

## Value Added of Partnership in the Fight against Corruption



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## Value added of Partnership in the Fight against Corruption\*\_/

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### **Abstract**

The paper promotes an anti-corruption strategy that rests on economic development, democratic reform, strong civil society and presence of rule of law. Based on these principles the authors recommend concrete measures to be implemented at the national and international level and emphasize the need for coordination with economic and social policies and the development of a civic political culture. The paper also gives information about the activities and experiences of international institutions in the fight against corruption and introduces an evidence-based, non-partisan, inclusive as well as comprehensive and impact-oriented approach to fight corruption.

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## **INTRODUCTION**

### **A. Aspects and Causes of Corruption**

There is a general consensus that, although the most serious consequences to the economic and social development of a country are likely to come from corruption at the upper levels, the citizens' perception is mostly related to their first-hand experience with public administration at the "street" level. While bribery for many years was seen as a "way of getting things done" in most developing countries and countries in transition, this "greasing of the wheel" syndrome is now seen as a "sanding of the wheel." At the international level, this change in perception is partly due to the economic crisis in Asia, which according to many experts was partly triggered by inadequate corporate governance practices (e.g. inadequate accountability and transparency). At the national level, data from surveys in Uganda (1998), Tanzania (1997) and Ukraine (1999) proves that citizens who bribe are less likely to be satisfied with the service than the ones who did not. The survey in Tanzania revealed that respondents who did not pay a bribe were 2.9 times as likely to find a higher level of service provided. On the other hand, those who paid bribes were 1.7 times more likely to receive poor service than good service. In fact only 13 percent of the people surveyed paid the bribe and received a good service.<sup>5</sup> Types of corruption have been classified in many ways in the literature. For example, categories have been made for "petty," or survival, and "grand" corruption; or between "episodic" and "systemic" corruption.<sup>6</sup> Other categories have identified "simple" and "complex" corruption, particularly as have been observed in European countries.<sup>7</sup> This paper will refer to three levels ("street," business and "top" political and financial)

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1 This paper is a revision of the paper prepared by UNICRI and CICP for the 10th Crime Congress in Vienna, April 10-17, 2000.

2 According to Harold Tribune Feb 7th 2000 a US Senate Investigation identified more than US\$ 1000 Billion "dirty money" in the financial sector. More than 50% was in the US and there is still no clarity regarding how is coming from organized crime, corruption, drug trafficking and tax evasion.

3 P. Langseth, "Prevention: An Effective Tool to Reduce Corruption," ISPAC 1999 Conference on "Responding to the Challenge of Corruption," Milan, 19-20 November 1999.

4 According to the International Harold Tribune, Feb 7th , 2001

5 Petter Langseth and Bryane Michael, "Are Bribe Payments in Tanzania 'Grease' or 'Grit'?" *Crime, Law and Social Change* 29; 197-208, 98.

6 P. Langseth, proceedings of the International Conference on "Responding to the Challenges of Corruption," Milan, Italy, November 19-20, 1999 (Milan Conference).

7 Simple corruption, or the base of the pyramid, mostly refers to bribery of public administrators and generally involves transactions between two individuals. Complex corruption, the top of the pyramid, generally corresponds to political corruption and involves several actors from both the supply and the demand sides. See E. Savona, L. Mezzanotte, *La corruzione in Europa*, Roma 1998.

as taken from the Global Programme against Corruption. Corruption materializes in different forms. It usually includes several of the elements depicted page 13.<sup>8</sup>

**Bribery.** Bribery involves an exchange that improperly affects the actions or decisions of a public official.<sup>9</sup> ” In the words of Judge Noonan<sup>10</sup>, it is an "inducement improperly or properly influencing the performance of a public function meant to be gratuitously exercised". *For example*, a customs official may receive bribes in order to ignore legal or illegal imports or exports. In this way, the payment of duties and levies is avoided at the expense of the national treasury. In addition, dangerous or prohibited goods cross national borders. Smuggling activities may include anything from cigarettes and agricultural products to gold, diamonds, nuclear materials, and human beings.

**Embezzlement.** Theft of resources by persons entrusted with authority and control over anything of value. These can include public officials and private individuals. *For example*, government workers in charge of distributing food to the local village steal a portion of the food and sell it to other parties. Medical supplies being transported from the airport to a local hospital are stolen and sold to a local pharmacy instead.

**Fraud.** Any behaviour designed to trick or fool another person or entity for one's own or a third party's benefit. *For example*, in order to collect benefits from the government, a healthy man capable of working tells the government that he has an injury and can't work. The public health department doctor writes a false medical report in exchange for money. His patient can now collect benefits from the government for a disability he does not have.

**Extortion.** forcing a person to pay money or other valuables in exchange for acting or failing to act. This coercion can be under the threat of physical harm, violence or restraint. *For example*, a sick woman needs to see a doctor and at the hospital, the nurse tells her husband that he must pay something extra just to get into the doctors office. His wife dies while he is searching for the money. A citizen phones the police to report a robbery. The robber is related to a policeman. The citizen is told that he must pay or he will be arrested for calling in a false report.

**Abuse of Power.** Using one's vested authority to give undue preferential treatment to any group or individual or to discriminate against any group or individual. *For example*, an elected official responsible for maintaining all the roads in the state assigns the road repair crews to areas where his constituents reside and neglects other areas in similar need of road repairs.

**Conflict of Interest.** Engaging in transactions or acquiring a position or commercial interest that is incompatible with one's official role and duties. *For example*, a public official owns land in the area where a large real estate development is planned to be built which is expected to have the effect of raising the value of all properties in the area. This official votes in favour of granting permission to the real estate developer to build its

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8 Petter Langseth, Integrated vs Quantitative Methods, Lessons Learned; 2000 (presented at NORAD Conference, Oslo, 21 October 2000).

9 The UN has so far defined corruption in its Convention against Transnational Organized Crime as: "i) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her functions; and ii) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her function."

10 (Noonan, 1984: xi).



project. Regardless of whether or not this project is in the best interest of the public, this official has a conflict of interest.

***Receiving an unlawful gratuity, favour or illegal commission.*** A public official receives anything of value from others wishing to do business with the government. *For example*, five companies are bidding on a government contract to clean the public streets. One of the firms informs the public official that they will pay 2 per cent of the contract price in exchange for being selected as the winning contractor. This company is guilty of offering an unlawful gratuity, favour or commission and the public official, if he in fact assists them in winning the contract, is guilty of receiving it.

***Favouritism.*** This is the assignment of services or resources according to family ties, party affiliation, tribe, religion, sect and other preferential groupings. *For example*, a public servant provides extraordinary services, commissions, jobs and favours to political allies, family and friends. Members of the general public would not receive this special treatment.

***Nepotism.*** This is a form of favouritism whereby an office holder with the right to make appointments, prefers to nominate his/her relatives for positions within the public administration. *For example*, a newly elected administration replaces current civil servants with members of the new administration's family and close friends. This sort of corruption undermines the stability and integrity of the government.

***Illegal Contributions,*** This occurs when political parties or the government in power receives money in exchange for non-interference with the entity or group making the contribution. It is closely related to bribery.

