magnitude, are not well measured by surveys or any other existing method. Such grand corruption scandals routinely

surface, but the magnitudes are not known in a way that facilitates comparison over time. It is clear that when such cases do come to light, they are often massive—and consequential. Transparency International’s 25 Corruption Scandals that Shook the World lists scandals in football and jade mining, leaks that brought down presidents, death squads and Hollywood parties. The imperative to address corruption is as strong as ever.³²

From technology to behavioral science, other trends that impact corruption

Changing global trends and some additional factors present opportunities to address corruption but also create some challenges. Despite the improvement in reducing the prevalence of administrative corruption in many places, the spotty record and continuous stream of scandals suggest the need for a re-examination of approaches to controlling corruption. In addition, other factors have changed and continue to change rapidly, calling for a realignment of approaches. While

SETTING THE STAGE

by no means exhaustive, a few of these changes, including technology, globalization, human behavior, politics and power, and the issue of incentives, are worth a mention.

GovTech can be a game changer for strengthening various aspects of governance and control of corruption, but technology can also pose risks.³³

Online platforms can be used to enhance transparency, strengthen citizen engagement, and establish grievance redress mechanisms, including whistleblower systems. Digital technology can also speed up government services and facilitate monitoring of service quality, obviating the ability to demand certain bribes. The ready availability of some technologies, such as mobile phone cameras, can make it harder for abuses to

remain hidden and others, such as distributed ledger technologies, can also prevent fraud. E-GP can level the playing field for bidders and facilitate the collection of data, which itself can help identify red flags that signal corruption risks.³⁴ While the rapid advance of technology holds great promise, it also poses cause for concern. The explosion of data and transparency needs to be met with a massive expansion in data literacy and analog complements, such as skills, infrastructure and institutions, to reap the full potential of digital dividends.³⁵ At the same time, digital technologies can also be abused to repress human rights or to transfer and disguise large amounts of stolen assets. The role of GovTech is discussed later in the report (chapter 7) as a thematic area with several country examples covering a wide range of services where technology is playing



a key role. Indeed, technology features throughout this report for applications in procurement (chapter 1), customs (chapter 4), service delivery (chapter 5), open government (chapter 6), asset and income declarations (chapter 8), and others.

Increasing globalization has facilitated the movement of people and assets across borders, leading to expansion of cross-border illicit financial flows. As discussed earlier, offshore financial centers have long been available as safe havens for illicit assets, but their use has expanded in recent decades with easy access to services of lawyers and bankers that specialize in cross-border financial dealings. At the same time, stricter enforcement of laws against overseas bribery is increasing the risk to international investors that do business with countries with endemic corruption, with fines running into the billions of dollars. Tools like asset and interest declarations (chapter 8), beneficiary ownership transparency (chapter 9) and sharing of tax administration data (chapter 10) are useful in addressing some of these.

A more systematic understanding of behavioral patterns, and experiments with innovative approaches, can make anti-corruption efforts more effective. Conceptual approaches have long viewed corruption as a reflection of underlying governance weaknesses.³⁶ In the past decades, advances in behavioral social science have revolutionized economics and are being harnessed for development work.³⁷ However, the implications for anti-corruption are just beginning to be explored. Social norms can sometimes explain the effectiveness or lack thereof of anti-corruption interventions.³⁸ For example, in an environment of systemic patronage, increases in salaries have been argued to increase the expected payout to benefactors who provided the jobs. Such cultural expectations of reciprocity could fuel corruption as pressure to conform to the average behavior can override or redefine one's personal integrity. Social norms and culture work the same way for those who pay bribes. When individual citizens are asked "why they pay bribes", many respond that "everybody does it."³⁹ Changing perceptions of what is "normal" and shifting social norms and behaviors is challenging and takes time. Many anti-corruption-oriented civil society organizations at the national level are focusing on shifting behavior, and finding it a slow process.⁴⁰ Social norms are prominent in the discussion of corruption in customs (chapter 4).

A deeper understanding of the power and political landscape of a country helps in designing interventions that not only address corrupt practices but also tackle resistance to their implementation due to a preference to maintain the status quo. As pointed out in *World Development Report 2017—Governance and the Law*, approaches that focus on transactions, without sufficient attention to context and history, or those that focus on particular forms of institutions, rather than the functions they perform, can have limited traction at best.⁴¹ In addition, since advanced economies are significantly more "rule-following" than developing countries, powerful organizations benefit from rule of law and may work to keep it because it is in their own interest to do so. In countries where rule of law is weak, in contrast, powerful organizations rely less on complex market contracts for their prosperity and are less interested in a generalized rule of law, making it harder for such reforms to stick.⁴² From a practitioner's perspective, the "political settlements" concept forces deeper thinking beyond specific transactions to the constellations of interests that may be benefiting from the extant situation.

Finally, a closer look is needed to consider how best to address incentives and influence the behaviors of individuals through reforming policies and institutions, with a view to reducing corruption. Much of the academic literature views corruption as the result of a "principal-agent" problem. The principal, say the legislature or even the general public, cannot perfectly control the behavior of the agent, say the public official, who has different incentives. Changing the misbehavior of the agent, then, entails stronger oversight and accountability for misbehavior, using principled tools like greater transparency as well as instrumental ones like asset and income declarations, discussed later in the report. A second school of thought, however, looks at individual instances of corrupt behavior as part of a broader system. In places where corruption is systemic, it is argued, trying to alter the behavior of individuals is challenging and slow, and it is best approached as a collective action problem. For practical purposes, the different paradigms complement each other and should not be seen as substitutes.⁴³ In this report, these paradigms are not purely theoretical, but have practical implications.

Notes

1. The literature on the costs of corruption is vast. Useful summaries can be found in the WBG Governance and Anti-corruption Strategy (2007), and Sofia Wickberg (2013), "Literature review on costs of corruption for the poor", U4 Expert Answer 382. The April 2019 *Fiscal Monitor* from the IMF examines the fiscal costs of corruption.
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5. This section draws on World Bank (2019) Anti-corruption Initiatives—Reaffirming Commitment to a Development Priority.
6. As noted in the groundbreaking *The Many Faces of Corruption*, "in a surprisingly large number of countries in all regions of the world, corruption is pervasive at all levels of education, from primary schools through tertiary institutions. It can occur at any stage and among any group of actors from policy makers at the ministerial level to providers at the school level such as teachers and contractors to beneficiaries of education such as students and parents. Corrupt practices in education can include bribes and illegal fees for admission and examination; academic fraud; withholding teacher salaries; preferential promotion and placement; charging students for "tutoring" sessions to cover the curriculum needed to pass mandatory examinations and that should have been taught in the classroom; teacher absenteeism; and illegal practices in textbook procurement, meal provision, and infrastructure contracting." Harry Patrinos and Ruth Kagia, 2007, "Maximizing the Performance of Education Systems: The Case of Teacher Absenteeism," in J. Edgardo Campos and Sanjay Pradhan (eds), *The Many Faces of Corruption--Tracking Vulnerabilities at the Sector Level*. The World Bank.
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10. For a summary see Talha Burki (2019), "Corruption is an 'ignored pandemic'". *The Lancet*. Vol 19, p 471, May 2019. <http://www.thelancet.com/infection>
11. See Emile van der Does de Willebois, Emily M. Halter, Robert A. Harrison, Ji Won Park, J.C. Sharman (2011). *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington: World Bank. Nicholas Shaxson (2011). *Treasure Islands: Uncovering the Damage of Offshore Banking and Tax Havens*. New York: St. Martin's Griffin. Oliver Bullough (2019) *Moneyland: The Inside Story of the Crooks and Kleptocrats Who Rule the World*. New York: St. Martin's Griffin.
12. Rankings of countries according to financial secrecy are provided by the Tax Justice Network, although the rankings do not facilitate comparisons in absolute levels of secrecy over time.
13. Open Government Partnership factsheet.
14. The original seven international development partners were: The European Commission, International Monetary Fund, World Bank, and the governments of France, Norway, Switzerland, and the United Kingdom.
15. Knack, Stephen; Biletska, Nataliya; Kacker, Kanishka. 2017. Detering kickbacks and encouraging entry in public procurement markets: evidence from firm surveys in 88 developing countries (English). Policy Research working paper; no. WPS 8078. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/817871496169519447/Detering-kickbacks-and-encouraging-entry-in-public-procurement-markets-evidence-from-firm-surveys-in-88-developing-countries>.
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 25. Corruption Perceptions Index.
 26. Worldwide Governance Indicators.
 27. See footnote 31 for some critiques. Responses to some of the criticisms of the Worldwide Governance Indicators can be found here.
 28. Anderson (2009), op. cit.
 29. These findings based on the WBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) have been reported in the EBRD Transition Report, the World Bank's Anti-corruption in Transition series, and other publications.
 30. As noted already, surveys on corruption experiences have been subject to criticism because some people do not participate honestly. To the extent that the rate of being candid does not greatly change with time, this criticism would not have much of an effect on our understanding of trends. In addition, the same studies argue that questions on perceptions of corruption face similar challenges. See, for example, Omar Azfar and Peter Murrell, (2009), op. cit., and Aart Kraay and Peter Murrell (2013), op. cit.
 31. While this section has focused on what is known about trends corruption in the past, an even more challenging set of questions centers on predictions of changes of corruption in the future. A current research project attempts to do just that: Alina Mungiu-Pippidi and Lucia Cizmaziova (2020) "Beyond the lag. How to predict and understand evolutions towards good governance?" European Research Centre for Anti-Corruption and State-Building, Hertie School of Governance, ERCAS Working Paper No. 61. May 2020.
 32. While this section has focused on what is known about corruption trends in the past, an even more challenging set of questions centers on predictions of changes of corruption in the future. A current research project attempts to do just that: Alina Mungiu-Pippidi and Lucia Cizmaziova (2020) "Beyond the lag. How to predict and understand evolutions towards good governance?" European Research Centre for Anti-Corruption and State-Building, Hertie School of Governance, ERCAS Working Paper No. 61. May 2020.
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PART I

Confronting Corruption in Sectors and Functions

CHAPTER 1

Public Procurement



Introduction

Public procurement is often placed at the epicenter of discussions of corruption. Procurement features prominently in corruption scandals in developed countries as well as developing countries, suggesting that procurement has characteristics that make it uniquely vulnerable to corruption and that corruption in procurement is particularly resilient. This chapter examines the nature of corruption in public procurement and explores efforts and initiatives to reduce corruption in state contracting.¹ There is an abundance of information on principles of good practice in public procurement relating to transparency, equity, and

efficiency. These principles are reflected in easily available and frequently utilized model procurement laws, such as the UNCITRAL Model Public Procurement Law. Implementation of procurement laws are supported by a host of international agreements that create legally enforceable commitments, including UNCAC and the World Trade Organization's Agreement on Government Procurement. Much less information exists on how to establish well-functioning procurement systems in the face of opposition by individuals and groups benefiting from existing practices.

Why is it important to tackle corruption in public procurement?²

Corruption in public procurement has wide-ranging ramifications for the economy and delivery of public services. The need to tackle corruption in public procurement is based on the importance of public procurement in public spending and economic activity, the prevalence of corruption in procurement and its impact on how public money is spent, private sector investment, and the availability and quality of public services.

Public procurement constitutes a significant proportion of public spending. It accounts for between 10-25% of public spending globally.³ This figure is often substantially higher in countries where the state participates significantly in economic activity and directly provides services. Public procurement is often the single largest channel for government spending, the single largest source of commercial spending in a country, and the dominant means for translating public money into public services.

Estimates from a variety of sources indicate that corruption in procurement is frequent and extraordinarily costly. Over the years, international organizations have consistently suggested that between 10-30% of the cost of capital investment projects is consumed by corruption.⁴ More than one-half of the cases relating to foreign bribery involve public procurement, and surveys of business owners

consistently identify corruption in public procurement as among the major constraints to doing business.⁵ Corruption in public procurement continues to be a substantial issue in developed as well as developing countries and large public scandals involving firms such as Odebrecht,⁶ Siemens,⁷ and Airbus⁸ have demonstrated that corruption in public procurement happens in some of the most advanced economies. Moreover, international and global distortions are sometimes caused by corruption in public procurement transactions.

The costs and societal damage caused by corruption in public procurement extend far beyond the price tag of capital projects. Corruption leads governments to overinvest in capital projects, given the ease of capturing rents from public procurement, and reduces their return on investment.⁹ It also robs school children of safe and well-built classrooms, reduces the quality of their education by limiting their access to textbooks and school supplies, and endangers their health and the health of their communities as publicly procured medicines are privatized and become inaccessible to the poor. Corruption also results in the provision of sub-standard infrastructure, which increases accidents and wear and tear costs, inflates the user-charges required to pay for services, and acts as an extra tax on the citizens. The cost of corruption is then borne by the poorest citizens who are most dependent on public

resources for access to life-sustaining medicine, public shelter, or the knowledge and expertise required for modern economic activity.

At the same time, corruption in public procurement creates noxious incentives for firms and distorts economic development. Private sector firms are encouraged to invest in building networks of influence instead of investing in skills and expertise, to the detriment of increased efficiency. Corruption in public

procurement enables well-positioned firms to dominate markets and restrict the ability of new firms to obtain contracts and access markets through innovation, creating competitive imbalances with lasting impact for economic growth.¹⁰ The firms that lose out are often those who do not have the financial or political means to access public procurement opportunities, but who, paradoxically, could have been the prime drivers for the creation of local jobs, thus reducing inequality and poverty.

What are the characteristics of corruption in public procurement?

Although procurement covers a wide range of actions, certain characteristics remain the same.

In most countries, public procurement takes the form of a vast number of contracts signed by a broad collection of government agencies for an extraordinary variety of goods, services, and projects.¹¹ The single term, public procurement, encompasses the purchase of office paper in a small village, contracting for the regular maintenance of roads across a district for a period of years, investment projects supported by development partners, as well as the acquisition and deployment of an advanced military defense system to protect the security of the nation. While these actions could not be more different in regard to scale, complexity, and cost, they share common features. They are the result of choices about what to purchase, from whom, and at what price. They require an act of purchasing often via a contract, and a determination by the purchaser of whether the contract terms have been properly fulfilled and payment is warranted.

Despite the development of useful tools, discretion remains at the core of procurement.

Each step along the process requires government officials to perform activities that involve the implementation of policy choices necessitating extensive interpretation and often substantial discretion. A large number of tools have been developed to guide procurement, including detailed processes to determine capital investment decisions, standard bidding documents, explicit rules on the evaluation of bids, and exhaustive price lists for products purchased by the state. Each of these instructs officials on how they are expected to make choices, but they do not alter the inherently

discretionary nature of the activity. Discretion, and the use of professional judgement, is at its highest in cases of high-value sophisticated procurement, where the state invites private parties to propose methods to achieve the specified outcomes.

By its very nature, public procurement is highly vulnerable to corrupt activity.

Given that public procurement requires multiple discrete decisions, which take place in decentralized settings involving public and private actors and large sums of money, the frequent association between corruption and procurement comes as no surprise. There is a tendency for the analysis of corruption vulnerabilities to concentrate on the risks relating to the selection of a contract award winner, and a very rich literature has developed detailing different bribery, extortion, and collusion schemes used to capture contracts.¹² It is clear, however, that corruption occurs not just around the selection of an award winner, but at every stage in the procurement process, from the selection of what to buy to the determination that a contract has been fulfilled and the receipt of final payment. In a compromised process, each stage is engineered to increase the chances of a preferred contractor obtaining the contract.

Corruption risks are as deep as they are broad.

Corruption can take the form of an individual paying a bribe to win a contract in a single transaction. In other instances, corruption in procurement takes place systematically via a network involving multiple firms and individuals both inside and outside of government. Corruption networks can be strong and entrenched, lasting many years and involving the entire market

for a good or service.¹³ In these instances, corruption is systematic and is a function of the relationships among parties. In some countries, the money obtained through systematic relational corruption in public procurement fuels political parties and plays an essential role in financing politics. In these situations, public procurement serves as a way for economic elites to capture contracts and public funds and for political elites to finance their continued power and authority.¹⁴ Network domination of procurement is not exclusive to high-value national markets. It can be found at all levels where power and the authority to spend public money through procurement exist.

Corruption risks are also multifaceted. Corruption risks in public procurement can be driven by the type of procurement process (open versus closed), the processes used by the ministry and agency responsible for executing procurement, and the type of contractor and his/her network of connections. Other drivers include the mechanisms for paying contractors and managing the assets that have been created, and the interests of those parties with responsibility and authority for overseeing the procurement process. The multifaceted nature of these risks creates extraordinary challenges in improving accountability and integrity in impactful ways.

What do we know about fighting corruption in public procurement?

A vast and growing literature provides guidance on fighting corruption in standard public procurement transactions. This includes guidance on bidding documents that define the required technical specifications, design elements, and inputs required. The Methodology for Assessing Procurement Systems (MAPS), an internationally developed standard for evaluating procurement systems, identifies the features of procurement systems that operate with integrity, and allows countries to determine what needs to be put in place to address corruption vulnerabilities. Core principles to inform the fight have been set out in publications, such as the OECD's Preventing Corruption in Public Procurement.¹⁵ The guidance provided in this and other similar publications primarily restates the stipulations on procurement in the UN Convention against Corruption and the OECD's own Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, 1997).¹⁶ Books and papers by groups like Transparency International provide complementary pointers and lessons on using particular tools in fighting corruption, such as integrity pacts or participatory governance.¹⁷

While differences in emphasis certainly exist in these materials, there is a general consensus on the features of procurement systems that operate with high degrees of integrity. Such features include transparency; procedural standardization that reduces the need for interpretation or human interaction; detailed and inclusive control; oversight and

monitoring of procurement transactions and contract implementation; mechanisms for raising and addressing complaints; Whistleblower statutes to encourage and protect informants; and clarity in the prosecution and sanctioning of individuals when corruption is identified. In addition to these technical aspects, rule-based procurement systems have well-defined roles for citizens, communities, civil society organizations, and the private sector in the monitoring and oversight of procurement transactions and outcomes.¹⁸

Increasingly, e-GP is identified as the key platform for delivering change and addressing corruption vulnerabilities. Buoyed by the positive impact of the implementation of fully functional systems in Ukraine and Rwanda, policy makers, advisors, and other stakeholders look to solve their procurement efficiency and corruption issues by rolling out end-to-end e-GP solutions.¹⁹ Such systems, especially when their use is mandatory, could standardize processes for carrying out procurement, and at the same time they might radically enhance transparency around bidding opportunities, bid evaluation, and contract award winners. The shift from paper to a digital platform can allow for the collection, sharing, and analysis of outcomes across the vast range of individual procurement transactions. Real-time monitoring could identify corruption risks as a procurement transaction goes through its different phases, allowing officials the possibility of intervening when red flags are triggered in the process to prevent corruption from ever taking place. The analysis of large

volumes of transactions over time could enable the identification of subtle corruption patterns and trends that might otherwise avoid detection, uncovering hidden corruption networks.

The power of e-GP to combat corruption may be fully activated when the data that is being collected is put into a machine-readable format, made publicly accessible, and linked with other data sets.

Linking data on contract award winners with emerging databases on beneficial ownership may allow public and private parties to know who is really competing for and winning procurement contracts and could identify previously hidden networks and conflicts of interest. Linking procurement data with data from integrated financial management systems can create the opportunity to systematically track physical and financial progress and may create the potential to intervene where corruption vulnerabilities appear to be substantial before the loss of public funds happens. However, there is limited attention and/or guidance on how initiatives might be designed or sequenced in jurisdictions without well-functioning systems for transparency, public administration, law enforcement, and judicial decision-making, or where corruption is relational and systemic.

While expectations are high that the implementation of e-GP will be associated with dramatic reductions in corruption in public procurement, the experience to date is decidedly more mixed. Cross-country analysis was unable to detect a relationship between the adoption of e-GP and the level of bureaucratic corruption or the willingness of firms to bid for procurement contracts.²⁰ In more developed countries, the adoption of e-GP was found to increase the likelihood of firm bidding.

Country-level studies of the impact of e-GP present highly variable results. e-GP in India and Indonesia was found to be associated with positive changes in a number of variables that may be linked with corruption—the percentage of contracts awarded to non-local firms, a reduction in contract delays in Indonesia, and an improvement in the quality of construction in India.²¹ At the same time, the research was unable to detect a relationship between e-GP and the cost of contracts at the time of signing, or the final amount paid to the contractor. Ongoing and preliminary analysis of the influence of e-GP in Bangladesh suggests similar mixed findings; while the reform is associated with a rising number of tenders, an increasing number of bidders,

and a reduction in the time required to process a transaction, no statistically significant changes in cost and time overruns appear to have occurred.²²

Several reasons have been put forward to explain the difference between the expected impact of e-GP on corruption and the actual results.

- **Low capacity.** The primary reason may be the low capacity of the institutions and individuals responsible for executing procurement and for managing the switch to e-GP systems. Studies have repeatedly revealed the limited expertise and functionality of procurement officials and organizations, who frequently have received little or no training in how to carry out their current jobs, much less manage the implementation of an entire new system.²³
- **Differences in technology.** e-GP systems differ greatly regarding their functionality. In many jurisdictions, including in large economies, technology is used only to switch manual processes into automated ones. This, while improving transactional efficiency, is unlikely to achieve much else. Similarly, limited change is likely to be generated if barriers to registration are retained even in an e-GP system. Performance changes would, perhaps, be more easily captured by considering only those systems that involve in-depth modification of practices, and not simply the introduction of technology into the process.
- **Lack of corruption baselines.** The lack of useful corruption baselines established prior to the implementation of an e-GP system prevents research from measuring change and detecting an empirical relationship between performance and the move to e-GP. Without a robust corruption baseline, researchers sometimes place excessive reliance on measuring changes in cost savings, namely the difference between the cost estimate for the procurement and the cost obtained at the end of the tendering process. However, such calculations are difficult and subject to a wide range of influences and biases.

The expected relationship between corruption and e-GP has so far eluded detection, perhaps due to a combination of the above reasons. While theories of change explain why an intervention should reduce corruption, the impact of actual reforms often

falls short of expectations or results in a number of unexpected consequences.²⁴ For example, the introduction of e-GP in Albania significantly reduced personal contact with officials, but at the same time it led to a surge in the number of unpublished, negotiated procedures done outside of the system.²⁵ In Chile, the expansion of external audits of public procurement was closely associated with an increase in the use of direct contracting.²⁶

An efficient and rule-based procurement system, based on an e-GP platform, is strongly associated with high performance and low levels of corruption. Similarly, the successful prosecution of individuals who engage in corrupt actions in public procurement is a feature of most systems that maintain high standards of integrity. However, the history of efforts to establish effective systems for sanctioning corrupt officials or to drive out corruption by moving to e-GP demonstrates the space between inputs and outcomes. Many countries, especially those with poorly performing procurement systems that are assessed to be systemically corrupt, can point to an extensive list of failed efforts designed to fill “gaps” in accountability by importing best practice models of transparency, participation, and efficiency.

The mixed impact of such initiatives appears to often reflect the degree to which initial assessments appreciated how accountability worked or did not work around procurement, and the formal and informal mechanisms underpinning existing practices. Assessments that provide useful inputs for reform are designed to capture the nature of the corruption problem, the capabilities of the parties responsible for managing change, and the ability of those who benefit from existing practices to subvert or circumvent the efforts.

Experience in confronting corruption in public procurement demonstrates the importance of resilience in the pursuit of reform, and the continued use of authority to maintain change. The response to an anti-corruption initiative, especially one that is powerful, has often been to wait out the reform until political attention shifts to another issue or politicians can be co-opted. Alternatively, they shift the locus of corruption, moving from influencing the contracting process to distorting contract implementation. Countries are successful when they develop and sustain reforms over time in ways to counter adaptations and defeat efforts to circumvent change.

Before concluding this section, it is important to discuss an important caveat on the features associated with well-performing public procurement systems that operate with high integrity. Recommended practices on confronting corruption are likely to generate large costs for output-oriented, high-value contracts. In these contracts, where the government defines the outputs it desires without prescribing inputs or specific designs, actions that focus on standardization of processes, reduction of discretion, and extensive auditing and oversight may perversely end up reducing the benefits obtained through contracting with the private sector.

Large capital projects are not efficiently purchased through rigid processes for evaluating bids submitted in accordance with specified designs and inputs. In many cases, shifting the responsibility of innovation to the private sector unleashes efficiency and effectiveness, creates the right incentives and more effectively shapes markets. It creates a body of the sub-contracting industry that is driven and regulated by the market and survives by its capacity to deliver value. This reduces government intervention (except at the initial procurement stage) and corruption possibilities.

Output-based contracts, whether they are structured as public-private partnerships or as more traditional procurement, are negotiated, multi-stage contracts that often adapt over time as new innovations are identified, and both the contractor and the state develop a richer understanding of their objective. Such contracts require a strong foundation of trust among all parties in order to enable the best options to come to the fore. They also require a high degree of expertise and sophistication across all parties in order to ensure that the parties have the ability to detect honest experimentation from strategic behavior.

For output-based contracts of this sort, approaches to integrity that emphasize extensive systems of internal and external reviews to test compliance with standard requirements are likely to be at odds with achieving best value. Multiple review and oversight processes generate large time and cost delays and reduce the space for innovation and experimentation as contractors are forced to justify their actions before they can determine their effectiveness. The best firms are likely to be discouraged from bidding in environments where oversight and accountability is structured in ways that are inimicable to trust.

Complex output-based contracts remain the exception rather than the rule and are found primarily in advanced and sophisticated markets.

At the same time, the tendency for accountability processes to multiply as contracts become more complicated and more valuable is a more general

phenomenon. A recent study of the interactions between audits and the complexity of procurement in Chile demonstrated the negative consequences of this dynamic as officials relied upon less efficient contracting in order to reduce costs associated with heightened oversight and monitoring.²⁷

What is needed to reduce corruption in public procurement?

Research studies and country experience are the two primary sources for learning what can reduce corruption in public procurement.

The research studies examine the impact of different types of intervention and the country experience focuses on those countries that have been successful in reducing such corruption. Both sources have their limitations since many of the “experiments” on the impact of different interventions come from more developed countries with better data sources, and there have been few efforts to track corruption indicators over time in public procurement systems. Moreover, these sources provide little or no information on addressing corruption in high-value output-based public procurement.

Transparency is the sole factor that has been demonstrated to reduce the risk of corruption in procurement across different jurisdictions and conditions.

Analysis of cross-country data reveals that ex-ante transparency in regard to the completeness of information in the call for tenders reduces corruption risks substantially.²⁸ In this situation, transparency allows horizontal monitoring of insiders in the bidding process in ways that lead to lower levels of corruption.

Increased frequency of audits has also been identified in a number of settings as leading to reduced levels of corruption.

Studies in Brazil²⁹ found a decrease in costs (of approximately 10%) and decreases in audited resources involved in corruption (of approximately 15 percentage points) linked with initiatives to increase the frequency of auditing by 20 percent. A 2007 study of village-level procurement in Indonesia found that increasing the frequency of audits to 100% resulted in a decline in missing expenditures by 8 percentage points.³⁰ However, the relationship between increased audits and lower levels of corruption

does not always appear. When audit agencies are themselves corrupt, increased auditing serves to shift the distribution of corruption or, in the worst-case scenario, increase rents.³¹

At a country level, many of the countries that have succeeded in reducing corruption overall have undertaken major reforms of their public procurement systems.³²

In countries such as South Korea, Georgia, Rwanda, and Estonia, changes in procurement policies, which focused on increasing competition and transparency, have been reinforced by advanced e-GP systems that have standardized practices and increased efficiency. In a number of cases, provisions for meeting the Open Contracting Data Standard have been built into the e-GP systems, ensuring a high degree of transparency and information access. These efforts have led to substantial increases in the level of competition in procurement and much greater transparency about the identity of contract award winners.

Successful anti-corruption efforts that include work on reducing corruption in public procurement share a number of core features. These include:

- **Strong leadership.** Successful anti-corruption reforms are initiated and maintained through strong leadership from the highest political level. Political leadership creates an overall vision and orientation, while administrative leadership establishes the necessity and the space within institutions to introduce new processes and systems. Finally, technical leadership within organizations establishes new behaviors and protocols that show others how to adopt new tools and methods.

- **Problem-driven and outcome-oriented.** Successful initiatives to reduce corruption in public procurement are problem-driven and outcome-oriented. This requires careful analysis of the specific mechanics of corruption, and often the development of sector or ministry-specific approaches to reducing the problem. Problem-driven approaches to corruption often result in distinguishing among types of procurement. Addressing corruption problems in local level procurement in small markets involves actions that are different from those that would be employed to reduce corruption in the procurement of high-volume standardized goods. In the same vein, outcome orientation means that efforts to confront corruption in procurement are likely to be sector specific, since corruption functions differently, for example, in a sector like irrigation than it does in wastewater management or education. Outcome orientation also requires close monitoring not only of progress in implementing the reform but also of outcomes. For example, establishing multiple points of control in order to prevent and reduce corruption in high-value procurement may perversely convince the most reputable firms to stay away if they determine that there is insufficient trust to enable creativity and flexibility in creating an asset.³³
- **Sustainable.** Successful efforts are built over the

medium to long term and grow over time in order to sustain change in the face of repeated opposition. Resilience is often built through producing concrete changes and establishing expanded coalitions of support that include enhanced roles for the private sector, and for civil society/communities in oversight and monitoring.

- **Complemented by other reforms.** Public procurement reforms that succeed in reducing corruption tend to draw support from other complementary reforms. Most directly, such efforts have been aided by the introduction of effective systems for asset declaration, prevention of conflict of interest, revealing beneficial ownership of firms, and enhanced efficiency in sanctioning misbehavior. Concurrent reforms to improve public financial management, introduce performance contracting, build skills and expertise within the civil service (including procurement skills), privatize and/or improve corporate governance of state-owned enterprises, and remove barriers to entry and competition can all contribute to strengthening accountability and integrity, and to changing behavioral expectations and incentives. These broader changes are essential in addressing the systemic collective action problems that drive corruption in procurement in many jurisdictions and settings.

How to gain traction in fighting corruption in public procurement: Case studies

Reforms have to be tailored to the prevailing environment. As with many reforms, much of the challenge in fighting corruption in public procurement revolves around defining an approach that is appropriate for the problem at hand and tailored around the authorizing environment for reform. Reforms that look good on paper often fail because they are not shaped and structured around the political and administrative realities that exist. The three case studies that accompany this overview describe very different anti-corruption efforts relating to procurement. However, they were all designed to have traction and have been shaped by the broader governance environment. The three cases—Somalia, Bangladesh,

and Chile—describe anti-corruption reforms in public procurement that alternative emphasize changing strategic transactions, systems for undertaking public procurement, and the interactions between economic and political elites. Differences in the focal point for reform occur along a governance continuum.

The Somalia case explores an effort to reduce corruption in a limited number of strategic high-value procurement contracts, using a specially designed mechanism established jointly by development partners and the Government of Somalia. The intervention does not attempt to reform public procurement due to severe limitations on the

capacity and authority of the government to manage large reforms and the systemic nature of corruption. The initiative is confined to restricting corruption in a number of transactions, using the combined authority of the government and international development partners. Its success demonstrates the ability to achieve results in even the most challenging of environments.

The Bangladesh case explores an effort to reduce corruption as one dimension of an overall reform of the country's public procurement system. In this instance, anti-corruption efforts are closely intertwined with work on establishing new mechanisms for carrying out public procurement utilizing an e-GP platform. Bangladesh officials included a number of measures to proactively address corruption in public procurement, based upon their recognition of the impact corruption has on outcomes and the risk that corruption poses to the implementation of the reform. The results to date demonstrate both the progress that can be made as well as the tenacity of the problem.

The final case, Chile, explores a reform effort where corruption issues in public procurement were understood to be symptoms of a larger problem in the relationship between economic and political power. The initiative, which was largely driven by an independent and non-political task force, recommended a number of steps to improve the coherence of the public procurement system, within a larger program of reforms aimed at restructuring the role and transparency of the private financing of political parties. In the context of a well-performing state with a relatively high degree of capacity and integrity, addressing corruption in public procurement was approached primarily by modifying the incentives and dynamics in the overarching system of governance. As with the other two examples, the patterns of success that were achieved demonstrate that progress can be made in modifying relatively fundamental governance issues, but the overall process of change is long and progress is not constant.

Conclusion: What is realistic to expect?

The major misconception is the assumption that, as long as there is sufficient political will, corruption can be solved by a technical fix done by the government to address an accountability gap or capacity weakness. Sometimes that fix is asserted to be greater oversight, stronger sanctions, enhanced transparency, or the introduction of e-GP. Reforms based on this approach often feature the adoption of "best practice" processes and practices that have been demonstrated to be closely associated with well-performing procurement systems that operate with low levels of corruption. The track record of success of these efforts is not encouraging, especially in those environments where state capacity and authority are weakest, where civil society and the private sector are fractured and fragmented, and where corruption is most systematic.

Nonetheless, experience has demonstrated that it is possible to reduce corruption in public procurement regardless of the extent of corruption and the overall governance environment. To achieve progress in this regard, effective approaches are built for the long haul, with the expectation that initial

successes will face challenges and that reform progress will not be a straight and linear line. Demonstrating concrete progress is an essential part of building reform momentum, just as learning from setbacks is fundamental to establishing sustained change. Anti-corruption reforms in public procurement that succeed are designed to achieve concrete outcomes relating to a reduction in corruption and an improvement in procurement outcomes. Such reform programs invariably involve actors outside of government, and are sustained through coalitions of government, private sector, and civil society groups.

One corollary to the point above is that impactful efforts to reduce corruption make use of existing resources. Countries should only attempt reforms that are within their capacity; otherwise, they are likely to fail. Examples from countries that have reduced corruption overall, as well as from the specific cases in this report, illustrate variations in the depth of those resources and the strength of the forces opposing change. Some circumstances, such as those found in countries emerging from conflict, may only allow for initiatives to reduce corruption in certain transactions. In other



cases, anti-corruption work can be woven into systemic procurement reforms in ways that tackle corruption and increase the probability of reform success.

A second corollary is that anti-corruption initiatives in public procurement must consider their overall impact on procurement performance.

This point is most evident in relation to output-oriented high-value contracts that are not amenable to strict rules of the pass-fail variety. Obtaining best value in output-based procurement requires developing a deeper engagement with the industry both at the pre-tender stage as well as during the procurement process. In addition, it requires government officials to use professional judgment in applying principles that are clearly defined ex-ante. For procurement of this type, constructive anti-corruption actions will involve defining very tight and verifiable boundaries, investing in professionalization of officials entrusted with responsibilities for executing procurement, creating the right incentive structure, and developing a more active engagement with industry while maintaining a level playing field. A more difficult process will be the professionalization of the oversight bodies, so that procurement officers are not penalized for their bona-fide decisions.

The centrality of public procurement for development means that it is essential to find

ways to address corruption in how procurement

functions. The development of new tools, like e-GP and the broad range of other information technologies, greatly expands opportunities for changes that strengthen accountability and oversight. To be effective, efforts to reduce corruption in public procurement need to identify ways to harness the power of technology to help drive fundamental changes in expectations, incentives, and authority, which form the basis for better outcomes.

In sum, successfully reducing corruption in public procurement requires a country-specific approach that pays as much attention to the incentives and capabilities of the institutions responsible for executing procurement as it does to improving the transparency and efficiency of the procurement system.

Overcoming repeated opposition to change requires harnessing forces in the private sector and civil society who have a strong interest in improving procurement outcomes through greater integrity and accountability. These opposing forces are likely to be stronger in high-corruption environments than they are in jurisdictions with lower levels of malpractice. New technologies, like e-GP can dramatically improve the effectiveness and efficiency of public procurement systems, but their potential will only be fully realized when combined with work to deal with the causes of corruption and not just the symptoms.

CASE STUDY 1

PUBLIC PROCUREMENT

Strengthening Competitive Procurement in Somalia

Strengthening procurement of high-value contracts in Somalia's security sector

Overview

After years of state collapse, a new Federal Government administration took over in Somalia in 2012 and began to try to regain the confidence of the Somali public, its semi-autonomous regions and the international community. Against a backdrop of conflict, warlordism and corruption, improving national security and re-establishing good financial governance practices were central to the new administration's credibility. This nascent credibility received an early blow when the Governor of the Central Bank resigned in 2013, citing concerns over corruption. In 2014, the government and international community established an innovative joint body called the Financial Governance Committee (FGC), whose purpose was to provide confidential expert advice to the government on strengthening financial governance. The FGC identified improved procurement practices as central to the credibility of government expenditures, and in particular noted the corruption and security risks associated with sole-source contracting of rations supplies in the security sector. Rations procurement was not under heavy scrutiny from international actors, despite being the government's largest non-wage recurrent cost. As a result of sustained attention from the FGC over a number of years, and convening and maintaining a reform coalition at the center of government, rations have finally been competitively tendered and large fiscal savings have been realized.

Introduction

The new Federal Government of Somalia took office in September 2012 amidst strong support from the international community, but with lingering doubts about its ability to rein in the corruption that had been considered to be endemic during previous transitional administrations. Some actors in the international community wanted to establish direct control over government finances through a joint-signatory arrangement analogous to the approach previously used in Liberia. However, President Hassan Sheikh Mohamud argued that this would impinge on the new government's sovereignty, and asked that the administration be given space to prove its commitment to better management of government resources.

In November 2013, the Governor of the Central Bank of Somalia resigned after only seven weeks in the job, dealing a blow to the administration's credibility. "From the moment I was appointed, I have continuously been asked to sanction deals and violate my fiduciary responsibility to the Somali people as head of the nation's monetary authority," said Yussur Abrar in her resignation letter.³⁴ Abrar alleged that she had come under pressure to open an account outside the Central Bank of Somalia to divert recovered assets.³⁵ It also came to light that the government had signed a contract with an American law firm on questionable

terms to assist with the recovery of Somalia's frozen assets abroad.

International partners' confidence in the federal government was dented, and it became accepted that a new approach to strengthening financial governance was needed to restore confidence: *'business as usual'* would not suffice. The government needed to implement concrete measures to strengthen financial governance, in particular in asset recovery, Central Bank governance, and government procurement of contracts and concessions, in order to restore the confidence of the international community and the Somali public more broadly.

President Hassan Sheikh Mohamud knew he needed help to implement those reforms. Mohamud called for measures that would provide him and his team with confidential expert advice to help make informed decisions on sensitive financial governance matters, while also respecting Somali sovereignty.

Led by the World Bank, the federal government and the international community reached an agreement in early 2014 on the establishment of a Financial Governance Committee (FGC) to provide a forum for dialogue on strategic financial governance issues. The FGC's formation was a direct response to the crisis of confidence that followed Abar's resignation. It aimed to enable the federal government to access independent and confidential international advice on important areas of financial governance, while also building the international community's confidence in the federal government. The FGC's initial terms of reference required it to "provide advice on existing concessions [and] contracts the Federal Government of Somalia has entered into." This remit was subsequently extended by the federal government to include reviewing all draft concessions and contracts worth over USD5 million, until such time as capable new national institutions could take over the review function.

The FGC is chaired by the Minister of Finance and its membership includes the Governor of the Central Bank, representatives from the Office of the President and Office of the Prime Minister, the State Attorney General, and the Chair of the Parliamentary Finance Committee. The international community is represented by delegates from the World Bank, African Development Bank, and the International Monetary Fund and a delegate appointed by the EU to represent bilateral donors. The FGC is supported by a specialist adviser on

public concessions and contracts and a Secretariat. The FGC has met on an almost monthly basis for the past six years since its inauguration in early 2014.

One of the FGC's most pressing goals was to reintroduce competitive procurement practices, especially for major government expenses like security sector food rations. Security as a whole accounted for approximately 42% of the federal government's operational expenditure, and other than wages, food rations for security personnel were the security sector's biggest expense.³⁶ In 2018, security sector food rations accounted for about 20% of total government non-wage recurrent costs, or USD14 million.

A lack of transparency and competition in the supply of 'dry' rations (beans, cooking oil, sugar, etc.) was suspected to be fueling corruption and patronage in the sector, as contracts were directly awarded to well-connected local business people without scrutiny of unit costs or justification of volumes. It was also suspected that misallocation of the rations was compromising the effectiveness of the security forces, as the rations either did not necessarily reach the fighting forces, or were being purchased in excess of need, diverting scarce resources away from other expenditures. In addition, a large proportion of the security sector's expenditures was transacted in cash, as the commanders were given funds to purchase 'wet' (fresh) rations for their units and to pay individuals' salaries, creating high potential for corruption and limited accountability. FGC advice consistently flagged the need for rations contracts to be competitively procured to improve transparency and reduce costs, and for salaries and fresh food allowances to be paid direct to individuals' accounts, to limit the scope for diversion of funds.

The implementation process

Since security sector rations constituted the single largest goods purchase within the federal budget, the FGC sought to promote improved transparency and competition in the award of rations contracts. At first, the FGC found it difficult to obtain any pre-existing rations documentation from security sector institutions, and it appeared that supplies were being delivered and payments made without formal contracts. Somalia's legal framework for procurement dated back to the 1960s, and was no longer used to govern government purchases. However, FGC's advocacy for improved

transparency and competition in the sector received the support of the President, who announced in September 2015 that food and logistics contracting for security sector institutions would be managed on a competitive basis.

At the time, a new legal framework for procurement had been submitted to Parliament and was subsequently passed in 2016. However, it established a decentralized approach to public procurement, which was not well aligned with existing institutional capacities. Line ministries lacked procurement expertise, and the Procurement Authority—whose role it was to certify line ministries' procurement units—had not been established. The FGC therefore recommended that the government adopt a set of Interim Public Procurement Requirements that required all procurements above USD100,000 in value to be conducted by the Ministry of Finance's Procurement Department until such a time as line ministries had certified procurement units.

The Ministry of Finance launched an open tender for the supply of dry rations to the Somali National Army in 2016, and, following FGC review, the contract was awarded in February 2017. The FGC also reviewed the outcomes of rations tender processes for the police and the National Intelligence and Security Agency (NISA). In line with FGC advice, the government began to strip out the cash components that had been included in the contracts; the intention had been to require contractors to provide cash to the force commanders for fresh rations purchases, in addition to delivering dry rations. The FGC argued that paying contractors to deliver cash was not good practice, and that cash requirements for fresh rations purchases should be regularized through the payment system and paid to the bank accounts of individual security personnel.

However, following elections in early 2017 the incoming army commander summarily cancelled the competitively awarded contract and issued a new contract to a different contractor without following due process. This reversion to nontransparent direct contracting, with associated implications of patronage, presented a test of resolve for the FGC and the center of government more generally. The supplier whose contract had been cancelled raised a formal complaint, and the Ministry of Finance, at the recommendation of the FGC, responded by conducting a legal review in July 2017, which determined that the contract cancellation and re-award was irregular. The Economic Committee of the Council of Ministers then resolved in September

2017 that the contract should be retendered.

It took a year of sustained follow-up by the FGC before the contractor was finally served a termination notice by the Minister of Defense in September 2018. During this period, there were several changes in both the Minister of Defense and the army commander, which delayed the termination process. The Ministry of Finance finally launched a fresh tender process in October 2018, covering the supply of dry and fresh rations to all army units. However, during bid evaluation it became clear that the contract scope provided by the army had not been well specified. It proved too ambitious to expect a single contractor to deliver dry and fresh rations to all army units ('sectors') across a wide geographic area, encompassing both Mogadishu, the capital city, and the rest of Somalia. This demonstrated that, in addition to overcoming overt resistance, the procurement reform process also needed to address the limited capabilities of key institutions.

In February 2019, the Cabinet issued a set of financial management procedures for the security sector, which required immediate competitive retendering of all rations contracts. It also required payment of salaries direct to individuals' bank accounts, following the completion of a security sector personnel biometric registration process, which had been initiated in the second half of 2018. The Ministry of Finance subsequently launched four separate tenders in April 2019 for one-year delivery of dry rations to two army units ('sectors') located in Mogadishu,³⁷ the police and NISA. Twenty-one different firms submitted bids for the various contracts. The FGC reviewed each tender process and was satisfied that each had been sufficiently competitive and transparent to justify contract award. Following the competitive re-tenders, the government's monthly expenditure obligations on rations contracts nearly halved, generating an annual saving of USD6.7 million.³⁸

A significant portion of the savings was driven by a reduction in the volume of rations purchased. The security sector personnel biometric registration process, coupled with a re-organization of the security forces, enabled the leadership of each force to provide more accurate specifications for its required rations volumes, based on the actual number of personnel that required feeding. NISA saw the greatest reduction in its rations volumes (78%), followed by the army (36%). The re-tendering also enabled the government to achieve a significant reduction in the unit prices of most goods,

which were reduced by at least 10% in most cases. In general, the government was able to achieve the lowest unit prices for the larger contracts which attracted the most bids (army and police), demonstrating that competition helps lower prices. The unit prices achieved under the smaller NISA contract, which attracted fewest bidders, were in most cases higher than for the larger contracts.³⁹

In parallel to reforming security sector rations procurement, the successful completion of the biometric registration exercise for national security sector personnel enabled the government to create a comprehensive payroll register for each force, linked to the Somalia Financial Management Information System. As a result, the salaries of security personnel are now paid direct to their bank accounts, instead of being distributed to them in cash by their commanders. This reform was able to overcome vested interests within the higher ranks of the security forces and has significantly improved the accountability and transparency of security sector wage payments. It has also had a positive impact on the transparency and accountability of fresh rations payments, since all registered soldiers are now paid a USD30 stipend for fresh rations direct to their bank account, whereas previously this cash had been received and managed on their behalf by their commanders.

Despite these achievements, major gaps remain. For example, significant effort needs to be put into verifying the delivery of goods and services. The gains made in improving the tendering and transparency of rations contracts will count for little if there is limited visibility on whether goods and services are delivered. Given the public mistrust of the government's financial management, it may not be sufficient at this stage to rely solely on inspection reports from the receiving spending agency as proof of delivery. The FGC has recommended that the Ministry of Finance establishes an inspection function responsible for verifying the delivery of goods and services. In addition, to date rations delivery to the prisons service has remained outside of the reform process, as prisons already had an ongoing five-year rations supply contract. However, this contract expires in 2020 and it is anticipated that a tender process for prisons' rations will commence alongside a new tender process for the army, NISA, and the police, to replace the contracts awarded in 2019 at the expiry of their one-year term.

Reflections

The case study highlights how the FGC has been successful in Somalia, and how its approach might be applied to other settings. At a strategic level, the FGC helped draw key decision makers' attention to Somalia's procurement problem and suggested a pragmatic approach to solve it. The committee's regular meetings generated reform momentum among a coalition of top officials, establishing a common problem definition and achieving consensus in an environment beset by low intra-governmental levels of coordination and technical capacity. Vested interests and institutional fragility, including frequent personnel changes, meant the issue required sustained attention and follow-up over a five-year period.

Competitive tendering combined with a better specification of needs cut costs by USD6.7 million per year.⁴⁰ The clear return on investment fostered wide support for competitive tendering, illustrating how concrete results can generate a push for expanding the effort to other sectors.

The new procurement policy was implemented in tandem with other inter-related reforms, including the comprehensive biometric registration exercise of security personnel and moving from cash to electronic payments for salaries and fresh rations. However, key challenges remain, including the need to sustain competitive tendering going forward, to improve capacity within the security sector for specifying their procurement needs, and to strengthen the process for rations delivery verification.

The FGC used its reputational credibility, which came from the expertise and experience of its international members, as a lever to promote the reintroduction of due process in procurement. While the FGC was a voluntary arrangement, the international community closely monitored the extent to which the federal government adhered to FGC advice, making it difficult for the government to leave FGC recommendations unaddressed. By combining representatives of the World Bank, IMF, and AfDB in its membership, the FGC brought together the key institutions with which the federal government was seeking to re-engage, and hence that had most weight in the domain of economic governance. This is given added weight by the support of an expert FGC Concessions Advisor to provide detailed technical review and advice on

BOX 1.1

Timeline on Somali National Army Rations Re-tendering

- Presidential Press Release commits that “All tenders for logistic supplies will be carried out through the Interim Procurement Board”, 9 September 2015.
- FGC asserts that it should review any draft contracts before signing and seeks to obtain copies of legacy contracts, Ministry of Finance concludes there are no formal contracts by August 2016.
- The federal government launches a competitive tender for army rations in September 2016.
- FGC reviews the tender process in February 2017.
- Competitively tendered army rations contract with new supplier signed 13th March 2017.
- The army cancels the contract in May 2017 and makes arrangements with another provider non-competitively.
- Competitively awarded supplier complains in June 2017.
- The Ministry of Finance reviews the case in July 2017 and writes to Ministry of Defence to say that the competitively procured contract should stand. Ministry of Defence agrees.
- Economic Committee of Cabinet determines in October 2017 that the non-competitive contract should be cancelled, and a competitive re-tender process commenced.
- Army rations contractor is served a termination notice by the Minister of Defence in October 2018.
- A new army rations tender process is launched in October 2018, but is not concluded.
- February 2019, federal government issues a set of financial management procedures for the security sector which also required immediate competitive retendering of all rations contracts.
- The government issued a tender for two army rations contracts, for supply of dry rations in two army sectors in April 2019.
- The bid submission deadline passed by May 2019, and bids were opened by June 2019.
- The government completed the procurement process for supply of dry rations in two army sectors (12 April and Hamar), Police and NISA by September 2019.
- The FGC reviewed all four processes and advised that they are an appropriate basis for contract award by September 2019.



procurement processes in a confidential manner. The FGC also derived credibility from its reputation among major bilateral actors, many of whom were major security sector actors in Somalia. These actors could follow FGC deliberations—without confidential details—at bi-monthly informal briefings led by the FGC’s international delegates.

In comparison with more standard internationally supported procurement reform efforts, the FGC approach has been unusual in two ways. First, it is often widely assumed that adopting a “best practice” legal and regulatory framework is the essential foundation for procurement reform, and that the adoption of good rules (usually defined as those applied in other places) will alone drive out bad practices. By contrast, part of the FGC’s work has entailed reviewing and supporting the revision of the Procurement Act (which was passed in 2017 and heavily mirrored Liberia’s decentralized procurement law) to better adapt it to the Somali context and government capabilities.

Second, procurement reforms often push for Ministry of Finance-centered reforms of business processes to be applied to all government procurements, often involving adoption of an e-GP system as a necessary reform step. By contrast, the FGC has focused on a specific set of contracts over a sustained period, combining high-level engagement with a key coalition of institutions at the center of government (and in a

manner that explicitly acknowledged both the politics and the multi-dimensionality of the reform effort) with hands-on expert confidential advisory support. In so doing, the FGC’s attention to procurement has cut through the “*form over function*” problem often prevalent in procurement reforms, where the appearance of best practice rules and systems often conceals the underlying true practices.⁴¹

Sustained focus over a long period, with multiple incremental reform steps and willingness to persevere in the face of setbacks, was crucial given the challenging and fragile environment. By maintaining government attention on this complex problem over a long period, as well as raising the issue with the international community, the FGC kept actors focused on the matter over a period of six years. By consistently coordinating key economic agencies at the center of government as well as international partners, the FGC was able to build and maintain a sufficiently powerful reform coalition to overcome security sector actors seeking to revert to non-competitive practices, as well as to provide technical advisory support to help rectify procurement missteps resulting from weak government capability. As a result, the FGC helped the federal government to manage the transition from a period of non-adherence to due process in public procurement, to gradually establish high-level commitment to and some of the institutional underpinnings for due process in public procurement.

CASE STUDY 2

PUBLIC PROCUREMENT

e-Procurement Reform in Bangladesh

Overview

Bangladesh's public procurement system long constrained the nation's economic development and the performance of the public sector. In 2000, approximately 80% of Bangladesh's developmental budget and one-third of public spending occurred through state contracting, using a range of mechanisms stipulated in a variety of laws and regulations. While the public procurement system had the capacity to conduct numerous transactions and spend large sums of money, its ability to deliver value to the citizens of Bangladesh was questionable. Opaque accountability arrangements created a system that favored some at enormous public cost. The economic loss due to inefficient procurement and misappropriation of funds was estimated at over 1.5% GDP growth per year.

In two decades of sustained effort, the government established a modern, well-functioning, and transparent public procurement system. The country developed its own Public Procurement Act and Rules, including tender documents, a nodal agency to regulate procurement, a comprehensive capacity development program, an integrated e-GP system, an on-line procurement performance measurement system, citizen engagement, and social accountability with a strategic communication framework. A corrupt system has been reformed and corrupt practices have become the exception instead of the rule.

This case study examines the steps that Bangladesh has taken to address corruption within the context of its overall reform of its public procurement system. In Bangladesh, corruption was recognized as both

a symptom of failings in the procurement processes, and an impediment to achieving more competitive, transparent, and value-adding procurement. The success that Bangladesh has achieved in marginalizing corruption in the contracting process demonstrates the benefits of confronting corruption as one aspect of a larger systemic reform effort. The Bangladesh experience also highlights the ways that implementing a comprehensive e-GP platform can help drive standardization of practices and increased transparency. At the same time, the indication that some corruption may have shifted towards contract implementation in Bangladesh indicates the tenacity and resilience with which groups fight to maintain their corrupt income.

Introduction

In 2011, Bangladesh was at a crossroads in its efforts to improve public procurement. Procurement reform had started almost a decade earlier with the Public Procurement Reform Project.⁴² In 2003, the government introduced a Public Procurement Regulation to start practicing procurement under a single framework, although with limited legal enforcement. To further consolidate the legal framework, the government introduced a Public Procurement Act in 2006 and the Public Procurement Rules in 2008. These laws adopted the principles of the UNCITRAL model in the core procurement functions, introducing modern regulations on eligibility of tenderers, procurement planning, preparation of tenders and evaluations, tender submission and approval procedures, an independent complaint review mechanism, professional misconduct, and sanctions, including anti-corruption measures.

This first wave of reforms produced little in the way of improved outcomes and performance. The highly decentralized paper-based procurement process remained prone to corruption, collusion, and coercion at the local level. Perverse practices, like the physical intimidation of potential bidders and non-competitive processes for awarding contracts continued as the legal changes failed to translate into new processes and behaviors. Bureaucratic resistance to introducing new practices was substantial, especially among those officials who obtained the greatest private benefit from the way the existing system functioned. Procurement staff lacked the capacity and incentives to change practices and processes and there was scant evidence to suggest that new bidders were competing and winning tenders. Procurement volumes and values remained high, but the system continued to be characterized by inefficiencies, incapacity, and wastage.

Starting in 2011, the Government began the roll-out of a comprehensive e-GP system. Through e-GP and related reforms, the government aimed to reduce corruption in the procurement process and shift to a system that delivered better value for money for the country's citizens. The Ministry of Planning's Central Procurement Technical Unit (CPTU) oversaw public procurement and managed the reform process.

The implementation process

The government's second wave of reforms to improve public procurement performance began in 2011. The reforms had three major elements: introducing an electronic procurement system, training people how to use the new system, and strengthening monitoring and oversight.

Rolling out an electronic procurement system

After completing a readiness assessment for the introduction of e-GP, the CPTU implemented e-GP in four pilot agencies: the Local Government Engineering Department, the Roads and Highways Department, the Water Development Board, and the Rural Electrification Board. The four pilot agencies accounted for approximately 40% of the national procurement budget and included both high-value central procurement transactions as well as smaller value decentralized

contracting for a wide range of goods, works, and services.⁴³

The e-GP platform brought every step of the procurement cycle online: registration (public agencies/ bidders/ banks), procurement planning, tendering (invitation, preparation, submission of bids, including bid security), evaluations, award, contracting and payments. Additional features were added over time to further enhance transparency, including the creation of a citizen portal to disclose procurement and contract management data using the Open Contracting Data Standard, as well as procurement performance information.⁴⁴

The introduction of the e-GP system presented various challenges on the ground, mainly related to system security, poor connectivity, inadequate IT infrastructure at rural levels, and a lack of knowledge skills among users. The roll-out of the e-GP system was enabled by the IT infrastructure support created by Bangladesh Telephone Company Limited and Power Grid Company Limited supported by some private network providers. A significant effort was made in ensuring network coverage and providing the pilot agencies with the computers and IT equipment necessary to conduct all procurement operations on the online platform. Recognizing a lack of existing IT and computer knowledge among the procurement staff and the tendering community, CPTU created a help desk for e-GP and made a comprehensive effort to organize technical trainings for procurement officials as well as for suppliers and stakeholders at large.

After the pilot, the CPTU expanded coverage across government. The steady expansion of e-GP reshaped the mechanics of the procurement process. Digital platforms eliminated the need for a range of face-to-face interactions. Adopting e-GP also fostered a high degree of procedural standardization, including in the forms and documents used, the publishing of information on contract opportunities and awards, and the recording and filing of information relating to each transaction. As a result, e-GP led to increased procedural regularity as well as increased ability to identify when and where non-standard processes occurred.

By starting with a pilot, observers inside and outside the government could track the procurement performance of the pilot group versus agencies still operating under the paper-based system. This required an extensive

effort to collect and harmonize transaction-level data from the e-GP system as well as from the paper-based system.

Building procurement capacity in the public and private sectors

The second key element of the procurement reform was an extensive and intensive program of training in basic procurement skills and in navigating the e-GP platform. The emphasis placed on training responded to a need to raise the skill level of officials responsible for procurement and enable new and dynamic private sector firms to participate and win procurement tenders.

The training program was designed to spread expertise widely and to allow training to take place on a continuous basis. The CPTU managed the training of approximately 37,000 people, which included creating a crucial mass of 60 nationally certified trainers. The trainings ranged from procurement awareness and orientation to more in-depth training on different dimensions of planning and executing procurement transactions. That number included at least one procurement officer from each of the procuring entities in the pilot agencies. Over 6,000 private firms interested in participating in future procurements were also provided instruction in how to learn of contract opportunities and submit bids.

Through the training program, a cadre of procurement officials gained the knowledge and expertise needed to procure goods, works, and services efficiently and in accordance with the rules. The procurement officials were distributed within key sectoral agencies. Equally important, the training programs produced a community of informed bidders eager to compete for contracts and armed with knowledge and expectations about how public procurement transactions should be organized and executed.

Strengthening oversight and monitoring

The final reform element was to increase transparency in procurement processes and greatly expand the amount of publicly available information concerning individual transactions and overall system outcomes. In addition, the CPTU undertook a determined effort to increase citizen awareness of public procurement and community participation in monitoring procurement

practices and processes.

The CPTU conducted a comprehensive communication campaign in order to promote public awareness, knowledge sharing, advocacy, stakeholder engagement, and behavior change. This included communication support for and around the CPTU, expansion of e-GP, open contracting efforts and two-way communication among multi-stakeholders, including procuring entities, line ministries, oversight agencies, businesses, media, academia, and beneficiaries. Activities included: social media campaigns, engagement of beneficiary groups, public debates, education programs, awareness campaigns, e-GP orientation for different stakeholder groups, including media and community support organizations, media awards and fellowships, and collaboration with other governmental organizations involved in increasing information flows.⁴⁵

The stakeholder engagement program targeted political leaders, implementers, bidders, bankers, civil societies, academia, journalists, and, most importantly, citizens. The forums at policy level and district levels, combined with numerous workshops and deeper dialogues directly with the field level officials, tendering community, and journalists across the country, created visible momentum. Partnership with a communication firm and the BRAC Institute of Governance and Development⁴⁶ effectively moved the reform beyond simplistic technical 'solutions', reflecting an integrated approach that explicitly addressed both supply and demand issues.

The CPTU recognized that social accountability could help motivate public sector employees' performance and that citizen engagement could contribute to monitoring the execution of public contracts. In order to institutionalize citizen engagement, encourage dialogue and social accountability, and enable citizens to participate in the procurement cycle, four platforms were formed: (i) Public Private Stakeholders Committee comprising representatives from think-tanks, non-profit organizations, academia, and senior officials/ civil servants from the key ministries/ sector organizations; (ii) Government-Tenderers' Forum with representatives from both the public sector implementing agencies and the tender community;⁴⁷ (iii) Site-Specific Citizen Monitoring activities to monitor implementation of procurement contracts at the rural level; and (iv) a citizens' portal for monitoring public spending with appropriate disclosure of procurement information to the public and a feedback portal that

would help promote dialogue to ensure transparency and accountability in public spending vis-à-vis better service delivery.

From the start, the reform effort was designed to build support and momentum over time. The changes to procurement practices faced strong opposition from vested interests in the private sector and the parts of the bureaucracy that benefited from the existing system. Political support for additional reforms to procurement in 2011 was limited, as politicians were hesitant to become too closely associated with a reform viewed as having limited chances of delivering results. The bureaucratic hierarchy and procurement officials were also among the actors opposed to the introduction of the e-GP system, concerned about the transformation of officials' roles, functions, and responsibilities as well as the deep restructuring within their organization necessary to accommodate the e-GP adoption.

After seeing the benefits of e-GP through piloting, a young group of public officials with expertise and interest in IT became champions in carrying forward the e-GP agenda within their respective agencies. As the initial successes of e-GP in curbing collusion, coercion, tender rigging at the local level and improving the economic efficiency of the procurement system started to become apparent, the Bangladesh Prime Minister extended unequivocal support for the total digitization of the procurement process. On October 21, 2015 the Prime Minister announced that all public procurement would be conducted through the e-GP system by 2016, demonstrating the degree of political support for procurement reform that built over time.

Results

The reforms initiated since 2011 transformed the public procurement system in Bangladesh. Bangladesh stands out as a leader in the implementation of procurement reforms and in changing how procurement gets done, especially among countries at a similar level of economic development.⁴⁸ As of 2020, the e-GP system had been implemented in more than 900 public sector organizations and local government municipalities, covering about 13,000 procuring entities.

The average length of time from tender invitation to contract signing decreased from 95 days to 59 days between 2011 and 2019. The new system demonstrated

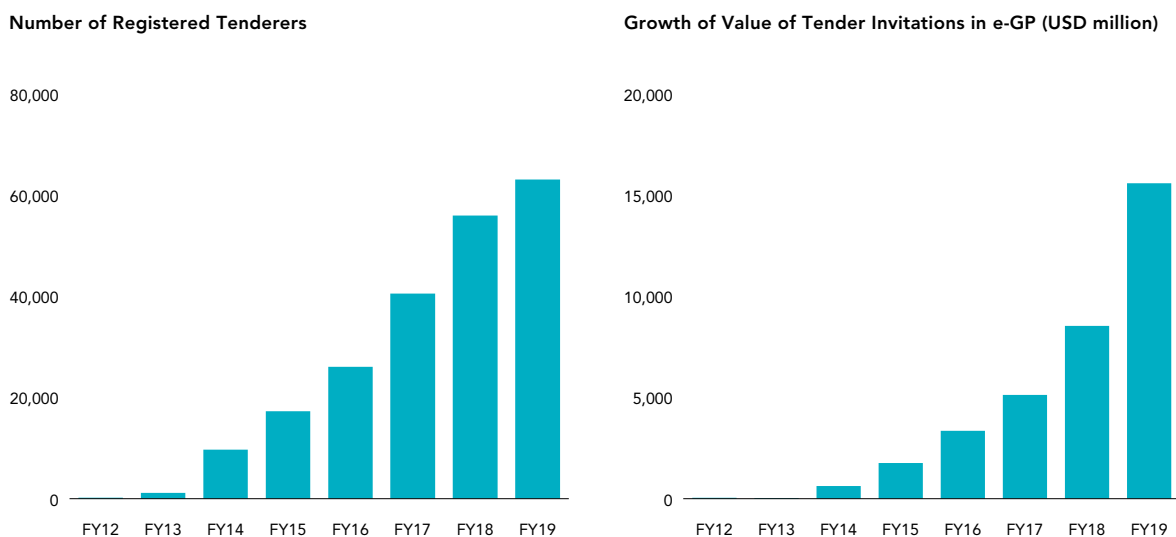
improved efficiency in terms of timeliness of award of contracts (award within the initial tender validity period), drastically decreasing the cost of accessing information on tendering opportunities, and enhanced competition through an increase in participating tenderers. The number of registered tenderers and the value of invited tenders also increased (Figure 1.1). Quasi-experimental analysis by Blum et al⁴⁹ suggests that improvements in the performance of pilot agencies relative to agencies that remained in the paper-based system were substantial in terms of lowering corruption risks.

The effort to engage stakeholders created ownership of the reform agenda both among the procuring organizations as well as the tendering community. Procurement officials started to feel more comfortable in exercising their functions through the new e-GP portal, and the private sector began to demonstrate increased interest in participating in tenders for state contracts. The e-GP system changed the nature of competition in public procurement and created demand for an army of employees equipped with the newly necessary IT and computer skills among the tendering community. These dynamics opened the door for small and local firms to win public procurement contracts while also providing new job opportunities for well-educated young professionals who could help small firms to bid on contracts using the electronic portal, thus ensuring significant support for the reform even in rural areas and at the community level.

An on-line survey-based evaluation of officials, private sector firms, civil society members, media, and financial institutions conducted by the Nielsen Company in 2017 found that 79.3 percent of respondents were positive about improved transparency in public procurement due to the introduction of e-GP; 76.6 percent viewed procurement reforms as effective; 72.3 percent recognized the e-GP system as efficient; and 81.9 percent mentioned that one of the benefits of reform has been improved accountability.⁵⁰

Data on the impact of the reforms on procurement transactions are very encouraging but should be treated with care given the on-going nature of the reforms.⁵¹ The reform's direct impact on corruption is not possible to measure. However, corruption risk indicators associated with likely corrupt acts, which are particularly well suited for identifying systemic impacts, can be tracked.⁵² Three corruption risk indicators were thoroughly evaluated by Blum et al⁵³, using a quasi-

FIGURE 1.1 Trends of Electronically Administered Tenders and their Value



experimental methodology:

- Single bidding,⁵⁴
- Non-local suppliers,⁵⁵ and
- Winning rebates.⁵⁶

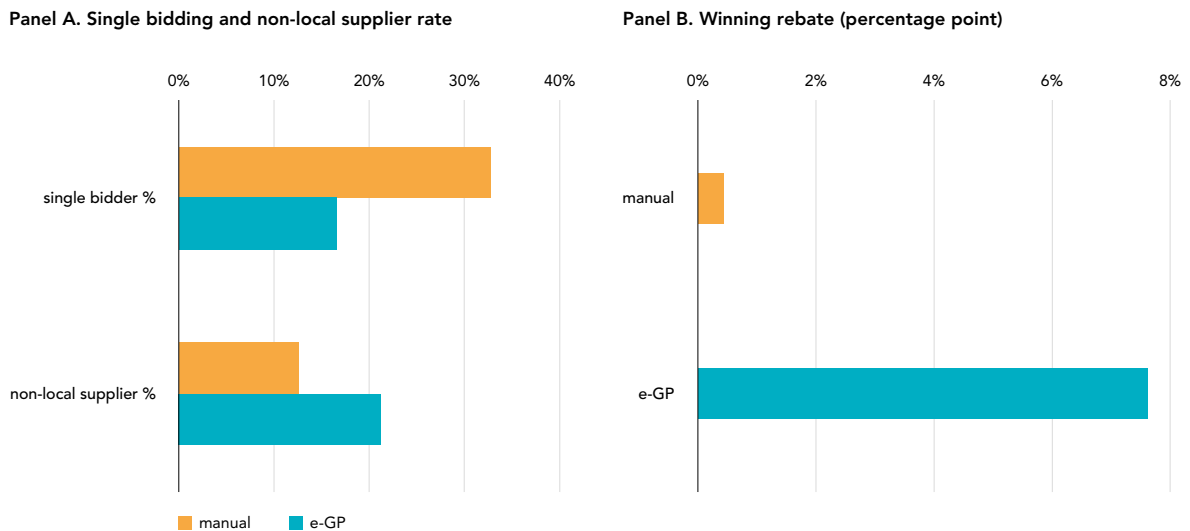
All of these indicators showed a statistically significant and sizeable improvement due to the switch from manual to electronic tender administration in the impact evaluation (Figure 1.2). Throughout 2011-2016, the rate of contracts awarded on a tender with only one bidder practically halved, dropping from 33% to 17%. Similarly, the rate of suppliers hailing from outside the district of the buyer increased from 13% to 21%. Furthermore, the average winning rebate the successful bidder offered (i.e., discounts) greatly increased, moving from about half a percent of the initial estimate to close to 7%. Taken together, these improvements in corruption proxies indicate that across the board, the likelihood of corruption declined as a result of the e-GP introduction. These quantitative results were also accompanied by anecdotal evidence on the disappearance of physical violence around bid submission as reported in the local media.

At the same time, there is evidence that procurement reforms have not “solved” corruption. While the reforms of the procurement process appear to have made a difference in the integrity of the process of contracting, it is less clear that the reforms have influenced the process of contract implementation. As the study

of successful anti-corruption interventions in public procurement indicates, reform of one procurement phase is likely to induce corruption displacement to other phases of the process.⁵⁷ Initial analysis of existing data by Blum et al⁵⁸ has been unable to identify improvements in the final cost of capital investment projects or in the time it takes to complete such projects. Fully 70% of capital investment contracts are not completed on time, and there is no indication that the quality of contract implementation has improved. While the data is only suggestive, we cannot rule out that there is a considerable amount of corruption remaining in the contract implementation phase, which should be tackled in subsequent reforms.

Reflections

Bangladesh’s more than nine-year experience implementing e-GP demonstrates the amount of effort and dedication required to improve procurement practices. Successfully reforming procurement, especially in the face of concerted efforts to maintain the status quo, is a long process. The resilience of the reform effort was a testament to the commitment to reform of officials in the Ministry of Planning and their ability to incrementally build support across government through demonstrating their ability to produce concrete and visible results.

FIGURE 1.2 Change in Corruption Risk Indicators as a Result of the e-GP Intervention

The more procurement performance improved in the select group of first movers, the more support procurement reforms gathered. Effectively addressing corruption was fundamental to achieving early successes, for example by preventing the physical intimidation of bidders by corrupt gangs by enabling the electronic submission of bids. Concrete improvements in procurement created an expanding constituency for continued reform that was strong enough to overcome the initial opposition to reform from the entrenched vested interests in both the public and private sectors. The initial adoption of the e-GP system in only the four pilot agencies also allowed government officials to focus their efforts on implementing change across a limited number of entities. Ownership and support for reforms was built over time thanks to a gradual sequencing of the reform implementation.

Initially, government support for the e-GP reform was weak. Instead, the implementation of the e-GP reform was a bottom-up approach, mainly owned by mid-level public officials of a few key agencies (who wanted to see changes) and a relatively young tendering community. The project implementers, including CPTU and the four pilot agencies, leveraged the support of these enthusiastic officials and the young community of bidders as well as communities. Political will to support procurement reform grew when leaders saw that new procurement practices and systems were gaining popularity by reducing bid rigging, coercion, and collusion. Shortly thereafter, procurement reform

became one of the Prime Minister's most prominent political commitments. Key members of cabinet, like the Minister of Finance and Planning, also supported the roll-out of e-GP.

Beyond technical content for laws, capacity development, and e-GP, the CPTU also undertook a massive stakeholder engagement program that supported a range of activities in engaging and sensitizing key stakeholders across the country on the importance of procurement reform and the benefits of efficient procurement. Increased transparency, combined with increased attention to making information publicly accessible, was essential to generating interest in public procurement reforms inside and outside of government. Equally important, newly established mechanisms for capturing and analyzing information provided stakeholders with the opportunity to examine procurement outcomes across the four agencies, within specific procuring entities, and in specific transactions. This new insight enabled officials, bidders, and communities to understand where progress was taking place, as well as where problems persisted and where additional scrutiny was needed. Transparency, information provision, and active monitoring allowed government officials to manage procurement reform, while at the same time enabling outsiders to monitor and review progress and behavior. This combination proved to be a vital source of energy and dynamism for reform.

CASE STUDY 3

PUBLIC PROCUREMENT

Reforming Procurement and Political Party Financing in Chile

Overview

In 2014 and 2015, the authority of the Government of Chile was challenged by a string of scandals relating to the relationship between economic and political power. While many of the “incidents” existed in a gray area of questionable legality, the overall public discourse suggested that the bureaucratic reforms undertaken ten years prior had not succeeded in eliminating the influence of elites on the workings of government. One of the scandals, which involved public procurement and the military, hinted at the role of procurement in the opaque flow of money among economic elites, political parties, and the government.

In response, the government initiated an innovative reform process designed to define new norms and expectations for Chilean governance. At its center was an independent and non-political commission entrusted with responsibility for making specific and concrete recommendations on restructuring the role and transparency of the private financing of political parties. A number of proposed reforms focused on improving transparency and consistency in public procurement. In the context of a well-performing state with a relatively high degree of capacity and integrity, addressing corruption in public procurement was approached primarily by modifying the incentives and dynamics in the overarching system of governance.

The Chilean Government subsequently adopted a number of the commission’s recommendations, which served to reshape the manner in which political parties

were financed, the internal rules by which political parties operated, and the transparency of the public procurement system. Success in changing the rules of the game demonstrates the possibility of designing reforms that address the symptoms and the underlying causes of corruption. At the same time, the mixed impact of the reforms in reducing the power of economic and political elites is a reminder that the overall process of changing fundamental aspects of governance is long and progress is neither linear nor constant.

Introduction

Between September 2014 and March 2015, Chile—which had a reputation as one of the least corrupt countries in Latin America—was rocked by a series of high-profile corruption scandals. Investigative journalists revealed how President Michele Bachelet’s son had allegedly engaged in insider trading and influenced peddling in a multimillion-dollar real estate play. Bachelet’s former finance minister was investigated for alleged campaign finance violations but not prosecuted. And executives from one of Chile’s largest financial groups were arrested on charges of tax fraud, bribery, and money laundering linked to an illegal scheme to finance the Independent Democratic Union, an opposition party.⁵⁹

The scandals exposed how prominent Chilean politicians and business executives used connections to exert influence and obtain wealth. While improper links between business and politics sometimes resulted in clearly fraudulent activities, such as tax evasion,

the role of money in politics more generally was a legal gray area. The links between private interests and politics were systemic, with all political parties involved in funneling cash through opaque payment arrangements that had the veneer of legality. To the public, the scandals seemed to prove that the whole political establishment was corrupt. Confidence in political institutions dropped dramatically, and citizens viewed corruption as one of the biggest problems of the country.⁶⁰

Corruption in public procurement was another area of concern following the “Milicogate scandal” that was exposed in 2014. Between 2010 and 2014, a group of military officers concocted a series of fake military procurement deals for goods and services that were never supplied, embezzling an estimated USD11 million. At the time, the military procurement system allowed off-budget funds to be transferred to secret accounts, and there was no parliamentary scrutiny or accountability for how that money was spent.

The scandals in Chile revealed the continued existence of corruption in Chile and instilled in the public a sense of urgency for reform. On March 11th 2015, Bachelet created the “Commission against Conflicts of Interest, Influence Peddling, and Corruption,” an independent advisory body with a 45-day mandate to prepare specific proposals for policy action. The commission was composed of 15 independent and neutral members and chaired by economist Eduardo Engel. The “Engel Commission,” as it became known, did not include anyone who worked in politics or business, a crucial element for building credibility and being perceived as non-partisan.

The Commission’s work was based on the understanding that the corruption scandals were symptoms of much deeper problems—the relationships between economic and political power and systemic institutional weaknesses in political parties. As a result, the anti-corruption agenda proposed by the Commission was comprehensive and ambitious, attempting to address both the symptoms and the causes of corruption. The agenda included both specific sectoral reforms (e.g., public procurement, market regulation, public employment, corporate governance) as well as broader reforms that sought to alter the dynamics around political party financing, governance, transparency, accountability of political parties, and conflicts of interest.

The implementation process

Dealing with the symptoms – proposals to reform procurement

Chile’s public procurement law had been revised in 2003.⁶¹ The restructuring, which enhanced procurement rules and processes, established ChileCompra, the Central Purchasing Body in charge of managing procurement, and Mercado Publico, the online procurement platform.⁶² The new systems fostered transparency and increased competition among bidders. While the 2003 reforms were a huge step forward, the procurement system retained some features that enabled the manipulation of rules and processes. The Commission analyzed the public procurement system with an eye towards identifying the institutional weaknesses that created opportunities for political influence and conflicts of interest.

While large parts of the procurement system operated under a common framework, the rules established special regimes for certain types of transactions, creating a degree of fragmentation (including some transactions undertaken by state-owned enterprises and the military). Some branches of government—the military, for example—were not required to use ChileCompra. This fragmentation reduced the value of the standardization that had been introduced in most of the procurement system, and increased corruption vulnerabilities. When the Milicogate scandal broke in 2014, these vulnerabilities were exposed to the public.

The Commission’s final report included various measures to address the weaknesses identified. It proposed the unification of the entire procurement system under the ChileCompra umbrella and further training for staff. It also proposed a series of measures to strengthen ChileCompra and extend its scope to coordinate, supervise, and support the entire integrated public procurement system. In order to increase transparency in purchasing and reduce opportunities for elite capture, the report also proposed strengthening of reporting requirements and further standardization of public purchases that go across government agencies. The Commission also proposed that the “Copper Law” be abolished. The law—which allowed a portion of revenue from the state-owned National Copper Corporation (CODELCO) to be transferred to secret military bank accounts—had been exploited by those behind the Milicogate scheme.⁶³ The Commission

wanted to reduce the chances of that happening again through the introduction of a multi-year budget with greater planning and oversight capacity and by eliminating off-budget expenses.

Addressing the causes – proposals to reform political party financing

The Commission's work was based on the recognition that Milicogate and the other scandals were manifestations of deeper problems related to the relationship between economic and political power. Improvements to ChileCompra and other technical reforms were unlikely to achieve their objectives unless they were combined with actions to change the overall incentives in the system. The set of reforms proposed by the Commission to shift the dynamics of elite capture had three pillars: reforming campaign finance, strengthening the governance of political parties, and regulating conflicts of interest.

In principle, the Commission determined that it was essential to regulate political parties as if they were public institutions in order to achieve greater equity and fairness in political and economic life. Recognizing that parties' reliance on private funding had facilitated their capture by private interests, the Commission proposed introducing public funding for political parties. The Commission's report also included proposals to improve the governance, transparency, and accountability of political parties, including stricter regulations on private financing.

At the time, most private donors gave money through "reserved contributions" where, in theory, neither the public nor the candidate knew the donor's identity. As became clear with the 2014-2015 scandals, in practice candidates knew exactly who was making large donations, and only the public was left in the dark. In order to reduce the interconnections between politics and business and to increase transparency, the Commission's report proposed allowing only individuals (not private businesses) to finance political parties, and the public disclosure of significant contributions.

The Commission's proposals on conflicts of interest had a similar focus on enhancing transparency. The Commission proposed that asset declaration requirements be enhanced so that officials should be mandated to declare all their interests before assuming public office, provide additional details on their assets

to enable effective oversight, and then periodically review and update their declarations. It proposed standardizing the declarations, ensuring they contained sufficient details to clearly determine an official's wealth, and that declarations be published on Chile's Transparency Portal in a reusable open data format.

The report also addressed the lack of provisions to regulate revolving doors between the public and the private sector,⁶⁴ recommending a one-year cooling off period for former officials⁶⁵ and the creation of a public directory of all politicians and bureaucrats ineligible for certain contracts or functions upon leaving office. Finally, it proposed several administrative rules to facilitate the application and enhance the effectiveness of the "Lobby Law",⁶⁶ for example by introducing a code of conduct for lobbyists and creating a training plan and courses on the content and application of the "Lobby Law".

Building support for reform

The Commission submitted its final report on April 24, 2015. Acting on the Commission's recommendations, the government quickly formulated a comprehensive set of reform measures. On April 28, President Bachelet announced the "Integrity and Transparency Agenda", and in May and June the government introduced 21 legal and 14 administrative initiatives. The "Integrity and Transparency Agenda" consisted of a broad set of medium- and long-term measures intended to improve anti-corruption laws and make transparency a centerpiece of the relationship between politics and business.

Monitoring implementation of the anti-corruption agenda was an arduous task given the number of bills and proposals promoted by the Commission, which had to make their way through Congress. In order to keep citizens engaged during the legislative process and facilitate the production of accurate and timely information, two civil society organizations created the Anti-Corruption Observatory in November 2015.⁶⁷ The observatory evaluated the achievement of objectives and tracked the legislative process. During the legislative process for the implementation of the reform agenda, the Observatory published this information in real time on its website, enabling citizens to validate progress and keep on pushing for completion of the reform agenda.



Progress on reforming procurement

Chile achieved mixed success in operationalizing the recommendations of the Engel Commission in regard to reforming procurement. For example, there was no progress with respect to some of the proposals included in the Commission's final report, such as stronger sanctions against irregularities in the procurement process or the creation of a strategic unit to oversee special purchases. However, Congress approved bills to: (i) expand the scope of the public procurement system to consider the entire procurement process, including support in the development of the bidding rules, the award and the execution of the contract; (ii) promote an anonymous system to report irregularities; (iii) sanction the use of direct contracting for contracts whose characteristics, by law, do not justify its adoption;

(iv) extend the use of Framework Agreements and establish objective criteria for their development;⁶⁸ and (v) cancel the "Copper Law" and provide Congress with greater capacity to monitor military purchases.

In 2017, 99% of award contracts were published according to the new standards of transparency and integrity promoted in the Commission's final report and adopted in the "Integrity and Transparency Agenda".⁶⁹ The number of public agencies qualified to publish Bidding Requirements (Bases de Licitación) with advanced electronic signature in the ChileCompra online platform increased from 0 in 2014 to 17 in 2017. In the same year, 8.7% of the bidding processes used advanced electronic signature.

In May 2017, ChileCompra approved the Code of Ethics

in Public Procurement Processes, establishing the reporting obligation of officials participating in public procurement. In 2018, a connection was developed between Mercado Publico and the National Financial Management System. This enabled the tracking of government spending from the procurement process to the payment of supplier invoices within the finance system and it strengthened ChileCompra's ability to monitor payments to suppliers that do not relate to procurement activity conducted within Mercado Publico. Finally, in 2019 ChileCompra launched the system for anonymously reporting irregularities in government procurement on its website.

The advancements related to the "Copper Law" and transparency of military purchases were notable achievements given the history of attempted but failed reforms. In 2015, a motion to make the content of the "Copper Law" publicly available was approved and in December 2016, the complete content of Chile's "Copper Law" and its amendments since 1958 became publicly available. In September 2019, Chile partially replaced the "Copper Law" with new legislation that ended the transfer of funds from the copper tax to the military, and instead directing those funds to the regular state budget.⁷⁰

Progress on overall "Integrity and Transparency Agenda"

When Bachelet left office in March 2018, Congress had already enacted 12 major anti-corruption-related bills, while the executive branch had implemented several administrative changes. A 13th bill was approved in late 2018 under Bachelet's successor, Sebastián Piñera. Based on the last update (2017), the Anti-Corruption Observatory reported a 63% degree of progress in the legislative process and 4.5/5 evaluation of achievement of objectives. "Financing Politics to Strengthen Democracy" was the area that registered most progress according to the Observatory, with a completion score of 83%.

The reforms introduced public funding for political parties in proportion to their representation in Congress, an important step forward in reducing the influence of money on politics, but one that was very unpopular with the public according to opinion surveys. In addition, the Electoral Service established limits on electoral spending as well as on maximum electoral contributions.

The impact of these reforms can be appreciated by looking at the political donations in the presidential election of 2017. Comparing the presidential elections immediately before and after the reforms (2013 and 2017) the number of donors increased from approximately 1,200 in 2013 (mostly firms) to close to 8,000 in 2017 (only individuals), while both the average and the median donation went down significantly.⁷¹ As intended, the proportion of public financing of campaigns increased, providing almost two-thirds of financial resources once the reform had been enacted. The reforms also had a positive impact on transparency regarding the wealth of public officials. The share of officials that submitted their declarations of interests and assets (among those obliged to do so by Law N° 20.880, 2016) increased from 90% in 2015 to 94% in 2017 (95.4% in the Central Administration and 91% among municipal officials).

Progress continued after 2017, but at a slower pace. For example, in 2017 the OECD released a statement urging Chile to address the remaining weaknesses in its frameworks to combat foreign bribery. In November 2018, Chile published a new law amending the Criminal Code and providing a more complete Anti-Corruption Statute. Finally, in July 2018, President Piñera signed into law a widely-hailed Bill on Public Integrity, which regulates the hiring of relatives, the nature of lobbying and interest management, and conflicts of interest between state officials and their ownership in entities that might be subject to audits by the state.

Lessons learned

The Chilean case represents a relatively unique effort to address the symptoms and causes of corruption by confronting the undue influence of economic elites on public sector decision-making. Reforms centered around changing regulations on the funding of political parties and the rules by which they operated. Reform actions also included a number of changes in regulations relating to public procurement, especially in relation to public finance and procurement in the security sectors.

The approach to reform was as creative as its substance. The creation of a strict timeline for producing a national program injected a high degree of urgency into the process and generated intense pressure to negotiate and find consensus across groups, while the creation of an independent committee to lead the

strategy process established a high degree of public legitimacy and independence into the proposed changes. The Commission's work was participatory, seeking guidance from technical experts and support from citizens. Realizing the importance of building momentum and creating a common understanding in public opinion on the anti-corruption reform agenda, the Commission relied on civil society organizations and the media to inform and empower civil society and build political capital to be spent during the legislative process and implementation of the reform agenda. Civil society and the media had a crucial role in monitoring the implementation of the anti-corruption agenda and holding the administration and Congress accountable. Because of the intense public scrutiny on the government and Congress, all political parties were under enormous pressure to embrace and support the ambitious and comprehensive anti-corruption agenda pushed by the government.

The Engel Commission's work and the reform agenda promoted by the government were based on the understanding that corruption in the public sector in Chile was the symptom of much deeper problems—the relationships between economic and political power and systemic institutional weaknesses. Earlier reforms had already created the regulatory foundations for a transparent, meritocratic, and well-performing state. The intervening years had demonstrated the ability of economic elites to find ways to circumvent some of the technical solutions that had been implemented. As a result, the specific technical or sectoral reforms that had been enacted were at risk unless they were buttressed by actions to change the overall incentives in the system, and the dynamics between economic and political power.

This case provides an example of how, by recognizing and acting when a window of opportunity emerges, a broad and non-partisan coalition can make progress on previously intractable problems. Until scandals erupt, citizens and politicians may not perceive the importance of anti-corruption reforms and affected groups may have veto power, resulting in reforms being blocked. The corruption scandals that occurred in Chile in 2014 and 2015 created a window of opportunity, and citizens demanded strong, clear and prompt actions by the government and Congress to introduce significant anti-corruption reforms. Congress was initially reluctant to embrace the anti-corruption agenda, with senior lawmakers and party bosses fearing the impact of stricter campaign finance and transparency norms. But

the outrage created by the scandals, public support for the Commission's work and President Bachelet's leadership made opposing the anti-corruption agenda political suicide for legislators. Once bills were put to a vote, deputies and senators felt enormous pressure to vote in favor and not be perceived as undermining efforts to clean up the system.

In times of crisis, politicization of corruption scandals can poison the political environment, impeding collaborative efforts and the creation of a shared reform agenda. In this case, because all parties had been involved in the corruption scandals and illicit campaign finance schemes, there was no scope for political shaming. Even further, the government understood that any proposals coming directly from the political establishment would be received by the public with enormous skepticism—and that a more neutral agent would have to initiate the process. The Engel Commission's neutrality and independence earned it high credibility in public opinion, allowing it to elaborate concrete proposals that gained unanimous consensus.

At the same time, it is important to recognize that the reforms of 2015 represent a step in Chile's development and not an end point in its national development nor the end of corruption in the country. In 2019-2020, Chile has experienced a round of protests relating to issues of inequality and elite privilege.

Notes

1. For the purposes of this chapter, the terms “public procurement” and “state contracting” are used interchangeably to indicate that the discussion of corruption applies broadly, and includes traditional public procurement, public-private partnerships, as well as contracting by state-owned enterprises. We differentiate between input-oriented public procurement (where state contracting occurs on the basis of clear technical specifications, designs, and enumerated inputs) and output-oriented public procurement (where state contracting happens on the basis of specified outcomes/functionalities), since anti-corruption activities differ depending on this distinction.
2. Public procurement is defined as the purchase by government of goods, services, and works. There are four main phases: project identification and design; advertising, prequalification, preparation of bid documents, and submission of bids; bid evaluation, post qualification, and award of contract; and contract performance, administration, and supervision.
3. World Bank. (2020). *Doing Business 2020*. Washington D.C.: The World Bank. <https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020>.
4. See G. Ware, S. Moss, J. Campos, and G. Noone, *Corruption in Public Procurement: A perennial Challenge*, in J. Campos and S. Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, World Bank, 2007.
5. Corruption in public procurement leads to distortion of competition, limited market access and reduced business appetite for foreign investors. Not surprisingly, companies increasingly demand for improved fairness in public procurement procedures. The 2014 Business and Industry Advisory Committee to the OECD (BIAC) Economic Survey indicates that among business leaders, enhancing efficiency and transparency in public procurement is the top priority for public sector reforms.
6. Chavkin & Shiel (2019). *Bribery Division: What is Odebrecht? Who is Involved?*. International Consortium of Investigative Journalists. <https://www.icij.org/investigations/bribery-division/bribery-division-what-is-odebrecht-who-is-involved/>.
7. Berghof (2018), “Organised irresponsibility”? The Siemens corruption scandal of the 1990s and 2000s”, *Business History*.
8. United States Department of Justice. *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case*. <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.
9. See V. Tanzi and H. Davoodi. 1998. *Roads to Nowhere: How Corruption in Public Investment Hurts Growth*, IMF Economic Issues, No. 12, March 1998. Fazekas and Tóth (2018): “In transport infrastructure, corruption steers infrastructure spending towards high value as opposed to small value investment projects. It also inflates prices by 30–35% on average with largest excesses in high corruption risk regions.”
10. Knack, Biletska and Kacker (2017) show that in countries with more transparent procurement systems, where exceptions to open competition in tendering must be explicitly justified, firms are more likely to participate in public procurement markets.
11. The term “agencies” includes all enterprises where the government or state has significant control through full, majority, or significant minority ownership.
12. For an extensive discussion of corruption vulnerabilities and corruption schemes across the entire procurement process, see G. Ware, et al., 2007.
13. Network analyses show that public procurement markets are dense and well-connected (Fazekas, Skuhrovec and Wachs, 2017), high corruption risk organizations are clustered (Fazekas and Tóth, 2016) and corruption in public procurement is predominantly about the exclusion of suppliers (Fazekas, Skuhrovec and Wachs, 2017).
14. Balrunaite (2019) demonstrates that banning political contributions to party campaign financing reduces corruption risks in public procurement. Fazekas, Skuhrovec and Wachs (2017) show that captured buyers (buyers with high corruption risk and denser networks) are significantly less stable around changes of government, supporting the theory that political connections shape markets and are key drivers of corruption patterns. These papers show that public procurement can be a vehicle for the connections between economic and political interests, in an implicit quid-pro-quo where firms contribute to party financing, the political elites disburse compensations through public contracts and money obtained thanks to political favoritism are reinvested to reinforce these relationships.
15. OECD (2016), “Preventing Corruption in Public Procurement”. <http://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>
16. OECD (1997), “OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>.
17. See, for example, “Model Monitoring Agreements on Integrity Pacts for Infrastructure: An implementation guide for Civil Society organizations,” Transparency International, 2018.
18. See Knack, Stephen; Biletska, Nataliya; Kacker, Kanishka. 2017. *Deterring kickbacks and encouraging entry in public procurement markets: evidence from firm surveys in 88 developing countries* (English). Policy Research working paper; no. WPS 8078. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/817871496169519447/Deterring-kickbacks-and-encouraging-entry-in-public-procurement-markets-evidence-from-firm-surveys-in-88-developing-countries>.
19. For example, the OECD report on “Preventing corruption in public procurement” and the 2015 OECD “Recommendation of the Council on Public Procurement”.
20. Kochanova, Anna, Zahid Hasnain & Bradley Robert Larson (2016), “Does E-Government Improve Government Capacity? Evidence from Tax Administration and Public Procurement,” *World Bank Policy Research Working Paper Series*.
21. Lewis-Faupel, Sean, Yusuf Negggers, Benjamin A. Olken & Rohini Pande (2016), “Can Electronic Procurement Improve Infrastructure Provision? Evidence from Public Works in India and Indonesia”, *American Economic Journal: Economic Policy*.
22. Blum, et. al. 2019.
23. For example, an OECD study on the Latin American region revealed that a common challenge faced by both procuring entities (47%) and potential users of e-GP systems (57%) are low knowledge and skills of ICT. Lack of innovative culture (47%) and limited knowledge of the economic opportunities raised by e-GP systems (38%) were identified as additional challenges for procuring entities.
24. There is limited evidence that increased prosecutions for corruption in public procurement leads to lower levels of corruption. Researchers have been unable to detect the influence of legal rules and legal enforcement on corruption levels in general, or in procurement, despite regular repetition

- of the importance of active policing in deterring corruption and extensive efforts to stamp out corruption. See Minxin Pei, *China's Crony Capitalism: The Dynamics of Regime Decay*, 2016 for an extensive discussion of the impact of China's punishment-led anti-corruption efforts. Some countries, like Indonesia, have sought to prevent corruption by criminalizing activities that might reflect misbehavior, such as contract modifications and cost overruns. There is no evidence that these efforts contribute to solving the problem, and many anecdotal stories indicate that criminalization slows down decision-making as officials are disinclined to make decisions that expose them to risk.
25. Transparency International (2014), "The Role of Technology in Reducing Corruption in Public Procurement". <https://knowledgehub.transparency.org/helpdesk/the-role-of-technology-in-reducing-corruption-in-public-procurement>.
 26. Gerardino, Maria Paula, Stephan Litschig & Dina Pomeranz (2017), "Can Audits Backfire: Evidence from Public Procurement in Chile", *CEPR Discussion Paper*.
 27. Gerardino, Litschig, Pomeranz, 2017.
 28. Bauhr, Monika, Agnes Czibik, Jenny de Fine Licht & Mihály Fazekas. 2019. *Lights on the Shadows of Public Procurement: Transparency as an Antidote to Corruption*. Governance: An International Journal of Policy, Administrations and Institutions.
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 30. Olken, Benjamin A. (2007), "Monitoring Corruption: Evidence from a Field Experiment in Indonesia", *Journal of Political Economy*.
 31. See Bandiera, Best, Khan, and Pratt, 2019 for findings from a complex random control trial experiment in Pakistan relating to the impact of auditing, performance pay, and discretion on corruption in public procurement.
 32. For a review of countries that have successfully reduced corruption, see A. Mungiu-Pippidi, A., & Hartmann, T. (2019). *Corruption and Development: An Overview*. In *Oxford Research Encyclopedia of Economics and Finance*. Oxford: Oxford University Press.
 33. For a discussion of the South Korean experience in addressing corruption at the sector level, see Arsema Tamyalew, *A Review of the Effectiveness of the Anti-corruption and Civil Rights Commission of the Republic of Korea*, World Bank. For Rwanda, see *Addressing Administrative Corruption in Rwanda*, World Bank, 2020, forthcoming.
 34. Manson, Katrina (2013, Nov 3). "Somalia central bank governor resigns after seven weeks". *Financial Times*. <https://www.ft.com/content/5bf9ac6c-4319-11e3-8350-00144feabdc0>.
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 36. 2020 Appropriation Act allocated USD146 million for security sector operational costs out of a total operational budget of USD349 million. Rations spending was budgeted at USD15 million in 2020, around 11% of security sector operational spending.
 37. Sectors outside of Mogadishu were covered by in-kind support from the international community.
 38. FGC Advisory Note. (2020, Jan). "Gains from competitive rations tendering in the security sector".
 39. FGC Advisory Note. (2020, Jan).
 40. FGC Advisory Note. (2020, Jan).
 41. This "form over function" problem is sometimes also referred to as isomorphic mimicry, see for example "Building State Capability: Evidence, Analysis, Action," Matt Andrews, Lant Pritchett, and Michael Woolcock.
 42. The Public Procurement Reform Project (2002-2007) was initiated, with the support of the World Bank, and designed to implement the recommendations of the 2002 Country Procurement Assessment Review. See World Bank. 2002. *Bangladesh - Country procurement assessment report* (English). Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/812041468743656486/Bangladesh-Country-procurement-assessment-report>.
 43. The e-GP system was initially piloted only in four procuring entities of the four "pilot agencies", then in 50 procuring entities, then in 308 procuring entities, and eventually in all procuring entities within the four "pilot agencies" (about 1300).
 44. The Open Contracting Data Standard, developed by the Open Contracting Partnership, defines what procurement information should be made publicly available, and the form the information should take in order to enable civil society oversight and monitoring. See Open Contracting Partnership. org for additional information on the OCDS.
 45. The key activities for the communication campaign included: conducting 99 events on procurement reforms covering over 5,700 participants, convening 64 e-GP awareness workshops at district level with over 2,400 participants, establishing 64 Government and Tenderers' Forums covering 3,300 procuring entities, and organizing four e-GP workshops including one at the national level for 44 registered banks in the e-GP system. Also, it developed a mobile app, produced an e-GP theme song, videos, radio and television commercials and success stories, and created two digital billboards in Dhaka that displays on-line live procurement data with a direct feed from the e-GP platform.
 46. The BRAC Institute of Governance and Development, operated by the internationally recognized Bangladesh NGO – BRAC – undertakes work in support of governance improvements in Bangladesh and across South Asia. For more information See www.Brac.net/
 47. The GTF provided an informal platform for government officials and bidders to share information and experience including issues and resolutions about procurement and the e-GP system.
 48. See Zafrul Islam, "Bangladesh's Success in Public Procurement: Sustained reform really pays off," *World Bank Governance of Development Blogs*, Nov 19, 2018.
 49. Blum et al, 2020, forthcoming.
 50. See Islam, 2018 for additional information on the survey methodology and findings.
 51. A detailed analysis of the transaction-level data is presented in Blum et al, 2020, forthcoming.
 52. Mungiu-Piuppidi, A. and Fazekas, M. (2020). "How to define and measure corruption." Mungiu-Piuppidi, A., & Heywood,

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53. Blum et al, 2020, forthcoming.
 54. Mihály Fazekas and Kocsis, Gábor, (2020), Uncovering High-Level Corruption: Cross-National Corruption Proxies Using Public Procurement Data. *British Journal of Political Science*, 50(1), p. 155-164.
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 57. Elizabeth Dávid-Barrett and Fazekas, Mihály (2020) Anti-corruption in aid-funded procurement: Is corruption reduced or merely displaced? *World Development*. <https://www.sciencedirect.com/science/article/abs/pii/S0305750X20301261>
 58. Blum et al, 2020, forthcoming.
 59. See Kevin Casas-Zamora and Miguel Carter, *Beyond the Scandals: The Changing Context of Corruption in Latin America*, Inter-American Dialogue, Rule of Law Report, Feb 2017 for additional information.
 60. A national opinion survey by the Research Center of Public Studies (CEP) shows that between 2012 and 2015 public confidence in the government, the National Congress of Chile (Congress) and political parties fell, respectively, by 19 percentage points, 10.5 percentage points and 5.5 percentage points. In just five months prior to April 2015, the share of the population considering corruption one of the top three problems of the country tripled from 9% to 28%, while support for Bachelet dropped by almost 10 percentage points.
 61. Public Procurement Act (Law n° 19.886)
 62. www.chilecompra.cl
 63. The Milicogate scheme was abetted by the "Restricted Copper Law" (Ley Reservada del Cobre), which required the state-owned National Copper Corporation (CODELCO) to transfer 10% of revenues from its copper exports to pay for arms acquisitions and equipment maintenance for the armed forces. The "Copper Law" was restricted in the sense that its full text was secret and the funds were transferred every year to secret military accounts. This off-budget system led to military spending unrelated to any assessment of actual defense needs, unplanned and uncoordinated spending, and no parliamentary scrutiny or accountability for how money was spent, opening the door for corruption. The inadequacy of the "Copper Law" had been discussed since Chile's return to democracy in 1990, and in 2011 the Congress introduced a bill to abolish the "Copper Law" and allow Congress to oversee arms acquisitions and the military budget. The bill reached the Senate in 2012, where it stalled.
 64. For example, Rodrigo Hinzpeter was the Interior Minister from 2010 to 2012 and Defense Minister from 2012 to March 2014, and only one month later he was hired as General Manager at Quíñenco, which holds stakes in companies that engage in a wide array of business activities related to regulated industries, including oil imports-exports and the transport sector. Andrés Chadwick Piñera was the Interior Minister from 2012 to March 2014 and in June 2014, three months after handing over power, announced his decision to create a Consultant Office on Public Affairs, a lobby firm dedicated to helping energy companies prevent and solve conflicts with local communities.
 65. Cooling-off periods are minimum time intervals restricting former public officials from accepting employment in the private sector. Cooling-off period regulations are a common measure to prevent conflicts of interest.
 66. The main provisions of the Lobby Law (Ley N° 20.730, 2014) included: (i) The establishment of legal definitions for lobbying, activities and actors; (ii) The creation of public registers where authorities must disclose information regarding regular meetings and individuals/lobbyists who attended those meetings; (iii) Sanctions and fines for infractions; (iv) A mandate for the Council for Transparency to consolidate data on lobbying activities and make that information public via a website.
 67. The two organizations were Espacio Público (Public Space in Spanish) and Fundación Ciudadano Inteligente (Intelligent Citizen Foundation in Spanish). The results from the Anti-Corruption Observatory can be found at: <https://observatorioanticorruccion.cl/>
 68. Framework agreements are arrangements between one or more buyers and one or more suppliers that provide the terms governing contracts to be established for a certain period of time, in particular with regard to price and, where necessary, the quantity envisaged. Other repetitive conditions known in advance, such as the place of delivery, may be included. They are intended to provide expeditious ordering of commonly used, off-the-shelf goods, purchased on the basis of lowest price. Examples of such goods are printing supplies, stationery, computers and software, and pharmaceutical supplies (UNECE, Trade Facilitation Implementation Guide).
 69. IDB (2019), "Bankability through the Lens of Transparency, Increasing Private Investment in Latin American Infrastructure". <https://publications.iadb.org/en/bankability-through-lens-transparency-increasing-private-investment-latin-american-infrastructure>.
 70. According to the new legislation, the Chilean National Congress must approve allocations for arms acquisitions and military investment, thus officially ending the use of off-budget funds, and the Comptroller General (the government audit office) has now oversight powers on all financial activities involving these funds. The derogation of the "Copper Law" and the enactment of the new funding system involve a transition plan until 2032. Funds from the copper tax will be gradually phased out over 12 years: the 10% tax on copper exports will remain until 2028 and will then decrease by 2.5% each year until it disappears in 2032. During this period, however, copper revenues will no longer be transferred directly to funds for arms acquisitions controlled by the armed forces; instead, they will be made available to all sectors of government through the regular state budget.
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Case Study 2: e-Procurement Reform in Bangladesh

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CHAPTER 2

Public Infrastructure



Introduction

Why does corruption in public infrastructure matter?