When discussing the issue of corruption, a distinction must be made between the supply and the demand side of the activity. Corruption involving the supply side focuses on the payment of bribes in return for specific services, preferential treatment or contracts. Corrupt practices occurring on the demand side include solicitation of bribes and/or extortion. The latter is typical of corruption involving political and financial powers.

Countries in a developing phase are susceptible to corruption basically because of a change in the needs of the civil society as it transitions towards a consumer society combined with an imperfectly organised and enforced public and judicial administration. Therefore, previously existing corruption at the street level provides a hotbed for corruption at higher levels. Greed, social injustice, peer pressure and a lust for social status and power may all be contributing factors. Since corruption is—in a narrow sense—a victimless crime, low risks of discovery and punishment do little to deter the prevalence of these factors.<sup>11</sup> Additionally, certain country-specific factors, such as population size and natural resources, also appear to be positively linked with the prevalence of bribery and corruption.<sup>12</sup>

Countries that are radically reforming their economic and political system, like Central and Eastern Europe during the 1990s, are confronted with corruption in the business sector and at the high political and financial levels. Their exposure stems mainly from the strong impact of reforms on their national economy. Specifically, corruption thrives during the large-scale privatisation of former state-owned properties including enterprises, buildings and other holdings, which are an important part of the national

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11 A.N. Lai, "Corruption Prevention - A Hong Kong Perspective," Proceedings of the Milan Conference, p.

12 C.W. Gray, D. Kaufmann, "Corruption and" World Bank PREMnotes 4/1999, p. 2.

economic value.<sup>13</sup> The new opportunities arising from the distribution of such property increases the appeal of obtaining illegal advantages. The actors in this context are not only national or international business members, but also, in the case of high-level corruption, the national decision-makers within political and administrative offices.<sup>14</sup>

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13 N. Ceka, "Corruption in Albania - the struggle against wind mills," Proceedings of the Milan Conference, p. 2; B. Kovacevic, in: Proceedings of the Milan Conference, p. 2.

14 B. Kovacevic, in: Proceedings of the Milan Conference, p. 1.

## **B. Consequences of Corruption**

The consequences of corruption are generally devastating both for the economy as a whole and for the citizenry. The “pain” caused by corruption at the village level has best been described by more than 3,500 villagers participating in 348 focus groups facilitated by CIETinternational in Uganda in 1998.<sup>15</sup>

*At the Hospital:* A man had taken his pregnant wife to hospital to deliver their baby. He did not have the money demanded by the hospital. While he searched for money, the hospital workers let his pregnant wife die. —Soroti, Site 1, Men’s group

My husband was beaten by a thief. On the way the local commissioner got the thief and took him to police. The case was dismissed after the father of the boy paid the magistrate some money. —Hoima, Site 2, Women’s interview group.

Police bosses expect their subordinates to give them money and the subordinates are forced into corruption to satisfy their bosses. In turn, the bosses do not inspect or supervise. —Mubende, site

*In Court:* In courts, people who have money are usually set free and the poor remain for long in jail. —Lira, Site 2, Women’s group.

I had a land dispute with my neighbour which we took to the police. I paid 270,000 shillings by my rival paid 260,000, but our case was not settled. When we both realised we were wasting a lot of money, we had to reach a compromise to avoid further wastage —Kitgum, Site 3, Men’s group

*How Can We Safely Report Corruption?* The communities should learn to report cases of corruption. But to whom? And are we safe? —Mbale, Site 3, Men’s interview group

The community is willing to report corrupt service workers but they do not know the offices of the Inspector General of Government (IGG) in their area. —Luwero, Site 4, Women’s group

Corrupt behaviour, such as bribery, also produces external costs in the form of “added taxes,” which are mainly shouldered by the national economy. This, particularly in developing countries, undermines efficient allocation of badly needed financial resources for economic development and is altering the composition of public expenditure.

Within the context of international trade, corruption—particularly in the form of bribery—serves as a barrier to trade and investment. The existence of corruption presents global investors with a poor environment in which to place their capital. Those investors most likely to make a long-term contributions to development may therefore be discouraged, while those who seek quick profits through dubious ventures may instead be encouraged.<sup>16</sup> This in turn increases the harmful effects of corruption on global economics, which have been mounting. It has been shown that countries suffering from

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15 P. Langseth, “Update on Uganda; Staying the Course,” World Bank PREM NEWS, June 1999.

16 C. Nzerem, “Commonwealth Action on Corruption,” Proceedings of the Milan Conference, p. 5.

pervasive corruption invest less and achieve lower economic growth.<sup>17</sup> A corrupt country is likely to achieve aggregate investment levels of almost 5 percent less than a country relatively free of corruption and to lose about half a percentage point of gross domestic product growth per year.<sup>18</sup>

Corruption in both the public and private sector, regardless of the level at which it occurs, can jeopardise free trade, distort competitiveness and undermine the stability upon which the free market system is based.<sup>19</sup> Companies may resort to bribery as a means of bypassing existing trade barriers or reducing national tariffs and expediting international trade. Such action, however, undermines the position of the state, reducing government revenue and violating important environmental and safety standards, among things.

Widespread corruption jeopardises the credibility of governments and their institutions. As a result, a negative culture arises in which priority is given to individual success and short-term achievements. Systemic corruption also weakens the effectiveness of punishment tools—it is hard to punish one person severely when so many others are likely to be equally guilty.<sup>20</sup> Within such an environment, organised crime is likely to grow and infiltrate high-level public administration offices. In the worst scenario, public order may break down, as occurred in Albania in March 1997,<sup>21</sup> or civil war may explode in the country.

### **C. Top Level Corruption**

Top level corruption is often controlled by hidden networks and represents the sum of various levels and types of irregular behaviour including abuse of power, conflict of interest, extortion, nepotism, tribalism and fraud. It is the most dangerous type of corruption and the one that causes the most serious damage to the country or countries involved. In developing countries, such corruption may undermine economic development through a number of related factors: the misuse or waste of international aid; unfinished development projects; and living standards remaining below the country's potential.

In particular, industrialised countries have been confronted with systemic corruption at the high level of government. An environment where power is shared over the long-term by only a few social and political is conducive to the establishment of such networks. These networks hide behind consensual agreements, justified by political, social, ethnic and religious arguments, which are well concealed from the public. Often they are only discovered inadvertently, thus allowing them to be prosecuted. Unfortunately, due to the

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17 J.B. Kim, Proceedings of the Milan Conference; citing Paulo Mauro, The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-Country Analysis, Corruption and the Global Economy, 83-107, (Kimberly Ann Elliot, eds. Institute for International Economics, Washington DC, 1997).

18 R.Stapenhurst and S Kpundeh; Curbing Corruption, Toward a Model for Building National Integrity, EDI, Development Studies, 1998

19 S. Bially. "International Business Community Fosters Ethical Behaviour," Public Management Forum, Vol. II, No. 5, 1996.

20 B. Kovacevic, in Proceedings of the Milan Conference, p. 1.

21 "In March 1997 riots caused the destruction of the public order. They were provoked by the loss of lent money of a mass of people, due to corruption within the bank sector involving also public authorities."

identification of only individuals or small parts of the network, the prosecution is, in most cases, unable to identify or eliminate the entire network.

As public awareness increases of the immediate negative effects of high level corruption on day-to-day life, tolerance of the problem will be reduced. Media reports can be very effective in bringing corruption scandals to the attention of the society. The perception that a scandal exists and the motivation to have the participants brought to justice are the first signs of citizens' empowerment and willingness to confront the phenomenon.

#### **D. Corruption in Public Administration and the Criminal Justice System**

Officers of the public administration, as the authority issuing licenses, permissions, permits and so forth, are both potential targets for corrupters, as well as instigators of corrupt practices. Within the police, opportunities are even greater. As the institution which not only enforces the laws but also has the power to deprive individuals of their freedom through the use of legitimate force, criminal investigations may be conducted that lead to severe sanctioning and/or economic penalties.<sup>22</sup> It appears that, particularly in a number of developing countries and countries in transition, further efforts are needed in order to improve the social status of, and compensation for public officials, thus making them less "vulnerable" to the challenges of bribery. Of the 18,412 household surveyed in Uganda in 1998, 63 percent reported having paid bribes to the police and 50 percent to the courts. While the median bribe paid to the police was Ushs. 20,000<sup>23</sup> (US\$ 20), the median bribe paid to the courts was Ushs. 50,000 (US\$ 50).<sup>24</sup>

Reforms are also needed to facilitate and increase the transparency of both the decision-making process and interaction with citizens. It is difficult to deal with corruption when no confidence exists between the citizenry and public administration. This situation will be exacerbated if discretionary power over public and/or private affairs is mainly concentrated in the political regime or the financial-political administrations that still maintain a philosophy of power over citizens rather than a service to citizens<sup>25</sup>. Therefore initiatives must be undertaken which not only reform the organisation of public administration but also modify the political culture as it relates to economic instability and market culture.

#### **E. Corruption in the Private Sector**

Businesses may either be the perpetrator of corruption, by offering bribes to public officials to secure contracts, or the victim, being solicited for bribes by public officials or other businesses to obtain licences, contracts or "protection or assurances." Corruption may be confined entirely within the business world, occurring between companies or may

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22 M. Punch, "Police Corruption and Its Prevention," Paper presented at the Twelfth Criminological Colloquium, Strasbourg, Council of Europe, 24-26 November 1999.

23 The monthly pay of a young teacher was Ushs. 75,000.

24 P. Langseth; "Update on Uganda; Staying the Course," World Bank PREM NEWS, June 1999.

25 U. Zvekic, *Criminal Victimization in Countries in Transition*, UNICRI Pub. No. 61, 1998.

extend into the arena of government or public officials. In either case, the corrupt environment tends to favour domestic companies familiar with the local way of “doing business.” In addition to lacking sufficient local market knowledge, foreign firms may also be liable in their own country. They may be prohibited from offering bribes by their national foreign bribery legislation or by international agreements such as the OECD Convention on Combating Bribery of Foreign Public Officials if their governments have ratified these.<sup>26</sup>

Business activities involving corruption and bribery are not always wilful acts on the part of criminal organisations. It may be difficult for establishments to “just say no” to bribes. Organisations with a strong ethical corporate culture might be able to “resist the temptation” and large multi-national corporations may be able to afford to lose contracts to avoid situations involving bribes. Such decisions, however, may be more difficult for smaller businesses whose survival may depend upon securing a particular contract. According to Laufer, 97% of all convictions in U.S. federal courts involved small companies with less than 50 employees.<sup>27</sup> This, however, may reflect either the fact that small businesses are being targeted or that it is easier to obtain a conviction in cases involving smaller businesses with limited resources and skills.

Another problem faced by businesses are transactions in “grey areas” (where corruption is less obvious). These are areas where activities, such as the issuance of commission payments, “signature bonuses,” facilitation payments and donations to humanitarian causes, all begin as legitimate practices but somewhere along the line turn into corrupt practices or activities. The question for many businesses is “How do we know what is a bribe?”<sup>28</sup>

When examining issues of corruption addressed in various international conventions on corruption and bribery as well as the penal laws in various countries, it becomes clear that there are no good subjective or objective measures of corporate compliance.<sup>29</sup> Furthermore, many of these agreements focus on a narrow definition of corruption which

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26 J.B. Kim, Proceedings of the Milan Conference. “The OECD Convention is only open to OECD Member States who joined the OECD Working Group on Bribery in International Business Transactions, article 13, section 2”

27 W. Laufer, Proceedings of the Milan Conference.

28 F. Marcq, “The Business World and Corruption,” Proceedings of the Milan Conference, November 19-20, 1999.

29 W. Laufer, Proceedings of the Milan Conference.

has resulted in the enactment of more comprehensive national legislative acts or penal laws to cover activities not addressed in international treaties. For instance, while the OECD Convention of Combating Bribery of Foreign Public Officials is a milestone in the efforts to combat bribery and corruption in international commerce, it is limited to addressing the “supply” side of corruption of public officials. Public officials who accept bribes must be dealt with according to the domestic criminal laws of the foreign public servant’s country.<sup>30</sup>

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## II. RESPONSES TO CORRUPTION

### A. National Measures

Experience from successful countries like Hong Kong<sup>31</sup> Singapore and Botswana have taught us that there are at least six important components to any anti-corruption strategy: (i) awareness raising and public education; (ii) institution building across all sectors (judicial, legislative, executive, private, civil society, media); (iii) prevention; (iv) enforcement; (v) national and international anti corruption and money laundering legislation; (vi) establish new partnerships at the national and international level.

A distinction should be made between the political and legal measures to be considered at the national level to combat corruption. Progressive legal measures can only be enforced effectively when a political environment is established that does not tolerate corrupt behaviour and guarantees good governance.

#### At the Political Level

Since corruption is a “hidden crime,” transparency in the interface between the state and the public is one of the most important preventive measures. Public administration must be primarily regarded as a service to citizens and not as an exercise in power. Therefore, the establishment and enforcement of code of conducts for officials in the executive, legislative and the judiciary is critical. Furthermore, a clear, streamlined and transparent public administration structure is needed, so that there is a reduction in the number of opportunities to hide corrupt behaviour behind complex administrative arrangements. This, in accordance with the checks and balances principle, also includes a strict separation of responsibilities so that no single agency or branch is simultaneously responsible for a decision and the related enforcement. Moreover, a strict separation in the independence of different administrative units is needed to avoid the appropriation of key positions within different institutions by corrupt networks. In combating high-level corruption, binding and unambiguous rules of recruitment and disciplinary sanctions must be established. Finally, the effectiveness of these measures must be insured by independent monitoring and control mechanisms, such as auditing.