The world's infrastructure needs are huge. Globally, an estimated USD3-4 trillion on an annual basis through 2030 is required to meet the infrastructure needs of the 1.2 billion people who lack electricity; the 663 million who lack adequate drinking water sources; the 1 billion who live more than two kilometers from an all-weather road; and the many millions who are unable to access work and educational opportunities due to the absence or high cost of transportation services.¹

Corruption exists in all sectors and its impacts are universally negative, but corruption in public infrastructure has particularly serious implications for low-income countries where infrastructure accounts for a higher share of GDP and institutional structures may be less stable. Inappropriate project preparation and selection, poor price forecasting, limited competition, and badly designed tenders lead to excessive time and cost overruns, inadequate maintenance, and low-quality end results. This all impacts negatively on economic growth and poverty alleviation.

Private sector funding is urgently needed, but corruption makes investors reluctant. Given the so-called infrastructure gap, the growing need to attract financing from a nuanced range of new and conventional sources is evident. Yet surveys conducted among the private sector unanimously show that corruption risks are among the top barriers to investment in infrastructure and auxiliary sectors. The size, complexity and long-run nature of infrastructure projects leaves them vulnerable to corrupt practices and, as a result, the prospect of exposure to criminal or ethical misconduct functions as a deterrent to investors.

In addition to large financial losses, the cost of corruption to governments is reputational. Diminished public trust and disinterest in public-private cooperation from quality contractors decreases

civic engagement and leads to low-quality results. Malfeasance and mismanagement along the project lifecycle result in transactions that have high external costs and low public benefit. These results tend to repeat themselves, not least when corruption goes unchallenged, but risk management is a persistent challenge facing public entities.

Risk management is complicated by the many possible entry points for corruption. Projects often cut across several institutions, jurisdictions, levels of government, and policy areas on their long-run path to delivery. This complexity makes corruption tricky to detect. Infrastructure is also often subject to considerable local influence on topics such as land use and access to services leading to many opportunities for rent extraction. Finally, the corruption risks in infrastructure development are inextricably linked to those in government contracting. As such, the preceding chapter on public procurement draws complementary lessons and insights.

World Bank experience shows that the stakes are high in infrastructure, but mitigation efforts matter. The World Bank's infrastructure lending portfolio represents a significant portion of its activities. In 2014 alone, the World Bank allocated USD24 billion to infrastructure, amounting to roughly 40 percent of its total lending that year. A project mainstay of the World Bank through the years has been road construction. Between 2000 and 2010, USD56 billion was directed to roads and road maintenance projects. The Bank's Independent Evaluation Group (IEG) reports that roads and other transport projects consistently score higher on measures of outcomes, institutional development, and sustainability than non-transport projects. Yet, one quarter of the more than 500 projects with a Bank-funded roads component during that decade drew one or more allegations of corruption-related activity. In comparison to non-Bank projects or projects with no corruption mitigation efforts, this number is low, hinting at the true extent of the problem.

Identifying corruption risk: Targeting the whole project cycle

Research consistently shows that corruption occurs at every stage along the project lifecycle.

Every phase in an infrastructure project involves distinct combinations of institutions and stakeholders, each with their own vulnerabilities to particular types of misconduct. The interaction of country specific circumstances, market conditions, and project particulars determine where the dark corners are.²

Overlooking early and late stages is detrimental to fiscal prudence. Attempts to measure corruption in the infrastructure sector have tended to focus predominantly on the procurement phase, resulting

in a lack of data on other phases. Estimates of losses to bribery in construction, which lies downstream from procurement, are as high as 45 percent of construction costs.³ To illustrate, more than a quarter of the allegations against the road projects with World Bank involvement, mentioned above, concerned fraud during the construction phase.⁴ Better oversight of the entire project cycle is essential: If an economically viable project is selected in the initial phase, and the quality and maintenance of the end-product is ensured, the potential impact of corruption is already substantially reduced.

Corruption entry points by phase

To understand which types of corruption most commonly afflict the infrastructure sector, it can be helpful to simplify the corruption challenge by breaking it down into stages. This section describes some examples of the most common types of misconduct as they might occur in the early, middle and late project stages.

1. Needs identification, appraisal and project planning: Bribery and undue influence

The high stakes and outsized profits of multimillion-dollar contracts provide an alluring incentive to influence the identification, selection and planning process. Early project stages involve multiple actors with competing agendas, such as potential contractors, lobbyists, and regulators. The bribery of officials, driven by the potential returns on misconduct, is aimed at gaining connections or undermining merit-based procedures for project or contractor selection, for example through access to confidential information such as financial or commercial project details. Similarly, policy capture, whereby the government body responsible for project selection is subject to undue influence—concealed as lobbying—

places some parties at an advantage to others.

In the absence of fair competition, project value is compromised. In many jurisdictions, bribery is plainly unlawful, while lobbying might happen legally in ways that cause information asymmetry between bidders and undermine competitive procedures. However, the result of the two scenarios can be the same: financial pressure or lobbying power wins out over public interest in project selection. The cost of this bias in project selection is cumulative. For governments and end users, overall project value is negatively impacted when funds are directed to projects that are not selected based on fair competition.

The size of bribes has a significant impact on procuring entities. Statistics show that bribes during the submission, evaluation and awarding of contracts are between 10 to 15 percent of the contract value. One well-known and recent example of grand corruption is the Odebrecht scandal, which saw the Brazilian infrastructure giant bribe its way to contracts in otherwise largely competitive auctions across two continents for more than a decade. Between 2005 and 2015, the equivalent of Odebrecht's entire profit was made from infrastructure contracts won from bribes. By Odebrecht's admission in a U.S. District Court,

the company paid about USD788 million in bribes in Brazil and 11 other countries, securing more than 100 contracts that generated USD3.3 billion in profit for the company. Typically, bribe payouts are recovered in the mark-up placed on the unit prices of the procurement items, driving up costs for procuring entities who end up paying the price, twice.

Bribery aside, the early project stages are sensitive to several types of misconduct. For example, bidders may present fraudulent information to pass technical or other assessments, potentially prompting serious safety hazards to people and the climate, not to mention the costs tied to fixing defunct infrastructure at a later date. Proposed budgets that either overestimate outcomes or underestimate costs are another example of misreporting that intentionally skews competition. These types of misreporting can be difficult to detect in time and, because the cost of re-contracting for governments is prohibitively high, they can lead to a pernicious outcome of rewarding fraud.

2. Procurement: Collusion and nepotism

The procurement phase may hold the highest risk of corruption. Compared with other areas of development lending, large-scale, technically elaborate infrastructure projects require more specialized contractors and consultants and more capital input, leading to complex contractual procedures throughout. The procurement phase may indeed be where this complexity creates the most entry points for corruption, and the biggest chance of rewards for misconduct. A study showed that government procurement worldwide was worth around USD9.5 trillion in 2014.⁵ Due to the size of the market, even low percentage levels of corruption account for enormous financial losses.

Collusion occurs when bidders conspire to limit competition through schemes, including complementary bidding, market division, and bid suppression. This type of cartelization defeats the competitive bidding process in order to inflate prices to artificially high levels. Contractors may also act alone, offering payments for contract awards or facilitation payments to circumvent taxes and customs.

Or, the government contracting authority manipulates the bidding process to exclude other competitors. This ensures that the contract will be

awarded to the bribe-paying firm, whose prices are now inflated to cover the cost of the bribe. It is done by limiting calls for bids, skimping on advertisements or setting unrealistically short timeframes with specifically tailored requirements. A study of more than 3.5 million government contracts across Europe showed that publishing more information about contracts decreases the risk of single bid tenders. This matters because single bid contracts are a governance risk and are over 7 percent more expensive. Publishing five more pieces of information, or data points, about each tender would save up to USD3.9 billion in Europe.⁶

Nepotism occurs when decision makers influence the processes of procurement to favor bidders who are connected to them via professional or familial networks. This is done by either limiting the set of bidders in the advertisement phase or unfairly assessing bidders in the assessment phase. The payoff for this can come in the form of kickbacks or political campaign support in a textbook example of corruption as the misuse of public office for private gain.

3. Construction, operation and maintenance: Fraud and renegotiation

Years of construction lead into decades of operation and maintenance (O&M), yet PPP regulations tend to neglect the long tail-end of projects. Too often there is no robust evaluation plan in place, nor a clear procedure for dealing with unexpected risks. As a result, contract execution and infrastructure operations are vulnerable. While mechanisms to ensure the quality of outcomes are key to long-range project success, there is a lack of ready tools to help governments evaluate and manage indicators of corruption through construction and O&M. This gap is compounded by the fact that O&M is often underfunded: The average cost for road rehabilitation across 18 countries with good data on both bribes and costs was USD36 per square meter in 2010. In countries with a low risk of bribery, it was USD30 and in those with a high risk it was USD46, a spread of more than 50 percent.⁷

One of the most common risks during the construction phase is ex-post renegotiation of performance requirements in the contract details.⁸ When contractors' terms begin to deviate substantially from initial requirements, it can be an indication that the contract was won through intentional under-

bidding. Renegotiations reflect the fact that PPPs suffer from chronic cost overruns, and recurrent renegotiations are a likely outcome of the incentive structure in place. Recent evidence shows that when firms pay bribes, renegotiated amounts and cost overruns are substantially larger,⁹ yet renegotiations continue because the financial and reputational cost to government of returning to the tendering process is likely perceived to be too high. Case Study 5 provides more insights into how renegotiation affects PPPs in particular, and, using country-level examples, gives

guidance on how countries can protect themselves from disingenuous contract offerings that lead to renegotiation attempts.

The operational, audit and evaluation phases are also particularly sensitive to fraudulent results reporting. Auditors play an important role, but to be efficient they need to be sufficiently resourced and siloed from situations where they may be exposed to attempts at facilitation payments to overlook violations of controls.

Policy actions: Integrity and transparency in governance

Planning is an essential part of protecting against financial and reputational losses. Measurements of losses to corruption in the infrastructure sector are open to wide margins of error, but a comparison of World Bank supported projects with non-Bank related projects shows that the mere presence of a risk management strategy results in fewer allegations of corrupt activity overall.¹⁰

The best prevention is a whole-of-government approach. Neither increasing the costs associated with misconduct, nor adding time-consuming layers of due diligence has proven to be a catch-all defense. Corruption is a human incentive-based behavior with no archetypal villain, and prevention, as ever, is preferable to treatment. Best practices for governments entail formalized criteria to guide the prioritization, approval, and funding of projects.

At the project level, policy measures to encourage integrity can include requirements for:

- **Mandatory conflict of interest disclosure** for all persons who come into contact with the project at the government level. This is a key part of risk planning that helps prevent incentives for corrupt behavior by limiting the possibility for persons to make project related decisions that benefit them personally.
- **Systematic controls via Independent External Monitors (IEMs)** who review the process from

inception to project closure. IEMs should be required to monitor objectively and may have administrative or enforcement responsibilities, for example the power to halt a project in the case of allegations of wrongdoing.

- **Digitization of information** and dissemination for equal access by all stakeholders. This includes the public and civil society organizations, which play a key role in successful oversight.
- **Integrating PPPs into a broader public investment management process** as well as ensuring sign-off from the Ministry of Finance at key points can reduce the scope for poorly prepared projects.

Other efforts that are shown to make a difference:

- **Risk mapping.** Understanding who is involved at each step of the procurement process, and the links between people and entities is key to limiting losses. First steps to formulating a policy response could include a 'risk map' for relevant government bodies to identify official positions that are vulnerable to outside influence, and to set a threshold for determining which types of projects are particularly risk prone, based on costs and complexity. Building a risk map helps establish a clear view and open lines of communication between all relevant government departments.
- **Codes of conduct and training.** This should include

provisions on asset declaration and whistleblower procedures including, importantly, whistleblower protections. Training relevant officials on how to avoid corruption and providing general ethics and integrity training raises awareness, builds commitment and opens up space to discuss wrongdoing and bring it to light.

- **Multi-stakeholder agreements.** In places where the whole-of-government approach is untenable, risk mitigation instruments can be put in place on a case-by-case basis. One way to do this is for all stakeholders—government, potential contractors, and civil society—to sign a binding agreement mutually pledging to avoid corrupt practices and ensure enhanced disclosure, including to the public. This type of contract can be implemented on all or parts of a project and adapted to the context at hand. For example, agreements can stipulate requirements for an IEM, such as a relevant civil society group, and sanctions for transgression, including contract cancellation.

While being a good preventive tool, this type of agreement is limited in scope. Like any strategy, if not carefully managed, it can be merely window dressing. It works best as a supporting mechanism to weak regulations but requires complementary approaches, such as effective intervention of control agencies and the timely prosecution of criminal offenses in order to be most efficient.

Introducing a multi-stakeholder approach to accountability can involve partnering with initiatives, such as Transparency International, which has created the Integrity Pact for this purpose; the Open Government Partnership; Open Contracting Partnership; or, the Infrastructure Transparency Initiative (CoST). See Case Study 4 of this report to read more about how CoST uses a four-pillar approach to improve service delivery and value for money in public infrastructure spending.

- **Beneficial ownership disclosure laws.** Beneficial owners are natural persons who effectively own or control a legal entity, in this case the bidder. Preventing their anonymity complicates the process of illegal practices, including money laundering and corruption, by blocking attempts to obscure ownership through layers of entities across several jurisdictions. Concealing beneficial

ownership is attempted for several reasons, including to hide connections or collusion between government officials and owners. See Chapter 9 for more information on how beneficial ownership registries are being implemented globally.

- **Cross-government reporting and monitoring.** Monitoring cash payments and ensuring that financial transactions are sufficiently tracked and recorded facilitates the detection of irregularities. Following the whole-of-government ideal, this includes cross-referencing public expenditure information within and across sectors.
- **Encourage integrity among potential project partners.** Even when governments have sound regulations in place, compliance monitoring is never failproof. A lot of risks come from working with third parties who, directly or indirectly, pose a threat. Some partners might obscure ultimate beneficial ownership details that can hide important conflict of interest information. Others may not have any screening measures in place for subcontractors or, indeed, any risk management at all. To avoid doing business with companies that do not actively manage risk in their own operations, or in their sub-contractors, is a crucial step in avoiding external risk.

Box 2.1 is an example of the types of internal policies and practices that a project owner should be screening for in partners on major infrastructure contracts. It draws on the experience of the International Finance Corporation (IFC), the largest global development institution focused exclusively on the private sector. Early identification of corruption and other integrity risks is an essential component of IFC's overall project risk management. Through due diligence, IFC aims to identify likeminded clients and partners who are committed to transparency, sustainability and good business practices. IFC's methodology is relevant for practitioners from all sectors, including SOEs, investors, and government procurement bodies, because it sets a standard at the project level for all stakeholders, equally. It mirrors the rise of environmental, social and governance standards that large institutional investors and corporates increasingly apply to their own decision-making.

BOX 2.1

IFC's Integrity Due Diligence (IDD)

The purpose of the IDD process is to understand the ownership structure of the client and partners, determine the ultimate beneficial owners, and identify integrity risks, such as corruption, fraud, money laundering, tax evasion, lack of transparency and undue political influence associated with the project. Mapping the underlying ownership structures and networks of the parties involved helps the IFC gain a view of the potential risks of engaging with parties who are sanctioned or have a known history of misconduct; or of engaging with unknown third parties who could present other risks.

Opaque structures may be used to evade taxes, hide ownership and wealth, facilitate criminal activity and launder the proceeds of crime. For these reasons, as part of its IDD process, IFC is required to conduct due diligence to understand the structures used by its clients. Enhanced due diligence is required for investments involving intermediate jurisdictions (broadly defined as jurisdictions other than those of transaction sponsors or project companies and sometimes referred to as offshore financial centers). IDD also covers other entities and individuals whose role in a project could potentially have a material adverse reputational or financial impact.

Policy articulation: Drawing on the experience of multilateral organizations

Competition is cleaner and kickbacks are fewer and smaller in places where transparent procurement, independent complaint procedures and external auditing are in place. These findings of a World Bank survey of 34,000 companies in 88 countries are in line with today's standards for best practice, as formulated by a handful of multilateral organizations.¹¹

The OECD takes intellectual leadership in this area.

The OECD's work on anti-corruption is a diverse toolbox that includes frameworks for developing standards and best practices on issues such as bribery, procurement, and public financial management.¹² The G20 also takes a leading role. The G20 High-Level Principles (2017) take a narrower approach, concentrating on the structural organization of public administration against corruption.¹³ They are divided into organizational measures that focus on administrative procedures;

awareness-raising amongst public officials; and human resources management.

Multilateral institutions have followed the OECD's example.

The OECD may currently take intellectual leadership in its work with corruption related issues, but a large number of multilateral institutions have similar initiatives in place. These include regional partnerships, such as the African Union's Convention on Preventing and Combating Corruption and the Economic Community of West African States' Protocol on the Fight Against Corruption; economic and political organizations such as the World Economic Forum's Principles for Countering Corruption, which builds on its early work on countering bribery; and the United Nations Convention Against Corruption (UNCAC), which is the only legally binding and universal instrument.

Across these frameworks, the following common principles emerge:

- **Openness/Transparency**

Countries where information about contracting is made public have reduced prices, increased competition and better services.¹⁴ Potential suppliers, contractors and the public should be provided with consistent information so that the public procurement process is clear and the outcomes are equitable. Governments should promote transparency for and among relevant stakeholders, such as the public and oversight institutions, across the entire public procurement cycle.

Transparency is not just a trendy term for keeping governments honest and citizens happy. A growing body of academic research shows that a certain level of disclosure by companies is strongly correlated with lower cost of capital, improved capital allocation, enhanced earnings, and increased company valuation.¹⁵ This is true for companies across markets and includes financial and non-financial disclosure on social and environmental factors.

- **Coordination, code of conduct, and training**

A code of conduct for all government officials in touch with the planning, procurement or execution processes builds cohesion and trust and gives clear

directives on what constitutes ethical behavior. Governments should establish and disseminate a chain of responsibility and obligations for internal reporting with well-defined responsibilities for designing, leading and implementing corruption prevention measures across the public administration at all levels. Guidelines and regular integrity training go even further in helping to ensure impartiality, manage conflicts of interest, and give directives for how to handle suspicions of misconduct.

- **Monitoring and accountability**

Governments should provide mechanisms to monitor public procurement as well as detect misconduct and apply sanctions accordingly. This can include an independent monitoring body with the power to halt projects on the basis of suspicions of foul play or an ombudsman that reviews department practices and complaints and ensures alternative dispute resolution processes.

As described in the following section, citizen monitoring can complement traditional accountability measures and the positive effects of empowering the public are well documented. A randomized control study of roadworks projects in Afghanistan, for example, found that new roads were of significantly higher quality and more durable in neighborhoods where the community had monitored the implementation of the project.¹⁶

Using data and citizen monitoring

Good governance, risk management and transparency go hand in hand. End-to-end monitoring of public spending contributes to good governance objectives by strengthening public sector efficiency, while policies that promote transparency impact citizen trust, value for money and competition.¹⁷

One of the most convincing trends in cost-efficient and effective risk mitigation is the technology-driven use of data collection, storage, and analytics to promote these goals. This implies gathering, inspecting, and modeling data on, for example, transactions or networks in government spending, in order to inform current and future decision-making. In

practice, project data helps decision-makers identify vulnerabilities and plug these gaps; for example, by generating probability scores for the risk of bid rigging or mining e-GP systems for patterns that indicate favoritism or collusion.

Bringing procurement processes online has large payoffs, not only in terms of streamlining data points. E-GP systems are not only less prone to human error than manual ones, but also lower the barrier of entry to smaller companies. On average, more than four times more firms bid for e-GP tenders than for manual ones (5.2 versus 9.4, respectively).¹⁸ Moreover, market participants' perception that data is timely and

accurate is a precondition for capital market financing of infrastructure and for the development of infrastructure as an asset class.

Engaging citizens in the monitoring process provides a feedback loop of valuable information for governments to act on. A growing body of evidence supports the theory that citizen monitoring reduces corruption, improves the quantity and quality of public services, and strengthens the demand for long-term reforms. In Colombia, for example, an app was introduced in 2013 that allows citizens to flag over-priced, neglected or incomplete public works (so-called white elephants) to the government’s transparency secretariat. Colombians use the app to upload photos of construction projects in municipalities across the country. Users cast votes for the most disliked projects and the app collects data on where the white elephants are located and which are most frequently reported, allowing government to prioritize its investigations. Once the secretariat receives a report, it begins assessing the case for corruption. By the end of 2017, the secretariat had pushed the government to finish 15 of more than 50 projects, worth more than USD400,000. Citizens are stakeholders and their proximity to projects and interest in seeing taxes efficiently spent makes them a valuable partner.

When linked to regulations that grant public access to information on government spending, open data can boost transparency, increase competition and deter collusion. In Peru, a study found that monitoring contracts in public infrastructure decreased costs by up to 50 percent¹⁹ and multi-country studies show similar outcomes: adequate disclosure policies reduce prices, increase competition, and result in better quality services.²⁰

Of course, transparency requirements must be balanced by procedures for safeguarding privacy, such as information relating to national safety or commercial and competitive information. Transparency requirements that are untimely or overreaching can allow competitors to monitor each other’s pricing and bidding strategies. For example, revealing companies’ bids for a sequence of similar contracts might facilitate anti-competitive agreements – collusion – as companies can observe if competitors submitted their bids as illicitly agreed. Requirements to disclose ultimate beneficial ownership information, on the other hand, is an efficient, low-cost way to avoid conflicts of interest. Ensuring a reasonable balance requires regulations to determine levels of transparency and channels for reporting suspicions related to leaks of confidential information.

Organizations are pushing for greater transparency of administrative data on government tenders.

One of these organizations is the Open Contracting Partnership (OCP), initially hosted by the World Bank. OCP utilizes data analytics as a tool to promote openness and prevent corruption. OCP monitors public procurement by connecting stakeholders around a standardized contracting platform designed with the principles of transparency at its core. The Open Contracting Data Standard platform—and the OC4IDS platform designed specifically for infrastructure—tracks and logs spending while guaranteeing data immutability and access to information for relevant stakeholders, including civil society, at various project stages. In practice, it provides guidance to governments on what information to disclose at each stage of an infrastructure project so that public money is spent well from planning to completion. Case Study 6 is a concrete example of how open contracting and e-GP can benefit public infrastructure.

Conclusions

The key message is this: for integrity to overcome the forces of corruption, a broad and vigorous alliance is needed, using varied tools to foster transparency and openness. Corruption is a reflection of how things are currently done by certain officials, businesses, and politicians in specific situations. This does not happen in a vacuum; corruption is enabled by conventions and approaches that have been allowed to

develop over time. In some situations, these practices may not even be considered particularly harmful or wrong by the participants—as illustrated by the oft used term for corruption: the price of doing business. This chapter argues that if the political level commits to the systematic implementation of integrity measures across the infrastructure cycle, it will make a difference on both a systemic and project level. In addition, and crucially,



mobilizing citizens and stakeholders and strengthening their hand through greater project transparency and openness can build momentum and change the political economy and cultural considerations that have allowed corrupt practices to happen. Through such a sustained and broad-based movement, country examples demonstrate that change can happen at both the project and society level.

There are considerable gaps in our practical understanding of how to anticipate and manage corruption in the provision of public infrastructure, but the fight is worth joining. What we do know is that corruption occurs across the entire life of a project, from needs identification through procurement to construction, operation, and maintenance. Government efforts to combat corruption pay off early and the benefits are long run. Studies by the World Bank, the IMF, and the OECD show that the quality of governance of public investment is directly correlated with outcomes at the national and subnational levels.²¹

Decades of research and experience indicate that a whole-of-government approach presents the strongest barrier to corruption, but the political landscape must allow for such policies to be implemented. Today's best practices for tackling corruption at the policy level are founded on work from a number of multilateral organizations: the strongest defense against corruption is the integration of principles of integrity across all levels of government with clearly formulated and well-disseminated formalized criteria for prioritization, approval, and funding. In low capacity or institutionally weak environments, traditional

risk mitigation can be supplemented with project level interventions on a case-by-case basis, using instruments that target particular types of corruption along the project cycle. Because of the complexity of corruption in public infrastructure, there is no specific set of regulations or policy actions that is adequate for eliminating corruption risks. The menu of policy options described in this chapter aims at addressing multiple entry points and incentives that drive corruption. They can contribute together to a broader risk management strategy, but their ultimate effectiveness will be influenced by the support from the political elites who may benefit from the existing system.

The power of citizens makes the difference. Government plays a central role in prevention efforts, but civil society and the private sector must be part of the solution because of the political economy constraints to effective policy implementation. Involving the public requires a willingness for transparency and disclosure, as well as timely incentives and opportunities for civil society to get engaged. When implemented correctly, transparency fosters better, fairer competition; and leads to lower prices and higher quality end-results. Counter to popular belief, principles of transparency also support private sector growth and development: Good corporate governance based on principles of transparency helps companies operate more efficiently, gain access to capital, mitigate risk, and safeguard against mismanagement. By setting integrity and transparency standards for the types of companies they will do business with, governments can help facilitate a level playing field and reduce the avenues for corrupt agents to benefit.

CASE STUDY 4

PUBLIC INFRASTRUCTURE

Accountability in Infrastructure: The CoST Approach (Thailand, Ukraine, Honduras)

The Infrastructure Transparency Initiative (CoST) is the leading global initiative working to improve transparency and accountability in public infrastructure. By promoting accountability in the governance, planning and delivery of infrastructure, the CoST initiative seeks to improve both the quality and value for money of public infrastructure investments. In doing so, it also aims to reduce risks for investors and create a more level playing field for the private sector.²²

When it was launched as a pilot project in 2008,²³ the CoST initiative was one among a growing number of public sector accountability initiatives based on multi-stakeholder approaches. The CoST initiative builds on the experience of earlier initiatives (see for example a comparison with Integrity Pacts in Box. 2.1) and leverages the technical and policy contributions and the international convening roles of accountability platforms, such as the Open Government

FIGURE 2.1 Core Elements of the CoST Approach

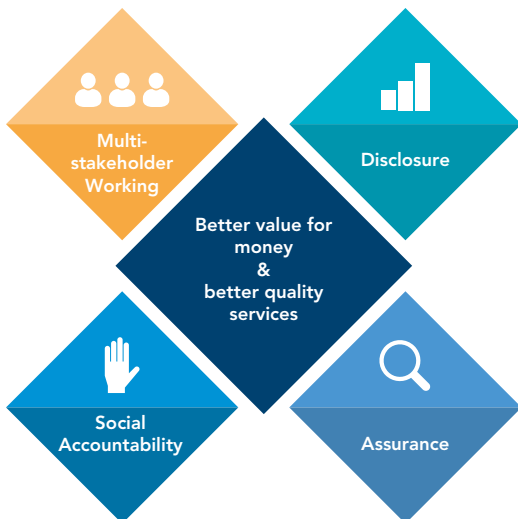
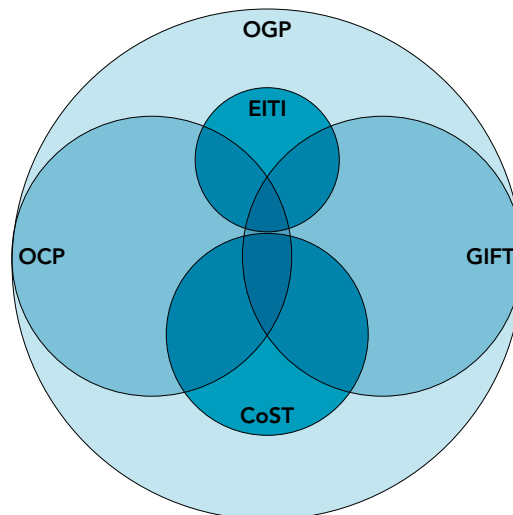


FIGURE 2.2 CoST Goals Benefit from Synergies with other Multi-Stakeholder Initiatives



Partnership, the Open Contracting Partnership, the Extractive Industries Transparency Initiative and the Global Initiative for Fiscal Transparency.²⁴ CoST has benefited from a convergence of some of the goals shared by these platforms (see Figure 2.2), and contributes to enhancing public accountability in ways

that are complementary to these platforms. CoST also contributes to accountability goals in a range of areas, including in public procurement, public investment programming, and strengthened audit capacity. While the effectiveness of multi-stakeholder initiatives in confronting corruption is (as yet) hard to

BOX 2.2

The Evolution of Multi-Stakeholder Approaches to Accountability in Infrastructure

The Infrastructure Transparency Initiative (CoST) leverages the expansion of digital governance and data to enable a more participatory approach to public accountability in infrastructure than was possible two decades ago when Integrity Pacts were developed. CoST also works in conjunction with other accountability initiatives, like the Open Government Partnership (OGP) and the Open Contracting Partnership (OCP), to leverage the policy commitments made by governments as part of their membership of these platforms, including commitments in the adoption of open data standards. The expansion of digital government (GovTech) and open contracting data has been particularly useful in creating a more enabling environment for multi-stakeholder approaches to take effect.

Integrity Pacts were pioneered by Transparency International in the 1990s. Key differences (in the table below) between Integrity Pacts and the CoST approach illustrate how much accountability structures and opportunities for multi-stakeholder working have evolved in the last two decades.

Comparison of Integrity Pacts and the CoST approach

Integrity Pacts	CoST approach
<ul style="list-style-type: none"> • Emphasis on the prevention and detection of corrupt practices in public contracts • Targeted to individual contracts • Principle-based (a voluntary ethical commitment) • Two-party commitment (public sector agency/contractor) • Oversight by third parties (civil society) • Deterrent effect depends on credible consequences from oversight authorities 	<ul style="list-style-type: none"> • Emphasis on quality and value for money, and the responsiveness of infrastructure investments to public interest and needs • Applied to projects or sectors (multiple contracts across project lifecycle) • Accountability-driven (through mandatory data disclosure, and the validation of data from a sample of projects) • Multi-stakeholder commitment to meeting and working collaboratively (public sector agency / private sector associations / civil society organizations) but typically government-driven • Oversight by all stakeholders; data validation by industry experts • Publication of validation reports for review by policy makers (interactive data tools also supported)

establish or measure,²⁵ the CoST approach represents a significant advance in applying multi-stakeholder working methods to strengthen governance in the infrastructure sector through improved transparency, stakeholder engagement and accountability (see Box 2.2). The growth in demand for CoST programming has taken time to mature. After ten years of incremental growth in the number of CoST national and sub-national programs and tools, evidence of positive impacts is now established. The country examples below describe the impacts and experiences of each country in achieving success as well as the constraints

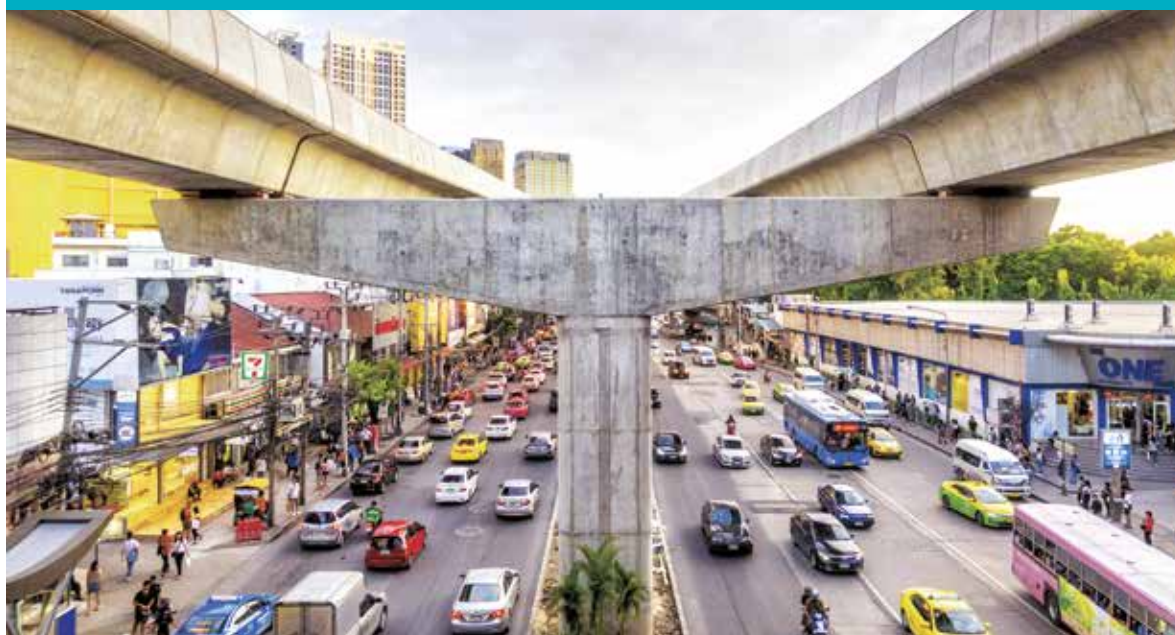
in different governance settings.²⁶

This case study will explain the elements of the CoST approach and will describe the experience and results achieved in three country examples: Thailand, Ukraine and Honduras. Through country examples, this case study will explore the reform paths, constraints and results achieved in infrastructure transparency in different environments and will also review CoST's contributions to global tools and standards and how these are playing a role in reform at the national and sub-national levels.

BOX 2.3

The Role of the CoST Secretariat

The CoST Secretariat provides technical support to CoST members to set up and sustain these elements and develops technical and policy tools drawn from research to advance infrastructure transparency at the national and sub-national levels, and among international policymaking bodies. To become a CoST member, a national or sub-national authority submits an application to join to the CoST Secretariat. The merit of an application is evaluated on the basis of its commitment to CoST core principles, willingness to publicly announce CoST membership and commitments, and a concrete, detailed and budgeted implementation plan. The CoST Board makes the final decision on the approval of applications. The CoST Secretariat provides funding to support CoST programs.²⁷ Non-compliant CoST members or members who are persistently unable to implement the core elements of the CoST approach lose their membership status.²⁸

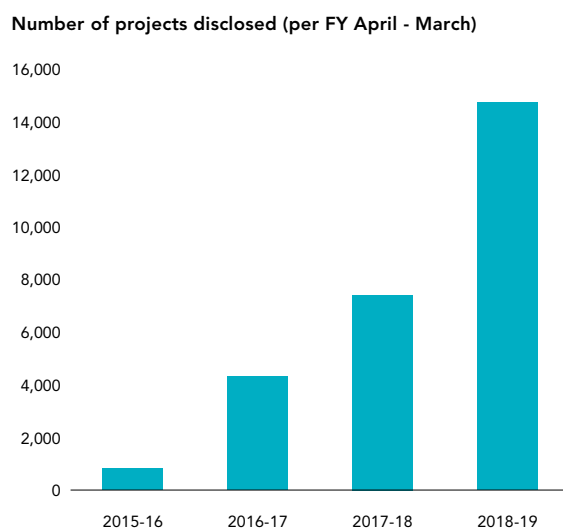


The CoST approach has four core elements as shown in Fig. 2.1 and described below:

» **Multi-stakeholder working:** The starting point for a CoST program is the formation of a multi-stakeholder working group (MSG), which comprises representatives from government, private sector, academic experts, and civil society. The MSG is formed at the behest of the CoST host agency (usually an infrastructure ministry, but sometimes the Ministry of Finance, or a sub-national infrastructure sector authority.) The role of the MSG is to oversee, set the strategy, and guide the implementation of the CoST program in the country (or in a mega-project, or sub-national territory) through regular meetings and collective decision-making. This approach to stakeholder engagement seeks to promote meaningful participation by civil society organizations and private sector associations by ensuring they have a seat at the table and a voice in structured procedures and decision-making.²⁹ One key responsibility of the MSG is to approve the members of the assurance team, which needs to include industry experts who are independent from government. The fact that civil society and the private sector have a seat in the MSG helps to guarantee this independence and gives legitimacy to the process. Effective multi-stakeholder working therefore requires that participating authorities enable officials to invest the time needed to participate and follow up on the activities of the MSG.

- **Key benefits of the CoST MSG approach:** Clarity about the composition and procedures of MSGs is key to the success of this approach, as it reduces discretion and opportunities for powerful interests or actors to limit the participation of others or to unduly influence decision-making.
- **Key challenges to implementing the MSG approach:** Ensuring that the right actors are participating can be a challenge in practice. Alterations in the power and influence of a host agency or the leadership of a key stakeholder group can alter the political economy of an MSG. Honest brokering by influential members of an MSG and CoST national or sub-national teams can become essential to the success of the process.

FIGURE 2.3 Increase in Number of Projects fulfilling CoST Data Disclosure Requirements (2015-2019)



» **Disclosure:** Disclosure of infrastructure project data is based on the CoST Infrastructure Data Standard (OC4IDS)³⁰ (see Box 2.4). CoST programs require data disclosure in line with the OC4IDS and advocate for the adoption of a legal mandate (act or decree) to remove legal barriers to disclosure. A CoST program also builds the capacity of the responsible authorities to fulfill disclosure commitments.³¹ The OC4IDS is also applicable to infrastructure projects under public-private partnerships (PPPs).

- **Key benefits of the CoST disclosure approach:** Although not all CoST members have the capacity to fully implement the OC4IDS, the CoST secretariat supports authorities in forging a path towards sustainable implementation. This may involve engagement with the relevant e-GP authority or support to a line ministry in establishing an infrastructure data portal (or both), as the country examples below will show. Data standardization and publication in user friendly graphics and maps creates a powerful tool for implementers and policy makers to identify and mitigate risks and track infrastructure expenditures and results.
- **Key challenges to implementing disclosure:** The adoption of a legal requirement for disclosure does not automatically lead to full compliance with

BOX 2.4

The Open Contracting for Infrastructure Data Standard (OC4IDS)

A defining feature of the Open Contracting for Infrastructure Data Standard (OC4IDS) is that it combines data on *projects* with *contract-level* data across the lifecycle of large and complex public infrastructure projects. Currently this type and range of data is rarely collected systematically and publicly outside of a CoST program. CoST support to the implementation of the data standard provides a resource for governments to track expenditures and monitor results on public infrastructure investments. When published in user friendly formats and visualizations, the data also enables implementers and policy makers to compare the cost and efficiency of projects across sectors and regions. From an integrity standpoint, data disclosure supports accountability in project planning and implementation. The data standard enables the tracking of contract modifications (a common point of vulnerability for corruption) and reduces the discretion that can otherwise help conceal unwarranted cost overruns or substandard delivery.

The OC4IDS includes **40 data points** that must be proactively disclosed (published). These cover:

- **Project data:** 20 data points related to the identification, preparation and the completion phases of projects (for e.g. project id, implementer, location, funding source(s), budget, approval date, completion cost, reasons for change to cost or scope).
- **Contract data:** 20 data points related to the procurement and implementation phases of contracts, including any variations in contract price, duration and scope. Explanations for variations are also required.

There are also **26 data categories** that need to be made available upon request: for example (at the project level) project briefs and feasibility studies, environmental and social impact assessments, technical and financial audit reports; and (at the contract level) tender documents, registration and ownership of firms, quality assurance reports, disbursement records and contract amendments.

A full list of the fields covered by the OC4IDS and a toolkit for implementers can be found here: <http://infrastructuretransparency.org/resource/oc4ids-a-new-standard-for-infrastructure-transparency/>

the OC4IDS. Ensuring implementation through policy and practice can require sustained support and/or pressure from stakeholder groups.

- » **Assurance:** Assurance is an expert driven approach to verify that disclosed data is accurate and complete (and ultimately also in compliance with the OC4IDS). Assurance teams also check for examples of good practice in sample projects and for issues or red flags and make recommendations for addressing them. Assurance reports are published in a non-technical format intended for a general audience. Assurance teams report to the MSG, which is expected to follow up on issues raised and encourage the replication of good practices. Assurance is undertaken on a

sample of projects that are selected by the MSG to be representative of the range of infrastructure projects in a given context. The assurance team reviews the data disclosed, can request additional data, and undertakes site visits to selected infrastructure projects from among the sample. The assurance process helps identify issues that need addressing at the project level or by policy makers (such as construction quality issues, poor contract management, deficiencies in project preparation, tender and contract award irregularities, and safety issues). The assurance team avoids duplicating the responsibilities of others, including, for example, those of the supervising engineer in relation to quality. Observations from visual inspections are

noted so that any issues can be brought to the attention of those responsible.³²

- **Key benefits of the CoST assurance approach:** The highly technical and complex nature of infrastructure projects means that public monitoring or citizen audits and other non-expert accountability mechanisms will not be capable of identifying all issues or irregularities. The CoST approach is therefore built around validation of the data by *assurance teams*, who are contracted to undertake the validation for a sample of projects. Participation by some of these industry experts (often academic engineers) in the MSGs ensures expert participation in all discussions. A key benefit of the CoST assurance process is prevention, since any project could potentially be selected to undergo assurance.
- **Key challenges in implementing the assurance approach:** Validating the accuracy of infrastructure project data requires the paid participation of expert assurance teams. This is sometimes perceived as more burdensome than ‘citizen audit’ approaches, as it relies on the identification and availability of experts who are independent from government or other vested interests. The selection of sample projects for validation could be vulnerable to manipulation, and the publication of assurance reports is not a guarantee that appropriate remedial action will be taken, sometimes requiring advocacy and follow-up.
 - » **Social accountability:** The CoST approach activates informal (horizontal) accountability mechanisms by supporting the structured participation of civil society representatives in MSGs, public access to information about infrastructure projects, and community engagement at the local level. Social accountability helps to exert pressure on official (vertical) accountability mechanisms to ensure that transparency and participation lead to better decision-making and improved outcomes. Key stakeholders in the social accountability process include communities who are affected by, or are the intended beneficiaries of infrastructure projects, media, policy makers and politicians, and organized civil society groups. The development of infrastructure data portals is showing great promise as a tool for public accountability as well as for official tracking of infrastructure projects (Honduras and Ukraine are good examples). CoST programs are also adapting to local preferences regarding public access to information (in Ethiopia the preferred medium for sharing CoST program information is via the radio, based on a finding that 80 percent of Ethiopians access information primarily via the radio and only 2 percent via the internet).³³ CoST is also supporting social participation in monitoring infrastructure projects by sponsoring CoST investigative journalism awards (Uganda, Honduras and Malawi); giving free SMS notifications about infrastructure project issues to local radio stations in Malawi and conducting live Q&As on the radio with government and civil society representatives; and by providing a Transparency Monitoring Tool (which can be used by citizens or contractors and consultants) to guide site visits and help in asking the right questions. Community meetings in Uganda and Thailand are also providing new avenues for raising issues to be acted on by the procuring authorities.
- **Key benefits of the CoST social accountability approach:** Advances in digital governance and open data have demonstrated that transparency (access to information) alone does not necessarily lead to better policies or decision-making. Sustained attention by multiple stakeholders to decision-making and results in a given sector and the interpretation of published information are also necessary. CoST country programs support all of these accountability measures. In particular, CoST programs are playing a vital role in building capacity and training civil society actors in how to use data to hold governments to account. In many contexts, CoST is the only program engaged in this kind of stakeholder capacity building, thereby closing the link between data disclosure and accountability.
- **Key challenges to implementing the CoST social accountability approach:** While assurance reports are written for non-expert audiences, holding policy makers to account for necessary reforms or improvements often requires additional interventions by *infomediaries* (civil society or media groups able to interpret data and extract their policy relevance and social implications). This may involve support to or engagement with local community groups in addition to the more structured support to the core CoST features.

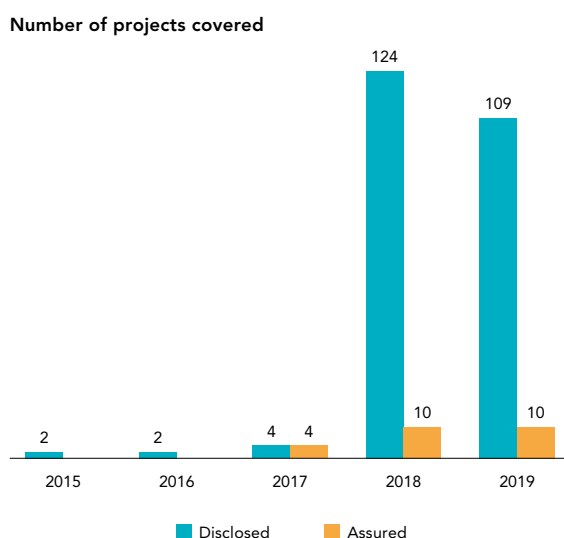
Thailand: Evolution of Multi-Stakeholder Working

Ministry of Finance takes the lead in multi-stakeholder working

Thailand's engagement with the CoST initiative was initially driven by civil society. The Anti-Corruption Organization of Thailand (ACT)³⁴ submitted a letter of engagement to the CoST Secretariat in 2014. The CoST Board approved Thailand's membership following a scoping visit by the International Secretariat to determine the viability and potential sustainability of a CoST program in Thailand. This would depend on the willingness of a government agency to 'host' a Multi-Stakeholder Group. Thailand's Ministry of Finance took the lead and facilitated the involvement of other agencies, including naming the State Enterprise Policy Office (SEPO) as host of the CoST Program.³⁵ The Multi-Stakeholder Group (MSG) was established only a few months later in early 2015, which was in part attributed to Thailand's prior experience with Transparency International's Integrity Pacts, and the CoST Program was launched as a pilot with purview over a single megaproject.³⁶ The CoST Program has evolved since then: the number of projects for which data has been disclosed has increased (see Figure 2.4), with 10 projects undergoing assurance (in transport, aviation and flood mitigation, at the national and sub-national levels).

Leadership of the MSG process has also evolved since the CoST program was launched, with a more central role now played by the Ministry of Finance. To enable CoST disclosure to be extended to a larger number of projects, the Cabinet approved a new operational framework for the CoST program in 2017, naming the Permanent Secretary of the Ministry of Finance as Chair of the MSG. The two Vice Chair positions were assigned to oversight bodies: the Director General of the Comptroller General's Department (CGD)—a government entity and the Chairman of the Anti-Corruption Organization of Thailand (ACT)—an NGO. Under this revised framework, the CoST approach was mandated to apply to infrastructure projects valued at over THB5 million (USD150,000) or that are deemed to have significant public impact. The leadership role taken by the Ministry of Finance in Thailand suggests that infrastructure accountability and value for money are regarded as a public expenditure priority and not only a sector-level integrity related issue.

FIGURE 2.4 Disclosure and Assurance of Infrastructure Projects in Thailand



A strong legal framework for accountability but SOEs remain a blind spot

Thailand has had a strong legal framework for accountability in place for a number of years, with at least eight laws and regulations focused on transparency and access to information.³⁷ This provided a strong starting point for the CoST program. A fairly large proportion (62.5% (25 out of 40)) of the transparency requirements under a CoST program are already mandated by law. Given the role played by Thailand's 56 SOEs in completing the government's ambitious infrastructure plans (valued at 33 percent of Thailand's 2015 GDP), data disclosure and accountability will be particularly important in supporting value for money in infrastructure investments. CoST Thailand therefore has an active role to play in helping to expand existing transparency requirements to align with CoST best practices and to include additional data points relevant to infrastructure accountability in the local context (including for instance on road safety statistics).

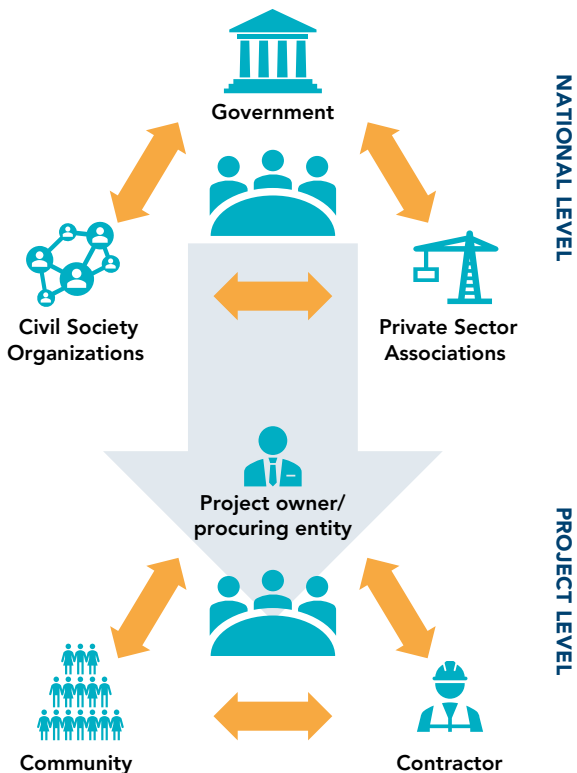
Multi-stakeholder working at the national and project level

An innovative aspect of the CoST program in Thailand concerns the use of community engagement at the project level. Community engagement was initially

proposed by the national MSG in 2018, with a view to enabling engagement through the CoST assurance process. Since then, public meetings have been organized at the project level, bringing together representatives of the project owner/procuring entity, the contractor, and the local community to discuss concerns, mirroring the multi-stakeholder working at the national or institutional level (see Figure 2.5).³⁸

Key to the success of this approach has been the role of the assurance team as mediator and validator of issues or concerns, which are then addressed by the project and raised in assurance reports. This enables a possible response in ‘real time’ to issues raised by the community. The work at project level is complemented by ‘community surveys’ that help to capture local concerns and identify potential red flags. The surveys are used to inform discussions in the public forums. In some cases, public forum discussions and assurance team site visits are filmed and uploaded to CoST Thailand’s Facebook page.³⁹

FIGURE 2.5 Multi-Stakeholder Working at the Project Level



Making the case for the economic impacts of accountability mechanisms: Evidence of efficiency gains in infrastructure projects in Thailand

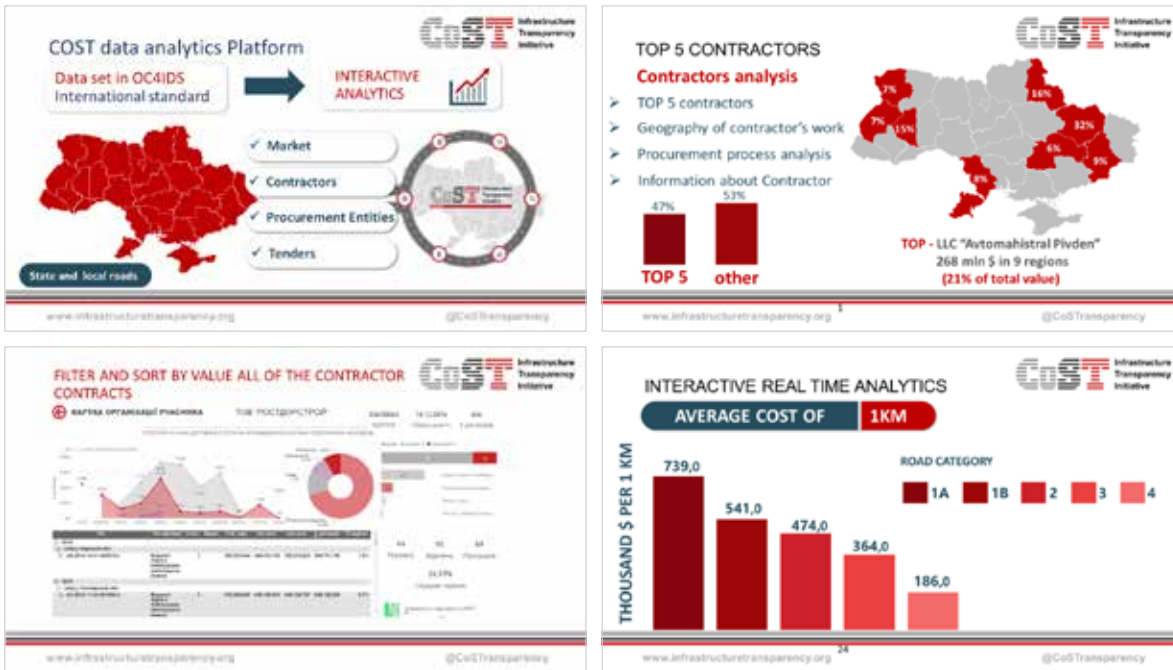
Positive developments have been linked by the CGD and ACT to the combined effects of the CoST program and Thailand’s use of Integrity Pacts. The CGD has reported efficiency gains in budget utilization in infrastructure projects since the CoST program began in 2015 in the amount of roughly THB11.5 billion, equivalent to USD360 million.⁴⁰ According to the CGD, the higher levels of transparency and greater scrutiny have led to government officials reducing project budgets, to which firms have reacted with lower bid prices.

Ukraine: Strong institutional foundations support actionable data disclosure in the roads sector

Ukraine stands out as a strongly performing CoST member despite the challenging political, social and economic context, including challenges associated with corruption. The need for greater transparency and accountability in the roads sector was an urgent development priority when the CoST program was launched. A scoping study commissioned by CoST and published in 2015 found that up to 50% of the road sector’s budget was lost through unscrupulous financial management. Prior to that, in 2012, the State Financial inspection had found that the state lost the equivalent of USD9.2 million from corrupt practices in the roads sector. In 2017, then President Petro Poroshenko stated that, thanks to CoST and a range of road sector reforms, the authorities were now able to build more with €30 billion than they had previously been able to do with €50 billion.⁴¹

A commitment to join CoST was made by the State Road Agency of Ukraine (Ukravtodor, UAD) in 2013. Since then, the Ministry of Infrastructure (MOI) has played a key leadership role in establishing the program. An MOU between the CoST Secretariat, the MOI, Ukravtodor and TI Ukraine established these as the host organization for the MSG from 2016-2019. Relations between the CoST Ukraine office and the

FIGURE 2.6 Making Infrastructure Data Useful for Planners, Implementers and Policy Makers



government remain strong. A new MOU was signed with the incoming government in 2019. Before that, an MOU was also signed with the Kyiv City State Administration, 10 regional state administrations (oblasts), and 3 additional regional-level cities (Lviv, Chernivtsy, and Khmelnytskyi), making Ukraine one of the few member countries where the initiative is implemented both at national and local government levels. The endurance of the CoST program through a significant government transition is a sign of strength and of non-partisan support for the program.

A key driver of early engagement with CoST in Ukraine was the role played by the World Bank as convener and facilitator in the initial stages, bringing together key stakeholders from government, private sector and civil society to meet with the CoST Secretariat to learn about the initiative. This collaboration continued with the Bank supporting training of more than 30 government bodies in data disclosure in 2016. The Bank has played this facilitator role in a number of CoST countries based on a shared commitment to transparency and accountability for Bank-financed projects, domestically financed projects and public-private partnerships.

The infrastructure data journey in Ukraine: from data disclosure to actionable findings

Ukraine has transitioned from a largely paper-based system to one that is fully aligned with the Open Contracting and Open Data standards. Against this backdrop, CoST Ukraine developed an online disclosure platform which was enhanced in 2019 with an analytics dashboard. The platform, which was recently handed over to the Ministry of Public Works, automatically imports 40 percent of its data from the e-GP portal (ProZorro) and the rest is populated by the procuring entities responsible for the projects covered (currently more than 7,000 projects). The sixth CoST assurance report for Ukraine shows that the country is on the cusp of full compliance with the Open Contracting for Infrastructure Data Standard (OC4IDS). The quantity of projects for which data is now disclosed means that analyzing trends in the data is becoming more useful for planners, implementers, and policy makers (see Figure 2.6).

The data platform enables the following views:

- Detailed analysis of contractors in infrastructure

projects (which has been useful in overcoming previous issues with contracts being awarded to firms with links to high-ranking public officials);

- Disclosure, analysis, and comparisons of project data across different regions (Oblasts), for example to assess comparative project performance in terms of price and cost overruns;
- Analysis on the average cost per km of road according to different categories of road and terrain; and
- General statistics on procurement in the road sector (price changes, number of bidders, outlier contracts in terms of cost modifications etc.).

Advanced tools for data disclosure are an important element of the progress Ukraine has made on assurance (validation of data). While it took some time for assurance processes to get underway (the first assurance report in Ukraine was published only in November 2016), by the end of 2019 Ukraine had published its sixth report. The reports, which included key findings and recommendations, generated a lot of attention and were endorsed by the President of the Republic, the Minister of Infrastructure, and the Mayor of Kyiv.

Key findings included:

- Lack of competition in the market
- Lack of justification for funding distribution
- Poor quality works
- Pricing discrepancies
- Lack of quality in medium-term planning and a complete lack of strategic planning
- Lack of data on the condition of roads and, accordingly, incorrect choices regarding repairs
- Management problems in the implementation of donor-funded projects, and incorrect use of FIDIC standards (FIDIC: International Federation of Consulting Engineers)
- Lack of independent quality control

Importantly, the latest assurance report also found that the Road Agency of Kyiv City State (Kyivavtodor) had implemented the recommendations of the assurance

team, for example by creating a new department to improve quality assurance and verification of project documentation. The report also presented new recommendations concerning:

- Data gaps on the environmental impact of the projects
- A low level of public participation and consultation
- Missing information on the expected level of noise pollution
- Limited risk mitigation, leading to increased construction outside of the project design and a time overrun of five months

The CoST program in Ukraine has also had successes in leveraging social accountability by building the capacity of local civil society groups to monitor road sector management and public spending on construction and repairs. This involved a USAID-funded program to build the capacity of 204 local officials representing 9 regional state administrations and 15 local communities to disclose data in line with the OC4IDS, and train a network of civic monitors (69 activists and 7 CSOs from 6 regions of Ukraine) in how to monitor road construction works and public spending on roads, how to appeal to local governments about road quality, and how to use citizen complaint mechanisms. The program also developed educational toolkits for governments and civil society.

With the advanced use of open and independently reviewed data in Ukraine, a logical further step would be to generate data-driven analysis on efficiency and cost savings. In Ukraine this type of analysis should be possible for the roads sector as data has now been produced consistently over a number of years. Extending the CoST approach beyond the roads sector to other kinds of infrastructure projects would also be beneficial (a power sector project was covered under the fifth assurance report).



Honduras: International support meets local leadership ensuring reforms take root

The results achieved by CoST in Honduras are the product of two elements: government leadership in support of the CoST approach and the government's collaboration with international financial organizations and international good governance initiatives. The genesis of the CoST country program in Honduras in 2014 was linked to a World Bank-financed roads infrastructure project with a strong focus on governance. The project, implemented by the Ministry of Infrastructure and Public Services, created an opportunity and provided the necessary resources to introduce CoST in the country and provide it with a strong institutional footing from the start.

Political support for the CoST approach, headed by the President and with strong backing from the Minister of Infrastructure and Public Services, among others, was a key factor. Most importantly, the sustained leadership of a government champion (initially advisor to the President and later Minister of Transparency) who took on this initiative as his top priority, giving it visibility at national and international levels, made it possible to deliver results in a relatively short time. Honduras positioned itself as an example to follow. The appointment of Honduras's government champion to the CoST International Board helped draw attention in other CoST country programs to the important role of political leadership in introducing transparency and accountability mechanisms in infrastructure governance.⁴²

Another important feature of the CoST experience in Honduras was the combined leadership in setting up the national multi-stakeholder forum (comprising representatives of government, the private sector and civil society). This leadership, which involved a key sector ministry (Infrastructure) and a government accountability champion, helped to establish trust among the participants. The fairly rapid implementation of data disclosure, which created opportunities for active monitoring of projects and public discussion of results, helped to keep the trust alive, despite the challenging governance conditions in the country.

Data disclosure creates a path to social accountability

The experience of the CoST program in Honduras is noteworthy for its success in implementing the social accountability elements of the CoST framework in addition to the multi-stakeholder working, disclosure, and assurance elements. This was largely due to the emphasis given in the early stages of the program both to the disclosure of infrastructure project data but also to building the capacity of civil society to use data and monitor projects through a structured process with a clear strategy.

Honduras was the first CoST member country to develop an electronic platform for publishing data on public infrastructure projects. Launched in 2015, the "*Sistema de Información y Seguimiento de Obras y Contratos de Supervisión*" (SISOCS: <https://sisocs.org>)⁴³ began by publishing data on 13 projects under one procuring entity. This was followed by a Presidential Decree⁴⁴ creating the obligation for all infrastructure procuring agencies to publish the 40 data points of the CoST infrastructure data standard (IDS).⁴⁵ CoST Honduras has also developed, with support from the World Bank, a sister platform (SISOCS APP), which discloses data on 21 public-private partnerships (PPPs).

Data disclosure alone is not sufficient for social accountability to take effect, however. Expert interpretation and assessment of the data through assurance reports is a key ingredient, particularly for specialized sectors like infrastructure. CoST Honduras has produced at least one assurance report per year (6 assurance reports between 2015 and 2019, covering 71 infrastructure projects, three of them developed under PPP arrangements). These reports have provided an opportunity for evidence-based discussion of the findings of the reports and, importantly, have kept the issue in the public eye.

Training in social audit widens the accountability net beyond sector experts

The CoST assurance process is typically undertaken by technical experts with experience in the sector. This enables detailed oversight of a sample of projects as part of the structured CoST multi-stakeholder group approach. Social audit expands the accountability net beyond sample projects and engages local

communities, who may also be project beneficiaries, in monitoring. The CoST program in Honduras has invested in creating the conditions for citizens and community actors to get involved in the monitoring of infrastructure projects by training them in how to use the information published on the SISOCS platform and in other sources, and to engage with the project owners and contractors to hold them accountable for project results. CoST Honduras has trained more than 600 'social auditors' since 2017, including students, teachers, and university professionals, as well as journalists who are key users of the SISOCS data and of the assurance reports.

In 2017 CoST Honduras set up the Social Audit for Infrastructure School (*Escuela de Auditoría Social en Infraestructura*), aimed at building the capacity of local community members who are part of the Municipal Transparency Commissions (created by Law) and giving them the skills to undertake social audits of publicly funded public infrastructure projects in their territories. Community members use this training to (i) engage with local authorities, project owners, government contractors and supervising engineers to verify whether the infrastructure projects are properly advancing and being delivered as agreed, and (ii) produce their own reports with findings and recommendations to hold the project owners accountable for the results. CoST Honduras has signed agreements to train members of Transparency Commissions from 250 of the 298 municipalities in Honduras. To date 105 community members have graduated from the school and have produced social audit reports on 21 infrastructure projects.



Members of Municipal Transparency Commissions undertaking social audit of the Siguatepeque road maintenance project, in Jesús de Otoro La Esperanza Intibucá⁴⁶

Institutional reform and project modifications provide some signs of impact

Progress in infrastructure governance is difficult to measure, and the impacts of accountability measures may be uncertain, but some of the results achieved by CoST Honduras are undoubtedly significant. The CoST country program has helped usher in a complete overhaul of the old road maintenance agency (Fondo Vial) and the creation of a new Directorate operating under a new agency (Invest-H), where principles of transparency have been applied and have demonstrated increased efficiency and better value for money in operations compared to its predecessor. The CoST approach has also enabled the identification of projects for which data was not being properly disclosed, which helped the new administration look more closely and take corrective measures to ensure that contractors complied with the contract. In some cases, this resulted in the cancellation of the contract.

Another example of impact is a CoST assurance report focused on PPP infrastructure projects. Honduras was the first CoST country to undertake such a report. As a result of the recommendations from the assurance report, the government initiated a formal review of the country's PPP portfolio, and has started a process of institutional reform to replace the previous institutional framework which had come under much criticism. A new unit is being set in the Treasury supported by an inter-institutional council that will improve governance in the management of PPPs.

Impacts have also been seen in smaller value projects as a result of social audits. In one case, a social audit commission documented violations of the environmental provisions in a road contract. The commission found that the construction company was managing the building materials improperly, causing air pollution that was affecting the community. The report was shared with the supervision engineer and the problem was addressed with the construction company, who adjusted its operating procedures to comply with the agreed environmental standards.

Significant steps are still needed for meaningful and sustainable reform

Despite the progress made in publishing data and promoting its use to highlight issues and results in

infrastructure projects, important limitations still need to be overcome for these efforts to be sustainable and achieve long-lasting results in the sector. In terms of access to data on government projects, there is no reliable way for CoST Honduras to verify whether the digital platform (SISOCS) is publishing all of the infrastructure projects of the nine infrastructure procuring agencies currently publishing data. There is as yet no easy way of cross-checking infrastructure project data with public procurement data (published by *Honducompras*, the government e-GP system), *SIAFI* (the public financial management system), or with *SNIPH* (the public investment system), which is not accessible to the public.⁴⁷ In addition, other government agencies who procure and manage infrastructure projects are not publishing data in SISOCS, though the Presidential Decree mandates the publication of IDS data for all institutions who contract public works or supervision services.⁴⁸ Among those are large urban municipalities, including Tegucigalpa and San Pedro Sula, that undertake significant infrastructure projects.

Another big challenge is to create the mechanisms for actively following up on the recommendations produced by the assurance process and reports, and by the social audits, so that there is evidence of any measures taken by the project owners based on those recommendations. Monitoring and evaluation would help ensure that CoST is “closing the loop” to achieve its intended impact on the performance of infrastructure projects. This would also create an opening for policy adjustments or legal reforms where necessary, to address systemic issues or constraints detected by the different CoST monitoring mechanisms.

achieved. In Thailand, for example, the leadership exerted at the center of government by the Ministry of Finance, and the formal inclusion of governmental and non-governmental accountability institutions were instrumental in establishing effective multi-stakeholder working. In Ukraine, a leadership role played by sector agencies, combined with investments in data-driven visualizations, has helped ensure that the assurance process captures public attention and provides actionable information. In Honduras, leadership from the top and investments in social audit capabilities have been key drivers of accountability. These country examples are not intended as a blueprint for reform but as illustrative guides of how the core elements of the CoST approach can be leveraged for results. The complementary roles played by CoST and other accountability platforms are also an important factor to keep in mind, as these platforms provide different entry points and opportunities for reform. The country examples in this chapter illustrate that significant hurdles and gaps in implementation are to be expected and that the reform path is of necessity incremental.

Conclusion

The examples of CoST member programs above demonstrate some of the impacts that have been achieved, using the CoST approach to strengthening transparency and accountability in the governance of infrastructure projects in a sample of country contexts. The core elements of the CoST approach—multi-stakeholder working, disclosure, assurance, and social accountability—provide the necessary framework for achieving results. What the above examples show, however, is that the path and sequence of reform may be very different in each context and may depend on a unique set of factors for progress to be

CASE STUDY 5

PUBLIC INFRASTRUCTURE

Managing Public-Private Partnership (PPP) Renegotiation

Introduction

Public-private partnership (PPP) renegotiations of infrastructure projects have the potential for abuse, as evidenced in Brazil, which was the epicenter of one of the largest corruption scandals in history. The scandal centered around bribes and the use of renegotiations. The firm at the center of this scandal, Odebrecht, obtained contracts through competitive processes but underbid the contracts. Once Odebrecht won with a lowball bid and came to commercial close, it was able to renegotiate the contracts. In fact, PPPs are not different from traditional provision, but are renegotiated much more often than similar private contracts.⁴⁹ PPP renegotiations can allow governments to elude spending controls and defer costs to future administrations, while companies can use renegotiations and bribery to build market share. While renegotiation should be avoided to the extent possible, it is likely that due to the long-term time frame of PPP contracts, renegotiations will from time to time be needed, and governments will benefit from understanding good policy for conducting them. The following examples of good practice demonstrate the importance of appropriate transparency and accounting for any additional fiscal costs related to renegotiation in the public sector budget. Significant additional investment due to renegotiation should be subject to an independent review outside the procuring agency and subject to cost benefit analysis like other public investment projects.

Opportunities and risks of using PPPs to finance public infrastructure

PPPs constitute a relatively small percentage of overall infrastructure investment. A recent World Bank paper⁵⁰ shows that the public sector clearly dominates, with the private sector accounting for only 9 to 13 percent of total infrastructure investments (14 to 31 percent without China). However, there is considerable variation across regions, from a low of 2 percent in East Asia and the Pacific to a high of 35-46 percent in South Asia. Even though private investment represents a relatively low percentage of infrastructure investment, PPPs are often used in the larger and more complex and strategically important projects, and therefore receive more attention from policy makers than the actual percentage of projects would suggest. Governments may also be tempted to use PPPs to get around the fiscal constraints of big and politically important projects by not including PPP liabilities in the national accounts.

Renegotiation refers to changes in the contractual provisions of a PPP contract, when these changes are negotiated between a project company and the government⁵¹ outside rather than through the adjustment mechanisms contemplated in the contract.⁵² Renegotiation is something to avoid where possible. Misuse of the renegotiation process

for corrupt purposes can be due to opportunistic behavior of the private sector with the collaboration of government officials who are complicit in this behavior for personal gain. Good use of adjustment mechanisms within the contract can obviate the need for renegotiation. Renegotiations, however, will from time to time be needed, and governments will benefit from understanding good policy for conducting them.

PPPs are long-term contracts that are implemented over a period of 20 years or more and are by their nature incomplete. That is, PPP contracts are considered incomplete in the sense that it is impossible to predict the range of possible risks and to allocate these risks over such a long period of time in a complex project and ever-changing social-economic environment. Renegotiation may even have positive outcomes if it results in improved value for money. On the other hand, PPPs can be vulnerable to corruption leading to inappropriate renegotiation, particularly in the absence of fiscal transparency, public policies supportive of disclosure of project information throughout the project cycle, and sound project preparation capacity, including for procurement.

Studies comparing PPPs and publicly procured or run infrastructure have found that PPPs can achieve better results in both construction of new infrastructure assets, and in infrastructure service delivery.⁵³ Achieving these benefits, however, depends on the government structuring, procuring and implementing PPPs effectively. Good project preparation and identification and allocation of risk to the partner best placed to manage and mitigate the risks can help reduce the occurrence of opportunistic renegotiation. The effectiveness of PPP governance could be undermined where weak government or private sector capacity results in poorly-run tender processes or poorly drafted contracts, and frequent renegotiation.

The impact of contract renegotiations on good governance

While some renegotiations are efficient and carried out for valid reasons and according to the change management provisions within the contract, others are opportunistic.

- Renegotiations have the potential to reduce the

transparency that existed during competitive bidding, which may also be controversial in terms of public perception.

- Competitive bidding may be distorted, and the most likely winner is not the most efficient company, but the one most skilled in renegotiation.
- Where a contract is renegotiated and the agreed risk allocation changes after the preferred bidder has been selected, it is no longer obvious that the project company that was awarded the project offers the most cost-effective solution. This is because the originally tendered project and the renegotiated project are in essence two different projects.
- A project's value for money becomes less clear in the absence of competition for any additional works required. Renegotiations have the potential to reduce the overall economic benefits of PPP arrangements by changing the tendered and agreed risk allocation and revenue.
- A government is often under political pressure to deliver on the promised infrastructure, and a delay in construction puts power into the hands of the project company that can enable monopolistic pricing. This pricing power can be exacerbated if PPPs are off-balance sheet transactions and not counted as public debt, thus less subject to public oversight and accountability.

PPP contracts typically include several mechanisms, such as scope change provisions for minor scope changes and claims procedures, to manage circumstances that were not fully understood or envisaged at financial close, without the need for a renegotiation. Simple correction of errors or clarification of contract drafting can also typically be dealt with under existing provisions in the PPP contract and do not require renegotiation.

The World Bank Guidance on PPP contractual provisions⁵⁴ provides sample standard language for PPP contracts that govern change management. This includes best international practice for provisions related to force majeure, material adverse actions by government, dispute resolution and contract termination. The actual provision will depend on the regulatory framework in each jurisdiction. Contractual clauses may specify under what conditions a renegotiation takes place and what the process will be.

Economic rebalancing refers to the practice of modifying the financial conditions (i.e. 'economic equilibrium') that were agreed as part of the original contract, with the intention of preserving or restoring the original economic equilibrium (rate of return) of the PPP contract. This can occur after a risk borne by either party has materialized and is claimed to have economic consequences. For example, a force majeure event, a scope change, a change in macro-economic conditions, a change in law, or a major change to demand. Rebalancing provisions may potentially be abused as it shifts demand risks to the government and private sector claims may be based on changes that are subject to change over the life of the contract.⁵⁵ The type of renegotiation is specific to some civil law jurisdictions (e.g. several countries in Latin America) and differs from the provisions of a typical common law PPP contract. In common law jurisdictions, events such as scope changes and changes in law are typically managed under specific scope change provisions and claims procedures. Rebalancing may also be activated in favor of the Procuring Authority. For example, if the construction of an adjoining bypass increases demand and therefore toll revenue on a PPP road project, the PPP contract could be rebalanced in favor of the government with reduced tariffs, sharing excess profits with the government, or a reduction to the contract period.

Global data on PPP renegotiation

The Global Infrastructure Hub (GIH) carried out a global study on renegotiation and found 48 instances of renegotiation in the 146 projects for which data was available, or approximately one in every three projects (see Table 2.1).⁵⁶ Contract renegotiation is particularly prevalent in Latin America (58%) and in the transport sector (42%). The average period of time after financial close for renegotiation to occur was 3.6 years. Where the renegotiation occurred during the construction phase, it occurred on average 2.5 years after financial close. Where it occurred during the operations phase, it was on average 5.0 years after financial close.

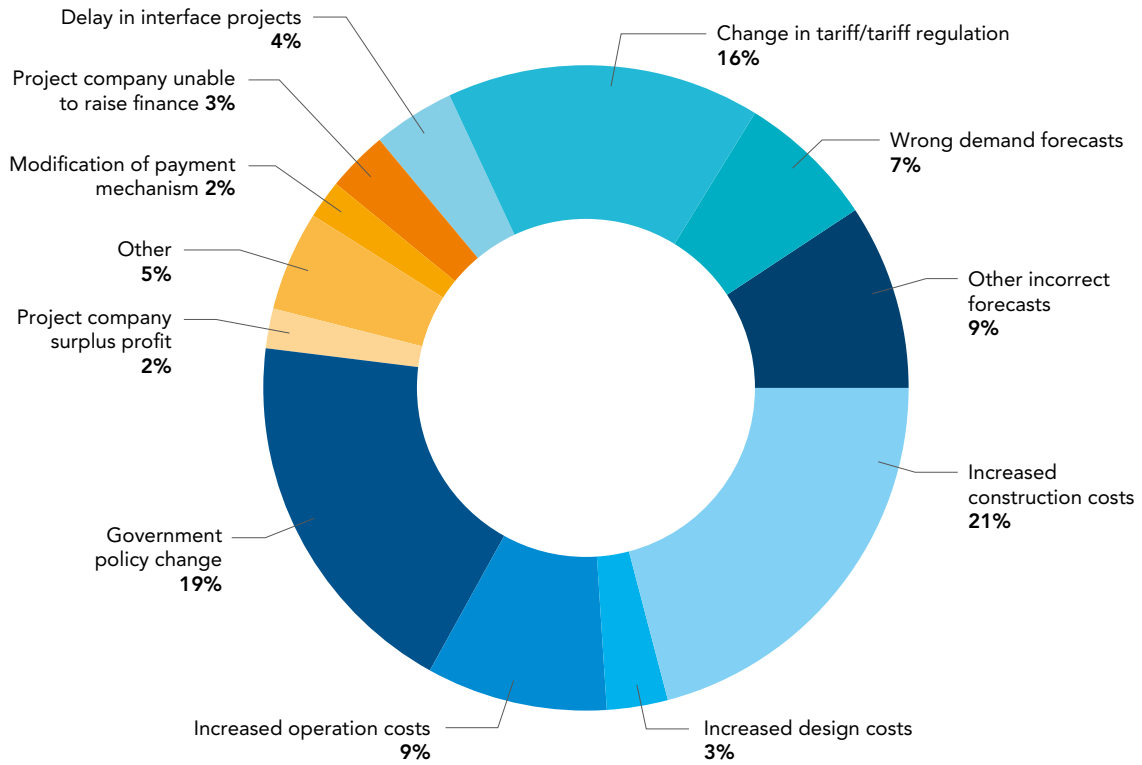
In addition, the most common cause of renegotiation was found to be increased costs in construction or operations, while the most common outcome of a renegotiation was a change in tariffs. Given the timeframe for the study (projects that reached financial close between 2005 and 2015, inclusive), almost all the projects are still in progress, and therefore may incur further renegotiations in the future. This suggests that renegotiation is likely to be higher than was found in the study.

TABLE 2.1 GIH Study: Prevalence of Renegotiation by Region

Region	Project with Data	Renegotiation Events	Percentage
East Asia	17	2	12%
Europe	43	12	28%
Latin America and the Caribbean	43	25	58%
Middle East and North Africa	8	1	13%
North America	5	2	40%
South Asia	14	5	36%
South East Asia	8	1	13%
Total	146	48	33%

Source: Global Infrastructure Hub, PPP Reference Tool, Renegotiation, Chapter 4, 2018

FIGURE 2.7 Causes of Renegotiation, based on 48 Projects that experienced Renegotiation



Source: Global Infrastructure Hub, PPP Reference Tool, Renegotiation, Chapter 4, 2018

These findings for Latin America in the GIH study correspond to an earlier landmark study on PPP renegotiation, which also showed pervasive renegotiation of PPPs in Latin American countries, particularly ones where the PPP model is that of user-pays rather than government-pays PPPs.⁵⁷ Of a sample of over 1,000 concessions granted in the Latin America and Caribbean region between 1985 and 2000, Guasch found that 10 percent of electricity concessions, 55 percent of transport concessions, and 75 percent of water concessions were renegotiated. These renegotiations took place an average of 2.2 years after the concessions were awarded. Guasch suggested the high rate of renegotiation so soon after concession award may reflect poorly designed tender processes, weak regulation, or opportunism on the part of the government or the private sponsors. Most

renegotiations were favorable to the operator—for example, resulting in increased tariffs, or reduced or delayed investment obligations.

In Figure 2.7, the GIH report shows that the reasons cited for renegotiation vary, with the most frequent cause being increased construction costs (21%) followed by government policy change (19%) and change in tariff or tariff regulation (16%). The reasons given in the figure below for a renegotiation may be legitimate. While not feasible within the scope of this paper to analyze individual contracts, it is reasonable to suggest that at least some of the reasons given for renegotiation may mask more opportunistic behavior by the private sector and their government counterparts to obtain an additional benefit not envisioned in the original contract approved by government.

Country experience in managing renegotiation risks

Brazil allows economic rebalancing to manage changes in a PPP contract. While this allows a renegotiation within the framework of a competitively bid contract, it has the potential for abuse as evidenced in Brazil, which was the epicenter of one of the largest corruption scandals in history. The Odebrecht Construction Company scandal left one former president in jail; another is on the run; another resigned; and another one committed suicide before he could be arrested. It affected a Vice President, ministers, senators, and billionaires. Around 200 politicians and public officials were bribed. It affected 12 countries in Latin America and Africa and delayed many large infrastructure projects. While the scandal relied on an elaborate bribery scheme involving public officials and the media, the bribery is also linked to renegotiations. Odebrecht obtained contracts through competitive processes but underbid the contracts, and in at least one case, its bid was under the next lowest technically qualified bidder by 25 percent. Once Odebrecht won with a lowball bid and came to commercial close, it was able to renegotiate the contracts. In fact, PPPs are not different from traditional provision, but are renegotiated much more often than similar private contracts.⁵⁸

Some countries, such as **Colombia** and **Peru** find it helpful to impose a moratorium on renegotiation during the first three years of a project to address lowball bids.⁵⁹ **India** has few renegotiations due to a strict framework for PPP contracts, which only allows changes due to a defined change in law and force majeure events outside the control of the concessionaire. **South Africa** has a robust PPP framework that requires the procuring authority to obtain Treasury approval for any material amendment in terms of impact on value for money, sustainability, and technical, operational, and financial risk transfer to the private party.⁶⁰

Under the PPP Guidelines of **Australia**, renegotiations of any significant part of a PPP contract after it has been approved and signed by government must be approved by the Cabinet before negotiations commence. This has led to the government taking a tough position to ensure public interest is served before bailing out a project. For example, in the Cross-City Tunnel Project in New South Wales, the government allowed the PPP

contract to enter into a stage of liquidation without the government stepping into the contract. The “let the market work” approach enabled the lenders to step in and sell the concession through competitive bidding rather than the government renegotiating the contract with the project company and bailing out shareholders. Nevertheless, if the PPP market is relatively undeveloped, as in many developing countries, there may not be other parties willing to take over the project through such a process, and it may be necessary for the government to take measures to prevent a complete failure of the project.⁶¹

Chile has one of the most developed regulations concerning renegotiations. It permits changes to contracts for works and services that raise the service levels and technical standards by up to 15% of the approved capital value. If there is no cost to the government, then no agreement is necessary. If additional investment by the private partner is required due to conditions that occur after contract signing, the government and the private partner may increase the additional investment value by 20 percent in terms of an amendment agreement that must be approved by the Ministry of Finance. The Ministry of Public Works must be able to justify the changes in a public report. To avoid monopolistic pricing by the contractor, if the price increase exceeds 5 percent of the approved capital works, it must be put out to open and competitive tender by the private partner. The private partner is then compensated by one or a combination of subsidies provided by the state: a voluntary payment made directly to the concession holder by third parties interested in the development of the works, a modification to the current amount of the concession revenues, a change in the concession term period, a modification to the rates of return, or any other factor of the concession’s agreed upon economic regime.

During the construction phase, if a variation exceeds 25 percent of the capital budget, the amendment agreement must be approved by the Ministry of Public Works and the Ministry of Finance. Conditions for the amendment include that (i) the facts and circumstances causing the amendment to occur after contract award could not have been foreseen upon its awarding, and (ii) awarding the new works to the original concession holder is more efficient than granting a new concession, for reasons including expertise, behavior, performance, social and environmental impacts, management economies or economies of scale. The technical

BOX 2.5

Transparency in Renegotiation for Public-Private Partnerships

Transparency in Renegotiation

Many countries have access to information laws requiring public disclosure of contracts, project summaries and pipelines, but few publish information on contract variations that occur as a result of a renegotiation. Two notable cases are South Africa and the United Kingdom. South Africa provides full disclosure upon request of all documents in the possession of the government, except confidential information relating to trade secrets, proprietary information or other information which cannot be disclosed. Material changes to contracts are called “variations” and must be approved by the National Treasury and like all information in possession of government can be accessed by the public by making a request under the Promotion of Access to Information Act. In the United Kingdom, the public has access to all documents held by a public authority, under the provisions of the Freedom of Information Act of 2010. The transparency regime requires that variations to contracts, including for renegotiations need to be published when the variation changes the contract significantly resulting in a new contract.

Source: Disclosure of Project and Contract Information in Public-Private Partnerships, World Bank Institute, January 2013

panel established in Concessions Law, comprised of independent experts, must verify that these conditions are met. The compensation to the private partner is calculated and paid in such a way as to get the net present value of the additional project to equal zero, considering the applicable discount rate and the economic effect the additional project may have on the original project, including the higher risk that may occur.⁶²

The **European Union (EU)** is one of the most regulated procurement environments. Renegotiations of significant aspects of the PPP are in principle forbidden under EU law, though certain exceptions are allowed. The 2014 Directive on the Award of Concession Contracts explicitly makes an exception to the ban on renegotiation when the procuring authority can demonstrate that (i) the modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise, and unequivocal review clauses and do not alter the overall nature of the concession; (ii) additional works or services by the original private partner are necessary and cannot be provided by a new private partner for valid economic and technical reasons; and (iii) procurement

of a new private partner would impose “significant inconvenience or substantial duplication of costs” on the government, and the modifications, irrespective of their value, are not substantial.⁶³

Practical guidance to managing corruption risks in PPPs

In general, the use of renegotiation should be avoided for any event the project company would encounter in the course of its business, invalid assumptions made in its pricing of a bid or scope of work, issues arising from poor performance with contractual provisions by the contractor, and failure by the project company to secure financing. The government should distinguish between the realization of a risk that was allocated to the project company, and a genuine change in circumstance that was not contemplated at commercial close and could negatively impact the social and economic benefits of the project. Ideally, the former should not trigger the need for a renegotiation. While changes to a long-term PPP contract is to an extent inevitable, the following

BOX 2.6

Present Value of Revenue Contracts in Infrastructure Partnerships

Present Value of Revenue Contracts

In the standard fixed-term highway PPP contract with tolls, the concessionaire bears the risk if traffic volume is low. Low traffic volume often triggers renegotiations for increased tolls. On the other hand, a flexible-term contract, where the winning bidder proposes a fixed amount in user fees in present value terms, eliminates demand risk of the concessionaire. These Present-Value-of-Revenue (PVR) contracts are a type of built-in renegotiation, extending the contract term when the traffic volume is lower than expected, thereby avoiding that source of opportunistic behavior. Chile began using PVR contracts for most transportation PPPs in 2007 and reformed its PPP legislation in 2010. The reform created the independent technical panel that reviews and authorizes renegotiations and requires the owners of the Special Purpose Vehicles to compete for additions to the initial project. The combination of both policy innovations was followed by a reduction in renegotiations, as a fraction of investment, of more than 90 percent.

Source: When and How to Use Public Private Partnerships in Infrastructure – Lessons from International Experience, Eduardo Engel, Ronald D. Fischer, Alexander Galetovic, NBER Working Paper Series, National Bureau of Economic Research, February 2020

guidance is suggested to reduce the probability of opportunistic renegotiations.

Avoid renegotiation to the extent possible:

- Good project preparation requires up to date technical, financial and economic, environmental and social feasibility studies that can help avoid the need for renegotiation by identifying risks upfront and allocating these risks to the parties best able to manage or mitigate the risks. It is important that risks are identified and costed out upfront and updated as more information becomes available over the project cycle from planning and feasibility to the design and structuring of the contract. This goes hand in hand with the need for transparency, competition and public disclosure of the award of all PPP contracts, as these can also help reduce renegotiation.
- PPPs should be on the government balance sheet and not off-budget. This includes renegotiated amounts that should be accounted for as current public investment with a dollar for dollar impact on the deficit. This will help avoid incurring future

liabilities without the knowledge of the budgetary authorities.

- Project contracts should provide mechanisms to address conflict and changes. As noted above, the World Bank publication entitled Guidance on PPP Contractual Provisions offers standardized contractual language based on international best practices for PPPs to cover areas that lead to contractual changes, such as force majeure, material adverse actions by government, dispute resolution, and contract termination. These clauses define under what conditions a renegotiation takes place and what the process will be for resolution.
- Bids should be evaluated based on best overall economic offer rather than the lowest price, taking into account the overall lifecycle cost of the project. This will help avoid the problem of lowballing and deliver better value for money.

If significant changes are to be made in the scope of works:

- Significant works agreed to through a renegotiation must be tendered competitively, as in the case of

Chile, to avoid the private sector partner abusing the renegotiation process to generate work for itself on a sole source basis. It has also started using present value of revenue contracts for transport projects to automatically adjust the length of a contract when low demand reduces revenues and shorten the contract period when demand exceeds the contractual provisions for revenue.

- The government should provide a full justification and consider a forward-looking audit of the PPP to avoid unforeseen effects on other contractual provisions that could affect the public interest.
- The government should establish a defined and transparent process and framework for renegotiation subject to external audit. As we have seen in the case of Chile, Australia and the EU, the case for a renegotiation should be made explicit and recorded so that the decisions are made in a rational and defensible manner.
- The government should disclose evidence to demonstrate that project distress is material and likely to result in default under the PPP contract and cause adverse outcomes for the public sector and/or users of the service. The final decision on a renegotiation should be based on full disclosure of long-term costs, risks, and potential benefits.
- In developing markets with weaker institutional frameworks, or where renegotiation is a persistent problem, the government should consider, as in the case of Colombia and Peru, banning renegotiations during the first few years after commercial close to avoid lowball bids. This approach, however, runs the risk of failing to address justifiable contract modifications that may occur and cannot replace the importance of sound project preparation and risk allocation.
- Involvement of independent monitors, such as a technical panel of experts in the Chile case study or a requirement for Cabinet approval as in the case of Australia, can help the government respond to a request for changes. If the private partner perceives the government as open to renegotiation, this may encourage opportunistic private sector behavior, submitting low bids in the hope of renegotiation after financial close.

Key Messages for Policy Makers

Fiscal Transparency

Renegotiated amounts should be counted as current public investment and expenditure and accounted for in the budget of the country. Significant additional investment should be subject to an independent review outside the procuring agency and subject to cost benefit analysis like other public projects.

Project Preparation

Sound project preparation can mitigate risks through robust cost benefit analysis, social and environmental impact, economic and financial and technical feasibility studies. Project preparation should include a competitive and transparent procurement process based on value for money and not on the lowest cost bids.

Expert Advice

Renegotiations can cover complex financial and economic issues which can be a challenge for new PPP units and governments without the necessary experience and expertise. It is in the interest of the government to have the best expert advice for these negotiations with the private sector.

Be Proactive

Do not wait for problems to grow and become more costly. The procuring authority should establish mechanisms for two-way communication with the private partner to catch disputes as early as possible when the opportunity for resolution is higher.

CASE STUDY 6

PUBLIC INFRASTRUCTURE

Open Contracting Reforms in Colombia

Overview

In 2014, concerns of corruption in Colombian public procurement grew among the Society of Engineers (SCI). They were alarmed because tender specifications were so narrow that the SCI believed they were being tailored to benefit particular bidders.

Prompted by the potential for reputational risk, the organization began analyzing official data from the public procurement agency and discovered that the majority of tenders for public transportation projects had only one bidder. At best, this could be a symptom of an overly complicated tendering process that only a few companies were equipped to manage, with the result that tenders were not conducted based on fair competition; at worst, it would indicate bid rigging or other types of collusion, a sign of underlying corruption that is both expensive and wasteful to the taxpayer.

As a result of the organization's findings, the national government finally made it mandatory to use standardized open tender documents for public transport works beginning in early 2019. In parallel, a new, fully transactional e-GP platform, SECOP II, first launched in 2015, began to gain users at all levels of government procurement. SECOP II allows for accessible and clear standardized documents for bidders and buyers alike. It publishes data in the open, standardized, and reusable Open Contracting Data Standard (OCDS) format and will eventually be the principal procurement platform for all government entities.

Open contracting helps create a fair business environment and levels the playing field for suppliers:

half of all contractors that won government bids under the new, more open procurement platform after 2015 had never before participated in public contracting.

The Colombian government got this done in collaboration with Open Contracting Partnership, an international organization promoting openness and standardization of contracting in public procurement. The contracting process is now more transparent and tender specifications are prevented from being tailored to favor particular bidders.

Introduction

In 2014, the Colombian Society of Engineers (SCI) began scrutinizing government procurement. They were concerned that scandals involving corruption in the award of government contracts had tarnished the reputation of the engineering sector. "Contractor had become synonymous with corruption," explained the SCI's president, Argelino Durán Ariza, to Open Contracting Partnership, the international organization that has supported the Colombian government through the process of opening up and standardizing tendering procedures.

For years, Colombian civil engineers and other potential suppliers had voiced the problems they faced in bidding for government contracts. Their firms rarely met the requirements of the tender specifications, which were typically so specific that the SCI suspected they were being tailored to benefit particular bidders. "The biggest blow was dealt to local small and medium-

sized companies [who didn't win contracts] unless they agreed to pay bribes," Durán Ariza said.

In theory, there can be several reasons for low participation in tenders, beyond specifications being manipulated: capacity can be an issue, particularly for large and complex projects, such as infrastructure, where specialized technical skills are required but are often difficult to find locally. But the SCI did not think this was the whole explanation.

So the SCI began to gather data about the tendering process with the aim of assessing complaints about hiring practices for contractors within some municipalities, regional governments, and entities in Bogotá. They would analyze the data for patterns indicating unreasonable conditions in the tendering specifications and for evidence that this correlated with

low bidder numbers. Such findings could be indicative of potential corruption in the government procurement process.

The SCI analyzed data available on government websites to determine how many companies bid for contracting processes. They initially focused on three competitive methods: open tenders, abbreviated open tenders, and merit contests (in which quality is prioritized, e.g. for consultancies). In 2016, they included analysis of reverse auctions (in which price is prioritized, e.g. for standardized goods or services).

They used data from Colombia's SECOP I procurement platform to do their calculations, manually checking the PDF documents of thousands of tenders, from small goods and services to large public works contracts. Launched in 2007 by the public procurement agency



Colombia Compra Eficiente, SECOP I stored PDFs of tender and contract documents along with a very limited set of data fields. The number of bidders per tender had not historically been captured as a specific data field.

In 2017, the SCI made their findings public: there was only one bidder on 56 percent of all regional government contracts awarded that year. This came out to more than 2,500 contracts worth over USD280 million. At the municipal level, 21,500 contracts were awarded, 94 percent of which had three or fewer bidders.

SCI's findings are supported by similar findings from studies conducted by the Colombian Chamber of Infrastructure, which represents larger companies, lending further credibility to the results.

In order to correct the problem, the national and regional governments needed to improve the quality of published information, adequately alert the market to its needs, and increase the participation of new suppliers.

The implementation process

The central government institution that contracts public road works (INVIAS) saw a surge in the number of bidders when using standard tender documents for its own procurement processes; so when the SCI and Chamber of Commerce released their findings, there was a strong argument to expand the experience to the subnational level. Finally, the government made the use of standard tender documents mandatory in April 2019 with a six-month grace period for implementation.

But there was pushback from local governments over concerns of loss of autonomy. Colombian regional governments have a high degree of constitutionally granted independence with regards to expenditure allocation, and they were concerned that the new law would change that. There were also concerns about the guidelines being too inflexible and technically narrow for a country as heterogenous and large as Colombia. This debate became a major roadblock during deliberations in Congress: would the initiative move decision making power to the central government, shifting corruption upward in the system rather than eliminating it?

Ultimately, the standard was clarified to stipulate that autonomy over tender specifications remains with the local governments. The requirements are set at the national level; they are written by the offices that manage policy of the corresponding sector and refer to the type and amount of information required from bidders. The law stresses that the promotion of companies and people local to the regions will be prioritized, with the aim of promoting the economies of the regional departments and municipalities. It also allows for a great deal of innovation, which has resulted in buy-in from local leadership and boosted social growth, for example by adding requirements for gender parity among bidders in one municipality.

Others argued that the scope was too limited and should include all sectors, not only road works. This proposal was accepted, and new templates are currently being developed for other sectors, as mandated by Congress.

While the documents were crafted by the National Public Procurement Agency, Colombia Compra Eficiente (CCE) with the technical advice of INVIAS, the Ministry of Transport was crucial in forming an early coalition around the initiative. The ministry's vice minister, Juan Felipe Sanabria Saetta, who is in charge of all major infrastructure works in the country, became a key driver for the successful adoption of the law in Congress.

The new standard documents became mandatory for all state governments as of April 1st, 2019. In the days leading up to this, several states saw a run on procurement systems, perhaps an early sign that the law goes part of the way to alleviating corruption in procurement.

In tandem with the new law, the use of Colombia's updated e-GP platform is spreading. SECOP I was launched in 2015 and is managed by the CCE. SECOP II is a fully transactional e-GP platform and is gradually becoming the principal platform for more and more government entities. The platform publishes data in the open, standardized, and reusable Open Contracting Data Standard (OCDS) format. It stores PDFs in real time and now includes many more data fields, including the numbers of bidders. Publishing to the OCDS ensures that all data is subject to the same quality control. When, eventually, every entity is obligated to use SECOP II, suppliers will be required to register to submit a bid in the system. The number of bidders will be calculated automatically from this data, as well as

other important statistics.

The documents set specific requirements that bidders must meet in order to participate in the tender process and win contracts. The new requirements relate to information, including transparency agreements; basic bidding letters; prior experience; organizational capacity; financial status; clauses for hiring local staff; and more. Standard documents are important in cases where there is a high risk of corruption, but they also boost accessibility for small entities with limited capacity who can file ready-made documents, saving time and resources for every tender.

Data on these processes are accessible to anyone in the OCDS format and the specifications can be set by the procuring entity to match the size and kind of contract. This creates uniformity in the information, while retaining regions' administrative autonomy to carry out their own contracting processes and to be innovative in doing so.

The use of standard bidding documents and e-GP systems is not unique to Colombia, but the adoption of these measures has a timely relevance as the country embarks on a major project to build tertiary roads across the country. The Colombian case is interesting not only because it is recent, but because of the positive knock-on effects that are already showing: inspired by the demand for fair competition, the central government set a goal to increase the average number of bidders per tender for the central government by five percent in 2019. Single-bid contracts are estimated to be seven percent more expensive than contracts with two or more bidders, so increasing the number of bidders could lead to substantial associated annual price savings for the government.

Reflections

Though the reform is recent, Colombia is already beginning to see the positive impact of using both standardized documents and e-GP, and of utilizing data analytics to assess these reforms. Data will continue to be analyzed and published in the future, a process which itself will be made easier when SECOP II becomes the principal platform for all government entities.

The Contracting Observatory of the Colombian Chamber of Infrastructure conducted an analysis of

the results on the infrastructure civil works sector, from implementation in April 2019 through August 2019. They found that the number of bids went up at the national and the regional level: At the national level, 61% of tenders received more than 20 bids while 20% of tenders received between 11 and 20 bids and only 19% received fewer than ten. At the regional level, results were more muted but still impactful: 20% of tenders received more than 20 bids, and 48% received between two and ten bids, while 32% received only one. The same analysis showed that the standard documents were used in their original or a modified version in more than 90% of tenders across national and regional cases.⁶⁴

The national public procurement open data policy allows regional governments to update their processes; improve efficiency in the use of their resources; use public procurement as a vehicle for inclusion and growth; communicate their needs more clearly to the market; and ultimately achieve better results for their citizens:⁶⁵

- Thus far, reports show that contracts relating to infrastructure have seen an increase in the use of public tenders to procure public works, rising from six percent in 2018 to nine percent in 2019. The median number of tenderers increased from five to nine. More data analysis is yet to be done.
- INVIAS, the public roads agency, has seen a decrease in single bid tenders from 30 percent to 22 percent on its approximately 900 tenders yearly since the introduction of SECOP II.
- Many of the early results are measured at regional or municipal level. For example, the city of Cali created an Administrative Public Procurement Department which published an Annual Procurement Plan. By alerting the market to public needs, the new plan has improved transparency and efficiency in public purchases, increasing the percentage of competitive processes from 31.1 percent in 2017 to 55.9 percent in 2019.
- The changes are also an opportunity to boost social change. Cali's standardized contracts are designed to promote inclusivity: a 2019 requirement stipulates that 10 percent of suppliers who would be awarded departmental contracts that year should be women-owned businesses.

- Other results are showing up on the bottom line. When the Caldas region began using the SECOP II platform in 2019, the region went from 53 digitally registered processes worth USD2.8 million in 2018 to 209 digitally registered processes worth USD52.8 million in 2019. That is a lot more transparency over a lot more projects.

Government-wide laws, policies, guidance and other factors influence the use of data analytics on an institutional and project level. In the case of Colombia, a combination of determination from the central government and buy-in from regional governments was key to getting the law for standardized documents passed, and to seeing it implemented innovatively and with fast results.

Aside from commitment, a handful of requirements facilitate the successful integration of data analytics into project management:

- Culture and people play a pivotal role. Implementation requires the technical skills to use e-GP platforms and the data that they generate correctly which, in turn, relies on a culture that understands the benefits of data gathering. The Colombian case is a good example of bottom-up driven change that was set in motion by the analytical skills of committed individuals and adopted into law by the commitment of leadership.
- Processes and technology are equally important. The collection of data through e-GP and the continuous assessment of its reliability and validity are part of the process. Monitoring and evaluation of the performance of SECOP II, based on objectives and metrics, is critical for understanding its effectiveness and adapting them into policy as needed.

Not all environments or projects are equipped with these fundamentals. A project may be too small, or the resources and willingness to experiment with these types of 'openness'-policies and tools may be lacking. Colombia partnered with Open Contracting Partnership (OCP), an international organization promoting open contracting in public procurement, in creating the right format for its law for standardized documentation.

The national public procurement open data policy in Colombia is modeled on OCP's Open Contracting Data Standard (OCDS). OCDS is a free and non-proprietary

platform that teaches users how to publish data and documents at all stages of the contracting process. In practice, it transfers previously paper-based processes into standardized, machine-readable, and interoperable open data.

OCDS is currently the only international open instrument for the publication of information related to the planning, procurement, and implementation of public contracts. As such, it is uniquely helpful for enhancing transparency in procurement.

Strengthening the leadership of regional authorities by making tendering open and accessible is making the whole procurement process more competitive and creating a broader and more diverse supplier base.

Public procurement can be a catalyst for social change by improving the goods and services that citizens receive and by expanding opportunities to participate in the market. Colombia is one example where regional governments are driving forces for change, and where transparent and efficient public procurement is proving to be an effective tool for strengthening institutions and developing regions.

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13. The High-Level Principles build on the United Nations Convention Against Corruption (UNCAC, 2005), which is the only legally binding universal anti-corruption treaty.
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22. CoST seeks to prevent integrity risks through accountability. The goal is not to detect corruption risks in a given context. If a CoST program encounters potential corruption issues, however, these are referred to the relevant authorities.
23. CoST was launched as a pilot from 2008-2011. It has received grant funding from the UK's Department for International Development (DFID), the World Bank (2011-2014) and the Netherlands' Ministry of Foreign Affairs (MinBuZa). An increase in funding allowed it to scale up its activities in 2015. At the time of writing, 14 countries are implementing CoST programs, that number is set to increase to 20 in the next year, and up to 35 in 5 years. The World Bank participated in the International Advisory Group that oversaw the pilot project and currently has observer status on the CoST Board.
24. OGP: <https://www.opengovpartnership.org/>; OCP: <https://www.open-contracting.org/>; EITI: <https://eiti.org/>; GIFT: <http://www.fiscaltransparency.net/>.

25. See for example, Brandon Brockmyer & Jonathan Fox (2015): *Assessing the Evidence: The Effectiveness and Impact of Public Governance- Oriented Multi-Stakeholder Initiatives, Transparency and Accountability Initiative*, <https://accountabilityresearch.org/publication/assessing-the-evidence-the-effectiveness-and-impact-of-public-governance-oriented-multi-stakeholder-initiatives/>
26. An External Review of CoST in 2019 found evidence of positive impact in CoST program countries, including in two fragile or conflict affected contexts (Afghanistan and Honduras), and in a diverse set of country contexts in Africa, Asia and Central America.
27. CoST has two membership categories: full and affiliate. Full members can apply for funding from the International Secretariat. Countries must be eligible to receive official development assistance (ODA) to receive CoST grant funding. Affiliate members receive structured technical support without funding. All CoST tools and technical resources are freely available for anyone to use (<http://infrastructuretransparency.org/resources>).
28. Countries are invited to re-apply when constraints to effective multi-stakeholder working or disclosure have been removed or addressed.
29. The rules of procedure of an MSG are not unlike that of a board of directors of an organization. The CoST Secretariat provides guidance on the composition of MSGs and on procedural rules for meetings and decision-making.
30. In 2019 CoST and the Open Contracting Partnership agreed on a joint approach to the standardization of open infrastructure data with the creation of the Open Contracting for Infrastructure Data Standard (OC4IDS). Alignment with another internationally accepted data standard (Open Contracting) supports the scalability of government efforts to produce uniform machine-readable data on public contracts and across the lifecycle of infrastructure projects.
31. CoST supports the development of infrastructure digital platforms such as in Costa Rica (Mapalversiones), Ethiopia (PPA), Honduras (SISOCS), and Thailand (AOT), or supports governments in enhancing existing e-GP systems (e.g. Guatemala's Guatecompras).
32. Further details about the CoST assurance process can be found here: <http://infrastructuretransparency.org/2018/11/12/turning-infrastructure-data-into-compelling-information-the-added-value-of-cost-assurance/>.
33. CoST (2014). Ethiopia finalises Disclosure Standard. <http://infrastructuretransparency.org/news/ethiopia-finalises-disclosure-standard/>.
34. The Anti-Corruption Organization of Thailand (ACT) was founded in 2011 by a former President of Thailand's Chamber of Commerce in response to widespread corruption in government projects and the public costs entailed. ACT was registered as a Foundation in 2014.
35. The first MSG was chaired by the Permanent Secretary of the Ministry of Transportation and hosted by the State-Enterprise Policy Office (Ministry of Finance). Since 2017 a new MSG formed by the Cabinet has included: Chair: the permanent Secretary of the Ministry of Finance, Vice Chairs: the Director General of the Comptroller General's Department (CGD) and the Chairman of the Anti-Corruption Organization of Thailand (ACT). Other members include the National Economic and Social Development Board (NESDB), SEPO, Transparency Thailand, Good Governance for Social Development and the Environment Institute, Engineering Institute of Thailand, Association of Siamese Architects and the Association of Thai ICT Industry.
36. The project was an extension of the Suvarnabhumi International Airport in Bangkok, valued at USD4.3bn managed by Airports of Thailand, a publicly listed company. This project was doubtless selected because the construction of the original Suvarnabhumi International Airport had taken 35 years (1971 - 2006) and had been hampered by corruption, mismanagement and procurement delays. Thailand's first project covered by the CoST program thus had a value that was greater than the aggregate value of many other country programs.
37. These are: the Official Information Act 1997 (OIA 1997); the NACC Act 1999, the Land Expropriation Act 1987, Cabinet Resolution of 20 April 2011 on Obligation of Government Agencies to disclose information on their website according to the Section 9 (3) and 9 (8) of the OIA 1997; Regulations of the Office of the PM on Procurement 1992 (ROPMP 1992); Regulations of the Office of the PM on Public Consultation 2005; Regulations of the Office of the PM on Electronic Procurement 2006; and Official Letter of the Ministry of Finance of 22 August 2012 on Guidelines on Disclosure of Government Reference Costs of Construction Works.
38. CoST's analysis of infrastructure accountability in high-income countries concluded that this would be the most productive way of applying multi-stakeholder working in wealthier economies.
39. Between early-2018 and mid-2019 there had been almost 4000 views of the Facebook videos posted by CoST Thailand (more than 7 views per day) and 45 shares (more than one every other week).
40. A financial advisor to the CGD credited the CoST program and Integrity Pacts with helping "save the government THB 83.138 billion that might have been wasted in payoffs": ThaiVisa (2019). Anti-corruption body to save Bt142 billion through anti-graft tools. <https://forum.thaivisa.com/topic/1122657-anti-corruption-body-to-save-bt142-billion-through-anti-graft-tools/>. A vice president of the Thai Chamber of Commerce and of the Thailand Anti-Corruption Organisation reported that Integrity Pacts and CoST would help the country prevent losses of Bt142.76 from corruption, crediting the impact of 230 voluntary observers monitoring projects." ThaiVisa, 2019.
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42. The CoST Board has international advisors representing government, civil society and the private sector.
43. "System for the Publication and Monitoring of Public Works and Supervision Contracts"
44. Decreto Ejecutivo Número PCM 02 – 2015 https://sisocs.org/docs/decreto_sisocs.pdf
45. As of the date of publication the SISOCS platform publishes data on 1,782 projects, valued at USD1 billion, and the PPP platform is disclosing data on projects valued at 1.5 billion dollars.
46. Photographs from the Siguatepeque Road Maintenance Project social audit report.
47. Steps are underway to facilitate the interoperability of data between the National Procurement Office (ONCAE) and the Ministry of Finance (SEFIN), but much work remains to be done.

48. As established by the CoST MSG, in agreement with ONCAE and the Ministry of Infrastructure - *Decreto Ejecutivo Número PCM 02 – 2015*.
49. Presentation by Eduardo Engles at the World Bank, *Frontiers in PPP Economics* (2019) and cited from (Squeren & Moore (2015), Beuve, Moszoro & Saussier (2018)).
50. Marianne Fay, Hyoung Il Lee, Massimo Mastruzzi, Sungmin Han, Moonkyoung Cho (2019). *Hitting the Trillion Mark, A Look at How Much Countries Are Spending on Infrastructure*, World Bank, February 2019. Given the absence of fiscal and national account data to fully capture infrastructure spending, the authors identify three proxies for infrastructure investments: two are variants on gross fixed capital formation from national accounts system data following ADB (2017) and one is based on fiscal data from the World Bank's BOOST database. Two of these proxies rely on the World Bank's Private Participation in Infrastructure database to capture the private share of infrastructure investments.
51. Government is used here as a general term to refer to the procuring authority or related public entity that is responsible for the PPP policies, implementation or oversight.
52. This definition is taken from: World Bank (2017). *Public-Private Partnerships: Reference Guide Version 3*. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/29052> License: CC BY 3.0 IGO, page 184.
53. World Bank, 2017: *PPP Reference Guide*, page 27.
54. See: World Bank (2017). *Guidance on PPP Contractual Provisions*. <https://ppp.worldbank.org/public-private-partnership/library/guidance-on-ppp-contractual-provisions-2017-edition>, for best international practice for PPP standardized clauses including clauses related to change management.
55. An alternative to economic rebalancing in the case of user fees is to adjust a contract based on the present value of revenues. The contract can be adjusted over time to extend the length of a contract to compensate for temporary shortfalls. Similarly, it can be shortened in the case of excess revenue. For more on this topic see: Engel, E., Fischer, R., & Galetovic, A. (2014). *The Economics of Public-Private Partnerships: A Basic Guide*. Cambridge: Cambridge University Press. doi:10.1017/CBO9781139565615 (p. 122-130).
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58. The information on Brazil and the Odebrecht scandal is based a presentation at the World Bank delivered by Alexander Galetovic: *Frontiers in PPP Economics*, World Bank, January 29-30, 2019.
59. Peru is refining this approach and is now aiming at greater negotiation flexibility, as embodied in modern contract types. The problem with lowball bids has been exacerbated by an over-emphasis on price in the bid evaluation process.
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Case Study 4: Accountability in Infrastructure: The CoST Approach (Thailand, Ukraine, Honduras)

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Case Study 5: Managing Public Private Partnership (PPP) Renegotiation

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CHAPTER 3

State-Owned Enterprises



Introduction

State-owned enterprise (SOE) corruption has gained prominence in recent years. High-profile corruption scandals, such as *Petróleo Brasileiro S.A.* (Petrobras) in Brazil, *Sonangol* in Angola, *Eskom* in South Africa, and *1 Malaysia Development Berhad* (1MDB) in Malaysia have attracted global attention and put the issue of SOE corruption at the forefront. SOEs manage substantial resources in key sectors. Many are inefficient, operate at a loss, and fail to provide critical public goods and services, due in part to conflicting objectives and mismanagement—and to corruption. Corruption can be detrimental to the SOE itself, to the economy, and to the people who count on them for basic services. The consequences for SOEs are reputational and financial losses, a fall in market value and share price, business disruption and fines, and risk of debarment from markets. For the economy, corruption can damage investor confidence, deter foreign investment, and lead to unsustainable debt or a plunge in stock market value, negatively impacting growth and increasing inequality.

SOEs face similar corruption risks as private companies, but the risks are compounded by the

scale of the assets they control, the considerable value of public contracts they award, and most of all their proximity to governments and politics.

Corruption risks arise from various sources. SOEs in high-value sectors often enjoy monopoly or quasi-monopoly rights that provide an opportunity for abnormal profit generation, a privileged relationship with the government, and state financial support. This creates incentives and opportunities to extract significant rents. Such mechanisms are often used to benefit political groups and party finances in order to sustain the resource diversion over time. Risks also arise from weak legal and regulatory frameworks; corporate governance weaknesses at SOE levels: a lack of transparency and disclosure over SOE finances compounded by poor financial reporting practices; and limited effective government and citizen oversight. These risks are exacerbated by inadequate technology in SOE operations and weak citizen participation in monitoring SOE performance. Addressing these risks can help combat corruption and improve integrity. Broader shortcomings in overall public sector governance and in the judicial sphere also play a key role, though these are not covered in this chapter.

SOE corruption risks

Monopolies and preferential treatment

Corruption is most rampant where SOEs operate as monopolies or have exclusivity rights and are highly regulated. A 2014 OECD study found that almost two-thirds of corruption instances occurred in sectors such as oil and gas, mining, energy, transportation, and heavy industry.¹ Their size and market structure impede the entry of new players, which in turn creates a privileged relationship between the SOE and the government and regulators. Such relationships allow for discretionary power and decision-making, unmanaged conflicts of interest, and blurred responsibilities between SOEs and their supervising agencies. High-value activities, such as the awarding of rights, procurement of goods and

services, commodity trading, licensing, and investment are especially prone to corruption. The dominance of SOEs in smaller markets where the private sector is less able to participate and compete also makes it easier for SOEs to be corrupt.

Preferential treatment by the state gives rise to abuse.

Funds for direct and indirect subsidies, debt write-offs and tax exemptions, and compensation for carrying out non-commercial objectives may be siphoned off for personal or political gain. Reliance on state support means that SOEs are less likely to suffer the same consequences of corrupt practices as their private sector counterparts as governments can provide resources to mitigate any damages incurred. SOEs also enjoy easy access to loans from state-owned banks at

preferential rates, even when such loans have no clear rationale. Subject to political interference, state banks themselves may suffer from corruption in the lending process, which can create a possible risk zone for both entities. A 2015 investigation into corrupt practices in Chinese state banks, for example, found that abuse of office and kick-backs played a role in the approval and distribution of non-profitable loans to SOEs.² A 2020 study shows that countries with limited transparency and accountability of their natural resource sectors used those assets to secure large resource-based loans (RBLs). The countries with the largest amounts of RBLs in their respective region—Venezuela in Latin America (\$59 billion) and Angola in sub-Saharan Africa (\$24 billion)—both have poor resource governance scores.³ Corruption risks are also associated with relaxed anti-money laundering procedures and due diligence practices, where state banks have been used to launder the proceeds of crimes in exchange for bribes.

Gaps in SOE legal and regulatory frameworks

Statutory loopholes and vagueness in legal and regulatory frameworks are an underlying theme to nearly all the risks mentioned below. Gaps and weaknesses are found in key areas, such as state oversight and monitoring of SOEs, the selection of boards and management, board decision-making processes, internal controls/compliance and risk management systems, information disclosure practices, and policies and procedures for creating an ethical culture. An inadequate legal framework was the case in Brazil, which was strengthened in the aftermath of the Petrobras scandal. Even where adequate laws and regulations are in place, implementation may be limited or formalistic, and compliance may go unchecked. Critical policies, such as confidential reporting programs, asset disclosures, and banning of political financing tend to be rare, while broader anti-corruption legislation may not be actively implemented.

Weak ownership arrangements

Corruption risks are higher where SOE responsibilities reside in sector ministries that combine ownership, policymaking, and the regulatory function. Combining these functions creates conflicts of interest, scope for direct interference, and diffused accountability. Even in high-risk SOEs,

ministries may not have the incentives and capacity to prevent interference and oversee specialized functions such as audit, compliance, and risk management. Insufficient attention may also be paid to establishing reporting systems to detect corrupt practices or monitor any corruption-related risks within SOEs. While countries such as Malaysia have established centralized ownership structures to address these problems, they too have been unable to prevent opportunistic behavior and promote a culture of integrity.

Politicized boards and management

SOE boards are often appointed by political parties or the highest levels of government. They often include state ministers, party leaders, and politically connected officials who present high risk by virtue of their position and influence. In the case of Petrobras, for example, politically appointed board members helped ensure a regular flow of funding to their respective parties and allies through systematic bid rigging.⁴ Competency requirements for such board members often do not meet the qualifications and competencies required of all board members, while verification of a candidate's integrity receives little if any attention. The lack of a structured and transparent selection process based on candidate assessments and shortlisting through independent institutions also makes the process vulnerable to interference and politicizes the outcomes.

Boards comprised of politically connected persons may play little to any role in exercising the duty of care and may instead engage in malfeasance. The Parliamentary Committee Report on 1MDB in Malaysia highlighted the lack of diligence of the board—chaired by the Prime Minister—in adhering to good corporate governance practices in decision-making that led to the misappropriation of public funds. High-value investment decisions were made at short notice without prior risk assessments, adherence to instructions and frameworks for board decision-making and approvals, and documentation of key decisions. In South Africa, a faulty appointment process also revealed the role of politics and private interest groups in board deliberations, which led to the board's violation of the duty of care in awarding a R564 million contract to a company predominantly owned by the son of the President and his close family friends.⁵ An informal system of patronage, the lack of adherence to proper decision-making frameworks, and limiting the scope

of key decisions to a few individuals without second reviews increased the scope for abuse. In Angola, as the case study shows, the former President's daughter, Isabel dos Santos, the richest woman in Africa, had been the President of the Board of directors of the oil SOE Sonagol, until she was removed as a result of anti-corruption and investigative efforts.

Risks also arise when the board has no role or only a figurehead role in appointing top management.

Contrary to good practice boards which have the power to hire and fire the CEO, the government often directly appoints the CEO and other key executives, often without a competitive and transparent selection process. This diminishes the oversight role of the board and makes SOE operations vulnerable to corruption risk. Lack of oversight by the board and, conversely, a disregard by management for the role of the board, also allows executives to use personal networks to engage in corrupt schemes. The Petrobras and 1MDB cases show that management decisions were often made contrary to the board's guidance or made without the board's consent.

Weak internal controls, compliance, and risk management

Weak internal controls, compliance, and risk management systems facilitate unethical behavior.

Such behavior may include unidentified or unmanaged conflicts of interest, frequent gifts and hospitality, failure to perform third party risk assessments, and lack of documentation of contracts and transactions. In the case of Eskom, for example, an inquiry into management practices showed that Eskom did not address conflict of interest by board members even though it was obliged to do so pursuant to the conflict of interest rules.⁶ And the Petrobras investigation revealed that 100 or so Petrobras employees, including the CEO, were receiving valuable gifts from 2010 onwards, which were not reported or identified.⁷ The lack of an internal risk management function also creates risk. Out of 32 countries surveyed by the OECD on risk management practices, only 52 percent require SOEs to establish risk management capacities and just 18 percent require at least large SOEs to employ risk specialists.⁸ The focus, however, appears to be on financial and investment risks rather than on mismanagement and corruption risks.

Compared to ministries, SOE procurement is especially vulnerable to corruption and collusion given the scale of assets they control.

In addition to public officials using their powers for personal gain, such as accepting a bribe in exchange for granting a tender, SOEs are also susceptible to collusion and bid rigging where bidders determine who should "win" the tender, and then arrange bids to ensure that the designated bidder is selected by the purportedly competitive process. The process may be facilitated by having an SOE insider that provides bidders with the information to rig bids. In Angola, as the case study shows, contracting was deeply affected by corruption and improving public procurement constituted a key element of fighting corruption. Statutory regimes that exempt SOEs from public procurement rules are especially susceptible to corrupt and collusive behavior, as was the case in Petrobras, which enjoyed a more flexible procurement regime at the time when the criminal activities took place.⁹ Even where rules apply, competition is avoided through means such as sole sourcing, direct awards, tailor-made bids, or sharing inside information regarding the tender. Additional red flags include single bids, awarding of contracts based on price and not quality, and collusive bids. Clientelist groups may circumvent public tenders and manipulate the process to directly award contracts and channel the funds for their purposes, while audit bodies may not be able to prevent such processes. In South Africa, for example, the boards of Transnet and Eskom created specialized procurement committees, even though procurement is not a board responsibility—established with the sole purpose of giving their members and preferred bidders direct access to SOE procurement budgets.¹⁰ These and other corrupt practices at the board and management level eventually led to the removal of malfeasant and incompetent directors and executives, including criminal charges in several instances.

Illegal behavior also arises from lack of ethics rules, internal reporting mechanisms, and whistleblower protections.

Only some jurisdictions have ethics rules for SOEs, while elsewhere SOE staff are expected to adhere to civil service or private sector rules. Staff ability to report misconduct without suffering repercussions came up in both the Petrobras and Eskom cases.¹¹ In both instances, persons who reported the wrongdoing suffered consequences for doing so. There is virtually no data on confidential reporting practices and is an area where further attention is needed.

Poor transparency and disclosure practices

A common challenge for state auditors and external auditors is getting access to documents, particularly around sensitive information.

In Brazil, for example, the Federal Court of Accounts struggled for 20 months to get access to cost appraisal and other key documents from Petrobras to draw conclusions in an urgent audit of work done on the off-shore rig P-57.¹² At the same time, external auditors were also accused of aiding Petrobras in misrepresenting its business and financial operations. Access to information is even harder to obtain when SOEs resort to changing external auditors to conceal information or obtain a desired/positive finding, as for example in 1MDB. In this case, audit firms signed off on accounts without qualifications, although some auditors were let go for not approving the accounts unless more details on specific investments were provided. Moreover, internal auditors may be controlled by management and not able to act as an independent source of information or vigilance for the board.

SOEs also fall short on information disclosure, especially in sectors where corrupt practices are more frequently observed, such as natural resources. The 2017 Resource Governance Index assessed the performance of 74 oil and mining SOEs across 10 governance and transparency practices, including the companies' public reporting practices, audit provisions, and conflict of interest protections.

The assessment showed that compliance is poor and the need for improvement is enormous. Only nine of the 74 companies received a "good" score, with many influential SOEs failing.¹³ Similarly, in the last quarter of 2016, only half of the 50 sovereign wealth funds assessed by the Sovereign Wealth Fund Institute met the disclosure threshold,¹⁴ while in Vietnam public disclosure of SOE related financial and non-financial information is voluntary, which has led to a predominant practice of non-disclosure.¹⁵ In Georgia, 22 out of the 36 SOEs with significant capital do not even have a webpage.¹⁶

SOEs may find ways to conceal important information such as major decisions on procurement, quasi fiscal activities, background and remuneration of management and board members, and related party transactions.

The types and amount of state financial assistance as well as material transactions with the state and other SOEs are often not reported. And where SOEs do disclose financial information, issues may arise in the quality, reliability, and timeliness of the information due to lack of application of IFRS, inadequate oversight by the audit committee, weak capacity within SOEs to process information, and lack of incentives and penalties to strengthen compliance. Those that report may still not include information on other key areas, such as beneficial ownership and anti-corruption programs. SOEs, including those with significant capital, may not even have a webpage.



Reforms to reduce corruption and strengthen integrity

Reducing corruption risk in SOEs is challenging, and technical solutions must be politically acceptable options given the benefits that flow to the state from their economic activities. Policies designed to improve corporate governance and oversight of SOEs are central to reducing corruption vulnerability, but they are rarely adequate in the absence of political will to tackle corruption in SOEs. This is evidenced in all three case studies: Colombia advanced SOE reforms under the leadership of its President and changed the Constitution; corruption in Brazil's SOEs was directly linked to patronage by top politicians and reforms can only be sustained with political will; and in Angola, it was a change in the administration that gave impetus to deep sector reforms. In conclusion, without strong political leadership to assure that implementation of laws and regulations (*de jure*) is carried out in practice (*de facto*), there is a strong risk that corporate governance tools and measures will exist only on paper and have no teeth. Prior to the Lavo Jato scandal—which drew attention due its magnitude—the flaws in Brazil's corporate governance regulations were hidden from view or overlooked. Sustained political support, accompanied by an independent and competent justice system, is essential for making corporate governance and regulatory oversight bodies truly effective and responsive. Effective implementation and enforcement do not happen overnight, and even the small but key steps and changes during one government can be reversed or undermined during the next. Thus, there is a need to think about these reforms as a long-term agenda.

Actions to improve corporate governance are nevertheless critical and target a range of vulnerabilities in SOE oversight and implicate many stakeholders. The menu of options below are not intended to represent purely technocratic fixes in a political vacuum. Rather, they should be considered within the range of what is politically feasible. To varying degrees, they draw on a combination of stakeholders to incentivize integrity within SOE conduct. The first options rely heavily on private sector market discipline, while others rely on the influence of ownership bodies, regulatory agencies, and broader citizen engagement.

- **Opening up markets to greater competition to reduce monopoly power and market share and incentivize financial and fiscal discipline.** Opening sectors to competition and allowing private sector participation into sectors and SOEs brings capital and expertise but also helps to reduce discretionary powers and opportunities for corruption. In Colombia, as the case study will show, the new Constitution of 1991 introduced a new model of economic development that included the SOE sector. As a result, public utilities were opened to private investment, which also allowed free agent entry and competition. Requiring SOEs to operate on the strength of their balance sheet without government financing and putting in place a clear framework for identifying and financing non-commercial objectives makes SOEs more disciplined and reduces the scope for corruption. Commercializing and improving lending practices of state banks, and bringing in private capital into the banks, can further limit corrupt activities from taking place. When SOEs are operating in a competitive marketplace and there is no clear rationale for state ownership, such SOEs can be let go and privatized, provided this can be done in a transparent and efficient manner. When state capture is of concern in the SOE sector, this may also affect the privatization process.
- **Strengthening SOE legal and regulatory frameworks and practices.** A strong legal framework makes corruption harder to conceal, introduces transparency and accountability at all levels, and puts ethics at the center of business decision-making. As the case study shows, in the aftermath of the Petrobras scandal, the Brazilian Government passed a Law on the Responsibility of Federal State Companies (Law No. 13.303/2016). The law introduces a code of conduct and ethics for management and staff, sets forth requirements for board and management appointments, strengthens the internal control environment, and increases transparency around contracting and procurement.¹⁷ Other countries have enacted new SOE laws (Afghanistan, Ethiopia) or ownership policies (Norway, Sweden) to establish

key governance principles and measures to improve integrity and transparency, including the introduction of ethics rules and employee position requirements. A wide range of countries require SOEs to adopt corporate governance and ethics codes which contain principles and guidance on ethical behavior, acceptable and unacceptable benefits/gifts, and accountability mechanisms. Monitoring and promoting compliance are key to ensure implementation.

- **Building the commitment and capacity of state ownership entities.** To better exercise ownership rights and to shield SOEs from political interference, countries such as China, Colombia, Malaysia, and Peru have established specialized ownership units. As per the OECD's 2019 Anti-Corruption and Integrity Guidelines for SOEs, such entities should themselves have high standards of integrity and have the right skills and staff to oversee specialized functions, such as audit, compliance, and risk management. Such entities are increasingly recognizing the need for: internal corruption risk mapping; third-party corruption due diligence; stronger accounting controls; training of management and staff; and periodic reviews of such systems. A core function is to monitor and assess implementation, sanction SOEs for non-compliance, and refer the matter to law enforcement as needed.
- **Professionalizing the SOE board of directors and senior management.** As the cornerstone of anti-corruption and integrity, professionally composed boards can have the most direct impact on building a culture of integrity. Board members must be independent of any outside influence, be competent, possess high integrity, and be selected based on a clearly defined appointment policy to safeguard them from malfeasance. New Zealand, for example, has a structured selection process in place where a specialized advisory body has a formal role in selecting candidates based on qualifications and integrity and a structured and transparent nominations process.¹⁸ Bringing in independent members to strengthen board decision-making and to chair the board's ethics, audit and risk committees can help prevent illicit activity from taking place. Good practice boards also maintain and update a register of conflict of interests and incorporate transparency practices, such as documentation on the voting of board

members. They also have the power to hire the CEO through a transparent and competitive process and to hold the CEO accountable for maintaining high standards of integrity. Committed management plays a key role in establishing, implementing, monitoring, and reporting on integrity programs.

- **Establishing effective internal controls, compliance, and risk management functions in the SOE.** Brazil, Colombia and various other countries have established policies and structures to manage risks proactively (e.g. confidential reporting, follow-up on reported incidents) and to counter pressure and undue influence while recruiting qualified staff with access to resources and top management structures. Sound internal controls and compliance systems can help manage risk, investigate alleged misconduct, and measure any financial implications. Their role is to lead and oversee the program, initiate investigations, monitor and receive reports from ethics hotlines, and provide guidance to staff. Broader institutional and governance factors may play a role in determining effectiveness of such systems—but strong, explicit, and visible commitment from the board and senior management is essential.
- **Countering corruption in high-risk activities and operations.** Key measures include the adoption and implementation of transparent procurement processes and e-GP, including the selection and appointment of third parties; monitoring of contracts and projects; actions on “red flags”, such as rush orders or changes in contract specifications after a project has started; and whistleblowing lines for raising concerns about bids and contracts.¹⁹ In Angola, the Public Procurement Law was updated to include lowering the threshold for contracts subject to public tender, the creation of a national procurement portal, and a list of companies certified to undertake construction work for the government. The Law also included a chapter on ethical behavior in the planning and execution of public contracts, including requirements for impartiality and avoiding conflicts of interest, fraud, and corruption, legal compliance and confidentiality. Integrity pacts can help ensure a transparent process with oversight by civil society organizations to monitor compliance. A register can be developed and used for risk assessment and to design the due diligence process for third parties. Strengthening the capacity of SOEs and

procurement agencies to hold corrupt officials to account and ensuring cooperation between various national enforcement agencies are also key to anti-corruption.

- **Promoting transparency and full financial disclosure, including of SOE debt.** In addition to financial reporting, SOEs are reporting more non-financial information, e.g. corporate governance and organizational structure, commercial strategy objectives and risk, KPIs and social objectives, engagement with stakeholders and interest groups, and anti-corruption initiatives. A good practice example shown in the case study is the Medellín SOE in Colombia, which promoted a citizen-centric approach to transparency. In the aftermath of the Petrobras scandal, Brazilian SOEs are required to publish annual and interim corporate governance and internal reports, as well as sustainability reports, in line with the Global Reporting Initiative, while providing reasons for non-compliance if not published.²⁰ Other countries are developing transparency plans that require SOEs to also publish information on the compensation of executive staff, advisors and associates and to disclose risk factors and internal control structures and reports. State auditors are increasingly reporting on both the state's role in promoting integrity and on governance within SOEs, although care should be taken to ensure that such reporting is not used for improper interference in SOE operations. There is growing coordination with banks, financial regulators, and public procurement agencies to verify asset disclosures and provide full reporting. In Angola, the 15 largest SOEs will be required to publish their audited annual reports on the SOE oversight institute's website (IGAPE).
- **Digitalizing financial and service delivery information to improve the accuracy of information available to the public.** Digitalization reduces corruption and facilitates advocacy and citizen participation. Service users are best placed to monitor the services on which they depend, due to greater incentives and information, as well as the possibility of face-to-face interaction with frontline providers.²¹ In Colombia, EPM, a commercial SOE wholly owned by the Medellín municipal government that provides infrastructure services, created "Puntos fáciles" (Easy points) that are self-service spaces where customers and users can use new technologies to improve experience,

facilitate interaction with the company, increase transparency, and reduce corruption. A mobile app gained strength as active users and customers grew by 65 percent from one year to the next. Several private institutions helped to incentivize alliances while promoting effective and transparent programs through informed and participatory citizens. And in the Philippines, an NGO called Concerned Citizens of Abra for Good Government (CCAGG) trains community beneficiaries to conduct audits and monitor project implementation in order to reduce corruption in the construction of public works.

- **Facilitating citizen engagement in holding SOEs to account for performance and providing feedback to management on service delivery issues.** Facilitating citizen engagement is an effective way to fight corruption. In Colombia, citizen monitoring tools that SOEs have developed can be even more effective than pure rules-based anti-corruption policy or traditional corporate governance approaches (which are nevertheless important). EPM, the Colombian power giant, is a leader in fostering citizen participation although it has not been immune to controversies. EPM overcame challenges through its track record of adopting a community-based approach against corruption and mismanagement. As the case study shows, in response to corruption allegations, civil society in Colombia created a surveillance committee to oversee the decisions taken by the Mayor of Medellín and any action that could negatively affect the SOE. A professional union was also created with the sole purpose of shielding the SOE from political interference in its corporate decisions. The citizen-centric culture appears not only to have persisted over time, but also to have grown, both in Medellín and the regions where the SOE provides services.

Conclusions

As this chapter including the accompanying case studies shows, tackling SOE corruption is critical to reducing negative economy-wide impacts and to creating an environment of trust, transparency, and accountability. Well governed SOEs are better equipped to raise integrity standards and culture, protect their reputation and that of the state, and give confidence to stakeholders. In turn, they are better able to access finance and attract private investment to grow their business. By being more transparent and accountable, they support sustainable development. EPM, the SOE in Medellín, Colombia, is such a case. Indeed, academic research, case studies, and experiences show that companies that adhere to good governance and ethical standards perform better financially in the long run than those without such a commitment, and that companies that take concrete steps to implement ethical values outperform those that do not go beyond a declaration of commitment to business ethics.²²

Combating corruption and building a culture of integrity is easier said than done and the real challenge is one of implementation. The needed reforms can be politically contentious and challenging to implement, and may not be feasible, or necessary, to put in place all at once. Overcoming the challenges can be difficult but experience shows that it can be done by paying attention to the reform process itself. Phasing or sequencing of SOE reforms based on their political and institutional feasibility can help overcome entrenched interests and provide confidence to policy makers to take further steps. The Angola case study illustrates this. Where opposition is strong, reforms can start with less controversial actions aimed at supporting improvements in SOEs, such as putting independent directors on SOE boards, establishing codes of conduct, and enhancing information disclosure. In the case of Brazil, most of the reforms to date have focused on necessary updates to the legislative framework; going forward, implementation will be key to achieve results and assure sustainability. Supporting improvements in a few key companies could also demonstrate concrete results. Establishing new SOE laws and building institutional capacity may take time, but changes in mindset and behavior are likely to occur as other reforms take hold and create pressures for more reform. And building support for reform among stakeholders and the public can help strengthen SOE integrity.

Finally, reforming governance of SOEs, although necessary, may not always be enough to prevent corruption. Such reforms are often accompanied by additional measures, such as SOE restructuring, which may involve breaking large SOE multi-layered enterprises into smaller business units or bringing opportunities for greater private sector involvement in the operations, management or even ownership of SOEs through PPPs or privatization, when the necessary conditions are being met. Such conditions include reduced or contestable market share and economic dominance; transparency over ownership, operations and finances, including SOE debts; increased capacity for monitoring and oversight; and improved efficiency. The evidence shows that privatization or public-private partnerships have brought big gains for many SOEs, in both competitive and non-competitive sectors, with respect to efficiency, transparency and accountability, and integrity. Gains come from ensuring that the privatization process is done correctly. This means tailoring privatization to local conditions. It also means emphasizing the policy and institutional underpinnings of market operations rather than focusing solely on privatization transactions. This requires developing and protecting competitive markets, creating proper regulatory frameworks before privatization to ensure efficiency and equity, developing social safety nets for those adversely affected, and introducing innovating pricing and subsidy mechanisms to ensure that the poor have access to affordable essential services.

Strengthening transparency of the privatization process is essential and requires a host of measures. Especially important is ensuring that transactions occur without special privileges for insiders or other favored purchasers, so that there is a level playing field with potential competitors. A key lesson is that introducing and enforcing transparency in the sales process is essential to ensure that privatization does not lead to state capture or corrupt transactions. Promoting competition in the privatization process may be the most effective way to support transparency, while also yielding maximum economic and financial benefits. Where privatization or private sector participation is not a viable option, SOEs can still be exposed to capital market discipline through partial listings. Removing barriers to entry and exit is also important, and broader reforms to develop the private sector should continue.

CASE STUDY 7

STATE OWNED ENTERPRISES

Enhancing SOE Accountability in Colombia

A citizen-centric approach to increase efficiency and enhance accountability in the Medellín SOE

Introduction

Poverty and inequality, corruption and chronic violence tormented Colombia in the 1990s. The city of Medellín was one of the most affected, with the homicide rate oscillating between 245 and 400 per 100,000 in the early 1990s. The high murder rates coincided with rapidly increasing rates of all kinds of crimes against property and people, as the criminal justice system nearly collapsed.²³ In an effort to restore peace and advance broader reforms in the country, engaging civil society was a staple part of Colombia's efforts.²⁴ This was important because Colombia already had a very active and engaged civil society.

A profound change process started with important legislative amendments, including changes to the Constitution, followed by all-encompassing reforms, which continue to this day. The new Constitution of 1991 introduced significant revisions, such as the new model of economic development that also targeted the SOE sector. As a result, public utilities were opened to private investment, which also allowed free agent entry and competition. Following that key step, the Colombian Congress strengthened the legal framework for the electricity sector through the issuance of critical laws.²⁵ All these legislative changes provided the foundation on which the Colombian SOEs later built their success.

Empresas Públicas de Medellín (EPM), a commercial and industrial state company wholly owned by the Medellín municipal government, illustrates how sector reforms were successfully introduced in a very challenging environment, which in the 1990s included very high levels of corruption and extraordinary violence. It also shows how these reforms evolved through a long process which originated in legislative changes and continued in a quest to strengthen transparency, citizen engagement, and corporate governance. Indeed, Colombia can be considered as good practice in the area of SOE reforms both in terms of the breadth and depth of its legislative changes and, even more importantly, in terms of implementation—the how of the reforms, not only the what. Although certain challenges remain, EPM showcases the importance of enforcing good standards and putting in place practical tools. What sets EPM apart from its Colombian and Latin American peers is its effective community-based or citizen-centric approach to improve service delivery, increase transparency, and prevent corruption. The transparency that came with this approach and the citizen monitoring tools the Colombians put in place were very effective mechanisms, perhaps even more than pure rules-based anti-corruption policies or traditional corporate governance approaches, which nevertheless remain important.

Fostering transparency in the Medellín SOE

The Empresas Públicas de Medellín (EPM) or the Medellín SOE is providing public utilities—including water, gas, electricity, and telecommunications—in the Colombian city of Medellín. In addition, EPM has a majority stake in and management control of 44 companies in Colombia and five other countries. Since 1957, EPM has included transparency towards the public as one of the basic principles of its business culture. From the start, it appears that there has been

awareness that EPM, although an autonomous body, is also a public service and, therefore, ‘ultimately owned by the citizens of Medellín’.²⁶ This has helped to foster a policy of transparency towards the public, which is kept well informed about its different activities through both the press and other means of communication. EPM identifies citizens as a paramount factor in ‘shielding’ it from political changes or decisions that could affect its sustainability and fosters mechanisms of communication with the community and social control.

This has also been noted by *Corporación Transparencia por Colombia*, the Colombian chapter of Transparency International, which in its 2016 measurement of the

BOX 3.1

About Empresas Públicas de Medellín

EPM is a decentralized municipal entity, created in 1955 as an Autonomous Public Establishment and transformed into an Industrial and Commercial State Company (EICE) of a municipal nature in 1997. As an EICE, EPM has legal personality, administrative and financial autonomy and its own capital while, as a public service company regulated by Law 142 of 1994, its acts and contracts are subject to private law, except when expressly indicated otherwise in the Constitution or the law. EPM’s purpose is to provide public aqueduct, sewage, energy and gas distribution, mobile telephony and other telecommunications services. It can also provide street cleaning services and undertake any other complementary activity related to all these public services and the treatment and reuse of waste. In addition, under its statutes, the company can enter into any type of contract or partnership or form consortia with other individuals and legal entities for the purpose of achieving universality, quality and effectiveness in the provision of public services to its users, fostering general welfare and improvement of the population’s quality of life.

Although the owner of EPM is the Medellín municipal government represented by the Mayor, in practice, the citizens of Medellín consider themselves to be the real ‘owners of the company’.²⁶ Along with the requirements established by the company’s Board for the development of its corporate governance practices, this perception is one of the key factors that has contributed to protect EPM from possible interference in its administration and strategy, with citizens looking out for and protecting the company from interference that could be detrimental to the SOE’s purpose. This has been accompanied by the development of a corporate culture under which citizens consider themselves ‘the DNA of the company’. In fact, as a response to corruption allegations, the civil society created a surveillance committee to observe and control the Mayor’s decisions and actions that could negatively affect the company. Also, a professional union was created with the sole purpose to isolate EPM and shield it from political interference in its corporate decisions. This culture appears not only to have persisted over time, but also to have grown, both in Medellín and the regions where EPM currently provides services.

Source: Empresas Públicas de Medellín. EPM.²⁷

components of dialogue and control, highlighted EPM's commitment to promoting citizen participation in control of its management. In the business transparency assessment 2018, EPM obtained a final score of 89.6/100 average points, standing as a company with a low level of corruption risk. This assessment indicates how well the policies and mechanisms prevent corruption risks, facilitate access to information, and promote spaces for dialogue and participation with the different stakeholders. For more than 10 years, EPM has participated voluntarily in the business transparency assessment promoted by *Transparencia por Colombia* Corporation. The overall goal of the business transparency assessment is to improve transparency and anti-corruption standards and serve as a tool that identifies institutional designs and practices that lead to corruption risks.

In *Medellin Cómo Vamos* (Medellín How Are we Doing?), an annual Citizen Perception Survey on quality of life in different areas and strata of the city, EPM regularly occupied the first or second place of citizen trust. In 2018, 88% of the population had a favorable image of EPM and 77% rated their business management as good or very good.

The implementation process

Corruption has long been a significant problem in South America and Colombia and remains a challenge even today. In 2018, the country ranked 99th out of 180 countries in Transparency International's Corruption Perceptions Index.²⁹ According to the *AmericasBarometer 2017*, published by the Latin American Public Opinion Project³⁰ the perception of corruption in Colombia reached 74.9%. This is also reflected in the World Bank's *Doing Business* which indicated that, in the view of businesspeople, corruption is the factor, which most hampers companies' competitiveness.^{31,32}

In a challenging environment, EPM has had a unique and successful approach to increasing transparency and strengthening corporate governance. Rather than making the anti-corruption agenda a goal in itself, the SOE placed citizens at the center of its policies and focused attention on improving service delivery and maximizing profits. Consequently, the company reached unprecedented success, although it has not been immune to controversy.³³

Strengthening corporate governance

During 2018, EPM evaluated the boards of directors and managers of its companies. The strengthening plans were implemented and executed throughout the year, and the rules of procedure of the international affiliated companies' boards were unified. As of 2020, those rules were in the process of being adopted.

During 2018, EPM's Ethics Committee met, with support from an external advisor. Progress was made in the analysis of "ethical dilemmas", and the adjustment to the organizational structure of ethical management was approved as an opportunity for improvement and to assure the implementation of the Ethical Management Model that began to operate in 2019. Each one of EPM's affiliates defined elements for ethical management, according to their characteristics and dynamics and based on some minimum aspects approved by the EPM's Ethics Committee. A roadmap for the implementation of the Ethical Management Model was designed and adopted with support from donors.

EPM also strengthened the ethical and transparent management practices with suppliers and contractors. In addition to the warning made to suppliers and contractors for making false purchase orders in the name of the company and its affiliates, EPM decided to strengthen the "Zero hour for procurement" strategy. For this purpose, familiarity with the Code of Conduct was reinforced, and relevant information related to the procedure for submitting purchase orders was adjusted and provided to contractors.

In February 2018, the Transparency and Integrity Strategy for small and medium enterprises (SMEs) was launched with support from donors and the Colombian network of United Nations Global Compact. The objective was to strengthen the capacity of SMEs to identify processes susceptible to corruption and implement actions for their protection, in accordance with Law 1778 of 2016. In October 2018, EPM created a Committee to recommend actions when cases of non-compliance with the Code of Conduct for Suppliers and Contractors of Grupo EPM or risks associated with engagement with third parties are detected.

Improving citizen engagement

EPM developed several practices to facilitate its

engagement with citizens. As a base for this engagement, EPM holds a public event that is broadcasted on local television with live questions from journalists and the presentation of its Annual Sustainability Report as well as other community engagement and educational programs.³⁴

In 2019, EPM created a new communication channel called “Transparent Contact” where citizens could report acts of fraud and corruption involving officials and contractors. The initiative sought to prevent and eradicate bad practices and create a transparent working environment. Citizens could make reports through a web page, a free hotline, email, or fax. “Transparent Contact” aimed to improve detection of conflicts of interest, unethical behavior and other types of irregularities, and enable EPM to act with greater speed in responding to such situations.

Since 2019, EMP has enabled other citizen participation spaces by the release of various *participation exercises*,

which are intended to consult and/or inform the public on different relevant matters. For instance, through these mechanisms EPM has asked the public for ideas on how to make EPM a more innovative company and has consulted their opinions on how they wish to receive information regarding high visibility projects.

Providing citizens with digital tools to facilitate access to information, improve experience, and increase transparency

Digitalization reduces opportunities for petty corruption and facilitates transparency, advocacy, and citizen participation. Service users are best placed to monitor the services on which they depend, due to greater incentives and information, as well as the possibility of face-to-face interaction with frontline providers.³⁵

In order to improve the experience of customers and provide them with more options, EPM enhanced self-

BOX 3.2

Power Sector Reforms in Colombia and the Success of EPM

Colombia’s experience of successfully advancing reforms in the power sector showcases many lessons for policy makers and practitioners. One of them is related to the country’s ability to reach compromise and accommodate the competing interests of national and municipal governments. Consensus was critical to the successful implementation of an ambitious reform agenda.

Colombia’s power sector has long combined national-level power utilities, controlled by the central government, along with powerful municipal utilities—notably EPM in Medellín and EEBB in Bogotá. Together, these companies accounted for about 40 percent of electricity distribution in the country. There had long been tension over the allocation of roles between central government and municipal actors in the sector, and this came to a head when the sector reform laws of 1994 called for privatizing the utilities. The municipal governments objected, and a compromise allowed EPM and EEBB to remain vertically integrated public utilities if they separated the accounting of their generation and distribution activities and abided by new restrictions on market shares in their activities.

EPM flourished under the new regulatory framework and remains to this day a successful, vertically integrated publicly owned utility and one of the main actors in the power sector. EEBB was unable to turn its performance around and eventually underwent vertical separation and privatization.

Source: WB Rethinking the 1990s Orthodoxy on Power Sector Reform, Flagship Report, June 2019³⁷

service solutions and digital channels. Six spaces were enabled in strategic areas of the city of Medellín, called “Puntos fáciles” (Easy points). These self-service spaces are equipped with technological devices so that citizens can use new technologies with the aim to have a better customer experience and easier interaction with the company. Users can perform up to 20 types of online transactions, which reduces transaction costs and increases transparency.³⁶

During 2018, EPM managed to interact with more than 601,000 people from all over the country, by conducting educational activities with the community. Through the strategies *Por ti estamos ahí* (We are there for you) and *Cercanías* (Surroundings) 80 programs were developed in the country, in which EPM talked with 159,000 people about the provision of residential public services. With the *Cuidamundos* (Take Care of the World) program, EPM interacted with more than 72,000 students, seeking to encourage care for the environment and promote the proper use of public utilities.

Seeking to consolidate EPM as a strategic ally of its corporate customers and leverage commercial offers, various business outreach programs, including academic and regulatory events, were conducted in 2018, in which more than 1,000 employees of government institutions and about 5,000 employees of EPM customers participated. In addition, 300 industrial customers received academic advice and 586 small businesses participated in energy efficiency awareness campaigns.

Reflections

Preventing corruption and increasing transparency in the SOE sector is critical to reducing negative economy-wide impacts and to creating an environment of trust, transparency, and accountability in which SOEs operate. The case of EPM shows that better governed SOEs are better equipped to raise integrity standards and culture, protect their reputation and that of the state, and give confidence to stakeholders, especially investors and consumers. This is critical since better governed SOEs are also better able to access finance through capital markets and attract private investment to grow their business. By being more transparent and accountable, they support sustainable development.

The case of EPM emphasizes several good practices that stand out and from which practitioners and policy makers around the world can learn. These lessons can be easily replicated, especially in those contexts where there is a vibrant civil society and citizens are active and feel empowered to play a role in the quality of the services that the state is providing, as is the case in Colombia. EPM’s corporate culture promoted the idea that the SOE is ultimately owned by the citizens of Medellín, a culture which in turn fosters transparency and helps prevent corruption. Although certain challenges remain, EPM can be commended for its efforts to continuously enable citizen participation through innovative tools, such as the creation of special purpose spaces and channels. Through a range of mechanisms, it is asking the public for ideas on how to make EPM a more innovative company and on how they wish to receive information on subjects of interest.

Here are a few practices that stand out:

1. EPM developed several good practices to facilitate engagement with customers. For example, the corporate governance model of EPM is highly participatory as provided by the Law of Domiciliary Public Services (Law 142 of 1994).
2. EPM’s new communication channel “Transparent Contact” can be used by citizens to report acts of fraud and corruption that involve officials and contractors. This is a multichannel tool that includes a web page, a free hotline, an electronic mailbox and a fax, through which the community may report acts associated with fraud, corruption, or violation of the norms or policies established by EPM.
3. The Medellín *Cómo Vamos* (*Medellín How Are We Doing*) Program is a private inter-agency alliance with the objective of evaluating changes in the quality of life of the city of Medellín from the perspective of its inhabitants. This involves several private institutions to incentivize alliances and promote effective and transparent government through informed and participatory citizens.

CASE STUDY 8

STATE OWNED ENTERPRISES

SOE Reforms in Brazil following “Lava Jato”

Increasing integrity in Brazil’s state-owned enterprises following the “Lava Jato” corruption investigations

Introduction

In 2014, Brazil’s *Operação Lava Jato* (Portuguese for “Operation Car Wash”) exposed one of the largest corruption scandals in the world and resulted in the largest corruption investigation by the Federal Police in Brazil’s history. Operation Car Wash, which started as an investigation into money laundering, eventually uncovered corruption in contracts worth billions of dollars that had been awarded to construction companies across Brazil. One of the worst offenders was Odebrecht, the largest construction conglomerate in South America.³⁸ Investigations centered on contracts with state-owned enterprise (SOE) Petrobras, the Brazilian Petroleum Corporation, but later revealed that corruption was embedded in virtually all public investment contracts in Brazil. Investigators implicated high-level politicians in Brazil and at least 11 other countries in Latin America and beyond (see Box 3.3: The Impact of Operation Car Wash across Latin America).

The multi-billion-dollar corruption scheme at Petrobras was intricately woven into the fabric of Brazil’s political parties and dated back to at least 1985, when Brazil transitioned to democratic rule. Board and executive appointments at Petrobras rested in the hands of political parties that formed coalition governments.

These coalition governments appointed intermediaries as directors of Petrobras and tasked them with ensuring a flow of funding back to their respective parties and allies. Political leaders achieved this through systematic bid rigging, involving a cartel of all the major construction companies, to pass funds to the intermediaries in order to finance their parties and in most cases their own personal wealth. Investigators also accused external independent auditors of aiding Petrobras in misrepresenting its business and financial operations.

Though Brazil’s largest SOEs may have appeared to have sufficient standards in place for corporate governance (e.g., listings on foreign stock exchanges), the unprecedented actions taken by the justice system forced into the public view the gaps in law, as well as the previous lack of enforcement. Following the revelations, civil society demanded radical change, with particular focus on strengthening the governance of SOEs. Robust corporate governance, therefore, was regarded as an antidote to corporate-level corruption by promoting transparency and better grounds for accountability.³⁹ A new Anti-Corruption and Money Laundering Strategy is proposing concerted action on multiple fronts to mitigate corruption risks going forward (See Box 3.4: Brazil’s National Strategy Against Corruption and Money Laundering, ENCCLA).

BOX 3.3

The Impact of Operation Car Wash across Latin America

At their core, the crimes in the Lava Jato cases are connected to public investment contracts involving the main construction groups in Brazil, as well as financing by the Brazilian Development Bank. Among these companies, Petrobras was the most deeply implicated. The company had essentially been used as a slush fund by all politicians and officials to enrich themselves and to finance their political campaigns and gain influence at home and abroad.

Investigations into the Lava Jato scandal have led to prison sentences for top executives and politicians. According to the Public Prosecutor's office, by October 2018, Lava Jato had resulted in more than 200 convictions, including corruption, abuse of the international financial system, drug trafficking, and money laundering. More than a dozen other corporations and multiple foreign leaders have also been implicated in Lava Jato, mainly through Odebrecht, which used the Brazilian system of bribing politicians of many parties, to maintain a patronage relationship. Those caught up in the corruption include Venezuelan President Nicolas Maduro and four former Peruvian presidents as well as the leader of a Peruvian political party (Keiko Fujimori).

The financial losses to Petrobras were huge. Petrobras itself estimated in its 2015 financial report that USD2.1 billion had been paid in bribes. In addition, it proposed almost USD17 billion in write-downs due to fraud and overvalued assets (including wasted investments, which nevertheless produced resources for political financing) which the company characterized as a "conservative" estimate.⁴⁰ Due in part to the impact of the scandal, as well as to its high debt burden and the low price of oil, Petrobras was also forced to cut capital investments and announced it would sell USD13.7 billion in assets over the following two years.⁴¹ By mid-2018, the corruption scandal was believed to have erased more than USD250 billion from Petrobras's market value. The oil giant has also lost billions more in legal settlements and other costs related to graft, including a USD853 million settlement with the U.S. Department of Justice, the Securities and Exchange Commission, and Brazilian authorities. Petrobras appears to be now recovering modestly as its share price recovered from a low of USD3.8 in 2016 to over USD15 as of November 2019.

Provisions in the new SOE framework to promote transparency and corporate governance

The Operation Car Wash investigation exposed many systemic problems in the governance of Brazil's SOEs. For example, it revealed the complexity of Brazilian SOE ownership arrangements, with a multitude of institutions involved in SOE reporting and oversight leading to information asymmetry and diffuse accountability relationships. In addition, state and local governments' reliance on a corrupt system of party financing meant that traditional accountability mechanisms were not

effective constraints to corruption and rent extraction.

In 2015, the Ministry of Transparency, Monitoring and Control (MTMC) prepared a Guide for the Establishment of Integrity Programs in State Owned Enterprises. The guide recommended that companies prepare their own integrity risk assessments and, on this basis, prepare their own integrity programs. The guide provided ideas and suggested measures to strengthen integrity in SOEs, including in the area of procurement through measures such as rotation of purchasing personnel.

In 2016, the government passed the Law on the Responsibility of Federal State Companies, which aimed to strengthen the internal control environment in SOEs through the introduction of fiscal councils and internal

BOX 3.4

Brazil's National Strategy against Corruption and Money Laundering (ENCCLA)⁴²

Expected results under the new Strategy:⁴³

- Development of the National Network of Money Laundering Laboratories (Red-LAB) and development of the Bank Transfer System (SIMBA), the standardization of layout for judicial decision involving bank secrecy;
- Development of the Account Register of National Financial System (CCS) and the initiative to regulate the declaration of assets and values of civil servants;
- Regulation of access by supervisory bodies to the accounting records of entities contracted by the public administration;
- Improvement of border control procedures;
- Proposals for rules to regulate the utilization of cash and cryptocurrencies in order to prevent money laundering;
- Development of the National System of Seized Goods (SNBA), administered by the National Council of Justice (CNJ) and the promotion of early disposal of assets, resulting in the improvement of the institute, later modified by Law 12,683 /12 and Law 12,694/12;
- Discussion and draft of the text of Law No. 13.810 of 03/08/2019 providing for the enforcement of sanctions imposed by United Nations Security Council resolutions, including the unavailability of assets of individuals and legal entities, and the national designation of persons investigated or charged with terrorism, its financing or related acts;
- Elaboration of a booklet for the guidance of public procurement officials (based on problems already identified by ENCCLA institutions);
- Discussion and debate about whistleblowing and production of a draft law for its regulation; and
- Recommendation for the establishment of specialized financial crime units in the Federal Police.

audit committees. The law also aimed to increase transparency around contracting and procurement, which was the main channel of kickbacks exposed by Operation Car Wash. Its implementation will be key, but the proposed instruments can be considered good practices by SOE practitioners and policy makers in the region and beyond.⁴⁴

Since 2016, SOEs in Brazil are required to establish an internal audit function which reports directly to the board and the audit committee. SOEs' internal audit function, including the nomination and dismissal of the head of the internal audit unit, is supervised by the MTMC. The state audit office undertakes financial, operational and investigative audits of SOEs. The MTMC published

guidance to support SOEs in implementing internal integrity programs. The Commission of Inter-sectoral Corporate Governance and Property Administration (CGPAR) approved a Resolution to require that all SOEs have an audit committee that reports to the board.

All SOEs must also have a Fiscal Council, a governance body that monitors management's activities and financial statements and reports to shareholders. The head of the internal audit unit may report directly to the Council on the implementation of aspects raised in the reports and by the Council.

Under the Access to Information Law (Law 12527/2011) and Decree 7724, public institutions—including

SOEs—are required to disclose information such as their internal hierarchy and structure and public procurement processes. This legislation also requires SOEs and other public institutions to establish channels for receiving information requests from the public, which shall be treated and responded to within the timeframe indicated in that law.⁴⁵

The implementation process

Introducing codes of conduct

After the law passed, all SOEs had to develop their own internal code of conduct or code of ethics, outlining in detail the expected behavior of staff and senior management, including clearly outlining what is acceptable and what might constitute conflict of interest or illegal activities. All federal SOEs had prepared and published their code of conduct as of end-2018.

Establishing statutory audit committees

The new law required that all companies establish “statutory audit committees” which would be responsible for hiring and overseeing both internal and external auditors. In addition, the committees would be responsible for receiving anonymous reports of any practices that violate the company’s business and ethical guidelines. The government expects the audit committees to strengthen internal controls and the ability of company boards to uncover and prevent corruption.

Just over 70 percent of federal SOEs had audit committees in place by early 2018 and nearly 90 percent had a whistleblower mechanism in place.

The requirement of audit committees is an overdue development for the larger SOEs, especially listed ones. Brazil has traditionally used a system of “fiscal councils” (conselho fiscal) as an equivalent to an audit committee, which had proved to be not very effective.

Revising the process for appointing board members and senior management

The new law introduced clearer requirements with regard to technical qualifications and professional

experience for appointing senior SOE management or board members. In addition, the law prohibited civil servants from holding such positions.

Increasing transparency in the procurement process

SOEs continue to be exempt from public procurement rules, but the new law imposed further restrictions on direct procurement and also required increased transparency with regard to the costing of bids and any contract amendments. Item costs (sometimes estimates) will be published while the overall financial bids remain confidential. SOEs can negotiate with potential suppliers before bids are awarded.

Monitoring and enforcement

The 2016 law is a late acknowledgement that this area had to be strengthened, according to best practices already in place in many other countries. Another development to underscore is the role of the Supreme Audit Institution (SAI)—“Tribunal de Contas da Uniao” in pursuing the corruption scheme.

The stricter controls requirements introduced in 2016 will not be enough. The changes in legislation call for active enforcement and monitoring in order to ensure effective application of the law. This means that the SAI and the state internal audit arm (the Office of the Comptroller General) will have to play an active role in order to advance the anti-corruption agenda beyond the corporate governance measures taken at the SOE-level.

Reflections

The lessons from Brazil’s SOEs can be looked at from two perspectives: (1) the actions that initially exposed the corruption and punished it, and (2) the actions that have been taken since to reduce the risk of future corruption in SOEs.

First, the actions that were exposed by Lava Jato should be viewed against the backdrop of the system of political financing. Brazilian legislation provided sitting cabinet members and other federal elected officials with special standing as they could only be tried by the



Federal Supreme Court. Cases against politicians move slowly through the court system. De facto, politicians enjoyed “practical immunity from prosecution” in the words of Matthew M. Taylor.

For a few years, reform of criminal justice and the criminal procedural code and strengthening the justice institutions led to and facilitated the investigation that disclosed the scandals. In particular, the Government of President Dilma Rousseff promoted two key laws in 2013, which allowed reduced sentences for individuals and corporations engaged in criminal activity if they denounced others and produced evidence to support the allegations. This, combined with years of capacity building and training in the justice and police sector (particularly in the pursuit of money laundering), allowed the judiciary and the police to unravel corrupt networks, which had been impossible previously.

Some of the specifics that were essential to exposing the corruption included:

- The creation of task forces by the police and federal prosecutors to concentrate effort and resources on the investigation and to prosecute serious bribery and money laundering crimes;
- The use of pretrial detentions only in cases in which there was strong evidence of the crimes or in which detentions would prevent new crimes from being committed;
- The use of plea agreements to disrupt complicity and secrecy between criminals and to advance investigations;
- Extensive international cooperation and support from Switzerland, US, and other countries;
- Trying cases under public scrutiny, from evidence and arguments to judgments;
- Speedy criminal procedures and trials; and
- Strong public backing to prevent attempts by powerful defendants to obstruct justice.

The second lens that is important is what the Operation Car Wash investigations triggered as a response. As noted above, the Brazilian government responded with legislation to improve the integrity of SOEs and align Brazil with international best practices on corporate

governance.⁴⁶ The government and the legislature in Brazil provided a robust technical response to an unprecedented crisis by adopting a comprehensive legal framework for procurement in SOEs, filling in a significant gap, and bringing innovations to the way SOEs procure goods. However, it is not clear to what extent the 2016 law alone can have the desired impact, as the root problem is a combination of private sector collusion with public sector extortion to finance the political system. Implementation of the laws is at a critical juncture and will determine their final impact. The story line so far is complex and still evolving. Civil society will undoubtedly be watching closely.

Brazil is a signatory to the OECD Anti-Bribery Convention, which establishes punishments for individuals and companies bribing public officials from other countries in order to gain an advantage in international transactions. As part of Brazil’s commitment under the working group, the country undergoes regular evaluations/assessments of its overall legal and institutional framework to combat corruption.

The OECD working group on corruption expressed concern that there is a slowdown and/or reversal in the fight against corruption in Brazil. Specifically, the Brazilian Senate has approved a Bill on Abuse of Power, which includes an overly broad definition of the offense of abuse of authority by judges and prosecutors.

Some critics argue that this new law could serve as a mechanism for corrupt individuals to unfairly attack justice-seeking prosecutors and judges for appropriately doing their jobs and have a significant chilling effect on anti-corruption prosecutions and investigations in Brazil and beyond. The new law was prepared in response to concerns about abuse within the judiciary, prompting a backlash against the recent anti-corruption drive, which some see as politically driven.

In mid-November 2019, the Brazilian Supreme Court ruled to end the mandatory imprisonment of people convicted of crimes who are appealing their cases. The decision of the Supreme Court to halt investigations and criminal proceedings based on reports from administrative agencies, including financial intelligence units, tax authorities, etc., caused some concern, as this would restrict the ability of such agencies to investigate corruption-related offenses.

CASE STUDY 9

STATE OWNED ENTERPRISES

SOE Reforms in Angola

Addressing systemic corruption in Angola's SOEs through strong political commitment

Introduction

Corruption scandals related to the SOEs in Angola made headlines at the beginning of 2020 in newspapers across the world.⁴⁷ However, the phenomenon of corruption is not recent. It was particularly intense in the years following the end of the civil war in 2002 as tens of billions of dollars in oil revenue had to be managed by weak institutions and public financial management systems. Vested interests, weak control and oversight, and the absence of checks and balances were a few of the country's many problems. Both petty and grand corruption have long thrived in Angola and given the resource rich nature of the economy, it involved staggering amounts of public money.

This widespread nature of corruption is well documented in numerous governance and anti-corruption assessments by the donor community. Angola fairs badly in world rankings: it was ranked 165 out of 180 countries on Transparency International's 2018 Corruption Perceptions Index. The World Bank Governance Indicator for Control of Corruption places Angola at a similar percentile rank as in 2000. It has been estimated that USD28 billion of government spending was unaccounted for between 2002 and 2015 and billions of dollars have been transferred often illicitly from Angola to offshore accounts, which has led to the country being listed in 2016 as a high-risk and non-cooperative jurisdiction on anti-money laundering and combating the financing of terrorism. While generally seen as weak, some anti-corruption laws and institutions have been put in place over the

years, but the system overall suffers from powerful vested interests.⁴⁸

The current political commitment and strong discourse to tackle corruption in the country in general and in the oil sector in particular, coming from the highest political level, represents a unique opportunity to tackle corruption in Angola and introduce credible reforms with a long-term impact. This can be aided by the increased engagement from international institutions with a strong governance agenda and expertise to build effective anti-corruption frameworks.

Corruption in the oil and diamond sector and the role of SOEs

The oil and mining sectors in Angola are considered especially high-risk areas for corruption. Clientelist networks generally govern the way business is conducted in Angola, with many Angolan companies functioning as front organizations for government officials whose integrity and accountability are frequently questioned by observers. Active and passive bribery, illicit enrichment and conflict of interest are criminalized by the Probity Law,⁴⁹ but offenses are rarely prosecuted.⁵⁰

As Africa's second-largest oil producer, Angola has vast petroleum wealth, which is licensed exclusively by its SOE, Sonangol. It has ventures in a swath of other

sectors, including air transport, telecoms, banking and insurance, and real estate, to support its core business. In 2018, its turnover was USD18 billion. By 2015 Sonangol was in a deep crisis. The falling price of oil and longstanding inefficiency were draining the company's revenues. With oil the keystone of the Angolan economy, responsible for a third of its GDP and 90% of its exports, a bankrupt Sonangol would mean economic catastrophe. The government took drastic action. By decree of the then president, José Eduardo dos Santos, a committee to restructure the Angolan oil sector was constituted, and it invited a Maltese company, Wise Intelligence Solutions, to coordinate a group of consultants to advise on reforms. Wise's owner was the president's daughter, Isabel dos Santos. Six months later, Isabel dos Santos would be granted even greater influence over the reforms. A second presidential decree announced her appointment as chair of the SOE, Sonangol, mandated with overseeing its turnaround.⁵¹

Sonangol and Resource-Backed Loans (RBL) in Angola⁵²

According to a recent study,⁵³ Angola received the largest amount of RBLs in sub-Saharan Africa. Between 2000 and 2016, Chinese lenders committed over USD24 billion worth of oil-backed loans and credit lines to Angola, most of which have been disbursed. The national oil company Sonangol has played an important role in RBLs in Angola. In addition to the Chinese RBLs, Sonangol independently borrowed large amounts from Chinese lenders. Furthermore, USD10 billion from the USD15 billion oil-backed credit line that the Angolan government signed with China Development Bank in 2015 was subsequently lent to Sonangol.

The financial flows between Sonangol and Angola's government budget were not transparent. In 2012, for example, the International Monetary Fund (IMF) uncovered USD32 billion excess of revenues over expenditures in Angola's state budget from 2007 to 2010, which was the result of Sonangol using government oil revenues to finance "quasi-fiscal operations" not recorded in official budget accounts.⁵⁴ In 2016, Angolan oil-backed loans had reached USD25 billion, which was more than half of the government's total debt. The country requested an IMF bailout in

2018, in which it committed to stop taking any new RBLs (collateralized loans) and limit how much it draws down on existing RBLs.

Researchers⁵⁵ showed that in total, two-thirds of all RBLs went to countries with poor governance standards. Countries with limited transparency and accountability of their resource sectors used those assets to secure RBLs. The countries with by far the largest amounts of RBLs in their respective region—Venezuela in Latin America (USD59 billion) and Angola in sub-Saharan Africa (USD24 billion)—both have poor resource governance scores. Data⁵⁶ shows that in roughly 40 percent of cases (21 cases), the borrowing entity was an SOE operating in the oil or mining sector. Across one dataset, the following national oil companies (NOCs) were recipients of most RBLs: Petrobras (Brazil), PetroEcuador (Ecuador), Petróleos de Venezuela (Venezuela), Sonangol (Angola), Société des Hydrocarbures du Tchad (Chad), and Société Nationale des Pétroles du Congo (Congo).

Crackdown on corruption and efforts to increase transparency in the Angolan SOE sector

In September 2017, President João Lourenço took office and initiated a crackdown on corruption. After taking office, President Lourenço started delivering on his pledges by initiating a number of economic reforms aimed at tackling corruption, graft and patronage as well as breaking up a number of artificial monopolies in the economy (most notably in the cement and telecoms sectors). At the same time, he made numerous high-level appointments in key positions and initiated investigations against a number of high-level officials linked to former President Dos Santos and his family, some of whom were put under preventive detention.

The former President's daughter, Isabel dos Santos, had been the president of the board of directors of the state-owned oil company Sonangol, until she was removed, as part of the anti-corruption and investigative efforts initiated under the new President. The son of the former President, Jose Filomeno dos Santos, was also removed as chairman of the sovereign wealth fund (Fundo Soberano de Angola, FSDEA) and subsequently charged in a fraud case concerning misappropriation of

USD500 million of public funds. His business partner, Jean-Claude Bastos de Morais, was also arrested in relation to the misappropriation case alongside the former governor of the National Bank of Angola, Valter Filipe. These are just a few of several high-level cases that have received significant attention both within and outside Angola. Norberto Garcia, another high-ranking member of the MPLA party and former director of the Technical Unit for Private Investment (UTIP) was charged with fraud, money laundering and document falsification. The former transport minister Augusto Tomas was also arrested on charges of embezzlement and corruption. Another central component of the anti-corruption policy under the current administration has been the intent to recover stolen assets first by creating a legal framework for voluntary repatriation of resources under amnesty and subsequently through coercive repatriation and confiscation of assets in lieu of stolen assets.⁵⁷

Reforms in public procurement and the income and asset declaration system

Contracting of goods and services has been deeply affected by corruption and improving public procurement constituted a key element of fighting corruption in Angola. The public procurement law was updated to include lowering the threshold for contracts that are required to be subject to public tender, the creation of a national procurement portal and a list of companies certified to undertake construction work for the government (Presidential Decree 198/16 of September 26). The thresholds for authorization of expenditure were updated in 2018 to adjust for inflation, although the thresholds for requirements for the type of procurement were not altered (Presidential Decree 281/28 of November 28 and Rectification 26/18 of December 31). The law also included a chapter on ethical behavior in the planning and execution of public contracts, including requirements for impartiality and avoiding conflicts of interest, fraud and corruption, legal compliance and confidentiality. In the past, compliance and enforcement of the legal anti-corruption framework had been a bigger problem than the legal framework itself.

Reforms to income and asset declaration were

introduced to reinforce and complement the reforms to public procurement. In Angola, income and asset declaration is regulated principally by the Law on Public Probity (Law 3/10 from 2010). Article 18 established that public officials must not, in the exercise of their functions, directly or through an intermediary, benefit from an offer by any natural or legal entity, under Angolan or foreign law. Article 27 stipulates the obligation of some officials to declare their income and assets when taking office using a specific form. The types of officials included are those elected or appointed to posts, judicial and public prosecutors, senior officials of central and local government, public institutes, state-owned enterprises, managers of public assets assigned to the armed forces, heads of local government.

In late 2018, regulations were issued for the declaration of income and assets, declaration of interests, and declaration of impartiality and confidentiality in public procurement (Presidential Decree 319/18 of December 31). The regulations were issued alongside several tools, including the ethical code of conduct in public procurement, a guide for denouncing indications of corruption in public procurement, and a practical guide for preventing and managing risks of corruption in public contracts (anti-corruption guide). Combined, the regulation and tools have been referred to as the strategy for the moralization of public procurement.

The regulations extend the requirement for income and asset declarations (IAD) specifically related to public procurement to include both senior public officials and technical staff preparing bidding documents, members of the procurement committee and contract managers. Senior officials in the public sector, including SOEs, and members of the procurement committee are also required to declare any interests in companies, business groups, consortiums or other business interests that could result in a conflict of interest (Article 2). The regulations establish that the IAD of public officials must be submitted to the highest level of authority within the procuring entity and handled in line with law 3/10 on public probity. Declarations of interest, however, must be submitted to the Inspectorate-General of the Public Administration (IGEIA), which is entitled to use them as they see fit to deliver their mandate (Article 7 and 8). This represents a shift in the IAD framework, which has to date been a closed system (IADs are submitted in closed envelopes and only opened by the prosecutor's office as part of an investigation) to a semi-open system for matters concerning public procurement.



More transparent privatization efforts involving the SOEs

Angolan SOEs have been used in the past to extend favors and lucrative contracts to party loyalists. The early 2020 ‘Luanda papers’ leaks⁵⁸ by the international consortium of investigative journalists showed the extent of the misuse of state assets for personal gain by the Angolan elite—and in particular Isabel dos Santos and her entourage. Ongoing SOE reforms in Angola include efforts to address flaws in past SOE governance and privatization processes and increase transparency and predictability, thus leveling the playing field. The Privatization Law was published in the spring of 2019 and a privatization program was presented in September. The large and ambitious privatization program is being implemented over four years. A number of minor SOEs

and state assets have been sold through international competitive bids. Sonangol, the national oil company, is implementing its own “Regeneration Program,” which includes divesting non-core businesses and reducing stakes in oil blocks. The company is expected to start divesting in early 2020.

To improve transparency and accountability of SOEs and reduce opportunities for corruption, the authorities began publishing reports on its SOE portfolio,⁵⁹ including audited annual reports of the 15 largest SOEs, at the end of 2019.⁶⁰ Ongoing structural reforms aim to reduce the large State footprint in the economy, reduce fiscal risks, and foster private sector-led development. The authorities’ home-grown reforms—including Sonangol’s “Regeneration Program” and the privatization of several SOEs—are expected to reduce State presence in the economy, curb fiscal risks, improve governance, mitigate price distortions, and increase economic efficiency. In turn, these efforts

should pave the way for private sector-led development and economic diversification.⁶¹ Under the IMF program, important fiscal risks in the economy are expected to be mitigated by the proposed restructuring of the largest SOE, Sonangol, the improved transparency of all SOE accounts and the timely implementation of the SOE privatization program, whose proceeds could be used to reduce mounting debt.

Institutional changes to increase transparency and efficiency in the oil SOE and beyond

The authorities continue to make progress on the privatization program and reform of SOEs, yet challenges remain. The public offering of the first set of SOEs/state assets took place in September 2019. Moreover, the authorities plan to continue with the disposal of non-core assets of Sonangol and to reduce some of its stakes in oil blocks. As part of an effort to streamline the operations of Sonangol, the authorities established the National Oil and Gas Agency in February 2019, which has taken over the function of concessionaire in the oil sector. The first phase of this change was completed in June 2019 and involved the new agency absorbing human resources and assets from Sonangol.⁶²

There have been many positive indications of the Government of Angola's commitment to strengthening governance and fighting corruption. In January 2019, the National Assembly approved a new Penal Code, which includes harsher punishment for both active and passive corruption. The Attorney General's Office, which is in the process of implementing the anti-corruption strategy published in December 2018, has stepped up its investigations and two members of Parliament have been indicted on several corruption charges. The creation of a specialized anti-corruption unit in 2018, under the Executive branch, is expected to further support the fight against corruption. To help enforce laws on SOE transparency and accountability, the 15 largest SOEs (by assets) will have to publish their audited annual reports on the website of the SOE oversight institute (the Institute of Assets Management and State Holdings [IGAPE]). Starting in 2019, the government enforced the publication of these companies' annual reports on IGAPE's webpage, as

required by the law. The government also committed to increase the share of public contracts awarded through open tender (*concurso público*) to at least 50 percent by end-2020.⁶³

Conclusion

Fighting corruption in SOEs remains a huge challenge in Angola, and the early policy actions need to be carefully watched for sustainability and impact. The few corporate governance codes that were passed over the years had limited impact and action was needed beyond the regulatory level. With the arrival of the new government in mid-2017, a concerted effort has been made to address systemic corruption by targeting both enforcement and prevention. The SOEs were front and central in that effort. Some results can already be seen, as evidenced by reports of the donor community, but progress is slow. A new and reinforced SOE unit in the Ministry of Finance is now collecting data and is preparing regular monitoring reports. Most SOE board of directors have been replaced. Many state assets, which were 'privatized' (at low or zero costs) in the past have been taken back by the state and are now being prepared for a new and transparent privatization process. Corporate governance in the state oil company Sonangol is being strengthened to help the SOE become an efficient company rather than a parallel public sector arm of the authorities, and the state's concessionaire responsibilities have been transferred to a separate institution, which will somewhat reduce the opportunities for using it as an extended arm of the executive. In addition, the SOE has been asked to sell most of the 150+ subsidiaries. The same concerted efforts are now targeting the diamond holding company ENDIAMA. On the other hand, there have been setbacks: privatization is proceeding slower than expected, lending practices of state-owned banks have raised new concerns, and the transparency of Sonangol remains a work-in-progress. While the eventual impact on corruption of Angola's reforms remains to be seen, the country's vigorous approach to tackle corruption in the SOE sector is commendable and can serve as an inspiration to practitioners and policy makers in other countries that are facing similar challenges.

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CHAPTER 4

Customs Administration

Corruption in Customs: How can it be Tackled?



Introduction

Why is it important to tackle corruption in customs administration in developing countries?

Modern customs administrations perform a number of tasks, including revenue collection, trade facilitation and protection of national borders. Corrupt practices often stand in the way of accomplishing these tasks, actively compromising revenue collection, trade facilitation, and internal security requirements such as trafficking in illicit goods, including weapons and narcotics.¹ Trade taxes—tariffs, excises and import value added tax—account for a significant portion of government revenues, commonly 30-50% of total tax revenues in low-income countries.² In fragile states, customs typically account for an even higher share of total tax revenues. However, estimates suggest that 30% or more of customs revenues are lost in some developing countries due to rampant corruption.³

Corruption in customs affects a country's capacity to benefit from the global economy. This is because corruption in customs delays the processing of imports and exports, increases the costs of doing business, and reduces the competitiveness of firms.⁴ As business and investment decisions by multinational companies are increasingly subjected to international competition, the presence of widespread corruption in customs can act as a major disincentive to foreign investors.⁵ In addition, corruption in customs takes on new significance in the current environment of heightened concern about national security and international terrorism. Sophisticated systems and procedures designed to detect weapons offer little protection if they can be circumvented by bribing customs officials.

What are the characteristics of corruption in customs?

There are few public agencies in which the preconditions for corruption are as clearly present as they are in customs administrations.⁶ Corrupt practices easily materialize in a working environment where officials enjoy discretionary powers over important decisions, and where risk-based systems of control and accountability are absent or easily breached. High tariffs and complex regulations offer

significant incentives for traders to try to reduce import charges and speed up transactions by bribing customs officials to undervalue or under-declare goods.⁷ Many cases of extortion by customs officials are reported where they threaten to use their authority to administer ambiguous tax laws against traders.⁸

As a border protection agency, customs' role is also to prevent the import of illegal goods. Smuggling of drugs and weapons, and large-scale smuggling of alcohol and cigarettes, places customs directly in the realm of organized crime. There is no scarcity of examples where criminals use any means, from extensive bribery to intimidation and violence, to promote their illegal transactions.⁹ Given the high financial stakes, rent-seeking opportunities are huge. In such settings, customs officials may have strong incentives to accept or ask for bribes in the execution of their duties.

Another important characteristic is that the relationship between customs and traders is normally managed through third parties (customs brokers and logistics operators). Over time these third parties may develop close relations with officials and exploit opportunities to act as facilitators of bribes. The participation of intermediaries in these relationships provides additional challenges in terms of communication, transparency, and accountability. For instance, complex procedures for customs clearance in the Philippines in the late 1990s required face-to-face interactions between operators and customs officers in practically all transactions—import entries, export entries, requests for transit and others.^{10,11} Excessive discretion was also common in the management of customs operations in Bolivia.¹² Consignments were selected for physical inspections on a discretionary basis, without the application of objective criteria, and with little use of technical methods. Even with modern, sophisticated clearance procedures, direct contact between customs officers and clearing agents cannot be avoided while goods are being physically inspected. Customs checks carry the risk of being conducted by individual officers, especially in small offices and during night and weekend shifts. Opportunities for corruption are high. Since customs administrations also operate in geographically dispersed, remote posts, with relatively few staff, adequate supervision of a customs office or individual officer is difficult.

Entrenched corruption is likely to affect the human resource management systems. When appointments and promotions are influenced by corruption, this facilitates the formation and maintenance of networks of accomplices. At larger border stations, harbors and airports, corruption may be conducted by reasonably well-organized networks, where trust and reciprocity are found between network members.¹³ Such relationships are likely to reduce transaction costs, as well as any moral costs that may arise from being involved in corruption. The peer networks often function as ‘repositories of knowledge’ for members, for example, on the attitudes of the top management to corruption, how the internal monitoring unit works, and who is potentially bribable among staff members and management. Establishment of a corruption network affecting an entire customs office is not unknown.

Political interference is a major concern

In some countries, customs administration has been an attractive target for political interference.¹⁴

This is because it offers both relatively well-paid jobs and considerable rent-seeking opportunities.¹⁵ Political control over the customs administration can pay high political dividends.¹⁶ Politicians may intervene in customs to grant favors, such as attractive managerial positions and tax exemptions to supporters, or to harass political opponents through excessive audits and delays in the clearing of goods. A recent study from Tunisia, for example, found that firms owned by the then president and his family were more likely to evade import tariffs. Tariff evasion in Tunisia led to considerable fiscal losses, and resulted in substantial competitive disadvantages for companies not aligned with the president’s family.

Experiences from some developing countries demonstrate that the public sector may become an instrument for the political elite to build public support based on patron-client reciprocity.¹⁷

Patronage undermines the implementation of policies and rules-of-law more generally. For instance, distribution of civil-service positions based on non-meritocratic criteria results in a civil service less apt for the task with which it is charged.¹⁸ Meritocratic recruitment and promotion are overshadowed by the politics of *who knows whom*.¹⁹ Clientelistic structures and patronage may pervert integrity and modernization reforms. The absence of a cadre of committed professionals and managers, structured in a robust civil-

service career plan, affects the continuity and resilience of reform and modernization efforts after changes in top leadership.²⁰ It also offers opportunities for the appointment of key strategic customs management positions based on political alignment. In April 2015, the International Community Against Impunity in Guatemala accused the political elite of the country to be part of a sophisticated network of corruption and smuggling in customs. The corruption scandal (“The Line”) became famous due to the mass protests that ultimately led to the resignation, investigation and arrest of then President Otto Pérez Molina.²¹

The role of family and social relationships must not be underestimated

Customs officers and managers may also remain under the strong influence of traditional patterns of social relations and kinship.²² These relations operate at cross purposes to the formal bureaucratic structures and positions. The informal traditional system may rule over the formal “modern” one. Because ordinary citizens perceive that customs officers receive high salaries, extended family members expect to get their share of the high wages (and rents acquired by other means). A person in a position of power is expected to use that influence to help his or her kin and community of origin. It is one’s social obligation to help and share.

In such cases, customs staff are seen by their family members and social networks as important potential patrons who have access to money, resources, and opportunities that they are morally obliged to share. To accumulate, even in corrupt ways, is not necessarily perceived to be bad in itself. It is accumulation without distribution which is considered unethical.²³ Only someone who accumulates can redistribute and be identified as “a man of honor”.

It is also in the customs officer’s own interest to help others because he or she might be the one who needs help the next time around. Thus, a manager in the customs administration may “forgive” a customs officer who is caught taking bribes or embezzling money, because next time he or she may be the one who needs forgiveness. Instead of being fired, common practice in some countries is to transfer customs officers detected for corruption to other positions within the revenue administration.²⁴ Favors of this kind may also

be understood as a way of consolidating and building social capital. In other words, customs officers are building up networks made up of family, friends, and acquaintances that are based on trust and reciprocity as a way of banking assistance for the future. The larger the network, the greater the accumulation of social capital that can be drawn on in a future time of need. One possible explanation for the persistent corruption in customs administrations in some countries may be the fact that people at the middle and low end of the political-economic spectrum are just as involved in vertical networks of patronage as the elite patrons who benefit the most.²⁵

What do we know about fighting corruption in customs?

Recent international reports and declarations have sought to address the problem of corruption in customs administration, but effective reform measures are not easy to implement. The Revised Arusha Declaration provides a global framework to address corruption in customs and increase the level of integrity of customs officials for World Customs Organization (WCO) members.²⁶ There are only small differences between the *WCO Arusha Declaration*²⁷ and recommendations by other international organizations such as the IMF's integrity paper *Practical measures to promote integrity in customs administrations*,²⁸ and the OECD's²⁹ report *Integrity in customs. Taking stock of good practices*. They all emphasize that there is no quick solution to the problem of customs corruption

and that a comprehensive approach is needed. These documents identify a number of factors that contribute to high integrity in customs administrations. However, they provide less insight into how to implement measures to reform a corrupt administration.³⁰

How does the principal-agent relationship play out in practice?

Much of the policy debate on anti-corruption strategies in revenue administrations is rooted in the principal-agent (incentive) theory. Klitgaard's³¹ popularization of this approach has been widely promoted and applied in a number of developing countries during the last two decades, as reflected in the World Bank's *Customs Modernization Handbook*.³² Klitgaard's work has also been used extensively in the development of the *Revised Arusha Declaration on Integrity in Customs*, as well as in a range of the WCO's integrity-related tools.

Policy instruments need to be directed at both the incentives and opportunities for corruption. Following Klitgaard,³³ corruption is most likely to occur when agents (customs officers) enjoy monopoly power over clients (traders), when agents enjoy discretionary decision power over the provision of services (for instance, assessments of origin, value and classification of goods), and when the level of accountability is low. At the theoretical level, this approach explains how customs officers have a number of incentives and opportunities for engaging in corrupt transactions. At



the more practical policy level, the approach indicates that policy instruments may be divided into those which influence the number of corrupt opportunities, and those influencing the incentives. This includes policy instruments that affect the expected (gross) gain of the corrupt act, the probability of being caught, and the size of the penalty if detected. If the expected gains of corruption are higher than the expected costs, the agent will, according to the theory, choose to be corrupt. For example, the expected gain for customs officers is higher when they have wide discretionary powers and considerable monopoly power in their jobs.

Understanding the role of the principal reveals a major difficulty in implementing reforms. While the principal-agent-client model is a useful analytical framework to explore incentive problems in customs and other public agencies, its dependency on the role of the principal reveals one of the greatest obstacles to reform. There are (at least) two objections to this approach: First, there may be several principals involved, each with incoherent objectives and interests. Second, the principal(s) may also be corrupt and not acting in the interests of society but pursuing his or her narrow self-interests. Thus, part of the explanation why anti-corruption reforms in countries plagued by widespread corruption fail, is that they are based on a theoretical mischaracterization of the problem of systemic corruption, taking the existence of non-corruptible principals for granted. Thus, Persson *et al.*³⁴ argue that in thoroughly corrupt settings, corruption rather resembles a collective action problem.

How important are social norms and informal practices?

Collective behaviors like corruption can be sustained by social norms. These norms are rooted in “shared understandings about actions that are obligatory, permitted, or forbidden within a society”.³⁵ Such norms provide the unwritten rules of behavior. Especially when formal rules such as laws fail to regulate conduct, as is often the case in countries riddled with corruption, social norms structure many social interactions by dictating the rules of the game.³⁶ Thus, there may also be social sanctions for violating these norms.³⁷

Informal practices are pervasive in some countries. These practices decisively shape the interactions among power networks of political and business elites

and influence how state actors relate to the general public.³⁸ What makes such informal social networks relevant in the context of customs reforms is that they generate strong moral imperatives, including a sense of obligation to provide mutual assistance and reciprocity for favors given, which go above and beyond any consideration for the formal legal framework.

Efforts to address these factors have not always been successful

Addressing the root causes of corruption goes beyond legal and regulatory reform. A major challenge to the effectiveness of mainstream anti-corruption technical assistance is that it usually does not take into account the evidence that corruption often is deeply embedded in the norms and expectations of political and social life.³⁹ Even if most customs officers may morally disapprove of corruption and are fully aware of its negative consequences for society at large, few rational actors have a clear-cut interest in establishing or defending clean institutions. The functional relevance of informal practices also points to the problems with the tendency to address corruption by means of adopting tougher formal laws. An adequate legal framework is, of course, important to establish, and so are measures to reduce opportunities for corruption, including simplification of processes and rate structures, automation, etc. But laws and regulatory reforms must also be supplemented with other approaches that address the root causes of corruption. Otherwise one risks ending up designing and implementing reforms that have little impact on the incidence as well as perception of corruption. Misalignment of legal practice and ethical norms may result in mere law-based compliance and “lawful, but awful” practices.⁴⁰

Important progress can be achieved through modern compliance management. Beyond the update of the legal framework and simplification of procedures, modern compliance management demands that customs administrations not only identify and sanction non-compliant behaviors but also promote transparency and provide better guidance, as well as recognize compliant operators and offer different treatment (e.g. the Authorized Economic Operator Programmes). The adoption of modern risk-based compliance management changes the relationship model with the private sector and traders and contributes to integrity improvement.

Would private management and outsourcing of revenue collection be an option?

Development agencies have in some cases helped fund what might appear to be experiments in the privatization of tax collection.⁴¹ Historical evidence⁴² and more recent experiences from developing countries, including Angola and Mozambique⁴³ give reason for concern: such reforms have achieved few sustainable results; the transfer of skills has been limited and the contract has been expensive for the government. Tax practitioners are therefore increasingly questioning the value of outsourcing customs administration. Outsourcing of some customs activities, for instance, verification, convoy security and warehousing, might be appropriate, though experience suggests it may be expensive and susceptible to corruption especially in a medium- to long-term perspective. Outsourcing of other activities, such as valuation and entry processing can also be challenging, since it places the collection of government revenue directly into the hands of non-government interests.

Pre-Shipment Inspection (PSI) programs have had mixed results.

During the past three decades, several developing countries have adopted PSI programs to improve the efficiency of tariff collection, and to fight customs administration corruption.⁴⁴ In these programs, the inspection of imports is outsourced to a private surveillance company (a PSI firm). Foreign PSI-inspectors are tasked to verify the tariff classification and the value of individual incoming shipments before they leave their countries of origin and forward this information to the client government. Pre-shipment inspection aims to complement information provided in customs declarations and is used to evaluate customs duties. This additional information is expected to limit the discretionary power of customs officers and thus be an efficient means of reducing customs corruption. Experiences with PSIs are mixed. In a study covering 19 developing countries that have implemented PSI, Yang⁴⁵ finds that these programs increased import duties on average by 15-30% during the first five years. However, Anson et al. (2006) find less clear-cut results; PSI programs may decrease or increase fraud. This is consistent with Dequiedt et al.⁴⁶, who find that entering a PSI program is not optimal for all countries. They conclude that for countries with a high level of corruption, PSI programs are not the solution. In highly corrupt environments, there is no reason to believe that private interests are any less corrupt or more transparent in their dealings than staff of the customs administration.

Should customs officers' salaries be increased?

Some scholars argue that increasing civil service wages will reduce corruption.⁴⁷ The basic idea is that a rise in the tax collector's salary is like an increase in the fine for bribery, since that is what (s)he will lose if detected and fired. Van Rijckeghem & Weder⁴⁸ find that corruption seems to be lower in countries where bureaucrats are relatively well paid compared to private sector employees. However, in order to eliminate corruption, very large increases in salaries are needed⁴⁹ and this is not socially acceptable because customs officers are already the best paid of public service employees in most low-income countries. Hence, fighting corruption only on the basis of wage incentives may be extremely costly to the authorities both financially and politically, and will most likely have limited impact if not combined with other measures such as improved auditing and monitoring of tax officers.⁵⁰ This is also reflected in experiences from reforms in Tanzania and Uganda.⁵¹ Despite a dramatic increase in pay rates in the revenue authorities compared to normal rates in the public sector, it was not enough to compensate the tax officers for the expected gains from corruption. This argument is supported by Foltz & Opoku-Agyemang.⁵² Based on detailed survey data and experimental evidence from West Africa, they find that the salary reform generally worsened petty corruption, caused by the increased effort by civil servants to get bribes, which made them increase the value of each bribe taken. The results suggest that merely raising salaries without changing the context and incentives within which civil servants operate will not have the desired effects on corruption.

Raising salaries to combat corruption fails to fully recognize the important role played by social obligations.

Economic research on human behavior also indicates that reformers and economists have an inclination to exaggerate the impact of monetary incentives because of a too narrow understanding of intrinsic motivation and group dynamics.⁵³ It is a well-known fact in sociological management theory that workplaces are social environments and that people in them are motivated by much more than pure economic self-interest.⁵⁴ An additional aspect of wage incentives that has received little attention in connection with institutional reforms in developing countries is associated with the role of family networks and obligations (as mentioned above). Increased pay rates may in some cases also imply more extensive social obligations, which in turn may lead to an actual net loss to the individual.⁵⁵ This state-of-affairs can develop into a vicious circle with higher wages leading

to more corruption because the tax officer has to make up for the loss caused by such obligations.

The international customs community has recognized that integrity development cannot be addressed exclusively by incentives associated with higher wages. The WCO advocates a comprehensive approach for customs professionalism, addressing relevant aspects of management of people (long-term attractive career plan, competency-based human resources management, merit-based recruitment and promotion, including for key management positions,

and a robust human resource development plan that should address adherence to desired values and attitudes) (see the Madagascar and Afghanistan case studies). It is important to build an *esprit de corps*, with a common spirit of purpose, devotion, observance of institutional values and a collective commitment to guard integrity and report corruption cases. In addition to the customs staff, it is important to work with traders and other operators and establish clear rules for expected behavior, for instance through joint development of codes of conduct with customs brokers.

What is needed to reduce corruption in customs?

Making customs reforms part of a broader reform of the public sector

Rwanda and Georgia are two success stories, where customs reforms were not carried out in isolation. There have been many prescriptions and initiatives on how to tackle corruption in customs, but the results have often been disappointing. However, there are a few success stories, with Georgia and Rwanda as notable cases. In Georgia, the tax code was simplified, including the elimination of many tax loopholes and a reduction in the number of taxes and import tariffs.⁵⁶ One-stop windows were introduced for customs clearing procedures. In Rwanda, reforms led to significant improvements in collection efforts and auditing procedures. The tax and customs reforms in these countries were not implemented in isolation but were part of larger and radical reforms of the public sector.⁵⁷ The reform packages involved a drastic reshaping of the bureaucracies. Discredited public agencies were dismantled and replaced with new ones based on principles of leaner bureaucracies and administrative simplification. The new rules were strictly enforced based upon effective monitoring mechanisms and little or no tolerance of deviations. Thus, the opportunity space to engage in corrupt practices was dramatically reduced.

What can we learn from the cases of Rwanda and Georgia? The experiences from Georgia and Rwanda are, of course, context specific and refer to

particular events in the two countries' history. In both countries a new leadership came to power who was not dependent on informal ties and obligations to the networks associated with the previous regimes.⁵⁸ Still, some lessons of broader relevance can be identified. In both countries, a combination of measures addressing the broader social and political roots of corruption and technical measures based on the principal-agent framework were applied.

1. Send a clear signal from key leaders. Leaders at the top can provide a strong signal that there is a "new order" under which corruption is no longer tolerated. Changing norms from the top is challenging. However, they can happen when specific events open a window of opportunity in which to take advantage of social discontent with the status quo.⁵⁹ Opportunities to establish pro-integrity norms within institutions are not always triggered by revolutions such as the one in Georgia. They can also be created by a whistleblower exposing corruption, a major political scandal, or public frustration with ineffective anti-corruption efforts (as described above in the case of Guatemala).⁶⁰ When these opportunities arise, it is important to "seize the moment". Incentives and interests matter for potential reform, and leaders may only support reform if it is in their interest to do so. Thus, reformists need a strong understanding of the underlying political economy of a country and of the interests and incentives that influence

key leaders who may be in a position to flip norms and instill a sense that corrupt practices are no longer tolerated.