In addition, an administration that is resistant towards corruption also needs a civic political culture whereby the public can critically observe official activities and have access to credible and responsive public complaints systems (hot-lines). This requires transparency in and accessibility to the fiscal data of all public transactions. Monitoring, auditing, the survey of independent commissions and a strengthened free press can achieve these objectives.<sup>32</sup> The effectiveness of such anti-corruption “watchdog” bodies is positively illustrated by examples like the Independent Commission against Corruption (ICAC) in Hong Kong, the Corrupt Practices Investigation Bureau (CPIB) in Singapore and the New South Wales Independent Commission against Corruption (ICAC) in

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31 A.N. Lin, “Corruption Prevention: A Hong Kong Perspective,” Proceedings from the 9th SPAC Conference in Milan.

32 A. Bradanini, “Corruption: The International Experience and Activities,” Proceedings of the Milan Conference, p. 3.



Australia.<sup>33</sup> Although the creation of independent commissions is largely regarded as successful, some question whether such organisations should have exclusive jurisdiction over the problem.<sup>34</sup>

Encouraging progress in combating crime by installing control mechanisms can also be seen in Poland and Uganda.<sup>35</sup> Another effective instrument to sharpen public pressure against corrupt institution is the scorecard method, whereby users rate local service-providing agencies. This measure was implemented in India by the Bangalore NGO and helped to reduce bribery and resulted in the termination of corrupt officials.<sup>36</sup>

In addition to this, economic policy reforms that would minimise the chances for corruption should be considered. As stated previously, corruption is often used to circumvent tariffs, taxes and barriers. Therefore, minimising opportunities for illicit behaviour in these areas would help to reduce corruption and would free resources within the administration, both financial and personnel, to control and enforce the remaining barriers such as environmental and security standards.

### **At the Legal Level**

National measures within the legal system mainly refer to the developing and setting into force of various legal tools, such as criminal sanctions and—something that has mostly gone unnoticed so far—the use of non-criminal measures, like remedies (for example liability or negligence) or the confiscation of illicit assets.

It should be noted at the outset that all administrative reforms also have to be implemented within the judicial system and the related administration. This may include require restructuring the courts. A single-judge system is more vulnerable to corruption than a chamber or a jury system.<sup>37</sup> To guarantee a controlling system against corrupt judgements at least some degree of appeal should be accessible. An efficient corruption-free court system needs proper case management to ensure equal and fast access to justice.

Furthermore, successful prosecution depends on adequate procedural rules. In this context, rules, laws and legal measures protecting witnesses and whistleblowers should be available since corruption cases are often only discovered by relying on those channels of information. Experience has proved that specialised jurisdiction with secret witnesses and hidden evidence is not an adequate measure for combating corruption. This is mainly

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33 For further details on each organisation, see J.T. Quah, "Controlling corruption in city-states: A comparative study of Hong Kong and Singapore." *Crime, Law and Social Change: An International Journal* Vol. 22, No. 4. 1995, 391-414; M. Bersten, "Investigations by the New South Wales Independent Commission against Corruption: The Law, Procedures, Practices and Judicial Review." *Current Issues in Criminal Justice*, Vol. 3 No. 1, 1991; A.N. Lai, "Corruption Prevention - A Hong Kong Perspective," *Proceedings of the Milan Conference*, p. 2.

34 See United Nations Manual on practical measures against corruption.

35 C.W. Gray, D. Kaufmann, "Corruption and development," *World Bank PREMnotes* 4/1999, p. 3.

36 C.W. Gray, D. Kaufmann, "Corruption and development," *World Bank PREMnotes* 4/1999, p. 4.

37 D. Abadjiev, *Proceedings of the Milan Conference*, p. 1.

because the public is likely to perceive it as a “faceless” justice and, because of the lack of transparency, may lose confidence in the judicial system.<sup>38</sup>

Strengthening the criminal law is one of the most important legal tools against corruption. This includes norms for the punishment of bribery and corruption on the supply and the demand side within the public and private sectors. Continuing along this line, since business and high-level corruption are often committed by legal persons, normative solutions must be developed on their criminal responsibility.

However, criminal law as a repressive measure must be supplemented by preventive, non-criminal tools to achieve a new ethical, corruption-free culture. As an example, reforming the commercial law is one optional measure. Binding rules of conduct, auditing and controlling are needed to establish transparency within the business world and public administration. Furthermore, corruption within the private sector should be sanctioned, especially by rules of private law, to ensure that corrupt behaviour becomes unappealing. The example of Korea shows that such rules could be effectively installed by finding companies negligent for breaching standards of supervision.<sup>39</sup>

## **B. International Measures**

The purpose of international measures against corruption is to develop credible and effective tools to increase the risk, cost and uncertainty of: (i) national civil servants misusing public power for private gain; (ii) international civil servants misusing public power for private gain; and (iii) national and international private companies bribing national civil servants.

In order to achieve this objective the international measures against corruption will aim at facilitating the following conditions:

In the member countries through:

- broad access to information for all;
- availability of a Comprehensive Assessment of Corruption Situation assessing the types, causes, levels and location of corruption and presenting the National Integrity Strategy and Anti-Corruption Action Plan;
- inclusion of as many stakeholders in the anti-corruption campaigns as possible focusing on: (a) awareness raising, (b) prevention, (c) institution building and (d) enforcement of rule of law to increase the risk and cost of corrupt people nationally and internationally;
- independence of the legislative, executive and judicial branches;
- existence of an independent, free and competent media;

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38 R. Orduz Medina, Proceedings of the Milan Conference, p. 4.

39 Jong-Bum Kim, “Korean Implementation of the OECD Bribery Convention: Implications for Global Efforts to Fight Corruption,” Proceedings of the Milan Conference, p. 23.

- a strong, informed and well-organised civil society with a mandate to oversee the state;
- rule of law enforced by independent, competent and efficient institutions;
- access to an independent, credible and efficient complaints mechanism to address complaints about national and international corruption.
- Involvement and empowerment of the victims of corruption
- Facilitate new broad based national and international partnerships against corruption

In the international community through:

- broad based access to information about international development agencies;
- establishment of a credible international complaints mechanism to deal with member countries complaints about international civil servants;
- establishment of internal procedures by international donor agencies to address internal corruption, fraud, conflict of interest and misuse of power; and
- provision of the legal framework assuring international law enforcement co-operation, mutual legal assistance and extradition regarding the prosecution of corrupt officials and the forfeiture and confiscation of the proceeds.

The 10th Congress on the Prevention of Crime and the Treatment of Offenders was asked to discuss and make suggestions regarding the elaboration and content of a possible independent international legal instrument against corruption, considering in particular the following issues:

- The particular importance of and need for a global legal instrument addressing the phenomenon of corruption in the broadest possible manner in order to tackle corruption more effectively and efficiently.
- To help member states build integrity to prevent and fight corruption nationally as well as addressing the challenges of transnational corruption.

Corruption is a phenomenon which reaches far beyond the giving, demanding and receiving of bribes of money by a public official. Therefore, a future Convention should aim at criminalising all forms of corrupt practices, such as (i) the bribing of auditors and witnesses; (ii) the illegal funding of political parties; (iii) conflict of interest where senior officials use their position to get advantages; (iv) abuse of power where senior government officials and/or politicians actively work against the drafting and/or enforcement of legislation to open up government to increase its accountability to the citizens; (iv) the extortion of money by civil servants demanding bribes for free health, educational or other services; (v) extortion by tax and custom officers for reducing the tax and customs fees to be paid by the public; and (vii) the buying of votes in elections. Furthermore, the sanctioning of illicit enrichment should be considered, in order to overcome problems encountered by law enforcement agencies when trying to produce evidence.

The international measures against corruption should provide a legal framework for the forfeiture and confiscation of the proceeds of corruption, evaluating the possibilities of shifting the burden of proof in this particular context. The close connection between corruption and money laundering, as highlighted in the Report of the Expert Group Meeting on Corruption and its Financial Channels, needs to be addressed. It should therefore be borne in mind that money laundering methods are not only being used to disguise the origin of corruption proceeds, but also during the committing of the offence of corruption in order to dissociate the origin of the bribe money from its destination. At the same time corruption is a means to facilitate the laundering of all kinds of criminal proceeds. Moreover an international legal instrument against corruption has to provide a legal framework assuring international law enforcement co-operation, mutual legal assistance and extradition regarding the prosecution of corruption and the forfeiture and confiscation of its proceeds.

Future international measures should also contain provisions facilitating the detection and investigation of corruption and its proceeds. Consideration should be given to lifting bank secrecy in cases of suspected corruption, and the possibility of applying forceful tools such as: (i) integrity tests (“sting operations”); (ii) seizure of business and banking records; (iii) protection of witnesses and “whistleblowers”; (iv) enactment and enforcement of “access to information” legislation; (v) credible, independent and efficient complaints procedures administered by an independent and efficient institution (Ombudsman); (vi) external monitoring of the tender process for large international projects; (vii) international independent and credible complaints mechanism for the public and officials to file claims about donors and international civil servants; (viii) mandate for the public to monitor the state performance; (ix) establishment of regulations allowing mitigation of sentences for offenders collaborating with the law enforcement agencies in the investigation of corruption; and (x) provision of access to member countries to investigative competence in large cases of corruption involving international companies.

Future international measures should however not be limited to designing a legal framework relating to the issues of criminalisation, prosecution, investigation and detection of corruption. It should also promote preventive measures guarding against corruption such as: (i) code of conducts and declaration and monitoring of assets for senior officials in the executive, legislative and the judiciary; (ii) strengthening tender procedures through increased transparency and the involvement of international observers in larger projects; (iii) credible, free and independent media; (iv) black listing of international companies involved in bribing; and (iv) lifting of the bank secrecy act in larger cases with clear evidence of corruption.

All member states will be encouraged to incorporate a participative inclusive process, which involves all key stakeholders (legislative, judiciary, executive, private sector, civil society, youth, labor unions, anti-corruption agencies, media) reaching consensus around a National Integrity Strategy and an Anti-corruption action plan. The implementation of the Action Plan will be monitored periodically through a transparent assessment of measurable performance indicators such as: (i) economic, social and moral costs of corruption; (ii) levels of corruption, as perceived by civil society and external investors; (iii) public awareness of and confidence in anti-corruption strategy and agencies; (iv) the risk of being caught, as perceived by the public; (v) number of complaints received; (vi)

number of corruption reports received; (vii) number of people prosecuted; (viii) conviction rate; (ix) number of civil servants disciplined; (x) number of corruption training sessions; and (xi) number of people reached through the education program. Conducting a rapid assessment surveying citizens, private sector, service providers (civil servants) and potential external investors about levels, types, extent and location of corruption and what, in their opinion, should be done to improve the situation would strengthen this process.

To ensure optimal implementation, future international measures against corruption need to foster international co-operation. In particular, developing countries and countries with economies in transition must be provided the necessary technical assistance to meet their needs for effective and timely implementation of the convention. In this regard, increased political and financial support should be considered for international agencies active in the field of anti-corruption work, particularly the United Nations Crime Prevention and Criminal Justice Programme within which the Centre for International Crime Prevention (CICP) provides a holistic approach to developing anti-corruption measures in such areas as criminal justice, money laundering, organised crime and corruption.

Moreover, the adoption of other international instruments against corruption should be promoted, including: the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development; the Inter-American Convention against Corruption by the Organisation of American States; the Principles to Combat Corruption in African Countries of the Global Coalition for Africa; and the Criminal Law Convention on Corruption by the Council of Europe.

### ***C. Measures to Prevent Corruption***

As stated above, four components appear to be crucial for effective prevention of corruption: (i) economic development; (ii) democratic reform; (iii) a strong civil society with access to information and a mandate to oversee the state; and (iv) presence of rule of law.<sup>40</sup> It should be noted, however, that “There is no single model or practice which suits all countries, and each jurisdiction needs to explore practices drawn from a variety of options.”<sup>41</sup> Measures to prevent corruption, in the form of codes of conduct and training in ethics, must focus on various sectors and all levels within society to include local institutions in the public and private sectors, including public administration, political office, and corporations at the local, national and international level.<sup>42</sup>

Organisations are instrumental in curbing corruption within themselves through the implementation of internal measures such as: clear procedures; a simple accounting system; an effective supervisory system; transparency and the adoption of a suitable code of conduct. Such measures raise ethical standards within an organisation. Leaders must foster a culture of honesty within their organisations. Compliance programmes must be

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40 P. Langseth, Proceedings of the Milan Conference.

41 A.N. Lai, “Corruption Prevention - A Hong Kong Perspective,” Proceedings of the Milan Conference.

42 A. Bradanini, the Milan Conference.

introduced which include training of employees at all levels. Businesses must define and apply corporate values and foster an aspiration mentality as opposed to a compliance mentality.

On the whole, governments have been reluctant to acknowledge the very real problem of solicitation. This creates the illusion that businesses are the source of corruption. The solution is for governments to acknowledge the demand side. Companies need some form of assistance against solicitation of bribes, and governments must take responsibility for addressing this. Co-operation must be international.

## **D. Use of Statistical Data to Understand the Dimensions of Corruption**

More and more surveys are being used to fight corruption. Broadly there are two categories of surveys<sup>43</sup>:

- (a) *Awareness Raising Surveys* conducted by international organizations measure perceived levels of corruption across countries. The purpose is awareness raising and international monitoring. The data is mostly used by international organisations for awareness raising and sometimes monitoring (example the TI-Index)
- (b) *Community Based Planning Surveys* conducted by national anti-corruption agencies measure perceived levels of corruption at national and/or municipal level. The purpose is to establish a baseline to increase accountability but also to facilitate community-based planning where the data is used as an input to a national or municipal action planning process. These surveys tend to be large and are often supplemented by focus groups and disseminated through broad-based action planning workshops.

The opinions of selected professionals from the criminal justice system and/or business people, such as the surveys used by Transparency International<sup>44</sup> for the production of the Corruption Perception Index, can be used as a third source of information.<sup>45</sup> This index relies mainly on perceptions of the importance of the phenomenon drawn from different sources, at different periods of time and from different individual respondents.