2. Create a new organizational culture that values integrity.

If provided with the autonomy to do so, pro-integrity leaders and managers in customs can demonstrate exemplary behavior, build up organizational values, and create an environment where it is safe to challenge norms. Shared responsibility and a sense of moving together are important in creating a new organizational culture. Getting everyone on board may require some additional resources. For example, support for a new human resources management system may be important in establishing more secure employment arrangements. When an individual cannot be certain of future income, this insecurity may heighten the influence of horizontal pressures to engage in self-enriching acts,⁶¹ a situation that is not conducive to normative shifts within organizations. Strengthening employment security may provide a basis for nurturing a culture of integrity over the long term.

3. Establish ownership of the reform within the revenue administration.

Ownership of the reform among the officials involved in reforming the revenue administration is a critical issue for sustainability. An administrative reform is unlikely to succeed if the main source of energy and leadership for it comes from outside. A locally grounded policy intervention is also less likely to have unintended side effects. International development agencies should therefore not play a leading role and they should not dictate the content, pace and direction of the reforms. Integrity reforms are often highly political processes that may pose a threat to important local stakeholders. Thus, a strong and well-placed leadership of the customs administration is essential for overcoming the political and bureaucratic obstacles it is confronted with.

4. Design mechanisms that create a balance between simplification and controls.

Opportunities for corruption in customs and border control can be reduced by designing mechanisms that create appropriate incentives, limit discretion by public servants and include enhanced controls (see Box 4.1 for experiences from some Latin American countries). It is important to establish a balance

between easing red tape, such as simplification of trading procedures, and having appropriate controls, while taking into account the local context and inherent risk areas.⁶² Relevant actions of a technical nature include:

- processes that reduce compliance costs and are based on a risk-based approach;
- effective internal audit units;
- revenue administration processes that are digitalized and automated (including an automated system of internal controls and risk assessment); and
- ongoing performance assessments of relevant tools, procedures and controls

Providing ongoing education and training

The education and training of staff are identified as important factors affecting customs performance, and key to building technology absorption capacity, as well improving the transferability of skills.⁶³ Regular training of customs officers has been particularly important when introducing new electronic systems, such as customs management systems or national electronic single windows. A comparison among regions of the average time for export clearance shows that requiring a college degree is not necessarily associated with better customs efficiency.⁶⁴ Many other variables impact the efficiency of customs procedures, such as technology, legal support and infrastructure. However, customs administrations that offer regular training for customs officials have shorter customs clearance times than those that do not.⁶⁵ The World Bank's *Doing Business* data indicate that the average time required to clear customs (for both exports and imports) is about 34% lower in economies where customs officers receive regular training compared to those where no regular training is provided. Sub-Saharan Africa and the Middle East and North Africa are the regions where the difference in clearance time is largest between economies where regular training is offered and where it is not.

Introducing individual performance contracts

Implementation of reforms can be strengthened through individual performance contracts. A

BOX 4.1

Standard Operating Procedures and Internal Audit Capacities in Latin America

The customs administrations in Chile, Uruguay, Peru, Paraguay and Bolivia have adopted quality management as part of their integrity strategy. They have invested in the implementation of standard operating procedures and internal audit capacities to ensure consistency, improve the quality of service provision, and better frame the application of discretionary powers and accountability. A common feature in these administrations has been the adherence to ISO 9001 standards for selected procedures.

For further information see:

<https://www.aduana.cl/aduanas-mantiene-y-amplia-certificacion-iso/aduana/2014-08-28/181638.html>

<http://www.sunat.gob.pe/legislacion/aduana/certiso9000.htm>

<https://www.aduana.gob.bo/aduana7/content/aduana-obtiene-certificaci%C3%B3n-iso-90012015-para-su-archivo-central-de-regional-santa-cruz>

major problem identified in recent studies is that reforms often do not cascade to the level of frontline officers due to an information asymmetry between the senior management of customs and frontline officers.⁶⁶ Recent experiences from Cameroon and Madagascar demonstrate that the hierarchical link can be strengthened by individual performance contracts.⁶⁷ A performance contract is a formalized agreement between the customs managers and the customs officers. It has at its core a system of non-financial incentives and sanctions to be applied to an individual officer's performance.⁶⁸ The contracts detail the results that must be met by individual customs officers in a specific period of time for a set of specific indicators. The indicators go beyond the revenue targets fixed by the government to include organizational and good practice issues. Customs officers who are successful in meeting their performance goals will receive mainly non-financial incentives such as options to participate in training courses and congratulatory letters from the management that are put in the officer's permanent file and disseminated publicly to provide wider recognition. If the performance contract commitments are broken, warnings are issued of possible disciplinary action if performance does not improve.

The effect of the contracts program on trade facilitation has been positive in Cameroon and Madagascar. The volume of declarations processed generated substantial improvements in revenue

collection and reductions in clearance times. Further, customs officers seem to have become more aware of their responsibilities, and the relationship between customs agents and their managers has improved. One important insight from these experiences is that administrative reforms in customs is about behavioral change, which requires internal leadership who is trained to use the internal performance measurement policy. Individual performance measures and the threat that poor results can be measured, compared and publicly released, may protect senior managers from appointing officials as subordinates in their units based on political allegiance.⁶⁹ It also requires cooperation with external control authorities and consultations with private sector operators and intermediaries that provide services to traders.

Incentivizing stakeholders to make customs administrations accountable

Another insight from these experiences is that motivation for reform must also come from taxpayers and traders. Business communities, import-export associations, clearing agent associations, and other influential stakeholders have a critical role to play in pressuring the customs administration to do a better job of serving society. It is important to provide incentives for stakeholders in the private sector to adopt anti-corruption policies and practices, and to

collaborate with customs and other relevant public sector actors to identify integrity vulnerabilities and appropriate mitigation measures. Establishment of formal spaces between customs and the private sector for exchanging information and reporting complaints might be an effective trust-building device.⁷⁰

The customs broker profession is evolving.

Customs brokers play a crucial role due to their in-depth knowledge of the industry, customs laws, tariffs and regulations.⁷¹ Brokers are often the only channel through which domestic companies can sell their goods internationally. By hiring an agent, firms gain access to international markets without incurring the

upfront costs and risks associated with searching for new markets or negotiating deals. The internet and e-commerce are prompting customs brokers to offer more sophisticated services rather than merely filing documents for customs clearance. These insights are echoed in several recent studies,⁷² with the WCO recommending that modernization and customs reforms are accompanied by the required training and sharing of information between the government and brokers. Box 4.2 illustrates how this has been put into practice by the Uruguay Customs Administration. In addition, the International Trade and Customs Broker Association recommends capacity-building for brokers through certification programs and examinations.

BOX 4.2

Comprehensive Modernization of Customs: The Uruguay Case

From 2010 onwards the Uruguay Customs Administration embarked on a comprehensive modernization program with a number of complementary projects that included further automation and adoption of technology (e.g. electronic filing system, single window (*Ventanilla Única de Comercio Exterior*), risk management, electronic seals, and a cargo tracking and tracing system); improvement of management systems and procedures (strategic planning, project management and business processes management, establishment of a results framework and monitoring system); development and professionalization of customs staff (including the update of career plans and review of salaries, a performance based incentive system and management agreements); renovation and maintenance of customs infrastructure (which raised internal morale).

One of the highlights of this development cycle was the cooperation with the private sector and customs brokers to tackle integrity. The Customs Administration implemented a communication strategy (with public campaigns and open doors policy to disseminate information and raise awareness of how customs works); developed a Code of Ethics and Conduct; and established procedures for reporting integrity breaches.

The Customs Administration signed 11 Integrity Agreements with private sector associations and representatives, making explicit the expected behaviors and commitment with a set of values. Communication channels were established to address concerns and manage conflicts.

A strategic Public and Private Sector Consultative Forum was established, which also supported the development of the Authorized Economic Operator (OEA) program.

The Customs Administration implemented regular anonymous perception surveys to traders on the quality of services rendered by the administration. The perception of integrity and the reputation of the Customs Administration have improved after the reform and modernization program.

Coordinating and sharing information with relevant authorities

Since tax crime and corruption are often linked, tax and law enforcement authorities can benefit from more effective cooperation and sharing of information.⁷³ Improving the sharing of information on international trade could also help to reduce corruption in customs. International cooperation is becoming an increasingly important element in anti-corruption

efforts and in building stronger institutions.⁷⁴ More countries are following the example of the US *Foreign Corrupt Practices Act*, which makes it an offense for US firms to pay bribes to get business abroad. These efforts include coordinated action through international initiatives, such as the OECD Anti-Bribery Convention. However, enforcement by individual countries has been uneven, and the flow of information between countries is slow and unreliable, making it harder to investigate and prosecute corrupt acts.⁷⁵

‘How to’ matters a lot

Taking a measured approach to reforms

Overambition has been cited as a common cause of project failure in various countries.⁷⁶ This does not imply that governments should keep the scope of customs administrative reforms limited. But when governments decide what measures to take as part of their reform programs, they should bear in mind the state of the economy and the resources at hand. Most developing countries have neither the political capital nor the administrative capacity to sustain more than a limited range of concurrent initiatives. An incremental process of change can add up to a radical transformation if it is sustained long enough. Nevertheless, experiences from Madagascar suggest that ‘quick wins’ in the form of fast revenue growth might be necessary to establish credibility and trust in customs reforms.⁷⁷

Encouraging stability of leadership and management

Sustainable change demands sustained effort, commitment and leadership over time. In the countries referred to in this chapter as examples of progress, like Uruguay, Georgia, Madagascar and Rwanda, the modernization process was strongly supported by a management team that remained in place for longer than usual or by a cadre of middle managers that obtained support and sustained the initiatives even when there were changes at the top management and executive levels. Reformers need political backing, and one must accept that some initiatives will fail. Mistakes and setbacks are a normal

and inevitable part of the process. The big challenge is to use failures as learning opportunities, rather than as excuses for abolishing reforms.

Understanding the prevailing environment

Anti-corruption efforts require an understanding of the norms and incentives of key players and should therefore be based on thorough analysis of the customs administration and the environment of which it is a part. Baez-Camargo & Passas⁷⁸ argue that a nuanced understanding of the political economy of corruption will help practitioners to recognize that, in the “challenging” cases, we are confronted with complicated systems comprising powerful and tightly interwoven interests; this calls for an evidence-based, systematic, and collective response. Understanding social normative pressures in a given context can help practitioners design interventions to relieve those pressures, allowing collective behavior to change.⁷⁹ While it is well documented that peer networks can impose social pressure to engage in corruption, such networks can also be employed to mitigate the same pressures.

Adopting a whole-of-government approach

The international customs community, represented by the WCO, advocates that integrity reforms should be placed at the highest policy level, and should have a whole-of-government approach.



This would require the commitment of other external control authorities (such as the police, prosecutors and judicial power) and also private sector operators and intermediaries that provide services to traders. The development strategies should be comprehensive (as proposed by the Arusha Declaration) and sufficiently resilient to be sustainable when the top leadership of the customs administration changes.

Building integrity on a broader scale

The reform strategies discussed above should take place in the context of wider efforts to build integrity through increased enforcement of anti-corruption legislation, and better checks and balances targeting the customs administration and the private sector.⁸⁰ Such efforts include:

- Simplify the tariff structure to the maximum with a limited number of tariff peaks and variation within harmonized classification chapters.
- Continue to commit to transparency and anti-corruption requirements through trade agreements.
- Enforce the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* to dissuade businesses and individuals from engaging in corrupt cross-border transactions and encourage the world's major exporters and investors to ratify the Convention.
- Implement effective internal management tools in the administration and ensure transparency and accountability in internal procedures.
- Incentivize the private sector to be more transparent and push for integrity within private sector associations.

Conclusion: How can the fight against corruption be further strengthened?

As a first step, it is important to understand how things actually function in the specific context, independently of how we would expect customs to perform according to good governance logic.

This calls for more robust analysis of country and local contexts. Anti-corruption efforts require a thorough analysis of the customs administration and the environment of which it is a part, in order to understand the norms and incentives of key players.

Based on this analysis, a two-pronged approach to reform needs to be adopted.

The first prong relates to the development of policy instruments that are directed at both the incentives and opportunities for corruption. Unless customs officers recognize that the penalties for being caught are much more severe than the potential gains, they are going to continue to take the risk. This, of course, requires enforcement of the rules, which depends on the willingness at the top to eradicate corruption. In addition, the current structure of most customs administrations is not conducive to the implementation of reforms as the principal-agent-client model places too great an emphasis on the role of the principal. New approaches to address this situation need to be explored.

The second prong must go beyond legal and regulatory reform to address the root causes of corruption.

Many efforts to adopt stricter rules for customs administrations have failed because the informal practices have continued. Changing culture and mindsets is much more difficult than bringing in new regulations because social norms are deep rooted.

The experiences of Rwanda and Georgia, in particular, provide guidance on approaches and actions that have been successful.

It is important that customs reform be part of a broader reform of the public sector with a clear commitment from the country's leader that corruption will not be tolerated. This message is then taken on board by the leadership of the customs administration, who tries to inculcate a new organizational culture that values integrity. Where this leads to ownership of the reform by the customs administration, the sustainability of the reforms can be achieved.

In addition to ownership, several other measures can promote sustainability.

Reforms can fail because enthusiasm wanes and people return to their former practices. It is therefore essential that training become a key component of each officer's work program. Given the increasing use of technology, which can also reduce the opportunities for corruption, officers must be adequately trained to ensure that such technology facilitates their work rather than becoming a burden. Other measures include (i) performance contracts that provide incentives, albeit largely non-financial, to individual officers who meet their work objectives, and (ii) incentives to stakeholders in the private sector to adopt anti-corruption policies and collaborate with customs to build trust and stamp out corruption.

Successful reforms in customs administrations are not achieved overnight.

Reformers must keep this perspective in mind and not be discouraged when they face challenges in implementing their reforms. Nevertheless, significant progress can be made if the foundation blocks discussed above are put in place at the beginning of the process. Should unexpected difficulties arise during implementation, senior leadership will need to identify the root cause and make adjustments that will bring the reform back on track. Thus, achieving the goal of tackling corruption will require both time and a strong commitment from senior leadership.

CASE STUDY 10

CUSTOMS ADMINISTRATION

Customs Reforms in Madagascar

Using customs reforms and performance contracts in Madagascar to curb tax evasion, facilitate trade and enhance revenue

Overview

While the Malagasy customs collected half of the country's overall tax revenues, it was at the same time an institution permeated with corruption, with large revenue losses due to tariff evasion. Collusion between inspectors, importers and brokers was widespread, while customs management was crippled by information asymmetries on practices on the ground. As a response, Malagasy customs, in close collaboration with the World Bank, introduced individual performance contracts for customs inspectors in Madagascar's main port of Toamasina, incentivizing them to curb tax evasion and illicit financial flows, and expedite customs clearance. This was accompanied by continual data mining and monitoring, which helped to detect corrupt individuals and practices, such as the manipulation of the customs' IT system, and enabled the design and implementation of an evidence-based and locally-tailored reform program. As a result, the intervention reduced some corrupt practices of inspectors, facilitated trade, and doubled customs' revenues within four years. The success of this type of performance contract may serve as an important mechanism toward modernizing customs and revenue administration (when complemented with other measures).

Introduction

With a tax to GDP ratio of 10 percent, Madagascar's revenue mobilization is among the lowest in Africa. Like in many developing and least-developed countries, revenue mobilization is highly dependent on customs, which alone accounts for 48 percent of Madagascar's overall tax revenues. With a customs officer collecting on average 1.5 percent of total annual tax revenues each year (about USD1.4 million per inspector per month), inspectors play a key role in mobilizing revenues. However, tariff evasion by colluding customs inspectors and brokers has led to an estimated revenue loss equivalent to at least 30 percent of non-oil revenues for the government.⁸¹ Information asymmetry about fraudulent practices on the ground constrained customs management in its ability to adequately address these issues. Limited information also entailed the risk that top-down reforms would not cascade to the level of frontline officers. Consequently, an approach was needed that would strengthen the hierarchical link, provide the head of customs with sufficient information on practices on the ground, and finally remedy corrupt practices.

In 2016, under a newly appointed Director General, the Malagasy customs introduced individual performance contracts for customs inspectors in Madagascar's main port of Toamasina, incentivizing them to curb tax evasion and illicit financial flows, and expedite customs clearance. This was undertaken in close collaboration with the World Bank, which provided financial incentives for customs reforms through investment project financing⁸² and supported the reform efforts by providing training, analytic and advisory support, including on-site visits to countries with similar systems.

The implementation process

The reform approach to address tariff evasion and improve customs performance can be divided into four principal steps:

Generation of operationally relevant knowledge

The initial step (January 2016) was to generate the operationally relevant knowledge for designing an effective and context-specific program. The World Bank supported the Malagasy customs by studying tariff evasion channels using mirror trade statistics,⁸³ which made it possible to identify higher risk importers and customs brokers as well as the dominant corrupt mechanisms, such as misclassification⁸⁴ and undervaluation⁸⁵ of imported goods.⁸⁶ Estimates suggested that, in 2014, customs fraud reduced non-oil customs revenues (duties and import value-added tax) by at least 30 percent.

The presentation of these study results to the private sector and to customs inspectors helped the Malagasy authorities to identify two priorities: reforming the accelerated clearance program and improving human resource management.

Design and implementation of individual performance contracts for customs inspectors in Madagascar's main port of Toamasina

As a next step, contracts were designed rewarding good performance with (i) bonuses, such as merit awards, where the best performer in a quarter receives a bonus

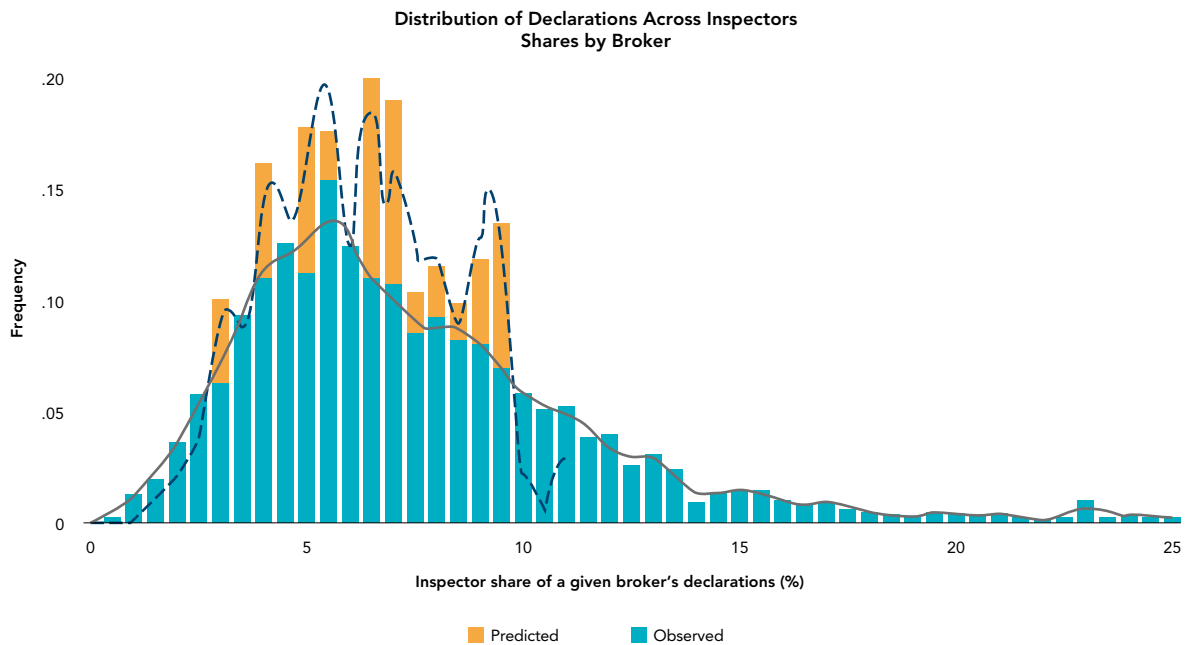
of USD1,000, representing 2.5 times the GDP per capita of Madagascar; (ii) training opportunities at home and abroad; and (iii) accelerated career progression. More importantly, the negative incentive was to sanction poor performance by reassigning inspectors to less desirable positions where corruption opportunities were much smaller. The focus of the individual performance contracts for customs inspectors has been on non-financial incentives, since the extent of corruption was so high for some officers that financial incentives could not offset illegal payments. In customs, the threat of reassignment is, in general, a strong deterrent because the role of an inspector is also prestigious, especially a position at the main port of Toamasina. In 2017, for example, 15,000 candidates applied for a 300-position recruitment program launched by Madagascar customs.⁸⁷

The contracts contained seven objective indicators (at the beginning) covering trade facilitation with an expedited clearance process, but also the fight against fraud and maximizing revenue collection. Setting explicit performance targets required a structured stakeholder dialogue, particularly through consultations and negotiations with inspectors, to overcome resistance to measures that would reduce opportunities for corruption.⁸⁸ A project implementation unit was established to lead this dialogue and to monitor each inspector's performance by using data on import declarations collected from the Automated System for Customs Data (ASYCUDA).

The performance contracts were signed in September 2016 and came into force the following month for 15 inspectors at the main port of Toamasina. Launched as a six-month pilot, it has been gradually expanded to several other offices.

Evaluation and adjustment

Data mining and monitoring of individual performance almost on a real-time basis revealed sophisticated IT manipulation and collusion between some IT staff, inspectors and some brokers and importers. A randomized control trial, conducted in 2018-2019, showed that import declarations suspected of involving collusion are significantly riskier, as measured by risk scores from a service provider,⁸⁹ with a greater likelihood of being recommended for physical inspection and of being subject to reference value advice. Moreover, declarations suspected of involving collusion were

FIGURE 4.1 Excessive Interaction between Inspectors and Brokers

Source: Chalendar et al. (2018)

found to have significantly higher ex-ante declared values, taxation rates and undervaluation, and hence embody higher potential tax revenue losses.⁹⁰ Analysis of customs data also demonstrated clear-cut evidence of a differential treatment provided by inspectors to the declarations of brokers they may be colluding with. For example, inspectors give priority to such declarations and assess them significantly faster; they also scan them less frequently and change less frequently the inspection channel (Figure 4.1).

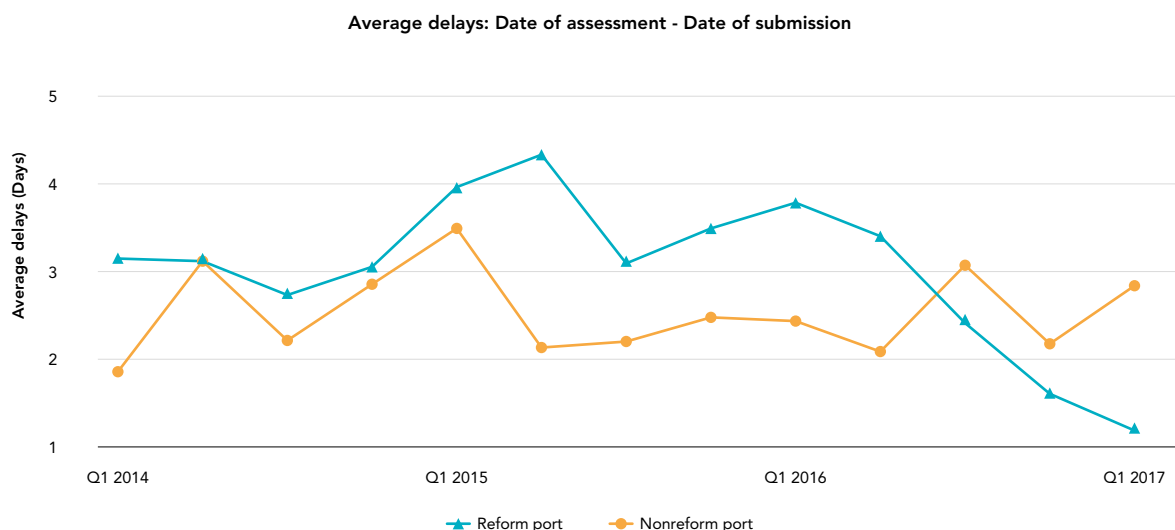
The detection of the fraudulent practices of individual inspectors enabled the transfer of 6 out of the 15 customs agents.⁹¹ As a result, the most common practice from inspectors, which was to stop cargo until a bribe payment was received, was reduced. The likelihood of being sanctioned became higher, which started to act as a deterrent for some non-compliant importers.⁹² This triggered a virtuous circle, which has been increasingly put in place.

However, some non-compliant practices continue. In this regard, several indicators in the performance contracts were adjusted during the process due to some 'gaming' and evolving collusion practices.

Transparency

Transparency through publicizing performance metrics and rewarding good performance contributed to more merit-based promotion and recruitment. This was important, since, according to a survey conducted during contract implementation, only one out of every ten inspectors in Madagascar believed promotions were fair. To enhance transparency, a vacancy announcement to replace the transferred inspectors in Toamasina was published internally to all of the country's inspectors (more than 120), and a panel selected the best candidates.⁹³ This type of recruitment was the first of its kind to fill positions in Toamasina and a critical step.

From a trade facilitation perspective, customs reforms have shown a strong positive impact on aggregate customs outcomes, such as expedited customs clearance times (Figure 4.2)—which have increased in other ports—and reduced frequency of physical inspections (red channel) from 60% in 2014 to 20% in 2018. At the same time, inspection targeting and the detection and recording of fraud improved.⁹⁴ Among general improvements in customs administration, these performance enhancements have contributed to the

FIGURE 4.2 Evolution of Average Delays

Source: Raballand et al. (2017)

TABLE 4.1 Revenues Doubled in 4 Years

	2014	2015	2016	2017	2018
Collected Revenues by the Customs DG (in bn Ariary)	1255	1459.2	1682.7	2047.1	2427.9
Evolution of Revenues (in %)	7.1%	16.3%	15.3%	21.7%	18.6%
Revenues of Customs DG as % of GDP	4.9%	5.1%	5.3%	5.7%	Nd

Source: World Bank data

rapid growth of collected revenues since 2015 (Table 4.1), which doubled within four years. Average revenue per container increased from USD3,435 in 2016 to USD5,020 in 2018.

Reflections

An important finding is that customs inspectors in Toamasina have the required capacity and information to detect fraud, but they usually have strong financial incentives not to do so. Consequently, since the working

environment enabled inspectors to deliberately not detect fraud, tax evasion and the associated corruption of most customs inspectors were a logical corollary.

This highlights the importance of incentives in institutions, especially customs. Yet, the key to the behavioral change of inspectors was to combine targeted incentives with improved monitoring. Data mining and analysis on a regular basis—not just a one-time exercise at the beginning of the project—have proven to be extremely helpful in documenting and demonstrating evidence of collusion in customs. This, in turn, has enabled the design of context-specific reforms



and the making of evidence-based adjustments during the implementation process. Positive reform outcomes were achieved without any expensive infrastructure investments, such as information technology or equipment, or lengthy legal changes. Instead, applied research has paid considerable dividends.

The relatively low-cost of this approach facilitates upscaling and replication in other contexts.⁹⁵ In this regard, having a good understanding of political economy aspects and customs practices, including corruption patterns, is paramount, especially when setting financial and non-financial incentives. Since strong internal vested interests make reforms relatively difficult in Madagascar, performance contracts were implemented with the aim of gradual improvement, but with important gains in terms of revenues already in the short term.

Government reform leadership, particularly the support from the Director General and the Minister of Finance and Budget, has been central to the success of the intervention.⁹⁶ However, with a new President elected in 2019, the Director General and a number of key officers were replaced in customs. The performance

contracts have been modified with much less teeth (but expanded to several offices with less monitoring and a hardly credible sanction mechanism), which could undermine the previous successes, as observed at the end of 2019. Moreover, key personnel in the IT department have been kept, which, without strong monitoring, may have important consequences on the integrity of the IT system.

While individual performance contracts have shown to generate positive outcomes in the social sectors, this case study provides a novel example that this approach can positively impact multiple outcomes also in customs, at a relatively rapid pace and low cost for the administration.

However, it requires a strong investment from international financial institutions in terms of personnel, policy dialogue, and advice almost on a weekly basis over many years. The higher pace of support to Madagascar customs began in 2016 but was built on an engagement that started several years before. A mutual trust relationship between the customs administration and donors like the World Bank is essential to fight corruption in customs.

CASE STUDY 11

CUSTOMS ADMINISTRATION

Customs Reforms in Afghanistan

Reducing parallel customs structures through automation of clearance processes in Afghanistan

Overview

Anyone transporting goods in Afghanistan has to negotiate parallel tax structures: the official customs system, run by the government, as well as others run by powerful interests, including provincial chiefs and various insurgent groups. All collect taxes and/or fees at border crossings, on goods transiting domestic transport routes, and in domestic markets. This revenue collection process—often facilitated through informal negotiations—hinders the growth of legitimate trade and contributes to ongoing problems of tax evasion and smuggling at the borders.

Beginning in 2004, the Afghanistan Customs Department in collaboration with the World Bank started a countrywide computerization of customs clearance operations. The goal of computerization and automation was to improve the release of legitimate goods in an efficient manner and reduce opportunities for corruption. Throughout the implementation process, the customs department faced numerous capacity and security constraints. Security in border areas was constantly evolving, which impacted the extent to which the government could effectively control various customs points.

Through 15 years of efforts to improve processes and reduce opportunities for parallel customs structures, revenue collection increased, and truck release times

decreased substantially. Major challenges persist, however, with facilitation payments being routinely demanded and collusion and criminal corruption continuing to take place.

Introduction

In May 2019, *The Economist* reported on the corruption lorry drivers in Afghanistan experienced when transporting goods across the country. The newspaper spoke with Muhammad Akram, one of those lorry drivers, who said that both the Taliban and the government demanded payments from drivers. “But when the Taliban stop [Akram] at the checkpoint, they write him a receipt,” *The Economist* reported. “Waving a fistful of green papers, [Akram] explains how they ensure he won’t be charged twice: after he pays one group of Talibs, his receipt gets him through subsequent stops. Government soldiers, in contrast, rob him over and over.”⁹⁷

While the Afghanistan Customs Department (ACD) made remarkable progress in improving the release of legitimate goods in a fair and efficient manner from 2004 to 2019, Muhammad Akram’s story illustrates the magnitude of the challenge that ACD faces. Given the persistence of insecurity and conflict in Afghanistan, the threat posed by corruption in customs extends beyond just fiscal losses and high trade transaction costs. Major

national security issues associated with terrorism and drug trafficking are also at stake and are well beyond customs' capacity to manage on its own.⁹⁸

In countries like Afghanistan, combating corruption and illicit trade is not simply a matter of collusion between inspectors, importers, and brokers—a problem faced by customs all around the world—but rather a problem that extends across the fabric of society. ACD operates in a fragile country environment with parallel systems that undermine government efforts. The ACD's efforts are part of a broader State building process, legitimizing the State's authority and control over territory and establishing a robust environment of sound governance. Revenue collection efforts are at the core of establishing the State's legitimacy. Like in many developing countries,⁹⁹ customs payments in Afghanistan account for a significant portion of government revenue, with the ACD collecting roughly 40% of total revenues. Expanding the domestic revenue base is crucial to Afghanistan's self-reliance, as external assistance is expected to decline in the years to come. Establishing good governance is a key component of this process.

In 2004, ACD began the long process of switching to automated customs procedures. Automation was expected to significantly reduce face-to-face contact and the resulting informal negotiations that were then a central feature of the relationship between customs and traders.¹⁰⁰ Automation was the driver of ACD's reform agenda, facilitating overall rationalization and streamlining of business processes and procedures. Moreover, it was meant as the vehicle to increase state legitimacy through enhanced control over revenue streams, reducing corruption and space for parallel structures from illicit actors.

Introducing automation across the board was a risky decision, however, since the government did not fully control all border posts, and it was not clear that inland and border customs departments would collaborate and agree to send more revenue to customs headquarters by declaring goods through the system. These border posts were—and still are—often heavily intertwined with local non-state actors, constituting a complex negotiated equilibrium of official and illicit payments around the clearance of goods. Infrastructure weaknesses, such as unreliable electricity, limited satellite connectivity, and poor fiber-optic cable availability added further challenges.

While the ACD had to rely on other parts of the government to directly tackle the parallel customs structures—like those run by insurgent groups—the automation reform would contribute to those efforts by reducing personal interactions and formally connecting border posts to the central government, increasing the government's ability to exert control.

The implementation process

Automation of ACD's customs procedures was rolled out in three phases, starting in 2004; an initial phase in which 8 out of 25 customs offices were connected to headquarters' central system, followed by a second and third phase aimed at countrywide coverage. All three phases were supported by the World Bank and other international donors (see Box 4.3).

Automation started with the computerization of the domestic transit process and was rolled out across three trade corridors. The first corridor connected the busiest border crossing point (Torkham, on the road from Peshawar and the port of Karachi, Pakistan) to Kabul, the capital city, via the Jalalabad inland clearance post (see Figure 4.3). This involved computerization of customs processes from scratch and equipping border posts with the basic essentials of reliable power supply and communications.¹⁰¹

Automation was then carried out in the second busiest corridor, connecting to Iran via Islam Qala to Herat, followed by the northern corridor from Uzbekistan via Hairatan to Mazar-e Sharif. This automation allowed ACD to gain better control over customs revenues from provincial governments and implement a domestic transit policy for the first time, allowing traders to clear goods at inland customs points as opposed to border posts. Prior to that, if goods were not reported to the ACD at the border, they tended to be lost for good. Moreover, without the automation of customs points, revenues declared at the border were hard to track, verify, and consolidate and thus easily subject to diversion.

In Torkham, the first customs border post to be automated, brokers and traders initially resisted using the automated system. Most of them had never worked with computers before. Whereas before they were able to process goods using paper forms, moving from one customs official to the next, they now had to enter the

FIGURE 4.3 ACD Presence and Main Transit Trade Routes



Source: ACD

details of shipments into the automated system at the start of the process, after which the digitized forms provided the basis for subsequent clearance checks and verifications. For automation to work, ACD had to train brokers and traders on how to use the systems. In order to facilitate computerized declarations, the ACD provided a computer center in Torkham where brokers and traders could access the system to declare goods. In subsequent implementations at border crossings, brokers and traders were required to provide these facilities themselves.

One challenge that quickly emerged was the diversion of illicit trade and smuggling from automated customs offices to non-automated ones. To counter this “border shopping,” the government wanted to automate remaining offices as fast as possible.¹⁰² By 2010, eight customs points had been automated. The remaining 17 were automated in subsequent phases.

Revenue collection during the first phase increased fivefold and clearance time reduced from 1.5 days to 1.5 hours.¹⁰³ The trade volume also grew during the same period but far more slowly than the revenue gains. Improvements were also reflected in the perceptions of the business community: Afghanistan’s rank in the World Bank Logistics Performance Indicator improved significantly. In 2007, Afghanistan was rated as the worst performer in the world, whereas in 2010 it had jumped to 104th out of 155 countries.

Under the second phase of automation, the focus was on (i) upgrading the ASYCUDA ++ version to ASYCUDA World;¹⁰⁴ (ii) computerizing three more trade corridors (Turkmenistan, Tajikistan and Southeast Iran); and (iii) addressing human resource issues associated with the retention, motivation, and competence of some of ACD’s key ASYCUDA staff.

BOX 4.3

Donor Support to Afghanistan Customs Department

Throughout the reform process, ACD has been supported by the international donor community. The automation effort of the ACD has been sustained through three different World Bank funded projects: the Emergency Customs Modernization and Trade Facilitation Project (2004 – 2010), the Second Customs Reform and Trade Facilitation Project - (2010 – 2018), and more recently the Fiscal Performance Improvement Support Project (2018–2021). UNCTAD has been an active implementation partner during this time, working closely with the ACD on supporting the implementation of the Automated System for Customs Data (ASYCUDA), a computerized customs management system. Other donors, such as USAID, have provided bilateral support to the ACD on various other customs functions (e.g., export facilitation), complementing the ongoing automation reform effort. Donor support is coordinated through an Informal Customs Network that meets at regular intervals.

Upgrading the systems to ASYCUDA World required considerable skills from the national ASYCUDA staff, which until 2010 were hired as civil servants under the Ministry of Finance. But the national ASYCUDA team was experiencing human resource issues due to difficulties in retaining highly qualified staff, a common issue experienced by governments when dealing with in-house Information Technology systems. To address this issue, 20 local ASYCUDA staff were contracted by the United Nations Conference on Trade and Development (UNCTAD), the main UN body working on trade issues. Working under a UN contract provided staff with better job security and more competitive remuneration.¹⁰⁵ This national team built significant capacity over time and the rollout of ASYCUDA post-2012 was largely implemented by them. The team guaranteed the functioning and integrity of the system, supported by access to international expertise through UNCTAD. The UNCTAD contracts were supposed to be a medium-term solution; however, the return of these officers to a sustainable ASYCUDA structure within the ACD, with appropriate job security and better salaries, did not eventuate.

A third phase of reform began in 2018. It involved further expanding coverage of border and inland customs offices, as well as expansion of ASYCUDA modules such as risk management and post-clearance audit. These modules allowed for further streamlining and

automating core customs functions, specifically in the area of risk management. In addition, new technology such as fingerprint readers to avoid unauthorized use of log-ins to the ASYCUDA system was installed, a problem that had emerged over time as automation was being rolled out. E-payment is also underway, which will contribute to further reducing clearance time, as well as eliminate cash payments from the clearance process.

Reflections

At the end of 2019, almost all border customs posts, as well as inland customs departments, were fully automated, except for 3 border posts in particularly remote and insecure locations—Paktika, Ghulam Khan and Badakhshan.

While on the one hand, ASYCUDA greatly facilitated and to some extent formalized customs processes, a parallel paper trail still exists for each transaction. In addition to submitting declarations through the automated system, a paper-based declaration package forms the basis for clearance decisions along the various steps in the clearance procedure and moves from customs officer to customs officer for approval. This impacts clearance times and also weakens potential gains in reducing corruption by failing to eliminate discretionary and

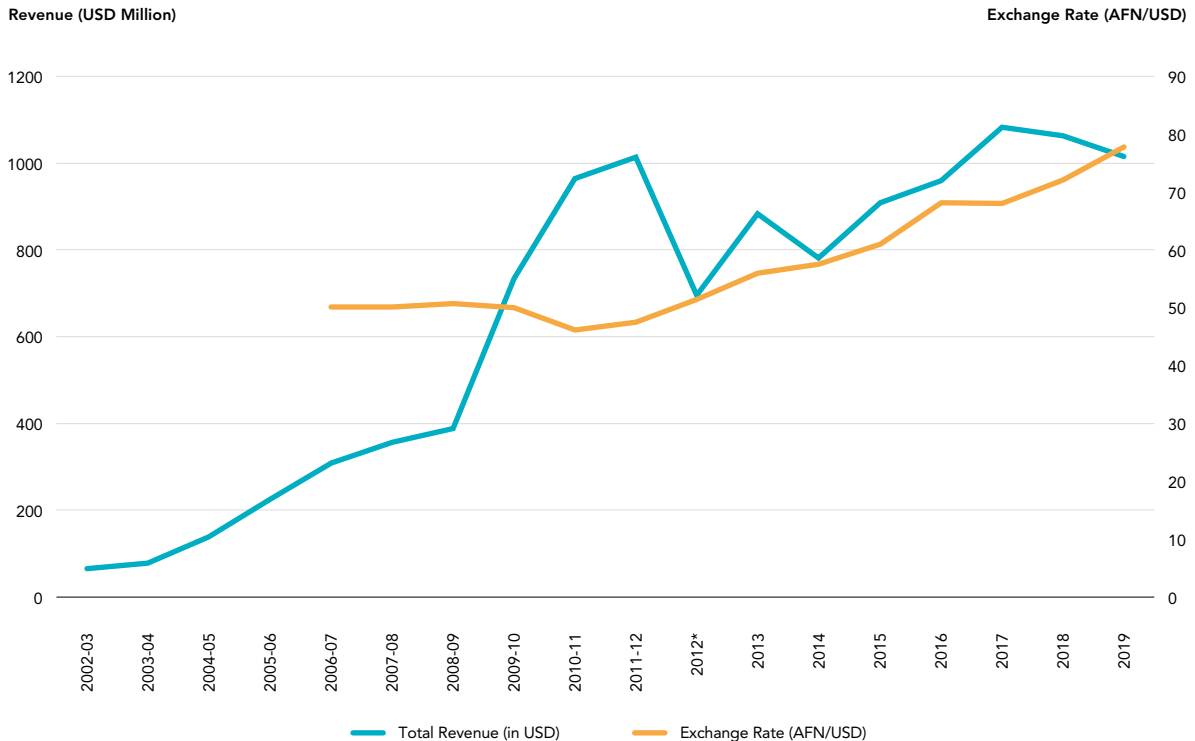
unnecessary human contact. The barriers to removing the parallel paper trail are both legal (e.g. Afghanistan does not yet have an e-governance law)¹⁰⁶ and political, as there are incentives within the customs offices to maintain the parallel paper trail as this provides an opportunity for much needed supplements to income, which is currently very low at between \$100–\$200 a month. Indeed, even though the number of signatures and interactions between customs officers and clients decreased with the introduction of automation, anecdotal evidence suggests that the actual bribe price at other points has increased, seemingly compensating for eliminated collection opportunities.¹⁰⁷

A Customs Cadre Regulation allowing for higher pay through competitive recruitment was developed and approved in 2018, aimed at addressing the human resource problems. However, the regulation is not yet

implemented, largely due to political reasons. The Cadre Regulation has many opponents, who prefer keeping the current system of patronage appointments at customs in place. Indeed, there are widespread allegations of political appointments, of pressure leading to the rehiring of dismissed staff, of preference given to individuals with links to the political elite (at the central or local level), and of the sale of lucrative posts.¹⁰⁸ These pressures keep the Cadre Regulation from being effectively implemented.

Over time, traders, brokers and customs officers have also learned how to game the new system. Traders in Afghanistan can shop around for the border station that offers the best deal, even if it will increase transportation costs. While automation should have reduced this practice, turning a blind eye to undervaluation or misclassification can go a long way in facilitating these

FIGURE 4.4 Customs Revenue (in USD)



Source: Afghanistan Customs Department. All figures prior to 2005 may not be accurate.

* In 2012, the Afghan calendar was changed from starting the new calendar year on March 21st to starting the new calendar year on December 23rd. 2012 as recorded here thus only covers nine months (March 21st – December 22nd, 2012). The previous year covered March 21st, 2011 – March 20th, 2012. The next year covers December 23rd, 2012 – December 22nd, 2013.

kinds of offers and deals. Discounts offered at customs posts are partially an unintended response to officials trying to meet ever increasing revenue targets with the idea that offering informal discounts will bring in more traders and thus result in more revenue for that particular customs post. From a national perspective, however, the Treasury loses out as goods are cleared at discounted rates. Not only does this impact revenue collection, it also greatly distorts trade statistics and growth estimations of the economy. The ACD has recently started to combat this practice, moving towards a new negotiated equilibrium with traders and brokers and also customs personnel, where more accurate valuation and classification is being applied and corresponding higher taxes are being paid, but implementation will likely take time.

Indeed, it appears that the ACD is at a critical crossroads where initial gains from automation now require further, politically difficult, decisions in order to move to the next level. The first phase of reforms saw large gains in terms of revenue increases and improved processes, but the subsequent phases failed to deliver similar progress. Between 2007 and 2010, Afghanistan customs jumped from being the worst performer in the World Bank's Logistics Performance Indicator to being ranked 104 out of 155 countries, but by 2018 it again ranked as one of the worst performers (158 out of 160 countries). As Table 4.2 illustrates, revenue collection increased fivefold in the first 5 years of reform, from USD138 million in 2004/5¹⁰⁹ to over USD733 million in 2009/10. Customs revenues increased at a slower rate during subsequent phases of reform, reaching over USD1 billion in 2016 and then plateauing. Since then, improvements in revenue collection have been mostly driven by depreciation in the exchange rate.

In summary, the endeavor to automate Afghanistan's clearance process brought major benefits to the government, including increased revenue and improved clearance time. Other gains include improved transparency of trade transactions, better (although not yet accurate) customs and foreign trade statistics,¹¹⁰ simplified procedures, standardized documents, and the possibility to declare goods online. Automation also increased transparency of customs operations and national consistency across borders and has resulted in better predictability of the trade environment.¹¹¹

While automation helped the ACD to boost revenue, this technocratic approach can only go so far. Ongoing challenges relate to the extension of automation to

remote areas, human resources, technical capacity, security, and finally vested interests and political challenges. Tackling corruption in environments like Afghanistan needs a multi-pronged approach that has to be revisited on a continuous basis as vested groups find loopholes that need to be repeatedly plugged.

The next steps for the ACD in further eliminating corruption and facilitating trade will be to work towards a fully automated self-assessment, eliminating the parallel paper trail, and optimizing the functionalities ASYCUDA World has to offer. In this case, traders and brokers would submit their self-assessed declarations online through the automated portal and pay taxes based on their preliminary assessments, which would subsequently be verified and checked by the ACD, supported by automated controls and (post-clearance) assessments. This will be a gradual process, however, as the existing business processes must first be formalized across the various customs offices in the country, supported by appropriate regulations and formal procedures. To date, automation has contributed to reducing opportunities to engage in corrupt behavior but has done little to tackle incentives. For this, some politically difficult decisions will be required, such as addressing weaknesses in the ACD's human resource capacity and effectively negotiating a new equilibrium with traders and brokers in which proper taxes are being paid and directed to the government. Unless these challenges are addressed in parallel, it may be difficult for the ACD to sustain and improve on the progress it has already made.

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 Hors (2001: 18) reports that recruitment, postings, transfers and promotions in customs in Pakistan were not merit-based. Postings, which would lead to large receipts from bribery, were auctioned to highest bidders who, in addition to making down payments, made regular payments of specified amounts to higher officials from their corrupt earnings.
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 24. For example, Arifari (2006: 209) reports from Niger that the posting of a customs officer to head office in Niamey was considered a punishment, since there was no extra source of income on top of their salaries there.
 25. It is important to emphasize that such corruption networks are not a specific developing country phenomenon. In 2013, investigations revealed deep rooted corruption within the Australian Customs and Border Protection Service at Sydney International Airport (WCO, 2017: 16). Widespread corruption was the result of long-term collusion between Customs officers at the airport to facilitate the importation of illicit drugs. The officers used their inside knowledge to defeat surveillance. They had privileged access to databases. By working together, they exploited weaknesses in the supervision system and exploited connections that they had developed in the workplace to gather information and to cover their tracks.
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 30. Almost two decades ago, Hors (2001) provided a similar observation and wrote (p. 11): "It is one thing to define the characteristics of what an ideal corruption-resistant, efficient customs administration would be like; it is quite another actually to drive and manage the transformation."
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83. Mirror statistics calculate the gaps of foreign trade statistics between two trading partner countries and can be used to detect potentially fraudulent import flows. See Cantens et al. (2012) for detailed discussion.
84. Misclassification consists of importing a good on which there is an import tax or value-added tax (VAT) but declaring it as another good for which there is no import tax or VAT.
85. The value declared is lower than the actual purchase value of imported goods leading to lower tax payments for the importer because taxes are paid as a percentage of declared value.
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88. Despite initial resistance, the majority of inspectors when surveyed said they preferred performance contracting after being trained on using the new monitoring system. However, some inspectors have not accepted the change.
89. Risk management systems generate a risk score for the shipment. The risk score determines the probability of inspection and the rigor of the inspection should it occur. High-risk shipments face the highest degree of scrutiny via physical inspection whereas lower-risk shipments are given less scrutiny, being subject to documentary inspection only (Chalendard et al. 2018).
90. Chalendard et al., 2018.

91. Some of them were reintegrated with a new DG appointed in March 2019.
92. For more information on the rationale of the approach, see Raballand and Rajaram (2013), "Behavioral Economics and Public Sector Reform - An Accidental Experiment and Lessons from Madagascar", mimeo.
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94. Raballand et al., 2017.
95. Cameroon was the first country in Sub-Saharan Africa to implement such a scheme (Raballand and Rajaram 2013). Later, other countries, such as Togo and Liberia undertook fairly similar initiatives.
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CHAPTER 5

Public Services: Land, Ports, Healthcare



Introduction

Why is it important to curb corruption in public services?

Corruption in public services takes many forms.

*“Corrupt incentives exist because state officials have the power to allocate scarce benefits and impose onerous costs.”*¹ Consequently, reducing the benefits or increasing the costs of malfeasance are the key strategies for anti-corruption efforts in public service delivery. A classic example is a service provider—a government clerk issuing passports or licenses, a teacher, doctor, or police officer—extracting an informal payment from a citizen or business to grant access to a service, expedite it, or guarantee a certain quality standard. These forms of malfeasance are often labeled “petty corruption” because of the relatively small amounts involved in every transaction; however, these per-transaction amounts add up to significant totals in those systems where they are common. Yet such “petty corruption” in service delivery sectors is often symptomatic of what the literature refers to as “grand corruption,”² such as embezzling funds earmarked for government services, receiving kickbacks from private-sector contractors responsible for different aspects of delivery, or various forms of collusion and realized conflicts of interest.

Whether operating on a relatively small or large scale, corruption in service delivery imposes significant costs on the government, citizens, and businesses. Olken and Pande³ provide a useful review of the existing country-specific studies that use

a variety of methodologies to estimate the magnitude of such costs (see Table 5.1). Naturally, these estimated costs differ by country and service delivery sector. For example, bribe payments to port and customs officials by cargo shippers were about 14 percent of total shipping costs in Mozambique, in comparison to 4 percent in South Africa. In another example, truck drivers in Indonesia pay around 13 percent of the cost of the trip in bribes to police; this is significant in comparison to the truck drivers’ wages, which average about 10 percent of the trip cost. Perhaps most staggeringly, in Uganda, only 13 percent of the education funds from the central government for non-wage spending reached the schools, suggesting that 87 percent of the public money had been lost to graft. While these estimates must rely on various assumptions, and as such are subject to critiques, taken together they point to the significant magnitude of the monetary costs of corruption in public services. One attempt to estimate the total amount of bribes across sectors in a single country, Ukraine, arrived at roughly USD0.5 billion, or 1 percent of the country’s GDP per year.⁴ Additional costs with multiplier effects include poor development outcomes that are sector-specific (e.g., corrupt health or education sectors), reduced volume of international trade and investment flows due to high informal payments, and generally low trust in government. Low trust in turn results in a vicious cycle of low investment, low tax compliance, and low citizen participation.

Adopting a sector-specific approach

Unpacking sector-specific issues is crucial to diagnose the root causes of corruption in public services. Some researchers have argued that binary distinctions of corruption types in service delivery—grand/petty, need/greed, political/bureaucratic, institutional/individual—may be useful as a framing device, but are not particularly actionable in terms of formulating a reform approach.⁵ This is because these different types of corruption, just as the general phenomena such as bribery, nepotism, or collusion, can be present in any sector at the same time.⁶ Instead, a

more sector-specific approach allows one to see the problem holistically and to laser-focus on appropriate solutions. For example, the Curbing Corruption⁷ initiative by a group of international policy experts and academics develops a list of corruption types for 11 sectors, including health, land, shipping, defense, education, police, and others. The typology includes 20-40 different types of corruption per sector that are common across countries; as an example, Figure 5.1 lists corruption typologies in land and health administrations.

Understanding the existing corruption types in a sector enables the design of appropriate and feasible solutions. For example, in healthcare, a reform could be narrowly focused on rooting out a particular issue, such as bribery in surgery waiting lists, or adopt a multi-pronged approach to focus on the entire service. The correct diagnostics also allows reformers to assess the feasibility of the program, as well as to identify the loci of leadership and how to

build stakeholder coalitions. For example, where the professional integrity has currency, doctors could be asked to lead the reform. Where civil society is strong and vocal, further power could be given to patient groups for monitoring and closing the accountability loop. In some situations, a link to an international initiative, such as U4 for healthcare or EITI for mining, may provide the necessary alliance to boost the reform and increase its feasibility and credibility.

TABLE 5.1 Corruption in Public Services: Estimating the Magnitude of the Problem

Source	Country	Service delivery sector	Type of corruption	Methodology	Estimate of the magnitude of corruption
Olken and Barron (2009)	Indonesia	Police	Bribes paid by truck drivers to police	Direct observation: Enumerators accompanied truck drivers on their regular routes, posing as truck drivers' assistants, and recorded illegal payments	13 percent of cost of a trip (cf. truck driver's salary is 10 percent of cost of a trip)
Sequeira and Djankov (2010)	South Africa, Mozambique	Ports and customs	Bribe payments to port and border post officials	Direct observation: Enumerators accompanied clearing agents in ports to collect information on bribe payments	Bribes amounted to 14 percent (Mozambique) and 4 percent (South Africa) of the total respective shipping costs for container passing through the port
Reinikka and Svensson (2004)	Uganda	Education	Graft in public spending of educational funds intended to cover school's nonwage payments	Estimate by subtraction: PETS compared the amount of grant sent down from the central government to the amount received by schools	87 percent of funds (schools received on average only 13 percent of the grants)
Olken (2006)	Indonesia	Social assistance	Theft of rice from a program that distributed subsidized rice	Estimate by subtraction: Administrative data were compared to a generally administered household survey	At least 18 percent of the program's rice disappeared before reaching households
Gorodnichenko and Peter (2007)	Ukraine	Multiple	Bribes received by public sector employees	Estimate from market inference: Residual wage differentials between the public and private sectors (consumption levels are the same in the two groups and labor)	Aggregate amount of bribery estimated to be is between USD 460 million – USD 580 million, or about 1 percent of GDP of Ukraine

Source: Olken and Pande, 2012.

FIGURE 5.1 Disaggregating Corruption Typology within Service Delivery Sectors

Corruption Typology - Health	Corruption Typology - Land
HEALTH FUNCTIONS	LAND ADMINISTRATION
<ol style="list-style-type: none"> 1. Poor clinical protocols 2. Unnecessary interventions 3. Informal payments in interventions 4. Informal payments in waiting lists 5. Prescribing unnecessary or costly medicines 6. Over-charging 7. Other cases of illegal contact 8. Inappropriate prescribing and misuse of the electronic systems 9. Over-treatment 	<ol style="list-style-type: none"> 1. Bribery and rent-seeking by land administration officials 2. Bribery of judicial authorities 3. Favouritism and nepotism by land in decision-making 4. Elite capture and preferential access to land titling schemes 5. Manipulation and interference of records, adjudication and dispute resolution 6. Manipulation of land valuation to secure higher prices and/or reduce compensation payable 7. Fraud and production of false claim documentation & certificates 8. Embezzlement of public land administration funds & land revenues 9. Use of the institutions as a platform for private practice 10. Manipulation in public procurement of land administration services to win private contracts
LEADERSHIP & GOVERNANCE	CUSTOMARY LAND TENURE
<ol style="list-style-type: none"> 10. Capture by special interests 11. Inappropriate care strategies 12. Dereliction by fraud, lax controls 	<ol style="list-style-type: none"> 11. Abuse of power by chiefs 12. Control over land revenues by influential people 13. Multiple allocations of the same plots 14. Conversion of customary and rural land for urban development 15. Reluctance of officials to provide land services 16. National institutions and business interests override local land rights
HEALTH WORKFORCE	MANAGEMENT OF STATE-OWNED LAND
<ol style="list-style-type: none"> 13. Inappropriate selection for jobs, promotion or training 14. Inappropriate absenteeism 15. Nepotism in restrictive expert groups 16. Inappropriate professional accreditation 17. Expert-bias in complaints procedures 18. Improper inducements for conferences, research, placements 19. Fake workshops and fake per-diems 20. Discrimination against groups 21. Undeclared or tolerated conflicts of interest 22. Fake reimbursement claims 	<ol style="list-style-type: none"> 17. Collusion of government officials by private interests 18. Manipulation of compulsory land acquisition and compensation processes 19. Inadequate legal framework for conversion to private land 20. Irregular conversion of property classification status
MEDICAL PRODUCTS, VACCINES & TECHNOLOGIES	LAND USE, PLANNING & INVESTMENTS
<ol style="list-style-type: none"> 23. Substandard, falsified medicines 24. Inappropriate approval of products 25. Inappropriate product quality inspection 26. Private sector collusion in markets 27. Corruption in new product R&D 28. Companies 'gaming' the system 29. Theft and diversion of Products 30. Re-packaging of non-sterile and expired product 31. Legal parallel trade in drugs 32. Overly high pricing on non-medical products 33. Inadequate control of non-intervention studies 34. Improper benefits from companies 35. Improper acceptance of donated devices 36. Improper research, trial & marketing practices by companies 	<ol style="list-style-type: none"> 21. Capture of profits originating from land conversion and re-zoning 22. Abuse of government officials' discretionary power to propose developments 23. Acquisition of land through state capture and/or by insider information 24. Bribery of government officials by investors and/or developers
HEALTH FINANCING	LARGE SCALE LAND ACQUISITION FOR INVESTMENT
<ol style="list-style-type: none"> 37. Corruption in health insurance 38. Corruption in procurement 39. Complex & opaque tendering procedures 40. Decentralised procurement that enables corruption 41. Donor collusion in corruption 42. Corrupt invoicing by suppliers 	<ol style="list-style-type: none"> 25. Bribery and manipulation of community leaders 26. Payments of bribes and kickbacks to officials involved in approving land allocations 27. Circumvention of agreed and legally binding consultation procedures 28. Political interference in land acquisition and allocation
HEALTH INFORMATION SYSTEM	
Not usually a source of corruption types	

Source: Curbing Corruption

What are emerging economies doing to address corruption in public services?

Implementation of reforms takes time, providing important lessons for emerging economies along the way.

Rose-Ackerman and Palifka⁸ offer general takeaways: *“The most favorable cases are those in which the number of beneficiaries builds up over time as reforms take effect to create a constituency for the new policies. In particular, reform is much easier if the domestic and international business communities believe they will benefit from a reduction in corruption and patronage, and ordinary citizens benefit as well.”*

In other words, progress takes time, often decades, and sequencing matters. However, there are plenty of anti-corruption initiatives focused on service delivery ongoing around the world, many of them showing promise, even if the progress is partial or its sustainability not yet ascertained. It is this partial progress and the potential reversals that offer lessons for other countries on what works and what doesn't in particular sectors and contexts.

Although the issues and their corresponding solutions are sector-specific, there are common threads that can be derived when comparing reforms across sectors. This chapter focuses on three distinctive service delivery sectors: healthcare, land administration, and port services.

- **Healthcare** is an example of a frontline public service that affects virtually all citizens, as proven by the 2020 COVID-19 crisis. If plagued by pervasive corruption, the outcomes in human development can be impacted, which in extreme cases undermine governments' legitimacy.
- **Land administration** – land titling and registration – affects a large proportion of the population and is often a very sensitive sector that is central to many economies. Especially in historically unequal or post-conflict societies, corruption in land administration can undermine land reform and citizens' trust in government as a whole.
- **Port services** may seem like a very specific issue; however, they are a good example of a government-to-business (G2B) service. Pervasive corruption in ports directly affects trade and the investment climate in the countries relying on maritime commerce, hampering their development.

The solutions being implemented in these three sectors vividly illustrate the types of reforms that have a chance to take root in emerging economies.

They take into account both the service type as well as sector specifics.

Some public services, such as land administration, lend themselves to sector-wide “sunlight” reforms with a primary aim to modernize the sector and increase transparency, thus increasing the cost of malfeasance and reducing corrupt incentives in service delivery.

The case of Rwanda's reform of land mapping and titling is an example of such an approach. The reform was focused on good management practices in land administration, including the digitization of records. Even though rooting out corruption was not a stated objective of the reform, the largely informal land transactional system in place prior to the reform was especially conducive to corruption. Some of the most common types of corruption issues are bribe payments to gain access to records; the production of fraudulent documentation and certificates; circumvention of procedures for allocating land or the duplicative allocation of land plots; bribery of court officials; and refusal of basic services without payment. The reform is one of the reasons why Rwanda scores significantly better in regional surveys on managing corruption in land services than neighboring countries. In addition, this reform took place during a period of post-conflict recovery where land was a continuing source of tension. Since corruption was a symptom of the underlying problem, the reform was able to use the post-conflict window of opportunity to solve a number of underlying issues, including corruption.

In other public services, such as healthcare, the sector-wide approach needs to focus on improving the sector's development outcomes that have been directly affected by corruption.

In these cases, the fight against corruption moves away from financial compliance that “zero tolerance” approaches espouse, focusing instead on improving service delivery across the sector. In Ukraine's ongoing health system reform, changing the incentives of healthcare providers involves decreasing relative benefits from corrupt transactions as well as increasing their costs, resulting in better health outcomes. The reforms have been initiated for capitation financing in primary care; raising health

professionals' remuneration; initiating transparent, merit-based medical university admissions and health staff appointments; and developing an eHealth digital record-keeping system. Even though still ongoing, these reforms aim to lower out-of-pocket expenditure, reduce the number of acute medical events, and increase patient satisfaction with their care providers. This is an example of a true "ecosystem reform," in which changes to legislation are going hand-in-hand with executive implementation and strong civic engagement to serve as a feedback loop.

Successful sector reforms specifically focused on rooting out corruption in service delivery are possible when coalitions are formed. In the case of the program to combat corruption in Nigeria's ports, such a coalition included private shippers, the United Nations Development Program (UNDP) and three of the country's anti-corruption agencies. Shipping is a sector where it is possible to align the incentives of private companies, concerned about

the costs and risks of corruption, and government, which is trying to stem the flow of lost revenues. The collective action problem of the shipping companies was partly addressed by an international association called the Maritime Anti-Corruption Network (MACN), which brings together a group of shipping companies collectively concerned about reducing the prevalence of corruption in the sector. MACN and UNDP have piloted some reform programs globally and so were able to play a constructive key role in Nigeria's ports sector reform. The network worked together with the Nigerian government to initiate and implement measures with an aim to reduce corruption. These included developing corruption risk assessments of five ports, followed by standardizing procedures, using an e-governance portal, and establishing a grievance mechanism. Surveys conducted by the network and its partners suggest the measures had a positive impact in improving functioning of the ports, even though substantial work remains to be done.

What can we learn from these examples?

The reform approach need not be designed specifically to combat corruption, but rather aim to resolve its impact. Sector-wide reforms will have anti-corruption effects as long as they increase the costs and/or reduce the benefits of corrupt transactions. When the reforms specifically target corruption in a sector, they seem to work when there is a strong pro-reform coalition between the anti-corruption champions in the government and businesses or citizens. In order for businesses and citizens to be able to become agents of change, their collective action problem must be solved. To this end, an international network or body may help galvanize the effort.

In all three cases, employing information and communication technologies played a role, but only insofar as they changed the underlying incentives. In Rwanda, the land records were digitized, which brought the necessary amount of "sunlight" into the system, which meant that this basic information could no longer be bought and sold. In Ukraine, a digital eHealth platform connected to the reimbursement system was initiated to ensure greater transparency in payments. In Nigeria, an e-governance portal was introduced for the ports, making malfeasance and

extortion more difficult to hide.

Although each approach was different, it seized an existing political window of opportunity for reform. In Rwanda, it meant addressing the land titling issue during the post-conflict period by creating more transparency. In Ukraine, the reform was a response to a public health crisis, facilitated by the ripe political climate. In Nigeria, an international shippers' association with strong commercial incentives found willing partners in the UNDP and three anti-corruption agencies that were motivated to show positive results in combating corruption.

None of the three reforms are fully finished, uncontroversial, or immune from possible reversals. Rwanda's top-down approach calls into question the reform's sustainability. Ukraine's success continues to depend on the ability of the reformers to sustain their momentum. In Nigeria, despite improvements, there is still a long way to go until corruption in ports is fully rooted out. However, intermediate results in all three cases show that progress is possible even in very challenging environments.

CASE STUDY 12

PUBLIC SERVICES: LAND, PORTS, HEALTHCARE

Land Administration Reforms in Rwanda

Improving land administration through the Land Tenure Regularization (LTR) program in Rwanda

Overview

Rwanda set out to address the issue of land ownership and land-related challenges through passage of several laws and policies. The 2004 National Land Policy provides general guidance on a rational and planned use of land while ensuring sound land management and efficient land administration. The policy was developed to address land-related challenges, including a land tenure that was dominated by customary law, resulting in land fragmentation, a practice that reduces further the size of family farms below the threshold of the average surface area that is economically viable. A wide-ranging program initiated by the Rwandan government between 2008 and 2012 to map and title land parcels for the entire country has played an important role in improving service delivery and reducing corruption risks.

The reform process did not stop with the land titling program, and since 2012 the Rwanda Land Use and Management Authority has been grappling with the challenge of maintaining digital records for over 10 million land parcels. This has required extensive training of officials and campaigns to raise awareness around the land registry system. While these challenges are ongoing, the country can claim important successes in having formalized its land administrative system. Even if reducing corruption may not have been an overt aim of the project, this is one of the reasons why Rwanda compares positively to its peers in East Africa for the low prevalence of corruption in land administration.

Introduction

Historically, insecurity over land ownership was a critical part of the tension between communities. Addressing insecurity around land has consequently been one of the foremost priorities of the post-conflict reforms initiated in Rwanda following the 1994 Rwandan genocide. The long-term solution was found to be the initiation of a land reform. The reform started with a new policy and law in 2004 and 2005 respectively.

The problems of conflict and corruption are closely interlinked. As surmised by Apollinaire Mupihanyi, Executive Director of Transparency International Rwanda, “when there is conflict, this increases corruption... people with wealth buy their way out of problems. Vulnerable people are the worst affected, especially poor Rwandans and women.”

Corruption was one of the symptoms of the deficiencies in Rwanda’s land administrative system in place following the conflict. In its 2007 activity report, the Rwandan Ombudsman identified the land registry as the government agency about which it received the third highest number of complaints, including complaints of corruption.⁹ A qualitative study published by Transparency International Rwanda in 2009 on the land administrative system in Kigali also revealed widespread citizen dissatisfaction and concern around corruption, particularly related to land expropriation.

The largely informal land transactional system in

place before reform in Rwanda gave rise to a range of corruption risks. In the absence of consistent and objective land ownership information, land officials and the courts have broad discretion when mediating land disputes, increasing their potential susceptibility to improper influence. Some of the most common types of corruption issues in service delivery, which occur in informal land administrative systems, are bribe payments to simply gain access to records; the production of fraudulent documentation and certificates; circumvention of procedures for allocating land or the duplicative allocation of land plots; bribery of court officials; and refusal of basic services without payment.¹⁰

While addressing land ownership as one of the sources of conflict may have been the foremost motivation for land tenure reform in Rwanda, important lessons from the program subsequently implemented have relevance to anti-corruption practitioners. Faced with a largely unmapped national tenure system, the country embarked on an ambitious program to formally map and digitize all land titles across the country. After the process, the government then had to improve the public's knowledge and understanding of the new system, and the land registry had to find a sustainable way to maintain and administer the digital database. Overcoming these challenges has led to important

improvements in land governance in Rwanda and improved integrity in the provision of land services.¹¹

The implementation process

The process of land reform in Rwanda initiated in the 2000s was first premised on changes to its legal framework for land. The Rwandan Constitution (2003), National Land Policy (2004) and Organic Land Law (2005) had all provided a basis for legal recognition of land rights and established clearer mechanisms for enforcing rights and resolving conflicts. With a legal framework in place, the Land Tenure Regularisation (LTR) program then set out with the goal of issuing title registers to all landowners in the country. The program can be divided into two phases: the land mapping and titling project, initiated in 2008 and concluded in 2012, and the development and maintenance of the digital registry to make this service available to the public.

Phase I: Land mapping and titling

Multilateral agencies such as the African Development Bank (AfDB) have cited the Rwandan government's approach to its land titling program as an example of



good practice.¹² The biggest challenge the Rwandan authorities had to overcome was that land ownership was largely unmapped: in 2005 the land registry held titles for only 20,000 parcels for a population of over 9 million people. The National Land Centre, the land administrative agency and registry which was then responsible for the reform,¹³ took an important early decision in the implementation process to pilot the project in four areas between 2006 and 2009, covering 15,000 plots of land within three districts. This enabled the agency to test the practicalities of implementing the program, the results of which informed the Strategic Roadmap for Land Tenure Reform in Rwanda, an organizing document that was adopted by the cabinet in 2008.

On the basis of the pilot's findings, the Strategic Roadmap concluded that the most effective means for mapping the entire country was to use aerial photography. This had the advantage of being quicker and more cost effective than demarcating parcels entirely through on-site surveying. It involved using airplanes and helicopters to photograph land parcels based on visible boundaries. Once the photographers identified possible boundaries, staff from the National Land Centre visited individual parcels to determine their ownership.

Completing such a large exercise required a significant increase in personnel numbers at the National Land Centre. In 2008 the agency recruited 100 permanent employees, 800 contract workers and more than 5,000 casual personnel. The employees gathered data on parcels, which was then transmitted to a central office and, after allowing for a period for corrections and objections, digitized to enable land titles to be issued. In the correction stage, one innovation was the large-scale mobilization of citizens, up to around 110,000 people, to assist in adjudicating disputes.¹⁴ This was based on training community members to hear different views on the land ownership information that had been gathered and establishing land committees in each district. By 2012, the database held information on 10.4 million land parcels.¹⁵

Phase II: Establishing a land administrative structure

While a major achievement in itself, the land mapping and titling program did not represent the end of this process. The National Land Centre, which by then had

been integrated into the Rwanda Natural Resources Authority (RNRA), a larger government agency whose remit also covered the management of other natural resources such as water, forestry and mines, underwent a transformation from the focus on mapping titles to administering the large database that had been created. This necessitated investment in skills and training of registry officers. In 2012, the RNRA rolled out new software to record the different categories of land transactions that had been formally established under the new system. Again, in a move designed to lower costs, the registry made use of existing open source software to build its Land Administrative Information System.

Perhaps the most significant challenge to overcome was the initially low level of citizen engagement with the new administrative system. The processes introduced were entirely new to citizens, which was reflected in the fact that by 2012 less than a million people had collected their title documents, while in 2013-14 only 10,535 transactions were recorded in the land registry. The RNRA responded by commencing a large-scale public awareness campaign, which included media advertising and holding events, such as a national land week. The registry additionally decentralized services, establishing district land commissions supported by committees at sector and cell level, the smallest organizing units of local government in Rwanda, to make services more accessible to citizens. The end result was that by mid-2017, 7.16 million landowners had collected their titles and in 2015-16 the number of recorded transactions had increased tenfold.¹⁶

Securing the financial sustainability of the new system has also proven to be a key challenge. The mapping program had received substantial funding from donors of around USD67.5 million.¹⁷ The funding was due to end in 2013 and, although the UK Department for International Development continued its support to the registry, this was at a lower level, making it necessary to find ways of self-financing. The registry team had difficulty in fully engaging the finance ministry to provide adequate funding, while revenue from administrative fees had not yet been sufficient to entirely fund operations due to problems of affordability for citizens in obtaining titles.¹⁸

As of 2020, the registry is an independent entity and known as the Rwanda Land Use and Management Authority, but securing financing has been a challenge. There was some concern that donors may step back

from supporting the sector with the registry system in place, threatening what has been achieved to date. Experts still believe that more awareness around the benefits of recording transactions needs to be built, as a significant number of transactions take place informally, particularly in rural areas. Transaction fees may therefore be a factor inhibiting access to service. This points to the need for consistent long-term financial support in maintaining the registry.

Reflections

The land reform program is widely recognized as having made an important contribution to helping manage the conflicts that are present around land use and management in Rwanda. The AfDB considers that the process resulted in a 'noticeable element of increased efficiency, transparency, citizen participation and development of viable land governance institutions.'¹⁹

Apollinaire Mupihanyi, Executive Director of Transparency International Rwanda, believes that the land reform also had an important impact on reducing corruption: "Although we can't say that with digitalization all issues were solved, I ascertain that corruption was drastically reduced." He also cited the benefits that "transparency and clear management" in this sector have for land values and investor confidence. While this may not have been the principal, or even an explicit, aim of the project, lessons can be drawn from this case for reducing corruption risks in service delivery. The system that was established has several key characteristics that can help to reduce corruption risks.

- Fees for services and obtaining documentation are standardized and publicly advertised, including on the agency's website;
- Citizens can use a mobile texting service to directly access land registration information without the need to obtain this from land officials;
- This independent source of land ownership information can be used to settle contested points and ambiguities, which in an informal system create space for improper forms of influence to be used; and
- The database produced has already been used to

track changes in land use and provide information for land use planning.²⁰ These two areas are vulnerable to corruption, given the significant changes in monetary value that occur in land use planning.

An indication of the benefits of this reform process can be seen by comparing survey data on the corruption in land administration in Rwanda to its neighbors in East Africa. The East African Bribery Index captures key data on corruption in service delivery across various sectors in the region. Analysis conducted by Transparency International Kenya for the period 2010–2014 found that Rwanda scored significantly better in managing corruption in land services than neighboring countries. Its aggregate score for corruption in land services in 2014 was 12, where scores range from 0 to 100, and 100 is the worst score. This compares favorably with Burundi (42), Kenya (55), Tanzania (36) and Uganda (60). The aggregate score brings together five indicators: the likelihood of encountering bribery, the prevalence of bribery, the average size of a bribe, the share of the 'national bribe', and the perceived impact of bribery.²¹ As of 2020, more recent data on corruption in the land services sector in Rwanda was unavailable.

The scores for land services are consistent with various reports and surveys, which have concluded that the prevalence of corruption across different types of public service delivery in Rwanda is low by regional standards.²² However, the same may not be true of all sectors. Transparency in certain areas of government activity such as procurement or the organization of elections can be limited.²³

Notwithstanding this point, the case shows the value of scrutinizing broader governance reforms to determine whether gains in reducing corruption have also been achieved. By regularizing the land tenure system and making land ownership information readily available, the reforms implemented have played an important role in upholding high standards of integrity in service delivery in land administration in Rwanda.

CASE STUDY 13

PUBLIC SERVICES: LAND, PORTS, HEALTHCARE

Collective Action for Reforms in Nigeria Ports

Collective action to spur changes in functioning of ports in Nigeria

Overview

Ports in Nigeria face corruption that deeply impacts their operational effectiveness with harmful consequences for the country's economy. While the issues persisted for a long time, an anti-corruption program instigated by the Maritime Anti-Corruption Network (MACN) and its partners in Nigeria since from 2012 has nonetheless demonstrated that progress in countering the problem is possible.²⁴

The MACN brought together a global group of over 100 companies in the shipping sector that wanted to reduce the prevalence of corruption in ports around the world. Beginning with a risk assessment of five Nigerian ports, the network worked together with government agencies, port authorities, and civil society to implement a series of measures designed to reduce corruption. These included standardizing procedures, using an e-governance portal, and establishing a grievance mechanism. Surveys conducted by the network suggest the measures have had a positive impact in improving the functioning of ports. Though there is still a long road ahead to tame corruption in Nigeria's ports, this case study shows how anti-corruption measures can make incremental progress in challenging sectors through collective action and stakeholder collaboration.

Introduction

Ports in Nigeria face corruption challenges that are rooted in the sector-wide issues. A 2018 report prepared by the Lagos Chamber of Commerce and Industry estimated that illegal charges, bureaucratic red tape, delays and capacity underutilization in ports cost the country around 3% of gross domestic product (GDP) annually.²⁵ These are long-standing problems. Commenting on the situation in the 1990s, Chatham House wrote that "ports in Lagos had a notorious reputation: vessels often had to wait for weeks – sometimes months – offshore until a berth became free, while rampant corruption added hugely to the time and cost entailed in clearing cargo for onward delivery to its final destination."²⁶

Challenges of congestion and lack of adequate infrastructure resulted in its biggest port Apapa in Lagos losing its leadership position as a regional gateway for shipping to the neighboring port of Lomé in Togo. In 2017, Lomé became the largest port in West Africa by volume of containers handled.²⁷

Interaction between government and business in Nigerian ports faced threats of delays, unpredictability and confusion around processes that lead to illicit payments to circumvent procedures. Based on a survey

of 79 leaders in the industry, the Lagos Chamber of Commerce estimated that illegal charges added 50% to the cost of imports and 60% for exports.²⁸ In addition to being a major source of lost revenue for the government and increasing the cost of goods for citizens, illicit payments increased operational costs for companies and exposed them to significant regulatory risk. As a result, both businesses and the government had strong incentives to work together to address these issues.

Recognizing the magnitude of the problems in the shipping industry, a group of shipping companies banded together in 2011 to form the MACN. The group, which included Maersk, the Mediterranean Shipping Company and Stena Bulk, grew to include over 100 members worldwide, including vessel owners, ship managers, commodity trading firms, and service providers. Business for Social Responsibility, an international civil society organization, managed the network. A key guiding principle of the network was to engage with multiple stakeholders in government and the private sector. “As soon as you have a stakeholder who is out of the room, they take the blame for the problem,” said Cecilia Müller Torbrand, MACN’s Executive Director. “Stakeholders become constructive when they work together.”

Following its establishment, the MACN began researching countries where it could work with government authorities to test a series of anti-corruption measures. After surveying its members on the most challenging ports globally in terms of corruption, and assessing the willingness and capacity of the local government to support reform, the MACN decided to launch a pilot program in Nigeria. The program covered five ports: Lagos Apapa, Lagos Tin Can, Port Harcourt, Port Calabar, and Port Warri. MACN’s decision to choose Nigeria to pilot its approach was a significant challenge, as it was expected that many businesses and government officials would resist any change.

The implementation process

When confronted with corruption entrenched in the functioning of a sector, it can be difficult to find an entry point for reform. To overcome this difficulty, MACN consulted widely within its network to determine that conditions for reform were present in Nigeria. The

network adopted a clear step-by-step reform strategy, beginning with a risk assessment (2012–2014), before policy implementation (2015–2017) and then collecting data for a preliminary impact assessment (2017).³⁰

Risk assessment (2012–2014)

The United Nations Development Program (UNDP) office in Nigeria, which had an existing relationship with the Nigerian authorities around the themes of trade and governance, played a critical role in launching and coordinating the reforms. The UNDP also coordinated with three Nigerian anti-corruption agencies involved in the reforms. These were:

- The Technical Unit on Governance and Anti-Corruption Reforms, which is primarily a research and policy unit. It produces country surveys and develops tools and indicators for monitoring corruption and governance issues;
- The Independent Corrupt Practices Commission, which is involved in both the prevention and enforcement of corruption. This project fitted within the agency’s prevention mandate, which has included reviewing the procedures and practices of government bodies to identify weaknesses in managing corruption risks; and
- The Bureau for Public Procurement, a federal agency which makes recommendations on best practice and supervises public procurement. It has a track record in anti-corruption work and has built a reputation as an effective agency.

The involvement and coordination of these three agencies, which generally operate independently, provided an important foundation to implement the program. The three government agencies carried out a corruption risk assessment, which followed a methodology developed by the UNDP. The agencies put together a team of 20 assessors who conducted interviews and reviewed data from 17 different stakeholder groups in the ports sector, ranging from the Nigerian Ports Authority, to Customs and Immigration Services, and shipping companies and freight forwarders. The assessment was structured around three levels of risk: the environmental level, focusing on broader macro factors that influence corrupt behavior, such as economic, political and social issues; the organizational level, reviewing the internal processes

and controls across port organizations for gaps; and the personnel level, identifying specific individuals at risk of involvement in corruption.³¹

The assessors initially faced opposition, with agencies at some ports refusing to participate in the exercise out of fear that the assessments would expose illegal practices. The assessors were able to overcome this problem due to high-level support from the leadership of the Nigerian Ports Authority, the federal government agency which oversees all the ports. The government agencies themselves were also able to push back on this opposition by emphasizing both the value of the exercise for improving operational effectiveness and the support from shipping businesses and the UNDP.

Even when the ports fully participated in the exercise, the assessors faced challenges. Most of the port agencies lacked clear process maps and had not established standard operating procedures (SOPs). Without those in place, the assessors could not compare actual practice with established standards.³²

The assessment identified several key risks in the operating practices of the ports. The biggest was the excessive level of bureaucratic red tape. For example, the assessors found that getting clearance for a vessel and its cargo in Lagos could require as many as 140 signatures from officials at local authorities and port agencies.³³ Other risks highlighted in the assessment included facilitation payments made by ship captains, unpredictable and unclear decision-making processes, and a lack of internal communication and training around anti-corruption. These points all informed the recommendations subsequently developed by the MACN and its government partners.

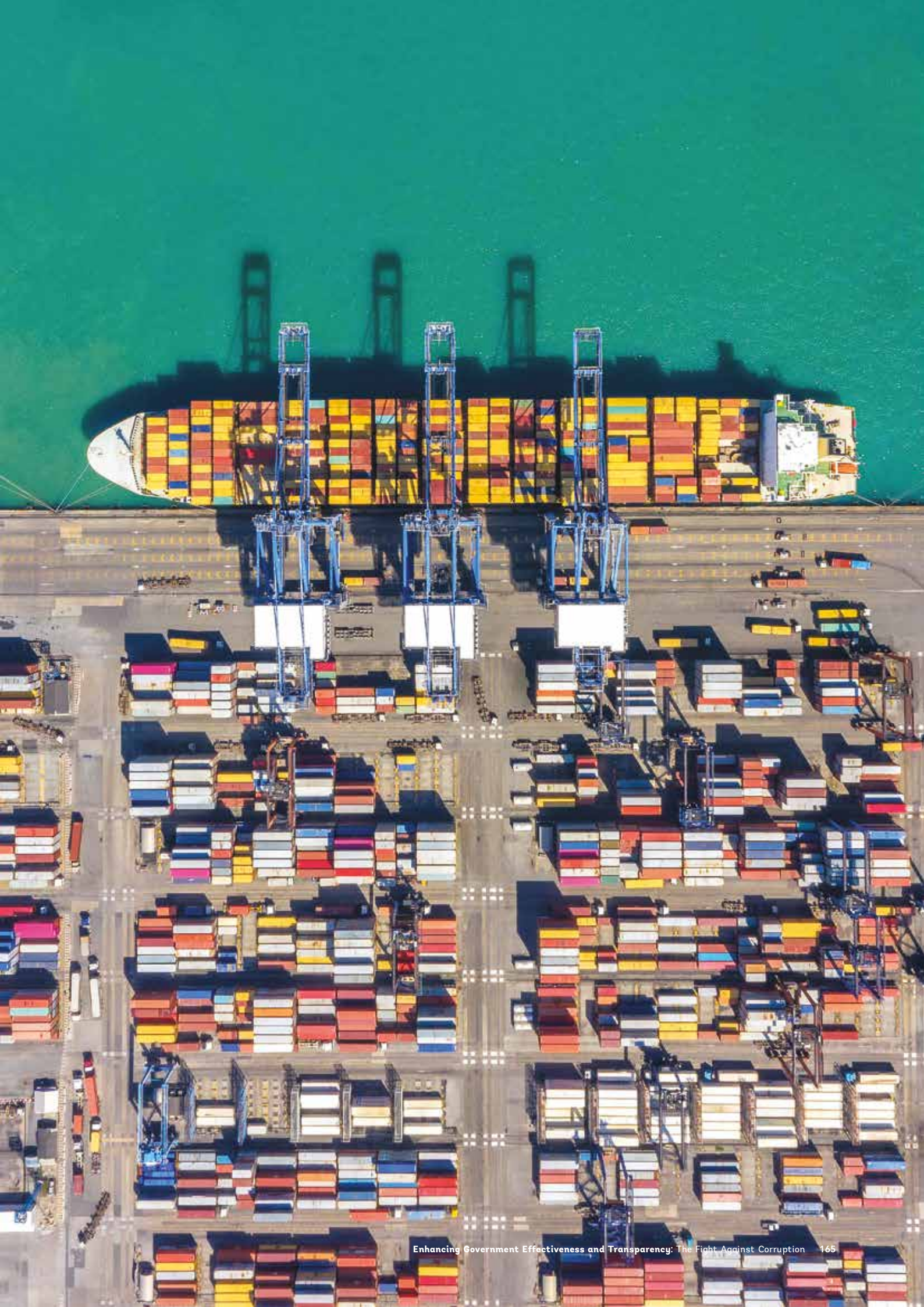
Policy implementation (2015–2017)

Over a two-year period, the MACN and its government partners implemented a series of reforms in the ports sector. Many of these measures go hand in hand with improving organizational effectiveness. One key priority, for example, was to develop and distribute SOPs for vessel clearance at the ports. The aim was to improve transparency around a process which has been highly susceptible to corruption. Publishing standards meant that companies had a clearer reference point when assessing the legitimacy of demands for payment for alleged violations of procedures.

The Port Service Support Portal, which aims to standardize cargo handling and import-export operations across Nigeria's ports, also seeks to improve the efficiency and transparency of the ports' systems. Installed at a cost of USD159,000 by the Nigerian Shippers Council, companies are able to track online the status of port service enquiries and complaints, data which can also be used to assess the performance of agencies.³⁴ Research in ports in other countries has shown that technology and automation of procedures are two tools which can help counter corruption. Technology reduces the frequency of interaction between companies and multiple layers of government officials and agencies, often conducted in time-pressurized circumstances in this sector.³⁵

In addition, a grievance mechanism provided an outlet for shipping companies to report incidents and raise concerns, thus improving the level of data and knowledge collected on corruption in the ports. The number of incidents reported by members, including safety-related incidents, increased from 6 in 2011 to 155 in 2017.³⁶ The Nigerian Ports Authority also set up an anti-corruption and transparency unit to investigate concerns in 2016, although it is still to be seen how effective the agency can be in ensuring implementation of appropriate responses to the complaints raised.³⁷

While the measures introduced helped to reduce opportunities for corruption, progress is not linear. A fundamental reform of routine practices is a much longer-term process. In this regard, a train-the-trainers module led by the Convention on Business Integrity (CBI), a leading Nigerian civil society organization, showed how a large number of personnel could be reached to raise awareness. The training focused on professional ethics and was structured around several scenarios, which had been developed around the problems in the sector garnered from the corruption risk assessment. Both public and private stakeholders attended the training. The co-founder and CEO of the CBI, Soji Apampa, said in interview that the training had been well-received and "confirmed something that we have long known: people are corrupt because they have no alternative. It is not because they are evil but because they are trapped in a system... If you give people the option of integrity, they will take that path, but they have to be made aware."



Reflections

In 2018, the MACN conducted a survey of stakeholders in the ports to assess the preliminary impact of its work with government partners. The survey indicated that the program had chalked up some initial successes, while progress in other areas had been more limited.

Among the companies themselves, members of the MACN claimed to have implemented a zero-tolerance approach to bribe requests when calling at Nigeria without this resulting in additional delays or threats. They also reported that physical harassment and threats to crew during vessel clearance were becoming less severe.

Over time, some companies increased their use of the grievance mechanism, and the customs authorities were quick to respond to complaints. Soji Apampa of the CBI gave the example of a US shipping firm which had used the line in response to a corrupt demand from customs authorities in one port in 2018. After making the complaint, the issue was resolved within 48 hours by appealing directly to the heads of the national customs authorities. Now the company routinely uses the mechanism, and issues are typically resolved within 24 hours or less. “It has taken from 2012 to get here”, said Apampa, but more people are using the line without fear of repercussions.”

The anti-corruption training for public officials is also beginning to show some modest signs of success. The CBI trained 1,000 senior public officials from 2016 to 2018, and the MACN’s survey uncovered several examples of port officials actively assisting MACN members to reject corrupt demands. This reflects partial success of the training in promoting the value of professional ethics over other social obligations, even if problems persist. “It is not that corruption has disappeared, but options for integrity now co-exist with corruption,” said Apampa. As of 2019, the MACN planned to build on these efforts by training 600 people as compliance officers within the ports. Their role will be to ensure compliance with procedures and promote professional ethics through further training in individual locations.

While significant progress was made, the MACN’s initiative was unable to achieve wholesale changes to the integrity culture in the ports in a short period. The 2018 MACN survey highlighted a low level of awareness

among government officials around new procedures, and requests for bribes were still present and even increasing in some ports.³⁸ This finding was consistent with another survey, compiled by the MACN and CBI in 2019, which found that deliberate violation of SOPs and the use of discretionary authority were still severe problems in the ports.³⁹ More than 90% of sector leaders surveyed by the Lagos Chamber of Commerce and Industry in 2018 also believed that corruption remained a big issue in the ports.⁴⁰ This continues to directly harm the operational effectiveness of ports. Nigeria now ranks 179 out of 188 countries on the World Bank’s Ease of Doing Business Index for trading across borders, an indicator that captures the time and cost of doing business at a country’s borders.

Despite the ongoing challenges, the high level of coordination between shipping companies was a significant achievement that has not been seen to the same extent in other sectors. The MACN’s partnership with government agencies could be replicated in other sectors affected by systemic corruption. As highlighted by the UNDP, an important aspect of the program was to involve Nigeria’s anti-corruption agencies directly in tackling corrupt practices in service delivery, which can have a more direct impact on those affected by corruption on a day-to-day basis.⁴¹

The program helped in building political support in Nigeria, in part by framing the reforms in terms of their potential economic benefits rather than focusing exclusively on their potential benefits in reducing corruption. “The project has survived changes in political administrations and built momentum since 2014,” said Torband, the program director of MACN, “It shows the project has a decent anchor. We have introduced and analyzed a problem, showing why it is important for government. Fundamentally, addressing these issues represents the possibility for the country to import and export goods, and trade is linked to social economic development. This doesn’t just need to be about fighting corruption.”

Several aspects of the MACN’s strategy were critical to the incremental progress that the program was able to achieve:

- **Collaboration.** In making the case to businesses that there was more to gain than lose through collaboration, the MACN put forward a solution that eased the costs of doing business and approached the problem on a manageable scale

to earn quick wins to generate momentum.⁴²

- **Dual focus on change and data collection.** The clear organizing framework of the program around a theory of change as well as the continual emphasis on data collection around corrupt practices are two methodological approaches that have served the program well.
- **Risk assessment.** Even if not without contention, the process of conducting a corruption risk assessment supported the participation of a broad range of stakeholders in the program.

Expansion of the program

Despite these encouraging successes, the task of rooting out corruption in the Nigerian ports is by no means completed. Further work is now underway to improve implementation of the measures developed in Nigeria. In particular, the MACN plans to focus on increasing awareness and ensuring consistency in the application of the revised SOPs. Middle management will be the main targets of further engagement and training, in addition to the local compliance officers. After feedback from members that the problems can be more severe further away from shore, the program is also extending beyond the six ports to oil and gas terminals and floating production vessels.

The MACN has used the methodology and lessons learned from Nigeria to launch programs in a number of other countries, including Argentina, Egypt, India, and Indonesia.⁴³ Programs in these countries have already brought about major changes in practice. In Argentina, for example, the organization helped change regulations for the loading and inspection of vessels holding agricultural products. This led to a 90% drop in the number of corrupt incidents reported through the MACN's anonymous reporting mechanism. All of the MACN's programs place strong emphasis on public-private collaboration and demonstrate that when the incentives are clearly framed the private sector can be a strong advocate for reducing corruption.

CASE STUDY 14

PUBLIC SERVICES: LAND, PORTS, HEALTHCARE

Reforms in the Health Sector in Ukraine

Revolutionizing care: Ukraine's sectoral approach to anti-corruption in health

Overview

Following the 2014 Euromaidan Revolution, Ukraine embarked on a national reform program to reduce widespread corruption within government. In the health sector, the government introduced several complementary reforms that aimed to improve the health outcomes of Ukrainian citizens, but designed in such a way that they would also reduce corruption. The reforms included reconfiguring primary care financing and essential medicines reimbursement under the newly formed National Health Service of Ukraine; raising the remuneration of health professionals; introducing a transparent, merit-based, process for medical university admissions; and initiating development of an eHealth digital records system. As of early 2020, these reforms have improved overall value for money, lowered out-of-pocket expenditure, reduced the number of acute medical events, and increased patient satisfaction with their care providers. Such indications of change are encouraging, although it may be too early to tell if these ongoing reforms will sustainably reduce levels of corruption on a national scale. In the coming years, it will be critical that anti-corruption momentum is maintained to allow for the full realization of the sectoral reforms.

Introduction

In 2011, 4-year-old Christina Babiak from Kherson Oblast was diagnosed with congenital aplastic anemia and needed an urgent bone marrow transplant. As such a treatment was only available abroad, Christina's parents appealed to the Ministry of Health, which granted them almost USD200,000 for Christina to receive the procedure at Debrecen Scientific University in Hungary. Christina's parents were later told that the procedure was to take place at a municipal clinic in Miskolc that was affiliated with the Debrecen Scientific University and they reluctantly agreed to the treatment. It turned out that the clinic and university were not affiliated at all and Debrecen Scientific University was in fact not equipped to perform pediatric bone marrow transplants. The ministry had employed a mediator to arrange the treatment and handle the funds. The clinic received approximately USD160,000 and the rest went missing. Three days after the botched procedure Christina died.⁴⁴

There is no shortage of literature describing the failure of the Ukrainian health system to provide for its citizens. Historically, modern Ukraine's political system has been described as a kleptocracy and earned

Ukraine the title of being “the most corrupt country in Europe”.⁴⁵ In the health sector, rampant corruption has resulted in poorly maintained, funded, staffed and supplied health institutions, and high levels of out-of-pocket and informal payments across all levels of care. Unsurprisingly, Ukrainians were recorded as having the second lowest life expectancy compared to all other European countries after Moldova.⁴⁶

The procedures for financing Ukraine’s health system facilitated both corruption and poor health outcomes. Health facilities received lump sums to cover costs of inputs, regardless of the level of patient flow or conditions treated, and patients were assigned a practitioner based on their place of residence, giving them little to no recourse when provided poor or fraudulent services. This was coupled with severely low wages for health personnel. For example, in 2014, the average monthly salary for health workers in Ukraine was approximately 2,500 Ukrainian hryvnia (UAH) or USD100.⁴⁷ Such low wages incentivized medical personnel to expect informal payments or in-kind gifts for better quality care.^{48,49} Data from 2010 indicated that 53% of Ukrainians had made informal cash payments and 42% had provided gifts in-kind to personnel at health facilities.⁵⁰

In addition to corruption within health institutions, the medical education system was also infamous for corruption schemes, including students paying bribes to deans and professors for study entry, exam results, and qualifications. According to OECD, unlike other higher education institutions, applicants to medical universities did not have to complete so-called External Independent Testing, which was successfully used in other university subjects to ensure students were accepted based on independently verified merit. Rather, applicants to medical universities wielded their social and financial capital in order to be accepted to the coveted, state-funded positions at medical universities by paying bribes to those responsible for admissions.⁵¹ This problem also traveled beyond borders, as Ukraine educated many medical students from other countries, including India, Nigeria and Turkey.⁵²

In an effort to steer away from scattered, isolated interventions or broad national-level approaches, there has been increasing global advocacy for a sectoral approach to tackling corruption in health that prioritizes improvement in health outcomes as the key indicator of success. Advocates of this approach have suggested that by moving away from a zero-tolerance stance that

relies predominantly on financial control mechanisms, the possibility of bringing strategic health sector improvements through an anti-corruption lens opens up.⁵³

Following the 2014 Euromaidan Revolution, when months of sustained protests ousted the president and large swathes of the political establishment, the new administration chose to attempt a sectoral approach to reducing corruption in the health system. The subsequent Law on the Prevention of Corruption bolstered further support for anti-corruption reforms in the country, including for the Ministry of Health to tackle rampant corruption within the system as part of centralized reform efforts, in addition to public procurement reforms.

The ministry embedded these anti-corruption reforms in the National Healthcare Reform Strategy 2015-2020,⁵⁴ developed by a group of 12 Ukrainian and international experts with financial and technical support from the International Renaissance Foundation, the World Bank, and the World Health Organization (WHO). The strategy set out a plan to overhaul Ukraine’s healthcare system, highlighting the importance of tackling inefficiency and corruption as a cornerstone for providing services that met patients’ needs.

The implementation process

The ambitious reforms included in the strategy aimed primarily to improve service delivery and control costs, but also lent themselves to reducing corruption. The reforms included establishing a national health service and reimbursement plan, improving compensation for health personnel, introducing transparent processes for medical university admissions and career progression, and developing an eHealth system for digital health records and reimbursement. The Acting Minister of Health Ulana Suprun led these reform efforts from 2016 to 2019. In May 2017 the ministry also conducted a Corruption Risk Assessment and shortly thereafter established an anti-corruption program⁵⁵ to improve overall transparency and accountability within the ministry itself.

The health ministry established the National Health Service of Ukraine (NHSU) in March 2018 as a national insurer and the main institution responsible for

promoting and implementing a revised healthcare financing mechanism. The new mechanism, known as “money follows the patient”, employed output-based purchasing through capitation⁵⁶ adjusted for age. Using this approach, the NHSU funded patients’ servicing, rather than providing lump sums to finance facilities, doctors, or other staff. Under this scheme, expanded to cover specialized outpatient care and hospitals in 2020, all public facilities and any private facilities requiring or desiring public financial support, had to sign up to the NHSU scheme.

As part of this scheme at the primary care level^{57,58} patients signed a “declaration” with their practitioner and financial reimbursements were calculated based on the number of patients registered to a facility. To sign a declaration, patients had to present their passport, individual tax number and include their registered address on declarations. Declarations were confirmed using patients’ mobile phones connected to their registered address. Signed declarations underwent central vetting in the NHSU and eZdorovya (described below) data systems that used digital algorithms to prevent fraudulent or multiple submissions. Further data cleaning was undertaken regularly to remove from the registry duplications, as well as those who had emigrated or were deceased. A key component of this reform was that patients could change providers if they were dissatisfied with the services provided. As of early 2020, 97% of all primary care facilities had signed onto the NHSU and by March 2020 nearly two-thirds of the Ukrainian population had signed declarations (29.3 million). The government kept a transparent, online record of all primary healthcare facilities and the number of signed declarations on the NHSU open data platform.^{59,60} In 2020, the NHSU went beyond primary care and integrated secondary and tertiary care into the reimbursement scheme with a second phase of NHSU integration commencing in April 2020.

Prior to the establishment of the NHSU, the Ministry of Health developed a medicines governance program in 2017 called, the Affordable Medicines Programme, which was then integrated into the NHSU reimbursement scheme. The program set out a list of essential medicines for three chronic diseases that were covered by the NHSU outpatient reimbursement program, namely, hypertension, diabetes type 2, and asthma. Patients were provided with information about which medicines were covered and which were not. This increased overall access to medicines and led to a huge reduction in patient co-payments.⁶¹ This system was

complemented by a weekly-updated, online resource, “There is a Medicine” (ELiky)⁶², where patients could search for information on all available, state-funded stock at a given health facility. This resource also provided links to information about the cost and reimbursement of medicines.

Through the NHSU’s primary care financing reforms, provider salaries have increased.⁶³ As part of the “money follows the patient” model, primary care providers whose facilities have joined the NHSU scheme have seen an increase in salaries based on the number of patients with whom they sign declarations. Some providers saw a tripling of their salaries. For example, in the months immediately after the implementation of the model, the Ministry of Health reported that a family doctor in the Odessa Oblast, who had signed 1,795 patient declarations, earned UAH16,011 (USD640) after tax in July, as opposed to UAH5,834 (USD230) the previous month.⁶⁴ Such an incentive can act as a quality assurance model and a deterrent for informal payments as, under the NHSU, patients were able to change their provider if they were dissatisfied with services. The impact of increased salaries was reflected in a reduction in reported levels of bribery in an October 2018 poll, which found that 7% of polled patients paid a bribe compared with 15% four months earlier in June 2018, and 20% in August 2017.⁶⁵

The ministry identified two further points of intervention to concentrate on that presented a corruption risk to the healthcare profession more broadly, namely, medical university admissions and appointment procedures for Senior Healthcare Managers.^{66,67} In both instances, merit-based requirements were put in place. Previously, those aiming to study medicine could apply to any of the medical universities in the country using their final high-school results without any external admissions testing. However, starting in 2018, students for the specialties of dentistry, medicine and pediatrics were required to achieve a higher minimum score on entrance criteria in relevant subjects reviewed by external independent evaluators. Further initiatives to improve medical school examinations, such as standardized interim and exit exams, were also introduced. For example, in 2019 the Ministry of Health set the Unified State Qualification Exam, which expanded the existing “Krok” examination schedule to include the standardized “International Foundations of Medicine” exam.⁶⁸ In addition to providing greater quality assurance of knowledge and skills of students and graduates, this reform aimed to weed out those

who bought their university placements.⁶⁹

The process for the appointment of senior health staff was also adapted to be relatively transparent and merit-based from 2018 onward.⁷⁰ Using the new procedure, a hiring panel was assigned, consisting of representatives from the administrative body, selected members of the public and staff delegates—any interested individual could apply to become an interviewing board member. In one example, this procedure was applied for the appointment of the Director of the Department of Health for the Poltava Oblast in January 2020. Three shortlisted candidates were required to complete a written test, a professional exam, and an interview with an independent selection committee, which culminated in an objective numerical score. The recruitment procedure and the results of the outcome were made public in the local news.⁷¹

Finally, in 2018 the ministry launched a further initiative that ties many of the reforms together, eZdorovya⁷², which was an e-Health system accessible by patients, providers and administrators alike that aimed to digitize all appointments and medical records, including prescriptions, thereby making paper-based record-keeping obsolete. Paper-based records present a risk for fraudulent practices and can hinder accurate medical surveillance, whereas e-Health records can facilitate better quality and faster care, rule out loss of patients' medical data, enable more efficient resource management, improve price-setting accuracy and ensure better overall quality control. The eZdorovya system was initially developed and tested by Transparency International Ukraine in 2017 to support the restructuring of health financing and allow for better management of public spending. The system was later transferred to the ministry in 2018, after which it became a state-owned enterprise.⁷³ Already by the end of July 2019, over 29 million patients (as part of signing declarations), over 24,500 doctors, nearly 11,000 pharmacists, over 2,000 medical establishments and over 1,000 pharmacies had joined the system. At the same time, more than 4 million electronic prescriptions were filled under the NHSU reimbursement program and over 3 million e-prescriptions issued by pharmacies were reimbursed.^{74,75} The next steps for eZdorovya are the roll-out of digital patient health records and the integration of the secondary and tertiary care levels into the system as part of the NHSU health sector financing reforms planned for 2020.

Reflections

The health sector reforms undertaken in Ukraine began in 2014 and in a short period of time considerable gains were made. The sectoral approach that was adopted shows how diverse health system reforms that prioritize health outcomes and improvements to system efficiency can be coupled with anti-corruption objectives in order to achieve both ends. This is encouraging, as it can be immensely challenging to acquire resources needed to implement a sustainable anti-corruption reform, especially in the health system.

There are three distinct cornerstones of Ukraine's reforms, namely, supportive legislative change, diverse reform implementation that targets the corruption causing the greatest harm, and civic participation. Particularly for reforms carried out in primary care, it appears that collectively these initiatives had a positive impact. According to a series of surveys, rates of reported bribery when accessing health services decreased from 20% in August 2017 to 7% in October 2018.⁷⁶ This is encouraging, as bribery and out-of-pocket expenses were listed among the major reasons for catastrophic loss⁷⁷ in Ukraine.⁷⁸ Also, increased access to essential medicines has led to a decrease in the total number of acute events, such as heart attack or stroke.⁷⁹ This has all occurred in spite of a decrease in overall % GDP expenditure on health since 2013—7.3% in 2013, 6.7% in 2016.⁸⁰

However, it would be premature to declare it all a success; as the reform process in the Ukrainian healthcare system continues, considerable corruption risks and challenges still remain, and reversals cannot be ruled out. For example, while there has been a reduction in out-of-pocket expenses in primary care, an increase in secondary and tertiary care—not yet integrated into the NHSU reimbursement system—has been observed.⁸¹ This illustrates the critical need for sustained momentum on health system improvement and anti-corruption to ensure Ukraine reaches its goal of having a healthcare *"ecosystem in which the very causes of corruption will be impossible"*.⁸²

Notes

1. Rose-Ackerman, Susan & Palifka, Bonnie J. (2016). Reducing Incentives and Increasing Costs. Chapter 4 of *Corruption and Government: Causes, Consequences, and Reform*. Cambridge University Press. Page 126.
2. For a definition of grand corruption, see: http://files.transparency.org/content/download/2033/13144/file/GrandCorruption_LegalDefinition.pdf
3. Benjamin A. Olken & Rohini Pande, 2012. "Corruption in Developing Countries," *Annual Review of Economics*, Annual Reviews, vol. 4(1), p. 479- 509, 07.
4. Yuriy Gorodnichenko & Klara Sabirianova Peter (2007). Public sector pay and corruption: Measuring bribery from micro data, *Journal of Public Economics*, Volume 91, Issues 5–6, p. 963-991.
5. Pyman, Mark (2019). Sectors as the primary locus for corruption reform. <https://curbingcorruption.com/mark-pyman-sectors-as-the-primary-locus-for-corruption-reform-april-2019/>.
6. Incentives for grand and petty corruption do not always go hand in hand. For example, Bussell (2013) argues that the incentives to do away with petty corruption in India by introducing digitization and one-stop shops depend on the reformers' access to grand corruption rents.
7. See <https://curbingcorruption.com/about/>.
8. Rose-Ackerman & Palifka, 2016, page 443.
9. Transparency International Rwanda (2009), 'Ville de Kigali: Etude sur la transparence et l'intégrité dans les services d'urbanisme et du cadastre'.
10. For a full typology see Koechlin, L., Quan, J. and Mulukutla, H. (2016), Tackling corruption in land governance. A LEGEND analytical paper. <https://landportal.org/library/resources/legend-analytical-paper-1/tackling-corruption-land-governance..>
11. Parts of this case study draw from: Schreiber, Leon (2017), *Securing land rights: making land titling work in Rwanda, 2012-17*, *Innovations for Successful Societies*, Princeton University.
12. African Development Bank (2011), *Land tenure regularization in Rwanda: good practices in land reform: case study*.
13. In implementing this program, the land agency also took different names, with the government also changing its governance structure on two occasions. The National Land Centre began the mapping and titling program before it was integrated into the Rwanda Natural Resources Authority (RNRA) in 2011. In 2017 the agency was renamed the Rwanda Land Use and Management Authority and re-established as an independent body.
14. African Development Bank, 2011.
15. Schreiber, 2017.
16. Ibid
17. Ibid
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PART II

Key Instruments for Fighting Corruption

CHAPTER 6

Open and Inclusive Government

Let the Sunshine In: Tackling Corruption through Open Government Approaches



Introduction

Corruption thrives in an environment of secrecy and opaque government processes, with lack of accountability in the use of public resources. Open government reforms aim instead to promote an ethos of transparency, inclusiveness and collaboration. Over time, this could potentially shift norms in a sustainable way by introducing changes that lead to enhanced transparency and promote an environment that is less conducive to corrupt activity, and empowering citizens to demand better services from the government. The impact of these reforms depends on the existence of other enabling factors, such as political will, a free and independent media, a robust civil society, and effective accountability and sanctioning mechanisms. The idea of open government has gained momentum in the last decade, with anti-corruption objectives among the key drivers of the shift. As illustrated in Figure 6.1 below, open government can be broken down into four components: transparency, participation, accountability, and responsiveness.¹ Initiatives to increase transparency are the most widespread, while

efforts to promote accountability and responsiveness represent the frontier (as represented in the figure by the “maturity” continuum).

Each of these elements is critical to effecting broader change, as transparency and participation lead to greater accountability resulting in a government response. *Transparency* is at the core of the open government concept, as it enables informed debate based on a common understanding of issues, and *participation* is essential because it means that citizens play a role in the problem-solving process (rather than being passive recipients of information). While there is a valid notion of transparency and participation as intrinsically good—the idea that citizens have an inherent right to know about and engage in their own governance—from an anti-corruption perspective, the focus is on transparency and participation as routes to a more efficient and ethical use of public resources through greater *accountability* of public officials, followed by a government *response*.

FIGURE 6.1 Unpacking Open Government



Source: Adapted from Ul-Aflaha, McNeil, and Kumagai (2020).

Theoretical and empirical underpinnings

Open government is a broad and holistic concept that has gained significant momentum and widespread usage, driven in part by digitization.

Using open government approaches to tackle corruption arises in part from a perceived failure of more “direct” anti-corruption strategies in the 1990s (such as the formation of anti-corruption agencies) and the search for indirect approaches that mainstream prevention measures.² Moreover, technologies and digital tools have created new ways to engage citizens in anti-corruption efforts, giving impetus to the open government movement.

The theory of change posits that openness can lead to a stronger relationship between government and citizens, increasing levels of trust and social capital and generating more effective government policy and service delivery.

An open government involves citizens in the workings of government by providing relevant information, creating opportunities for citizen engagement, and implementing mechanisms that strengthen accountability. Over time, due to the increasing risks associated with corruption (because of the higher likelihood of detection), officials should be

less likely to engage in corrupt behavior, contributing to a more ethical and citizen-centric government where social norms shift and corruption is less likely to thrive. While the logic may be straightforward, as with other kinds of governance reforms, it is a challenge to make an empirically-grounded causal link between open government measures and specific impacts, such as reduced corruption, as the evidence base is still somewhat limited. Nevertheless, a growing body of case studies, as well as cross-national and experimental evidence, demonstrates that well-designed open approaches can lead to positive change. For example, the idea of participatory budgeting—that is, involving citizens in decisions about how to spend public funds—originated in Brazil, and has since been implemented in many countries. One study found that Brazilian municipalities with participatory budgeting have, on average, 39% higher tax collections than those without, and that the correlation is stronger the longer participatory budgeting has been in place.³ The findings suggest that over time participatory institutions may strengthen trust and generate tangible financial benefits, which could potentially include indirect effects on corruption.

BOX 6.1

What Does Open Data Have to Do with Open Government?

The term “open data” occurs frequently in discussions about open government. Open data is data that is freely accessible and reusable by anyone; the term also implies technical openness, meaning that the data is machine-readable and available in bulk.⁸ Many governments, wishing to become more open (in the sense of embracing transparency, participation, accountability, and responsiveness), have usefully committed to publishing open data. However, as explored by Yu and Robinson⁹, a government can theoretically be open using low-tech approaches, while open data efforts (e.g. releasing public bus schedules in an online, machine-readable format) can be undertaken by governments that remain politically closed and unaccountable. It is therefore worth keeping the distinction between openness of data and openness of government in mind. There are many instances of governments claiming a mantle of openness based on data provision without taking politically meaningful steps toward open government. Open data reforms may accelerate a transition to open government in some contexts, but assessing their potential to reduce corruption requires considering to what extent they address underlying political and institutional issues.

Transparency is a foundational pillar of open government but can only enable accountability if complementary policies and enabling factors are present. Countries cannot stop at releasing information (e.g. via open data initiatives—see Box 6.1); they need to create and enforce specific accountability mechanisms. The potential impact of transparency on corruption hinges on whether stakeholders are able to understand and act upon the information provided⁴ and whether it results in an official response. In practice, this can break down for many reasons, such as the lack of a strong policy framework to promote accountability, lack of agency on the part of civil society, or lack of a robust and free press. One study looked at data from 25 countries in Sub-Saharan Africa to try to make a more comprehensive assessment of whether open government data is associated with accountability.⁵ It found that while open government data is correlated with better scores on an “accountability index,” the factors of access to information (related to political

freedom and civil rights) and political agency are also key. Effective sanctioning mechanisms must also exist, with the most important being political accountability (for example via elections) and legal accountability (via the rule of law).⁶ Fox⁷ refers to the importance of strategies that reflect both citizen “voice” and state capacity to respond, or “teeth”.

These challenges underscore the critical roles of reform champions, coalitions for change, “infomediaries,” such as journalists, an independent media where that exists and watchdog organizations. These have the time, expertise, and platform to get meaningful information to the stakeholders positioned to make a difference. Moreover, reform sustainability requires the continued availability of resources for stakeholder engagement and outreach, as well as for recurrent costs, such as the maintenance and upgrading of IT systems.

Using open approaches to fight corruption

This section looks at three entry points for reformers: increasing citizens’ access to information via legislation or transparency initiatives; increasing fiscal transparency (treated as a separate category of “information” due to its prominence in anti-corruption efforts); and facilitating citizen engagement and social accountability. These selected examples do not represent a comprehensive catalog of open government reforms, but rather aim to highlight a few common issues and considerations at the intersection of the open government and anti-corruption agendas. Looking beyond the set of topics highlighted here, open government themes are prominent throughout this report. Other relevant discussions include the role of transparency and citizen engagement in conjunction with public procurement, infrastructure projects, and SOE management (Chapters 1, 2, and 3); and public scrutiny of beneficial ownership arrangements and officials’ private assets (Chapters 8 and 9).

Access to information

Interest in transparency has surged in recent years, as witnessed by a spate of access to information¹⁰

legislation and initiatives, with about 120 countries passing right to information laws.¹¹ These laws create a legal framework that supports openness by giving the public the right to request government data, as well as access to information about government laws, regulations, and legal processes. While legal reform is often a first step for governments that wish to pursue an open agenda, implementation is key. Ensuring that the rules on the books are enforced and function in practice is a challenge for many countries, as is making citizens aware of their rights.

Many governments have implemented open data initiatives to proactively make data accessible, often as part of their commitments under the Open Government Partnership, a multilateral initiative that now counts nearly 100 countries and localities as members. This may mean establishing online government data portals or one-stop-shops for information; providing data files in machine-readable form; making information available in local languages; disseminating information via radio or text message; providing data visualizations if literacy rates are low; or other locally appropriate strategies. In general, open data advocates and anti-

corruption campaigners have been working relatively independently of each other; there is therefore scope to link these two agendas more closely together.¹²

Evidence of the impact of legal rights to access information on the extent and nature of corruption is mixed. When meaningful information is available in the public domain, it can sometimes lead to dramatic results, as seen in the case of the investigative journalism that led to the release of the Panama Papers in 2016. It is less obvious, however, that information that governments choose to disclose has similarly powerful results. A meta-analysis of the literature on the effectiveness of transparency and access to information initiatives found a body of evidence suggesting that access to information is “important to the effectiveness of the broader range of social accountability mechanisms, although evidence of the direct impact on corruption is inconsistent”.¹³ This prompts a key question about what impactful implementation requires.

Information by itself cannot solve the problem of corruption, as seen in countries that score well on international rankings on transparency measures but have blatant instances of corruption. At the same time, it is encouraging to note that information disclosure has, in some cases, enabled civil society and the media to bring the abuses to light.¹⁴ In Ukraine, collaboration among CSOs and a concerted effort to use access to information rights to piece data together exposed corruption in the health sector disguised as charitable payments.¹⁵ These anti-corruption advocates repeatedly ran into obstacles created by those benefiting from the status quo. This illustrates that in addition to information disclosure, the underlying realities of politics and power asymmetries must be considered.

A broader enabling environment that supports the involvement of a range of stakeholders in accessing, analyzing and responding to information in the public domain is essential for access to information initiatives to lead to more fundamental change. Media outlets, civil society watchdog groups, bloggers, think tanks, academics, and others play important roles in translating specialized or voluminous information into a format that a broader audience can act upon. Civil society and media organizations often step into the gap to transform it into usable formats—merging and structuring relevant data from multiple sources, translating it into open formats, and extracting relevant bits from large volumes of data. This includes

international efforts, for example in the case of Open Ownership’s beneficial ownership registry,¹⁶ as well as domestic initiatives. In Mexico, a CSO analysis based on data from the country’s online data platform for school performance revealed the endemic nature of corruption in the education system, prompting a public outcry. The report led to audits in 10 states and a change in teacher payroll funding from the state to federal level.¹⁷ Patience may be required. It can take years for awareness of an issue to build, and then at a critical political inflection point, public outrage may relatively quickly force a response; such “jolts” also demonstrate that political will is not a static variable.¹⁸

Progress depends on cooperation among stakeholders. In India, which has some of the most robust access to information legislation and has earned a reputation as a success story in this area, research underscores the importance of ongoing efforts to build awareness among citizens of their rights and the ways they can obtain information.¹⁹ Cooperation among multiple stakeholders seems to be key, as for instance journalists tend to rely on CSOs and citizens to do some of the slow legwork of filing information requests. Sustained coalitions of media, activists, and CSOs have been essential to creating an ethos among citizens around the right to information agenda.

Fiscal transparency

Fiscal transparency, a standard principle of good governance, has a number of benefits apart from better public spending accountability. It encompasses transparency of fiscal data, the budget process, and related government functions.^{21,22} It has been shown to contribute to a range of benefits from citizen empowerment and more efficient and effective public spending²³ to lower sovereign borrowing costs.²⁴ From an anti-corruption perspective, the purpose of fiscal transparency is to enable greater scrutiny of public accounts, thus deterring corruption, so that resources are used in the public interest. The existing literature shows that budget tracking indeed reduces leakage of public funds (a proxy for corruption), but once again, success generally depends on a combination of factors and interventions, such as accompanying measures to engage citizens.²⁵ Diagnostic and reporting tools such as the Public Expenditure Tracking Survey (PETS) can be useful, and public financial management reforms, such as strengthening IT systems may also help lower corruption via increased transparency.²⁶

Fiscal transparency, both in general and at the sectoral level, has led to identifiable victories against corruption in some countries. For example, after the government of Brazil’s decision to publish data on the use of government credit cards through its Transparency Portal, journalists began publicizing suspicious transactions. This prompted multiple scandals and sanctions, including the resignation of a Minister and payment of \$30,000 to the government; also, “perhaps most importantly... [it] led almost immediately to a 25 percent reduction in spending by officials on government cards”.²⁷ Sector-specific fiscal transparency efforts have also emerged. In Malawi, the Infrastructure Transparency Initiative (CoST) led to the cancellation of a public roads contract due to concerns about quality and price, and similar CoST achievements have been notched elsewhere.²⁸ Owing to their large share of government revenues in many countries and endemic corruption in the sector, the extractive industries have been a particular focus for fiscal transparency advocates (Box 6.2).

Since public procurement accounts for an overwhelming share of public spending, open contracting reforms are closely related to fiscal transparency. Open contracting²⁹ aims to increase value for money in public spending by making timely and comprehensive information on government contracting available to the public, and by effectively engaging stakeholders across the public and private sectors, and in civil society. This can lead to measurable savings. For example, in Colombia, an open contracting reform in the procurement of public school lunches led to government savings of 10 to 15 percent and contributed to ending a price-fixing operation.³⁰

Citizen engagement

Fostering citizen engagement and participation is at the heart of the open government idea. Engagement initiatives are often organized at the local level and tend to focus on government service

BOX 6.2

The Extractive Industries Transparency Initiative (EITI)

Data released by members of the multilateral Extractive Industries Transparency Initiative (EITI) has been used by a range of civil society and media organizations, such as journalists looking into a license acquisition deal in Liberia, or the identity of mining companies in Cameroon.³¹ In Madagascar, EITI reporting led to a debate around overdue revenue transfers to localities, prompting an investigation that revealed that payments had been made to local officials’ personal bank accounts, because the municipalities lacked official accounts.³² In Burkina Faso, EITI reporting revealed that an illegal \$10 million signature bonus had been part of an agreement between the government and a mining company.³³

The EITI example also highlights the importance of calibrating expectations for a particular type of reform: “unlike criminal investigations, leaks or whistleblower statements, EITI reporting is neither forensic nor unpredictable enough to expose most instances of corruption. Instead, EITI reporting aims to spread systematic transparency across the sector”.³⁴ Despite its limitations, the kind of regularly provided information promoted by EITI (and by some other forms of fiscal transparency initiatives) can play a valuable role in providing background information on a context in which corruption takes place, shedding light on the processes behind transactions, and highlighting risks. Moreover, once again the evidence shows that results are context dependent. A meta review of studies on EITI’s impact found that the likelihood that EITI reporting helps reduce corruption is partly driven by local factors such as the strength of civil society.³⁵

provision or public expenditure, though they can run the gamut from simple mechanisms for citizen feedback on schools or healthcare facilities to processes for sustained public deliberation around complex policy issues. Governments may seek public participation in the design, implementation, and monitoring of specific projects, such as large-scale infrastructure investments, or in ongoing matters of policymaking or oversight of expenditure and service delivery.

Evaluating the impact of engaging citizens in public resource allocation and other social accountability mechanisms on corruption can be difficult, since these activities tend to have broader governance goals (such as improving services or empowering citizens), rather than fighting corruption per se.

However, as the foregoing discussion has emphasized, transparency and engagement need each other to effect change.³⁶ Research shows a link between higher levels of participation of external stakeholders in budgeting processes, and lower levels of corruption.³⁷ Theoretically, public engagement can increase oversight of budget allocation and spending decisions. The Government of Kaduna State in Nigeria, for example, has published its budget online in a citizen friendly format, as well as created an online feedback platform, in-person public consultations, and a citizen accountability report.³⁸ Participatory budgeting work may also have an indirect effect on corruption via the building of trust and platforms for deliberation in the community, which may be preconditions for tightening the link between transparency and accountability.³⁹

There is evidence that social accountability mechanisms, such as social audits, surveys, citizen report cards, or grievance redress mechanisms, can all be used to address corruption in service delivery.

Technology can be useful in creating feedback loops, as with the Proactive Listening initiative of EDE Este, an electricity distribution company in the Dominican Republic, which enables citizens to report problems, including service issues or requests for bribes from maintenance personnel. It was implemented in 2011, and within a few years, the instances of reported corruption had declined 70 percent.⁴⁰ A review of digital accountability platforms in the Philippines found that people need not just transparency, but “specifics that enable the public to systematically track resource flows and monitor programs ‘in their own backyards’”.⁴¹

Overall, evidence shows that social accountability initiatives can be effective, but under certain

conditions.⁴² Impactful interventions are effective when they address citizens’ private interests, and garner high levels of citizen participation. Important enabling factors include access to information, legislation, policy and practices, an active and independent media, citizens’ ability to hold institutions accountable through oversight institutions and political channels, markets and institutions that prevent elite capture, credible sanctions, and the existence of coalitions among multiple actors.⁴³ The World Bank⁴⁴ stresses the “importance of [citizen] volunteerism and agency in overcoming collective action problems,” advising that international actors “build on organic structures and bottom-up solutions”. Also, the creation of positive incentives for officials, rather than merely exposure of corrupt behavior, increases the likelihood of meaningful impact.

Designing a locally appropriate intervention requires an understanding of the socio-political landscape and the associated corruption risks in that specific context.

It is, for example, useful to assess the potential for successful collective action.⁴⁵ If the environment seems conducive to effective collective action (based on factors such as high levels of participation in voluntary associations), then social accountability tools leveraging group participation (e.g. community scorecards) may be appropriate. In areas with low potential for collective action, tools based on individual feedback (e.g. SMS reporting) may be more effective. For instance, a social accountability initiative in one community in the Philippines aimed at monitoring support for farmers was highly successful, in large part due to the preexisting dense horizontal social networks.⁴⁶ Other factors to consider in designing engagement initiatives include measures for promoting the equitable representation of women and for reaching vulnerable groups.

While civil society monitoring of government performance can help in identifying corruption, it can also uncover other causes of weak service delivery.

In South Africa, the International Budget Partnership (IBP) worked with local stakeholders in eThekweni Metro to conduct a social audit of communal ablution blocks. While corruption is often blamed for problems in the area, the audit revealed maintenance issues that the responsible officials did not know about. Rather than simply flagging a problem and making assumptions about the underlying cause, since the campaigners were able to dig into what was really happening and who specifically could fix it, they were able to get positive results.⁴⁷

Conclusion

Open government measures can directly or indirectly lead to a reduction in corruption even though the impact can be difficult to measure.

An example of a direct effect is the sanctioning of corrupt officials prompted by public outrage following media reports made possible by access to information initiatives. Indirect effects occur as officials are deterred from engaging in corruption because the incentives have changed. They may perceive higher benefits associated with behaving ethically (e.g. due to increased levels of trust and cooperation between government and citizens) and higher risks associated with illegality (e.g. as greater scrutiny increases the risk of being caught, and better policies reduce the scope for corruption). However, what is clear is that no intervention is a panacea; notably, transparency initiatives must be accompanied by other measures to facilitate uptake of the information and a government response. The enabling environment plays a (possibly decisive) role. Interventions should address a genuine need; for example, data should be published with a purpose and in a format and manner that fits, and not just to check a box. Clearly defining the problem also makes it easier to measure results, which will add to the evidence base of what works. Coalition building and increasing awareness may be slow processes requiring significant patience.

Open government promotes the appropriate use of public resources, which is the crux of the fight against corruption. Tackling corruption is notoriously difficult, but if information is increasingly reaching citizens and the media, and officials are acknowledging its accuracy, that is a step in the right direction. Over time, with a holistic approach tailored to the context, open government may help change behaviors so that public resources are directed not to the pockets of individuals but rather to the common good.

CASE STUDY 15

OPEN AND INCLUSIVE GOVERNMENT

Boosting Accountability through Participatory Budgeting in Kenya

Overview

Beginning in March 2013, Kenya devolved a huge amount of responsibility for delivering public services to county governments. The administration envisioned that these local governments would closely incorporate citizens in the governance process and that citizens would be able to demand greater accountability from their elected representatives. Two years into the devolution process, counties sought assistance from the World Bank to improve their participatory processes. The World Bank introduced the counties to “participatory budgeting,” an approach that involved allocating a portion of the budget for citizens’ priorities and creating a participatory process where citizens could work together to define and vote on development priorities. Two counties piloted the process in the 2015/2016 fiscal year, and more counties followed their lead in each of the following years. While participatory budgeting did not directly target corruption, it nonetheless had an impact on ensuring public funds were spent on citizens’ needs, increased citizen oversight of public spending, and in some cases resulted in cost savings during project implementation. Kenya’s experience with open budgeting illustrates that engaging citizenry in the budgeting process can enhance accountability of public officials.⁴⁸

Introduction

When Kenya began rolling out its 2010 constitution, local governments and citizens suddenly had a far greater role in governance than ever before in the country’s history. Newly established county governments, which took office in March 2013, took on major responsibilities—and major funding—for delivering public services and local infrastructure. The new constitution stated that the new “devolved” governance system ought to “give powers of self-governance to the people” and to “recognize the right of communities to manage their own affairs and to further their development.”⁴⁹ Along with increasing citizen participation in governance, the new system aimed to tackle regional inequality, increase the responsiveness and accountability of government to citizens, allow regions greater autonomy, and rebalance power away from a historically strong central government. The Kenya Accountable Devolution Program, a World Bank multi-donor trust fund program, supported Kenya’s transition to the new system.

Delivering on the promises of the new constitution was a tall order. Citizens had little experience participating in the governance process, and local officials often lacked the skills to encourage meaningful participation. In the first two years of the devolved system, counties’ efforts

at increasing participation tended to be tokenistic at best and opportunities for women and minority groups to engage were minimal. Pressure on counties to fix the problem grew when Kenya's High Court annulled Kiambu county's 2013 finance bill for failing to meet the constitutional requirements for citizen participation.⁵⁰

Even when counties made genuine attempts at engaging citizens, public forums were usually unstructured and citizens were rarely provided with adequate advance notice or information to participate effectively. Meetings often resulted in citizens presenting overambitious wish lists that were difficult to translate into practical development projects.

Seeing the challenges that county governments were facing in delivering their mandate, the Kenya Accountable Devolution Program partnered with the Council of Governors, an organization composed of the governors of all 47 counties, and the Kenya School of Government, a training institution for the public sector. In October 2015, the Kenya School of Government hosted a workshop for representatives from county governments. A team of international experts led by the World Bank introduced the Kenyan attendees to participatory budgeting, a tool pioneered by the Brazilian city of Porto Alegre beginning in the late 1980s. Participatory budgeting involved engaging citizens in discussions about development priorities and allocating a portion of the government's budget for projects chosen by citizens.

Following the workshop, representatives from 12 counties that showed a high level of interest in participatory budgeting attended a seminar to learn how they could go about implementing it. The World Bank team selected six of the 12 counties from the seminar to work with to implement participatory budgeting. To ensure resources were not spread too thin, the team decided to pilot participatory budgeting with three of those counties in 2016, and three more the following year. The selected counties all demonstrated that they had incorporated citizen input in previous budgets and committed to allocate at least 5% of their budget to participatory budgeting in the next budget cycle.

The idea was that, through participatory budgeting, counties would allocate resources in a way that better responded to the needs of their citizens. The participatory budgeting process could also provide citizens with a better understanding of the

budget process and a platform to hold local officials accountable.

The implementation process

Kenya had some experience in participatory governance through its Local Authority Transfer Fund, launched in 1998, and its Constituency Development Fund, introduced in 2003. Through these two funds, the central government allocated resources for community projects following a selection process that involved community meetings where citizens identified priorities. However, the initiatives faced some challenges due to a number of reasons like poor access to information, low levels of citizen participation, and weak monitoring, all of which meant projects often stalled or service delivery was poor.⁵¹ Still, this prior experience, along with different counties' experiments with engaging citizens in 2014 and 2015, provided a starting point to build on.

In January 2016, the World Bank experts led a workshop to help local officials from the three counties design participatory budgeting mechanisms using a 10-step process (see Box 6.3). Time was short—the budget preparation cycle ended on June 30th. In less than six months, the three pilot counties had to design a participatory budgeting process that fit their local context, mobilize citizens, refine their ideas, and vote on priorities.

Designing a participatory budgeting system

The World Bank team leading the participatory budgeting training implemented a two-tier process for working with counties on the design of participatory budgeting systems. First, the team trained high-level policy makers, including county finance ministers and heads of departments for planning and budgeting. Next, those heads of department trained staff working at a more local level, and some also held trainings for elected representatives who were members of the county assembly. "We wanted the policy makers, but we also wanted those who would oversee the running of the program to make sure it cascaded down to the lower levels," said Annette Omolo, who led the World Bank's participatory budgeting initiative in Kenya. Under the devolved system, counties were divided into

BOX 6.3

The 10-Step Process to Implement Participatory Budgeting⁵²

1. Choose a general strategy (Where and when to implement? What are the goals?).
2. Prepare the organizational model (Decide on an approach to engage with citizens, set aside a portion of the budget for participatory budgeting initiatives).
3. Develop informational material and mobilize citizens.
4. Hold public meetings to identify citizens' priorities.
5. Carry out technical evaluation of proposals.
6. Refine and publish the list of proposals.
7. Hold a vote so citizens can decide which proposals to prioritize.
8. Approve the proposals and ensure budget is allocated.
9. Create voluntary working groups on selected proposals to oversee implementation.
10. Review the process and make improvements for future budget cycles.

sub-counties, sub-counties were divided into wards, and wards were divided into sub-wards and villages. The World Bank team wanted to help the counties implement participatory budgeting at the ward level and encourage participation down to the sub-location or village level.

Each county adapted an approach based on its local culture and context. Makueni county, for example, had already implemented citizen meetings that closely matched the participatory budgeting approach, so the county government only had to make revisions to their existing processes. "Makueni already had a framework for engaging citizens down to the sub-ward level," said Omolo. "But they wanted to make it more inclusive, for example by including people who might never have left their village before." Makueni had 3,455 villages, and the county government wanted to ensure every one of them was included in the participatory budgeting process.

At the second-tier trainings in West Pokot and Makueni, the high-level officials that attended the first-tier event trained officials at the ward level and worked out the practicalities of implementation. Both West Pokot

and Makueni allocated 12% of their 2016 budgets to participatory budgeting. Although policy makers in Kakamega county participated in the first-tier training, the county later dropped out of the pilot program.

Mobilizing citizens and reaching agreement on priorities

Next, West Pokot and Makueni had to mobilize their citizens and encourage them to attend participatory budgeting meetings. The county governments placed advertisements in major daily newspapers detailing meeting dates, times, and venues. In addition, the two administrations advertised meetings on radio, made announcements at public gatherings (such as church meetings), put up flyers in public places, sent text messages to citizen contact lists, and posted information on social media channels. Citizens who were unable to attend meetings could send written submissions to the county finance offices by email.

The counties worked out a process whereby citizens could choose priorities at a local level and then gradually refine those ideas into a selection of specific

projects that would be voted on and finalized at the county level. In Makueni, the head of each village organized public meetings to discuss development needs and propose possible projects to address them. Each of Makueni's 3,455 villages chose 11 local leaders to represent their village and present the development priorities decided on at "village clusters," which were groups of 11-15 villages grouped together based on proximity and similarities. Eleven representatives from each cluster then attended sub-ward meetings, where they prioritized which projects to present at the ward level. In early March, projects were presented at the ward level, the first level of official representation. All projects presented had to show a trajectory of how they were arrived at from a specific local development need. No new projects could be introduced at the ward level.

At each meeting, attendees discussed all of the proposed projects and eventually reached agreement on a few projects to put to a vote. Attendees voted on which projects to move on to the next level, within the budget constraints outlined by the county government. There was no set mechanism for voting on projects. A secret ballot was recommended during the participatory budget training, and some locations used secret ballots to avoid potential conflicts during the decision-making process. In practice, however, most locations found it easier to conduct voting by a show of hands. "We did not see any evidence of people being coerced into voting a particular way," said Omolo.

On March 18th, 2016, Makueni held a county level forum to present the county's budget for the next year. The budget included the projects which had made their way from the village level through to final approval by the elected officials of the county assembly and the governor. Examples of projects chosen included a medicine dispensary, a stadium, a training college, an adult learning center, an early childhood development center, and a borehole to extract water. The county set up a complaint mechanism, so that citizens could make complaints about errors in the projects chosen or problems in the selection process.

After the governor signed off on the projects to be implemented, Makueni set up project management committees, made up of citizens from the area where the project was being implemented, to oversee implementation. The county trained the committees on their responsibilities, and how they could monitor and supervise the project. The committees paid particularly close attention to project spending, and reported

back to the county when funds allocated to a project appeared to be too low—or too high. When projects were under budget, funds could be diverted to other citizen-selected projects. One way that the committees helped cut costs was by facilitating land donations. For example, in the construction of several dams in Makueni, the county was able to acquire land for free from community members who realized the benefit the dams would bring to their communities.

Refining the process

After budgets were allocated for the first year's projects, the World Bank team and the counties set about improving the process for the following year.

One area the counties wanted to improve was the inclusion of underrepresented or marginalized groups, such as youth and disabled people. To ensure higher participation of those groups, Makueni set up "thematic groups" and specifically invited young people and people from the disabled community. According to Omolo, the thematic groups "made the counties aware of the particular issues the groups were facing," and by participating in the participatory budgeting process, the groups "could make decisions on what they needed...rather than having someone else make those decisions for them."

Engaging at a more local level also helped counties boost inclusivity. "You find women and youth in the villages, from there they are able to access the meetings," said Omolo. "In rural areas it is difficult for a woman to leave her immediate environment and her daily chores to travel long distances for a meeting."

Another issue that Makueni and West Pokot faced in the first year was that, in some cases, the projects decided on had ended up not being feasible to implement. There were a range of reasons behind this, for example not having land to implement the project, or the land allocated being unusable. To avoid these issues, Makueni introduced technical evaluations to their participatory budgeting process. "County officials and citizen representatives went to the field to assess the land, the costs, and other technical aspects, and took that information back to the citizens," said Omolo. "Citizens could then adjust their selections or allocations based on the evaluations. For example, they might need to allocate more funding for a particular project based on the evaluation." West Pokot also



presented the technical costs of the proposed projects to the citizen representatives at ward level meetings to guide their final selection of projects.

In 2017, the World Bank team partnered with Map Kibera, a local organization in Kenya, to further strengthen citizens’ ability to make informed decisions during the participatory budgeting process. Map Kibera began helping the counties integrate more data and digital mapping into the decision-making process. For example, digital maps made it easier for communities to identify where medical facilities were, or where boreholes to access water were, and that data made it easier for participants to identify where the areas of greatest need were. “Mapping helped citizens determine their real needs and priorities,” said Omolo. “Now their decisions are informed by data.”

Expanding from the pilot

In the second half of 2016, the World Bank team began working with the three other counties that had been selected at the initial participatory budgeting workshop. All three followed a similar process to that adopted by Makueni and West Pokot, and followed through on their commitments to allocate part of their budget to the projects chosen through participatory budgeting.

In addition, more counties became interested in following the example set by the pilot counties. Media in Kenya highlighted Makueni’s experience, and word spread across the country how that county had delivered on citizens’ priorities through participatory governance.

To capitalize on the interest, the Council of Governors in August 2018 organized a peer-learning workshop in Makueni, where other counties could learn how participatory budgeting worked in practice. At the workshop, Makueni's governor Kivutha Kibwana described his county's experience implementing participatory budgeting and other governors also shared their efforts at improving citizen engagement.⁵³ Counties with a strong level of interest in participatory budgeting were able to request World Bank support through the Council of Governors. After training a further seven counties on participatory budgeting in 2017, the World Bank team trained four more in 2018.

Makueni county continued to be one of the leaders of the participatory budgeting movement, and in 2019 introduced a new innovation to streamline the budgeting process. The county trained "Community Resource Volunteers" on how to conduct meetings, and these volunteers went on to convene and facilitate participatory budgeting meetings at the village and village cluster levels. The new process reduced the administrative burden on officials, who previously had to travel to each village unit to oversee meetings, and also reduced the number of days needed to select projects since meetings could be conducted simultaneously.

Reflections

Participatory budgeting reforms are designed to ensure that public money is spent on communities' highest priorities, and do not directly target corruption. Nevertheless, in Kenya's case, introducing participatory budgeting possibly reduced or prevented corruption because citizens were more engaged in the budget allocation process and had more information to hold public officials accountable. "In Makueni... people become part and parcel of the [budgeting] process," said Kibwana. "At various levels on the ground, they must approve completed projects. It is only when they are satisfied that the county government can process payments."⁵⁴

If projects stalled or were not completed, citizens could demand explanations from the officials that had approved their project selections. According to Omolo, in some instances, citizens refused to select new priorities until county officials provided answers as to why the previous year's selections had not been completed.

The mapping component of the process helped citizens find better and more cost-effective solutions for their needs than might otherwise have been decided on. "In some cases, communities realized there was no need for an entirely new project when instead they just needed to upgrade an existing facility," said Omolo. "In other cases, it might just require more staff in order to improve service delivery."

Citizens were also able to identify cost savings through their oversight role. According to Omolo, local citizens often had a better idea of the costs of labor and materials than bureaucrats did, and when citizens in Makueni had access to project expenses they were able to identify opportunities to deliver projects at lower cost. "Increased accountability has meant more value for money," said Omolo. Although Makueni had strong citizen oversight through its project management committees, as of 2019 most other counties were yet to implement similar mechanisms.

Officials wielded little say on the participatory budgeting portion of the budget, but since participatory budgeting allocations were less than 15% of each county's entire budget, the overall impact on increasing budget oversight and preventing corruption was somewhat limited. "Whatever projects citizens decide on are locked in," said Omolo. "Policy makers still have their flagship projects, because participatory budgeting is always only allocated a portion of the budget." Over time however, counties tended to incrementally increase funds available for participatory budgeting and also began to incorporate more citizen involvement and oversight in other portions of the budget.

As of 2019, participatory budgeting had been implemented in less than a quarter of Kenya's counties and the extent of citizen engagement across those counties varied. In counties like Makueni, however, where the government had embraced participatory budgeting by actively engaging citizens and giving them a strong oversight role, the reform was working. "The budget process has gained more credibility and there is more trust between the citizens and the government," said Omolo.

CASE STUDY 16

OPEN AND INCLUSIVE GOVERNMENT

Enhancing Social Accountability in Ethiopia

Overview

Citizens' engagement with government to address service delivery issues had long been a challenge in Ethiopia. To encourage citizens to hold service providers more accountable, the government in 2011 launched the second phase of the Ethiopia Social Accountability Program, which aimed to build on a pilot implemented from 2006 to 2009. The program partnered with civil society organizations across the country, which then worked with communities to assess and give feedback to public service providers, such as schools and healthcare centers. At the outset, there was very little trust between citizens, service providers, and the government. By 2019, when a third phase of the program began, there was significantly more trust between the different stakeholders, and there were some signs that citizens were beginning to hold service providers more accountable. While the program's scope to impact corruption was limited, it did boost citizens' knowledge on public services and the role of government, giving them the opportunity to take on a greater oversight role.

Introduction

In 2011, Ethiopia was looking for ways to better engage its citizens and improve public service delivery. A decade

earlier, the country had launched a decentralization policy whereby the governments of the country's *woredas* (administrative divisions similar to districts) progressively took on more power and responsibility. The idea was that these local governments would be more responsive to citizens' wants and needs. "But that was on paper, not in reality," said Workneh Deneke, who worked on the Ethiopia Social Accountability Pilot Program (known as ESAP 1) from 2006 to 2009. "We had just come from a very long period with successive totalitarian regimes when everything was top-down. Citizens couldn't do much more than accept the status quo... their demands were limited."

Part of the problem was a lack of resources. While the country boasted double-digit GDP growth in 2010 and 2011, its GDP per capita was just USD1,162, ranking it among the bottom ten countries in the world according to that indicator.⁵⁵ Although resource constraints explained some of the challenges, another important dynamic was that local governments were more responsive to senior officials than to the citizens they served, and citizens feared the repercussions of voicing discontent. Since citizens did not speak out about the quality of public services, it was difficult for service providers, such as schools or health clinics, to know how they could improve.

Civil society organizations, too, had limited opportunity to influence local governments or service providers. The Ethiopian government—dominated at all levels by the

ruling political party—was effective at implementing programs from a national level that reached right down to the village level. But that top-down structure did not have any mechanism for the government to receive feedback from citizens or civil society groups working at a local level. Such feedback was critical for boosting social accountability, which involved citizen groups holding government officials and service providers accountable for delivering quality public services.

To shift the status quo, the Ethiopian government in cooperation with its development partners and the World Bank launched the Ethiopia Social Accountability Program 2 (ESAP 2) in 2012. ESAP 2 was funded by a multi-donor trust fund and implemented by VNG International, the international development arm of the Association of Dutch Municipalities (known as VNG, its acronym in Dutch). VNG International, which worked in several developing countries to strengthen democratic governance at a local level, set up an agency in Ethiopia to administer the program. The agency aimed to build on the success of ESAP 1, which had worked with 12 civil society organizations to improve social accountability in a select few regions in Ethiopia. ESAP 2's goal was to partner with civil society organizations across the country, facilitate a dialogue between citizens, service providers, and local governments, and eventually, to improve the quality of public services.

Building trust between civil society, citizens, and the government was a monumental task. At the time, civil society activity was highly restricted in Ethiopia, and the Charities and Societies Proclamation strictly limited NGOs' work on human rights and policy advocacy issues. Citizens feared speaking up about the issues they faced in accessing education, healthcare, and other services. For example, parents avoided voicing discontent about schools because they were concerned their children might face repercussions. At the same time, the administration feared being blamed for service failures, and worried that citizens would demand far more than service providers were able to deliver.

"We had to bring civil society and government together," said Lucia Nass, who went on to lead capacity development and training for ESAP 2. "It seemed very risky because there was so much animosity, but if the project was going to go anywhere, we had to do it."

The implementation process

Partnering with civil society and spreading knowledge

The first step was to identify partner organizations to work with. The management agency for the program invited interested civil society groups around the country to submit applications to be involved. Selected organizations would receive funding and training to work with local governments, service providers, and citizens on social accountability initiatives. In their applications, the organizations identified the sector or sectors they wanted to focus on (education, healthcare, agriculture, water and sanitation, or roads), and the woredas and kebeles they planned to work in. Kebeles, the smallest administrative division in Ethiopia, are usually made up of a few thousand people, and there are usually a few dozen kebeles in each woreda.

Some civil society organizations were initially skeptical about the government's commitment to the project. Many wanted to take a human rights-based approach to their work, but government legislation limited any human rights advocacy. Fortunately, the highly influential finance ministry—which led the ESAP 2 steering committee—strongly supported the effort to improve social accountability. The government granted civil society organizations permission to work on the program, and the finance ministry's endorsement was crucial in signaling to civil society that the government supported its involvement.

After recognizing the government's commitment—and the possibility of securing funding for their activities—civil society's interest in the program grew. There was significant funding available, and the program ultimately aimed to improve the livelihoods of the poor in Ethiopia—a goal shared by many civil society groups.

In total, 118 civil society organizations were selected to work in 240 different woredas, about a quarter of the total woredas in the country. Within each woreda, each organization initially focused on about 3-5 kebeles, and then scaled up to cover more kebeles over time.

Education and health were the most common sectors to work in, followed by agriculture. For example, some organizations opted to work with primary schools or health centers. In the agriculture sector, organizations



worked with extension agents that provided technical support to farmers at the kebele level. Only a few organizations chose to work with water and roads, as these areas often required intervention from the regional or central government—something beyond the program’s scope.

Before disbursing funds, a team of trainers held a workshop with the selected organizations. The training focused mostly on how to use five distinct social accountability tools: Community Scorecard, Citizen Report Card, Participatory Planning and Budgeting, Public Expenditure Tracking Survey, and Gender Responsive Budgeting.⁵⁶ As well as introducing the tools, the trainers also taught attendees about the governance system in Ethiopia and how budgets were allocated. The trainers found that there was little awareness about how government functioned in Ethiopia and the important roles that woreda councils, civil society organizations, and citizens had in the governance process. The Financial Transparency and Accountability team (a separate component of the Protection of Basic Services Program that ESAP was part of) led budget education activities throughout the country.

Setting up social accountability committees

After being trained and receiving funds, the civil society organizations began forming “social accountability committees” in the woredas and kebeles they planned to work in. The committees had a tripartite structure, being composed of elected representatives from woreda or kebele councils (who were in charge of oversight and resource allocation), public administrators (in charge of service delivery), and citizens (including civil society representatives).

In some areas, earning approval and participation from the local government proved to be quite a challenge. When they faced resistance from woreda councils, civil society organizations tried different strategies to win their cooperation. In some cases, this meant involving higher levels of government, for example someone from the regional government or a representative from the Ministry of Finance. Often these higher-level officials could “nudge things forward,” according to Nass. In other cases, civil society organizations sought help from peer organizations that had already established working relationships with government.

Each committee had a unique structure, partly tailored to the area it was working in, and partly down to who volunteered to participate. “Some committees were dominated by service providers, while others were mostly citizens,” said Meskerem Girma, who worked with Nass on the program. “There were usually 9 to 15 people on each committee.”

The committees also included members of the woreda council. In theory, councils were supposed to provide oversight of service providers, but few had been able to do so effectively. “Gradually council members, civil society organizations, and regional governments began to understand the role councils could play,” said Meskerem.

Implementing social accountability tools, meeting with service providers, and developing joint action plans

Although ESAP 2 introduced civil society organizations to several different social accountability tools, the most widely used by far was the community scorecard. The community scorecard involved communities holding discussions and developing indicators to assess the performance of service providers, with the service providers also conducting self-evaluations. The assessments were followed by a joint discussion to reconcile differences in the scores and come up with a joint action plan to improve service delivery moving forward.

The quality of the action plans—and to what extent they were implemented—varied greatly. “Some service providers were extremely enthusiastic about the action plans, and really wanted to improve service delivery,” said Meskerem. However, there was no enforcement mechanism to ensure follow through. “If nobody worked on the action plans, then nothing happened,” Meskerem said.

The process to form joint action plans was often difficult, as was the case when the Addis Ababa Women’s Association, a civil society organization based in Ethiopia’s capital city, worked with Addis Hiwot Health Center to improve healthcare service delivery. “The hardest part of the process is building trust; that takes the longest time,” said Mussie Yasin, project coordinator for the association. “During the initial meetings at Addis Hiwot, all of our discussions were heated.” Community members accused doctors

of misdeeds, and the doctors felt attacked and responded in a defensive manner. “But after a while, the tone changed, and the consultations began to be about finding solutions to the problems together.” To respond to the concerns that community members expressed in the face-to-face meetings, the medical center recruited more midwives, installed a power generator and water pump, and allocated more funding for medicine purchases.⁵⁷

Building trust and sharing ideas

After the first year of implementation across the country, ESAP 2 hosted an event to bring all of the civil society organizations together with selected service providers from the 240 woredas involved, as well as government representatives. “We were looking for important innovations that were working,” said Nass. “That encouraged others to look beyond what they were already doing.” Social accountability committees were encouraged to create videos of their efforts to improve services in their districts, and the event included a video competition to celebrate those successes.

ESAP 2 held similar events annually, with 250 or more people attending each year. Over time, the events attracted a wider range of stakeholders, including representatives from regional governments that had not originally been included in the program. According to Nass, most government representatives—including woreda councils, woreda administrations, and regional government officials—were reluctant to participate at the beginning but grew to fully embrace the program after they saw the positive impact it was having in communities across the country.

Overcoming obstacles

When ESAP 2 came to a close, there was strong enthusiasm from those involved to continue supporting civil society in Ethiopia to improve social accountability. However, changing political dynamics and other factors meant a new project to build on ESAP 2 was slow to materialize. To ensure that the achievements of ESAP 2 were not lost, several donors chipped in to fund a “bridging phase” until the new project (which would be known as ESAP 3) came together. While some of the civil society organizations and social accountability committees continued throughout the bridging phase, others struggled to maintain momentum. “A lot of

social accountability committees went dormant, and some joint action plans were never followed up on,” said Meskerem.

Further difficulties ensued in October 2016, when the country entered a state of emergency that lasted nearly a year. “In some regions our partners found it very difficult to continue,” said Nass. Civil society organizations halted operations when the situation worsened, but picked up their work again when the situation improved.

Following an administration change and government reforms in 2018, the ESAP 3 project, also administered by the World Bank and managed by VNG International, finally launched in May 2019. Around the same time, the new government rescinded the Charities and Societies Proclamation, opening the door for civil society organizations to work on a wider range of issues and take on a stronger policy advocacy role.

The new project team began working on ways to deepen social accountability in Ethiopia and ensure their efforts were sustainable. For example, the ESAP 3 team planned to work closer with longstanding local governance organizations, such as kebele councils, community-led structures, and other groups, which were likely more sustainable than parallel structures like the social accountability committees. In addition, the ESAP 3 team planned to integrate their work with higher levels of government—which could work on a wider range of issues—as well as focus more on planning and budgeting at the woreda level. By 2020 ESAP 3 was operating in 317 woredas and was set to disburse funding to civil society organizations through the end of 2023.

Reflections

ESAP 2 did not directly target corruption, and its goals were mostly to increase public participation, build better relations between local governments, citizens, and civil society organizations, and to improve service delivery. Nevertheless, those involved in the project suggested that the initiative likely had some spillover effects in reducing corruption, even if on a small scale. “At the district level, there is not much money that can be captured by corruption,” said Nass. “In that sense, the scope to reduce corruption was not very large. However, there is a lot of petty corruption, which is

especially difficult for poor people. ESAP 2 helped citizens understand what services are supposed to be free and what services need to be paid, and how much they cost. With greater transparency and accountability, corruption becomes more difficult.”

In addition, ESAP 2 spread knowledge about the important role that woreda councils play in overseeing service delivery. “There is now a much better understanding that councils have an oversight role,” said Nass. In theory, increased oversight would reduce opportunities for corruption.

Citizen oversight increased too. Several people involved in the implementation of ESAP 2 reported that there were some indications that citizens had become more willing to voice their concerns about public services. One example of this was through increased participation in parent teacher association meetings at primary schools. Participation in such avenues that allowed them to demand better public services was potentially a sign that citizens were beginning to hold government accountable.

According to Nass, Meskerem, and others closely involved in the program, its biggest result was increased trust between civil society, service providers, and the government—something that had been severely lacking when the program began. “Over the years ESAP has developed a strong position of trust with both civil society and the government,” said Paul Hamilton, who was leading ESAP 3, and added “We hope that the trust will deepen now that the project has entered its third phase in 2020.”

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Case Study 15: Boosting Accountability through Participatory Budgeting in Kenya

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CHAPTER 7

GovTech

Emerging Technologies to
Disrupt Public Sector Fraud
and Corruption



Introduction

How important are emerging technologies in combating corruption?

The broadening and deepening of global digitization of governments and citizens is changing the face of public sector governance and its impact on anti-corruption in both developing and advanced economies. Digital government is moving fast, beyond digitizing paper-based records and transactions. The broad spectrum and increasing sophistication of the use of technology ranging from mobile computing to internet-connected sensors—spanning the internet of things (IoT) and biometric identification—means that digitization is ever more ubiquitous. The increase in digital interactions among officials, citizens, and business within countries and across the globe has had a positive as well as a negative impact. On the one hand, legitimate money can move efficiently, but on the other, illicit gains can be moved quickly across individuals and countries, making it difficult to track.

While digitization as a ‘foundational’ factor is important, other factors like institutional incentives and capacities and strong leadership are key for enhanced efficiency, improved service delivery and fewer opportunities for corruption. The 2017 World Development Report on Digital Dividends extensively documented that digitization by itself will not change the nature of public services if the institutional incentives and capacities are not in place. Similarly, to be effective, digitization and technology, together with strong institutional mechanisms, can make fraud and corruption more costly and less attractive for perpetrators both inside and outside of government. Use of digital technology with strong leadership can be instrumental in bringing about a wider transformation, including improved service delivery⁵⁸ and less opportunities for corrupt practices.⁵⁹ This has been demonstrated in the case study of India’s Andhra Pradesh (AP) State Digital Transformation Strategy in the past decade. AP’s experience shows how the sub-national government was able to disrupt traditionally strong vested interests that resisted change.

The traction that digital technologies may have in reducing fraud and corruption depends on the institutional context. Many political manifestos at the national and sub-national level articulate commitments to anti-corruption and technological

innovation. Governments across the world have invested in digitizing government systems, including eProcurement systems.⁶⁰ However, any system will only be as good as the practices that complement it. To gain greater traction for addressing fraud and corruption, data needs to be captured, and linked with other data. Mandating the use of the system and validating and analyzing data using Artificial Intelligence (AI) or other methods can prove to be effective. The correct question, therefore, is not whether eProcurement systems can reduce corruption, but rather to investigate whether the institutional environment supports the use of data to detect fraud and corruption (see Box 7.1 on Brazil Court of Accounts). Institutional processes, practices, policies and regulatory regimes will determine whether digital applications are successful (or not) in achieving the desired outcome.

Increasing sophistication and advancement in technical solutions has implications for human resource management in the public sector. Understanding emerging technologies and their application in an institutional context requires specialized skills to assess and apply these technologies, both in the delivery of specific solutions (e.g., procurement data analytics and AI) and to better prioritize solutions. Government officials or public sector specialists typically do not come from a technologist background, or spend much time keeping abreast of the latest technology trends. While reform champions will themselves not need to be technical specialists, they should at the minimum have an understanding of what can be expected from different applications. Any productive discussion in this area will need to carefully align institutional reform with technology terminologies and expertise for domain areas, such as fraud and corruption. Some of these concepts are discussed later in the chapter and listed in Table 7.1.

While available data suggest that higher levels of digital government development are most likely correlated with greater government effectiveness and less corruption, other factors may also be playing a role. While technologies such as the internet, social media, and digital feedback mechanisms may initially heighten perceptions of corruption by exposing corruption, the real issue is whether they lead to change in behaviors to reduce, if not eradicate, corruption in a particular domain. Reporting and disclosure may in

its own right not reduce petty bribes, but follow-up actions may.⁵ However, given the aggregate nature of these cross-country indicators, measurement is not

straightforward, and therefore may confound more general associations between income levels and a general set of governance indicators.⁶

BOX 7.1

Brazil's Tribunal of Accounts Robots

AI can serve as a decision support tool for identifying transactions and payments *ex ante* that are at a high risk of fraud and corruption. However, this technology can only have an impact if it changes the behavior of relevant government personnel, in this case auditors. The Brazilian Federal Court of Accounts (*Tribunal de Contas da União*, "TCU"), a Brazilian Supreme Audit Institution (SAI), has implemented AI systems since 2015 to analyze the procurement processes of the federal administration. The TCU's acronyms for the systems translate into robot names: Analysis of Bids, Contracts and Public Calls (ALICE)⁴; Analysis of the Dispute in Electronic Bids (ADELE); Integrated Monitoring for Acquisition Control (MONICA); and Guidance System on Facts and Evidence for the Auditor (SOFIA).

A more systematic study of auditors suggests that the solutions have not been mandatory, nor has training for auditors. The designers, however, suggested that this was part of a deliberate strategy. They believe that the auditors don't need to be trained to use the products; if they do, something is wrong. Just as a first-time user doesn't need to be trained to use Netflix. If the solutions use complex algorithms based on machine learning and cognitive processing, what should matter to the auditor are the results and their reliability for each purpose (Chief Data Officer).

Interviews of Audit Managers suggested varying levels of use: ALICE (3/5), followed by SOFIA (2/5), ADELE (1/5) and MONICA (1/5). Most managers were ambivalent about the actual changes or implications the decision support tools brought to their work. Qualitative interviews suggested that many auditors still followed old practices, including a preference for text editors and spreadsheets. While adoption was growing, it was happening at a slow pace.

Source: Neves et. al. (2019)

Use of digital technologies involves both opportunities and challenges

Digital government transitions, coupled with disruptive technological change, offer both opportunities and risks for anti-corruption. Digital investments (e.g., major 5G or shifts to cloud based services)⁷ can lead to an increase in complexities and higher scope for corruption, as they might entail new modalities of procurement around notional services

and data. Valuable resources, such as spectrum licenses can be a source of significant rents and consequently corruption.⁸ Digital realms also bring a new set of public sector vulnerabilities in terms of abuse of office and capturing illicit gains. Digital transaction platforms (including bitcoin stores) can facilitate a rapid or scaled illicit syphoning of resources. On the

other hand, digitization can help improve transparency, with near real-time feedback helping expose illicit behavior. Digital workflows and validation can lead to simplification of bureaucratic procedures and limit the discretion of public officials, improving the beneficiary experience and reducing corruption. For example, distributed ledger technologies—commonly known as blockchains (discussed later)—promise to increase the trust in digital registries and transaction data, reducing the scope for records tampering by officials.

Across levels of digital transformation, governments are facing different opportunities and challenges for better leveraging technology. Singapore’s government, for example, has demonstrated a strong commitment to addressing fraud and corruption, not only by augmenting the use of technologies, but also by developing in-house technology capabilities in such areas as AI (see Box 7.2).

The maturity of Singapore’s digital ecosystem, coupled with its integrity institutions, demonstrates how a country can leverage opportunities that new forms of digital data offer, together with technological solutions. However, in a context that is still largely cash based, reliant on paper-based workflows, and where existing systems are not set up to link to each other, options in the short term are quite different. In such an environment, specific technical measures such as linking procurement to enterprise registries, as both systems improve, can prove to be a better solution to detect, for example, rigging patterns in bidding. A relatively underdeveloped digital government ecosystem or institutional context may also provide opportunities for ‘leapfrogging’ in terms of technology solutions. For example, the use of high-resolution satellite imagery technology platforms to supervise projects in Fragile, Conflict, and Violence (FCV) afflicted states where regular project supervision is not possible (e.g., Afghanistan or Iraq) represents

BOX 7.2

Singapore’s SkillsFuture Program and Fraud Detection

Singapore’s SkillsFuture program, a several million dollar grant program for training, faced issues of corruption. It was found that fraudulent training providers were signing up fictitious beneficiaries and pocketing the training fees.

Given the importance of the program, Singapore’s Government Technology Agency (“GovTech”) helped implement an AI machine learning solution to flag anomalous transactions. GovTech is a statutory board of the Singapore government, under the Prime Minister’s Office. Since its current establishment in 2016, GovTech has built up strong in-house capabilities for applying technology solutions to government decision-making challenges (in this case Fraud and Corruption Detection), as well as citizen and business facing services.

Beyond the innovative technical solution (unsupervised machine learning to flag training payments that would suggest further human scrutiny), Singapore has introduced additional controls to ensure the integrity of the program. The program involves about 600,000 claims per year. Training recipients must now scan a time sensitive Quick Response (QR) code, which in turn is linked to individual Singpass accounts. SingPass, which stands for Singapore Personal Access, is an authentication system for citizens to transact online with the government. The SingPass mechanism uses a variety of authentication mechanisms, including fingerprint and facial recognition.

Singapore’s digital government development is by all accounts one of the most advanced in the world. The SkillsFuture case highlights not just the applied use of AI, but above all the progressive linkage of different technologies, including foundational biometric identity confirmation technologies.

Source: Goh (2019), Singapore Straits Times (2019), Ko (2020)

both a different rationale and realization of technology-supported solutions.

For developing countries seeking to address public sector management challenges, there may be opportunities to leapfrog and deploy new disruptive technologies (DTs) more widely. DTs have, in several instances, enabled better or new ways of doing things (like the shift from chemical to digital photography). They are also associated with lower complexity and costs to address the needs of a wider base of users by improving day-to-day processes. Due to their widespread use of cloud-based platforms, they are also rapidly scalable. Examples of DTs include transport platforms, such as Grab, that combine the use of smartphone, location-referencing/mapping, AI, and financial intermediation innovation to transform

a particular service. While biometric technologies to confirm identities are not completely novel, rapid reductions in cost and increases in reliability have made it possible to scale them up in a massive way in such settings as India.⁹

This chapter seeks to highlight areas where digital technology developments can help disrupt fraud and corruption in the public sector. The focus is on the use of more recent technologies, against the wider backdrop of digitization, to promote increased detection of corruption and reduced discretion (or abuse) on the part of public officials and other implicated parties. Through illustrative boxes and cases, the chapter highlights the key contributions of a number of technologies in practice and associated theories of change.

Digital technology disruptions

Digital technology disruptions have been used in the public sector in a number of areas, including for revenue, expenditure, regulation, and financial and physical asset management. Table 7.1 summarizes the range of use-case applications across selected areas of public sector management used to address the associated vulnerabilities. The primary driver for reforms, and consequently more concerted

applications, may be driven by efforts to increase taxes, improve the business environment, enhance services, or improve the effectiveness of certain regulatory functions. Framing technology-supported reforms as a public services delivery agenda, rather than in the first instance as an anti-corruption crusade, may also be a more disarming approach in light of the existence of the vested interests benefiting from corruption.

TABLE 7.1 Public Sector Fraud and Corruption Domains

Domains	Addressing Vulnerabilities	Applications
Revenue Mobilization	Reduce tax or customs evasion	eFiling, Risk profiling
Expenditures / Procurements	Reduce expenditure leakages/ efficiencies (wages, recurrent, or capital)	Expenditure risks and risk management
Public Services	Address petty corruption and unresponsive services	Digital services
Regulatory Services Enforcement	Enhance enforcement of environmental standards, zoning,	CCTV Cameras/IoT/satellites/drones for verification
States assets management	Tighten control and oversight over key financial and physical assets	Public property and works registries, public investment management
International Money Laundering /Stolen Asset Recovery	Illicit gains are moved across borders	Stolen asset recovery and re-patriation

Source: World Bank Staff

While digital channels can help improve convenience and lower levels of corruption in many public services (as listed above), the impact will depend on the complementary practices put in place. A study by Okunogbe and Pouliquen¹⁰ in Tajikistan finds that higher risk firms, as categorized by an indicator from the tax authorities, are less likely to use eFiling,¹¹ as the choice to e-file taxes remains voluntary. The study finds that the impacts of technology, thus limiting discretion on the part of officials, will differ by how that discretion was previously used. If it was used to allow firms to pay lower taxes against a bribe payment to the official, technology may disrupt this equilibrium. If officials were using discretion to correctly monitor firms, the outcome may be different. The study suggests that depending on the degree to which electronic channels are voluntary, and how discretion was used, impacts will be heterogenous. Other benefits of eFiling systems include saving time and the ability to screen data (e.g., for risk profiling) more quickly.

Enhanced technologies may offer opportunities to address information asymmetries in difficult digitization settings, but should preferably be

connected to foundational systems. In more extreme data scarce settings, including FCV-affected countries, technologies may serve to mitigate fraud and corruption risks associated with information barriers. Satellite or drone imagery could be useful to validate infrastructure projects where physical supervision is too costly or risky. Enhanced technologies can work to increase detection and reduce discretion (and abuse) with respect to particular risk areas like irregularities in construction. However, some of these techniques may only go so far, as parties colluding towards fraud and corruption learn to neutralize or evade these types of technological measures. “Leapfrog” technologies like satellite imagery are also likely to be most powerful if they can be connected with progressively strengthening “foundational” systems, for example eProcurement systems. Table 7.2 outlines cross-cutting areas of technological change that appear to have an impact on public sector fraud and corruption across the enumerated use-case applications. The past decade has seen rapid changes across a set of cross-cutting technologies. A number of terms, such as big data and AI can refer to very different approaches and use in different settings.

TABLE 7.2 Major Technology Trends for Public Sector Fraud and Corruption

Technology Trends	Examples	Opportunities
Digitization / Core Public Sector Enterprise Systems	FMIS, HRMS, Digital Registries, M&E	Improved process controls and transparency
Big Data	Expansion of data from systems, satellites, smartphones, sensors, Unmanned Aerial Vehicles (UAVs)	Richer feedback and insights from a vast new ecosystem of data
Cloud Computing Platforms	Use of cloud platforms to rapidly scale data integration and analysis	Ability to better leverage conventional core and emerging big data, including AI
Artificial Intelligence/ Machine Learning	Use of automated/deep learning techniques to identify fraud and corruption risks	Ex Ante or Ex Post risk detection (Box 7.1 and Box 7.2)
Biometrics (ID4D)	Unique identification of civil servants and government program beneficiaries	Civil service registry clearing Transfer/ social safety net programs
FinTech	Digital money, wallets	Cashless transactions, transaction tracking
Distributed Ledger Technology/ Blockchains	Trusted data sources and “smart” contracts	Cadasters, next generation e-GP
Internet of Things (IoT)	Use of sensor networks, including visual CCTV for monitoring and control processes	Environmental monitoring, public safety

Big data

The power of big data lies in linking relevant data from a variety of sources (numeric, text, and image data) and breaking data silos. Governments have traditionally relied on collected statistical data, as well as accumulated administrative data. The overarching concept of big data has come to refer to a wealth of new sources that are larger in size, higher in frequency, and often contain quite personalized data.¹² For example, Hlatshwayo et. al.¹³ adopt a “big data” approach to measuring corruption based on cross-country news flow indices of corruption (NIC) and anti-corruption (anti-NIC) from over 665 million international news articles. They find that increased reporting on corruption shows some relationship with financial and real sector variables (e.g., stock markets and growth). However, the ability of developing countries, in particular, to implement the requisite data wrangling and analytics may in many cases still prove to be challenging. The term ‘data wrangling’ refers to the significant effort that is required to bring data together and clean it before meaningful big data analytics or AI can be applied. While data may exist in government, it is often siloed, requiring both technical capabilities and strong institutional leadership for integration, and consequently impact in terms of detection and control.

Greater access to digital data, alongside technology tools, can empower civil society and reform champions in government to detect fraud and corruption. The literature on ICT for better governance has highlighted that leveraging digital channels, including social media, to enhance transparency and feedback helps to flag corruption.¹⁴ The evidence, however, remains patchy.¹⁵ AI is also increasingly viewed as a possible strategy for governments (and civil society) to sift the digital data to gain insights on illicit behavior.¹⁶ In settings such as Brazil, civil society has used data mining opportunities and techniques concerning social media and expenditure records to flag fraudulent behavior by officials and politicians.¹⁷ These initiatives, however, risk remaining at the periphery of how the public sector, and its associated fraud and corruption risks, actually work in the digital area. While significant expectations are placed on transparency and feedback, there is a dearth of robust impact evaluations to confirm the impact of these data and feedback channels.¹⁸

The use of traditional public administration systems as well as new big data sources requires

careful attention to omissions and biases.

Conventional public sector enterprise systems relating to counting money, people, assets, and outputs may all be subject to omissions. Even if a civil servant is registered in a database, there is no guarantee that he/she exists. The fact that an eProcurement system records a public works contract is an important step in the journey of digitization. In the context of transactions systems such as FMIS or eProcurement, a key question is whether all transactions are comprehensive, and if not, why certain transactions are not included in these systems.¹⁹ But this is still a long way from linking it to richer big data, such as image verification, or risk pattern analytics of bidding. There may or may not be biases relative to fraud and corruption (e.g., bidders captured in an eProcurement system, or taxpayers in an eFiling system). Despite large investments in IT systems, the systems were not designed necessarily to flag corruption and often do not. Statistical data that is typically collected is representative. But big data sources like India’s *I Paid a Bribe* may also only give a partial or biased view of fraud and corruption. While big data—and the related application of Artificial Intelligence-Machine Learning (AI-ML)—can enhance detection and limit discretion abuse, the perseverance and skills to link and clean data will be key.

Cloud-based platforms

Cloud-based platforms and services provide for on-tap computing,²⁰ better data management capabilities, and storage capacities. They are not an improvement over traditional hardware deployments that typically entail large fixed costs, but provide a potential mechanism for addressing data fragmentation and silos. Cloud architectures lend themselves to the establishment of Application Programming Interfaces (APIs) that provide real-time integration of data and front-end services. Estonia’s X-road is a globally recognized open source data exchange platform that shows in real time if respective agencies are sharing relevant data services. For reformers seeking to break down data silos, for example to cross-reference eProcurement and firm level data, this type of readily available technology can be quite powerful. Rather than requiring prolonged system set-up cycles, the technology allows reformist policy makers to tackle data sharing, along with analytics, in a faster and more agile manner.

Artificial Intelligence (AI) and Machine Learning (ML)

While AI, with adequate digital data foundations, is being increasingly used in a number of areas, its ability to serve as a powerful tool for detecting corruption risks in the public sector rests on a few key factors. First, it should be technically sound and be able to match the right algorithms with requisite data. Second, it should allow flags or triggers to be used manually for further action. And finally, it should be able to decipher, understand and use the information to improve and plug leakages. Successfully bringing these elements together in a public sector setting demands specialized skills, and strong leadership to ensure the linking and rationalizing of the different data systems (e.g., as part of AI-ML applications). The legal and institutional environment for the application of AI tools remains critical in terms of actual impacts for fraud and corruption, particularly to sanction the perpetrators.

Both AI and machine learning have a key role to play in helping to detect fraud and corruption. AI tells the computer what to look for, while machine learning allows the computer to draw out patterns not directly seen by humans. Both approaches should be thought of as decision support for humans, rather than fully automating detection or discretion. There are examples of the use of both with varying degrees of success. For example, when Ukraine's State Audit Service developed 35 risk indicators to help evaluate tenders for closer inspection, fraudulent bidders adapted their behavior to avoid these fixed criteria.²¹ The Dozorro system by Transparency International demonstrated that machine learning was a more effective way to flag changing behaviors. Many tax authorities are using digital technologies to make the process of paying taxes easier, while building AI tools for helping detect evasion. The degree to which this combination exists across the functional areas is likely to differ significantly for any given context. A few successful examples are listed below:

Use of AI in detecting corruption in the public sector:

- Mexico's tax authorities identified 1,200 fraudulent companies and 3,500 fraudulent transactions within 3 months of a pilot AI scheme.²²
- India's Union Finance Ministry Project Insight monitors data from various sources, including social media to detect spending patterns and

compares the same data with tax records.

- Brazil's Office of the Comptroller General has developed a system that can rate the probability of any official being corrupt, based on entering a social security number.
- Singapore's AI for fraud detection in the SkillsFuture Program uses unsupervised learning to flag suspicious transactions (Box 2).

Biometrics

Biometrics has enabled identity validation, better targeting and access to services, and, in many countries, improved attendance of public servants.

Biometric technologies have to-date focused on such anchors as digital fingerprints, facial recognition, and iris scans.²³ In the public sector, confirming, or more generally cross-linking, identity can help identify ghost workers, target beneficiaries and track transfer payments. While biometric technologies are not new, their cost and versatility has improved significantly. India's Aadhar²⁴ biometric identity program, launched in 2010, provided unique digital identity to more than 1.2 billion Indians.^{25,26} Once a near universal platform of digital IDs is in place, the relative "start-up" costs of verification decrease. In settings where unique digital ID platforms are not yet in place, biometric registration will still need to be conducted on a stand-alone basis. In Sierra Leone, payroll verification and reconciliation exercises using biometrics led to substantial integrity gains through the weeding out of staff wastages. There was a decline in the average civil service payroll bill for 4 years in a row from 2014 to 2017 leading to savings of USD4 million, a significant sum in a small country such as Sierra Leone. The reduced complexity and costs of biometric solutions now also allow biometrics to be deployed in high-risk, FCV settings, such as fraud and corruption associated with refugee aid programs.²⁷ An impact evaluation by Dhaliwal and Hanna²⁸ suggests that biometrics helped increase health worker attendance by 15 percent.

The benefits of more stringent biometric verification criteria must be offset against the risk of errors in excluding genuine beneficiaries from government programs. India's Aadhar program, launched in 2010, covers over 90 percent of the Indian population (available to 'residents'), through a 12-digit ID number linked to specific biometric data, such as iris scans and

fingerprints.²⁹ The scale of India's program makes it unique by global standards, and also a key platform in India's overall emerging digital stack.³⁰ Its per unit cost of USD1.16 per person also makes it probably the most cost effective on a unit basis globally.^{31,32} The program has helped generate huge savings through cleaning up fraud in government social benefits programs. However, Aadhar has also had to address challenges of fraud by its national network of agencies certified to enroll persons into the program.³³ A continuing concern has been that the technology can also generate errors of exclusion. An impact randomized control trial evaluation by Muralidharan et. al.³⁴ for a subsidized food program in the state of Jharkhand highlights that "attempts to reduce corruption in welfare programs can also generate non-trivial costs in terms of exclusion and inconvenience to genuine beneficiaries."

Financial Technology

Financial Technology (FinTech) innovations have increased the scope and scale for digital payments and are transforming interactions between governments and citizens. Mobile money and payment systems³⁵ provide convenient means for financial transactions, including for those not served by retail banking systems. The growing prominence of on-line transactions in the private and public sector has increased the need for Know Your Customer (KYC), especially if money or sensitive information changes hands (e.g., transfer payments, access to health records). The standards for KYC usually depend on the type of service and the national context of digital IDs. Effective KYC can significantly reduce the transaction costs (including the reduced need for face-to-face processes) to provide public services, such as transfer payments (e.g., social security, conditional cash transfers, medical reimbursements), while better managing the risks of fraud and corruption through automated processes and AI-ML decision support algorithm applications. Given that most countries lack a universal and unique ID, solutions will need to involve some type of modular approach with respect to program and service design. The financial sector has led developments in predictive analytics, including for credit scoring and assessing potentially fraudulent charges. These techniques are being increasingly used to assess, for example, medical payment claims, as these are a significant part of public sector expenditures in advanced as well as emerging countries.³⁶

Blockchains

Blockchains have attracted significant attention as a technological revolution, but the technology is still evolving. Blockchains are in effect a database shared across a public or private computing network.^{37,38} Unlike a centralized database, blockchains are in principle less prone to being tampered with by the principal who controls the database. Blockchains rely on decentralized consensus across a number of parties who share the same data. The blockchain can represent stores of value (e.g., BitCoin), indirect representation of value (e.g., land records), or any other form of asset/ownership list. In the public sector, the blockchain can fulfill a number of functions where trust, independence, or conflict of interest may render standard data systems unreliable. This could include elections, records management (including certificates and land titles) and procurement.³⁹ For example, Andhra Pradesh in India (see case study) is using blockchain systems to maintain land records and streamline vehicle registrations as a solution to rampant corruption and a surge of property disputes.⁴⁰ However, blockchains are subject to their own risks, as can be seen from a number of bitcoin thefts, since stakes to a block content can be anonymous, which makes prosecuting illicit behavior challenging.⁴¹ The field of blockchain is a rapidly developing field, with a plethora of different institutional design and technical solutions currently being deployed.

Blockchain technology can support efforts to improve trust in digital government in settings where trust is low. Records are preserved as immutable unless there is a consensus that they can be changed. This can no longer be done by the collusion of corrupt officials as it would need to invoke a wider consensus as there is no single owner. This can have significant impact in areas such as voting, land registries, certificates (marriage, education, or other official attestations, construction permits, civil service rolls, payments, zoning designations, etc.). For example, in Georgia in 2018, 1.5 million land titles were published on a blockchain, with streamlined registration processes and strengthened provision of on-line services.⁴² Blockchain technology is still evolving, and the decentralized database structures, especially data, such as images and maps (including historical documents such as scanned deeds and maps), may face challenges in managing large amounts of data.

BitCoins

The rise of BitCoins and other cryptocurrencies, initially seen as anonymous ownership of assets, may lead to the strengthening of centralized monitoring for cashless societies over time.

The ability of cryptocurrencies to move rapidly across borders, which limits both transparency and accountability regarding ownership of gains, has raised significant concerns that they may be a store of illicit wealth.⁴³ Its blockchain exchanges could also be used in combination with the traditional financial system to facilitate cross-border money laundering.⁴⁴ Countries such as China have clamped down significantly on first generation cryptocurrencies, but are developing their own state-sanctioned digital currencies. This move out of cash and traditional banking systems may in future make traceability easier for authorities, with significant implications for taxation or stolen asset tracking and recovery. For example, China plans to create a national blockchain cryptocurrency that could make traceability easier for the central government and provide greater oversight and scrutiny of transaction records associated with local tax authorities and other government payments. This suggests that blockchain as a technology can be deployed in quite a number of ways, with very different impacts on detection and discretion. Perhaps more than for any of the other technologies reviewed here, both the technology specifics of the application and the institutional context will shape potential outcomes.⁴⁵

Internet of things and other sensor technology

The internet of things (IoT) and other sensor technology are increasingly allowing for richer and more dynamic tracking and feedback.

Two main types of sensor technology that generate data are image producing technology (e.g., satellites, CCTV) and local tracking technology (e.g., GPS trackers for vehicles or radio frequency identification (RFID) trackers). These technologies have been available for decades, though with rapid and significant improvements in functionality (higher capabilities coupled with lower cost and complexity of deployment). Combining these technologies with on-line networking (IoT technologies) has enabled opportunities for scaling up the impact in areas such as public asset/infrastructure management and provision of public services (e.g., smart meters for

water and electricity). An anecdotal example is tracking down Greek taxpayers who had not declared their pools.⁴⁶ Both in the private and increasingly also the public sector, the technology for asset tracking can be used for controlling the illicit use of government assets (e.g., official vehicles) or improving asset inventories (including through the use of embedded RFID asset tracking or QR Code identification).

While different technologies have merit in their own right, the full impact lies in breaking technology silos and implementing interlinked approaches across sectors and services.

The intersection of public sector applications (7.1) and more rapidly developing technology applications can work positively, but also adversely, to disrupt the ability of the authorities to detect fraud or circumscribe human discretion so as to reduce the risk of its occurrence. Digital decision support automation,⁴⁷ as part of fiduciary oversight, can potentially enable officials to focus on more high-risk activities in unravelling corrupt practices. However, for these applications to have traction they will need to have both ex ante and ex post links to business processes. When viewed through a silo lens, the application and evaluation of digital government transformation technologies will face two major challenges. First, technology silos will need to be broken as silo technology solutions will typically be associated with higher costs, incompatible technologies, and fragmented learning.⁴⁸ Second, the biggest impacts from digital technology in government will come from network and critical-mass effects associated with deepening digitization, and increasingly interlinked approaches to detection and business process discretion.

Conclusions and risks

Given the expanse and diverse nature of public sector services, the most productive strategies build on a mix of wider government digitization contexts and intersecting technology developments, rather than focusing excessively on a single technology.

Growing digitization in the public sector and societies is a reality and can be used to improve efficiency in delivering public services and plugging leakages. Table 7.3 lists options for navigating through GovTech in the public sector for speedy and more efficient delivery of services with an ultimate aim of addressing leakages and corruption in the system.

In light of rapidly developing technologies, there is a risk that governments over-invest and rely too much on the latest technologies to address deep-seated governance issues in the public sector. As Eaves⁴⁹ admonishes, governments should focus on being fast followers, rather than engage in expensive, excessively risky, and ultimately ill-fated explorations of untested technologies. Addressing principal-agent and time-horizon challenges particular to bureaucratic reforms in developing countries, the question is: Where does the line between fast follower and ill-advised technology projects get drawn, especially if reformers are looking to hurdle or “leap-frog”? The key to this dilemma may be to empower reformers with

a higher degree of digital technology literacy, as well as to build Technology Innovation Partnerships. These partnerships should be committed to helping national and sub-national governments strike the right balance between more conventional and emerging technology applications. For digitization to be effective, a number of complementary efforts will be required, a few of which are listed below.

Building digital literacy for government leaders: It is important for decision-makers to continuously update their understanding of the type and use of digital technology to guard against the possible pitfalls. Such pitfalls include heavy investment in any one technology, which may be outdated, and vendors selling specific solutions.

Increasingly adopting and operationalizing a digital government platforms lens: The opportunities and risks for technology in the public sector must be set against the broader context of digitization within and outside the country. Rather than see these investments as stand-alone cases, they should be treated as a portfolio and platform building set of efforts. Some initial investments will result in higher returns only after more cross-cutting technologies are yielding dividends.

TABLE 7.3 Navigating GovTech for Public Sector Fraud and Corruption

Prioritization and Sequencing	Dimensions/Questions
Functional or Foundation Prioritizations	Deliver use-case centric applications (AI, big data, data integration), versus emphasizing foundational platforms (Digitization, ID, connectivity)
Conventional or Disruptive Technologies	Improve legacy systems (e.g., traditional database design) or seize new models (cloud, blockchain)
Detection or Discretion Focus	Stress decision support tools for detection, versus changing business processes to reduce discretion with high-risk fraud and corruption abuse
Public or Private Data Foundations	Leverage traditional administrative data (e.g., civil service registries, procurement, targeted statistical data collection) or draw on private sector/interest data (big data, satellites)
Digital and Analogue Complements	Emphasize digital solutions (e.g., detection) or analogue complements (e.g., willingness to prosecute)
Performance “versus” fraud-corruption metrics	Stress performance outcomes (tax, services), while framing fraud and corruption as barriers to achieving these objectives.

Investing adequately for broader digital disruptions:

Most digital disruptions stem from improving public services rather than eradicating fraud and corruption. The most successful activities will therefore depend on a wider set of functional and foundational efforts and resourcing. Strong cost-benefit appraisals will help strengthen the design and implementation of these efforts. While benefits may be framed in terms of losses averted (e.g., so many dollars in ghost worker salaries saved), wider metrics are likely to be particularly material (e.g., health services improved, revenues raised equitably).

Addressing privacy concerns:

The literature on the use of AI in the US justice system illustrates this concern.⁵⁰ If algorithms are used to flag firms or individuals for fraud and corruption risks, care must be taken to filter for any adverse bias.⁵¹ For example, firms that have come out of the “digital shadows” by registering on eProcurement systems may be more exposed. These transitions therefore need to be managed, including by strengthening the incentives for firms or individuals to participate in the digital ecosystem. Conversely, safeguards need to be put in place to ensure that digital data is not abused to illicitly target particular firms or individuals.

Adopting a prudent approach to digital technology investments both for public service delivery improvements and addressing corruption:

It is well-recognized that ICT is no silver bullet to address poor public sector governance. Implementing technological solutions in the context of government bureaucracies rife with inertia and vested interests can be challenging. The roll-out of the latest ICT systems, including those supported by development partners, may be seen as potentially solving the problem, but this is not necessarily the case. Given the traditional investment project lifecycle of 3-4 years, sustainability could be at risk under the next political cycle or administration unless the reform context or commitment is truly enabling. What is essential is that for any country to adopt new technology or ‘leapfrog’, the corresponding analog complements must be in place. While the current wave of disruptive technologies brings a variety of new tools to address old problems, one needs to guard against catching up with the latest technology. In some cases, they may indeed be game-changing, but care must be taken that the next must-have technology does not become an excuse to address persistent challenges, such as poor service delivery and fraud and corruption. These issues should not wait for new technology before they are addressed.

ANNEX 1 Selected Tech Glossary

Digital Transformation	Broadly refers to instances where the ways of working of an organization (including government) are fundamentally changed due to the application of new workflows and data use.
Disruptive Technologies	Typically used to refer to innovations that have upstaged market incumbents (e.g., Uber and the taxi industry) by offering more convenient and scalable solutions. In terms of governments, key aspects would include reduced complexity and costs for a user, along with requisite capabilities to address a particular need or wholly new process.
GovTech	The World Bank’s GovTech initiative is focused on three core aspects, as follows: (i) designing human-centered services that are simple, transparent, and universally accessible; (ii) engaging citizens to increase participation, foster transparency and accountability and build trust; and (iii) transforming core government operations to bring the public sector into the 21 st century. ⁵²
Cloud Services	On-demand availability of computer system resources, especially data storage and computing power, which does not require direct active management by the user or fixed hardware outlays.
Blockchains	A blockchain is a decentralized, distributed and public digital ledger that is used to record transactions across many computers so that the record cannot be altered retroactively without the alteration of all subsequent blocks and the consensus of the network. ⁵³
API	Application Programming Interface is a communications protocol, allowing for example targeted and dynamic data exchanges across government.

CASE STUDY 17

GOVTECH

Digital Transformation in Andhra Pradesh, India

Overview

In 2010, municipalities across the Indian state of Andhra Pradesh were unable to collect adequate revenue or deliver the public services that citizens demanded. Through the Andhra Pradesh Municipal Development project, the state progressively leveraged digital government platforms and emerging technologies to improve public services. The government used drones to collect geospatial data and update maps, replaced paper-based systems with digital ones, and trained both staff and citizens on how to use the new platforms. Citizens could access services or lodge grievances through multiple channels: online, by telephone or through a mobile phone application. The reforms significantly reduced opportunities for fraud and corruption in key areas, such as taxation and construction permitting, and improved revenue for local governments.

Introduction

In 2010, Andhra Pradesh (AP), a state located on India's southeastern coast, was struggling to deliver high-quality public services to its 50 million citizens. As urban and economic growth accelerated and cities expanded, provision of urban services, such as roads, water and sanitation fell short of growing demand. For instance, the piped water coverage ratio had declined by over 10 percent in the cities of AP between 1991 and 2001, and municipal sewerage systems served fewer than 20 percent of residents. These service deficiencies were largely a consequence of the inadequate local financial

and managerial capacity of urban local bodies.⁵⁴ Updating maps was a particularly pressing issue, as towns across the state had rapidly urbanized and grown in population. Without accurate maps, municipal governments could not properly assess property taxes or identify community needs regarding water, sewage, waste disposal, or street lighting. Improving building permits was another major concern. The paper-based submission of construction permits was subject to a high degree of discretion, causing delays and creating opportunities for fraud and corruption.

AP's leaders recognized that digital technologies could help the state increase revenue and improve delivery of government services. In 2010, the government and its development partners launched the Andhra Pradesh Municipal Development Project, which aimed to leverage digital government reforms to address the state's governance challenges. The USD300 million eight-year project planned to use drones, artificial intelligence, and other technologies to collect and integrate geospatial data. Such data was critical for tax and land management purposes. Along with improving data collection, the state wanted to make public services more easily accessible for citizens, and to introduce a citizen feedback system to improve monitoring of public service delivery.

The implementation process

Using new technologies to improve data collection and integration

With the project's support, AP used cutting edge

disruptive technologies—such as drones—to map properties and collect information. Under the project over 1,000 municipal government staff were trained in the use of drones to capture geospatial data. Several rounds of training and capacity building workshops were held to train government staff in all the new systems introduced.

Drones turned out to be cheaper than satellite imagery, the other main option to collect property data, and drone images were also of higher quality. The collected data was analyzed using machine learning and artificial intelligence techniques. For example, the drone images were projected over base maps and connected to other data across multiple applications, providing a complete geospatial view of municipalities. The government linked the newly collected information with existing records across various government departments to enable data exchange and cross-verification. After the information was updated, the government found it easier to match demand and supply for urban services.

The state also introduced an online building permission platform and trained government staff how to use it. The digital submission of construction permit applications with automated artificial intelligence approvals reduced the discretion officials had in the permit approval process.

The AP experience highlighted that no single technology could serve to improve service delivery while also reducing fraud and corruption incidence and

risks. Rather, supporting combinations of emerging technologies served to address this goal. Table 7.4 summarizes the technologies that were used to support the AP program. Some technologies used, such as Geographic Information System (GIS) platforms, had been around for many years. However, while installing software manually had not been practical, cloud-based technologies made it easier to deploy GIS platforms across a significant number of municipalities. Both drones and AI in the form applied were indeed a new technology for the decade, at least for this type of application. The reduced cost and complexity of these technologies allowed for their application, while their increased capability met the objectives of the reform.

Increasing access to public services

The government made more than 350 services available online through a website called MeeSeva and provided time-bound service level agreements for those services. The government also made some services available through PuraSeva, a mobile phone application it developed. Several government departments underwent business process re-engineering to encourage availability of online services.

AP created a Citizens Charter that included details of services to be provided along with stipulated timelines and fee structure. This information was available on the MeeSeva website and was also displayed in Citizen Service Centers. The government provided

TABLE 7.4 AP's Transformational Technologies

Technology	Functions	Comments
GIS Platforms	Integration and application of different spatial data layers	Ability to intersect and cross- validate different data
Drones for spatial mapping with AI	Use of drones with AI supported image processing	Rapid mapping and validation of geospatial cadaster information
Enterprise Resource Planning (ERP)	Municipal e-governance system connected to geoportal	Cloud-based integration and software services for wide array of service and management functions
Online Building Permission System (Cloud-AI Supported)	Digital submission of construction permit applications with automated AI approvals	Discretion reduced for officials
Smartphone application for feedback	PuraSeva provides for different channels of citizen feedback	Continuous feedback enabled

legal backing to service level agreements and digital documents. The legal changes ensured that new digital documents were legally valid.

Incorporating citizen feedback

The state launched a citizen feedback mechanism to ensure service standards were maintained and reduce petty corruption. Citizens could leave feedback by telephone, at citizen service centers, or through a new mobile phone application called PuraSeva. Using the application, citizens could geo-tag pictures of service delivery problems, such as water leakages. The application assigned accountability to a municipal engineer to fix the problem, and a dashboard allowed elected officials to view the information in real time.

The government made information on the response taken publicly available. For instance, citizens were provided with access to information regarding the status of their complaints; municipal employees were given toolkits, training, and a way to track their work; city managers were entrusted with data-driven decisions that were real-time and easy to analyze; at the state level, data-driven planning was undertaken based on key performance indicators. If the grievance is actionable, and action taken is made public, more citizens get encouraged to use the platform. Clear accountability and transparency on the response taken encourages more people to use the digital platform, ensuring its success.

In the 2019 fiscal year, more than 125,000 complaints were received. Just 367 went unresolved. The complaints spanned a wide range of service delivery issues, including non-functioning streetlights, water pipe leaks, and absenteeism of street sweepers. Almost half of these complaints were resolved within stipulated timelines. The citizen feedback system was simple, transparent, and increased accountability of civil servants and municipal officials.

Lessons learned

What was achieved?

The project leveraged technology to boost transparency and strengthen accountability. It also increased citizen engagement by making real-time information on

citizen grievances available, along with information on the government's response. The initiative increased responsiveness and efficiency as services had to be delivered within fixed timelines or else the cause of the delay had to be reported.

Integrated service delivery platforms supported the entire lifecycle of city governance. The platforms were used for planning, implementation, results monitoring, and feedback for corrective action. Multiple technologies were connected, departments were able to exchange information, and data was no longer in silos.

The new systems enabled municipal governments to collect accurate information, which in turn provided two key benefits:

- **It helped curtail tax evasion.** Revenue from property taxes and water charges more than doubled from 2015 to 2019.
- **It improved the monitoring and delivery of public services.** For example, piped water was provided to over 200,000 households, and processing times for citizens to apply for public services reduced significantly.

Citizens benefited from digital technology as it enabled them not only to take advantage of better service delivery, but to do so at a lower cost and with less human interaction. Citizens could access services or lodge grievances through multiple channels, including the PuraSeva mobile phone application, Mee-Seva citizen service centers, websites, or through phone calls.

What led to these achievements?

1. **Strong political will** to improve governance and make AP more attractive for investors was an essential driver of the reform. There was considerable push from AP's top leaders to introduce technology-based reforms to combat inefficiency and corruption prevalent in municipal systems. Despite a change in political leadership in 2014, the new government continued to support technology driven reforms and sustained the momentum. The new government that came to power in 2019 also continued to use and enhance the platform to improve service delivery.



2. 'Analog complements' such as business process re-engineering and complementary reforms supported the technology driven governance reforms. The state government drew up time-bound service level agreements (SLAs), with legal backing, for almost 385 services, which even today are being delivered through the integrated online portal 'Mee-Seva,' while some services are available through the app 'PuraSeva.' Putting the 'Citizens Charter' on the 'Mee-Seva' website as well as in the Citizen Service Centers enhanced transparency and raised awareness. In addition, several government departments underwent business process re-engineering to deliver online services more efficiently.

3. Real-time data enabled stakeholders across sectors to develop innovative solutions. Getting real time data—whether on working streetlights, garbage collection, or unauthorized constructions—had to be available, up to date, and easy to use and analyze for the process to be successful. Citizens had access to information regarding the status of their complaints; municipal employees could track their work; and city managers could make data-driven decisions. At the state level, data-driven planning was undertaken based on key performance

indicators. Actions taken on grievances were made public to enhance trust and encourage greater use of the platform.

4. Training and capacity building programs helped reduce resistance from government staff and encouraged the uptake of new technology by citizens. Government staff across all 110 urban local bodies (ULBs) in AP received training on using the building permission platform; over 1,000 ULB staff were trained in the use of drones to capture GIS data; and other staff were trained in using the new systems.

Combining all these elements was the key to success. Thus, integrated digital technology, including the use of drones, GIS mapping, processing with artificial intelligence, E-governance (ERP) dashboard, geo-portal, Pura Seva app and Mee-Seva platforms, automated building permission approval systems, and the seamless linkage with various other government applications had to go hand in hand with extensive training of government staff on the use of the ICT applications. This combination, all together, helped improve both municipal service delivery and the tax revenues of the ULBs, while making the system responsive, inclusive, and participatory.

Final reflections

The recent developments in digital technologies have continued to catalyze public service delivery improvements, while potentially circumscribing fraud and corruption. Drones continue to rapidly increase the availability of increased resolution spatial and temporal data. Similarly, specialized sensors (IoT) have significantly reduced the cost of data collection from the field. Significant advances in data processing and artificial intelligence coupled with cloud (and potentially quantum) computing can enable a vast amount of data from varied sources to be analyzed and used for evidence-based informed decision-making.

Major advances in encryption and data protection technologies, together with robust interoperability and data-sharing strategies, have opened up an entirely new ecosystem of public and private sector players in developing new and innovative services, while preserving data confidentiality where necessary. These developments (collectively called Industry Revolution 4.0) provide unprecedented opportunities to formulate new policies that help overcome information gaps/asymmetries, enabling a common platform for multiple agencies to work together and deliver services in ways that were not possible earlier.

AP did not have advanced technology initially, but was able to “leapfrog” to the adoption of a set of emerging technologies. The past decade of success in AP suggests that national, and particularly sub-national governments, need to foster digital strategies that are broader than the current ICT strategies. They should foster a policy and institutional environment that promotes transparency and accountability, encourages uptake of new technology, invests in digital literacy and ensures broad-based digital strategies that improve participation by all, while keeping cyber-security concerns and data protection in mind.

The experience of AP shows that technology can be a great enabler of better service delivery and good governance, provided there is strong participation by citizens and government in the uptake of this technology and if the political leadership is strongly supportive.

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CHAPTER 8

Asset and Interest Declarations



Introduction

Why is it important?

Asset and interest disclosure by public officials has been widely used to build integrity and combat corruption. According to World Bank research, over 160 countries around the world have introduced financial disclosure systems.¹ Asset and interest disclosure (AID) systems differ in scope and reach, level of sophistication and transparency. Countries use different institutional setups and methods to enforce the disclosure rules and verify information. However, the analysis shows a clear trend of AID becoming a universal instrument to enhance public sector transparency and accountability, promote integrity and prevent corruption.

AID systems have increasingly become a multi-purpose tool aimed at preventing conflicts of interest, detecting unjustified assets and building broader integrity of public service. AID, therefore, combines prevention and enforcement purposes. New combined systems are replacing traditional ones, which often treated disclosure of assets and interests separately and pursued different objectives. Countries introduce or bolster verification mechanisms to improve enforcement.

AID systems also raise heated debates, especially concerning public disclosure of information from the declarations. It is a prominent example of how countries balance considerations of privacy and personal security with the public interest in transparency and accountability.

With more systems becoming digitized and going online, AID contributes to the development of digital governance and economy. Electronic systems of disclosure have a spillover effect by encouraging civil society and media that use data on the assets and interests of public officials in their watchdog activities. Open AID systems can contribute to the transparency of ownership and support supervision efforts in other sectors.

What affects the effectiveness of AID systems?

While many countries have AID systems, few of them are effective. Most AID systems have yet to live up to their potential. Cumbersome filing procedures, crucial gaps in the disclosure forms, and lack of transparency and enforcement are limiting the role of AID. Such weaknesses also may make it merely another check-a-box exercise to implement national anti-corruption strategies. Lack of control of submission and ineffective verification of declarations undermine their importance as an anti-corruption tool. There is also little understanding of the impact that the asset and interest disclosure systems have on the level of integrity and corruption in the country. Countries rarely have a clear vision of why they are introducing or reforming their AID systems, what goals they are pursuing in this process, and what outcomes they expect to achieve.

This chapter aims to show what an effective AID system should look like and how it can be relevant in the context of transnational financial flows, new ways of disguising unjustified wealth, as well as domestic typologies of conflict of interest and hidden wealth. Selected case studies included in the chapter illustrate what works and what does not, as well as the new trends and essential features that make AID effective. The chapter will follow the general framework that is used to regulate AID systems: who should file, when and how, what to declare, how to verify and sanction non-compliance, and what information should be public. It will end with remarks on how governments and other stakeholders can measure the impact of AID systems and make them more relevant.

The key questions about AID systems

Who should file asset and interest declarations?