The high correlation among various international statistical sources, although very different from one another, suggests that a high level of “street” corruption is likely to predict a high level of business corruption, as well as a high level of political and

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43 P. Langseth et al; *Building Integrity to Fight Corruption in Uganda*. Fountain Publishing House, Kampala Uganda, 1998

44 Transparency International, a German based non-governmental organisation for monitoring corruption in each country has made quite a unique effort in this area. Apart from establishing national chapters and monitoring individual cases of corruption, they annually publish the ranking of the countries according to “perceived cleanness” by business persons (Corruption Perception Index).

45 See Lambsdorff, *Proceedings of the Milan Conference: The 1999 CPI includes data from the following sources: Freedom House Nations in Transit (FH), Gallup International (GI), the Economist Intelligence Unit (EIU), the Institute for Management Development, Lausanne (IMD), the International Crime Victim Survey (ICVS), the Political and Economic Risk Consultancy, Hong Kong (PERC), The Wall Street Journal, Central European Economic Review (CEER), the World Bank and University of Basel (WB/UB), the World Economic Forum (WEF).*

financial corruption (that rarely comes to light). The opposite may not be true, since a high visibility of serious cases of political and financial corruption may reveal the willingness of a society to eradicate the phenomenon, thus indicating a widespread consensus against corrupt behaviours.





### **III. THE INTERNATIONAL EXPERIENCE AND ACTIVITIES**

Since the phenomenon of corruption is a world-wide problem, international co-operation is required to close loopholes caused by the existence of double standards<sup>46</sup> and to undertake joint measures. With the growing globalisation of the economy and the internationalism of illegal activities, international co-operation among governments with the involvement of international organisations, the private sector and civil society has become essential to fight corruption. The media have devoted considerable attention to corruption in the public sector, while citizens have begun to speak out more resolutely against unethical behaviour by public officials. In this context, a number of instruments have already been adopted to combat corruption at the international level.

#### ***A. Global Programme against Corruption: Implementation Strategy***

Considerable progress has been made in refining, implementing and raising awareness about the global programme against corruption, launched in March 1999, in cooperation with the United Nations Interregional Crime and Research Institute (UNICRI). The following facts are indicative of the progress made: (a) the programme has received firm endorsement of Member States, including through the Vienna Declaration, several General Assembly resolutions, the Convention against Transnational Organized Crime and the decision to initiate the elaboration of a convention against corruption; (b) the number of countries who have formally or informally indicated the request to join the programme has increased from five to 20; (c) the number of pilot countries has increased from three to eight; and (c) increased substantive expertise, dissemination of information and visibility for the programme have been achieved, especially through the organization of two international one national anti-corruption workshops, the launching of a new web page, participation at international conferences and presentation of professional papers. The global programme consists of an integrated package of assessment, technical cooperation, evaluation and contributions to the formulation of international strategies and instruments to combat corruption. It entails a systematic process of "action learning", which will identify best practices and lessons learned through pilot country projects, donor participation, programme execution and monitoring through periodic country assessments and the global corruption trends study. Attention will be given equally to preventive measures, institution building, law enforcement and prosecution. The technical cooperation component will also follow a modular approach, consisting of tools that may be implemented individually or as a sequenced package at different stages at the international, national and local levels.

A global corruption trends study is being initiated to analyze and forecast trends, types, levels, cost and causes of corruption around the globe, identify anti-corruption policies and best practices and assess public awareness. Subject to availability of funds, it is envisaged to cover several dozen countries through the study. It will be carried out in close partnership with concerned institutions and will link up closely with other crime

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46 C. Nzerem, "Commonwealth Action on Corruption," Proceedings of the Milan Conference, p. 7.

and justice issues and related work, especially organized crime, trafficking in human beings, illicit global markets and money-laundering.

An Anti-Corruption Tool-Kit has been developed, which outlines some 30 anti-corruption tools in the following areas: (i) institution building; (ii) prevention; (iii) awareness raising and education; (iv) enforcement; (v) anti-corruption legislation; (vi) repatriation of illegal assets; and (vii) monitoring and evaluation. Each tool will be supplemented through case studies of country experiences. The Tool-Kit will be disseminated both in print and through the web page of the programme.

A web page of the programme has been launched and is being continuously updated, as a component element of the Centre's web site (<http://www.ODCCP.org/corruption.html>). The web page will be used to disseminate detailed information on the programme, especially lessons learned, updates on findings of the global corruption trends study, results of perception surveys from country assessments, etc.

It is envisaged that during its initial stage, the programme will undertake projects in a few selected pilot countries from all regions of the world. Eight countries, which have requested the Centre's assistance to design and implement an integrated anti-corruption programme, have been selected for pilot projects: Benin, Colombia, Hungary, Indonesia, Lebanon, Nigeria, Romania and South Africa. Projects in these countries are currently at different stages of formulation and implementation. Projects are also being elaborated for Uganda and Iran.

In Benin, a project proposal, entitled "Elaboration of an anti-corruption strategy in Benin", has been developed by the programme and approved by the Minister of Justice, for which funding has been provided by the Government of France. Preliminary project activities are being initiated, such as the organization of coordination workshops and the review of anti-corruption legislation.

In Colombia, a project is being developed in close consultation with Government officials, which aims at establishing a national integrity strategy and action plan.

In Hungary, implementation of a project is currently underway, entitled "Assessment of corruption in Hungary". Funded by the Government of the USA, the project is assisting the Government of Hungary in its efforts to prevent, detect and fight corruption and promote transparency, accountability and the rule of law. With guidance from UNICRI, an independent survey company was selected by the Hungarian Government to conduct a country assessment. The results of the assessment were presented at a national workshop in May 2000 and were to be considered at an action planning expert meeting, scheduled for March 2001. In partnership with the global programme, the Government also organized an international conference in Vienna in October 2000 and presented details on the project implementation.

Consultations are underway with officials of the Government of Indonesia, for the purpose of elaborating a project on building integrity to prevent corruption.

In Lebanon, a project entitled "National anti-corruption strategy and plan in Lebanon" was launched already in March 1999, funded by the Government of the USA. At the request of the Government of Lebanon, this project has been reoriented within the framework of the global programme. Its first phase focused on improving anti-corruption legislation and training workshops for parliamentarians, magistrates and senior public officials. A second phase was launched in June 2000, which focuses on establishing a national integrity steering committee, conducting an independent country assessment and

implementing and monitoring a national integrity strategy and an anti corruption action plan. The programme has been requested to help in establishing an independent anti-corruption agency, introducing codes of conduct for ministers and public servants and strengthening the integrity in the judiciary.

In Nigeria, preparatory missions were undertaken and agreement has been reached to develop a project concept on strengthening the integrity in judiciary, with the active involvement of the Chief Justice and the Supreme Court. A similar project concept for prosecutors is also being explored, at the request of the Attorney General. Substantive assistance was provided for a workshop for senior policy makers. The Government has also sought assistance in recovery of assets looted by former regimes and possibilities of providing such assistance is being explored, in close cooperation with the global programme against money laundering.