The first question to answer when designing an AID system relates to the filer population. Including too many declarants may dilute the focus, raise political opposition and complicate enforcement. Excluding important categories of filers whom the public perceives to be high risk in terms of corruption may also negatively reflect on the system's effectiveness and credibility. It is therefore important to find a balanced solution that targets, first of all, the high-risk public sector positions and areas. There is no standard list of officials whom the system should cover. The filer population should ultimately reflect the national corruption risk assessment. Considerations of effectiveness and impact sought by the system should guide the decision on the scope of filers.

Consideration needs to be given to a minimum and a broader list. The minimum list of high-risk positions can reflect the definition of domestic politically exposed persons used in the anti-money laundering legislation. The broader list may include key officials in all branches of government, including the President, members of parliament, members of government and heads of central executive authorities, other political officials, staff of private offices of political officials (such as advisors), regional governors, mayors of large cities, judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators, senior executives of state-owned enterprises, etc. The high-risk areas or functions may include, for example, officials responsible for public procurement, licensing and supervision, members of independent market regulators, and tax and customs officials.

Family members should be included. Approximately 65 percent of countries with disclosure laws require officials to submit information not only for themselves but also for their family members.² Omitting family members creates a loophole that declarants can easily abuse to avoid disclosure of assets and interests. The system can require family members to submit their disclosures directly, or the public officials can include information on assets/interests held by family members in their own declaration forms. The latter approach reduces the number of forms submitted and makes it

easier to track and verify disclosures of the official.

How frequently should declarations be filed?

Frequency of filings should follow the employment cycle of the official and provide a record of both entry and exit situations (when the official started and terminated his/her public sector employment), and changes throughout his/her career. It is also useful to look at former officials' assets and interests one or two years after leaving office to see whether they gained any unjustified assets or improper interests. Some systems also require filing of *ad hoc* forms whenever significant changes in assets happen. It is important to note that disclosures discussed in this chapter differ from the conflict of interest reports which officials have to file when a conflict of interest arises and requires a management response.

Electronic vs. paper filing

Managing a paper-based system involves substantial challenges and costs, which an electronic system can eliminate. The following are some of the benefits of the electronic system: it allows for coverage of a broader scope of declarants, simplifies the submission process by making the declaration form more user-friendly, reduces the number of mistakes made in the forms, facilitates further verification of declarations, and improves data management and security. Not surprisingly, an increasing number of countries in various regions have transitioned to electronic AID systems.

However, several issues may impede the introduction of an electronic disclosure system. These include internet coverage and quality of access, availability of digital authentication, institutional capacity to process electronic filings and ensure data security, and additional costs to develop and roll out a new IT system.

Despite implementation challenges, World Bank experience in advising countries in this area shows that the electronic system saves financial and human resources. It eliminates the need for secure

physical storage space for paper declarations and allows the staff of asset declaration agencies to focus on ensuring compliance and advising filers on how to correctly fill out the declaration form or how to manage a potential conflict of interest. It also raises the level of compliance with the disclosure requirements and provides better transparency and public accountability.³

What is to be declared?

To be useful, the asset and interest disclosure has to include information that allows the tracking of all the important assets and interests of the public official. The information provided should also highlight significant changes in wealth that lawful income cannot explain, and uncover interests that may be in conflict with the filer's official duties.

Modern AID systems have to reflect current typologies of money laundering and corruption. Ownership through proxies remains a widespread way of hiding control of assets or getting unlawful benefits. It is essential for an AID system to require public officials or their related persons to report the legal entities of which they have beneficial ownership and control. The declaration form should also cover trusts and other similar legal arrangements, including any relation a public official or family members have regarding a trust.

Disclosure of assets should not only include their formal ownership. What matters for AID is the real control of assets regardless of the nominal owner, and the use of assets, which may show hidden ownership or lifestyle not commensurate with the official's position or income. Disclosure of beneficial ownership of assets should therefore extend to all types of tangible or intangible property and income.

Use of virtual assets (e.g. cryptocurrencies) has become a challenge for tracking ill-gotten proceeds. The reporting of such assets in the AID form is an important step towards bringing transparency to this new mode of wealth accumulation.

Building a comprehensive disclosure form without important loopholes can be accomplished by considering the outcome of the verification process. The form should ask for information that the verification process can later use to detect infringements based on an analysis of methods of hiding unjustified assets, laundering of criminal proceeds and violations of

conflict of interest rules. Among such elements that an effective AID form should include are:

- Disclosure of all types of income as well as gifts and sponsored travel, including disclosure of the identification details of the legal entity or individual who was the source of the income, gift or sponsored travel.
- Disclosure of national and foreign bank accounts and safe deposit boxes (vaults) to which the declarant or family members have access, even if formally opened by another person.
- Loans given or received by the public official, including to/from private individuals.
- Deferred corporate rights (e.g. options to purchase shares) and investments regardless of their form.
- Disclosure of expenditures above a certain threshold. This is essential to track significant changes in wealth by comparing income, savings and expenditures over time. Expenditures should cover not only acquisition of assets but also payment for services and works.
- Disclosure of interests not related to income or assets, notably contracts with state entities of the declarant and family members or companies in their control, prior employment, and any link with legal entities and associations (e.g. membership in governing bodies).

In the new AID systems, policy makers often focus more on assets, forgetting that the disclosure form can be very helpful in managing conflicts of interest. When officials fill out the form, they have to take stock of their interests and review them against their official duties. The officials can then seek guidance from the respective integrity official and manage their potential or real conflict of interest. The disclosure form can be a crucial tool to detect conflicts, if it contains sufficient information on the financial and non-financial interests of the declarant and related persons.

How can declarations best be verified?

Verification is an important element of the enforcement of the disclosure rules. Effective

verification helps to uncover non-compliance and to start the process that ultimately leads to imposing sanctions. Verification can enable the detection of:

- Cases of late submission or non-submission of disclosure forms
- Prohibited gifts
- Assets or income not reported or disclosed incorrectly (e.g. under-reporting or over-reporting of value)
- Assets not justified by the lawful income
- Lifestyle of the public official that does not commensurate with his status
- Non-compliance with anti-corruption restrictions (incompatibilities, divestment of financial interests, post-employment restrictions, etc.)
- Interests or activities that may give rise to situations of potential, real or apparent conflict of interest with the declarant's duties and position.

Certain legislative and institutional conditions provide the basis for an effective verification system. These include:

- A clear legislative framework that establishes the verification mandate, its triggers and scope.
- Verification procedures that streamline the verification process and prevent unnecessary impediments (e.g. short time limits for verification procedures or the possibility to challenge each step of the proceedings).
- Use of a risk-based approach to trigger and prioritize verification when inherent risks are found in the disclosure form, such as the position/duties of the declarant. Systems which automatically trigger the verification on formal grounds (e.g. late submission) are ineffective as they overburden the verification agency. This is especially relevant for systems where the number of disclosures is substantial and not matched with the resources to verify them.
- When the number of mandatory verifications is substantial, the verification agency has to prioritize its work by focusing on high-risk declarations. Such prioritization should be transparent and based on

clear criteria limiting discretionary decision-making. The system may categorize declarations submitted by certain top officials as high-risk by default. This will give credibility to the system and avoid focus on low-level officials or petty inconsistencies.

- External signals (e.g. media reports, complaints of citizens or watchdog NGOs, referrals from other authorities) should take priority. The agency should verify them if they give rise to a substantiated suspicion of irregularity. Anonymous reports about verifiable facts should also be included.
- The verification should include IT solutions that automate certain operations. Such solutions can perform a risk analysis of each declaration, compare several declarations of the filer or compare with declarations of similar filers. Applying analytical software to the disclosure data can help to find patterns that can be then used to develop red flags for future verifications.
- Cross-checking disclosures with other government-held registers and databases is an important element of the verification that effectively uses government data. The system can also automate such cross-checks and perform them shortly after the declaration is filed or even at the time of the submission.

Verification can only be as effective as the people who conduct it. Experience in countries shows that decentralized systems of verification, i.e. where individual agencies take on this responsibility for their own officials, are rarely effective because of the lack of motivation, expertise, and resources. A dedicated verification agency provides a better model for organizing the verification process. Such an agency does not have to deal only with the verification of financial disclosures; it may also combine this function with other preventive or law enforcement functions in the anti-corruption arena. It is important though to separate the verification functions within such an agency to ensure proper specialization and autonomy. The regulations should grant to the officials who conduct verification a certain level of autonomy and protection against undue interference.

A verification agency should have sufficient powers and resources to perform its duties. Such powers could include access to government registers and databases, including tax information, company

register and registers of real estate and vehicles, right to obtain information and records from public and private entities, access to banking and other financial data, and the possibility to request or access information abroad. At the same time, the verification agencies are usually not law enforcement bodies and lack certain tools that a criminal investigation can employ, e.g. special investigative techniques. This highlights the need to understand the limitations of administrative bodies in charge of verification and the importance of cooperation with law enforcement bodies. It also affects the debate on the level of dissuasive sanctions, as shown below.

A major challenge for the verification agencies is finding and tracking assets or financial interests located abroad. This remains an area of weakness in most AID systems with a strong verification mechanism. To address this issue, the verification agencies may take a number of measures, for example: raise the technical expertise of their staff by providing training on the available open source information and use of foreign jurisdiction registers; establish a legal mandate and the technical capacity of the verification agency to get and use information from foreign ownership registers for verification purposes; develop relations and sign information exchange agreements with verification agencies in other jurisdictions, especially in neighboring countries where declarants often acquire or keep assets; and join and support regional initiatives for information exchange on the assets and interests of public officials.⁴

How are sanctions to be imposed for non-compliance?

Effectiveness of verification is closely linked to the sanctioning regime, which should be effective, proportionate and dissuasive. Verification, which uncovers irregularities, is just the first step. The sanctioning proceedings have to follow and adequately respond to the discovered violations. To be dissuasive, sanctions must have a sufficient deterrent effect, which means that the personal cost of the sanction is higher than the potential benefit derived from the offense. To be proportionate, sanctions must correspond to the offense.

The level of sanctions and applicable procedures may also determine what tools enforcement agencies could use to establish and punish non-

compliance. Criminal sanctions for serious violations related to asset and interest disclosure (e.g. non-reporting of significant assets or illicit enrichment), which can be enforced through criminal proceedings, are usually more effective than administrative ones.

In line with the proportionality principle, certain breaches may attract softer measures that do not qualify as sanctions but bear negative consequences for the non-compliant official. For example, the public disclosure of the names of those who failed to submit a declaration or submitted it outside of the set time limit may be sufficient to deter repeat infringements. The “naming and shaming” can also reinforce other imposed measures and raise awareness about the disclosure requirements. Such visibility also helps to build public trust and awareness of the AID system. Some countries implement this tool as a searchable register of corruption offenders that is open to the public.

Sanctions for AID related violations do not have to be applied against an individual to be effective. Civil or administrative confiscation of unjustified assets, even without the individual liability of the public official, may be a dissuasive instrument to target assets that exceed the official’s lawful income. Such measures target the outcomes of the criminal acts of corruption or money laundering by confiscating the proceeds of such activity without having to overcome often an insurmountable hurdle of detecting and proving underlying offenses.

Besides sanctions or measures that target declarants, an effective AID system should also include sanctions that support the enforcement mechanism. They ensure that the different actors in an AID system properly perform the duties assigned to them. Such sanctions may target, in particular:

- Failure of public and private entities to provide information in response to a request from the institution carrying out the verification; and
- Failure of a public agency or official to fulfill their duties related to the AID (e.g. to check the submission of declarations, report non-compliance to the enforcement agency, verify the identity of the official if such identification is required during the official’s registration of the disclosure in the electronic system).

How much transparency should the disclosure system have?

Public transparency of asset and interest declarations acts as a deterrent in and of itself and reinforces other elements of the system. Public availability of information from declarations increases scrutiny and complements the enforcement efforts of the verification agency. Transparency of information about the assets and interests of public officials helps to build public sector integrity and promotes public trust in the government. Over 55% of countries require the declared information to be public.⁵

Making declarations public has both opponents and critics, as such transparency conflicts with the privacy and data protection rights of the declarants and related persons. In some contexts, this can affect their security and become a barrier to the entry of some professionals into public service. The policy makers therefore have to find a balanced solution that takes account of these competing interests.⁶ The degree of transparency could be linked to the corruption and public administration integrity level in the country—the more corrupt and less integrity there is in the system the more transparency it requires. Other considerations matter as well (e.g. the level of physical security and violent crimes). As a result of the balancing exercise, even in systems where wide public access is granted, certain information can be withheld from publication. This could be information about a person's IDs and place of residence or also information about cash and valuables held outside of banks. In any case, the scope of the information withheld from disclosure should be explicitly and narrowly determined in law.

The best approach to ensure transparency is to make data from asset and interest disclosures available online. Providing public access to such information free of charge and without technical barriers will help to reach the transparency objective. An electronic AID system allows the collection of structured data through declaration forms and then its publication in open data (i.e. machine-readable) formats. Publishing declarations as open data facilitates their re-use by civil society and the private sector can contribute to the emergence of new data analytics tools and watchdog initiatives.

Broader public disclosure can be beneficial also because of cross-sector use. For example, publicly available information on declarants and their related persons can help banks (and other obliged entities under the anti-money laundering framework) to conduct customer due diligence, in particular by identifying politically exposed persons. Information about beneficial ownership of public officials in legal entities can increase corporate transparency and improve the investment climate in the country. Governments can combine data from AID forms with other data to detect and prevent violations in areas like public procurement and licensing of rights to resources (e.g. in the extractive sector). Cross-checking data with the register of asset and interest disclosures can help sector regulators ensure compliance with the ownership and transparency requirements in the respective sector (e.g. banking, competition, audiovisual media services). AID transparency has, therefore, a significant spillover effect when actors in other areas use data from declarations for the public good.

Final reflections

AID systems constitute a fast-developing anti-corruption policy and enforcement area. More and more countries all over the world are introducing or upgrading their systems. The reforms usually aim to digitize filing systems, broaden their scope, and establish a verification mechanism. Governments often promote their AID systems as an anti-corruption tool that focuses on the public officials themselves. This and the visibility of AID systems can explain their popularity as an anti-corruption measure.

Countries and development partners, however, need a better understanding of how to measure the success and impact of AID systems. It may be impossible to establish exactly to what extent AID has contributed to the success or failure of anti-corruption policies. But it is still important to measure the impact of a disclosure system. This can include measuring population perception and expert opinion on how the AID system has contributed to the transparency and accountability of the public administration, and the



opinion of the public officials themselves on whether AID has resulted in better compliance with anti-corruption restrictions and improved integrity. Surveys of various stakeholders can measure the perception of whether the verification of declarations is effective and unbiased.

The results of enforcement efforts can also indicate the level of success. These results are reflected by the level of compliance with the AID submission obligation, the number of detected violations and applied sanctions, the amount of unjustified assets and prohibited gifts detected and confiscated, the number of disclosed and prevented conflict-of-interest situations, etc. The work of verification agencies can be evaluated using different performance indicators measuring the effectiveness and efficiency of their work.

The impact of AID may also extend beyond its primary anti-corruption goal and have a cross-sector effect. A disclosure system can have an impact

by boosting civil society activism and encouraging watchdog activities, improving compliance with anti-money laundering and other sectoral regulations, increasing corporate ownership transparency or contributing to digital governance.

The case studies of Romania and Ukraine that follow constitute examples of successful AID systems. Although both countries publish declarations online, the two systems are different in their history and level of development. One is completely digital covering about 1 million filers, while the other allows submission of scanned paper declarations. One country has a strong track record of enforcement and dissuasive sanctions, while in the other a poor enforcement record and allegations of bias brought down the corruption prevention agency. The case studies show why enforcement is key and how digitization can make AID systems more effective. They also include lessons learned from these countries that may be useful for policy makers and practitioners in other countries.

CASE STUDY 18

ASSET AND INTEREST DECLARATIONS

Reform of Asset and Interest Disclosure in Ukraine

Overview

Ukraine has required that public officials submit asset declaration forms since the mid-1990s, but up until 2014, the forms were merely a formality and were ineffective in preventing corruption. Following the dramatic events of the Revolution of Dignity (Euromaidan) in 2014, civil society successfully advocated an overhaul of the anti-corruption infrastructure, including the introduction of a new electronic asset and interest disclosure system. A new organization, the National Agency for Corruption Prevention, had to lead implementation of the e-declarations system. Despite numerous attempts by spoilers to block or weaken the reform, the new system became operational in September 2016, becoming one of the most comprehensive asset declaration systems worldwide in terms of how much information was disclosed and made publicly available. By the end of 2019, the system held over 4 million electronic documents, all of which were available for free public access, including in machine-readable format. The asset declarations register connected to 16 other government databases for cross-checks and operated an automated risk analysis system to select declarations for verification. Although the system itself was a success, the corruption prevention agency largely failed to use it to sanction non-compliance or ill-gotten gains. At the end of 2019, the agency was overhauled to improve its effectiveness.

Introduction

In the winter of 2013-2014, hundreds of thousands of Ukrainians took to the streets in protest. While the main impetus for the demonstrations was a shift in government policy away from integration with the European Union, the protesters were also motivated by the widespread corruption that permeated Ukrainian politics. The protest movement—which became known as the Ukrainian Revolution of Dignity or Euromaidan—led to the ouster of President Viktor Yanukovich. Yanukovich and other public officials were accused of embezzling billions of dollars to pay for mansions, sports cars, and other luxuries.

In theory, Ukrainians should have been able to track elected officials' assets through an asset declaration system put in place in 1995 (and revised in 2011). But the system lacked an enforcement mechanism and provided for very limited public access to asset declarations. Officials submitted hand-written declarations to the respective human resources department, which usually kept them out of the public eye and rarely reviewed them. The amount of information that was disclosed was limited and did not allow effective identification of variations of wealth and conflicts of interest. As a result, asset declarations did not help the public hold officials accountable.

Following the revolution, which ousted the top leadership of the country, lawmakers embarked on a complete overhaul of the country's anti-corruption infrastructure. The new anti-corruption legislation called for a fully electronic and web-based system of asset and interest disclosure and a new institution to oversee the system and verify asset declarations of public officials. The law also extended significantly the scope of the disclosure, provided for online publication of data from declarations and strengthened sanctions for non-compliance, including criminal punishment. The new system aimed to prevent and detect conflicts of interest, monitor public officials' wealth, and ensure transparency of officials' assets and interests.

Implementing such a system was never going to be easy. Corruption was endemic throughout all areas of public administration, and many officials were resistant to change.

The implementation process

Designing a new system

The support of development partners, such as the World Bank, International Monetary Fund and the European Union through advisory assistance, budget support operations and the EU visa liberalization plan was essential for the design of the asset declaration system and its launch. The budget support operations and the EU visa liberalization plan focused on pillars of the system, such as legislation underpinning the verification of declarations as well as the launch of the electronic filing system.

Even before the government set up the National Agency for Corruption Prevention, which would be responsible for the operation of the new e-declarations system, preparations for the system's creation started. Following a request from the Ministry of Justice, in July 2015, the World Bank handed the draft terms of reference for the electronic system to the ministry, and two months later, the United Nations Development Programme (UNDP) in Ukraine used the terms of reference as a basis for calling a software development tender. The contractor was selected in December 2015 and delivered the software in mid-2016. A quality assurance group that included the Ministry of Justice and the World Bank provided advice during the software development process.

The design of the new system included a vastly improved asset and interest disclosure form, secure data storage through a public-access website separate from the main database, and protection against data tampering since submitted documents could not be withdrawn or changed in the system and each document had to display the date and time of its submission. The system's terms of reference also stipulated a free read-only access to the e-declarations by the public and the possibility of data re-use.

Implementing the system

While the system was being designed, political interference threatened to block it from being implemented. In December 2015 parliament passed amendments that postponed the launch of the e-declaration system for one year. After civil society and international partners raised concerns, parliament returned to this issue, but instead of removing the amendment, it introduced a set of new restricting changes.

When the President vetoed those changes, opponents in parliament tried a new approach to thwart the new system, this time by drawing out the process to select commissioners for the new corruption prevention agency. The government appointed the minimum required number of commissioners only in March 2016. Opponents also tried to derail the launch by denying technical certification of the IT system behind the new asset declaration register. Some members of parliament (MPs) claimed that the system was deficient because the digital signature of one of the commissioners was allegedly compromised.

Through a combination of public campaigns and consultations with government stakeholders, civil society advocacy groups and international development partners maintained their focus on the need to avoid delays in the implementation of this vital reform. Eventually those efforts paid off, and in June 2016 the newly established National Agency for Corruption Prevention formally accepted the software and approved the bylaws necessary for the system's functioning.

The new system became operational in September 2016 when the first wave of filers submitted their e-declarations. Within two months, over 100,000 declarants submitted forms through the electronic

system. Once submitted, all declarations became immediately public online. The agency fully launched the system on January 1, 2017, when about 1 million filers from the public sector had to file their declarations.

The initial launch of the electronic filing system did not go smoothly. The system experienced overloads in peak periods, and the corruption prevention agency had insufficient capacity to advise declarants who were trying to submit their forms. To make it easier for declarants to comply with disclosure requirements, over time the agency introduced additional support for declarants, such as guidelines, video aids, and an online training course.

One important part of implementation was integrating the new system with external registers, such as the land register, company register, vehicles register and tax database. Such integration required a lot of inter-agency negotiations and time to technically arrange for the data exchange. Legal obstacles also hampered integration with some databases. Ultimately, parliament had to amend the law to remove these obstacles.

While there was an overall drive to strengthen anti-corruption efforts, there were also temporary setbacks. When the anti-corruption drive of politicians linked to the revolution weakened, some political groups and parts of government tried to roll back the new achievements, including by curtailing the asset and interest disclosure system. In 2017, parliament instituted requirements that anti-corruption NGOs and activists also file asset declarations, a decision that violated international standards.⁷ The new requirements were criticized by Ukrainian civil society and international partners, who perceived parliament's actions as a backlash against the civil society actors who advocated for the new system and defended attempts to undermine it. The e-declarations for civil society activists remained in force until the Constitutional Court revoked them in June 2019.

Enhancing the effectiveness of the system

National elections held in 2019 brought in a new government that had campaigned on an anti-corruption agenda. The administration change opened a new window of opportunity for anti-corruption reforms. In October 2019, parliament passed amendments that extended the disclosure requirements to cover new

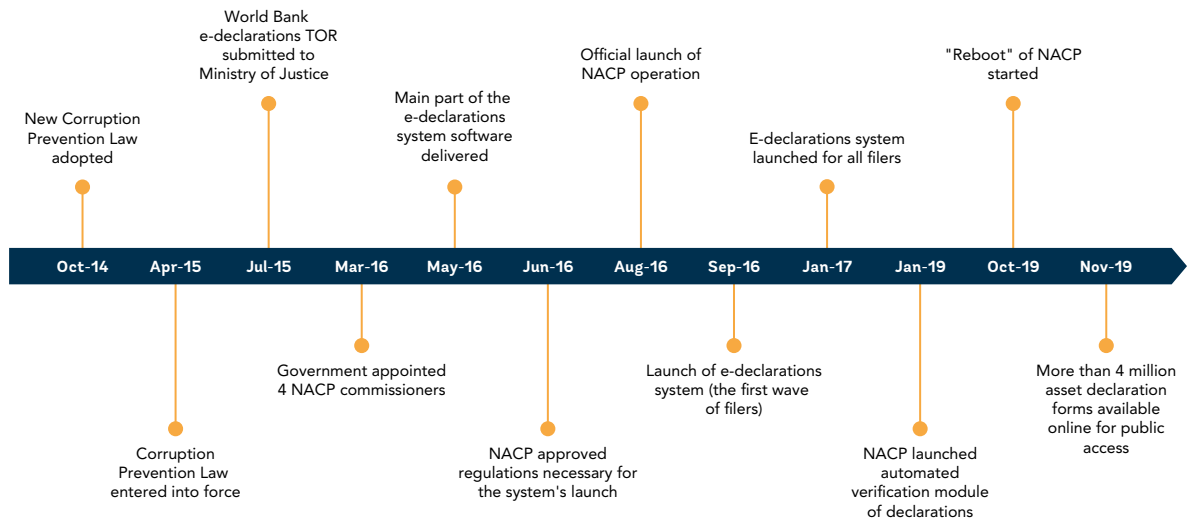
categories of high-risk declarants whom the law had previously missed, such as leadership of the president's office, and assistants to judges. The new amendments clarified the definition of family members and the definition of property use which filers had to report, and introduced requirements for the disclosure of beneficial ownership in trusts and similar legal arrangements, cryptocurrencies, bank accounts and bank safe deposit boxes in Ukraine or abroad.

In 2019 the corruption prevention agency started using the software for the automated analysis of declarations. The analysis included automated cross-checks with 13 external government registers and checked data against more than 100 pre-determined red flags.⁸ Based on such analysis, the system ranked all submitted declarations according to their risk rating and determined which declarations should be prioritized for full verification conducted by the agency's staff. Ukraine was one of the first countries in the world to introduce such an automated risk analysis of declarations in bulk, which also included data cross-checks.

The availability of information through the new e-declarations system fostered a range of new civil society initiatives. All documents submitted in the web-based system immediately became available online at <https://public.nazk.gov.ua>. Documents were also disclosed through an open application programming interface (API) as machine-readable data, allowing NGOs to develop new watchdog instruments.

"Introduction of the new e-declaration system was one of the main anti-corruption achievements in Ukraine in the past 5 years," said Vitaliy Shabunin, head of the leading anti-corruption NGO "Anti-corruption Action Centre". "Journalists, NGOs and, first of all, voters got access to comprehensive information about wealth of politicians and officials. The scope of data and the possibility of its processing in a machine-readable format afforded the country multiple investigations into unlawful assets of public officials. Such investigations doomed many political and civil service careers of corrupt officials who managed to keep their positions even after the two prior revolutions."

For example, a group of activists developed a website (declarations.com.ua/en) that presented the data retrieved from the official database with advanced search and filtering features, a more user-friendly interface, and data analytics and visualization tools. The site also included digitized forms of previous paper

FIGURE 8.1 Implementation Timeline of Electronic Asset and Interest Disclosure System in Ukraine**BOX 8.1****Scope of Asset and Interest Disclosure Form**

Ukraine's form of electronic declaration captures a very broad range of disclosure items. Most systems target real estate, vehicles, corporate rights, income, gifts, etc. In addition to such usual disclosure items, Ukraine's form also covers assets that reflect current corruption and money laundering typologies in the country and abroad. The form covers, for example, the following:

- Beneficial ownership (control) in legal entities, trusts and similar legal arrangements in Ukraine and abroad.
- Cryptocurrencies.
- Bank accounts regardless of the balance, opened by any person in the declarant's or family member's name, safe deposit boxes and persons who have access to them.
- Any property or income that formally belongs to a third person, but which is in fact controlled by the declarant (family member) or from which the declarant (family member) receives or can receive income.
- Use of any property.
- Any expenditure or transaction as a result of which the declarant acquired or ceased to own or use any asset.

Some of the items above (e.g. trusts, cryptocurrencies) were recently introduced and filers have to disclose them in declarations that cover the period starting January 1, 2020.

declarations, which allowed citizens to track the assets of officials to earlier periods. The same group operated another website (ring.org.ua) where 19 databases, including asset declarations, the company register and public procurement database, were integrated to provide cross search and a comparison of data.

Another anti-corruption watchdog NGO created a database of domestic politically exposed persons⁹ using a range of public sources, including e-declarations. The database was used by banks for customer due diligence and by anti-corruption investigators and investigative journalists. Information was available in English and was integrated in the WorldCheck database and other commercial data aggregators. The database aimed to prevent Ukrainians from using financial institutions to transfer ill-gotten assets abroad and disguise their origin. Inspired by this example, other groups in Europe and Asia began establishing similar databases in their countries.^{10,11}

Overhauling the anti-corruption agency to improve enforcement

By the end of 2019, the e-declaration system contained over 4 million electronic documents.

Despite the public availability of this data, the corruption prevention agency failed to gain public trust. Verification of declarations and enforcement of sanctions for non-compliance, in particular, remained a weak spot. The corruption prevention agency and the police focused their enforcement efforts mostly on minor infringements. Allegations of arbitrary application of the law and ineffectiveness discredited the agency and led to calls for its urgent overhaul.¹² Those calls grew louder after a whistleblower from the corruption prevention agency disclosed in 2017 that the President's office at the time allegedly gave instructions to the agency's staff concerning verifications they conducted.

After the 2019 elections, where a majority of MPs that won seats were from the new president's party, parliament passed amendments to reboot the agency and replace its leadership through an open competition. Giving a fresh start to the corruption prevention agency was one of the electoral promises of the new president and his party.

To choose a new leader for the agency, the

government set up a six-member panel that included representatives of two prominent anti-corruption Ukrainian NGOs and international experts from Slovenia, Germany, and US proposed by international organizations. The selection process was transparent and merit-based, including general skills and psychological tests, essays, and interviews with the 30 candidates who applied. In January 2020, the newly-selected head announced a broad reform of the agency to win back the public's trust.

Reflections

Ukraine's new asset and interest disclosure system was recognized both by Ukrainian citizens and the international community as one of the key tools to turn around the country's reputation for high levels of corruption. "By publicly disclosing officials' incomes and assets via an open, directly accessible digital system, the e-declaration system was Ukraine's breakthrough instrument to prevent corruption," said Blerta Cela, the UNDP's deputy country director.¹³

Support from international organizations like the EU, IMF, UNDP, and the World Bank, and advocacy from civil society organizations on the ground in Ukraine, was critical to get the system up and running and to overcome efforts to block its implementation. In the absence of broad political will and a strong national institution to oversee the design and implementation of the new system, civil society and international partners stepped in to provide the necessary technical expertise and advocacy support to develop and launch the new system. Later, those groups mounted a defense against attempts to curtail the robust asset disclosure provisions.

The submission compliance levels in Ukraine were high—despite the lack of sanctions handed down. Part of the reason for this was that it was relatively easy to detect non-submission of declarations since the law required entities that employed declarants to check if they submitted their declarations on time and report back to the corruption prevention agency, and the fact that all declarations were available online for public scrutiny.

The newly revealed details about officials' wealth sent shockwaves around Ukraine. While Ukrainians had long suspected that many public officials were

incredibly wealthy, the extent of the riches they had amassed caused a media storm. A survey conducted shortly after the new asset and interest disclosure system's launch found that Ukrainians thought the new system was one of the four biggest successes of 2016 in the country.¹⁴ A poll conducted in 2017 showed that 72% of Ukrainians had a positive or somewhat positive opinion about the system.¹⁵

Several aspects of the Ukrainian reform made it stand out as one of the most promising asset and interest disclosure systems around the world. "The Ukrainian system of asset declarations is probably one of the most advanced globally in terms of the information covered, the use of innovative digital solutions, and the level of transparency," said Ivan Presniakov, Deputy Chairperson of the corruption prevention agency, who had previously managed the e-declarations system development project at the UNDP. "It has three distinct features. First, the scope of reported data is comprehensive and leaves almost no loopholes to abuse the system. Second, there are strong sanctions for false data or untimely submission. And, third, what is of crucial importance, almost all data is publicly disclosed, which guarantees that assets of any official are under the scrutiny of public or law enforcement eye."

Ukraine's digital by design approach provided many benefits, especially because the e-declaration data was available for public use in machine-readable format. The availability of this information triggered civil society activism, the emergence of data analytics tools, and new forms of civil society and journalism watchdog activities. The digital approach also allowed the corruption prevention agency to continuously improve the system by adding additional functionalities, such as the automated red-flag analysis and the automated cross-checks with registers. As well as being cost effective, the digital approach eliminated the burden of storing and processing paper forms and limited manual work.

While the system itself was a success, its effectiveness was hampered by the corruption prevention agency's limitations in verifying the asset declaration information and sanctioning non-compliance. Although there were strong sanctions in place for submitting a false declaration or failing to submit a declaration altogether, there was little enforcement. The agency's struggles highlighted that in order for an asset declaration system to function effectively, the responsible agency

needs broader powers and resources, including the ability to impose sanctions, get information from different actors, access financial information and other government registers, and request information from abroad. In addition, it was important to have multiple points of verification, including criminal investigation of false statements in the declarations, since criminal investigators usually have more powers and resources to pursue effectively cases of false disclosure.

In Ukraine, however, even the criminal investigators ran into difficulties in pursuing cases. The National Anti-Corruption Bureau of Ukraine, a criminal investigation body targeting high-level corruption that was set up in 2015, opened more than 60 criminal proceedings into false disclosure by high-level public officials, but failed to deliver tangible results of dissuasive sanctions because judicial reform lagged behind.

In late 2019 the judicial reform started to make progress, promising to ensure that those who failed to comply with the asset and interest disclosure legislation would be sanctioned. In September, a new anti-corruption court took over the cases from the ordinary courts that had proven ineffective in dealing with corruption cases. In early 2020, this new court delivered a conviction for the non-submission of asset declaration by a judge, and more verdicts in cases of false asset disclosure were expected throughout 2020.

CASE STUDY 19

ASSET AND INTEREST DECLARATIONS

Enhancing Effectiveness of Asset Declarations in Romania

Overview

Asset declarations were first introduced in 1996 with the aim of cleaning up the public sector following the transition from Communism. The asset disclosure system, which was later expanded to cover potential conflicts of interest and incompatibilities,¹⁶ underwent several series of major reforms from 2003 through 2010. The road from first establishing the system to seeing results took many years and even now refinements are needed to match the emerging challenges.

A wide range of Romanian public officials have to declare their assets and interests. But Romania also set up a verification mechanism focused on detecting and sanctioning unjustified variations of wealth, conflicts of interest and incompatibilities. Since 2007, an independent administrative agency—the National Integrity Agency (ANI)—has managed the system. The agency collects mostly paper-based declarations and publishes them on its website.¹⁷ Transparency has been key to the success of the system; it has allowed for public oversight of disclosure forms and given prominence to the system on the political reform agenda. Public access also contributed to the effectiveness of the verification process, as the vast majority of review procedures have been triggered by media and civil society reports.

In 2017, the ANI launched its newest tool, PREVENT, which is linked with the public procurement system

and designed to issue early warnings to contracting authorities about potential conflicts of interest in procurement procedures.

Introduction

As Romania transitioned from a state-controlled economy to a market economy in the early 1990s, many public officials became inexplicably wealthy, despite having spent their entire professional lives working for meagre government salaries. MPs, ministers, mayors or heads of local or regional governments and their family members acquired real estate, vehicles or land whose value was disproportionate to their current or past sources of income. The rapid accumulation of wealth among public officials was hard to miss since private property had only recently appeared. Law enforcement failed to credibly tackle this very visible integrity issue, and the level of trust in the public sector decreased.

In 1996 Romania introduced mandatory asset disclosure for public officials, as did other countries in the region and elsewhere in the world. But the system initially did not deliver on its promise. Officials submitted disclosure forms to their human resources department, and the information declared was not disclosed to the public. With no transparency and no effective mechanism to verify assets or unjustified variations of wealth, the asset disclosure system failed to make significant inroads

in reducing Romania's corruption problem. Between 1996 and 2007, Romanian courts adjudicated less than ten cases of civil confiscation of unjustified variations of wealth. While this is a relatively high number in the regional context, it did not come close to making a dent in the challenge at hand.

A window of opportunity to fix the system began to appear at the end of the 1990s, when Romania started the long process of joining the European Union (EU). Along with other reforms, Romania had to tackle corruption in order to be accepted into the EU.

The implementation process

Reforming the system

In 2003, Romania introduced declarations of private interests¹⁸ in addition to asset disclosures, and the information filed in the declarations became publicly available for the first time. However, the information that declarants had to submit was limited in scope. For example, the asset disclosure form did not include the precise value of bank deposits, loans or debts, but just an indication of whether they exceeded the threshold of 10,000 euro. Declarants were also required to disclose in a yes or no format if they held shares worth more than 10,000 euro.

In 2004, the disclosure form was amended to close more loopholes, such as including the actual value of bank deposits if above 10,000 euro.

Finally, in 2005, the government made sweeping reforms to the asset and interest disclosures. The forms became more comprehensive, requiring officials to declare a much wider range of information: movable and immovable property with a clear indication of the value, financial assets in Romania or abroad (bank accounts and other financial investments including their respective value), liabilities, gifts and all income.

Local and national elected public officials, civil servants, judges and prosecutors, police and intelligence officers all had to file public disclosures at the beginning and end of their mandate, and yearly while they remained in their position. Filers needed to submit information not only on their own assets, income and interests, but also on those of their family members (spouse and dependent children). Information on the values and

sources of income and debts of family members as well as the balance of their bank accounts needed to be disclosed and was made publicly available.

Civil society groups and investigative journalists used the declarations in combination with other open source data to paint a comprehensive picture of the interests and wealth of public officials. During electoral campaigns and when individuals were competing for high-level public functions, information from the asset and interest disclosures played an important role in public debates. Initial concerns that public access to information in disclosures might pose a threat to the personal security of public officials turned out to be unfounded. "Blacklisting"¹⁹ of candidates for public office, based on information from the declarations, became a frequent practice of civil society groups since 2004. Investigative journalists routinely used declarations of assets and interests as a first step in their investigations.

By the time Romania joined the EU in 2007, its asset declaration system was comprehensive in terms of the scope of the information disclosed and much of what was filed was made publicly available. But there was still much work to do for the country to stamp out corruption, and the reforms of the late 1990s and 2000s were fragile. To ensure that Romania remained on track with its anti-corruption agenda, the EU implemented the "Cooperation and Verification Mechanism" (CVM), a tool used for both Romania and Bulgaria (which faced similar challenges and joined the EU at the same time). The mechanism allowed the European Commission, the executive branch of the EU, to issue regular reports assessing the two countries' progress²⁰ on or deviation from their reform agendas.

The European Commission set four criteria for assessing Romania's progress. One of those criteria was to set up an agency responsible for verifying asset disclosures, identifying conflicts of interest, and issuing sanctions for noncompliance. Despite pressure from the EU to set up the agency, it took time to overcome strong domestic opposition.

The ANI was set-up as an independent administrative agency in mid-2007 and became operational at the beginning of 2008. The ANI published all disclosures on its website and kept them there for three years (before archiving them). As of April 2020, 7.7 million declarations are available on the ANI's public portal.

Facing challenges

Early in ANI's life, it faced a fundamental challenge to its institutional framework and at an immediate operational level to many on-going verification procedures. One of the first cases on confiscation of unjustified variations of wealth, which was sent to the court in 2008, was appealed, and in April 2010 the Constitutional Court found that parts of the law on the procedure for controlling wealth were unconstitutional. A new law, amended to reflect the criticism from the Constitutional Court, was adopted in September 2010. ANI had to pause operational work for half a year, then close all on-going verification procedures and restart them from scratch in line with the amended procedures, generating further delays in its anti-corruption efforts.

Over the years there have been frequent legal initiatives²¹ in Parliament to curtail ANI's powers. The 2019 European Commission CVM report on Romania highlighted that in the previous two years, five legislative proposals modifying the integrity framework had been adopted, weakening certain provisions and the ability of ANI to maintain its track record of cases. This included a "relaxation" of the incompatibilities regime, introducing a non-dissuasive sanctioning regime for the local elected officials found to have conflicts of interest, and a general statute of limitation period of 3 years²² for sanctioning conflicts of interest and incompatibilities in ANI's cases.

Achievements

Confiscating unjustified wealth

Since the asset disclosure forms were first introduced in 1996, Romania has been one of the few countries that has aimed to control and sanction unjustified variations²³ of wealth of public officials by embedding civil confiscation tools in its financial disclosure system. Although other countries have civil confiscation tools in place, there are few systems where civil confiscation is so intertwined with the asset declaration system.

The original mechanism for verifying the accuracy of asset declarations that was in place between 1996 and 2007 was rudimentary and difficult to use. The procedure could start either with a complaint from the public regarding unjustified variations of wealth (even though at that point the declarations were not public)

or ex-officio by the chief prosecutors from the Courts of Appeal (there are 15 courts of appeal in the country). The verification was conducted by a commission composed of two judges and one prosecutor and later assessed by appeal court judges. The results achieved by these commissions in the area of wealth verifications were modest. The system lacked accountability mechanisms and transferred tasks to the judiciary that should have been dealt with by administrative control bodies. Prosecutors and judges had to perform the prima-facie investigations of wealth, although this is essentially a technical task that should be performed by an administrative or investigative body and censored and reviewed by the judiciary.

After 2007, ANI initiated verification procedures based on complaints or ex-officio. Staff used relevant government databases (such as the companies register, vehicle registration register, police database) to crosscheck information provided by declarants. One of the most important features of the Romanian integrity mechanism is the power of ANI to request any type of data and information from both public and private entities, including financial information from financial institutions regarding transactions, bank accounts or credits. This proved to be extremely useful when assessing the wealth accumulated by a public official during his mandate and in the process of verifying the accuracy of the disclosed data. Public officials were able to provide additional information during the verification process, and ANI's findings were challengeable in court. Around 70% of ANI's cases are challenged before courts.

Following the Constitutional Court's 2010 decision related to the procedure for controlling wealth, the September 2010 law introduced an additional filter. This was that ANI decisions would have to be analyzed by a commission of two judges and one prosecutor set up at the level of each court of appeal. This is a combination of the initial institutional set-up of ANI and the old system of wealth control. If the commission agrees with ANI's findings, the case is sent to the administrative litigation section within the Courts of Appeal with a final appeal to the High Court of Cassation and Justice. While ANI is limited to asking for further clarifications only from the subject of the investigation (the filer), the Wealth Investigation Commission attached to the Court of Appeal (another filter) can gather its own additional evidence and can hear other individuals than the subject of the investigation. A final finding of unjustified variation of wealth results in the confiscation

of the wealth that the public official cannot adequately account for.

Sanctioning conflicts of interest and incompatibilities

As in the case of verification of unjustified variations of wealth, in the area of conflicts of interest and incompatibilities ANI can also conduct verifications based on complaints or start investigations ex-officio. The agency's findings can be challenged in court (the administrative litigation section within Courts of Appeal with a final appeal to the High Court of Cassation and Justice) without the additional filter of the commission that exists in the area of unjustified wealth. For conflicts of interest, the sanction is disciplinary²⁴ and the act concluded under the conflict of interest is annulled and parties must be reinstated to the initial state. In practice, this means that disciplinary sanctions range from salary reduction for a limited period of time to removal from the position. To deal with conflicts of interest in the area of public procurement, an ex-ante mechanism for identifying potential conflicts of interests was introduced (see below).

For incompatibilities, the sanction is the public official's dismissal from the public position unless s/he gives up the other position declared incompatible by the law. Between 2010 and 2019, 321 public office holders were removed from their offices (MPs, mayors, heads of public authorities, civil servants, police officers etc.), while 635 had already left their offices before the ANI decision was enforced.

Besides dismissal, another dissuasive feature of the sanctions for incompatibilities and conflict of interest is a three-year ban on occupying any other public position. The public officials under this prohibition are listed on ANI's website.

Inter-agency cooperation

If inspectors find indications of other irregularities (administrative, fiscal or criminal), they have to notify relevant bodies, for example the tax administration, police, or prosecutors. The following are examples of successful cases of cooperation between prosecutors and integrity inspectors, with both using their respective competences to tackle lack of integrity in the public sector.

- In the case of a prominent political figure, prosecutors notified ANI, based on their information, that a public official was hiding large sums of money in a foreign jurisdiction. ANI's inspectors requested the Tax Administration to provide additional information about the official's bank accounts abroad. This information was obtained at a later stage from the foreign jurisdiction and ANI found this amount to be an unjustified difference between legal income and assets and notified the Wealth Investigation Commission.
- In a case of corrupt police officers, judicial proceedings performed by prosecutors were doubled by the administrative wealth assessment conducted by ANI's inspectors, which led to the non-conviction based confiscation of half a million euros (sums of money discovered by the prosecutors during the home searches).
- In a few hundred cases, ANI notified the prosecutors about false statements or missing information from the asset or interest disclosures.

Between 2011 and 2015, ANI identified both administrative conflict of interest and indications of possible criminal conflict of interest in the case of a few dozen MPs. The conflict of interest was generated by the fact that they hired their own relatives to work as members of their parliamentary offices. On the administrative side, the courts confirmed ANI's findings, civil sanctions were applied and the interdiction to occupy any other public office for three years was enforced. On the criminal side, prosecutors sent the cases to court, where most defendants received suspended prison sentences.

Using PREVENT to deal with potential conflicts of interest in public procurement

Since 2013, the European Commission has constantly called upon Romania to strengthen integrity in the public procurement system: "The penalties for officials involved in fraudulent public procurement cases continue to be very low and the law does not foresee a possibility of a cancellation on the grounds of conflict of interest of projects that have already been executed....A more systematic approach to ex ante checks, most logically a role for ANI (with new resources) that would

also ensure a uniform and systemic implementation, would offer a useful way forward.”

In June 2017, ANI launched PREVENT, a prevention tool to detect and eliminate potential conflicts of interest in procurement. The targeting of conflicts of interest in public procurement procedures is due to: 1) the magnitude of this sector—around 15 billion euros yearly; 2) the widespread perception of corruption in this area—8 out of 10 companies say that corruption in public procurement is a widespread problem; 3) a significant number of conflicts of interest found by ANI in the previous years were related to public procurement; and 4) EU-funded contracts are also subject to public procurement legislation.

PREVENT automatically checks whether participants in a public bid are related or otherwise connected to the management of the contractor. The system predicts the likelihood of a potential conflict of interest through a risk rating of each tender. The tool introduced “integrity forms,” which bidders and procurement committee members (who decide which bid to accept) have to upload in the country’s electronic procurement system. Using the forms, ANI verifies the composition of procurement committees and identifies potential conflicts of interest between committee members and bidders. In this process, ANI cross-checks the information from the integrity forms with other public databases (company Register and National ID register, which also includes data on birth and marriages). When the PREVENT system identifies potential conflicts of interest (for example, a relative of a bidder being on a procurement committee), ANI issues an integrity warning to the head of the contracting authority. The responsibility for removing the cause of the conflict of interest rests with the head of the contracting authority. If the latter fails to do so, ANI starts an ex-officio verification on the consumed conflict of interest. In other words, where prevention fails, sanctions are imposed.

From June 2017 to December 2019, the PREVENT system reviewed 43,008 procurement procedures, resulting in 117 integrity warnings. In 113 of those cases amounting to 255 million euros, the contracting authorities removed the cause that generated the potential conflict of interest, while in the other four cases ANI started ex-officio verifications. By identifying and eliminating potential conflicts of interest early, the PREVENT system helped Romania to avoid spending time and resources on court proceedings to

recover losses incurred through corrupt procurement processes.

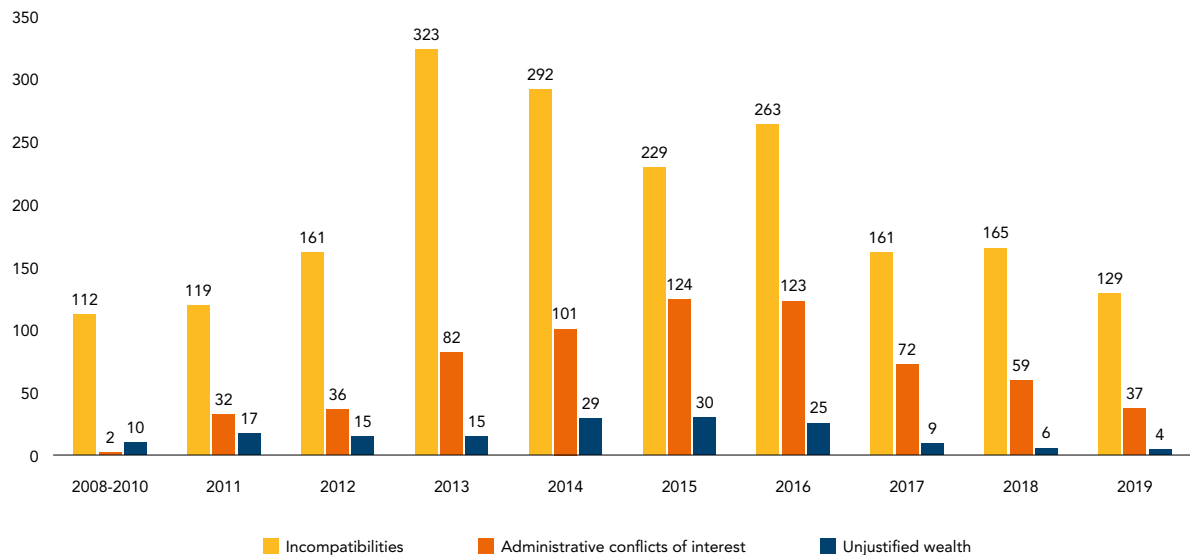
As PREVENT is an automated system, it also managed to monitor procurement procedures on a scale that would have never been possible through manual processes. It also fosters a collaborative approach to dealing with conflict of interest situations as the main outcome of the PREVENT procedures is not punishing individuals, but rather pinpointing specific risk situations.

Results of the integrity system in Romania

By the end of 2019, ANI had reviewed more than 18,000 cases, out of which 3,000 were confirmed to be integrity violations (significant differences between incomes and acquired assets, incompatibilities, administrative conflicts of interest, suspicions of criminal offenses i.e. conflicts of interest, false statements, money laundering, suspicions of committing corruption offenses, including crimes against the financial interests of the European Union). ANI applied more than 7,000 administrative fines for non-compliance with the obligation to disclose. ANI’s final reports also include 1,954 cases of incompatibility, 668 cases of administrative conflict of interest and 160 cases of unjustified wealth amounting to over 29.2 million euros.

Among high level officials, ANI found integrity incidents in the case of 141 MPs, 31 government officials, 1,755 local elected officials and 252 heads of public institutions.²⁵ In around 1,400 cases, sanctions were enforced and assets were confiscated and returned to the state budget. In the other cases, ANI’s findings were not confirmed by the courts or the officials no longer occupied positions in the public sector or the statute of limitations had passed.

Moreover, the PREVENT system is acting as a strong deterrent: The number of investigations opened into alleged cases of conflict of interest related to public procurement contracts has significantly dropped (by almost 50%) since the system became operational.²⁶

FIGURE 8.2 Final Findings of ANI Reports between 2008 and 2019

Reflections

Several key legal and operational factors have contributed to ANI's track record of cases:

- Dissuasive sanctions included in the law (ANI's findings on incompatibilities, conflicts of interest or unjustified assets were followed up by sanctions or confiscations of the unexplained amounts);
- Access to information (any information can be requested and easily obtained from any private or public entity or individual, including from tax authorities and financial institutions);
- Comprehensive methodologies and procedures developed and used by the operational staff (which include templates for communication, working methods and strategies, scenarios, etc.);
- Constant communication with other stakeholders in the integrity system (communication with the filers, judges, prosecutors, fiscal administration inspectors, etc.); and
- Effective cooperation with other institutions involved in the fight against corruption. In some countries, the institutions responsible for verifying

asset and interest declarations are in an unhealthy competition with criminal investigative bodies or believe that results are dependent on having similar investigative powers as their colleagues on the criminal side.

The institutional architecture also played an important role in the evolution of ANI. Integrity inspectors—the staff that carries out the analytical and operational work—appointed to their position following public competition have full autonomy and independence in their case files, i.e. they cannot receive instructions from anyone, not even their superiors on the conclusions that they reach during the investigations. The quality of their work is assessed every year by an external independent audit report and every time a case file is challenged in Court (judicial review). The management of ANI is performed by a president and a vice-president, who are also appointed based on public competition. They only fulfill management duties and do not have the right to intervene in the inspectors' case files.

Romania's experience shows the benefits of a comprehensive approach that focuses on both prevention and sanctioning. In similar country contexts to Romania, where there are high levels of violations related both to unjustified variations of wealth and conflicts of interest, it is important to consider a comprehensive approach. Preventive measures alone

will not be sufficient. At the same time, sanctions alone will be less effective than a combined approach.

Transparency of asset and interest disclosures plays an important role. After declarations became public, civil society groups, journalists and citizens were able to check what public officials declared that they own²⁷ and compare it with information from other sources. As a result, the public could demand investigations based on concrete information rather than just suspicions. Transparency also helped consolidate active citizenship and public accountability, generating support for anti-corruption institutions like ANI.

In implementing its asset and disclosure system, Romania confronted strong and sustained opposition from individuals and groups that benefited from corruption. Public support and international pressure were essential to build political will and overcome those trying to stifle reform. In particular, pressure from the European Commission through the EU accession process and the Cooperation and Verification Mechanism ensured the country kept strengthening its asset and interest disclosure system and did not backtrack on its anti-corruption efforts.

Looking forward

Despite the system's successes, some ongoing challenges need to be addressed. Some of these are:

- **Use of third parties.** Many assets are held under the names of third parties (relatives, business associates, companies, friends etc.) and this frequently makes it impossible to ascertain the size of a public official's estate. Other countries that have faced this challenge have introduced the declaration of assets held by public officials and their family members as beneficial owners.
- **Assets held abroad.** Another challenge is verifying the assets held abroad, such as real estate and bank accounts. While some very limited mechanisms are now in place (i.e. a treaty for avoiding double taxation) and others are under discussion (International Treaty on Exchange of Data for the Verification of Asset Declarations),²⁸ administrative entities responsible for verifying asset declarations face difficulties in tracing assets held abroad. Administrative entities like ANI can neither receive

assistance from similar entities in other jurisdictions nor provide it. ANI cannot provide information to similar foreign institutions about bank accounts because the ANI integrity inspectors can only access information if a specific verification file is opened under the name of a Romanian public official.

- **Paper-based system.** One important operational challenge that prevents the further strengthening of the asset declaration system is the fact that it is still paper based. As a result, ANI uses a lot of financial and human resources to deal with the complexities of collecting, organizing, securing and making publicly available millions of declarations. This also hampers the further development of its verification system. ANI launched at the end of 2019 a complex EU-funded project, which aims at developing the technical platform for introducing electronic filing of declarations. The relevant legislation still needs to be adopted by the Romanian Parliament.

Romania's experience also shows that it is a long way from identifying a violation to enforcement, particularly when it comes to elected officials. Sometimes, not even final court decisions guarantee enforcement. For example, the Romanian Parliament refused on several occasions to sanction its own members.²⁹ A truly effective anti-corruption regime requires the support of all institutions, particularly those with the power to bring significant change.

Notes

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- Idem*, p. 24.
- See, in particular: Dmytro Kotlyar and Laura Pop. (2019). E-filing asset declarations: benefits and challenges. World Bank/Stolen Asset Recovery Initiative. <https://star.worldbank.org/publication/e-filing-asset-declarations-benefits-and-challenges>.
- As an example of such regional work, see the initiative on the International Treaty on Exchange of Data for the Verification of Asset Declarations in Southeast Europe, www.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest.
- Rossi, Ivana M., Laura Pop, and Tammar Berger. 2017. Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure, cited above, p. 91.
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- See, among others, ICNL (2017). Analysis of the Draft Laws On Introducing Changes to the Tax Code and to Some Other Laws to Ensure Public Transparency of the Financing of Public Associations and the Use of International Technical Assistance. https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/our-work_ICNL-Analysis-of-the-Ukrainian-Draft-Law-on-Reporting-for-CSOs.pdf?_ga=2.40630884.773566487.1592189200-2000779560.1592189200/; Transparency International (2017). Proposed Amendments to a Law that Targets Ukrainian Anti-corruption Groups Must Be Abolished. www.transparency.org/news/pressrelease/proposed_amendments_to_a_law_that_targets_ukrainian_anti_corruption_groups; IFEX (2017). Ukraine: Drop government proposals that restrict NGO activity. <https://ifex.org/ukraine-drop-government-proposals-that-restrict-ngo-activity>; OSCE/ODIHR (2018). Joint Opinion on Draft Law No. 6674. & 6675. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)006-e).
- At the end of 2019, the agency connected the e-declarations register to other three important databases of the Ministry of Justice of Ukraine (registers of civil acts, powers of attorney and inheritance).
- See <https://pep.org.ua/en>.
- See, for example, <https://ceeliinstitute.org/identifying-unexplained-wealth-of-public-officials-ceeli-assists-civil-society-in-developing-new-anti-corruption-tools>, www.tisirilanka.org/tisl-launches-online-database-on-politically-exposed-persons.
- Other noteworthy examples of watchdog tools established using information from the e-declaration system include: a) Zaparkanom ("Over the Fence", <https://zaparkanom.com.ua/>) which used the e-declarations register to merge data on declarants, provide dashboard analytics, rate declarants by risks, and show links of declarants with other individuals and legal entities, b) DeclaCar (<https://declacar.com.ua>) which compared the value of cars declared by officials in their disclosure forms with public data on the market value of cars to show inconsistencies, and c) Sud na doloni ("Court on the palm", <http://court-on-the-palm.com.ua>) which used the open court decisions register to provide structured data from judicial acts, visualize them, provide statistics, and merge data from court decisions with other databases, including e-declarations.
- NGOs compiled a list of the corruption prevention agency's failures and urged parliament to disband it (<http://nazkfails.antic.org.ua/eng>). The OECD anti-corruption monitoring report outlined many challenges and deficiencies in the agency's work – see OECD (2017), Fourth Round Monitoring of the Istanbul Anti-corruption Action Plan, Anti-corruption Reforms in Ukraine, p. 33-37, www.oecd.org/corruption/acn/OECD-ACN-4th-Round-Report-Ukraine-ENG.pdf.
- Cela (2018). Electronic Asset Declarations for Public Officials – two years after its launch. A panacea against corruption? www.ua.undp.org/content/ukraine/en/home/blog/2018/the-expectations-and-reality-of-e-declarations.html.
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- Cela, 2018.
- The holding of two functions simultaneously despite this being forbidden by law.
- See <http://deklaratii.integritate.eu/>.
- Initially those included memberships in political parties and NGOs, paid professional activities and shareholding rights in companies.
- SAR (2004). Coalition for Clean Parliament – Local and General Elections (Translated Title). <http://sar.org.ro/coalitia-pentru-parlament-curat-2004/>.
- See https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en.
- "...the legal framework for integrity, the set of laws defining the situations of conflicts of interests and incompatibilities for civil servants and elected or appointed officials, has been regularly re-opened in Parliament." CVM (2017a). Report from the Commission to the European Parliament and the Council: On Progress in Romania under the Co-operation and Verification Mechanism. https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf. and in the technical report, "In April 2017, unexpected modifications of the law on incompatibilities for Members of Parliament were adopted. A negative opinion had been issued by ANI but the amendment went ahead." CVM (2017b). Romania: Technical Report. https://ec.europa.eu/info/sites/info/files/swd-2017-25_en.pdf.
- Based on the earlier provisions in the law on ANI, the assessment of conflicts of interest and incompatibilities was carried out both during the exercise of public functions by officials and civil servants, and for 3 years after their termination. According to the same provisions, the sanction for a conflict of interest or incompatibility could be applied in maximum 6 months from the date ANI's report remained definitive, i.e. confirmed by the court. For example, ANI could have started an investigation in 2019 for a civil servant that committed a conflict of interest in 2015. Assuming that the case had been completed and gone through all the judicial stages by the end of 2020, then the sanction could have been applied at any time between January and June 2021. However, a new amendment was introduced stipulating "a general statute of limitations for civil, administrative and disciplinary liability for conflicts of interests and incompatibilities of three years after the facts have been committed." For this reason,

in this new form, in order to sanction an incompatibility or conflict of interest, the deed must be discovered, ascertained, and carried through all the judicial and administrative proceedings in less than 3 years from the date the facts have been committed. One of the many consequences that this modification has generated is that ANI has already dismissed more than 200 ongoing cases, because more than 3 years passed from the date the acts had been committed.

23. Of more than 10,000 euros between incoming cashflow and outgoing cashflow.
24. Disciplinary sanctions range from a warning, a salary cut, relegation to a lower function and dismissal.
25. See <https://www.integritate.eu/Noutatiaspx?Action=1&NewsId=2964&PID=21>
26. CVM (2019a). Romania: Technical Report. https://ec.europa.eu/info/files/technical-report-romania-2019-swd-2019-393_en.
27. According to the 2019 Google Analytics Report, both ANI's website and the asset and interest disclosure portal have almost 280.000 unique visitors per year.
28. RAI (2019). International Treaty on Exchange of Data for the Verification of Asset Declarations. <http://www.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest/>.
29. Cooperation and Verification Mechanism report issued in January 2017 covering the previous 10 years – “There has also been a recurring problem concerning resistance to the implementation of the Agency's reports, even when confirmed by a court decision, and reluctance from the responsible institutions and authorities to apply the sanctions required (which consist normally in either dismissal of public function or administrative fines). In the last two years, the general situation has significantly improved, but some decisions by Parliament have still appeared to question or delay the implementation of final court decisions confirming the Agency's reports.” CVM, 2017b.

In 2019, the European Commission maintained these criticisms: “The November 2018 report pointed at delays and apparent inconsistencies in the application of sanctions for Members of Parliament who were found to hold incompatible functions or to be in a state of conflict of interest by a final court decision rendered on the basis of a report from ANI. It highlighted a possible divergent interpretation of the rules (notably when the integrity incident in question came in a previous mandate or position)” CVM (2019b). Report from the Commission to the European Parliament and The Council: On Progress in Romania under the Cooperation and Verification Mechanism https://ec.europa.eu/info/sites/info/files/progress-report-romania-2019-com-2019-499_en.pdf.

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CHAPTER 9

Beneficial Ownership Transparency



Introduction

The release of the Panama Papers and Paradise Papers in 2016 and 2017 shone a spotlight on the extensive use of anonymous companies for concealing corrupt practices and proceeds. The sudden growth in publicly available information on this widespread practice has helped increase pressure on policy makers to address the abuse of anonymously-owned companies and other anonymous financial vehicles, and to take into account the role that they play in facilitating corruption and illicit financial flows. These mega-leaks exposed abuses that toppled heads of state and provided the information for law enforcement actions that (by conservative estimates) helped recover \$1 billion for taxpayers around the world.¹ As revealed by these leaks, anonymously-owned companies registered in tax havens were the getaway vehicles for tax evaders, criminals, and corrupt politicians. The most shocking insight from these public revelations is that these cases are merely the tip of the iceberg, being just a few of the disreputable clients of a small number of the law firms that provide these services.

Regulatory loopholes in beneficial ownership disclosure requirements in one country have serious consequences globally because illicit financial flows (IFFs) are not constrained by national borders. Common practices employed for laundering corrupt proceeds adapt and evolve to seek out jurisdictions where legal structures offer the greatest degree of privacy protection. Developing countries pay the heaviest price for these practices because of lost revenues or funds that are diverted as a result of fraud, tax evasion, and the illegal exploitation of natural resources.

Estimates of the global volume of IFFs vary—precisely because the anonymity permitted by these services makes the problem hard to measure²—but most estimates put them in the trillions. It is difficult to estimate the value of financial assets held in tax havens for the same reasons. A 2012 report by the Tax Justice Network estimated that between USD21 trillion and USD32 trillion worth of financial assets was held in tax havens.³ The cumulative effects are devastating. In the Global South, IFFs are estimated to cause USD416 billion in tax losses, eroding service provision and trust in governance among the world’s most vulnerable populations.⁴

Confronting corruption and the IFFs it generates requires an end to secrecy surrounding company ownership and an end to the abuse of anonymous legal structures for illicit financial gain. This requires a shift in our thinking about confronting corruption. It means focusing on the financial centers and the jurisdictions that provide a “safe haven” for corrupt funds” in addition to strengthening the response to corruption in developing countries.

Addressing anonymity is a key challenge. A study by the World Bank’s Stolen Asset Recovery Initiative (StAR) showed in 2011 that this kind of anonymity is a core feature of grand corruption, with anonymously-owned companies used in 70% of cases studied. Since 2009, tax campaigners have also been drawing attention to the use of anonymous companies for tax abuse.⁵ Secrecy is a well-established norm, however, and access by law enforcement and other interested parties to information about the beneficial owners of companies and legal entities remains a challenge.

This chapter provides an introduction to beneficial ownership transparency. It explains the concepts, reviews the existing global standards, identifies some of the early impacts, and illustrates the policy and technical challenges governments face in implementing reforms. It also describes the growing international commitment to action by governments and international policymaking bodies. Finally, it presents three case studies that chart the reform experience in Nigeria, Slovakia, and the United Kingdom, to illustrate how governments have tackled some of the common challenges.

BOX 9.1

What is a Beneficial Owner?

The term “beneficial owner” refers to the natural person, i.e. the real, living person, who ultimately owns or controls a company or another asset, or who materially benefits from the assets held by a company. The control can be realized either directly or indirectly, for example via professional intermediaries, nominees, or through other contractual agreements. Control can be exercised in a variety of ways: for example by holding – directly or indirectly – a controlling legal ownership interest or a significant percentage of voting rights; by having the ability to name or remove the members of an entity’s board of directors; or by holding negotiable shares or convertible stock.

The difference between legal ownership and beneficial ownership

A beneficial owner describes an individual who ultimately controls assets held by a company, while the legal owner is the person (or corporate structure) that holds the legal title. In a majority of cases, the beneficial owner and the holder of the legal title of a company will be the same – if the legal owner is holding the title on his/her own behalf. In illicit practices, where there is an intention to hide the identity of the true owner of the asset, the legal owner whose name appears in a company registry, land cadastre or bank account will be different from the beneficial owner. Common techniques to separate legal and beneficial ownership in order to conceal the identity of the beneficial owner include, inter alia, use of complex, cross-border ownership chains and control structures, use of informal nominees (straw men) as company directors or shareholders, use of professional intermediaries for company administration.

The Financial Action Task Force (FATF) Standards, which set out global anti-money laundering and terrorist financing standards, distinguish between basic information about a company (which includes company name, registered office, proof of incorporation, list of directors, register of shareholders), and information about the beneficial ownership of a company). Corporate registries typically (at best) collect basic company information about legal owners of corporate entities. Increasingly, however, corporate registries, primarily in Europe, have started collecting and publishing information about beneficial owners as well.

For practical purposes, many countries adopt a numerical equity ownership threshold as a trigger for beneficial ownership disclosure requirements. The threshold used, for example, in the European Anti-Money Laundering Directives is 25% ownership interest, though some regulations require disclosure at lower thresholds of 5-20%, or even disclosure with no minimum threshold.

How the corrupt abuse corporate structures and arrangements

In many corruption investigations, investigators must first uncover who actually benefits from the ownership of an asset – for example a company or real estate that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or nominee company directors. Beneficial owners with criminal intent can conceal their identity through a variety of different mechanisms, for example: by creating complex and opaque legal ownership structures with corporate owners registered in jurisdictions with weak transparency regulations, by using nominees or informal proxies (e.g. family members or friends) as company directors or shareholders, or by going through professional intermediaries who protect the identity of their clients, either with complicity or unwittingly.

Evolving global standards on beneficial ownership transparency

Even before the release of the Panama Papers, international bodies were emphasizing the value of beneficial ownership information as a tool for law enforcement authorities. Such information would help with investigations into corruption, money laundering and other financial crimes. The Financial Action Task Force (FATF), which sets global standards on anti-money-laundering, requires that countries “take measures to prevent the misuse of legal persons and trusts for money laundering or terrorist financing and to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”⁶ Since the revision of the Standards in 2012, which included much more detail on what this obligation entails and different mechanisms to obtain beneficial ownership information, a range of policy and regulatory approaches have been adopted by national authorities. These include requirements that companies collect their own beneficial ownership information and have it ready for inspection by law enforcement agencies (e.g. Hong Kong),⁷ and the creation of centralized public registers that collect beneficial ownership information for all companies registered in a jurisdiction.

Post-Panama Papers, the prospects for beneficial ownership transparency have been evolving steadily. In 2014, the G20 Anti-Corruption Working Group endorsed High-Level Principles on Beneficial Ownership Transparency.⁸ Governments and international policymaking bodies are building on the growing attention to this agenda to push increasingly progressive reforms. In late 2019, the U.S. House of Representatives voted to require companies to submit beneficial ownership information to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN), a measure that gained bipartisan support in the US Congress.⁹

Governments are using a range of approaches in requiring and managing the disclosure of beneficial ownership information to prevent the abuse of legal structures for criminal purposes. These approaches vary in their reliance on public access or transparency as an accountability mechanism. The approach taken has depended in part on existing regulatory frameworks;

on the capacity of institutions to take on the task, including the verification of disclosed information; on the key priorities and vulnerabilities – related to money laundering or corruption – that governments are seeking to address with this tool; and in some cases on data protection and privacy laws in that country. These approaches include:

- **The central registry approach.** A government authority collects, records, and maintains information on the beneficial ownership of companies in a central registry. This information may be held by a corporate registry, the tax authority, the securities regulator, the Central Bank, the Financial Intelligence Unit, or the National Internal Audit Office. In some countries, the registry is accessible only to law enforcement and other government agencies (such as tax authorities), while other countries provide public access to the registry.
- **The “gatekeeper” or licensed intermediary approach.** The responsibility to collect and record beneficial ownership information lies with a professional service provider that is required to provide beneficial ownership information to authorities – either on request or on a routine basis. Intermediaries can be corporate service providers, financial institutions, notaries, lawyers, auditors, tax advisors, or real estate professionals. A critical feature of this approach is whether professional intermediaries are well-regulated, subject to licensing requirements and anti-money laundering rules, and subject to enforceable sanctions for misreporting. This model is more easily implemented in contexts where company registration already requires a licensed intermediary, as opposed to those where a private individual can set up a company directly. A risk-based application of this approach can focus on areas of the economy considered high-risk for corruption and money laundering, such as luxury real estate, luxury goods, public procurement, infrastructure, or extractives.
- **The company approach.** This is the most straightforward model in that it requires that

companies collect and hold information about their own beneficial owner(s) themselves and provide it to authorities when requested. However, evidence from FATF's mutual evaluations suggests that countries face challenges in ensuring that beneficial ownership information collected directly from companies is accurate and up-to-date. Reliance on this model alone, without any due diligence conducted by an independent party, is not considered effective in guaranteeing accurate beneficial ownership information, as corrupt beneficial owners of shell companies are unlikely to self-report their ownership interest to authorities or a government registry.

- **A combination of these approaches.** Some countries combine elements of these approaches to great effect (e.g., the Slovak case study below). A recent FATF report on Best Practices on Beneficial Ownership for Legal Persons, based on countries' mutual evaluations under FATF's peer review mechanism, emphasizes that a multi-pronged approach to beneficial ownership information disclosure and access has proven more effective in preventing the misuse of legal persons than any single approach.¹⁰ Given that a vital element of effective beneficial ownership disclosure is to ensure the veracity of the disclosure, the ability of authorities to cross-check data across different sources or the requirement that licensed intermediaries vouchsafe the reliability of disclosed information¹¹ is clearly more useful than frameworks that rely on self-reporting by companies.

There is a growing momentum towards providing public access to beneficial ownership information

Civil society advocacy groups, thinktanks and watchdogs have been contributing to policy developments related to beneficial ownership disclosure. They have also been working to help solve some of the technical challenges associated with establishing credible and effective public access disclosure systems, whether through centralized registers or other open data sources. Support for public access to beneficial ownership information gained significant ground at the 2016 UK Anti-Corruption Summit, where participating governments made commitments to collect beneficial ownership data and make it accessible to the public. Other developments in

this direction include the following:

- The UK and Ukraine were the first to launch national public registers of beneficial ownership information in 2016, with Slovakia following in 2017. Beneficial ownership registers can now be accessed by the public in Armenia, Denmark, Estonia, Poland, Portugal, Slovenia, Ukraine, Slovakia, the UK, and Sweden, though some of these registers impose access requirements, such as fees.
- The EU's Fifth Anti-Money Laundering Directive (AMLD5), passed in 2017, requires all EU member states to collect and publish beneficial ownership information on companies registered in their jurisdiction by late 2020.¹²
- The Extractive Industries Transparency Initiative (EITI) launched a pilot sectoral approach to beneficial ownership transparency, to help confront the high risk of corruption in the extractive sectors. The EITI standard now requires all 52 member countries to publish beneficial ownership data on extractive companies operating in their jurisdictions.
- The UK Parliament voted in 2018 to require overseas territories, including the British Virgin Islands and the Cayman Islands, to adhere to the same transparency standards as the UK's Companies House. In 2019, three Crown Dependencies, including Guernsey, Jersey and the Isle of Man, committed to meeting this standard by 2023.¹³
- Among members of the Open Government Partnership (OGP), the number of governments making commitments to beneficial ownership reforms is growing year by year, with 18 active commitments in early 2020.
- In 2019, the UK with OGP and OpenOwnership launched an initiative inviting governments to endorse a new 'global norm of beneficial ownership transparency' and a set of ambitious Disclosure Principles for Beneficial Ownership Transparency,¹⁴ including a commitment to open data.¹⁵ This 'Beneficial Ownership Leadership Group' includes Norway, Armenia, Mexico, Argentina, and Latvia, among others.

This momentum has strong participation from the private sector as well. In 2017, the B20

recommended that all G20 countries establish beneficial ownership action plans in a policy paper that described the benefits of transparency for business: chiefly, the market stabilization benefits of knowing who you're doing business with.¹⁶ Another benefit for the private sector was emphasized in a recent European Public Sector Information Directive, which refers to beneficial ownership information as a high-value dataset that should be available free for access by the public, adding that open data can "promote the development of new services based on novel ways to

combine and make use of such information."¹⁷

A wide variety of stakeholders now recognizes that the world cannot rely on mega-leaks to expose the scale and impacts of the abuse of corporate structures and arrangements. Stakeholders also acknowledge that these practices need to be prevented as a matter of policy, including through public access to information, thereby leveraging the 'disinfecting effect of sunlight.'

Emerging signs of impact

While a framework for beneficial ownership transparency is urgently needed, it is not yet clear which tools or approaches may be the most effective. There is a growing understanding that an effective framework for beneficial ownership transparency—meaning that the disclosure mechanism is accurate, up-to-date, and accessible—has the potential to offer tremendous value to governments, markets, and society in the fight against corruption. As an emerging policy area, however, there is an ongoing debate over how to achieve those objectives in different country contexts. The first public beneficial ownership registers are only a few years old, and it is too soon to meaningfully measure their impacts on preventing the abuse of corporate entities for criminal purposes. Ongoing analysis of the effectiveness of different tools and approaches will be needed.

Despite implementation challenges, well-planned reforms are achieving encouraging results. Implementing effective beneficial ownership disclosure poses significant technical and technological challenges, and most countries are struggling to implement FATF standards on beneficial ownership disclosure, particularly as it relates to the effectiveness of disclosure mechanisms.¹⁸ Governments may also face resistance to reform, either because of vested interests against increased transparency, or because the potential gains are misunderstood, or because of the added burden on companies (and/or intermediaries) engaged in legitimate business activity. However, there are some promising experiences and signs of impact that should provide encouragement. These emerging signs of progress demonstrate that carefully calibrated policy

reforms to increase beneficial ownership transparency are an indispensable tool in the fight against corruption and financial crime:

1. Beneficial ownership transparency is a deterrent.

UK registered companies have been implicated in several recent money laundering scandals, including the so-called Azerbaijani and Russian Laundromats, involving up to £80 million in illicit proceeds.¹⁹ When transparency advocates noticed a sharp increase in registrations of a unique type of UK corporate entity—Scottish Limited Partnerships (SLPs)—they brought this to the attention of the authorities. UK's beneficial ownership disclosure requirements had not initially applied to SLPs. Registrations of SLPs rose sharply after the disclosure requirements were introduced, revealing a loophole in the law. Lawmakers then moved to include SLPs in the disclosure requirements, and registrations plummeted. Transparency showed its value as a deterrent both in changing behaviors when the law was introduced, and in forcing corrupt actors to seek new avenues for concealing illicit proceeds after the loophole had been addressed.

2. Beneficial ownership disclosure helps in the enforcement of illicit enrichment laws.

A number of countries have illicit enrichment laws.²⁰ When paired with effective disclosure systems (asset declarations and beneficial ownership disclosure), these laws can be a powerful tool to detect and seize unexplained wealth. In financial centers, this tool can be useful to law enforcement, journalists and NGOs in exposing foreign public officials

(politically exposed persons) seeking to conceal, invest and enjoy illicitly acquired wealth abroad. Beneficial ownership transparency has played an important role in the successful use of a recently introduced illicit enrichment tool in the UK. Unexplained Wealth Orders (UWOs)²¹ allow law enforcement to compel individuals suspected of having committed a crime, or Politically Exposed Persons (PEPs) with assets valued over £50,000 that are disproportionate to their income, to explain the source of the wealth, and to seize the assets if no reasonable explanation is provided. In the first use of a UWO, law enforcement used the UK's company register to establish that the wife of a jailed Azeri banker had been the beneficial owner of a UK company for one day in 2016. They subsequently used a UWO to investigate the assets and compel information from the owner. The company's assets, valued at £10.5 million, were subsequently seized by UK authorities.

3. Beneficial ownership transparency helps detect and prevent conflicts of interest. In 2019, Czech activists used the Slovakian beneficial ownership register to establish that the Prime Minister was the beneficial owner of a company receiving European Union subsidies. This is now under investigation by the European Commission for potential conflict of

interest. Beneficial Ownership Registers thus have a valuable role to play in the oversight of public procurement to prevent self-dealing by politically connected individuals.

4. Beneficial ownership transparency is adding value to accountability data ecosystems. Open data standards and advances in digital governance are making transparency reforms more impactful: open data is becoming more accessible, data systems are increasingly interoperable, and structured data enables the aggregation and linking of key datasets. In 2017, a coalition of transparency organizations launched the OpenOwnership Register, which collects and links beneficial ownership data from registers around the world, allowing users to “follow the money” across borders.²² They are also supporting the development of the Beneficial Ownership Data Standard (BODS), a structured and standardized framework for representing beneficial ownership information, enabling beneficial ownership data to be connected to other key datasets, such as procurement or tax databases, locally and around the world. The BODS also enables more rapid scaling-up by governments of existing sectoral registers to systems with national coverage and supports the addition of new asset classes.

Further reforms are in the pipeline

These early signs of impact are highly encouraging, and some reformers are expanding their beneficial ownership reform to include new stakeholders and asset classes. For instance, the UK will collect information on the beneficial owners of overseas companies that are purchasing real estate property in the UK in a special “overseas entities” register.²³ It will also include overseas companies that win government contracts, requiring them to provide their beneficial ownership information as a condition of the award of contract. Some UK lawmakers are also pushing for the beneficial ownership of trusts to be made public (it is now held in a register only accessible by law enforcement, as required by the EU's Fifth Anti-Money Laundering Directive).²⁴

These reforms, in the UK and elsewhere, are intended to have a number of impacts: (i) to level the playing field for businesses bidding for government contracts by making it more difficult to conceal conflicts of interest using anonymously-owned companies; (ii) to prevent real estate (and other luxury goods) from being used as a destination for illicit funds; and (iii) to further close loopholes in the anti-money laundering framework. In a move that directly tackles the link between money laundering and corruption, some governments are also beginning to include beneficial ownership disclosure requirements in the income and asset declarations of public officials, thereby addressing a significant blind spot in these tools (see Chapter 8).

BOX 9.2

The Beneficial Ownership Data Standard (BODS)

Legal and beneficial ownership information consists of data about individuals, companies, and other legal entities and arrangements, and data about the relationship between them. Effectively identifying these elements requires a range of data points. To make this information open and accessible requires that the data be published in an open format that is standard across jurisdictions.

A group of experts in anti-money laundering, company data, and data standardization have developed a tool that meets these requirements. This data tool is intended to help policy makers design beneficial ownership disclosure systems that fulfil the accountability goals of the disclosure requirement while balancing data protection and privacy considerations. The Beneficial Ownership Data Standard (BODS) is a framework for representing information about people, companies, and relationships as structured data, in a standardized format that can be replicated across countries and systems. The BODS expresses this information as statements that can be linked together into a “claim about beneficial ownership made by a particular source at a particular point in time.” The necessary elements to identify a beneficial ownership relationship are summarized in the table below.

The Beneficial Ownership Data Standard includes the following elements:

Data about individuals	Data about companies	Data about relationships
<ul style="list-style-type: none"> • Name • Official identifiers, like tax ID • Nationalities and tax residencies • Date and place of birth • Place of residency and contact address • Whether they are a politically exposed person 	<ul style="list-style-type: none"> • Name • Official identifiers, like official registration numbers • Jurisdiction in which the company is registered • Founding and dissolution date • Address 	<ul style="list-style-type: none"> • The type of relationship, e.g. shareholding, voting rights • The level of interest, e.g. percentage of shares held, and whether it's held directly or indirectly through another entity • Start and end date of the relationship

The complete data standard can be found at: <https://standard.openownership.org/en/v0-2-0/index.html>

Across all categories of data, it should be clear to users if a piece of information is missing, and why it is missing—for instance, that it was not reported, or that the company is exempt from reporting. Missing data is also important information, and may raise a red flag to reviewers or law enforcement, for instance, if a company of interest has failed to adequately report its beneficial ownership, or if a company of interest has not updated a beneficial ownership disclosure for a long time. Statements should also come with certain metadata—data about data—that enables users to understand when the statement was made and where it originated. That way, users can tell if the information is recent and from a reliable source.

Implementing beneficial ownership transparency: Common challenges but different paths to reform

Even if many policy makers are no longer asking whether to implement beneficial ownership transparency, many questions are being asked about how to do it well. Governments face common challenges when implementing beneficial ownership transparency reforms. These include:

1. **The need for effective means of verifying disclosed information.** The criminal and corrupt have every incentive to lie to preserve their anonymity and have developed increasingly sophisticated techniques to elude changes in disclosure obligations. The usefulness of any registry that holds beneficial ownership information—whether it is publicly accessible or only accessible to national authorities—will succeed or fail based on the veracity and timeliness of the information it holds. Registries that operate on the basis of self-reporting by companies are particularly unreliable in this respect. Further, corporate registries in many countries are archival in nature and not equipped to cross-check or verify beneficial ownership information submitted to them by companies; and certainly unable to do so in real time, as such information by its nature is much harder to corroborate than basic company information.
2. **Winning political support and maintaining the momentum of early efforts.** Beneficial ownership transparency is a reform that touches many stakeholders and may involve multiple government agencies and areas of law. While global standards and initiatives can provide a platform and opportunity for reformers to push for the creation of disclosure systems, incremental approaches may be needed to sustain momentum and scale up transparency tools over time.
3. **The complex legislation and technical requirements involved in setting up an effective beneficial ownership disclosure system.** Effective mechanisms for disclosing and verifying beneficial ownership information require adequate regulation of registries, a mechanism for reporting discrepancies, and enforceable sanctions for misreporting. Further, effective beneficial ownership transparency reforms rely on technologies that enable a range of users and stakeholders to engage with the resulting data. Reformers thus need to get stakeholders engaged in developing a “data driven” approach to the design of policies and information platforms.
4. **Balancing privacy and transparency.** Beneficial ownership data incorporates identifying information about individuals. Reformers will need to balance the objectives of disclosure with growing obligations to protect personal data.
5. **Balancing fighting corruption and ease of doing business.** Disclosure obligations and verification mechanisms impose administrative burdens on companies and, in the “gatekeeper” model, on professional intermediaries as well. Careful policy design requires striking a balance between the sometimes-competing objectives of fighting corruption and enhancing the ease of doing business. While the speed of company incorporation is rewarded as an indicator of the ease of “Doing Business” it is increasingly a risk factor in the abuse of anonymous company structures.²⁵
6. **Tailoring the approach to an understanding of the risks.** Corruption risks are different in every country and are continually evolving. An assessment of the risks should inform decisions about approaches to beneficial ownership transparency systems.²⁶ The FATF’s 40 Recommendations (2012) require all jurisdictions to identify and assess the money laundering/terrorist financing (ML/TF) risks for their country and adopt a risk-based approach to mitigating risks. This approach extends to ensuring beneficial ownership transparency and preventing the misuse of companies and trusts. The value of beneficial ownership transparency extends beyond addressing AML/CFT risks to include self-dealing by connected elites and the capture of public funds and contracts by connected firms. These risks need also to be considered in the design of beneficial ownership disclosure systems.

BOX 9.3

Key Data Questions for Policy Makers to Consider

Embedding Data Quality Considerations in Policy Design

The impact of beneficial ownership transparency reforms relies on the use of the ensuing data by law enforcement, procurement agencies, tax authorities, and civil society. The data must therefore be reliable, detailed, and useful (Box 9.2 explains the Beneficial Ownership Data Standard). Considerations about data reliability and the needs of data users must therefore be at the heart of policy design. This means that determinations about what data can and will be available, where, and in what format need to be made while drafting laws and regulations, as these are often hard to adapt later.

Some jurisdictions have approached this challenge by expressing principles in the legislation and leaving more specific requirements about data and data quality to the supporting regulations. Regulations are easier to change, meaning that governments can learn and adapt from early implementation experiences. These considerations are particularly important given that this is still a new policy area and norms and best practices relating to high-quality beneficial ownership data are only just emerging and have yet to be standardized. One of the goals of the UK-led Beneficial Ownership Leadership Group is to establish and standardize these norms through a set of Disclosure Principles based on OpenOwnership's "Five characteristics of effective beneficial ownership data" <https://www.openownership.org/uploads/oo-characteristics-effective-bo-data.pdf>. In designing effective policies, the following questions may need to be answered:

Beneficial Ownership Information: Data Questions that Underpin Policy Design

- What types of legal entity and natural persons will be covered by the policy?
- What format will the data be published in, and what will be the access levels for the public?
- What definition of beneficial ownership is being used? What means and percentage of control of legal entities will be covered by the disclosure requirement?
- Will there be a threshold of control that shareholders or directors must cross in order to be considered beneficial owners? How will this data be represented?
- Will intermediate companies (between the beneficial owner and the disclosing company) be disclosed?
- How will historical data, about past beneficial owners of companies, be stored and published?
- Are there reliable identifiers that can be used for legal entities and natural persons?
- What will be the requirements on companies to submit and update beneficial ownership information, and how will compliance be ensured?
- What sanctions will be put in place for non-compliance against the beneficial owner and/or legal entity for failing to declare, or declaring false information?
- What steps will be taken to verify the information that is submitted, and analyze submissions to identify suspicious entries for investigation?

As the list above illustrates, beneficial ownership transparency may also require changes to existing areas of law. OpenOwnership's Policy Review Tool is intended to help reformers identify relevant policy areas where changes may be necessary: <https://www.openownership.org/uploads/oo-beneficial-ownership-policy-reviewer.pdf>

7. Ensuring effective enforcement of sanctions for violations. A 2019 analysis of public data in the UK's Companies House registry shows that a lack of systematic verification of self-reported data, combined with a lack of enforcement of sanctions for companies that don't comply or that report incorrect information, leads to data quality issues that undermine the effectiveness of the registry.²⁷

8. Increased transparency can have unintended consequences. While increased transparency is a vital element of accountability measures, well-intentioned policy reforms can have unintended consequences. Transparency regulations should be designed with the expectation that criminals will react swiftly and exploit any regulatory loopholes

or accountability blind spots to evade detection of their illicit activities. Law enforcement officials who routinely rely on cross-border cooperation to obtain beneficial ownership information from foreign authorities are concerned that the introduction of public registries without proper regulation, systematic verification mechanisms, and sanctions enforcement would simply prompt criminals to develop more sophisticated concealment techniques, or move their money elsewhere, thereby increasing the scale of the challenge that beneficial ownership transparency seeks to address.

Approaches to addressing these common challenges are explored in the case studies and Box 9.3.

Nigeria: Incremental reforms by leveraging existing initiatives and institutions

Beneficial ownership transparency requires action by governments to help solve a problem that is global in scale. Existing international commitments and initiatives thus provide a helpful springboard for launching domestic reforms. The most prominent platforms for this policy agenda are the Open Government Partnership (OGP) and the Extractive Industries Transparency Initiative (EITI). These platforms encourage implementers to meet baseline anti-money laundering and tax transparency standards (the FATF Standard²⁸ and the Standard set out by the Global Forum on Transparency and Exchange of Information for Tax Purposes²⁹) and to surpass them. They also provide support to governments in meeting these goals. OGP has partnered with OpenOwnership to provide technical assistance to member countries in meeting beneficial ownership-related commitments under Open Government National Action Plans. EITI is supporting governments to meet disclosure commitments in the extractive sectors.

Implementation of Nigeria's commitment to transparency began at the sectoral level

A number of countries with large extractive

sectors are undertaking beneficial ownership transparency as part of their EITI commitments.³⁰

Introducing this requirement at the sectoral level first, by collecting data on companies that own extractive licenses, provides a useful testing ground for the policy, procedures and technology required. Nigeria is a good example of this approach, despite having embraced a far more ambitious scope at the outset. At the London Anti-Corruption Summit in 2016, Nigeria committed to implementing a fully public central beneficial ownership register, reiterating this commitment in both their EITI beneficial ownership roadmap and their 2018 OGP National Action Plan. This reform found support at the highest levels of government; in 2017, the Vice President noted that the government expects this reform to benefit society and business too, "not only from the better business climate that results when governments better serve their citizens but also from knowing who they are doing businesses with or competing against."³¹

Nigeria's EITI multi-stakeholder group (NEITI) set in motion a plan to deliver beneficial ownership transparency for the oil, gas, and mining sectors.

NEITI worked with regulators in Nigeria's Mining Cadastral Office and Department of Petroleum Resources to include a beneficial ownership disclosure requirement in sectoral regulation.³² They developed

template forms and procedures and have since been supporting companies to comply. While EITI Nigeria is still working to fulfill its EITI commitments,³³ this experience has helped pave the way for scaling up disclosure requirements more broadly and incrementally.

Nigeria's initial steps along the reform path

Beneficial ownership requirements have since been introduced as part of a large bill reforming the private sector (the 2018 Companies and Allied Matters Repeal and Re-enactment Act), which passed both houses of Parliament in 2019.

Embedding the beneficial ownership disclosure requirement within an existing institution—the Corporate Affairs Commission (CAC)—is a practical measure that is helped by the fact that this move coincides with the CAC's reform and modernization of its data systems and online reporting tools. The CAC will be tasked with collecting beneficial ownership information for all 3.1 million Nigerian companies, and to make that information publicly available.³⁴ A further important step in this incremental reform path will then be to link this disclosure data to the oversight of public procurement and to support the use of the data by the relevant authorities and interested civil society actors.

Stakeholder engagement is a vital piece of the reform process since beneficial ownership transparency reform touches on a wide range of policy areas. The CAC will be supported in engaging stakeholders as part of Nigeria's Open Government Action Plan.

Lessons learned

Nigeria has a long way to go before being able to show progress in beneficial ownership transparency.

However, the initiation of the reform makes Nigeria a relevant illustration of how reforms that are politically and technically challenging can be introduced by leveraging international commitments and policy platforms, and by building on existing institutional frameworks. The need for new legislation, institutions and resources can be significant stumbling blocks for many countries. Scaling up these reforms is greatly facilitated when the data is collected and published from the outset in a structured, machine readable format, allowing each new data system to leverage existing data, thereby also reducing the compliance burden on users, and ensuring better data quality. Datasets can then be compared to uncover inconsistencies or red flags and to identify reporting hurdles due to existing policy constraints or the experiences of users.

Slovakia: Verifying the true owners of companies doing business with the State

Slovakia was among the first countries to implement beneficial ownership transparency in public procurement.

Civil society groups called for a beneficial ownership register in response to long-suspected corruption and conflicts of interest in the award of public contracts, and following public outrage after the restructuring of a road construction company threatened to leave thousands of workers unpaid.³⁵ The so-called Anti-Letterbox Act was passed in 2017.³⁶ It requires that companies wishing to either compete for government contracts, receive funds from the State or the EU, or obtain an extractive sector license must first register as a Partner of the Public Sector in a registry

created for that purpose.³⁷ The Register of Public Sector Partners is administered by a District Court on behalf of the Ministry of Justice. Slovakia's approach differs from disclosure systems in other countries in many ways. It is particularly instructive because of the steps Slovakia has taken to ensure the veracity of reported information.

International standards on beneficial ownership transparency, including FATF and the EU Anti-Money Laundering Directive, require that beneficial ownership data be accurate and verified. This poses an obvious challenge: where anonymity is being used

to conceal illicit practices, the incentives to lie are very strong. Verifying beneficial ownership information is a technical challenge (how can one verify a disclosure for which no other official record exists?) and administratively difficult (who verifies, when, how often, and against what thresholds?).

Slovakia makes “authorized persons” responsible for the verification of beneficial owners

The approach taken in many countries is to require that companies and other legal entities self-report their beneficial owners, leaving the task of verifying the veracity of the disclosure to the authority administering the register, or in some cases to a third party.³⁸ In Slovakia, companies are required to register as a Partner of the Public Sector through “authorized persons,” such as attorneys, notaries, banks, or tax advisors, who must have a registered place of business in the Slovak Republic, and no connection to the firm. The authorized person submits an application to the registry on behalf of the firm and is required to attach a verification form demonstrating that they have authenticated the identity of the beneficial owners (this includes a description of the ownership and management structure of the firm). The registry can object to incomplete applications, with an explanation of the shortcomings, and request additional information. “Authorized persons” are responsible for submitting changes to a registration; they must also re-authenticate the beneficial owner(s) annually while the contract or financial relationship with the State is in effect.

While the requirement that firms engage an “authorized person” to register them as a Partner of the Public Sector carries a cost for firms, this approach to authentication helps address the challenging (and costly) task of verification for the public sector. A noteworthy aspect of the Slovakian approach is in making the “authorized person” jointly liable for the veracity of the disclosure, in that they act as the guarantor of fines levied against companies that have misreported, unless they can prove they acted with “professional diligence.”³⁹ The system thus leverages the potential reputational and financial risk for legal professionals as a way of shoring up the objectives of the system: to establish the true owners of companies doing business with the State.

The public can query the veracity of the data

Free public access is another cornerstone of Slovakia’s approach to verifying data. Anyone can submit a claim establishing reasonable doubt as to the veracity of a disclosure to the registration authority in the District Court. If the Court finds the query reasonable, it holds a proceeding with the goal of verifying the data. Under Slovakian law, the Partner of the Public Sector is required to submit evidence that the beneficial ownership information is correct. If the evidence is unsatisfactory, the registering authority can fine the company, remove it from the register, and cancel financial arrangements or contracts with the government.

Lessons learned

Slovakia has reversed the burden of proof for verifying beneficial ownership, shifting the cost of verification from the government to companies. Over 70 investigations have been conducted since the register was launched, one of which produced the first fine ever levied against a company for misreporting beneficial ownership.⁴⁰ Five companies have chosen to end contracts with the government rather than disclose their beneficial ownership. The Slovakian approach is intuitive in many ways: it provides incentives for authorized persons to authenticate or correct disclosures, and provides greater confidence to the users of the data and to Slovakian civil society that the system is credible and effective in deterring the abuses that gave rise to the widespread demand for reform.

United Kingdom: Balancing transparency and privacy

Critics of beneficial ownership registers have justifiable concerns about the implications for data protection and privacy. Beneficial ownership information includes identifying data about individuals, most of whom may be using companies responsibly and would prefer not to have their corporate interests exposed. Champions of public data respond that the right to privacy is not absolute and has been limited in many cases, particularly when public safety or national security is at stake.⁴¹ International law recognizes that limitations on expectations of privacy can be necessary to achieve legitimate policy aims. Stemming corruption and illicit financial flows is clearly a legitimate policy goal. Disclosure systems need to find a balance between the accountability goals of transparency tools and rapidly evolving concerns related to data privacy in the digital age. Transparency, when implemented responsibly, is fully compatible with data protection laws.

This is true even in contexts of strict data protection laws, such as the EU’s General Data Protection Regulation (GDPR). The GDPR gives data subjects rights over data about them, and requires entities using personal data—data processors—to get their consent to do so. However, there are certain exemptions to this requirement, one of which is when there is a regulatory requirement to collect and process data. This would be the case in any jurisdiction that requires beneficial ownership disclosure. In other words, implementers will not be legally blocked from implementing beneficial ownership transparency for privacy reasons; instead, they should consider privacy as a *principle* and *responsibility* they must take into account in their implementation. A local privacy impact assessment can help to identify any potential harm and suggest mitigating actions that the government can take.

The UK implements beneficial ownership reforms while paying due regard to privacy concerns

Beneficial ownership reforms have been championed in the United Kingdom at the highest levels of government. This resulted in an amendment to the UK’s Companies Act to require disclosure from

all UK registered companies (the Small Business, Enterprise and Employment Act of 2015). In the UK, beneficial owners are called “Persons of Significant Control” (PSCs), and their data is held and published by Companies House in a fully public open data format. Currently, Companies House has data on over 4 million companies, associated with millions more beneficial owners.

The UK has demonstrated that it is possible to approach the matter of privacy with nuance, offering transparency while mitigating its risks. It has done this in two ways:

- Publishing enough personally identifying information to distinguish between beneficial owners and officers, while withholding sensitive information (birthdate and residential address) for access by law enforcement for official purposes only. Public access is only given to month and year of birth and a registered address for correspondence.
- Allowing beneficial owners with privacy concerns to apply to have their information removed from the register. This process is rule-governed and permits exemptions under specific conditions unique to the UK context; for instance, some companies are exempted because they fear their businesses will be the target of protests.⁴²

Perhaps surprisingly, the UK’s exemptions process has not been widely popular. Out of millions of registered beneficial owners in the UK, only around 300 have applied to have their information removed, and only 30 of these applications have been granted. It is important to note also that the UK is subject to the GDPR, one of the world’s most stringent data protection regulations. While the UK provides a useful example, getting the balance right means that every jurisdiction should conduct a privacy impact assessment for their context and design an exemptions process to fit.

Notes

1. Dalby & Wilson-Chapman (2019). Panama Papers helps recover more than \$1.2 billion around the world. <https://www.icij.org/investigations/panama-papers/panama-papers-helps-recover-more-than-1-2-billion-around-the-world/>.
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Global Financial Integrity (GFI) estimates that developing countries lose almost USD one trillion per year through illicit financial flows of all kinds—a number that is perhaps most usefully seen as suggesting the scale of the phenomenon. The Economic Commission for Africa of the United Nations (ECA) has used trade statistics to estimate that between 2001 and 2010 African countries lost up to US \$407 billion from trade mispricing alone.
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8. OECD (2014). G20 High-Level Principles on Beneficial Ownership Transparency. http://www.g20.utoronto.ca/2014/g20_high_level_principles_beneficial_ownership_transparency.pdf.
In 2014, the OECD issued a Common Reporting Standard, which requires data points on the beneficiaries of financial accounts. See <https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>.
9. Parker (2019). House Passes Bill to Expose Owners of Shell Companies. *The Wall Street Journal*. <https://www.wsj.com/articles/house-passes-bill-to-expose-owners-of-shell-companies-11571785516>.
10. FATF (2019). Best Practices on Beneficial Ownership for Legal Persons. <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>.
11. Slovakia, Jersey, Spain, and Uruguay have frameworks that rely on licensed professional intermediaries that can be held liable for reporting incorrect information to the registry.
12. The directive also requires states to create a register of beneficial ownership of trusts that is directly accessible to authorities and “obliged entities” subject to AML rules (financial institutions, lawyers, tax advisors) and accessible upon request to others who can demonstrate a “legitimate interest” tied to the directive’s purpose of combating money laundering.
13. BBC (2019). Secret company registers in Crown Dependencies to be made public. <https://www.bbc.com/news/world-europe-guernsey-48677083>.
14. Declaration of national commitment to meet the Beneficial Ownership Transparency: Disclosure Principles (n.d.). <https://www.openownership.org/uploads/oo-disclosure-principles.pdf>.
15. Open data means that it is freely downloadable, searchable, and reusable by the public, without a fee, proprietary software, or the need for registration. Open data is also machine-readable, which means it can be read and processed by computers.
16. B20 (2017). Promoting Integrity by Creating Opportunities for Responsible Businesses. https://www.b20germany.org/fileadmin/user_upload/documents/B20/b20-ctg-rbac-policy-paper.pdf
17. Official Journal of the EU (2019). Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on Open Data and the Re-use of Public Sector Information. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L1024&from=EN>.
18. The FATF standard for evaluating the effectiveness of Beneficial Ownership Transparency is Immediate Outcome 5 (IO. 5): “Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.” According to an analysis of FATF mutual evaluations conducted by the World Bank, ratings of effectiveness related to beneficial ownership transparency were among the poorest overall, with 90% of assessed countries rated as having either low or moderate effectiveness and not a single country achieving a high level of effectiveness. This analysis includes 97 Mutual Evaluation Reports (MERs) from FATF and FATF-style Regional Bodies (FSRBs).
19. Transparency International UK (2017). Hiding in Plain Sight: How UK Companies are Used to Launder Corrupt Wealth. <https://www.transparency.org.uk/publications/hiding-in-plain-sight/>.
20. The UN Convention Against Corruption defines illicit enrichment as a “significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”.
21. For more background on Unexplained Wealth Orders see: <https://star.worldbank.org/content/star-newsletter-january-2019#spotlight>

22. Open Ownership (2018). New on the OpenOwnership Register - data from the Danish Business Register has been added. <https://www.openownership.org/news/new-on-the-openownership-register-data-from-the-danish-business-register-has-been-added/>.
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24. Joint Committee on the Draft Registration of Overseas Entities Bill (2019). Draft Registration of Overseas Entities Bill: Report of Session 2017– 19. <https://publications.parliament.uk/pa/jt201719/jtselect/jtvsent/358/358.pdf>.
- Beneficial ownership disclosure of trusts is more challenging to regulate and enforce in part because the control structure of trusts is more complex than for companies, and because of the different legal purpose and nature of trusts in different jurisdictions. FATF, for instance, has different disclosure requirements for companies (and other legal persons) and trusts. There are also initiatives to support the creation of an international standard for the disclosure of ownership of all asset classes that are susceptible to being used to move and conceal illicit wealth or evade taxes (real estate, luxury goods, etc). See for example: <https://www.taxjustice.net>.
25. The World Bank's annual Doing Business report compares countries' business regulations with a focus on promoting entrepreneurship. <https://www.doingbusiness.org/en/data/exploretopics/starting-a-business>. On the risks associated with high speed company incorporation, see: Medium (2018). Open Corporates, Fireflies and algorithms — the coming explosion of companies. <https://medium.com/@opencorporates/fireflies-and-algorithms-the-coming-explosion-of-companies-9d53cdb8738f>.
26. The World Bank assists countries in conducting National Risk Assessments (NRAs) to help them comply with FATF Recommendations. Over 100 countries have used the WB NRA approach since 2015. The World Bank is updating its NRA tool with a module on legal persons to respond to new areas of risk, to help countries identify critical gaps in their beneficial ownership frameworks and determine where enhanced safeguards are required to prevent their misuse for criminal purposes.
27. Global Witness found that despite the legal requirement that companies disclose the identities of people with significant control (PSC), over 300,000 companies simply reported that they have no PSC; 9,000 companies named a foreign company as their PSC; and nearly 7,000 companies listed a PSC who controls over 100 companies, suggesting a nominee owner. While this may be in formal compliance with the requirement that only those who own 25% or more of a company need to report, it is clearly in violation of the substantive definition of beneficial ownership as the natural person(s) at the end of the ownership chain, who ultimately owns or controls the company. See Global Witness (2019). Getting the UK's House in Order. <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/>.
28. See [http://www.fatf-gafi.org/publications/fatf_recommendations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/fatf_recommendations/?hf=10&b=0&s=desc(fatf_releasedate)).
29. See <https://www.oecd.org/tax/transparency/>.
30. EITI requirements have prompted reform in 20 countries, which are now working on establishing public registers. See <https://eiti.org/beneficial-ownership>.
31. EITI (2017). Nigerian Vice President Yemi Osinbajo's address in Jakarta. <https://eiti.org/blog/nigerian-vice-president-yemi-osinbajos-address-in-jakarta>.
32. NEITI (2018). Annual Progress Report. <https://eiti.org/sites/default/files/documents/neiti-apr-2018-280619.pdf>.
33. By 2020, all EITI countries have to ensure that companies applying for or holding a participating interest in an oil, gas or mining license or contract in their country disclose their beneficial owners. The EITI Standard also requires public officials—also known as Politically Exposed Persons—to be transparent about their ownership in oil, gas and mining companies. EITI standards also require that this information be publicly available and published in EITI reports and/or public registries.
34. Andah (2019). CAC Reveals Number Of Registered Companies In Nigeria. <https://www.concise.ng/2019/03/27/cac-reveals-number-of-registered-companies-in-nigeria/>.
35. The Slovak Spectator (2015). Small businesses cut out in Váhostav case. <https://spectator.sme.sk/c/20056770/small-businesses-cut-out-in-vahostav-case.html>.
36. Wessing (2017). World-Wide Rarity: Anti-Letterbox Companies Act in Slovakia. <https://ceelegalmatters.com/slovakia/6605-world-wide-rarity-anti-letterbox-companies-act-in-slovakia>.
37. Firms receiving a one-off contract under EUR 100,000 in value are exempted.
38. In Jersey, for example, this task is assigned to corporate service providers, which are licensed intermediaries with specific expertise in this area. The argument has been made that this is the most effective approach given that public sector entities (and the public) lack the expertise to verify beneficial ownership. See Sharman (2016). Solving the Beneficial Ownership Conundrum: Central Registries and Licenced Intermediaries. Griffith University, Australia, for Jersey Finance. <https://www.jerseyfinance.je/media/PDF-Marketing/Jason%20Sharman%20Report%20-%20Solving%20the%20Beneficial%20Ownership%20Conundrum.pdf>. Governments are now exploring hybrid (public/private) approaches to verification. The UK has undertaken a comprehensive review of the available options to increase the reliability and transparency of its register of corporate entities, see: Department of Business, Energy & Industrial Strategy (2019). Corporate Transparency and Register Reform: Consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819994/Corporate_transparency_and_register_reform.pdf.
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Structures to Hide Stolen Assets and What to Do About It. <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>.

CHAPTER 10

Exchange and Collaboration with Tax Administrations



Corruption is intrinsically linked to tax crimes, as corrupt persons do not report their income from corrupt activities for tax purposes. The Financial Action Task Force (FATF) includes tax crimes in the set of designated predicate offenses for money laundering purposes, explicitly recognizing the linkages between tax crimes and money laundering. Moreover, the extensive level of corruption related to tax has serious implications for government revenues and thus economic development, as indicated in Box 10.1.

Inter-agency collaboration strengthens the efforts of tax administrations to combat corruption. In its 2010¹ recommendations, the OECD advocated greater cooperation and better information sharing between different government agencies active in the fight against financial crimes both domestically and internationally. Agencies, including financial intelligence units (FIUs), anti-corruption units, police, customs authorities, and the public prosecutor's office are also involved in countering corruption. While most of the administration for prosecuting tax crimes related to corruption can be undertaken by tax authorities, they often require support in the form of information sourcing or expertise from other agencies who are also combating corruption. Entering into inter-agency collaboration may substantially enhance the efforts of a tax administration and other agencies combating corruption. Guidance on how this can be achieved is given in Case Study 20, along with references from Africa and other regions of the world.

Investigating and prosecuting alleged corruption requires robust evidence, which is often scattered across agencies that are accustomed to working independently. Data sharing is an initial gateway for collaboration. In general, inter-agency cooperation between tax administration, financial intelligence units

(FIUs), financial institutions, anti-corruption authorities, and other enforcement agencies can strengthen efforts to uncover cases of corruption through the sharing of information. The variety of expertise, skills, knowledge and experience offered by cooperation, not only provides joint teams with significant resources, but it also ensures that all offenses are properly identified, investigated and prosecuted. As the OECD has noted, many countries are looking at ways to enhance inter-agency cooperation so that they are working toward a common goal.²

There are multiple benefits that can be gained from a joint effort to prosecute tax evasion and other financial crimes including:

- Ensuring evidentiary standards are met for all charges through cooperation with the prosecuting authority;
- Access to mutual legal assistance from foreign law enforcement agencies;
- Access to specialized tribunals, including tax tribunals and anti-corruption tribunals, giving rise to a greater likelihood of success where the judicial process may take more time; and
- Prevention of any duplication of effort and any likelihood of compromising the actions of one agency.

Case Study 21 explores the basic requirements for effective prosecutions of financial crimes, the role of the tax administrations, and the limitations that must be overcome for them to happen. Experiences are highlighted from South Africa and Brazil.

BOX 10.1

The Extent of Corruption

"...in countries perceived to be less corrupt; the least corrupt governments collect 4 percent of GDP more in taxes than those at the same level of economic development with the highest levels of corruption....and if all countries were to reduce corruption in a similar way, they could gain \$1 trillion in lost tax revenues, or 1.25 percent of global GDP" - IMF

CASE STUDY 20

EXCHANGE AND COLLABORATION WITH TAX ADMINISTRATIONS

Inter-agency Collaboration to Detect Corruption

Introduction

The ability of a tax administration to share relevant information is often a key indicator of its effectiveness to proactively identify risks pertinent to its mandate. This requires mechanisms to ensure that law enforcement and other tax authorities have full access to accurate and up-to-date information. If adequately planned, inter-agency collaboration is one of the ways to combat corruption. From the perspective of developing countries, the limited capacity of tax administrations could be in part overcome in cooperation with other law enforcement agencies.

Challenges encountered by tax administrations, customs, FIUs and other agencies

Challenges to effective cooperation between tax administration and other law enforcement agencies responsible for combating corruption and other financial crimes include the following:

- **Administrative challenges:** traditionally, the obstacles to coordination between government agencies stem from fundamental cultural differences and motivations of different agencies.

These include issues such as:

- » lack of interoperability among different IT systems, lack of secure email systems resulting in inability to send high-security material and widely differing software capabilities resulting in information transfer capacity limitations;
 - » each agency seeking to preserve its independence and autonomy;
 - » difficulty in synchronizing and coordinating organizational procedures and working approach;
 - » different organizational objectives among collaborating agencies;
 - » constituents bringing different expectations and pressures to bear on each agency;
 - » questions of who claims success for successful prosecutions; and
 - » the time period for pursuing cases.
- **Legal challenges:** these include specific restrictions and prohibitions, which may prevent an agency from obtaining access to relevant information from counterparty agencies.
 - **Operational barriers:** these include time-consuming or complicated procedures for obtaining information from another agency, a lack of awareness of the availability of information or other mechanisms for cooperation.
 - **Political challenges:** these include a lack of support for agencies to adopt the changes required to remove or reduce legal and operational barriers.

Models for sharing information

A study by OECD on inter-agency cooperation identifies the following four types of cooperation among different agencies:³

1. Direct access to records and databases

Tax authorities or other law enforcement agencies involved in investigating and prosecuting financial crimes may grant direct access to their records and information stored on their databases to designated individuals within other agencies or tax authorities. This access may be for a wide range of purposes or restricted to specific cases or circumstances. Direct access has the advantage that an agency requiring information can search for the information directly and, in many cases, can obtain it in real time. For example, in Iceland, tax crime investigators within the Directorate of Tax Investigations have direct access to databases held by the tax administration. However, allowing direct access carries the risk of access to data for purposes other than those for which it was initially contemplated. Countries may, therefore, seek to introduce safeguards to protect the confidentiality of sensitive information, by taking measures such as restricting access to databases to a few nominated individuals and maintaining access logs.

2. Mandatory sharing of information

An agency may be required to provide specific categories of information spontaneously, without requiring a request to be made. It has the advantage that officials within the agency holding the information identify what is to be shared, and they are likely to have a greater understanding of the information in their records. However, for this to be effective, an agency must have clear rules and procedures in place to identify the information that must be shared. Spontaneous sharing may be straightforward where an obligation exists to provide all information of a particular class, but it is more complicated where the exercise of judgement must be made to identify information that would be relevant to an investigation. Further, by itself, this method does not allow officials investigating to specify the information required. However, it may facilitate the detection of previously unknown criminal activity.

3. Spontaneous sharing of information

An agency may have the ability to provide specific categories of information spontaneously but can exercise its discretion in deciding whether to do so. Where this operates well, it can be at least as effective as the previous method. Information is shared spontaneously, but officials in the agency holding the data can exercise their judgement as to what to share. This model is particularly useful when it is backed by close cooperative working arrangements and a good understanding by officials in each agency of the information requirements of the other agencies. Models for information sharing that allow discretion to be exercised require clear rules for how this is to be done. For example, decisions as to whether or not relevant information is to be shared may be limited to individuals in certain positions or levels of management. At the same time, guidelines may set out the factors that can be taken into account in making a decision. The effectiveness of this type of legal gateway is also based on the ability of officials to identify relevant information and their willingness to exercise discretion to provide information. However, where there is no previous experience of inter-agency cooperation, the benefits to both agencies of sharing information must be made clear, or there may be a danger that officials exercise their discretion and choose not to share valuable intelligence.

4. Sharing information on request

An agency may provide information only when specifically requested. This may be seen as the simplest of the four methods for sharing information, as there is less need for rules or mechanisms to identify information for sharing or provide access to records. It also has the advantage of allowing officials to specify precisely the information they require. In the context of an ongoing transaction where investigators have identified specific necessary information, this can be a valuable mechanism. However, in many cases, an agency may hold information that an investigator is not aware of. This may mean that the investigator is unable to request information or is only able to do so at a later stage when the value of the information may be reduced.

Successful practices

Several countries have introduced different models or operational mechanisms to allow agencies to work together in lieu of “legal gateways.”

All countries assessed by the OECD⁴ have legal gateways in place to allow tax administrations to share information collected for the purpose of a civil tax audit or assessment with agencies conducting tax crime investigations and with the customs administration.⁵ However, in many countries, FIUs, the police or the public prosecutor are not obliged to report information to the tax administration to evaluate taxes, and vice versa. **Belgium** and **Korea** explicitly prohibit the tax administration from sharing information related to non-tax crimes.⁶ Fourteen countries assessed by the OECD prohibit the FIUs from obtaining tax information from the tax authority.⁷ Thus, despite the legal gateways to enable information sharing amongst agencies, some countries have introduced different models or operational mechanisms to facilitate collaboration between agencies.

A whole-of-government approach can be particularly effective.

Different government agencies collect and hold information on individuals, corporations and transactions, which can be directly related to the activities of other agencies in combating financial crime and tax evasion, including money generated from corruption. To be effective, a tax administration should establish cooperation with these law enforcement agencies, building a “whole of government approach” to improve the prevention and detection of financial offenses, leading to faster and more successful prosecutions, and increasing the probability of the recovery of the proceeds of corruption.⁸ For example, **Canada** has established a whole-of-government working group, which includes the Canada Revenue Agency, the Public Prosecution Service of Canada, the Department of Justice, the Canada Border Services Agency, FINTRAC, the Royal Canadian Mounted Police and Public Safety Canada.⁹ In the working group, Canada’s response to financial crime at large is discussed and opportunities to increase effectiveness are raised and studied, often resulting in recommendations for policy or legislative changes.

Information sharing has to be balanced with confidentiality and the right to privacy. Right to privacy, coupled with confidentiality requirements can also have an impact on the information sharing between

the tax administration and other law enforcement agencies. Different agencies share information under all types of cooperation. It is, however, critical to protect the confidentiality associated with the information in addition to the integrity of work carried out by other agencies. **Sweden** has enacted a new Data Disclosure Act, which provides for greater cooperation in tackling organized crime.¹⁰ The law aims to facilitate the exchange of information between authorities that cooperate to prevent or detect certain forms of crime. The information sharing and data disclosure is limited to cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. Also, the information shared between agencies through legal gateways is at all times required to comply with the provisions of the Secrecy Act.

Each country must design its own tailor-made model for inter-agency cooperation.

The international community has recognized the value of inter-agency cooperation. Many developed countries have initiated special programs based on inter-agency cooperation as an effective and efficient way of preventing, detecting, tracking and prosecuting corruption. A country should take into account its specific needs, the legal and organizational structure it has adopted and the particular risks that it faces in designing an appropriate model for inter-agency cooperation.

Finland has adopted a centralized approach for combating the grey economy.¹¹

It has established the Grey Economy Information Unit (GEIU) to promote the fight against the shadow economy by producing and disseminating reports about grey economy activities and how they may be controlled. The GEIU is a division of the Finland tax administration specifically established to work closely with other government agencies. It collects information from different government agencies regardless of existing confidentiality provisions. In preparing reports about grey economic activities, the GEIU has the right to receive, on request, necessary information held by other authorities, even where that information would not normally be available to the tax administration due to secrecy provisions.

The Netherlands has opted for a cooperative approach for tackling money laundering.¹²

It has established the Financial Expertise Centre (FEC), which is a joint project between the National Tax and Customs Administration (NTCA), the Fiscal Intelligence and Investigation Service (which is structurally part of

the NTCA), the National Police, the General Intelligence and Security Service, the Public Prosecution Service, the Netherlands Financial Markets Authority, De Nederlandsche Bank, and the Ministry of Finance and Ministry of Security and Justice (who are involved in regulating and monitoring activity in the financial sector). The mission of the FEC is to monitor and strengthen the integrity of the financial sector, and tackle issues of financial integrity through inter-agency cooperation. This entails sharing information.

Giving tax administrations access to suspicious transaction reports (STRs) would be beneficial in the fight against corruption.

In many countries, there is no obligation on the police, public prosecutor or FIU to report information to the tax administration. In addition, many countries do not have legislation to allow the tax administration access to STRs. Allowing such access will have several benefits, including an improvement in the detection of money laundering offenses and proceeds from corruption, greater success in tax crime investigations and prosecutions, and an increase in the actual quantity of tax assessed and recovery of the proceeds of crime. Further, access by FIU to other information held by the tax administration, such as declared income, tax payments, real estate as well as other property, cross-border financial transactions, and the results of tax audits, will help to detect corruption, though this has not yet been widely implemented.

In Italy, the FIU has direct access to the Account and Deposit Register (Anagrafe dei Conti) maintained by the tax administration.¹³

The Account and Deposit Register includes information on accounts and financial transactions carried out by financial intermediaries, including banks, trust companies, brokerage companies and post offices. Legislation has also been passed, which allows the FIU direct access to the Tax Register (*Anagrafe Tributaria*). Further, tax officials must report to the FIU any suspicious transactions they encounter in the course of their work.

Other examples of information sharing include:

- **Estonia:**¹⁴ The police and the Tax and Customs Board share information through a common intelligence database.
- **Iceland:**¹⁵ Directorate of tax investigations conducting tax crime investigations has direct access to information contained in police databases.

- **Serbia:**¹⁶ All state authorities and organizations, bodies of territorial autonomy and local government are required to report spontaneously to the tax administration all facts and information detected in the performance of their duties that are relevant to the assessment of tax liability.

Inter-agency cooperation is increasing across the globe

The concept of inter-agency cooperation is widespread among EU countries.

One such initiative is the establishment of the **Croatian State Prosecutor's Office for the Suppression of Organized Crime and Corruption**. This is a Croatian Agency, supervised by the state attorney's office but which also cooperates with the tax administration.¹⁷ Similarly, the **Czech Republic** has established Tax Cobra, a cooperation of police, customs, and finance administration.¹⁸ Using smart technology to triangulate data shared by agencies would make dissemination even more effective.

In Southeast Asia, Malaysia has established the National Revenue Recovery Enforcement Team (NRRET) to improve cooperation between law enforcement agencies.¹⁹

The NRRET, which is headed by the Attorney General, is an inter-agency initiative aimed at fighting tax crimes and other financial crimes. Its members include the tax administration, Company Commission Malaysia, Central Bank of Malaysia, Malaysian Anti-Corruption Commission and Royal Customs Department. Its role is to improve cooperation between law enforcement agencies to ensure a holistic approach to development, good governance, and combating corruption, as well as to assist agencies in fighting financial crimes. The NRRET also monitors the sharing of information and planning of joint operations among law enforcement agencies in high profile cases.

In South Asia, India has set up the Economic Intelligence Council (EIC), which acts as the main body to ensure coordination among various agencies.²⁰

The EIC meets twice a year and holds extraordinary meetings as and when considered necessary. The EIC is mandated to discuss multiple aspects of intelligence relating to economic security and to develop a strategy for the effective collection and collation of intelligence and its dissemination to various law enforcement agencies. It reviews crucial

cases involving inter-agency coordination and approves mechanisms for improving such coordination. As far as sharing of information among multiple agencies is concerned, the EIC generally performs this through the meetings of its Regional Economic Intelligence Councils (REICs).

Recommendations

- **Establish a bilateral agreement or memorandum of understanding (MOU) to share information between the tax administration and agencies involved in detecting and preventing corruption.** This ensures a clear legal framework for any information sharing with the agencies concerned. MOUs typically contain details of the types of information that will be shared, the circumstances in which sharing will take place, and any restrictions on sharing information (e.g., the information may only be used for specified purposes). It may also include other terms agreed by the agencies, such as the format of any request for information, details of competent officials authorized to deal with requests, agreed notice periods and time limits, and a requirement for the agency receiving information to provide feedback on the results of investigations in which the information was used. For example, in **New Zealand**, based on an information sharing agreement between the Inland Revenue and the New Zealand Police, the tax administration can share information with the police for the prevention, detection or investigation of a serious crime, or for use as evidence of a serious crime. The Inland Revenue of New Zealand can also share taxpayer information with the police or other agencies in cases related to the administration of taxation, investigation of tax crimes, and the facilitation of asset recovery.
 - **Establish a national task force.** The task force should be responsible for the timely collection and dissemination of relevant information to concerned agencies and for developing a framework that enables it to examine specific cases. This will help to identify a number of areas for further investigation across the full range of tax and economic crimes.
 - **Ensure connectivity between agency databases.** Lack of interconnectivity of databases of different government agencies is the biggest issue faced
- while sharing information with different agencies tackling corruption. Blockchain technology may be an appropriate platform for developing a common database system accessible to the agencies concerned. The Blockchain system may also facilitate the consolidation of information received by more easily identifying transactions undertaken by the same entity but reported by different companies/individuals.²¹ The **United States** Air Force is currently planning to test a Blockchain based database that will allow it to share documents internally as well as throughout the various branches of the Department of Defense and allied governments.²²
 - **Review limitations in tax treaties on the sharing of information with non-tax departments.** This can help in removing barriers to information sharing.
 - **Conduct capacity building exercises to develop a culture of cooperation with different agencies working together.** For example, setting up joint task forces or seconding personnel to different agencies to work together is an effective way of enabling skills to be transferred while allowing personnel to build contacts with their counterparts in another agency.
 - **Establish a system that balances the sharing of information with confidentiality.** A suitable system is one where the information can be shared only in cases where the need for an effective exchange of information is particularly strong and grounds for the protection of privacy do not prevail over the benefits of disclosing information. This helps to overcome the intense concerns about privacy and potential lack of trust among agencies.

Example 1: Kenya's success with inter-agency cooperation to obtain and use data

Despite the myriad of laws in place to combat corruption, Kenya ranked 145th (out of 176 countries) on Transparency International's Corruption Perceptions Index in 2016. To deal with the corruption, Uhuru Kenyatta, the President of Kenya in 2016, directed the

Office of the Attorney General and the Department of Justice to undertake a thorough review of the legal, policy, and institutional framework for fighting corruption in Kenya. A taskforce²³ was formed to oversee the whole process, drawing its membership from all ministries, departments, and agencies charged with fighting corruption in Kenya. One notable issue identified by the taskforce was the lack of proper coordination among agencies, resulting in duplication of effort. Combating corruption was an uphill task due to the lack of a coordinated framework for reporting corruption, information gathering, intelligence sharing, and cooperation in investigation, among other areas.

The birth of the multi-agency team

To tackle corruption and other economic crimes, Kenya established a multi-agency team (MAT)²⁴ to ensure cooperation and synergies among a number of agencies involved in combating corruption. The MAT was composed of the Kenya Revenue Authority; Ethics and Anti-corruption Commission (EACC); Office of the Director of Public Prosecutions; Directorate of Criminal Investigations; National Intelligence Service; Financial Reporting Centre; Asset Recovery Agency; and Office of the President.

Terms of reference of the MAT

The MAT's terms of reference were:²⁵

- To enhance cooperation, coordination and collaboration among the agencies;
- To engage other relevant agencies in order to enhance the effectiveness of the graft war;
- To identify resource needs for each agency and lobby for the same; and
- To develop effective communication strategies for awareness creation on the gains and achievements made in the fight against corruption.

Successes of the MAT

MAT has been successful in enhancing cooperation and collaboration amongst the agencies and in providing real-time information gathering and intelligence sharing. As of October 2016, Kenya had 406 corruption and economic crime cases pending in court. Out of these, 98 involved high-profile personalities such as cabinet secretaries, members of parliament, and chief executive officers of parastatals and state agencies. Kenya secured several convictions with various penalties, including imprisonment, mandatory fines, and restitution of

property. One of the celebrated convictions involved a former member of parliament who was found guilty of 9 corruption counts relating to the loss of KSh4.5 million; the member of parliament, her husband, and 4 others were convicted and sentenced to payment of KSh24.95 million (about USD2.495 million) and 18 years imprisonment.²⁶ In respect to asset recovery, Kenya has so far traced and recovered assets worth KSh9.8 billion between 2005 and 2016. In March 2017, the President reported that approximately KSh3 billion had been recovered or preserved. As of November 16, 2016, there were 174 civil cases pending in court for recovery of illegally acquired assets worth KSh3 billion.²⁷ Further, in one interview, the EACC CEO Twalib Mbarak²⁸ revealed that "there are numerous governors, MPs, and county officials and top government officials on its radar."

Challenges identified

Despite some great successes, MAT has faced a number of challenges:

- The biggest challenge is the lack of legality of some of MAT's operations, which have been challenged in the courts.
- Archaic court procedures with respect to acceptance of documentary evidence, which required the originator of the evidence to appear before the court, and at times injunctions that derailed the prosecution, have made the work of MAT difficult.²⁹
- Politicization of the cases against high-ranked politicians has led to claims that MAT is discriminating against or favoring someone in the war on corruption.³⁰
- Public awareness about the need for transparency is poor.

Lessons learned

MAT has been largely successful in prosecuting corruption and recovering assets. Some of the lessons learned are:

- Individual institutions face capacity constraints and combining the collective expertise and information pool certainly helps in combating corruption.
- A central depository for data is needed, not only on asset recovery but also for economic crimes and corruption-related cases.
- The capacity of officers needs to be built continuously through training and cooperation with other similar bodies.

Example 2: Nigeria's challenges in achieving inter-agency cooperation to obtain and use data

Nigeria is an interesting example of an African country where lack of effective inter-agency cooperation is responsible for inefficiency in detecting and prosecuting corruption. Until 1999, Nigeria was under military rule. In 1999, the former military head of state, Olusegun Obasanjo, was elected as a civilian president on the platform of addressing corruption. In 2015, Muhammadu Buhari (current President re-elected in 2019), from the All Progressive Congress, won the election on a platform where the fight against corruption featured prominently. Upon assuming office, he established the Presidential Advisory Committee on Anti-Corruption. Over the years, Nigeria established a range of anti-corruption institutions to address various aspects of the fight against corruption. These include the following key agencies:³¹

- **Institutions addressing corruption in public procurement:** Bureau of Public Procurement; Code of Conduct Bureau; and Code of Conduct Tribunal;
- **Institutions dealing with law enforcement:** Economic and Financial Crimes Commission; Nigerian Financial Intelligence Unit; Independent Corrupt Practices (and other Related Offenses) Commission; Special Control Unit on Money Laundering; and
- **Institutions dealing with public complaints, public information and government policy coordination:** Presidential Advisory Committee against Corruption; Public Complaints Commission; Technical Unit on Governance and Anti-Corruption Reform/Inter-Agency Task Team, Bureau of Public Service Reform.

The government also established a National Anti-Corruption Strategy and Action Plan for the period 2017–2021. Despite having multiple regulatory agencies, including the tax authority, the nation still ranked 144th (out of 180 countries) on Transparency International's Corruption Perceptions Index³² and continues to grapple with corruption scandals amid calls for fiscal transparency and accountability in governance.

The situation may be the result of not only the inadequate capacities of existing institutions but also the lack of a coordinated approach and undue rivalry among the anti-corruption agencies, including the tax authorities. Some government departments were unwilling to share information and some responsibilities between agencies were duplicated.³³ Also, most government systems are manual and therefore, retrieval of information becomes difficult. This situation has proved to be counter-productive, resulting in a string of losses of cases brought against high-profile suspects. In what counted as a major setback to the government, cases against Mike Ozekhome, a Senior Advocate of Nigeria (SAN)³⁴; Joe Agi, also a SAN; and Adeniyi Ademola, a Justice of the Federal High Court; and his wife, Olubowale, were all dismissed within a few days. In most of the cases, the judges cited lack of convincing prosecution.³⁵

Lessons learned

A number of lessons can be drawn for countries moving in a similar direction:

- Recognize the need for a clear policy and legal framework for cooperation;
- Develop a common technology platform to collect information and ensure interconnectivity of databases;
- Undertake capacity building exercises to train personnel on sharing information and building a culture of cooperation; and
- Establish a national agency responsible for overseeing the sharing of information between different agencies.

CASE STUDY 21

EXCHANGE AND COLLABORATION WITH TAX ADMINISTRATIONS

Sharing Evidence with Joint Prosecution Teams

Introduction

The basic requirements for effective prosecutions

Investigating and prosecuting suspected perpetrators of corruption is very time-consuming and requires collaboration, expertise and knowledge of the law. The process of detecting and proving corruption, fraud, tax evasion and other financial crimes requires many hours of work, specialized expertise and sometimes expensive software or surveillance equipment.³⁶ Inter-agency cooperation between revenue authorities, financial intelligence units (FIUs) and other law enforcement agencies can be a force multiplier, offering additional resources, expertise, and legal tools.³⁷ Effective cooperation can provide “critical cover in politically sensitive cases”, that can support law enforcement agencies to counteract any political risks.³⁸ In order to successfully meet the objective of prosecuting a suspect, Joint Investigation Teams must operate within the confines of the law, set a strong terms of reference determining the scope and role of each agency, and ensure timely action.

The successful prosecution of corruption and other financial crimes entails cooperation among agencies with varying institutional cultures and differing scopes and objectives. The level of cooperation between tax administrations and other domestic law enforcement agencies is critical in countering tax and financial crimes.³⁹ Whilst there are several limitations on the scope of cooperation, opportunities exist in the form of existing cooperation models, the use of task forces and joint centers, and in applying international best practices.⁴⁰

Tax administrations have a key role to play in addressing serious crime. They are granted access to and are highly trained in examining the financial affairs, transactions, and records of millions of individuals and entities.⁴¹ Alongside examining the affairs of taxpayers, tax authorities are enabled by law to issue demand notices requesting the payment of outstanding taxes and pursue payment through specialized tax tribunals or through mediation efforts with the taxpayer. However, tax administrators are not always aware, especially in developing countries, either of the typical indicators of possible bribery, corruption, and other financial crimes not related to tax, or of their role in referring their suspicions to the appropriate law enforcement authority or public prosecutor.⁴² For this reason, as well as the way that key data is spread across various agencies, inter-agency cooperation to share information, investigate alleged financial crimes and, ultimately, prosecute is imperative.

The different agencies need to be able to share information effectively while abiding by data protection rules. Some of the agencies involved may include the police, judiciary, public prosecutors, corruption investigation agencies, and financial intelligence units (FIUs). Each of these agencies/institutions will already have some appreciation of the links between their functions and mandates in tackling financial crime.⁴³ In the course of their activities, the different agencies will collect and hold information on individuals, corporations, and transactions, which may be directly relevant to the activities of other agencies. However, legal gateways will need to be established to enable the sharing of information.⁴⁴ This will often be defined by domestic law and limited by regulatory restrictions governing the collection and use of information (e.g. General Data Protection Rules

in the EU).⁴⁵ This requires balancing data protection rights with inter-agency sharing of information. It is important to protect the confidentiality of information and the integrity of the mandate being fulfilled by each agency.⁴⁶

Tax tribunals with less strict rules of evidence are an alternative to legal action. The decision to prosecute will generally be anchored on access to lawfully obtained information (particularly regarding the rules of evidence), which is collected and shared between agencies through a mandated process. The collection and sharing of information for purposes of prosecution can only be successful if relevant agencies utilize their technical capacities to identify a financial crime, the appropriate avenue for scrutinizing that crime and the agency entitled to initiate action. Selecting the correct agency is especially important for tax administrators since tax evasion cases may be prosecuted by tax authorities in specialized tax tribunals. From time to time, the tax authority may negotiate with the taxpayer to recover revenues, especially where the chances of a successful legal action are low. Specialized tax tribunals often have less stringent rules of evidence and may be preferred where evidence has not been handled in line with strict rules of evidence. In addition, where a legal action has little chance of success, the tax authority may, at least, recover some revenue from the income generated by that asset.

The capacity to investigate may not always translate into a capacity to prosecute. Investigation involves analyzing significant volumes of financial, banking, and accounting documents, including tax or customs records in order to identify illegal schemes, follow the money and gather financial intelligence.⁴⁷ Prosecution will require similar expertise, but will also require gathering and presenting evidence for confiscation, seeking judicial authorization for specialized investigation tools and presenting the case to the court.⁴⁸

The role of tax administration and limitations to joint prosecution

In many countries, the limitations imposed on the tax authority's ability to obtain information from other agencies pose a significant challenge to an

effective prosecution. The ability to share information for purposes of inter-agency cooperation in prosecuting a financial crime is often dependent on the enabling framework in a country. In general, for purposes of prosecution it is imperative that the agreement to cooperate is implemented in accordance with the enabling provisions of the law. Countries can and have modified their laws to enable them to get better access to information. Some of the methods of cooperation include direct access to information contained in agency records or databases; an obligation or ability to provide information spontaneously; and an obligation or ability to provide information only on request.⁴⁹

Based on a review of 51 countries, the OECD found that some countries had barriers to the ability of tax administrations to share information with the police or public prosecutors in non-tax investigations. In 15 countries, there was no legal obligation to report suspicions of serious non-tax offenses to the relevant authorities. In two countries, the tax administration was specifically prohibited from doing so.⁵⁰ Mixed abilities to share tax information with the FIU were found, together with the prohibition in two countries from sharing with the authority responsible for conducting corruption investigations.⁵¹ In contrast, customs administrations, due to their role in countering illicit trade, were mostly allowed to share information with the police or public prosecutors investigating non-tax offenses, and seven countries⁵² even permitted direct access to customs information.⁵³ Notably, in almost all countries, legal gateways permit (not obligate) the police or public prosecutor to provide information to the tax administration for purposes of administering taxes and, generally, enable sharing with the FIU.⁵⁴ Overall, while all other agencies that tend to be involved in the prosecution of a financial crime were permitted to share information with the police or public prosecutor, the limitation on tax administrations and the lack of an obligation for the police and public prosecutors to share relevant information are likely to impede an effective prosecution.

Tax administrations hold a wealth of personal and company information that is a valuable source of intelligence for other agencies tasked with identifying financial crimes.⁵⁵ Such information relates to income, assets, financial transactions and banking information, among others. Tax agencies are enabled to engage in exchange of information on request (EOIR), spontaneous exchange of information or automatic exchange of information (AEOI) for tax

purposes on the basis of either tax treaties, or Tax Information Exchange Agreements (TIEA). AEOI and EOIR provide tax authorities with a framework to request and obtain specific information relating to a taxpayer in a foreign jurisdiction; this information can be used to carry out a risk assessment and/or trigger a tax investigation.⁵⁶ This may be beneficial to other law enforcement agencies investigating a financial crime. However, there are limitations on the sharing of information. For instance, tax authorities should refrain from engaging in fishing expeditions or requesting information that is not likely to be relevant to the tax affairs of a taxpayer.⁵⁷ In addition, the information received must be treated with proper confidence and can only be shared with authorities involved in the assessment, collection, enforcement or prosecution of a tax related offense.⁵⁸ Information can be exchanged with other law enforcement agencies where money laundering, corruption and terrorism financing may be concerned, but the supplying jurisdiction must be informed and authorize this.⁵⁹

Since the proceeds or tools of corruption will often involve the use of other jurisdictions, exchange of information between tax authorities can prove advantageous to an inter-agency initiative to prosecute. Where gathering evidence will require the cooperation of foreign authorities, mutual legal assistance can be key, particularly where prosecution is concerned, in executing proceedings or extradition.⁶⁰ Mutual legal assistance can be provided via agreements between countries, the UN Convention against Corruption (UNCAC), or on the basis of reciprocity where no agreement exists. In Asia and the Pacific, some of the barriers to effective international legal assistance include the lack of legal basis for cooperation, differences in legal and procedural frameworks, language barriers, resource limitations and evidentiary issues.⁶¹ In addition, a relationship of trust combined with a strong and clear request for assistance was found to be key in enhancing mutual legal assistance.⁶² Other agencies can provide tax administrations with important information about ongoing or completed investigations that could influence the reopening of a tax assessment or initiate a tax crime investigation.⁶³

In the Brazilian Petrobras investigation, tax auditors supported the transnational corruption investigation by analyzing suspects' tax and customs data and sharing this with the police and public prosecutor as permitted by law.⁶⁴ With that information, officials were able to uncover evidence of

money laundering, tax evasion and hidden assets and the investigation has, so far, resulted in criminal fines, tax penalties and recovered assets amounting to USD15 billion and 1,400 years in prison sentences.⁶⁵ Brazil's National Strategy to Combat Corruption and Money Laundering (ENCCLA) was set up as an inter-agency organization to fight money laundering and corruption through coordination and joint policy making among public officials.⁶⁶

Criminal investigations can be affected by a country's limitation on the tax authority's sharing of information. Where criminal prosecutions are concerned, the tax administration is often able to ensure that individuals and companies are required to pay tax on all of their income. This includes income derived from criminal activities, on which the tax administration can deny a deduction for expenses.⁶⁷ However, in the event that information valuable to a criminal investigation is uncovered in a country that can limit the ability of tax administrations to share information, there is a likelihood that some elements of a financial crime may go undetected. In addition, where the tax administration may be limited from taxing the direct proceeds of a crime, cooperation with other law enforcement agencies could provide an avenue for alternative charges to be brought against a suspect.

A joint prosecution must be carried out within the confines and structures of the law, which can make prosecutions more difficult. For instance, if the law provides that information obtained from the tax administration may be used for investigative purposes but not as evidence in proceedings, this would present a barrier to successful prosecution.⁶⁸ Some laws may require that a formal criminal procedure is initiated under the authority of a public prosecutor or a court order obtained before an anti-corruption authority may receive tax information.⁶⁹ Although this ensures an important balancing with protecting personal or confidential information, it may delay and increase the costs of the process. Countries should introduce laws to streamline this process and adapt the legal framework to enable sharing of information for purposes of providing evidence in a formal case.

Globally, jurisdictions apply different frameworks for prosecution of tax and financial crimes. Some countries, such as Burkina Faso and Mexico, have a central prosecution authority that is also responsible for criminal investigations, whilst others do not involve public prosecutors in the investigations that will be

carried out by the police or specialized agencies.⁷⁰ In several countries, including New Zealand and Nigeria, law enforcement agencies, including the police, tax administrations or anti-corruption authorities, may prosecute cases directly.⁷¹ In a number of jurisdictions, for example Ghana, Rwanda, and Malaysia, public prosecutors responsible for the prosecution of a financial crime may either have the authority to delegate performance of significant elements of an investigation to a number of the agencies identified above, or they may not participate at all in the investigation process.⁷²

Tax administrations generally carry out a separate process of prosecuting tax-related cases through specialized tax courts or tribunals, which are found in most developed and developing countries.

In most jurisdictions, the enforcement of taxes and the prevention of tax crime is the tax administration's responsibility.⁷³ The process of investigation for tax purposes will involve specialized audit teams accessing the financial and other information of a person; this process and the powers to access the information of a taxpayer are provided for by law. Taxpayers are often required to exhaust the tax procedural process before the courts are approached. The coordination of this process with the overall joint prosecution is key, since a failure in the specialized tribunal or inability to prosecute may weaken an overall case, particularly with regard to money laundering. Where a taxpayer agrees to comply with the orders of the tax administration and pay the outstanding taxes, this is likely to affirm the allegation of a tax crime having been committed and efforts to determine whether money laundering occurred will be further justified. If joint teams opt to initiate prosecution in specialized tax tribunals, they will need to ensure that the tax investigation is distinct from the overall investigation. Pursuing an action in the specialized tax tribunal should be considered where a criminal prosecution might not be possible or is unlikely to succeed. This may remove at least part of the proceeds of crime from the criminals by taxing the income generated from that asset and would entail less stringent requirements for evidence. Where tax authorities are involved in a joint prosecution process, they may make strategic decisions about whether or not to combine charges for tax crimes, corruption, and other financial crimes into a single prosecution.⁷⁴

Obstacles to coordination between government agencies may arise from systemic and practical differences:

- Lack of political will and distrust amongst law

enforcement agencies;

- The agency's need to preserve autonomy and independence throughout the process to protect the integrity of its mandate;
- Organizational routines and procedures that may be difficult to synchronize and coordinate;
- Observing the rules of evidence to ensure admissibility in court;
- Differing organizational objectives between the collaborating agencies, which need to be balanced;
- Differing expectations and levels of pressure from and for each agency to deliver some element of the work; and
- Differing and incompatible technical platforms.

The importance of enabling law

The mandate of a joint prosecution effort must be clear and each agency must act within its empowering provisions. However, even where empowering provisions exist, political interests may often undermine the legitimacy of a joint investigation team. In addition, the support of policy makers to introduce an enabling legal framework will be key.

Where extensive empowering provisions are not available, a Memorandum of Understanding (MOU)⁷⁵ can affirm and evidence the objectives of inter-agency cooperation to prosecute. Under Project Wickenby, the Australian Tax Office has direct access to information collected by the Australian FIU (AUSTRAC) and an MOU with AUSTRAC.⁷⁶ Such an MOU should be compliant with the law and provide details on existing regulations, provide modalities of exchange of information, and facilitate shared objectives. It should not create legally binding obligations on the agencies, but it should foster a common understanding of objectives, procedures, and roles, and build trust between agencies.

Recognizing tax crimes as predicate offenses

The ability of tax administrations to be involved in prosecuting financial crimes is often made easier

when tax crimes are recognized as predicate offenses to money laundering. The Financial Action Task Force (FATF) recognized this in 2012, when they revised the Recommendations to include tax crimes as a predicate offense. Predicate offenses are types of criminal activity that give rise to funds or assets that can be laundered to obscure the illegal source.⁷⁷ Where a tax crime is designated as a predicate offense, it means that a person may be charged with the offense of money laundering and the predicate offense, in this case tax evasion. This is important because it gives joint prosecution teams greater scope to secure a conviction or impose greater penalties, pursue cases of tax crimes involving other jurisdictions and recover the proceeds of crime through mutual legal assistance.⁷⁸ The definition of a tax crime should be broad enough to cover the violation of all direct and indirect tax obligations. A narrow definition could limit the role of the tax administration. It also requires financial institutions and Designated Non-Financial Businesses and Professions to report suspicions of any predicate offenses relating to the proceeds of tax crimes; this will generally require some awareness of the risks and indicators amongst reporting entities and greater cooperation with tax administrations.

According to an OECD survey of 31 jurisdictions, the inclusion of tax crimes as a predicate offense had practical and positive impacts on their work.⁷⁹

The most reported impact was better inter-agency cooperation, including an increased ability to work with other agencies on particular cases and on strategic and policy matters.⁸⁰ Greater awareness amongst other law enforcement agencies, intelligence agencies and the private sector of the possibility of tax crimes occurring and better avenues for communication with other agencies were also reported.⁸¹ Notably, some jurisdictions reported an increase in prosecutions and that prosecutions were easier to undertake.⁸²

The EU 4th Anti-Money Laundering (AML) Directive introduced a requirement for member states to introduce tax crimes as a predicate offense. While no definition was specified, countries were expected to have effected this amendment by 26 June 2017, and by 1 January 2018 tax authorities were to gain access to data collected under AML laws. Ultimately, the European Commission had to open infringement procedures for non-communication of transposition measures against 20 member states. Of the 20, three countries, including Ireland, were referred to the Court of Justice.

Alongside laws defining the mandate of government agencies to cooperate, countries should introduce a wide definition of tax crimes as a predicate offense to money laundering. This could enable cooperation in investigations that involve a broad range of tax crimes. Although there is no recommended definition of a tax crime, countries seeking to introduce them as a predicate offense should amend their AML laws to define the offense and the elements that make it a serious offense.⁸³ Countries should also ensure that tax crimes committed in a foreign jurisdiction are considered tax crimes. The legal provisions should provide a broad set of tax-related offenses that constitute predicate offenses to money laundering. In particular, fiscal offenses relating to indirect and direct taxes should be included.⁸⁴ This could ultimately entail straightforward non-payment of direct and indirect taxes being considered as a predicate offense to money laundering, or, potentially, certain cases of aggressive tax avoidance. In addition, countries will need to:⁸⁵

- Establish, either through legislation or case precedent, that the predicate offense need not be proven in order to convict for money laundering, as established in the FATF recommendations;
- Prepare internal guidelines, handbooks and in-person training for investigators; and
- Introduce policies or directives that establish the mandatory requirement of opening a parallel financial investigation in every investigation of a predicate offense.

The introduction of tax crimes as a predicate offense needs to be effective. This will generally entail countries ensuring that law enforcement agencies, other agencies required to provide information in accordance with the AML requirements, and Designated Non-Financial Businesses and Professions undergo thorough training and awareness raising.

Showing regard for the right to privacy

Particular care is required to ensure that cooperation between agencies does not lead to any curtailing of the right to privacy. Enabling legislation is an important feature in framing the scope of each agency in the process of prosecuting financial crimes. However, an MOU can also provide an enabling framework for the authorities to cooperate.

The role of the tax administration can only extend as far as a tax crime may be concerned and the process will entail a simultaneous prosecution in alignment with tax procedures as mentioned above. Clearly setting out the roles of each authority throughout the prosecution process and ensuring strict adherence to the law ensures that the case cannot be dismissed based on procedural matters. Alongside respecting the rule of law, the right to privacy entitles persons to protection from arbitrary interference or intrusion from the state. Although the right is not absolute, limitations regarding banking secrecy and money laundering in general are often clear. The tax administration must evaluate whether sharing of information is in line with the requirements of the Constitution or Bill of Rights of their jurisdiction. Any limitations to the right to privacy should be balanced by some determination of whether it would be reasonably necessary for the attainment of the objectives underlying the joint investigation.

In making this assessment, the obligation of sharing taxpayer information with other agencies for purposes of investigating a financial crime must be balanced against the potential impact on the integrity of the tax system.⁸⁶ A tax administration's information sharing to address serious crime is acceptable as long as it is fit for purpose. In addition, balancing the right to privacy and the benefits to society must be evaluated based on the following:⁸⁷

- The nature of the serious crime in question and the scope of the information required;
- The authority to access the information and the ability of the tax administration to provide it;
- The intended and potential use of the information; and
- The risk of misuse.

Investigating agencies will need to determine to what extent the information is available and will be shared. The 4th AML Directive provides that the processing of personal data should be limited to what is necessary for the purposes of complying with the requirements of the Directive. Financial investigations are, by nature, intrusive and will result in obtaining the private information of an individual.⁸⁸ Law enforcement agencies must remain aware of their country's human rights legislation, which protects the right to privacy and associated considerations. They should therefore be able to justify such investigations as proportionate, non-discriminatory, legitimate, accountable, and

necessary to the investigation to be undertaken.⁸⁹

Joint teams should set the criteria for information sharing. These should be based on the indicators of suspicious features that fall within the prevention of tax abuses and money laundering initiatives to ensure that the process of prosecution does not infringe upon the right to privacy. The criteria should include:

- Transactions with no real business purpose (substance over form);
- The use of offshore accounts, trusts or companies which do not support any economic substance;
- Tax schemes that involve high-risk jurisdictions (particularly jurisdictions with high levels of secrecy and low or no taxes);
- Highly complex tax structures;
- Unexplained wealth;⁹⁰
- Short-term businesses involved in importing or exporting; and
- Use of cash transactions instead of appropriate financial instruments.

Conclusion

The obstacles to effective prosecutions go beyond the limitations imposed by legislation. The attention drawn to legal challenges is warranted by the potential consequences of a failure to operate within the confines of the law. These failures include the inadmissibility of evidence, the consequence of which will result in rendering the entire process redundant. Joint teams may be limited by distrust amongst the enforcement agencies, differing expectations on the delivery of outcomes, and a lack of harmonized institutional procedures particularly regarding the use of technology to collect, hold, and share data.

Joint prosecution teams must have a clear mandate based on the law, clearly defining the role of each agency and determining clear procedures for cooperation. They must remain aware of their limitations as any breach may result in a failed process, and be prepared to receive any additional support to ensure they meet the procedural requirements. Tax administrations will need to operate within the specialized courts and ensure that sharing of any

information is enabled by the legal framework or any reasonable exceptions. In order to do so, countries should consider introducing tax crimes as a predicate offense in order to facilitate:

- Increased sharing of information and awareness about the nature of tax crimes.
- Mutual legal assistance.
- Prosecution of money laundering based on tax crimes involving foreign jurisdictions.
- Expanding the tools, skills, and resources available, including for asset recovery.
- Extending the statute of limitations through linking to money laundering.

Example: South Africa (Tannenbaum case)⁹¹

Brief facts of the case

The following South African agencies cooperated in a four-year investigation of Barry Tannenbaum that led to prosecution in 2009:

- South African Reserve Bank (SARB);
- South African Revenue Services (SARS): responsible for the collection of revenue and enforcement of compliance with tax and customs legislation (semi-autonomous);
- South African Police Service (SAPS) Serious Economic Offences Unit: tasked with preventing, combating and investigating economic crime;
- The Financial Intelligence Centre (FIC): assists in the identification of the proceeds of unlawful activities and combating of money laundering activities, amongst others; and
- National Prosecuting Authority (NPA).

Tannenbaum was accused of setting up a Ponzi scheme that involved at least 800 investors in South Africa, Germany, US, and Australia. The scheme promised investors returns of 200% per year in investments related to fraudulent pharmaceutical imports. On 30 July 2009, the North Gauteng High Court granted the Asset Forfeiture Unit in the NPA a preservation order in

line with the Prevention of Organized Crime Act.⁹² The order froze an estimated R44 million held in two bank accounts belonging to Tannenbaum and his associate.

Cooperation and legal mandate of SARS

SARS's five-year priority initiative proposed to adopt a whole-of-government approach in managing the customs border environment. This included continuing to strengthen risk management capabilities as well as international agreements and links with other jurisdictions. Further, SARS's strategic plan emphasized a whole-of-government approach through collaboration with other government agencies to improve the government's overall value chain.

SARS is mandated to conduct criminal investigations into all criminal offenses created under the Tax Administration Act. This applies to all tax acts whether indirect or direct taxes, excluding offenses under the Customs and Excise Act.⁹³ SARS is also the only authority assigned the legal mandate to officially lay a criminal complaint with SAPS in respect of a Serious Tax Offense.⁹⁴ In general, South Africa recognizes tax crimes as a predicate offense to money laundering.

- Section 73 of the AML/CFT Act provides that any investigation instituted in line with the Act, including those on the property, financial activities, affairs or business of any person, must be reported to the Commissioner of SARS or any officials with a view to mutual cooperation and sharing of information.
- Section 70(3) (c) of the Tax Administration Act 2011, provides for the disclosure of information to the FIC where such information is required for the purpose of carrying out their duties and functions.

In general, South Africa's system provides an enabling environment for SARS to cooperate in a joint prosecution and review information obtained by other agencies with regard to the alleged tax crime.

Process of cooperation

The five agencies coordinated their efforts, ensuring that clear terms of reference identified each agency's scope and mandate. The joint team determined a plan of action for the high-level investigation into serious allegations of fraud, money laundering, tax evasion and

foreign exchange control violations. The responsibilities were set out as follows:

- NPA: freezing or forfeiture of assets of the main suspect and associates and determining whether to prosecute any of the persons or entities involved in the scheme;
- SARS: raising tax assessments and generating attachment orders;
- SAPS: supporting with seizure and arrest where possible;
- FIC: tracing the movement of finances; and
- SARB: accessing banking information, which revealed the use of Tannenbaum's personal accounts to channel money out of the country.

SARS reviewed Tannenbaum's tax filings in the period 2004–2009 and alleged that he had under-declared his income, resulting in tax, penalties and interest.⁹⁵ Through investigations into Tannenbaum's accounts, they discovered that he received about USD415 million and about USD324 million was paid to investors and agents in the scheme.⁹⁶

The issuance of arrest warrants could not be enforced since Tannenbaum had fled to Australia and one of his associates was based in Switzerland. Although extradition proceedings were pursued, the process has taken many years and prosecutors were not optimistic that Australia would agree to the extradition request.⁹⁷ Tannenbaum has also managed to evade authorities in Australia. The prosecution of Tannenbaum and his associates tied up state resources for several years with little progress made. In addition, investors and overall victims of the scheme have pursued litigation in efforts to recover their assets. Several of the businesses registered as part of the scheme are attached to different associates, whilst others are insolvent. This has had implications for recovery of assets by SARS.

Recommendations

For purposes of joint prosecution efforts, inter-agency teams should evaluate the following and encourage governments to strengthen any areas of weakness:

- Introduce enabling laws, including a broader legal

mandate that permits the sharing of information between agencies where reasonable and the recognition of tax crimes as a predicate offense;

- Ensure cost effectiveness;
- The possibility of extradition where suspects may be based in foreign jurisdictions may arise and teams must remain aware of the potential implications for the case and the need for a speedy process;
- Determine clearly whether illegal schemes are taxable;
- Ensure clear frameworks for any information sharing with foreign institutions;
- Consider the role of victims or investors not only as witnesses, but also in pressing charges; and
- Information management—ensure that a member of the directorate of public prosecution is part of the team to enable the quick turnaround of ex parte applications.

With regard to asset tracing and recovery:

- Evaluate the appropriate time to implement preventative measures, including the freezing of assets; this should be done in the interest of ensuring that the person of interest is not alerted too early or too late;
- Understand the constraints existing in the requested country;
- Since cooperation with foreign jurisdictions will be imperative to the tracing and identification of assets for recovery and taxation purposes, ensure that there is a legal basis for assistance, no barriers will prevent cooperation and the appropriate legal instrument is chosen;
- Freezing of assets at the domestic level: determine how fast the judiciary can respond, what kind of coordination will be required, the asset management framework available and the costs associated with holding certain assets whilst proceedings are taking place; and
- Freezing of assets in foreign jurisdictions: since this will require mutual legal assistance, with foreign authorities and comply with the differing rules of procedure.

Whilst the ultimate outcome may not have been a successful prosecution of the alleged offenders, the South African joint team was able to effectively coordinate efforts and engage in a process that should lead to more effective future investigations of financial crimes. The outcome does not take away from the commendable efforts made by the prosecution team and the recommendations made above represent the main lessons drawn by the involved agencies for future joint efforts.

Example 2: Brazil

Some additional lessons may be drawn from Brazil's experience with Operation Car Wash, which involved 44 other countries where investigations were being carried out. This required the negotiation of new agreements with several states, including the United States and Switzerland.⁹⁸ Using information obtained by the tax authority on the purchase of a luxury car by the daughter of a former director of Petrobras, the invoice revealed a connection with an operator of the corruption scheme whom the director had denied knowing.⁹⁹ Further analysis of the director found that he was the beneficial owner of an offshore company owning a luxurious apartment where the operator once lived.¹⁰⁰ Although the investigation is still ongoing, the authorities were able to engage in international legal cooperation that proved essential to obtaining relevant evidence of major crimes and in recovering illicit assets in foreign jurisdictions.¹⁰¹ Brazil had an array of regulations dealing with cooperation, including international treaties and agreements, direct assistance, extradition, and enforcement of foreign court decisions. To facilitate successful prosecution, enabling legislation must go beyond obligations for domestic institutions and establish cooperation across jurisdictions.

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PART III

Role of Institutions in Fighting Corruption

CHAPTER 11

Anti-Corruption Agencies

Can Anti-Corruption Agencies be Successful in Combating Corruption?



Introduction

Anti-Corruption Agencies (ACAs) have, over the past 2 decades, received a great deal of attention and criticism because of the high visibility of their work and their seemingly limited impact compared to the resources devoted to them.

Although they are a new institutional response to corruption (as suggested by de Sousa, 2010), ACAs are often misunderstood and insufficiently analyzed. A few authors have tried to systematically evaluate the effectiveness of ACAs.¹ This chapter builds on this literature and focuses on three less known experiences (UK, Lithuania, and Bhutan) to emphasize the importance of having a political commitment to tackling the problem of corruption, developing a deep understanding of the nature of the corruption problem, and mapping the existing institutional landscape before establishing a new anti-corruption agency if it is to be effective.

Is a stand-alone agency the best model?

A structured response to corruption often draws heavily on the United Nations Convention Against Corruption (UNCAC) as a comprehensive practitioner framework. UNCAC Article 6 requires States Parties to establish (or ensure the existence of) anti-corruption body/bodies to take ownership of the corruption prevention policies, practices and procedures required by Article 5. Article 36 requires States Parties to ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Both Articles propose standards for such institutions, including that they should be independent, specialized, staffed, and have sufficient resources to meet their roles and responsibilities.

Many governments, multilateral and bilateral donors have suggested or opted for the establishment of a single agency—an anti-corruption agency (ACA)—to undertake both Articles' functions. This approach has been reinforced by the perceived success of the Hong Kong experience. This route has resolved the reluctance of many donors to engage with existing inadequate and compromised public sector and law enforcement institutions. Many donors have therefore welcomed the establishment of

a single agency to focus on 'corruption' and, through project funding, have supported these efforts as evidence of a country's anti-corruption commitment. However, in a misreading of UNCAC, the focus on combining both Article 6 and 36 responsibilities has meant that these new agencies are often expected to take on a disparate range of roles, which may include national anti-corruption strategies, covert intelligence and money laundering investigations, asset disclosure and registration, and awareness programs for civil servants and citizens.

Despite the increase in the number of ACAs, their success has been mixed and limited. Experiences from countries show that most of these agencies have fallen short of achieving the organizational standards set by UNCAC. The independence of the institutions (functional, budgetary and appointments), strategic focus, human and financial resources, and mechanisms for collaboration and coordination fall short of what would enable them to be effective. They have therefore not been successful in delivering according to their mandates and in line with citizens' expectations, and in many cases have not had any significant impact on the trends, types and levels of corruption in their jurisdictions.

The pervasive institutional limitations raise questions as to whether the model of a stand-alone multi-functional ACA is the right one. Focusing attention on organizational inadequacies essentially ignores basic questions such as: Have ACAs been able to address the corruption 'problem', which is what they were set up to do? More importantly, is a dedicated agency the effective response, as part of a country risk-based anti-corruption strategy? These questions direct the focus onto a few relevant issues that give rise to further questions: (i) Was the 'problem' sufficiently defined to justify the need for a dedicated and often new agency? (ii) Does such a definition provide the basis from which to design a fit-for-purpose body and ensure its effective functioning? and (iii) Were wider issues, such as the agency's organizational development and maturity, and its fit within its external institutional and operating environment taken into account? These three relevant issues will be returned to later in this chapter. To provide the context, it is necessary to look at two aspects of these basic questions.

Corruption and the environment

Corruption has all too often been regarded as a stand-alone issue that can be addressed through the establishment of a stand-alone agency. Corruption is considered a core inhibitor of issues related to democratization, economic development, human rights and the rule of law. While UNCAC provides an adequate summation of the types of offenses and unacceptable conduct that it considers corruption (and by implication indicates a range of institutions that should be involved in combating it), it silos corruption as a stand-alone issue. Accordingly, an ACA is a stand-alone response, from both the causes of the problem and from other areas of financial crime, as well as from other inhibitors

of democratization, economic development, human rights, and the rule of law.

In most cases, countries do not develop a national anti-corruption strategy in advance of establishing an ACA and so do not tailor the design of such an agency to the problem.² In the absence of such a strategy, there is often no pre-agency assessment of exactly what type of corruption is to be addressed and whether a dedicated ACA is an appropriate response. There is also limited understanding of the roles and responsibilities of the ACA and of its mandate with respect to other law enforcement and public sector



institutions. Knowing the problem and clarifying how it is to be addressed ensures that an ACA can be designed to be focused and fit-for-purpose, and avoid getting involved in areas that do not fall within the normal understanding of corruption or becoming essentially the institutional repository of anything that has a ‘corruption’ dimension.³ At the same time, there is often a lack of clarity over the roles and responsibilities of other key institutions which also play a role in combating corruption, as well as the mechanisms and incentives to ensure the inter-connectedness and inter-dependence of the institutional landscape.

UNCAC itself does not recognize the dynamics of corruption as an operating environment.

This includes not only where corruption causes the most harm, promoting exclusion and inequality, or how far it may be rooted in legacy and cultural issues. It does not necessarily identify addressing corruption as a means to other developmental ends, such as fixing countries’ tax bases. Nor does it allow for the need to adjust or adapt the work of ACAs, or—by not specifying the roles of organizations—ensure the allocation of

responsibility more properly taken on by other bodies. This is partly a consequence of the antecedents of UNCAC, partly its use of mandatory and optional classifications, and partly its presentation as a legal document suitable for treaty purposes. Hence, it is a prescriptive document (rather than a working document amenable for updating, revision and adaptation) and a continuing driver for addressing corruption at the multilateral or bilateral level to the point where *not* having such an ACA becomes the exception to the norm. The prescriptive nature of UNCAC, reinforced by its current review process, lacks an approach that recognizes corruption’s developmental and country-specific trajectories as the starting point to assess the most effective strategic and institutional response to a dynamic phenomenon. Further, continuing to see corruption as a stand-alone issue has implications when it becomes less an end in itself than as a facilitator of issues being addressed by other agendas and agencies (for example, that of money laundering as a cornerstone of the fight against international illicit money flow, people trafficking, terrorist finance, and organized and serious crime).

Agency and the environment

Answering the ‘problem’ and ‘need’ questions

Establishment of a dedicated ACA based on a successful model from another country is a commitment to address corruption without considering the country-specific institutional environment which is long recognized as playing a significant role in determining the likely effectiveness of an ACA.⁴ Although the success of the Hong Kong model (i.e., the establishment of the Independent Commission against Corruption) can be explained by the specific institutional circumstance, it is frequently seen as an explicit and immediate commitment to anti-corruption. It has also been assumed that the fully-formed replica, as the distillation of good operational practice and appropriate organizational arrangements, can become active and effective immediately, irrespective of both the necessity of the UNCAC standards for such agencies’ organizational development and maturity in practice,

and the relationship with the agency’s external institutional and operating environment. This results in an expectation of high-level performance and quick results. Such outcomes, however, are predicated on an ‘ideal type’ organizational platform, without too much thought about what is required in organizational terms to deliver the expectations. At the same time, the point when an ACA is established is often the point at which it is loaded with most, if not all, the roles and expectations to address corruption without giving due consideration to parallel roles in the institutional landscape and complementary reforms in the wider environment. It has implications for the longer-term organizational capacity, capabilities, maturity, and credibility of the ACA, its perceptions among citizens, and its *impact* on the ‘corruption’ problem.

Rather than seeing the establishment of an “ideal ACA” as a panacea to address corruption, one could explore other options. One solution is to use the country’s vision as articulated in the National Anti-

Corruption Strategy (NACS) to determine whether an ACA is needed or whether an alternative response may be found among the existing institutional arrangements. Another solution, if an independent and new agency is considered necessary, may lie in supporting its establishment and evolution over time. This in turn requires defining 'success' in organizational terms and ensuring the necessary competences and approaches that support the evolution of the organization within its external environment to achieve the desired outcomes. Such a consideration may require an approach which

looks to support organizational maturation issues until such point as the ACA is consistently able to do something achievable *well* within its existing resources and capabilities. Further, and perhaps more importantly, it is seen to do something *well*. This means working toward the 'good enough'⁵ (or best possible) ACA and beyond until it is robust, credible and fit for the purpose for which it was intended (so long as that purpose has been identified). The next pages offer three examples of such alternative solutions and their effectiveness in addressing corruption at the country level.

Modell: Building an anti-corruption response from the existing institutional landscape

The United Kingdom (UK) was increasingly seen as a safe haven for illicit financial capital. The label 'Londongrad'⁶ exemplified the longstanding preference of politicians and other Politically Exposed Persons (PEPs) for London as a safe investment and relatively relaxed regulatory regime for a high-end net worth resident lifestyle. As the media often commented, law enforcement or other dissuasive actions had been limited. The scale of the laundering of criminal proceeds, as the UK's National Crime Agency warned in its 2015 threat assessment, was 'a strategic threat to the UK's economy and reputation'. The government's *Anti-Corruption Plan* (2014) aimed to more effectively tackle 'those who engage in corruption or launder their corrupt funds in the UK' as well as return the proceeds of corruption (a core tenet of UNCAC in Article 3 but imperfectly applied thereafter by most developed countries).⁷ This commitment was reinforced by Prime Minister David Cameron at the 'International Anti-corruption Summit' in London in 2016.

The UK's plethora of agencies with different and competing mandates and administrative costs limited any coordinated response to investigating international corruption and the proceeds of international corruption. There are nearly 50 police forces in the United Kingdom and a smaller number of agencies with a national remit, notably the National Crime Agency (NCA), the Serious Fraud Office (SFO) and the Crown Prosecution Service (CPS). Much of the effort to develop agencies' relationships with

other agencies is framed by strategies or plans (such as the police fraud strategy, the 2014 Anti-corruption Plan [now the UK anti-corruption strategy 2017-2022], the serious organized crime strategy, the cybercrime strategy, and so on). There are high-level boards and inter-agency arrangements to facilitate intelligence, case-sharing or inter-agency work. Within such a patchwork institutional landscape, all of whom have been the subject of year-on-year financial cuts and of competing policy agendas, the cost associated with investigating bribery allegations in foreign jurisdictions, and the cost of identifying, tracking and recovering the proceeds of corruption, severely limited the response options. Certainly, a new dedicated agency was never on the table but a possible reconfiguration of existing expertise within existing institutional arrangements was.

The UK established the International Corruption Unit through a reconfiguration of expertise within existing institutional arrangements. The Department for International Development (DFID) took the lead through a senior official who operated as the institutional 'boundary-spanner'⁸ in negotiating between agencies and adapting responses to changing circumstances. The official was authorized to commit, ring-fence and oversee dedicated resources and influence the selection of likeminded officials to lead the initiative operationally.⁹ This enabled the allocation of dedicated investigation and intelligence units within existing law enforcement agencies, who were able to

draw upon their agencies' in-country liaison officers and other technical support, with access to dedicated CPS prosecutors. Practice demonstrated the need for greater flexibility as well as removing demarcation issues between the various units and agencies for more effective coordination and cooperation, as well as intelligence-gathering and information-sharing. Thus, further reconfiguration within existing law enforcement arrangements was achieved in terms of amalgamating intelligence- and investigation-based work. The outcome was the establishment of the International Corruption Unit (ICU) within the NCA, which also houses the UK Financial Intelligence Unit. The NCA also managed the ICU's administrative, human resources, training, and other functions, with salaries, expenses and travel still largely funded by DFID.

The ICU was given dedicated staff and budget, and its capacity was enhanced, including support from the NCA, which yielded positive results. The ICU has had an annual budget of some £4 million and a staff of 45 persons, of whom 30 were frontline investigators. It also has seconded officials from the SFO and the Financial Conduct Authority (the regulator for financial services firms and financial markets in the

UK) to facilitate information-sharing. Staff expertise is enhanced by NCA financial investigator training, as well as bribery investigations training run by the City of London Police. Specialist support is accessible through NCA intelligence collection techniques, which the NCA can deploy in pursuit of its crime reduction mandate as well as the international liaison network of NCA officers attached to embassies overseas. In terms of organizational impact, the ICU currently has a caseload of 23 cases, and with current resourcing, they can handle in the region of 23-25 cases. By 2018, the value of assets restrained in the UK and overseas exceeded £683 million, while the cumulative amount of assets confiscated exceeds £55 million.

The key role played by the 'boundary-spanner' cannot be over-emphasized. The ICU's achievement very much reflects the intentions of UNCAC Article 36 and has relied on the flexibility of existing institutions and the availability of the 'boundary-spanner'—a senior official with a clear focus and a degree of executive and financial authority as well as trust from relevant institutions to deliver the necessary institutional reconfigurations and maintain, to date, its organizational development and consolidation.

Model II: A 'best possible' agency

A deep understanding of the institutional and operating environment is crucial for the design of a dedicated agency. Lithuania's post-Soviet transition to democracy was impacted, not surprisingly, by former Soviet-led institutions and bureaucracy. As part of accession to the European Union, the European Commission insisted that Lithuania address corruption, which, given the legacy issues, meant that the solution would be a political issue. The government recognized the necessity to secure external support to address corruption with an aim to secure membership of relevant western liberal democratic groupings, such as the European Union and NATO, and later OECD.

Following its establishment, the new agency benefited from internal and external guidance and followed a shrewd path. After due deliberations by commissions and with cross-party support, the Special Investigation Service (STT) was established. It was

located as a unit within the Ministry of Interior and was able to handpick experienced staff on enhanced terms. The STT also drew on Ministry resources and technical expertise internally, as well as US expertise and resources and then EU consultancy programs externally.¹⁰ While the model may (to some¹¹) seem like the three-function Hong Kong model, the Lithuanians saw the model as 'the FBI model which was the most viable, economically feasible, and efficient'.¹² The FBI provided the STT with early advice and support. The model in practice was very much a law enforcement-defined agency that focused on embedding its functions and competences. It did not over-extend itself within an evolving democratic context with pre-existing patterns of corruption and new ones emerging. In this context and against widespread citizen perceptions of corruption, the STT reflected what might be termed as an evolution towards a 'good enough' agency that was able to maintain organizational competence, resilience, and shape.

In the early years of democratization, Lithuania benefited from a number of international programs to improve its law enforcement areas and help it to assume the obligations of EU membership.

The primary focus was on strengthening the STT's investigative, intelligence and analytic functions. From the establishment of STT within the Ministry of Interior in 1997 to its establishment as an independent agency by law in 2002, it reported to the President and Parliament, which helped it to avoid isolation. This also addressed all the organizational issues that a new, independent agency was perceived to have suffered from in other countries. The STT was able to access in-house technical services and practitioner training and guidance that reinforced its own perceptions of its roles and requirements. STT's successful progression from an agency under a ministry to an independent fit-for-purpose agency can be attributed to a number of factors:

1. **From the outset, the STT was seen as a quasi-law enforcement agency focusing on corruption** (which in turn is largely limited to bribery and abuse of office offenses). Its functions also included corruption prevention and corruption awareness, but these were seen as subordinate to its core function. It had strong leadership committed to its core function, who had direct involvement in directing the early shape and ethos of the agency; in 2006, about 83 percent of the STT budget was allocated for criminal prosecution and by 2014 nearly two-thirds of staff continued to work in this area (just over 10% work in the areas of prevention and awareness).
2. **STT had the right human resources.** Its original employees, a number of whom moved later into management roles within the agency, had experience of work in other law enforcement institutions and were usually university graduates. The pattern (and method) of recruitment (by type, background and educational level) has largely been maintained. Despite losing staff when the original enhanced-salary scheme was ended and when private sector posts had greater attraction, the STT managed to maintain both its staff complement at around an average of 250, as well as the type of staff it wanted to appoint. This contributed to maintaining a continuing organizational culture. It also has taken a robust approach to those considered unsuitable for the organization (at times moving out up to 10% of staff in a particular year). The recent years indicate a gradual reduction of staff turnover (to 3%), which ensures continuity as well as retention of expertise and institutional memory.
3. **STT benefited from a continuous practitioner and technical training program.** Although the initial focus on the criminal investigation of corruption appeared to commit significant resources to minor offenses, the accumulation of competence and experience has been reflected in more recent years in an increasingly higher level of offender, primarily senior public sector and criminal justice officials.
4. **STT's effectiveness resulted from the combination of a strategic approach taken on the basis of informed intelligence and specific technical approaches.** Both covert and 'open source' intelligence informed strategic thinking as well as investigations. This, coupled with technical approaches and analysis, helped in corruption case management and in mapping the corruption problem by type and function, thus providing a better understanding of the drivers and location of the risk (some of which informed its prevention and awareness work).
5. **STT established early in its development the need for a 5-year strategy supplemented by an annual business plan and a performance management regime.** The budget was maintained, rising moderately in recent years, allowing it to maintain and recruit staff. This in turn enabled it to function effectively without significantly overloading the organization in terms of caseloads or cases that stretched the capacity and competency of the organization especially in the early years.
6. **STT succeeded in developing links with domestic and overseas organizations that were able to provide valuable guidance to the newly established agency.** It managed to negotiate the difficult formative years and survived countervailing influences and agendas as a consequence of both its strong but politically-connected leadership and its equally strong esprit de corps among its staff. This was facilitated by methods of recruitment and internal promotions, as well as its focus on a law enforcement approach to its investigative functions.

Model III: A specialized agency: The importance of assessing the institutional landscape and operating environment

Moving towards a democratic society that has a strong traditional culture has both benefits as well as unintended consequences for addressing corruption. This is demonstrated by Bhutan, a country that began the process of democratization from an environment where the society and state were largely based on personal connections and kinship. The consequence, according to a 2007 external review, was strong concentration of powers; weak or non-existent checks and balances; poor transparency; undefined discretionary powers; unclear rules and procedures; and patronage.

The Bhutan Anti-Corruption Commission (ACC) was established as part of the 2005 constitutional arrangements, with the aim of rooting out corruption right from the beginning. It was very much a pre-emptive move announced by the Royal Decrees to anticipate the consequences of social, economic, and political change and curb 'self-interest leading to corrupt practices'. The corruption 'problem' appeared to relate more to the risks posed by the emerging democratization process than to what may be described as traditional cultural behavior. Little attention was given to the potential consequences of criminalizing such practices or to the effect of democratic notions of public accountability and merit-based decision-making on the existing currency of social and political relationships within the state.

The ACC as a single agency had an extensive portfolio of responsibilities and its staff and activities were quickly ramped up. It was expected to address criminal behavior and had powers to prevent and investigate corruption. The ACC began work in 2006, with 3 commissioners and 8 staff. Within 5 years it had 3 commissioners, 16 staff in investigations, 5 in prevention, as well as 18 management and support staff. By 2018, there were over 50 staff in investigations (including technical staff), 14 in prevention and 45 management and support staff, making a total of around 120 staff. Within 5 years it drafted the first National Anti-Corruption Strategy (2008–13) (NACS) as part of its duty under the Act to operationalize the government policy of 'Zero Tolerance to Corruption'. It developed

a detailed Operations Manual, began public opinion surveys in 2007 and rolled out a National Integrity Assessment model in 2009, developed together with the South Korean Anti-Corruption Agency. This later incorporated the corruption perception surveys. It also began to conduct system studies, based on investigations and complaints from both citizens and the media.

Furthermore, despite the very challenging environment, the ACC was set up without an institutional and corruption risk assessment, which could have helped identify institutional gaps and weaknesses that the ACC could have begun to address in its work. This lack of strategic planning had consequences for the agency's impact. Efforts of the ACC were not complemented by a wider set of reforms that needed to focus on developing a public service ethics culture, as well as on mitigating some of the effects of particularism in practice through more robust internal controls. This led to the uneven development of the wider institutional landscape and operating environment, with the following consequences:

- 1. Many reforms did not address past cultural heritage issues.** Such issues included the presence of personal connections, kinship and hierarchy, which fostered a clientelist sub-climate that favored the political and business elites. This underlines the wider failure of educational and information processes, which should have derived from a national anti-corruption strategy. Not all awareness and educational responsibilities should be located within a single institution. Further it presents the ACC with continuing challenges because it has to focus on what it interprets as a corruption problem, but which is more rooted in the traditional cultural norms and values. This is confirmed both by the recent ACC Integrity Assessment reviews and its latest (2018) Annual Report:

Corruption in the form of favoritism and nepotism are prevalent in public service delivery. This corroborates with the significant number of complaints received by the ACC on abuse

of functions,...Abuse of function is the highest type of alleged corruption offenses constituting more than 50 percent and over the last five years the trend in the percentage has been increasing annually. Further, majority of the complaints that qualified for investigation pertained to abuse of function (48.6%)...the decentralization process in the country is expected to aggravate the corruption vulnerabilities with more authority and resources for the LG functionaries.¹³

2. The ACC's 'ownership' of the NACS did not include means to ensure parallel engagement by other public organizations.

The first NACS—and thus the one that sets the stage—was a broad statement of intent that did not require the ACC's substantive engagement with all the relevant ministries and agencies. Of the 21 objectives, only 7 involved the ACC in conjunction with other institutions, while implementation was the responsibility of the Committee of Secretaries. Furthermore, there were no measurable actions, activities or outputs, although this was rectified in the revised strategy. The ACC itself noted in 2009 that 'fighting corruption is perceived as an ACC battle...without the concerted and conscious effort of all actors, the cadre's lone battle against corruption will continue to remain an action of sorts at best and a mockery at worst'.¹⁴

3. The ACC's efforts were not complemented by increases in the capacity of other institutions, as envisioned in the National Internal Control Framework.

The State Audit Institution (RAA) in 2017 pointed to the continuing levels of inappropriate or inadmissible payments for contracts, services and expenses. It also noted that these were primarily due to the lack of effective accountability mechanisms, weaknesses in internal controls and the tolerance of unethical conduct. Some 270 staff in the RAA were insufficient to audit some 930 agencies with nearly 1,300 accounts; only 50% could be reviewed annually. With less than 50 internal auditors in the internal audit service (IAS), internal control risks are not addressed. The National Internal Control Framework, which was set up in 2013, had envisaged that the IAS would not only fulfil its responsibilities to assess risks and strengthen internal control mechanisms at various levels of management, but would also supplement the mandates of the RAA and ACC.

4. The civil service, as a whole, is uneven in its approach to the establishment of a basic ethical framework built on public ethics, accountability and merit.

This is generally reflective of the slow progress on embedding the expectations of the NACS. The civil service also appears reluctant to integrate into their work plans the increasing amount of information produced by the ACC on areas of vulnerability and risk. The roles of parliamentary oversight and accountability have not been developed as per the revised NACS. The efforts of ministries to promote ethical environments are still a learning process. There is also a lack of clarity as to the exact relationship between the legislature and the civil service, and where the general responsibility for governance should lie. In terms of the strategy, shifting primary responsibility for prevention to ministries has not yet been achieved.

The first national anti-corruption strategy did not have the intended impact.

As explained above, the lack of an environmental and corruption risk assessment had consequences for the NACS's impact. Several additional reasons were identified in a 2013 review:¹⁵

- Only a few departments and agencies have conducted strategic reviews of institutional capacity to prevent and combat corruption, or implement plans to strengthen this capacity, despite the availability of practical tools to do so developed by the ACC and external partners;
- Implementation of the NACS was perceived to be the sole responsibility and accountability of the ACC; this is likely to be one of the key reasons why the NACS is little known and governance-related reforms are not seen in connection with the NACS. There is limited awareness that measures to strengthen good governance, focusing on transparency and accountability, have a direct and highly important impact on reducing corruption risks; and
- Communication around implementation of the NACS was inadequate. In addition, the absence of clarity about leadership and implementation roles in relation to the NACS resulted in a lack of systematic monitoring, oversight and evaluation of implementation. This can partly be attributed to the aspirational and voluntary nature of the NACS.

Some external reviews have noted the ACC as a well-organized agency, reflecting good practice approaches to management and delivery of its functions. For example: “the ACC has made important contributions to citizens’ awareness and understanding of the meaning and consequences of corruption. It has managed to acquire a strong reputation very quickly and has built institutional capacity to carry out an extensive mandate and detailed functions. The ACC is a consolidated institution with a clear mandate, a clear vision, well-established capacities and a strong esprit de corps.”¹⁶

On the other hand, the consequences described above indicate the size of the challenges still facing the ACC. They not only identify the weaknesses associated with the wider reform process but also an ACC chasing a continuing corruption problem rooted in both the culture and the democratization process:

This is a serious cause for concern because money in politics will fundamentally erode and eat away at

*the heart of our relatively young democracy. It may create a pervasive culture of corruption that could result in a governance which systematically favors the rich over the poor and the well-connected over the disconnected. Corruption may seep into the fabric of our government, making policy decisions to favor the privileged few rather than the public good thereby creating a legacy of patronage.*¹⁷

This emphasizes how the ACC’s position in the institutional landscape should have been determined at the time of its establishment. A more coherent and coordinated approach to the wider anti-corruption environment and the responsibilities of the wider institutional landscape was never developed. As a result, the ACC does not fit entirely into this environment and the environment does not fully facilitate its purpose. This could and should have been anticipated at the time the ACC was established. The question should have been: what should come first – the NACS or the ACC?

Comparing the three models and their possible impact

Impact as organizations

The operational impact on the ground of the UK’s ICU has been substantial, though this is not always recognized by the media. Its impact is primarily reflected in the increase in the number of corruption cases under investigation. The ICU has also diversified to the countries to which its cases relate and built strong relationships with overseas law enforcement authorities. While the work of the NCA¹⁸ is often reported in the media, that of specialist units is only sporadically mentioned. This is often a consequence of the complexity of the institutional landscape and the tendency of the UK media not to spend too much time explaining specialist functions to a general readership.

STT is seen as a credible agency addressing more significant corruption issues, such as its criminal justice corruption investigations, international corporate bribery, and the financing of political parties. In terms of the organizational and institutional

arrangements, it is a ‘fit-for-purpose’ agency with a managed portfolio of roles and functions, adequate resourcing, and strong professional leadership. This was recognized by OECD’s review, which reported that ‘all representatives at the on-site visit were unanimous in their praise for the STT’s professionalism and efficiency’ as Lithuania sought (and achieved in 2018) membership of the OECD. Lithuania has demonstrated its willingness to cooperate with other countries and to set up networks for its law enforcement practitioners.¹⁹ In terms of external domestic impact, therefore, public perceptions may now consider it a ‘good enough’ agency. Many of the continuing corruption issues may be more of a consequence of delays in embedding wider reforms. On the other hand, in terms of the types of corruption that face a consolidating democracy, the agency may be considered as a ‘best possible’ agency and fit-for-purpose for the increasingly complex and significant corruption problems facing the country.

The Bhutan ACC is seen as a well-organized

agency, reflecting good practice approaches to management and delivery of its functions. The ACC is highly visible in Bhutan and recognized as a champion of good governance. Due to a significant amount of outreach, the ACC is gradually gaining trust within Bhutanese society, which was initially sceptical of an additional law enforcement type agency,²⁰ and has been a notable force in promoting the anti-corruption message and in investigating and prosecuting corrupt officials.²¹ It has determined its roles and responsibilities and established a strategy that integrates the three areas of activity: education, prevention and investigations. It has managed to improve the quality of complaints through education, investigate substantive complaints, and use the evidence from investigated cases to inform its review of system weaknesses through its system studies. It is developing its preventative responsibilities through the Integrity Assessments and system reviews. Organizationally, it has developed an accessible and open management approach, with detailed and documented procedures. It has also built awareness, through its change management program, of the need to self-assess and review what it does and how it does it, with enough time to allow organizational consolidation and a level of organizational stability and focus. Its main issue, however, is its position in the institutional landscape and a continuing balancing act between how much it influences, or is influenced by, its operating environment.

Impact on corruption

The ICU has achieved a coherent set of responses that reflect both UNCAC and the UK government rhetoric, and is therefore well placed to implement new initiatives to address the investigation of international corruption and the proceeds of international corruption. The identified corruption problem led to a specific need that did not require a dedicated agency response. The response that was devised was carried out within existing institutional arrangements and, in terms of this particular corruption issue, is being addressed in a law enforcement context.

The Lithuanian STT and Bhutan ACC have had less success in terms of their impact on the general presence, prevalence and perceptions of corruption. Indeed, the collateral damage from the existing and emerging corruption types and trends is that the STT is not necessarily seen as environmentally – as opposed to organizationally – effective. The STT's approach to

engagement with citizens lies primarily with surveys of perceptions and attitudes, and its awareness and prevention efforts are largely targeted at risk sectors, promotional material, and (probably decreasing) joint work with voluntary and civil society bodies to promote education and values.

This may reflect not only the agency's prioritization of resources, but also weaknesses in partner organizations. In the case of STT, the Ministry of Education failed to give full support to Lithuania's anti-corruption education programs, thus hampering their effectiveness. Indeed, one of the issues of longer-term impact is how far a specific agency is responsible for cultural and social change, and how far that must lie with governments, ministries, and so on, to find the appropriate means to change social mores.

In Bhutan, the key issue concerned the balance between democratization and traditional cultural values. The impetus for reform was predicated on an understanding that an absolutist monarchy was not sustainable and that Bhutan's delicate relations with neighboring countries would not be shored up by *not* engaging with the international community. While the commitment to democratization has been genuine, it has also been partly tempered with 'defensive democratization'. This means a move toward universalism adapted to maintain elite privilege, hierarchical management and many of the societal facilitators of traditional cultural norms and values.²² Thus, development along the particularistic-universalism continuum would appear to be predicated on preserving the country's cultural traditions. Not all of these are amenable to (and may even seek to influence) democratization and the development of public accountability and merit-based decision-making in the public sector. This has consequences for the demands on, and the effectiveness of the work of, the ACC. As its own integrity assessment noted in 2016, there continued to be a need 'to reinforce coordinated efforts towards improving service delivery, strengthening accountability mechanisms, ethical leadership and corruption prevention measures in the agencies to improve the level of integrity'.²³

Conclusion

The alternative models discussed in this chapter highlight three issues relating to the need for, or design of, an ACA.

1. **The essential first step in any proposal for the establishment of an ACA is a risk or threat-based review of the existing institutional and operating environment.** Such review ideally can help identify the corruption problem and provide an understanding of the political landscape and the space for reform. It helps to answer the following questions: (i) What is the corruption problem that such a body/bodies would address? (ii) Is the problem sufficiently defined to justify the need for a dedicated entity or agency? (iii) Does such a definition provide the basis for the design of a *fit-for-purpose* body and ensure that the standards noted above will support its organizational development and maturity?
2. **Practitioners and government officials must pay attention to wider issues, such as the agency's organizational development and maturity, and its fit within the existing institutional landscape and operating environment.** Simply supporting an ACA is not enough; it must be designed to address—and adapt to—its institutional and operating environment. The environment in turn should be encouraged to develop in ways that complement and facilitate not only the work of the ACA but also the roles and responsibilities of other institutions. A lesson from the experiences of the UK, Lithuania and Bhutan is the centrality of the ownership, implementation and monitoring of national anti-corruption strategies in determining the need for an ACC and, if there is, ensuring complementary reforms in the external environment.
3. **The design of an ACA should involve an understanding of the corruption problem and a recognition of the importance of the inter-connectedness and inter-dependency of the institutional landscape.** While the donor tendency has been to allow an over-focus on one agency, national anti-corruption strategies have generally under-achieved in improving the institutional landscape and operating environment. Understanding the corruption problem and clarifying modalities to address it ensures that the need for an ACA can be established, and if

so decided, *designed* to be focused and fit-for-purpose. This also entails determining the roles and responsibilities of other institutions, as well as the mechanisms and incentives to ensure the connectedness of the institutional landscape and a collective approach to addressing corruption from a range of perspectives.

Notes

1. Recanatini, F. 2011. *Anti-Corruption Authorities: An Effective Tool to Curb Corruption?* in *International Handbook on the Economics of Corruption*, Susan Rose-Akerman and Tina Soreide, eds., 2011; Doig, A., & Norris, D. (2012). Improving anti-corruption agencies as organisations. *Journal of Financial Crime*, 19(3), 255-273. <https://doi.org/10.1108/13590791211243101>.
2. For a review and discussion of country-level AC strategies, please see Norton Rose Fulbright. 2016. *Countries Curbing Corruption: An Examination of 41 National AC Strategies*.
3. Such as the powers of the Thai NACC in relation to malfeasance in office – which may include intentional exercise of power contrary to the provisions of the Constitutions or any law - or the multiple remits (such as bribery, fraud, money laundering, asset disclosure, ethical standards, inspections and whistleblowing) of the Ugandan Inspectorate of Government.
4. Huther, J. and Shah, A. 2000. *Anti-corruption Policies and Programs: A Framework for Evaluation*. World Bank Policy Research Working Paper No. 2501. Washington: World Bank; Shah, A. 2007. 'Tailoring the Fight Against Corruption to Country Circumstances'. In Shah, A. (ed). *Performance Accountability and Combating Corruption*. World Bank: Washington.
5. Drawn from Bruno Bettelheim (1988). *A Good Enough Parent*. Vintage Books; 1st Vintage Books Ed edition). Expanded in Doig, A., Watt, D. and Williams, R. 2007. 'Why Developing Country Anti-corruption Agencies Fail To Develop: Understanding The Dilemmas Of Organisational Development, Performance Expectation, And Donor And Government Cycles In African Anti-corruption Agencies'. *Public Administration and Development*. 27. pp1-9; 2006 'Hands-On or Hands-Off? Anti-Corruption Agencies in Action, Donor Expectations, and a Good Enough Reality'. *Public Administration and Development*. 26. pp163-172. These articles were in turn based on an empirical study: Doig, A., Watt, D. and Williams, R. 2004. 'Measuring 'success' in five African Anti-Corruption Commissions - the cases of Ghana, Malawi, Tanzania, Uganda & Zambia. U4 (www.u4.no). Here it is argued that, like *good enough parenting*, sponsoring bodies should not try to create the agency they would like to have at the outset, but should instead recognize that the best they can do is to help the agency toward a successful future by providing the means and mentoring to give it the organizational confidence and competence to do so until – and when – it reaches organizational maturity.
6. 'Londograd' is shorthand for the concerns summarized in 2016 by Roberto Saviano, the Italian investigative journalist, who said: 'If I asked you what is the most corrupt place on Earth you might tell me it's Afghanistan, maybe Greece, Nigeria, the South of Italy, and I will tell you it's the UK. It's not the bureaucracy, it's not the police, it's not the politics but what is corrupt is the financial capital.'
7. See World Bank/StAR. 2009. *Stolen Asset Recovery. Management of Returned Assets: Policy Considerations*. Washington: World Bank and *Proceeds of Corruption: Frameworks for the Management of Returned Assets. Draft Concept Note*. World Bank and UNODC/StAR. 2014. *Left out of the Bargain. Settlements in Foreign Bribery Cases and Implications for Asset Recovery*. Washington: StAR.
8. A person able to facilitate mutually-beneficial inter-agency arrangements through: building sustainable relationships; managing through influencing and negotiation; managing complexity and interdependencies; and managing roles, accountabilities and motivations.
9. The same official led the extensive discussions between DFID, the SFO and other agencies to agree a set of general principles (issued by the SFO and CPS in June 2017) intended to ensure that overseas victims – affected states, organizations and individuals – of bribery, corruption and economic crime, are able to benefit from asset recovery proceedings and compensation orders made in the UK.
10. A subjective observation was that most of the 'consultants' from the US and the UK in the early years were serving law enforcement and public sector officials whose level of practitioner expertise and technical competence offered a peer-to-peer experience that was compatible with STT expectations and aspirations, facilitating knowledge transfer.
11. In 2013 an UNCAC review team managed to misinterpret the STT as 'one of the most successful "copies" of the Hong Kong's Independent Commission against Corruption model'.
12. Kuris, G. (2012). *Balancing Responsibilities: Evolution of Lithuania's Anti-Corruption Agency, 1997-2007*. Princeton University: Innovations for Successful Societies. p5.
13. Bhutan Anti-Corruption Commission. 2018. *Annual Report 2018*. Thimphu: Bhutan Anti-Corruption Commission: 81.
14. Quoted in: UNDP/UNODC. 2010. *Bhutan: Capacity Assessment of the Anti-Corruption Commission*. Bangkok: UNDP/UNODC: 22.
15. Basel Institute on Governance. 2013. *National Anti-Corruption Strategy (NACS) of Bhutan 2008-13: Evaluation Report*. Basel: Basel Institute on Governance.
16. Transparency International. 2015. *Anti-corruption Agency Strengthening Initiative: Assessment of the Bhutan Anti-corruption Commission*. Transparency International: Berlin.
17. Bhutan Anti-Corruption Commission, 2018.
18. For example, in relation to the use of Unexplained Wealth Orders or the establishment of the National Economic Crime Centre.
19. OECD. 2017. *Phase 2 Report on Implementing the OECD Anti-Bribery Convention In Lithuania*. Paris: OECD: 42, 43.
20. Swiss Agency for Development and Cooperation. 2016. *Bhutan: We Can Win the Fight Against Corruption*. Asia Brief. SDC: Bern.
21. Bertelsmann Stiftung. 2018. *Transformation Index*. Bertelsmann Stiftung: Brussels.
22. See, for example, G. E. Robinson. 1998. 'Defensive Democratisation in Jordan'. *International Journal of Middle East Studies*. 30.
23. Anti-Corruption Commission. 2016. *National Integrity Assessment 2016*. Thimphu: Bhutan.

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CHAPTER 12

Supreme Audit Institutions



Introduction

Why are SAIs so important?

Supreme Audit Institutions (SAIs) are the chief auditors of the government and play a pivotal role in ensuring transparency and accountability. The independence and operating capacity of SAIs are important foundations for providing fiscal oversight through presenting credible and timely audit results to legislatures, government, civil society, and the general public. The primary purpose of an SAI is to report on the management of public funds and the quality and credibility of governments' reported financial data. Its recommendations can help strengthen institutions. With adequate independence and capacity, SAIs can contribute to combating corruption both through directly reporting on transactions and internal controls, and by assessing ways to improve the accountability and performance of government agencies and anti-corruption bodies. They can also contribute through undertaking "performance audits" of government or quasi-government entities. The International Organization of Supreme Audit Institutions (INTOSAI) has issued ISSAIs, the international standards of SAIs for the delivery of effective audit reports. SAIs are not primarily responsible for tackling corruption and fraud. However, given the nature of the work performed by SAIs, including checking government accounts, reviewing regulatory compliance, and assessing the performance of government institutions, SAIs are capable of contributing to the anti-corruption agenda.

SAIs play a unique role in detecting and preventing corruption, when they have the mandate, tools and trust of the government to take on the fight against corruption.¹ SAIs' audit mandate generally is broad enough to cover the entire public sector and flexible enough to examine government activities at any level. This could range from individual financial transactions, specific business practices, such as procurement, to a comprehensive corruption prevention system of an entity or whole-of-government. SAIs at the minimum have financial, compliance, and performance audits in their tool list, which enables them to evaluate the legality, integrity, efficiency, and effectiveness of government operations. Last but not least, SAIs are one of the most trustworthy institutions, which helps them

open up the audit process for active citizen engagement as a part of their anti-corruption mechanisms such as hotline and fraud net.

The central role of SAIs in combating corruption is that of prevention through the promotion of sound financial management and robust internal control mechanisms in public entities. Sound financial management, with effective financial reporting and disclosure of any deviations, is an effective deterrent to fraudulent and corrupt activities. SAIs can help public bodies strengthen their corruption prevention framework (or build a more comprehensive framework) by assessing the efficiency and effectiveness of the framework and recommending the relevant authority to address the shortcomings identified during the audit.² SAIs contribute to building public awareness of corruption and financial impropriety through timely and periodic public disclosure of audit findings. SAIs may strengthen other pillars of the national integrity system through close collaboration and coordination with other institutions in the public sector.

SAIs are expected to raise red flags that would deter and detect fraud and corruption and assist law enforcement agencies to bring perpetrators to justice. Prevention, detection and response activities are interdependent and mutually reinforcing to some extent. Early detection is a powerful prevention method that sends a clear message to the potential perpetrators. Detection is also useful to assess the appropriateness of preventive measures. SAIs may use detected fraud or corruption cases for publicity, to attract the attention of parliament, citizens and media, and put additional pressure on government to fix the problems effectively. Surprise audits that may be conducted for detection, act as a good deterrent. Some SAIs have institutionalized the detection function by setting up a designated unit and developing forensic and investigative audit guidelines and manuals. In order to vitalize the forensic audit function, SAIs may also require a firm statutory position, strong leadership, an integrity-first organizational culture, audit staff with relevant capacity, access to data and information, and collaboration with key stakeholders.

How can SAIs strengthen their effectiveness?

Detecting fraud and corruption requires proper guidance and training for auditors.³ Detecting corruption is neither easy nor straightforward, since it is fundamentally a crime of deception and deceit. Fraudsters use all sorts of deception techniques to conceal illegal acts. Auditors may also interfere inadvertently with potential future legal proceedings or investigations. Training on forensic or fraud audits helps auditors to be better prepared to detect irregularities and collaborate with the law enforcement agencies. The more auditors know about what perpetrators are likely to do, the better are their chances of finding the red flags associated with potential fraud and corruption. With good understanding on fraud and corruption schemes and professional skepticism, auditors can distinguish anomalies or potential red flags from regularity.

To be more effective, SAIs need to strengthen their relationship with parliaments and anti-corruption agencies. Strong external relations and partnerships is one of the key indicators to evaluate the effectiveness of an SAI. In fragile situations where state building or rebuilding is in progress, SAIs are confronted with many difficult challenges in building such partnerships.⁴ In the context of weak parliamentary oversight and lack of a proper feedback mechanism of audit results into the budget-setting process, parliamentarians do not take the audit findings or budget settlement process seriously. In such an environment, it is important to raise awareness on the role of SAIs and the value of audit findings through briefings for new and relevant members of parliament. This can be enhanced by ensuring that audit reports are user friendly and easily understood. SAIs can help build the capacity of members of parliament and their staff through, for example, joint study visits and exposure to advanced countries where SAIs and parliaments work together effectively. Similarly, when the rule of law is weak, suspected fraud or corruption cases transmitted by the SAI are not pursued by law enforcement agencies. SAIs could establish formal collaboration agreements with law enforcement agencies, where the scope of collaboration extends to information sharing, joint conferences and workshops to share knowledge and experiences, referred case follow-up, staff exchanges and joint agenda setting.