A project in Romania has been concluded and evaluated, entitled "Institution building and strengthening of corruption control capacity in Romania", which was funded by the Governments of Greece and the USA and the United Nations Development Programme (UNDP). Project activities during the past year included training seminars in various aspects of anti-corruption work, such as drafting laws, task force organization, investigative techniques and inter-institutional cooperation; study tours for officials from various institutions; enactment of new anti corruption laws; public awareness campaigns; mobilization of non-governmental organizations; assessment and identification of further measures required; etc. An independent evaluation of the project conducted in December 2000 concluded that the project was perceived to have added value to the government's efforts to fight corruption. The Government has requested the initiation of a follow up project, to focus on integrity in the judiciary and public awareness raising.

In South Africa, a project document has been finalized, entitled "Support to the National Anti-Corruption Programme". This was preceded by several preparatory measures, including needs assessment missions and a round table of experts for identifying the most effective anti-corruption measures.

In Uganda, an assessment mission was undertaken and a project concept, focusing on the strengthening of the institutional and legal anti-corruption framework, has been agreed upon. A project document is being finalized and fund raising efforts are underway.

An expert group meeting on the "Global Programme against Corruption - Implementation Tools" was held in Vienna, on 13 and 14 April 2000. The experts provided feedback on the proposed strategies and contents of the programme and presented anti- corruption tools, to be compiled in the Anti-Corruption Tool-Kit. A workshop on "Integrity in Judiciary" was also organized in Vienna, on 15 and 16 April 2000, which was attended by eight chief justices. The global programme also participated in a number of major global conferences and contributed substantive papers for publication.

## **B. Other United Nations Agencies**

The most important instrument promoted by the United Nations in the area of corruption is the United Nations Code of Conduct for Law Enforcement Officials. Its drafting process was initiated by General Assembly resolution 34/169 of 17 December 1979 and was then circulated by the Secretary-General in 1994 among member states for

comment.<sup>47</sup> In 1996 a final version was adopted together with a set of guidelines for its effective implementation.<sup>48</sup>

In 1996, the United Nations also adopted the Declaration against Corruption and Bribery in International Commercial Transactions.<sup>49</sup> The Declaration recognised the importance of promoting social responsibility and appropriate standards of ethics not only in the public sector, but also in private corporations. This included “transnational corporations, and individuals engaged in international commercial transactions, inter alia, through observance of the laws and regulations of the countries in which they conduct business, and taking into account the impact of their activities on economic and social development and environmental protection.”

To provide assistance to countries in applying those instruments and their provisions, the United Nations has also elaborated a Manual on Practical Measures against Corruption. A meeting of experts from all regions was convened at Buenos Aires in 1997<sup>50</sup> to consider ways and means of strengthening international co-operation in this field, as well as to offer suggestions on the revision and expansion of the Manual. The Expert Group Meeting recommended that consideration be given to a range of specific measures that included:

- disclosure by public officials of assets and liabilities;
- introduction or strengthening of existing independent auditing institutions or bodies that vet public expenditures;
- establishment of specialised anti-corruption bodies;
- measures to introduce or encourage transparency in the management of public funds and in the decision-making process;
- establishment of transparent and competitive procedures for tendering and supervision of public works contracts and introduction of clear procurement rules;
- measures to ensure free competitions, including anti-trust regulations;
- measures to prevent improper advantages;
- elimination of curtailment of bank secrecy;
- measures to ensure and encourage public participation;
- measures to ensure accountability and effective disciplinary action;

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47 See Report of the Secretary General on United Nations standards and norms in the field of crime prevention and criminal justice (E/CN.15/1996/16) and the Addendum on the use and application of the Code of Conduct for Law Enforcement Officials, together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (E/CN.15/1996/16/Add.2).

48 General Assembly Resolution 51/59.

49 General Assembly Resolution 51/191.

50 Expert Group Meeting on Corruption, Buenos Aires, 17 to 21 March 1997.

- financing of political parties and campaigns;
- guarantee of freedom of the parties and the right to information;
- elaboration and introduction of codes of ethics for certain categories of professions; and
- elaboration of a programme to encourage the implementation of guidelines for the performance of duties similar to the International Code of Conduct for Public Officials.

The Recommendations of the Buenos Aires Expert Group Meeting on Corruption were also the basis for the development of the Corruption Monitoring Protocol, the assessment component which will be integrated into the Global Programme against Corruption.

The issue of corruption has been discussed by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime. At its sixth session, the Committee discussed the possible inclusion of articles on the criminalisation of corruption of public officials by organized crime groups, and on other measures to prevent and control such corruption.

### ***The United Nations Convention against Transnational Organized Crime***

The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000 and open for signature from 12 to 15 December 2000 in Palermo (Italy), includes several provisions related to the phenomenon of corruption.

In particular, the Convention foresees the criminalization of the corruption of public officials; the adoption of such measures as may be necessary to establish as a criminal offence the participation as an accomplice in such an offence; the liability (criminal, civil or administrative) of legal persons corrupting public officials; the provisions of measures to prevent detect and punish the corruption of public officials; the promotion of the concept of "integrity" of public officials as well as the provision of adequate independence to competent authorities in the prevention, detection and punishment of the corruption of public officials.

The Convention will entry in force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.

*Criminalization.* According to article 8 each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: *i*) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; and *ii*) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties

Each State Party shall also consider adopting such measures as may be necessary to establish as a criminal offence the participation as an accomplice in an offence established in accordance with article 8. In addition, each State Party shall consider adopting such legislative and other measures as may be necessary to criminalize the conduct described above involving a foreign public official or an international civil servant as well as the criminalization of other forms of corruption.

The Convention strengthens its provisions by stating that an offence established, *inter alia*, in accordance with article 8 shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group (article 34).

*Liability of legal persons.* Article 10 foresees the liability of legal persons for, *inter alia*, the offence established in accordance with article 8 (i.e. passive and active corruption of public officials). Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

*Measures and sanctions.* The Convention states that each State Party shall adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials and shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (article 9). The Convention foresees also that each State shall ensure that legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (article 10). In addition each State Party shall make the commission of an offence established in accordance with, *inter alia*, article 8 liable to sanctions that take into account the gravity of that offence (article 11).

*Seizure and confiscation.* The UN Convention foresees that States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of: i) proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; and ii) property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (article 12, par.1).

For the purposes of article 12, on "confiscation and seizure" and of article 13, on "international cooperation for the purposes of confiscation", each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act on the ground of bank secrecy (article 12, par. 6).

The disposal of confiscated proceeds of crime or property is covered by article 14 according to which proceeds of crime or property confiscated by a State Party pursuant to the Convention shall be disposed of by the State Party in accordance with its domestic law and administrative procedures.

*Prevention.* The UN Convention introduces and promotes the concept of "integrity" of public officials and foresees that each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (article 9).

*Jurisdiction.* The UN Convention stipulates that each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with the Convention when: i) the offence is committed in the territory of that State Party; or ii) the offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed (article 15, par.1). Subject to article 4 of the Convention on "protection of sovereignty", a State Party may also establish its jurisdiction over any such offence when: i) the offence is committed against a national of that State Party; or ii) the offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory (article 15, par. 2, a and b). It must be added that, in accordance with article 16, para. 10, a State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which the Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.

*International co-operation.* The provisions of the UN Convention dealing with extradition and mutual legal assistance are similar to traditional provisions already in place in many or bilateral agreements. The major significance of these provisions is that a large number of countries is expected to ratify the Convention, making legal assistance and extradition available much more widely than is presently the case. These provisions are intended to set minimum standards only. Countries are encouraged to go further in bilateral or regional arrangements, and are in fact encouraged to do so. Where more advantageous provisions are found in other agreements between the States involved in a particular case, those provisions would apply.

Under article 16, extradition from another State Party may be sought for the four specific offences established by the Convention, or for any "serious crime", where an "organized criminal group" is involved, the person whose extradition is sought is in the requested State Party, and the offence itself is punishable by the domestic laws of both States.

As already mentioned under jurisdiction, according to the UN Convention, a State Party in whose territory an alleged offender is found, if it does not extradite such persons in respect of an offence to which the Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purposes of prosecution (article 16, par.10). Finally, States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (article 16, par. 15).



On the basis of article 18 the widest measure of mutual legal assistance can be requested from another state party for any investigation, prosecution or judicial proceedings in relation to offences covered by the Convention. The provisions of this article can be used to obtain statements or other evidence, conduct searches or seizures, serve judicial documents, examine objects or sites, obtain original documents or certified copies, identify or trace proceeds of crime or other property, obtain bank, corporate or other records, facilitate the appearance of persons in the requesting state party, or any other form of assistance permitted by the laws of the states involved (article 18, par.3). The range of forms of assistance available is generally consistent with many existing bilateral and multilateral legal assistance agreements. The major significance of the Convention provisions will be that these extend the availability of such assistance (in cases to which they apply) to a much greater number of countries than is presently the case, assuming that a large number of countries ratify and implement the instrument.

According to article 18, par. 8, States Parties to the UN Convention shall not decline to render mutual legal assistance on the ground of bank secrecy.

In addition, the UN Convention also provides the general basis for conducting joint investigations (article 19), co-operation in special investigative procedures, such as electronic surveillance, and general law-enforcement co-operation (articles 20 and 27). The development of domestic training programmes and the provision of technical assistance to other States in training matters are also encouraged (articles 29 and 30).

*Monitoring mechanism.* As other international legal instruments, the United Nations Convention against Transnational Organized crime foresees a mechanism which will monitor its implementation.

According to article 32, a Conference of the Parties to the Convention is established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of the Convention. The Conference of the Parties will be convened by the Secretary-General of the United Nations no later than one year following the entry into force of the Convention. Each State Party is supposed to provide the Conference of the Parties with information on its programs, plans and practices, as well as legislative and administrative measures to implement the Convention.

### **C. The European Union**

A Protocol to the Convention on the protection of the European Community's financial interests was adopted in 1996 to criminalise active and passive corruption of national and Community officials.<sup>51</sup> A second protocol adopted in 1997 made provisions for the criminalisation of laundering the proceeds generated by corruption and introduced

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<sup>51</sup> The Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interest, on the basis of Article K.3 of the Treaty on European Union (29 November 1998).

liability of legal persons involved in organised crime.<sup>52</sup> A convention on corruption adopted in 1997 criminalised active and passive corruption of officials even where financial damage to the Union was not at issue.<sup>53</sup> A Joint Action Criminalising Corruption in the Private Sector was another important instrument adopted at the end of 1998.<sup>54</sup>

The Action Plan to Combat Organized Crime, which was endorsed by the European Council of Ministers in 1997<sup>55</sup>, also identified the need for a comprehensive EU policy to fight against corruption. The Commission advocated the establishment of a Union policy against corruption in response to a call from the Parliament for the development of such a policy and in anticipation of the Action Plan.<sup>56</sup>

#### **D. The Organisation for Economic Co-operation and Development (OECD)**

At the national level, governments have responded to the problems of corruption in various ways, including campaigns to combat corruption, evaluation of the rules applying to public officials, adoption of service charters and codes of conduct. In this context, the OECD has been helping its 29 member countries to review and reform the institutions, systems and conditions used to promote ethics in the public sector. This OECD work on public sector ethics contributes to the global battle against corruption by addressing the “demand side” of the corruption equation.<sup>57</sup> Through this approach, corruption is recognised as not simply an “individual criminal action,” but rather the result of a “systematic failure and management problem reflected in weak public institutions.

The messages of OECD in this area are that the state’s role in preventing corruption is as complex as the phenomenon of corruption itself, and that the combination of inter-related mechanisms including a system for managing ethics, specific prevention techniques, and effective law enforcement (“ethics management system”) is necessary for success. The OECD Council adopted the Recommendation on Improving Ethical Conduct in the Public Service on April 23, 1998. This document is based on principles for managing ethics in the public sector as developed and agreed upon by representatives of the member states to support governments in their review of ethics management systems. The Council also instructed the OECD committee responsible for public management to analyse information provided by member states on how they apply these principles, and to provide support to these countries in improving conduct in the public service.

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52 Second Protocol to the Convention on the Protection of the European Communities’ financial interest, on the basis of the treaty on European Union (19 June 1997).

53 Convention on the Fight Against Corruption Involving Officials of the European Community or Officials of Member States of the European Union (May 1997).

54 Joint Action on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector (22 December 1998).

55 The Action Plan to Combat Organised Crime adopted in the Amsterdam European Council of Ministers meeting (June 1997).

56 Y. Grau, “The Role of the European Commission in the Fight against Corruption,” Proceedings of the Milan Conference, p. 3.

57 B.W Edes, “Promoting Integrity in the Public Sector-the Contribution of the OECD,” Proceedings of the Milan Conference, p. 2.

In 1994, OECD countries agreed on an initial Recommendation on Bribery in International Business Transactions. Subsequently, they adopted a Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials in May 1997.

Based on these recommendations and on further discussion, all OECD countries and 5 non-member countries adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions that came into force on 15 February 1999. This convention defines a public official very broadly in order to cover all persons exercising a public function. According to the definition of the convention, a “public function” may include any activity in the public interest, and a foreign official can be either a company officer of a public enterprise, a head of a government designated monopoly, or a senior officer of any company in which the government exercises a dominant influence through majority ownership or control.” Moreover, the convention requires that the bribery of foreign public officials be punishable by effective, proportionate and dissuasive criminal penalties comparable to those applicable to bribery of domestic officials.

### ***E. The Council of Europe***

The Council of Europe has also been playing a significant role in the international fight against corruption since the 19<sup>th</sup> Conference of European Ministers of Justice held in Malta, 1994 through its activities under the framework of the Multidisciplinary Group on Corruption (GMC). The cornerstone of the Council of Europe’s strategy against corruption is the Criminal Law Convention on Corruption that was adopted in November 1998 and has since been signed by 30 countries and ratified by one.<sup>58</sup>

The substantive law elements in the OECD and the Council of Europe instruments directly follow from the aim and scope of each convention. While the OECD convention prohibits one specific type of corruption and provides no possibility to enter any reservation, the Council of Europe convention prohibits various forms of corruption and allows for reservations. As mentioned, the Council of Europe Convention provides for the criminalisation of both active and passive bribery of domestic officials. The