In an environment where corruption is widespread, establishing the integrity of SAIs can be a challenge.⁵ As SAIs move closer to the frontline of fighting corruption, the temptations and risks to the auditors will grow, as will stakeholders' expectations on the SAI's integrity. Top management of the SAI must lead by example in maintaining high integrity and establishing zero tolerance regarding staff violations, failing which they will not be able to administer or propagate an organizational culture of integrity. Another potential challenge that SAIs face is the modality to reconcile the individual case-based approach of detection (i.e., forensic audits) and the system-based approach of prevention (i.e., traditional audits).⁶

Different external audit systems, Westminster⁷, Judicial or Board model, have their strengths and weaknesses that may have implications for their effectiveness in combating corruption. These three models can be distinguished, at least theoretically, in terms of centralization or decentralization of authority, susceptibility to political influence, openness and transparency, and ability to enforce audit findings.⁸ The distinguishing aspects—leadership, independence, accountability, and effectiveness—are all recognized as the fundamental principles of public auditing. Rapid convergence among the different types of SAI models has taken place since the introduction of 'The International Standards of Supreme Audit Institutions' (ISSAIs).

While the effectiveness of an SAI largely depends on its operational and financial independence, it is also influenced by the external audit model they follow, the country context, and the associated norms of behavior. The two case studies discussed below demonstrate the effectiveness of the SAIs in two different contexts. The case study of SAI Ghana is an interesting example of an overlapping or hybrid model of a Westminster type SAI equipped with sanction powers. Other Westminster type SAIs have established forensic audit functions, though the Westminster model is known to focus more on the supporting role of SAIs, targeting prevention of corruption rather than detection or sanction. The second case study on India, also a Westminster model, demonstrates the key role played by the Comptroller and Auditor General (CAG) in unearthing major inappropriate financial transactions costing the government huge sums of money.

Case study 1: Role played by Ghana's Supreme Audit Institution

Corruption perception has been a long-standing concern in Ghana. For instance, the Governance and Corruption Survey conducted by the Ghana Centre for Democracy and Development (CDD Ghana) in 2000 found that 75% of the Ghanaian households surveyed regarded corruption as a serious national problem; 59% of households saw corruption as a major problem in the private sector; and 86% saw it as a major problem in the public sector. A later survey in 2005 conducted by the Ghana Integrity Initiative (GII) also indicated that Ghanaians perceived corruption as equally serious, with 92.5% of urban households in Southern Ghana citing corruption as prevalent in the country while 90% of those surveyed considered it a serious problem.

Whilst some efforts have been made to address corruption, independent assessors find that the country has made little progress, as measured by global rankings in recent years. Amidst a growing perception of corruption amongst public officials, the public has become increasingly cynical about the government's commitment and ability to effectively tackle corruption. In 2015, Ghana ranked 56th in the world on Transparency International's Corruption Perception Index (TI-CPI) but slipped quickly over the years to 80th place in 2019. Ghana's position in the World Governance Indicator's Control of Corruption measure has improved from 53rd place in 2015 to 49th place in 2017, before regressing to 53rd place in 2018. Corruption is perceived to exist in all branches of the Ghanaian Government and has been a highly politicized issue since the country's transition to a multi-party democracy in 1992. In 2017, the new government undertook several measures, introducing electronic services and digitization to reduce the human interface in the delivery of several public services, including the issuance of electronic passports.

Ghana has several institutions to fight corruption, but they are fragmented and face persistent implementation challenges. Besides the traditional law enforcement agencies such as the Ghana Police Service (GPS), the Bureau of National Investigations (BNI) and the courts, the other institutions established to curb corruption in Ghana are the Commission on Human Rights and Administrative Justice (CHRAJ),

the Economic and Organized Crime Office (EOCO), and the Financial Intelligence Centre (FIC). However, many of these bodies struggle with issues that limit their ability to effectively perform their duties, such as a severe lack of resources.⁹ For example, the CHRAJ, despite being the leading anti-corruption institution in Ghana, does not have the power to prosecute, nor the required budget autonomy. Both the CHRAJ and EOCO have been reported to face interference from the executive, due to the structure of their boards and the appointment of directors and commissioners. Similarly, in his various writings and a public lecture given at the University of New York in January 2019, Mr Whittal, a Commissioner at CHRAJ, has consistently proposed the need to remove the appointment procedures from the executive: "the time has come to amend the laws on the appointment of the heads of state anti-corruption institutions—EOCO, CHRAJ and including the Financial Intelligence Centre (FIC)—to wean them off excess control by the executive." As a result, perceived public confidence in the mandated constitutional bodies against anti-corruption has been fast eroding.

The National Anti-Corruption Action Plan (NACAP) reflected an awareness by the government of the main drivers of corruption. In 2014, the Government launched the 10-year NACAP, which acknowledged and listed the various drivers of corruption in Ghana, including institutional weaknesses, low salaries, a skewed incentive structure, and insufficient enforcement of laws within the patrimonial social and political context. In addition, the document described the reasons for the failure of past efforts to curb the drivers of corruption and specified new measures to tackle the issues in a more holistic and coordinated manner. The accompanying foreword to the Ghana National Anti-Corruption Action Plan (NACAP) (2012-2021) acknowledges that the absence of the Ghana Audit Service (GAS) in developing the plan was a missed opportunity that the country could have pursued to better understand some of the core drivers of corruption in the country.

Similar to other SAIs globally, GAS has a mandate to promote and uphold financial integrity, but its impact had been limited. The GAS derives its

mandate from Ghana's Constitution. Articles 184, 187 and 286 of the 1992 Constitution established a broad mandate covering the activities for the Auditor General (AG), including to (i) audit the public accounts of Ghana and any other public office, (ii) take into custody the asset declarations of persons who hold public offices, (iii) determine and approve the form or manner in which public accounts are kept, (iv) submit audit reports, draw attention to irregularities, and make appropriate recommendations on the Ghanaian public accounts and the Central Bank's statement of foreign exchange receipts and payments, and lastly (v) the AG may disallow any item of expenditure contrary to the law and impose a surcharge on the person responsible. While this entailed powerful and far-reaching authority for the AG, it was a common view that implementation of these powers was weak, and that audit reports produced by the GAS were reduced to mere "journalistic reports of events"¹⁰ with little real impact.

Since the appointment of a new AG in December 2016, GAS's core financial oversight role has gained renewed prominence, which has in turn enhanced its contribution to anti-corruption efforts. Several key undertakings have contributed to GAS's impact on financial integrity:

- **Judicious use of disallowance and surcharge powers**

In 2017, the Supreme Court ruled that the AG be required to exercise its powers of disallowance and surcharge to commence the recovery of public funds that have been found to be illegally spent or lost through negligence or misconduct.¹¹ These powers enable the AG to disallow any unlawful expenditure and impose a surcharge on the person(s) responsible. Anyone aggrieved by a disallowance or a surcharge can appeal to the High Court as provided for by Article 187(9) of the Constitution within 14 working days of the surcharge. To facilitate the process, particular courts were identified and assigned by the Chief Justice to hear these appeals.

The refusal of previous AGs to exercise the disallowance and surcharge powers had resulted in a loss of almost GHS2.5 billion worth of public funds through ministries, departments, and agencies (MDAs) alone from 2003 to 2014, and GHS5 billion through public boards, corporations, and other statutory institutions between 2009 and 2014. The new AG established a special task force to review

all previous Audit Reports to reveal instances where the powers of disallowance and surcharge may be applied to recover lost public funds. Between June 2017 and November 2018, the GAS issued 112 surcharge certificates and returned a total amount of GHS67.3 million (USD12.2 million) back to government coffers. This achievement inspired other African SAs to pass similar legislation on disallowances and surcharges. In 2019, the GAS stopped publishing special reports on disallowance and surcharge activity, and instead incorporated it in their usual audit reports to Parliament as a step towards establishing it as a fixed and regular part of the audit process.

- **Audit of persistent arrears**

Ghana's persistent fiscal slippages were mainly driven by weaknesses in the public financial management (PFM) commitment control systems. In 2017, the AG worked closely with the World Bank and the IMF to undertake an audit of government payment arrears that had accumulated over the period 2013–2016. The audit was to: (1) verify the types and amounts of arrears accumulated; (2) identify the root causes for the arrears; (3) limit the future accumulation of arrears; and (4) develop a coherent strategy for managing and clearing the existing stock of arrears. As part of the audit, all MDAs were required to submit their outstanding liabilities to GAS for validation, which was tediously undertaken by examining and cross-checking the supporting warrants, contract documents, invoices, procurement records, and other documentation. Bank statements of the respective MDAs were also checked to ensure that the liabilities were not already settled. In prior years, such arrears were commonly settled and paid for without verification.

The outcome of the audit revealed several corrupt practices and led to the recovery of substantial sums of money, strengthening of commitment controls and prosecution of offenders. The total outstanding commitments submitted by the MDAs for verification of arrears amounted to GHS11.3 billion (USD2 billion), 51% of which were rejected by GAS as invalid arrears due to fraudulent reasons, such as double or triple payments to contractors for the same services rendered. The audit also revealed weak control mechanisms and poor record-keeping practices by the MDAs that facilitated corrupt activity. Internal auditors at the MDAs reported abuse and silencing through

threats, transfers, or invitations to participate in corrupt schemes. The findings of the report were subsequently shared with Parliament and civil service organizations (CSOs). Any payment of invalid arrears thereafter would lead to a surcharge against the person who authorized, made, or received the payment.

- **Audit of ghost workers in the public sector**

In the past two decades, Ghana's macro-economic instability has persistently been driven by two main drivers: the level of debt and the size of the wage bill. With the support of the World Bank-financed Public Financial Management Reform project, the AG partnered with the Special Prosecutor, the Ghana Police, CSOs, other anti-corruption bodies and heads of MDAs to undertake a government-wide verification of genuine government employees. The aim of this was to eliminate ghost workers who artificially inflated the payroll and allowed corrupt officials to steal the surplus. Employees in all the institutions were asked to produce authentic individual employment documents, following which the list of genuine government employees was matched against the payroll list kept by the Controller and Accountant General. In January 2020, GAS reported that the audit found 10,689 ghost workers on the public sector payroll. A final invitation was issued to these employees to verify themselves, and a failure to do so within the stipulated timeframe would result in their being disallowed from remaining on the payroll, and a surcharge on the salaries paid to these ghost workers would be imposed on the heads of the MDAs involved.

- **Certification of Public Financial Management Systems**

In Ghana, the AG is responsible for certifying the PFM systems that are used by the government. Once a system is developed and its objectives are articulated, it is subject to review by GAS to ensure that the internal control arrangements in place are strong and that the system will not allow the enabling of corruptive breaches. One of the key aspects that is reviewed by the AG is the extent to which there is an appropriate segregation of duties to prevent collusive practices, which have been known to underpin corruption in Ghana.

- **Undertaking of special audits**

The AG embarked on several special audits on

selected state institutions in 2018. One such example was an investigation of the Ghana Broadcasting Corporation (GBC), where it was revealed that the corporation had under-stated revenue realized for the 2014 World Cup by GHS3.5 million (USD626,273). The management was advised to update the financial statements accordingly to account for the disparity, a failure to do so would result in the officers responsible bearing a surcharge of the amount in question.

The leadership of the AG himself has also been an important contributor to GAS's impact, as he championed initiatives beyond the usual activity of GAS. The AG's firm and untiring anti-corruption stance has led GAS to undertake interests that spill over into what a robust anti-corruption agency might pursue in other countries:

- **Being a voice of reason in safeguarding the public purse**

As a result of his public crusade and determined actions against corrupt officials, the AG has emerged as a strong figure in Ghana's anti-corruption war. In various speeches, and through joint platforms with CSOs, he has been instrumental in sensitizing the public on the dangers of corruption and urging the media and the public to expose corrupt public officials, prompt investigations, reinforce the works of anti-corruption bodies and put pressure on the government to change laws and legislation that create enabling platforms for corruption in the country. He has also consistently advocated for effective collaboration between GAS, the public, the private sector, and CSOs in fighting corruption. The public has been responsive to his call, and over time they have become instrumental in providing important pieces of information that have assisted in GAS's audits and investigations. In 2019, the AG was voted Integrity Personality of the year at the Ghana Integrity Awards, owing to his strong stance against corruption.

- **Partnering with CSOs**

The AG has often partnered with CSOs to name and shame corrupt officials and institutions based on the findings of his annual and special audits, and lobby for changes in laws and legislation that facilitate corruption. This has generated deterrent mechanisms that were not present before he took office.

- **Using the Right to Information Law**

In May 2019, Ghana's President signed the Right to Information (RTI) Act into law, implementing the public's constitutional right to information held by any public institution and fostering a culture of transparency and accountability in government. Even though the RTI is provided for in the 1992 Constitution, the country struggled for years to pass the relevant law. The AG partnered with CSOs to lobby for the passing of the law and has been vocal in supporting the use of it for CSOs, the public and media in providing GAS with crucial and relevant information to investigate and prosecute corrupt officials.

- **Pushing for transparent asset disclosure**

The AG has been critical of the weak enforcement and flaws of the asset disclosure system in Ghana. As per the current laws, asset declarations by public officials are sealed in an envelope and marked secret, only to be opened in the event of a corruption investigation or if ordered by the court. The AG has deemed this to be ineffective and urged public officials to declare their assets publicly. Working with the Special Prosecutor, he has also demanded that the provisions of Article 286 of the Constitution and Public Office Holders (Declaration of Assets and Disqualification) Act 1998 (Act 550) be observed. This requires all qualifying public officers to submit written declarations of all assets owned within three months after taking office and at the end of four years. Unlike in previous years, the AG has partnered with CSOs to name and shame officials that have not yet met this requirement. One such example was the refusal to confirm the appointment of the new Chief Justice in 2019 until she had shown evidence of having declared her assets over the previous four years.

Factors behind GAS's impact

SAls are not always able to play an effective role in promoting financial integrity. In Ghana, its impact has been aided by several factors:

1. **Financial and administrative autonomy:** GAS's financial and administrative independence has been instrumental in allowing it to maintain impartiality, counter corruption effectively, and fulfil its mandate. While most public bodies

in Ghana are subject to the supervision of the Ministry of Finance, GAS maintains its operational control, with minimal external interference in decision making or the appointment or removal of staff. In addition, the Parliament is accustomed to providing GAS with the financial resources it requires yearly, as stipulated in the annual budget GAS submits.

2. **Personal conviction and knowledge of the AG:**

Besides a strong mandate, the AG's personal convictions and deep-rooted knowledge of the legal and constitutional authority of the office have enabled GAS to be effective in the fight against corruption.

3. **Provision of quality reports that are accessible to the public:**

Audit reports are made publicly available to increase the transparency and accountability of public institutions.

4. **A direct reporting relationship to Parliament:**

GAS reports directly to Parliament, although it has a Board whose role is merely advisory on key policy matters. The Audit Service Board according to article 189 is responsible for employing staff (except AG) for the audit service and determining their conditions of service. The Public Accounts Committee has at certain times exerted pressure on audited bodies to comply with GAS's recommendations.

5. **An effective arrangement with the Internal Audit Agency:**

GAS works very closely with the Internal Audit Agency using ISSAI 9150 and has established a memorandum of understanding to ensure there is an appropriate exchange of information on corruptive practices.

6. **Continued capacity building:**

For example, GAS has undergone the World Bank Integrity Vice Presidency's preventive and forensic training on matters of evidence and follow-through on corruption leads.

GAS's achievements in recent years owe partly to the strong leadership and conviction of the current AG, posing a risk for the sustainability of GAS's momentum and impact on the anti-corruption war in the future. A change in AG may jeopardize the current traction that the GAS has in curbing corrupt practices and bringing offenders to

justice. Nonetheless, the progress achieved and public support garnered in recent years are likely to create the necessary pressure, as well as enabling environment,

for future AGs and GAS to continue the fight against corruption.

Case study 2: The role of the Supreme Audit Institution in India

In India, the Office of the Comptroller & Auditor General (CAG) is the SAI responsible for ensuring accountability and oversight of government functionaries and programs. The CAG is mandated by the Constitution to audit the accounts of the Union Government and of all the State Governments of India, including institutions substantially financed by the Government of India. The CAG is also mandated to prescribe the accounting format and standards that public institutions must adhere to. Employing more than 45,000 employees across 141 field offices,¹² the CAG mainly undertakes three types of audits: (i) Financial audits that ascertain if financial statements are properly prepared and present financial information fairly; (ii) Compliance audits that examine if the applicable laws, rules or regulations are complied with; and (iii) Performance audits that are independent assessments of the extent to which a public institution operates economically, efficiently and effectively, and fulfills the objectives that it set for itself. All of the CAG's audit reports are laid before the Parliament and Legislatures of the States.¹³

Over the years, the CAG has strengthened its audit capacities and shifted its emphasis to risk-based performance audits. The CAG's staff has undergone continuous training to better conduct and report audits, as well as conform to national auditing standards and international best practices. This capacity building was partly supported by the World Bank. In 2007, the CAG's office also shifted its focus to conduct more performance audits that promote economical, effective and efficient governance. As practiced in more advanced SAIs globally, the CAG also started undertaking more risk-based audits, detecting and prioritizing high-risk and high-value areas where efforts can be concentrated to draw maximum impact.

Beginning in 2008, the CAG undertook several high-profile performance audits that generated public awareness and helped transform the role

of the audit in strengthening accountability, transparency and governance across the public sector. Some of these performance audits caught the public and media's attention because they exposed misallocations of public assets at undervalued prices. The public discourse and investigations triggered by these findings resulted in policy reforms and the removal of several government officials that were involved in the alleged corruption. While critical audit findings have not always led to prosecution of the accused individuals, they have contributed to a higher risk of detection for those contemplating corrupt acts. The investigations undertaken by the CAG gained traction with the public and made a significant impact in the fight against corruption in India as a result.

Performance audits by CAG

Telecom licenses. In 2008, the CAG undertook a performance audit of the issuance of telecom licenses and award of spectrum. The performance audit report revealed gaps in policy implementation, and an estimated loss of public funds based on deviation from prescribed rules. CAG's report tabled in the Parliament exposed corruption amounting to several billion dollars to the public exchequer, something that attracted the attention of the media and civil society. In 2012, the Supreme Court of India ruled that the 2G spectrum allocation in 2008 was "unconstitutional and arbitrary" and cancelled 122 licenses and spectrum allocated to eight companies.

Coal blocks. In 2012-13, the CAG published a performance audit report that revealed the inefficient allocation of coal blocks to private and public sector enterprises between 2004 and 2009. The report¹⁴ highlighted the delay in the introduction of competitive bidding for the allocation of coal blocks for captive mining, despite making the decision to operationalize competitive bidding since 2006. In the final report

submitted to Parliament, the CAG reported “an estimated USD26 billion in financial gains made by private coal block allottees, part of which could have accrued to the exchequer if the competitive bidding process had been implemented.”¹⁵ The CAG report notes “this allocation lacks transparency and objectivity.”¹⁶ The CAG’s findings led to investigations surrounding the issues of nepotism and collusion in the allocation of national resources. The issue, popularly referred to as “Coalgate” by the media, eventually led to investigations by the Central Bureau of Investigation against the public officials involved as well as the firms allotted the coal blocks. The CAG report also resulted in the formation of an Inter-Ministerial Group to deliberate the forfeiture of coal blocks that were not developed on time. The Inter-Ministerial Group eventually recommended the deallocation of 13 blocks and the forfeiture of bank guarantees for 14 allottees.¹⁷ The Parliamentary Standing Committee also reported the allocation of all coal blocks between 1993 and 2008 as unlawful, and the Supreme court eventually cancelled a total of 214 coal blocks that were awarded improperly during this time.¹⁸ Dismissing a public interest litigation that challenged the CAG’s power to conduct performance audits, the Supreme Court of India further ruled that “the CAG’s work to investigate into austerity, efficiency, and effectiveness by which the government has used its resources is embedded in the 1971 Act. Performance Audit Reports prepared under the Regulations should be viewed accordingly. The Court did not see any unconstitutionality in the regulations.”¹⁹

Commonwealth Games. The CAG also undertook two performance audits²⁰ pertaining to the Commonwealth Games XIX (CWG), held in New Delhi, India in October 2010. In 2003, the right to host the CWG-2010 was awarded to Delhi on the guarantee of the Government of India, in conjunction with the Government of the National Capital Territory of Delhi, to bear the expenditures of hosting the games. The Indian government laid out substantive plans to upgrade infrastructural facilities within the city in preparation for the games. The objective of the CAG’s performance audits post-completion of the games in 2011 was to assess the (i) adequacy and effectiveness of budgeting and financial management, and (ii) effectiveness and efficiency of agencies in planning and executing the infrastructure projects for the event.²¹ The performance audit found incidences of improper planning, procurement, and contract management that drove up the cost of the games. The CAG report states: “In the

absence of a single point of authority and accountability and the lack of a clear governance structure, a multiplicity of co-ordination committees were created, disbanded, and reconstituted at different points of time. This approach was not methodical, consistent and effective, and also led to complete diffusion of accountability. The argument of urgency was used to obviate the regular process of tendering for award of contracts. We found numerous instances of single tendering, award on “nomination basis”, award of contracts to ineligible vendors, inconsistent use of restrictive Pre-Qualification (PQ) conditions to limit competition to favour particular vendors, inadequate time for bidding, cancellation, and re-tendering of contracts, and inexplicable delays in contract finalization, all of which seriously compromised transparency and economy.”²²

All of the above examples of performance audits raised the profile and relevance of the CAG and created awareness amongst the public on the role of the SAI as a primary catalyst for improved governance, accountability and public service delivery in India. The audits by the CAG thus became an important instrument to expose alleged corruption, nepotism, and abuse of power in the public sector.

In addition to the disclosure of audit findings, several other factors have aided the CAG’s effectiveness in fighting corruption in the past decade. Since 2008 it has undertaken a number of actions that have improved the scope and usefulness of its outputs, enhanced its credibility and renewed public confidence in the CAG to expose and combat corruption. These were:

- **Continuous institutional capacity building.** The CAG has worked continuously to strengthen its audit capabilities, thereby improving the visibility and credibility of its audit reports. In addition to staff training, the CAG modernized and upgraded audit software and infrastructure for both the CAG’s office and its state branches. In 2008, the CAG froze new recruitments in the clerical cadre and focused hiring at the assistant audit officer level, ensuring that recruits had the required qualifications such as a commerce or accounting background, to undertake more complex risk-based audits. As a result of these efforts, the CAG’s reports came to be perceived as credible and reliable source materials for use not only by the public and media, but also by legislative committees, courts, investigative agencies and international organizations. On the

international front, the CAG became a member the United Nations Board of Auditors in 2014, serves in the Committee of the International Organization of Supreme Audit Institutions (INTOSAI), and also assists in the capacity building of SAIs in other countries in the region.²³

- **Production of more user-friendly, timely and impactful audit reports.** Prior to this, the CAG's audit reports left little impact on Parliament, the media or the general public, as each report typically took 2 to 3 years to publish and was usually long and difficult to read. However, the CAG worked to produce shorter and punchier 10- to 20-page audit reports, and significantly shortened the time taken to publish a report to 8 to 9 months. The previous time lag made it difficult to hold public attention, thus lessening the impact of the audits undertaken. The quicker publication not only mitigated this, but also ensured accountability as concerned public officials still held their posts within the shorter time frame, and faults in government programs could be quickly resolved.
- **Maintained independence and integrity.** CAG's independent position as a constitutional authority continues to provide grounds for the criminal investigations and court cases from its reports. The CAG's office can disseminate reports to the media regularly and is a powerful force for accountability and transparency in India.
- **Strong leadership and determination of the CAG.** Besides having an adequate legal mandate, CAG's leadership has enabled the office of the CAG to be very effective in the fight against corruption and rejuvenated the public image of the office and its work. All three of the audits described above, alongside several other audits that gained prominence, were undertaken underpinned by strong leadership.
- **Increased engagement with the public.** The CAG's office increased its outreach to the public and other stakeholders to seek inputs and determine the scope of audits. For example, prior to conducting a social audit on water pollution, a two-day conference involving civil society experts, government agencies, and international and regulatory bodies, was organized by the CAG in March 2010 to exchange knowledge and share concerns regarding the issue. Following the

conference, the CAG's office sought feedback from the public on the water pollution problems they faced through various means, including an advertisement in the newspapers. The office received more than 700 letters and e-mails, which it used to frame the objectives and questionnaires for the audit. The CAG also started teaming up with social action groups, tapping into their knowledge and expertise on issues of public concern.

The CAG serves as an example of how SAIs can become more effective and successful in exposing and preventing corruption, by prioritizing high-impact audits, continually strengthening capacity and improving citizen engagement. The efficacy of the CAG's office in stirring public interest and in initiating corrective measures through its audits was enhanced following a range of reforms made within the office since 2008. Strong leadership of the CAG had also facilitated these reforms and pushed through the release of impartial, but often uncomfortable audit findings to the public and media. A combination of these factors has enabled the CAG's office to properly conduct independent and critical evaluations of the performance of high-value government projects, as well as provide critical insights for further investigations by other law enforcement and anti-corruption agencies, and for the implementation of corrective and preventive measures to avoid reoccurrence of any wrongdoing or inefficiency. Like many public sector institutions, the CAG's office also needs to continuously invest in improving its capacity, both human resources and systems. Through these ongoing improvements, this office continues to command the respect of the public and is a huge deterrence against corruption and rent seeking behaviors. It has a number of international affiliations and memberships, and the CAG of India has been elected as Chair of the UN Panel of external auditors for the year 2020.

Notes

1. The Congress of the International Organization of Supreme Audit Institutions (INTOSAI), held in 1998 in Montevideo, Uruguay, discussed and delivered concrete recommendations for SAls to make an effective contribution to the fight against corruption. See also U4. 2018. "The Role of Supreme Audit Institutions in Fighting Corruption" for a more detailed overview.
2. ISSAI 5700 "Guideline for the Audit of Corruption Prevention". <https://www.issai.org/pronouncements/guid-5270-guideline-for-the-audit-of-corruption-prevention/>.
3. According to the survey conducted in 2010 by INTOSAI Working Group on Fight Against Corruption and Money Laundering (WGFACML), only one-third of SAls (18 out of 54) responded positively on the questions of availability of audit staff and training program specialized in audits related to corruption or money laundering. See <http://wgfacml.asa.gov.eg/>.
4. INTOSAI. CBC Workstream in support of Auditing in Complex and Challenging Contexts (ACCC). <https://www.intosaicbc.org/accc/>.
5. INTOSAI provides IntoSAINT, a tool to assess the vulnerabilities and the maturity of the integrity controls of SAls and to strengthen integrity in SAls. See <https://www.intosaicbc.org/intosaint/>
6. INTOSAI Working Group on Values and Benefits of SAI (WGVBS) plans to develop a guide on potential risks and challenges by incorporating the investigative powers among their functions. See <http://www.wgvbs.org.mx/wp-content/uploads/2018/10/01-SAls-investigative-powers-14mar19.pdf>.
7. A model where the work of the SAI is intrinsically linked to the system of parliamentary accountability.
8. DFID. 2004. Characteristics of Different External Audit Systems. Briefing. <http://gsdrc.org/docs/open/pf31.pdf>.
9. Poor funding, coupled with inordinate delays in releasing budgeted funds, has often delayed investigations and implementation of planned programs, in addition to increasing the cost of operations (CHRAJ -SEVENTEENTH ANNUAL REPORT 2010)
10. News Ghana. (2017, Jan 20). Auditor General Agrees with Occupy Ghana On Disallowance and Surcharge Powers. Retrieved from <https://www.newsghana.com.gh/auditor-general-agrees-with-occupy-ghana-on-dis-allowance-and-surcharge-powers/>
11. The decision materialized as a result of an action filed against the government by Occupy Ghana on claims that the powers have never been exercised by the AG. The court ruled that the AG must act on its annual reports, take steps to retrieve any public funds found to have been misappropriated and ensure enforcement of the orders including criminal prosecution where necessary.
12. CAG. 2016. CAG Performance Report 2014 -2015. https://cag.gov.in/sites/default/files/performance_activity_report/CAG_Performance_Report_2014-15.pdf.
13. See <https://cag.gov.in/hi/content/audit-report>.
14. CAG. 2013. Report No.7 of 2012-13, August 2012- Performance Audit of Allocation of Coal Blocks and Augmentation of Coal Production, Ministry of Coal. Retrieved from <https://cag.gov.in/content/report-no-7-2012-13-%E2%80%93-performance-audit-allocation-coal-blocks-and-augmentation-coal>.
15. Para 4.3 of the above report and Executive Summary of the Report Page V, (equivalent of Rs 1.86 lakh crores or USD 26 billion as per the report).
16. CAG, 2013.
17. Press Trust of India. 2012. Govt decides to deallocate two more coal blocks. <https://www.news18.com/news/india/govt-decides-to-deallocate-two-more-coal-blocks-524663.html>.
18. Rajagopal, Krishnadas. 2014. Supreme Court quashes allocation of 214 coal blocks. The Hindu. <https://www.thehindu.com/news/national/supreme-court-quashes-allocation-of-all-but-four-of-218-coal-blocks/article6441855.ece>; and Ministry of Law and Justice. 2014. The Coal Mines (Special Provisions) Second Ordinance, 2014. No.7 of 2014. https://coal.nic.in/sites/upload_files/coal/files/curentnotices/291214_2_0.pdf.
19. CAG. (n.d.) Important Judgements. <https://cag.gov.in/hi/content/important-judgements#chapter1>.
20. Two audits were conducted, facts are represented from both reports, one was tabled in August 2011 and one in 2012.
21. CAG. 2011b. Report No. 6 of 2011 – Performance Audit of XIXth Commonwealth Games. <https://cag.gov.in/content/report-no-6-2011-%E2%80%93-performance-audit-xixth-commonwealth-games>.
22. CAG, 2011.
23. CAG, 2016.

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CHAPTER 13

Justice System



Introduction

Defining the justice system

The justice system plays a key role in fighting the various forms of corruption across all sectors.

The justice system is understood to comprise “the institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules that societies create to govern members’ behavior; and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions.”¹ This normative framework includes the rules about preventing and sanctioning corrupt practices.

Beyond these rules, the justice system has the key task of upholding the rule of law more broadly, including by providing checks and balances on abuse of power by the executive and legislative branches of government. As the World Development Report 2017 summarizes it, the rule of law at its core is “the impersonal and systematic application of known rules to government actors and citizens alike” and requires that both “be bound by and act consistently with the law.”² This task is particularly relevant in contexts of elite capture and grand corruption, because they result in the normative framework itself being skewed. Justice institutions then become the last resort to ensure the supremacy of fundamental principles of rule of law, fairness, and equality.

The justice system is more than a loosely connected set of independent institutions.

These institutions constitute a network of interdependent actors. The performance of each of them is affected by the performance of the others. Courts are at the core of dispute resolution and are supported in this function by a range of other justice sector institutions, including the prosecution service, public defenders, bar associations, state and civil society legal aid providers, police, alternative dispute resolution mechanisms, administrative adjudication and enforcement mechanisms, customary and community-based institutions, anti-corruption and human rights commissions, ombuds offices, judicial academies, and more.

Preventing and sanctioning corrupt practices

The justice system plays both a preventive and a repressive role in the fight against corruption.

On the repressive side, it empowers citizens, businesses, and other stakeholders to actively fight corrupt practices by denouncing perpetrators and bringing facts and evidence to the attention of relevant justice institutions. While the starting point may vary and lawsuits in civil or administrative courts may proceed, the criminal justice chain is generally the one that is ultimately set



in motion to sanction perpetrators. On the preventive side, justice institutions also play a key role in enforcing the rules put in place to prevent corruption. Thus, when government officials, for example, do not comply with transparency requirements, even ahead of yet to materialize subsequent corrupt behavior, they can be

held accountable for that, which in turn strengthens the effective implementation of this anti-corruption framework. Moreover, the effective functioning of the criminal justice chain sends a strong signal of deterrence, including by increasing the likelihood of being caught in case of wrongdoing.

The roles of the different institutions

Justice institutions play different roles in fighting corruption, but each institution's performance counts. While it is important for the overall justice system to perform effectively so anti-corruption efforts can succeed, each institution plays a particular role. Below is an overview of the role of the key institutions.

The courts

For most observers of anti-corruption efforts, one of the most visible moments is when someone is convicted of a crime by a criminal court, with or without a jury trial depending on the country. These can be specialized anti-corruption courts, specialized anti-corruption chambers, or just the general criminal courts.

The role of other courts for anti-corruption efforts is less visible, but nonetheless important. Lawsuits in civil courts can provide an effective complement to more commonly used criminal approaches as a way to recover stolen assets.³ Insolvency proceedings can be used to recover corruption proceeds.⁴ Depending on the jurisdiction, civil or administrative courts can hear cases filed by journalists who are denied access to information in violation of freedom of information legislation. More broadly, administrative courts offer a venue for citizens and civil society to challenge abusive or simply illegal (in)actions by public authorities and their officials. Proving corruption in a public procurement case may be more challenging than proving the illegal nature of an administrative (in)action. While this does not normally result in a criminal sanction of the public official or the corruptor, the ultimate (in)action sought by the corruptor can be annulled or declared void this way.

The effectiveness of courts in fighting corruption is not just a function of their own performance, but also of

the performance of institutions that participate in their proceedings or contribute to earlier stages of the process prior to indictment. The effectiveness and quality of the investigations led by the prosecution service and/or the police in terms of the comprehensiveness, timeliness, and quality of evidence, and compliance with legal requirements are ultimately reflected in the quality of the case presented to the court. While the courts have the ultimate decision power, they do not operate in isolation. They depend on a range of other justice sector institutions to carry out their mandate.

The prosecution service

The prosecution service is a key part of the criminal justice chain that, on behalf of society and in the public interest, ensures the application of the law where the breach of the law carries a criminal sanction.⁵ This includes legislation criminalizing corrupt practices. In criminal justice systems, public prosecutors normally (i) decide whether to initiate or continue prosecutions; (ii) conduct prosecutions before the courts; and (iii) may appeal or conduct appeals concerning all or some court decisions.⁶ Thus, without a well-performing prosecution service, the effectiveness of the fight against corruption would be seriously undermined, because corruption cases may not be successfully brought to the court or the court would not be able to adequately sanction perpetrators, due to the low quality of the indictments.

Moreover, in many criminal justice systems, public prosecutors also (i) implement the national crime policy; (ii) conduct, direct or supervise investigations; (iii) decide on alternatives to prosecution; and (iv) supervise the execution of court decisions.⁷ They carry out their mandate while taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system in the fight against corruption.

BOX 13.1

Romania's National Anti-Corruption Directorate (DNA)

For a long time, Romania's DNA was a success story in the fight against corruption. The EU has praised the DNA for being effective and proactive and credited it with significant achievements in cracking down on corruption. The DNA increased the number of indictments by 50% between 2012 and 2017.⁸

An evolving political environment and subsequent justice sector reforms negatively affected this positive record.⁹ The Group of States against Corruption (GRECO), the Council of Europe's anti-corruption body, has voiced deep concerns in a 2018 report criticizing the justice system reforms adopted by the Romanian parliament, undermining the effectiveness of the fight against corruption.¹⁰

For example, public prosecutors have to scrutinize the lawfulness of police investigations at the latest when deciding whether a prosecution should commence or continue.

These considerations apply to prosecution services in general, but also to anti-corruption agencies that some countries have chosen to equip with such prosecution functions.¹¹ Whether general prosecution services or specialized agencies with prosecutorial functions, units with specialized and multi-disciplinary expertise within these institutions are often created to ensure adequate prosecutorial expertise in highly technical areas, for example in financial matters.

The effectiveness of the prosecution service in fighting corruption depends on the effectiveness of the whole justice system. Where the political environment is adversely affecting the justice system, the public prosecution service will be impacted. This is illustrated by Romania's National Anti-Corruption Directorate (Box 13.1)

The police

The police is also a critically important justice institution in the fight against corruption, intervening mainly in the preparatory phase of the criminal justice chain. Under the rule of law, the main purposes of the police in this context are to (i) detect crime; (ii) prevent and combat crime; (iii) protect and respect the

individual's fundamental rights and freedoms; and (iv) provide assistance and service functions to the public.¹² Whatever the exact relationship between the police and the prosecution service in a given jurisdiction,¹³ weak performance of the police will result in the prosecution service not being able to proceed with indictments for corruption. Illegal police actions, in particular, are likely to jeopardize the chances of indictments being successful or of indictments being brought to court by the prosecution service.

Other justice institutions

The performance of the courts, the prosecution service, and the police as the primary institutions of the criminal justice chain in the fight against corruption is more or less directly affected by the performance of other justice sector institutions as well. Without going into detail, they include bar associations (often tasked with taking disciplinary measures to sanction lawyers who act as vehicles for corruption),¹⁴ judicial and prosecutorial councils (often tasked with managing the performance of judges and prosecutors or with disciplining them for corrupt behavior), the Ministry of Justice (often tasked with setting national policies and managing judicial infrastructure, including facilities and ICT for courts), judicial inspections, forensic institutions, and judicial training institutions, which play an important role in providing training relevant for the fight against corruption.

What specifically causes weak performance of justice sector institutions in the fight against corruption?

Capacity constraints and under-resourcing in terms of financial and human resources as well as infrastructure, particularly in low-income countries, pose severe constraints to the effective operation of justice sector institutions. At the same time, the World Development Report 2017 on Governance and the Law has identified weakness in institutional performance not primarily as a function of weak capacity, but as a result of the elite bargain in place.¹⁵ Institutions are often meant to be weak for a reason. Were well-functioning justice institutions and the fight against corruption a priority within the existing elite bargain, the institutions would be resourced, equipped, and managed as a matter of priority, albeit within the country's overall limitations in terms of GDP and capacity. While a complete and nuanced list of what specifically causes weak performance of justice institutions in different country settings is beyond the ambition of this analysis, the following provides a summary of some key aspects.

First, the governance of justice sector institutions relevant to the fight against corruption is often deficient. Courts and the prosecution service are not sufficiently independent and free from undue interference based on capture, cronyism, corruption, and political relevance. In authoritarian environments, these institutions as well as the police protect the interests of those in power and are actively utilized to crack down on opposition, including at times under the pretext of fighting corruption. Beyond the actual influence on specific decisions, capture, cronyism and corruption also impact appointments to relevant positions and promotions within the justice institutions themselves, resulting in a playing field skewed against anybody who would challenge the status quo. To the extent that these institutions are not needed to support the elites in place, they are not managed for performance and service delivery is weak as a result.

Second, justice sector institutions in many developing countries are chronically under-resourced, though that is not necessarily true for all parts of the system. Higher echelons of the system are generally better resourced, because those working at that level are part of the ruling elites. In authoritarian

regimes, the capacity in the criminal justice chain and the level and quality of resources (e.g. financial resources, human resources, ICT, and infrastructure) tend to be relatively higher because, based on the elite bargain in place, criminal justice institutions are needed to maintain the status quo. But the incentives will then not result in this capacity to be prioritized for the fight against corruption.

These issues result in often observed performance weaknesses in justice institutions, whose strong performance is needed in the fight against corruption. These weaknesses include delays at all stages of the process, from police to prosecution to the courts. The low level of effectiveness of the police in investigating corrupt practices results in very few cases, if any, reaching the prosecution service. The same ineffectiveness there and in the courts often means that nobody, other than maybe political opponents, is ever convicted for corruption. The population knows the situation and therefore has no reason to initiate cases with the objective of holding anybody accountable for wrongdoing. They understand that applicable legal frameworks are deliberately kept weak and that even when they are improved, for example upon donor insistence, their application is likely to remain unpredictable, biased, and selective, without generating results, unless there is a change in political will. It is not uncommon for countries to instill fear in order to keep people in place by threatening them with jailtime or fines for challenging state institutions and their officials.¹⁶

Aspects of the weak performance of justice institutions not only limit the effectiveness of the fight against corruption elsewhere, they also create a market for corruption within justice sector institutions themselves. This is especially true for cases that are of no particular political relevance. Systemic delays, arbitrary application of the law, and lack of performance accountability offer opportunities for petty corruption to speed things up, slow things down, or influence the outcome of cases, depending on the needs of the corruptor, thus further weakening the credibility and effectiveness of the police, the prosecution service and the courts.

How can justice sector institutions improve their performance in fighting corruption?

Implementation of laws to fight corruption must be backed by political commitment. Based on the findings of the World Development Report 2017 on Governance and the Law, the performance weaknesses are primarily the result of the elite bargain in place. A paradigm shift to improve the effectiveness of justice institutions in fighting corruption in truly systemic terms therefore primarily requires strong commitment at the political level. Without such a commitment, the

potential for improvements through purely technical approaches is marginal at best, leading to a gap between the beautiful laws on the books and the weak implementation on the ground. Such a system is like a “Potemkin village” with institutions potentially designed based on international best practice, but merely as a façade that conceals what is really happening, as explained in Box 13.2 below.

BOX 13.2

Specialized Anti-Corruption Courts: Political Commitment or Implementation Gaps

Despite the benefits of specialized anti-corruption courts, technical solutions to address corruption will fail unless there is political commitment because of an implementation gap. A 2016 survey has identified roughly 20 countries that have implemented specialized anti-corruption courts worldwide.¹⁷ Additional courts have been created since, notably in 2019, in Albania, Ukraine, and Madagascar.¹⁸

From a technical point of view, there are arguments in favor of and against specialized anti-corruption courts. Advantages are that the institution is created from scratch and can more easily receive preferential treatment in terms of resourcing (financial resources, human resources, ICT, and infrastructure) so they are adequately equipped for the fight against corruption. Doing this for the entire court system or focusing such resources on the parts of the broader system that are particularly relevant for the fight against corruption is more challenging. At the same time, it takes time for new institutions to be established and perform, increases institutional complexity and overheads, and can lead to disagreements about jurisdiction. Politically, the establishment of specialized anti-corruption courts can send a strong signal of government commitment.

While some of these specialized anti-corruption courts were successful and had strong local ownership, international donors have played a pivotal role in the creation of many of these institutions, for example as conditions to the provision of budget support. At times, this results in a lack of ownership translating into a significant implementation gap, with these externally imposed institutions often looking impressive on paper but falling short of achieving their declared objectives due to a lack of political commitment.¹⁹

If the commitment at the political level exists, it requires an adequate communication strategy as well as sound technical solutions to translate it into tangible improvements. Putting in place an adequate normative framework to fight corrupt practices is often a starting point, but it is at the level of implementation through justice institutions where the rubber really hits the road to translate the political commitment into results on the ground. In the case of the Philippines, such results have not materialized and in the case of Indonesia these results, while initially promising, are disappointing (Box 13.3).

The overarching goal is for the entire justice system to work properly, and in today's world, this requires international cooperation. Domestically, the justice system is based on the mandates of the police, prosecution service and the courts within the given jurisdiction. But in an increasingly interconnected world, mutual legal assistance and other forms of international cooperation between jurisdictions are crucial to effectively fight against cross-border corruption, as Box 13.4 explains.

BOX 13.3

Specialized Anti-Corruption Courts in the Philippines and Indonesia

The **Philippines' Sandiganbayan** is the oldest specialized anti-corruption court in the world. It has operated since 1979 without interruption and witnessed several amendments since its creation. Sandiganbayan is at the level of a Court of Appeals, but functions as a court of first instance. It has original jurisdiction over anti-corruption cases provided they are (1) brought against a senior public official; and (2) involve a sufficiently large amount of money. Its decisions may be appealed to the Supreme Court. The Office of the Ombudsman has exclusive authority to bring cases to the Sandiganbayan. In addition to the political signal to the population, the main declared rationale in creating Sandiganbayan was to expedite anti-corruption cases. They have struggled to meet that objective. Sandiganbayan experienced, over the years, substantial inefficiencies and delays in deciding anti-corruption cases, in part due to limitations at the Office of the Ombudsman.²⁰

In 2002, **Indonesia's specialized anti-corruption court**, known as the **Tipikor**, was established at the same time as the Corruption Eradication Commission, known as the KPK. Due to a Constitutional Court ruling in 2006, criticizing the legal dualism established by these specialized institutions, the entire anti-corruption judicial system underwent a major legal reform in 2009. Initially, there was one Tipikor court in Jakarta. Only the KPK had competence to bring cases before this court, while the public prosecution brought cases only before the general courts. The Tipikor had a conviction rate of 100% in 250 cases, while only 51% of cases prosecuted by the public prosecution resulted in a conviction. The 2009 reform decentralized the system by creating 34 Tipikor courts, one in each Indonesian province. Both the KPK and the public prosecution can bring cases. Prior to the 2009 reform, the integrity of the specialized judges before the Tipikor was not questioned. They were perceived as rather overzealous in achieving a 100% conviction rate. With the decentralization and the convictions of several specialized judges for corruption, the belief that these judges are clean and trustworthy outsiders to the system has been undermined.²¹ The recent KPK law risks reducing the institution's effectiveness at attracting high-quality employees and its independence in gathering information. This could partly reverse the remarkable progress in controlling high-level corruption since the institution's establishment.

BOX 13.4

International Cooperation and Mutual Legal Assistance (MLA)

The legal basis required for states to provide MLA can come either from domestic law, rogatory letters, or multilateral and bilateral agreements.²² For instance, China adopted the Internal Criminal Judicial Assistance (ICJA) into law in 2018.²³ The ICJA provides for both rules on domestic anti-corruption enforcement and rules for China's cooperation with foreign authorities in connection with criminal investigations and prosecutions. The ICJA is intended to fill the gap for countries where China does not have MLA treaties and clarifies the terms, roles and responsibilities of relevant government agencies in the process of providing or requesting judicial assistance. Cross-border plea deal settlements reached in cases like Airbus and Odebrecht show that this cooperation is key.

Airbus: In 2020, Airbus struck a deal with the UK, France and the United States by signing a corporate plea deal to settle several probes into allegations of bid-rigging and bribery in exchange for aircraft contracts.²⁴ Courts in all jurisdictions with open investigations have approved the Airbus settlement that totaled EUR 3.6 billion. The signed settlement was published and acts as a powerful deterrent to multinational companies not to engage in future corruption, both to avoid high financial fines and significant reputational damage.

Odebrecht: When Operation Car Wash,²⁵ a codename for the biggest corruption scandal in Brazil, became public in 2014, it shone a light on the misconduct of this Brazilian conglomerate active in the fields of engineering, construction, chemicals and petrochemicals in Latin America. It also challenged the independence of judges and revealed bribes paid to elite high officials. The Odebrecht case led to multiple settlements amounting in total to USD2.6 billion and to prison sentences issued against its senior officials. Moreover, this case unraveled a network of bribes spreading all through Latin America, involving, notably, a Colombian Senator, the Vice President of Ecuador, the President of Venezuela, and four former Presidents of Peru.²⁶ More than USD10 million in bribes were paid in Mexico. Former Brazilian President Luiz Inacio Lula da Silva was convicted of bribery charges and served a prison sentence. Operation Car Wash had numerous repercussions around the continent and the way jurisdictions cooperated. Intensive MLA played a crucial part in untangling these corruption cases in Latin America. Transparency International counted 484 MLA requests mostly related to the Odebrecht case, between 2014 and June 2018, made by Brazil (250 requests) and 55 other countries (234 requests).²⁷

An adequate communication strategy needs to support the anti-corruption effort, externally with the population and internally with justice stakeholders. Externally, it is absolutely key to continuously inform the population about measures taken and the impact they have. This builds trust in the leadership of the anti-corruption effort and in the judicial system. Internally, continuous dialogue with and among stakeholders is required to continue

communicating the political will and actively engage with all those who in the end will implement the technical solutions. Lack of communication can leave internal resistance unaddressed and result in delays with implementation or in derailed technical solutions. Thus, to the extent possible stakeholders need to be on board, for which effective communication with them and among them in support of the reform effort is a key requirement.

Addressing the challenges at three levels

Justice institutions need to address performance and internal corruption challenges in order to strengthen their fight against corruption. At the level of implementation, justice institutions need to maintain a dual focus on (1) improving their performance in the fight against corruption, and (2) fighting corruption within the justice institutions themselves. Tackling these challenges effectively is vital as weak institutional performance undermines the effectiveness of the justice system as a whole. The challenges should be addressed at three levels: system-wide, at the criminal justice chain level, and at the institutional level.

1. System-wide national level

Domestically, the first level is the system-wide national level, i.e. the government, including senior leadership of the judicial branch. At this level, questions regarding the governance of the justice system need to be addressed; for example: How best can judicial and prosecutorial independence be ensured so that decisions are made without undue interference, while encouraging judges and prosecutors to be accountable to the public for their performance, including for non-compliance with integrity requirements? The sequencing here is important. If there has been a regime change with justice system officials compromised through involvement in abuse of power, cronyism and corruption, a vetting may be warranted as a first step. The second step is to increase independence, but only hand in hand with greater accountability to the public for performance. Many countries have made the mistake of increasing independence as a first step. It meant that the second step of creating accountability mechanisms was much more difficult or even impossible to implement. Putting in place a performance measurement and management system to ensure performance accountability to the public may then encounter resistance that becomes insurmountable, not least because judges at the Supreme Court or Constitutional Court themselves tend to have the last word in case of disagreement between branches of Government. It is therefore important to have the right pool of personnel and then balance independence and accountability. Providing independence unconditionally as a first step is not the way to go.

Reforms at this highest level to increase performance in the fight against corruption should also target the process of selection, evaluation, and promotion of judges, prosecutors and court staff. Indeed, the selection process needs to be as merit-based and apolitical as possible, for example through involvement of a broader range of stakeholders other than politicians, including justice professionals, civil society and academia with high technical credentials. Other reforms seek to create islands of excellence in parallel to an existing institutional landscape, whose performance may take too long to improve in the eyes of reformers. Often driven by the need to show quick results, they focus on establishing specialized anti-corruption agencies, prosecution services, courts or a combination thereof, instead of trying to fix the existing institutions in the criminal justice chain in charge of the fight against corruption. All of these reforms are likely to require constitutional and/or legislative changes.

Questions of adequate resourcing and equipment also need to be addressed at this level. The question of resources includes the overall level of resourcing, but also the allocation and availability of the required resources in all relevant parts of the system.

2. Criminal justice chain level

The institutions of this chain need to be effectively interconnected and bottlenecks in inter-institutional communication addressed effectively through a joint committee or roundtable at the institutional leadership level. This provides a forum where inter-institutional challenges can be raised and addressed right away and where progress can be monitored towards achievement of joint performance targets to be agreed upon between all of them, targets that can be adjusted over time. Other relevant justice institutions should be involved as needed.

3. Institutional level

Each institution itself needs to diagnose two things: (1) its performance bottlenecks, and (2) the corruption challenges it faces internally. The performance weaknesses of any one institution

BOX 13.5

Court User and Multi-Stakeholder Justice Surveys

Court user surveys generate data about the experience of court users, which is one of the best proxies to measure the quality of services. If designed correctly, they can capture all kinds of service delivery bottlenecks, including the vulnerabilities for corruption. In places where it is known that there are challenges, such surveys tend to be resisted by those supplying justice services, i. e. judges, prosecutors and administrative staff. Multi-stakeholder justice surveys provide opportunities for all stakeholder groups to participate and to share their view, thus making it easier for professionals in the institution to accept that users are also consulted. The triangulation of the data and the analysis of the discrepancies of views then offer an opportunity to start a dialogue and to reach an agreement on challenges. The World Bank has carried out such multi-stakeholder justice surveys in the context of the EU accession process in 2014 in Serbia²⁸ and 2018 in Montenegro.²⁹ A series of cross-country multi-stakeholder justice surveys are currently under implementation in countries of the EU's Eastern Neighborhood.

of the criminal justice chain weakens the chain as a whole, because the chain can only be as strong as its weakest link. So overall institutional performance matters. The very first step in this process is for the institution to acknowledge that these challenges actually exist. Court user and multi-stakeholder justice surveys have proven to be a useful tool in this diagnostic phase (see Box 13.5). Indeed, justice institutions themselves are not exempt from corruption and capture that affect the broader public sector. Police is a common first interface for citizens with the justice system and surveys worldwide indicate that many citizens in developing countries have had experience with police corruption, for example with police stopping or arresting vulnerable people in particular to extort a bribe or other favors. Corruption among judges and court staff often involves the speeding up and slowing down of case processing, or other manipulations of case files. Surveys also indicate that many developing countries struggle with a lack of integrity among judges and prosecutors, influencing their decision-making.

Once the challenges are identified and acknowledged, consultations will be needed. Such consultations should involve the relevant institutional stakeholders, if possible in conjunction with civil

society, with the aim of agreeing on what specific actions will be taken to address the challenges (by whom, by when, with what resources). To ensure effective implementation of these actions, they should be captured in a performance improvement action plan. A key aspect at the institutional level is a commitment to manage the institution for improved integrity and performance in terms of service delivery. A strong initial signal of such a commitment is full transparency about the survey findings. Transparency along the implementation process, including the communication of whether and to what extent reform targets have been reached, remains critical for reformers to retain credibility with the public.

Measures to increase the institutional performance can focus on the processing of identifiable corruption cases by prosecution services and the courts. They can be tracked, monitored, and prioritized, potentially supported by ICT-based case management systems and performance dashboards. However, measures should not focus on such identifiable cases alone, because the “anti-corruption” segment of an institution is not necessarily an easily distinguishable workstream separate from its overall work. Broader solutions can cover a very wide range of activities, from business process reengineering followed by automation to backlog and delay reduction programs, workflow

improvements through better spatial arrangements, capacity building, tools to improve the coherence of adjudication, improvements in the management for service delivery of financial and human resources as well as ICT and infrastructure, and support to disadvantaged court users through simplified procedures for small claims, effective provision of free legal counsel to the indigent, self-help guides for specific types of cases and groups with access challenges, and legal information for various types of court users to only name a few. There is no blueprint for that. This is a broad field and much depends on the specific challenges in the local context and the resources available to address them. One aspect that remains key in any context, however, is the commitment to achieving real improvements and the implementation of technically sound solutions.

When it comes to measures to specifically address corruption challenges within justice sector institutions themselves, the range of options is narrower. Some tend to feature prominently across many countries, while the potential of other measures

is often overlooked. Examples include:

- Establishing effective complaint mechanisms as well as disciplinary systems
- Strengthening institutions investigating and sanctioning integrity breaches (e.g. judicial inspection)
- Preventive measures, such as asset and income disclosure requirements of justice sector officials and strengthening of conflict of interest legislation
- Information and communication technology
- Random assignment of cases to judges and prosecutors based on an adequate algorithm.³⁰ This can eliminate or limit the ability of parties, their lawyers, or those in the system assigning cases to judges and prosecutors (e.g. administrative staff in the intake office or court presidents), to ensure that the case reaches the “right” decision maker in the system (see Box 13.6 below).

BOX 13.6

Trade of Influence in the Judiciary

The ability of parties to “shop” for specific judges deemed to be favorable to their cause undermines the integrity of the judicial process. Moreover, the ability of people inside the judicial system to allocate specific cases to specific judges to ensure particular outcomes creates opportunities for corruption. In Bulgaria, for example, the European Union’s Cooperation and Verification Mechanism highlighted this kind of trade of influence in the judiciary as a major risk,³¹ but the phenomenon is widely spread. The Quality of Judicial Processes Index of the World Bank’s Doing Business report and its chapter on Enforcing Contracts therefore includes the criterion of the existence of an automated random case assignment system to make such trade of influence more challenging.³²

Increasing transparency

The establishment of prosecutorial and judicial databases and systematic publication of decisions with online access for lawyers and the general public and a well-performing search function increases transparency. This also supports judges and prosecutors in their effort to provide legal certainty through consistency in decision making and adjudication. The ability of artificial intelligence (AI) to process large amounts of data also provides an additional tool for analyzing the consistency of decision making, and to identify biases as well as inconsistency among specific judges and prosecutors. Some law firms tout the ability to identify “friendly” judges due to their knowledge about the judges and their practice, but the potential for specifically using AI in the fight against corruption seems to remain largely unexplored for now.³³ However, simple solutions such as the establishment of forms for common types of cases and provision of standard building blocks for formulating decisions in these cases gently increases the pressure on judges and prosecutors not to make changes to the forms unless there are good reasons for digressing.

Audio and/or video-recording of proceedings can also increase transparency. A common face of corruption in the courts is that those in charge of the minutes are biased towards one party and draft the records accordingly. Or the minutes are deliberately of such poor quality that the judge retains discretion on which facts and evidence, if any, to retain. Recordings accessible to the parties of the trial provide an objective basis for appeals in case the decision is not based on facts or evidence provided.

Insufficient attention is given to judicial infrastructure. In many developing countries, adjudication takes place in judges’ chambers, thus limiting access of the public and transparency. Reorganizing the spatial arrangements can have an impact on corruption practice, e.g. by limiting access of lawyers or the public to the area of the court where the judges and prosecutors have their offices. In modern courthouses, there is a functional separation of spaces, establishing entirely separate pathways for the general public and lawyers, judges and prosecutors, and detainees, pathways that only intersect in the courtroom.³⁴

Providing parties with clear information and guidance can also limit the need for parties to resort to petty corruption. “Facilitators” in many developing countries offer their services at the court building and promise effective access to the relevant staff and prompt processing against additional remuneration. If the pathways are simple with adequate signage and adequate information and required forms provided to parties online or at a physical helpdesk (e.g. about procedural steps to file a claim, required documentation, court fees), the journey becomes more predictable and parties less prone to intimidation by those who are eager to market their services. In this respect, legal aid can make a big difference in empowering poor and marginalized populations to even just dare to engage in the process of claiming their rights.

Identifying corrupt practices requires considerable effort, but the results make it worthwhile. While it is challenging to root out corrupt practices in justice institutions and elsewhere, such efforts contribute to improving service delivery, enhancing transparency, and increasing accountability for performance to the general public. Communication to the population about the commitment, actions taken, and their impact will contribute to rebuilding trust in the institutions.

Conclusion

Policy makers today have access to an arsenal of tools that justice reform practitioners have developed to improve the way justice sector institutions contribute to fighting corruption, including corruption within justice institutions themselves. As outlined above, many lessons have been learned over the last couple of decades, including about areas and sequencing of reforms. Four lessons, however, truly stand out. They revolve around transparency, accountability, the role of civil society, and – above all – political will.

Transparency

Increasing transparency is absolutely paramount for the success of anti-corruption efforts. In terms of transparency about the operation of justice institutions, there is a broad range of entry points. Publishing relevant performance data can be done at low cost and dissemination requires only basic technology like a website. The same is true for providing authoritative guidance to users on what is needed to access and navigate services. The use of ICT, however, is a game-changer, but these solutions can be costly and may not be implementable within the short term. ICT has a tremendous potential for truly transformational impact. Technology standardizes practices and can limit the ability of individuals to manipulate business processes without leaving a trace, for example through an ICT-based case management system in the courts or prosecution service. Technology can increase people's ability to access information about what is happening within a justice institution, and for the institution to collect and disseminate performance data to the public. In terms of transparency about the people working in justice institutions, the establishment of mechanisms for asset and income disclosure of justice officials can be impactful.

Accountability

Increasing accountability is of fundamental importance for successful anti-corruption efforts and does not require major allocation of resources. The important question is: Who needs to be accountable to whom and for what? There is a need for accountability of justice officials for compliance with ethics and rules, both

internally as well as externally to the broader public. For courts and prosecution services, this can be a tricky question due to the need for adequate protection of judicial and prosecutorial independence. Ultimately, this independence is less a privilege of the individual official, but an entitlement of the population: the right of citizens to an impartial judge and prosecutor. Transparency is a key ingredient for this accountability to be effective.

Role of civil society

Strengthening the role of civil society organizations and free media is important for accountability mechanisms to deploy their full potential in the fight against corruption. While they do not require major funding either, they need a sufficiently open space to operate in. The potential and actual beneficiaries of the justice system are very dispersed, they are not a well-organized group with adequate agency. Civil society organizations and free media are therefore key to act on behalf of the broader population to uncover wrongdoings and ensure that adequate sanctions are imposed on the perpetrators.

Political will

Finally, while technically sound solutions are a key requirement for success, the breadth and depth of impact ultimately hinges upon the extent of commitment at the political level, both outside and inside the justice system. While it is important for policy makers to be able to show short-term victories to citizens and other stakeholders to maintain or increase the momentum of anti-corruption efforts, the sustainability of these reforms is not primarily a function of the soundness of the technical solutions. Long-term impact and its sustainability depend on the extent to which the fight against corruption has become part of the DNA of the political system. Even the most successful reforms, such as the Romanian Anti-Corruption Directorate, fade away when the commitment at the political level dries up. Integrity achievements are not a one-time victory. Maintaining them requires a renewed social contract that fully embraces this dimension and holds those to account who try to find ways around it.

Notes

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20. Matthew Stephenson (2016), *Specialised Anti-Corruption Courts: Philippines*, U4 Brief, July 2016:3.
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22. Several multilateral treaties have dispositions on MLA, such as the Inter-American Convention against Convention (article XIV), the OECD Anti-Bribery Convention (article 9), and the UN Convention against Corruption (UNCAC, article 46). See Marie Terracol (2015), *Mutual Legal Assistance and corruption*, No 2015:17, available at <https://www.u4.no/publications/mutual-legal-assistance-and-corruption.pdf>.
23. See Hughes Hubbard & Reed (2019), *Alert - FCPA & Anti-Bribery*, p 150, available at <https://files.hugheshubbard.com/files/HHR-Fall-2019-FCPA-Alert.pdf#page=13>.
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COUNTRY SPOTLIGHT

Malaysia's Approach to Fighting Corruption

Evolution, Failures and Successes of Malaysia's Anti-Corruption Efforts



Overview

Malaysia's case study highlights both the opportunities and challenges of building and sustaining an effective anti-corruption drive over time. Despite having a rich history of public administration since independence and drawing on international best practices, Malaysia continued to fair badly in global perception surveys on corruption. Indeed, many of the institutions that were set up to detect and sanction corruption became gradually compromised with increasing concentration of political power. Only when the magnitude and scale of corruption in the 1MDB sovereign wealth fund became widely known to civil society and the global media, did citizens become so outraged that they voted out the political

party that had been in power for over 60 years. The new government—a loosely formed coalition of opposition parties led by a former Prime Minister—stressed the “rule of law” and took upon itself to revitalize the institutions that were put in place to fight corruption and to re-establish limits on the power of the Prime Minister. Yet, without the parliamentary majority needed to make changes in the Constitution, the scale of changes was necessarily limited. The actions taken by the Pakatan Harapan (PH) government during its two years in office boosted Malaysia's ratings in global surveys of corruption perceptions. With the collapse of the PH government in March 2020, there is uncertainty whether the anti-corruption reform momentum will be sustained.

Background

Malaysia's anti-corruption institutional framework, dating back to the 1950s, has evolved through the years and to a large extent has been shaped at any point in time by the country's political and economic developments. As shown in the table below, graft prevention efforts started back in the 1950s with the Prevention of Corruption Ordinance and led to the

establishment of the Anti-Corruption Agency (ACA) in 1967. In 2004, the National Integrity Plan (NIP) was introduced with an aim to improve the effectiveness of the anti-corruption efforts. The NIP traced factors that might undermine integrity among individuals, including government systems and procedures, the structure of institutions, and the culture of organizations. To

Year	Trajectory of Anti-Corruption Laws and Agency Evolution in Malaysia
1950	The Prevention of Corruption Ordinance replaced previous laws introduced in the Federated Malay State, State of Johor and that Straits Settlement.
1959	Corruption Prevention Unit formed
1961	Prevention of Corruption Act
1967	Formation of Anti Corruption Agency (ACA)
1970	The Emergency (Essential Powers) Ordinance
1973	Introduction of National Bureau of Investigation
1982	Anti-Corruption Agency (established by PCA 1961)
1997	Anti-Corruption Act
1997	Anti-Corruption Agency (established by PCA 1961)
2009	Malaysian Anti-Corruption Commission Act
2009	Malaysian Anti-Corruption Commission reports to Prime Minister
2019	Malaysian Anti-Corruption Commission reports to Parliament

coordinate, advise and monitor the efforts of the NIP, the Malaysian Institute of Integrity (IIM) was established in 2004 (later rebranded to INTEGRITI in 2015). Together, the NIP and INTEGRITI were to form the crux of a national integrity system for comprehensive reform in Malaysia. The approach stressed individual and institutional ethics, beyond formal laws and regulations, with a goal of maximizing integrity at all levels as a prophylactic against corruption. INTEGRITI has assumed a new role under the current National Anti-Corruption Plan (NACP). It was not until 2009 that the ACA was converted from a government agency into a commission—the Malaysian Anti-Corruption Commission (MACC). The MACC was established with

an intent to empower the anti-corruption body with greater independence and autonomy to investigate cases. It could secure documents and witnesses, arrest and prosecute offenders, and propose reforms that would insulate key decisions from undue political interference. The reforms that took place in 2009 were partly in response to the growing frustration from the public and civil society over the overall quality of government, level of service delivery, problems around red-tape and lack of anti-corruption efforts. However, for several reasons, including gaps in policy or implementation (discussed later in the case), most of these reforms fell short of achieving the desired outcome.

Boost to governance reforms: 2018

Malaysia's anti-corruption efforts received a major boost in 2018 with the election of the Pakatan Harapan government that came to power with the promise of a clean, accountable and transparent regime that resonated well with people following the 1MDB scandal. One of the first steps in this effort was to set up the National Centre for Governance, Integrity and Anti-Corruption (GIACC), as secretariat of the Special Cabinet Committee for Anti-Corruption (JKKMAR), reporting directly to the Prime Minister. The GIACC, in consultation with other agencies and departments, formulated and launched the National Anti-Corruption Plan (NACP) and is currently overseeing its implementation. The main enforcement agency continues to be the Malaysian Anti-Corruption Commission (MACC), the two together being the main anti-corruption bodies in the country.

The NACP outlines the government's strategies and measures around combating corruption, strengthening governance, integrity and transparency in government operations. The five-year plan has a total of 115 initiatives, categorized under 6 strategic thrusts: (i) strengthening political integrity, (ii) accountability and effectiveness of public service delivery, (iii) efficiency and transparency in public procurement, (iv) enhancing the credibility of the legal and judicial system, (v) institutionalizing the credibility of law enforcement agencies, and (vi) inculcating good governance in corporate entities. Early initiatives of the

NACP include mandatory asset declaration for Cabinet Ministers and the Prime Minister's Directive on the roles and responsibilities between ministers and secretaries-general to improve the accountability framework of the administration. Some of the key initiatives and reform efforts that are underway and in line with the objectives of the plan, but not necessarily limited to the NACP, are listed below:

- 1. Strengthening the Parliament:** Reintroducing the Parliamentary Services Act 1963, to provide greater independence and autonomy to parliament to ensure checks and balances on the functioning of the executive.
- 2. Asset Declaration:** The policy for asset declaration is now in place for all executives and is being extended to members of parliament (MPs). The Asset Declaration information has been published on the MACC portal. The next step is to ensure its extension to all the elected MPs.
- 3. Prime Minister's tenure:** The initiative to limit the Prime Minister's tenure to no more than two terms requires amendments to the Federal Constitution, a process that has not yet started.
- 4. Procurement reform:** Efforts on various procurement reforms are on track with a plan to table the Procurement Act in the Parliament in 2020.

5. **Strengthening the Judiciary:** Special courts have been established to expedite trials on corruption cases.
6. **Strengthening the Electoral System:** The Election Commission is reviewing the entire electoral system, including the area of political financing, with the aim of publicizing all the political funders.
7. **Independent Police Complaints and Misconduct Commission (IPCMC):** The draft IPCMC Bill is under discussion with the Chambers of Attorney General.
8. **Ombudsman:** The Ombudsman Act, in draft stages, is meant to replace the Public Complaints Bureau with the aim of improving the management of public complaints in Malaysia.
9. **Reform of Government-Linked Companies (GLC):** The Ministry of Finance is finalizing guidelines for the appointment of senior management, Chairman and Board of Directors in GLCs and subsidiary companies, banning all political appointments in GLCs.
10. **Support Letters:** A new policy that forbids politicians from issuing support letters for government tenders and projects has been introduced.
11. **Organisational Anti-Corruption Plan (OACP) and Anti Bribery Management System (ABMS):** It is compulsory for all government agencies to have an OACP specific to their workflow and the implementation of ABMS has been launched government-wide after a pilot project last year.

While GIACC functions as an anti-corruption planning unit focusing on policy design, implementation, monitoring and assessment, enforcement is under MACC and other enforcement authorities. One of GIACC's key roles is monitoring the progress of the JKKMAR's decisions, from inception to completion. JKKMAR members include the prime minister as chair, the deputy prime minister as deputy chair, senior ministers, the chief secretary to the government, the director-general of the Public Service Department, the secretary-general of the Treasury, the attorney general and auditor general, the director-general of the GIACC, chief commissioner of the MACC, and all secretaries-general of ministries. The JKKMAR met monthly for the first 6 months following its establishment, and every two months thereafter. GIACC presents progress reports to the JKKMAR at regular intervals, using "traffic light" (green, yellow, red) status indicators.

Key changes with some early results

Malaysia's performance on international indicators and rankings on governance, accountability and transparency have improved as a result of some of these reforms and other on-going efforts. Its ranking has improved from 61st in 2018 to 51st in 2019 on Transparency International's (TI) Corruption Perception Index (CPI). On the Edelman Barometer on Trust in Government, Malaysia shot up by 20 points in 2018 to 60 points from 40 points in 2017. Press Freedom also saw an improvement from being ranked 145th in 2018 to 123rd in 2019. Malaysia moved from 15th to 12th in the World Bank's Doing Business 2020 Ranking. The Asian Corporate Governance Association (ACGA) placed Malaysia 4th out of 12 Asian economies in 2018, up from 7th place in 2016. The Economic Intelligence Unit (EIU)

gave Malaysia a marked improvement score for 2020 for improvements in electoral process and pluralism, where it received 9.17 out of 10 in the Democracy Index. It had scored only 7.75 in 2018.

Malaysia has also been recognized for its efforts to pursue corporate governance reforms and broader institutional reforms that complemented the anti-corruption and governance reforms agenda. Based on the ACGA Corporate Governance Watch 2018, the aggregate company scores moved most significantly for Malaysia, where improvements in the Enforcement sub-category and optimism about political change drove scores up 7% from 2016. Malaysia's ranking of 12th in the World Bank's Ease of Doing Business 2020 Report is a

testament to the ongoing reform initiatives to enhance competitiveness, productivity and governance for businesses. The improvement in the Democracy Index is a result of some of the electoral reforms and changes in political campaigning guidelines. Despite the improvement in overall ranking, Malaysia still features in the “flawed democracy” segment, but it has for the first time moved into the top half of the category. Another step to address financial crimes was the setting up of the National Anti-Financial Crime Centre (NFCC) and Corporate Governance Committee to track and report dubious financial transactions. The NFCC Act 2019 provides the NFCC with the legal provision to coordinate and collaborate with enforcement agencies in matters related to the reporting and prevention of financial crimes.

Another key reform was the amendment of the MACC Act in 2018 to incorporate, among others, a new Section (17A) on corporate liability for corruption. The new Section not only establishes a new statutory corporate liability offense of corruption by a commercial organization under Malaysian law, but also deems any director, controller, officer, partner or manager of a commercial organization to be personally liable for the same offense if the commercial organization is found liable, unless the relevant individual can prove that the offense was committed without his or her consent, and that he or she had exercised the requisite due diligence to prevent the commission of the offense. This change was expected to be fully enforced in June 2020. It is key that the relevance and consequences of this change are communicated effectively not only to

the private sector, but also to public officials who are sitting on Boards of corporate entities. It is here that the Executive and Legislative Branch must contend that any political appointments made to statutory bodies and/or GLCs must be cognizant of the fiduciary duties and liabilities of such appointments under the Act.

The Malaysian Government's resolve to take swift action on corruption scandals is on-going, as can be seen from some of the high-profile cases that are being pursued. The strong mandate, independence and resources accorded to the GIACC and MACC to carry out their roles and functions constitute an important step towards the strengthening of institutions. The commitment outlined in the 5-year national plan around anti-corruption enabled the reforms to bear early results. Key areas like political funding, public procurement and political interference are being addressed by putting in place more transparent systems and processes with a robust monitoring and evaluation plan. The government moved swiftly to follow up on some of the big scandals like the 1MDB, Federal Land Development Authority (FELDA), KWAP (Statutory Body for Public Sector Pension) and Tabung Haji (Haji Pilgrims Fund Board) to name a few. This was followed by the arrest of several political leaders and figures who were later charged by MACC for abuse of power, corruption and money laundering, and brought to the courts. Several concurrent cases involving the highest echelon of leadership in the country prior to the 2018 general elections are currently being heard in the courts.

Shortcomings of the previous reform efforts

Previous national level reform efforts on governance and anti-corruption had a limited impact for several reasons. In 2004, the government introduced the National Integrity Plan (NIP) and set up the Malaysian Institute of Integrity (IIM) to coordinate, advise on and monitor initiatives outlined in the NIP. The NIP tried to trace factors that might undermine integrity among individuals, systems and procedures, structure and institutions, and culture. The impact was limited as the focus was on advocacy rather

than on bringing about structural changes. The anti-corruption institutions were focused on mid-level corruption rather than grand corruption involving the highest echelon of government leadership. The NACP for that reason has singled out political interference as one of the major impediments of past reform efforts. The interference affected prudence in administrative and financial management in areas such as public procurement and resulted in half-hearted implementation of reforms.



The anti-corruption institutional framework suffered from limitations, including a lack of independence and autonomy granted to key institutions mandated with the task. There was over-centralization of power in the Executive, and both the MACC and Attorney General's Chambers lacked the independence to deal with grand corruption cases, such as the 1MDB and FELDA when they were initially unearthed. The MACC Act lacked the teeth to accord a mandatory minimum sentence for offenders, resulting in lighter punishments. The Auditor General's reviews were limited to government agencies and auditing of GLCs and government-linked investment companies only in the event of a complaint.

While the introduction of the Whistleblower Protection Act in 2010 was a step in the right direction, it was incapacitated by the weak witness protection infrastructure. Agencies tasked to oversee the whistleblower act and witness protection policy were placed under the Prime Minister's Department and enforcement agencies. This institutional arrangement resulted in a low trust environment and the fear of retaliation by the very authorities against whom the

complaints were likely to be registered. This resulted in less than encouraging rates of whistleblowing from the system. Since 2018, the MACC has been working on streamlining procedures and institutional arrangements for a more effective discharge of the whistleblowing and witness protection act.

Efforts were made to limit the role of politicians in statutory bodies and GLCs, and the government successfully implemented this in all GLCs with the exception of Khazanah Nasional. The GLC Transformation Plan, which was introduced in 2008, attempted to make GLCs more performance-based, including in the appointment of senior management and members of the board. However, transparency of board and senior management appointments with clear performance tied to these appointments remained elusive. Lack of institutionalization of these reforms by way of law and regulations has resulted in the dismantling of some of the reforms previously introduced. Political appointments continued to be made to board and chairman positions, making it difficult to separate political and business interests.

Unfinished reforms

The recent change in government in March 2020 has resulted in some changes at the top level and the key is to maintain the momentum and continuity of the reforms around anti-corruption and governance. The change in government led to the resignation of the Attorney-General and the Chief Commissioner of the MACC. It has resulted in the changing of the guard in several GLCs and government-linked investment companies. However, the new government has formed its Cabinet and has signalled that it is committed to carrying forward these reforms, which are still being led by the Cabinet Committee on Anti-Corruption, the GIACC, and the MACC and others under the framework outlined in the NACP. These plans are not clear yet, but of critical importance is for Malaysia to review the regulations of all its statutory bodies, develop clear regulatory and oversight bodies that will oversee corporate governance, and drive political governance and anti-party hopping laws which caused the fall of the federal government and

some state governments. Further reforms, including, but not limited to, procurement, political funding, asset declaration, politically-linked board appointments in statutory bodies, and effectiveness of the oversight of regulatory bodies, need to be taken to their logical conclusion. Reforms carried out in the judiciary, parliament, election commission and the public service provide a good foundation for institutionalizing the changes. Reform efforts taking place at the Federal level need to be cascaded to other levels of government, namely states and local authorities.

An early stage reform to ensure responsible and credible media reporting has been initiated by setting up the National Media Council. The next step will be to set up governance structures around the quality and authenticity of journalism and media reporting. Media can be a very powerful tool for the government to reach its citizens and for the citizens to hold the government accountable.

The Public Service Act, which is at the draft stage, is another vehicle to accord greater transparency and accountability and separation of powers between elected representatives and public officials. This includes clarity and accountability in the approval process, appointments, rewards and performance management, amongst others, and strong governance structures, including gender mainstreaming. This would ensure an apolitical public service with greater clarity and accountability

across the different branches of government.

The reform of the GLCs and state-owned enterprises is on-going and it is unclear if the next stage of reforms would include those at the subnational levels. This is a complex and politically difficult but important reform area, given its centrality in the Malaysian economy. It is also an area that standard setting bodies must develop to assist countries with complex and tiered public sector structures.

Lessons learned from Malaysia

The Malaysian experience in combating corruption and improving governance provides three important lessons.

- 1. A well-functioning institutional framework that provides for checks and balances in government is key.** When the anti-corruption and governance bodies—the GIACC and MACC—were accorded more powers and resources to deliver their mandate without undue political interference, the message and intentions were clear. Grand corruption cases could be investigated with greater autonomy and independence and brought to trial. Likewise, the passage of the Public Services Act and the Ombudsman Act and institutionalizing some of the on-going reforms will be important for their sustainability in the long run and will minimize the risk of reversal with a change in government.
- 2. Strong support and a clear mandate from the top leadership is a pre-requisite to pursue difficult reforms.** The newly created GIACC was given a

strong mandate from the country's top leadership to coordinate the implementation of the National Anti-Corruption Plan. The GIACC was also assigned as the secretariat of the Cabinet Committee on Anti-Corruption, which provided it with a high-level top leadership platform to discuss, monitor and report on the implementation status of the NACP.

- 3. It is important to have a broader coalition of reformers that is not limited to public institutions and other formal institutions of government.** The role played by civil society groups, the media, businesses, academia, international partners and other concerned parties also complemented the efforts of the MACC and GIACC to combat corruption. Their involvement was not just on the technical front; at times they also provided the needed support to keep the reform agenda on track.



Conclusions



Political realities will always constrain the menu of policy responses from which leaders may choose, but they need not be a permanent barrier in the fight against corruption. Several cases in this report show that technical solutions alone are insufficient to have an impact on corruption, nor can they be merely transplanted from one country context to another. The World Bank's 2017 WDR emphasized that the power asymmetries in societies—rich and poor alike—constrain the policy making environment. The impact of this “elite bargaining” is so strong that governments are rarely able to pursue the policies that would bring optimal development outcomes. As a result, countries remain “stuck” in sub-optimal development trajectories because well-positioned elites are unwilling to risk their loss of power. Change is nearly impossible to achieve unless influential actors agree for it to happen. However, all is not lost, as the WDR acknowledged, “elites may voluntarily agree to limit their influence in their own self-interest.” Citizens can play an important role in applying pressure to influence the outcome. The WDR further states that one particular policy—fiscal transparency—is effective because it “ties not only the hands of current elites but also those of successors.”

Corruption is stubborn but not intractable, and the dozens of cases presented in this report demonstrate that progress is possible. The contemporary news may tempt one to believe that corruption is impossible to curtail and that citizens have no choice but to accept it. Yet, while it is true that new schemes and vulnerabilities emerge daily, with ever higher monetary costs (e.g., Malaysia's “Billion-Dollar Whale”), there is an often-untold reality that governments are tightening the *marge de manœuvre* for many would-be corruptors. What emerges from this report is that the progress governments make is not necessarily from the large government-wide initiatives that garner extensive press coverage. Nor do they necessarily result in high-profile arrests or convictions, though some do. Rather, the cases of anti-corruption documented in this report show that the more focused efforts of governments may sometimes go unobserved. They evidence how governments seize an opportunity within a specific sector or function to enhance governance. They also highlight how specific policy

instruments and institutions that may have previously been ineffective, can be injected with new life and revived to achieve the desired results.

Unfortunately, the impact of focused anti-corruption initiatives may not always be measured in quantifiable savings or a jump in global survey rankings. Each of the cases featured in this report has demonstrated a positive contribution to the fight against corruption, as reflected in the views of public officials, local media reports, or citizen groups. Yet none of the cases has included an empirical study that would allow one to see the quantitative change in corruption before and after the intervention. Such studies are rare because of the difficulty of establishing a credible baseline on the magnitude of corruption prior to the policy action, and the equal difficulty of quantifying it after the intervention. Enterprise surveys conducted by the World Bank have helped give a quantitative aspect to measurements of corruption, but they only focus on a narrow range of actions. Likewise, international indices, such as the Worldwide Governance Indicators are too aggregated to reflect the impact of a single intervention. Because of this measurement challenge, reform champions may need to develop other tools to gauge public sentiment about the trajectory of corruption in their country or the impact of a reform in a specific government function or service.

Grand corruption has proven to be a particularly challenging area for public officials and citizens to address, notwithstanding the progress made in confronting petty corruption. Automation and the streamlining of bureaucratic procedures have enabled many countries to lower the incidence of small bribes at the point of service delivery. However, grand corruption is usually the most difficult to address precisely because those who are most empowered to take action may also be the ones who benefit from the system. Elite capture is typically one of the biggest barriers to effective action against grand corruption, where public officials and private interests see mutual benefit from the status quo. However, we see through the case studies that even when there is strong vested interest, there are a few factors that, when combined, can contribute to greater accountability among stakeholders.

Sharpening the anti-corruption toolkit

Effective anti-corruption strategies typically include multiple measures, often combining sector-specific interventions with transparency and accountability measures that apply to the whole of the public sector. Corruption manifests itself in specific functions and sectors of government, and the report emphasizes the relevance of this sector-based perspective. A better understanding of the potential entry points and opportunities for corruption within a specific sector or function helps develop an appropriate risk mitigation strategy. The incentives that drive corrupt behavior, as well as the political economy constraints to address them, will surely vary by sector or function within each country context. On the other hand, the evidence is overwhelming in this report, that sector specific interventions alone are generally insufficient. Corruption at the sectoral level may flourish because of broader social norms and a governance ecosystem that either tolerates or encourages corruption. Broader governance measures may include both strengthening the institutions that help to combat corruption and implementing specific tools or policy measures that make it harder to hide corrupt activity (and the associated proceeds). Governments need to critically examine the effectiveness of an instrument or a strategy in their country-context. The chapters in this report have highlighted some of the lessons learned about what does and does not work.

Strengthening core institutions and targeted policy actions are mutually supportive and should be adopted in tandem. Transparency and openness, for example, should be embedded in many of the policy instruments and institutional approaches; and a number

of GovTech tools can be used to strengthen the capacity of core institutions, as well as enhance the effectiveness of tools such as asset and interest declarations and beneficial ownership registries. Similarly, the most promising opportunities to limit corruption in public infrastructure, public procurement, and SOEs rely upon strong institutional oversight, coupled with technology platforms that allow enhanced transparency in government dealings. Strong ACAs have contributed to the effectiveness of asset and interest declaration systems. Data analytics and machine learning are also enabling tax administrations to contribute more effectively to anti-corruption efforts through the identification of illicit wealth and tax evasion.

Many of the strategies suggested are cross-cutting and are relevant to more than one sector or function. For example, the issues and recommendations offered for public procurement are also relevant for the provision of public infrastructure. Potential measures to mitigate corruption risks in SOEs can also be informed by the discussions on public procurement given the large volume of procurement that SOEs themselves undertake, though often under different regulatory provisions than ministries and agencies. The lessons on PPPs in infrastructure point back to the need to manage the whole of the procurement cycle from tendering to contract management. Beneficial ownership transparency may help reduce conflict of interest in public procurement as well as in the business of SOEs. Transparency and citizen engagement have proven critical in encouraging integrity in the operations of SOEs, as well as in the implementation of public infrastructure projects.

What drives effective corruption approaches?

While many factors may contribute to the effectiveness of anti-corruption, there are six cross-cutting drivers of anti-corruption reforms that are worth noting: Political Leadership, Institutions, Incentives, Technology, Transparency, and Collaboration. Not every driver is evidenced in every case study, but these six elements are present in

some combination in each of the cases. Why are they so important?

- Strong and determined **political leadership** is often needed to provide vision for reform and a commitment to support increased integrity in the face of opposition from vested interests.

- Countries benefit as **institutions** become more capable, contributing to checks and balances and fostering accountability. Without strong institutions to assure implementation, reforms risk being short-lived or only superficial.
- **Incentives** drive behavior and the entry points for corruption vary across functions of government. Therefore, corruption needs to be tackled at a micro-level, with a focus on its manifestations in specific sectors or functions and changing the incentives of those who assess the benefits and risks of corrupt activity.
- **Technology** is enabling countries to standardize processes, minimize human interaction, and capture comprehensive data that helps establish accountability for a wide range of transactions.
- **Transparency** can promote greater compliance and improve human behavior. Open government policies and access to information help make corrupt actions harder to hide and contribute to their prevention, particularly when they are linked to engaged and empowered communities and official processes.
- We increasingly, see that efforts that foster **collaboration** among multiple stakeholders, including across international borders, to pursue a common goal achieve greater success.

Political leadership

Political leadership drives the reform process in several of the case studies and its importance is emphasized in virtually all of the sectors featured in Part I. Leadership manifests itself in different ways. The chapters on Procurement, Public Infrastructure, and SOEs, for example, highlight that leadership from the most senior level is necessary because the economic decisions related to investments in these areas are often influenced by those in high positions and there is a risk that proceeds are used for political party financing. Changing the “rules of the game”, reducing the opportunities for political influence in economic decisions, and enforcing the regulatory framework on conflict of interest require strong political leadership. The case study on SOEs in Angola, as well as the procurement case study in Chile, demonstrate the impact of political leadership. While there is a risk that reform actions taken after a change of government will risk being seen as a ‘settling of scores’ or politically motivated rather than a genuine reform of the system. Similarly, a change of government can lead to a reversal of positive reforms. Thus, what may matter most is the institutionalization of those reforms so that they will not be reversed so easily. The case studies in the AID chapter (Romania and Ukraine) highlight that anti-corruption initiatives are vulnerable to changes in the political environment. The customs administration

chapter also highlights the importance of political leadership. Reform may not always be as dramatic as in Georgia and Rwanda, but as the Madagascar and Afghanistan case studies show, reforms in the sector take time and reformers within the customs administrations require sustained political support to show results.

Leadership also manifests itself in setting a tone and culture of openness and transparency that is required for some technocratic policy responses to be effective. Policy instruments featured in Part II, such as asset and interest disclosure, in particular, have implications for who may hold a position in government. Moreover, institutions that shine the spotlight on suspicious activity need to be supported at the political level, rather than undermined. Broader initiatives such as open government, fiscal transparency, and citizen engagement are also dependent on the direction and culture that are set by senior government officials. Similarly, assuring the independence and capacity of the justice system requires leadership at the most senior levels. Astute leadership within an organization can also be transformative in building capacity and voice, as seen in the SAI cases taken from Ghana and India.

Institutional capacity

Reforms need to be institutionalized if they are to be sustained, and increasing the capacity of integrity institutions is central to legitimizing a country's anti-corruption strategy. Part III of the report discussed the role that key institutions can play in supporting anti-corruption efforts, while acknowledging the challenges that confront them in doing so. For example, the SAI examples of Ghana and India start with a historical backdrop in which their role was quite limited, but with the right intervention they became re-energized and their audit findings had greater impact. In the two AID examples, the newly strong and independent institutions in the countries were critical to making the asset disclosure system more than just a requirement on paper and giving it real “teeth”. The importance of a well-functioning justice system to enforce the rule of law and impose sanctions on those responsible for corrupt activity is obvious—without a well-functioning enforcement system, all the preventive mechanisms become essentially toothless.

The country spotlight on Malaysia underlines how policy responses to corruption can be put at risk without the corresponding institutionalization of processes and rules. The country has gone through several reforms, including those initiated by the government that came into power in 2018. Some of the reforms could not be completed as they required

constitutional changes which were not possible. Following a change of government in early 2020, it is now unclear whether the momentum on anti-corruption reforms will be sustained.

Oversight bodies have a vital role to play in ensuring that reforms are institutionalized. For the technical reforms in procurement and public infrastructure to be effective, the relevant oversight bodies need to be sufficiently equipped and empowered to be able to act on the information at hand. In public infrastructure, for example, they need to be able to ensure that project identification and selection is based on merit and that changes proposed by contractors during implementation are well justified and not merely a method to enrich themselves in exchange for bribes. Moreover, as digitalization expands across the public sector and creates an audit trail for government transactions, one needs capable institutions with well-trained staff to be able to analyze the data, detect red flags, and then to act on those findings through appropriate enforcement channels. The procurement and infrastructure chapters highlight how the advances in e-GP systems are improving the ability to detect informality and irregular activity, but they need to be further exploited. Colombia's experience highlights a positive example of innovations in the procurement platform that are increasing competition and value.

Incentives

Of course, corruption is driven by incentives, where the perceived benefits of corrupt activity outweigh the perceived risk of being caught. Many of the initiatives in this report are aimed at increasing the risk of detection, though some are also focused on reducing the benefits or opportunities from corruption. In the Madagascar customs example, the performance pay approach aimed to increase the benefits of good behavior, but tough sanctions for bad behavior proved to be a stronger incentive, especially when stronger data monitoring raised the risk of detection. Automation of land records in Rwanda helped reduce the value of paying bribes to land registry officials

because the information was already public. In Ukraine, major changes to the health financing system upended the incentives that had previously been in place to extract bribes from patients and from prospective medical school students. Though the system is far from perfect, it has helped to constrain one of the channels for corruption that had endured for decades.

At times, government officials need to seek out an alignment of incentives among different stakeholders if they hope to tackle corruption. In the case of Nigeria's ports, the international shippers' association had strong commercial incentives to

reduce corruption, while the UNDP and three of the government’s anti-corruption agencies were all motivated to show positive results. This alignment of objectives helped foster collaboration on reforms. A similar alignment of incentives is evident in Slovakia’s approach to developing and maintaining beneficial ownership registries. Through a change of regulations,

they have now made the legal entities who represent companies liable for the updating and confirmation of beneficial ownership information on their clients. This shifts the compliance burden from the state to the corporate representatives, who are ultimately better placed to obtain and confirm the corporate data, and risk suffering a reputational risk if they do not.

Technology

Information technology is a common driver of reform in many of the cases, because of the key role it plays in enhancing transparency and reducing human discretion. Applying an appropriate level of technology—adapted to the country capacity—brings increased benefits when part of a broader policy change. For example, in low capacity environments, such as Madagascar and Afghanistan, automation of customs clearance procedures has been an important foundation of reform, but it has been accompanied by other efforts to prevent “gaming the system.” In Ukraine, a digital eHealth platform connected to the reimbursement system was established, to ensure greater transparency in payments for health services. In Nigeria, the Corporate Affairs Commission (CAC) will be relying on modernization of its data systems and online reporting tools to help the government implement new beneficial ownership disclosure requirements on all 3.1 million registered Nigerian companies.

Reformers must also take advantage of the opportunities that emerging technologies may offer, especially to leverage the rapidly growing

digitization of information in the public and private sectors. Brazil’s federal court of accounts (TCU) has applied AI as a decision support tool for identifying transactions and payments ex ante that are at a high risk for fraud and corruption. India’s Andhra Pradesh (AP) state has progressively leveraged digital government platforms and emerging technologies to improve public services, while also reducing the opportunities for fraud and corruption in key areas, such as taxation and construction permitting. They have used a combination of tools that included drones, GIS mapping, processing with artificial intelligence, E-governance dashboard, etc., to provide an integrated picture of government services. Even in very advanced countries, there is a need to remain vigilant and to anticipate new schemes that may emerge. For example, Singapore developed an AI application to help flag fraudulent training providers in its SkillsFuture program (a several million-dollar grant program for training). The GovTech chapter of this report details many tools that governments may avail themselves of, but the ability to leverage them is often impeded by silos within government and the broader ecosystem of “analog” processes and culture that are harder to reform.



Transparency

Transparency has been a cornerstone of many of the reform efforts, but it is made even more impactful when accompanied by increased citizen engagement. The AID cases in Romania and Ukraine both rely on public access to wealth declaration forms as a central characteristic to making them an effective anti-corruption measure. When the content of the declarations was known only to a few officials in government, the requirement had little impact. But once civil society and the media had access to the information, the level of scrutiny increased significantly, making it harder for corrupt individuals to hide. Positive experiences with beneficial ownership transparency are emerging in the cases of Slovakia, UK, and Nigeria, though at different speeds. Such information is critical to identify potential conflicts of interest in public procurement, as well as to support tax administrations in flagging potential profits from illegal activities. Supreme audit institutions in Ghana and India have enjoyed a stronger contribution to anti-corruption in their countries due to the public accessibility of their audit findings and the public outcry that has resulted. And while the experiments with participatory budgeting in Ethiopia and Kenya were not directly aimed at fighting corruption, they have nevertheless helped to increase the accountability of local officials to citizens and reduce the scope for bribes in public service provision that comes from lack of public knowledge.

Reducing corruption in public procurement and public infrastructure is particularly challenging, and most of the measures that are promising rely on transparency and citizen engagement, in conjunction with data. Each of the CoST examples from Honduras, Thailand, and Ukraine embodies mechanisms for transparency in contract management, coupled with a multi-stakeholder group to enhance the accountability of government officials and private companies. Reflecting the specific challenges to managing PPP contracts for public works and the risk of unjustified cost-escalation, governments such as Chile, Australia, and the EU are defining transparent processes and frameworks for renegotiation subject to external audit. The cases of Colombia, Chile, and Bangladesh show how e-GP systems have been used as a foundation for introducing greater transparency in the public procurement system. While there are differences in their stages of development, each of the countries has seen an increase in competition as information going to potential bidders becomes more standardized and trust in the system has increased. Andhra Pradesh's experience involves extensive investment in technology, but with the aim of increasing transparency on property tax assessments on the one hand, and in construction permitting on the other.

Collaboration

Collaboration among stakeholders is an increasingly important success factor in anti-corruption efforts; and better collaboration amongst public agencies is a starting point. The success of AP's reforms depended also on inter-agency collaboration, pulling together data from many sources to develop an accurate status of service provision on which to act. Indeed, for many governments seeking to leverage the benefits of digitalization and emerging technologies, it is essential that they break down the institutional silos that impede effective data sharing. Important data may be spread across different agencies, who have created their own constraints to sharing. Only by tapping into databases

across agencies and resolving data inconsistencies will governments be able to exploit the benefits of machine learning and to flag irregularities. As noted in chapter 10, tax administrations have significant untapped potential to aid in the fight against corruption by accessing third-party data from across government agencies and beneficial ownership registries to identify illicit financial flows. Where data held by tax authorities can be accessed by justice-related bodies, on the other hand, it may enhance governments' ability to prosecute individuals who have engaged in corrupt activities. Prosecution of corruption is a critical final leg in the anti-corruption platform, and the chapter on justice systems emphasizes how all three pillars—

police, prosecutors, and courts—need to work well together. Similarly, anti-corruption agencies (ACAs) rely on collaboration with other public institutions to be most effective; countries setting up or refining the mandate of their ACAs should take into account their roles and competencies relative to other bodies.

Collaboration with external stakeholders—journalists, civil society, and the private sector—is also an important theme across the cases. In **Nigeria**, private firms found a common interest with anti-corruption bodies to work together on governance of ports. For the countries who are using CoST to improve infrastructure governance, social accountability mechanisms are an integral part of their strategy to link the interests of the public and private sector. In the **Columbia EPM** case, the quality of SOE governance first began with legislative foundations for corporate responsibility, but what enabled EPM to stand out as an SOE was its commitment to public engagement and transparency with customers, communities, and shareholders. Moreover, anti-corruption instruments, such as asset and interest disclosure and beneficial ownership transparency rely heavily on collaboration

between government, civil society, and the private sector to be effective.

Finally, collaboration can extend beyond national borders to combat the globalization of corruption and the shifting of assets offshore. Countries can gain inspiration from Brazil's success in detecting and prosecuting corrupt activity in the Odebrecht case, which stemmed in large part from their ability to collaborate with other financial investigative units across national boundaries. Indeed, as schemes become more complex and the channels for hiding and moving assets become more sophisticated, governments will need to leverage collaborative agreements with other countries and develop forensic capacity to use the trove of data available through international conventions. Stopping corruption at its source will always prove elusive, but governments can benefit from emerging technologies to detect illicit financial flows and to provide evidence needed to recover stolen assets. Collaboration among national law enforcement agencies is also becoming increasingly important to the pursuit and prosecution of corrupt individuals, who are otherwise able to move assets across jurisdictions with ease.

Looking ahead to sharper tools

Sustaining the momentum for corruption-mitigating reforms is not easy, but it could be aided by having better ways to measure their impact. As noted earlier in this report, the current tools that are used internationally to measure corruption have the common problem of relying on the **perceptions** of experts. While there is some benefit from such surveys as a broad proxy, they are not a substitute for having a more quantitative or evidence-based set of indicators. Enterprise surveys are one of the few such evidenced-based tools, but they only track a narrow range of services, mostly targeting bribes for public services. A future research agenda for the international community could be to develop other types of survey approaches that would expand the breadth of corruption monitoring.

More also needs to be known about how corruption manifests itself within specific sectors and/or functions. Part I of this report provided a brief overview of corruption entry points in a few specific

sectors that absorb substantial public resources and have an impact on development. But the best designs for anti-corruption strategies will be able to establish the bridge between the corruption entry points that are common to a sector generally and those that are specific to that sector/function in country X and at a specific point in time. The incentives for corruption and the vulnerabilities that can be exploited need to be better understood first at a sectoral/functional level, before drilling down to a specific national/local level. Some CSOs and international organizations are already beginning to mine this area for insights, but more work remains to be done.

Countries' urgent responses to the COVID-19 pandemic should not be at the expense of the ongoing fight against corruption. There is an understandable pressure to address immediate and urgent needs in healthcare, social safety nets, and economic stimuli. Responding with speed may mean that the standard procurement and other accountability procedures

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have to be relaxed. As such, government officials must balance the need for discretion in public spending with maintaining accountability and transparency mechanisms. Simplification of procedures may be necessary, while at the same time preserving sufficient records to permit an accurate stock-take and review of expenditure after the crisis is over. Yet, the risks of corruption are real; countries should be wary that in accelerating public expenditures, public procurements could be captured by well-connected elites and fraudulent agents. In the medium term, governments should quickly restore those systems that are critical for integrity and not do lasting damage to the systems of checks and balances that have been put in place. In this time of dislocation and uncertainty, the core tools of fiscal transparency, citizen engagement, and social accountability become ever more important.

Achieving long-term economic growth and shared prosperity depends upon governments, companies, and communities working together to address corruption and its corrosive impacts.

We are reminded in this report that the challenges to confronting corruption are deep-rooted, but not impossible to overcome. Each case study gives evidence of impact in reducing the risk of corruption, spanning a variety of country contexts: fragile states, low-income, and advanced countries. Public policy practitioners and civil society advocates will want to adapt this menu of approaches to their own political economy contexts. But in the not-too-distant future, as digitalization expands across the public sector and disruptive technologies become more commonplace, the tools with which to detect corrupt activities and to track down illicit financial flows should become even sharper. When that happens, the 'disinfecting effect of sunlight' will be even more powerful than it is now.

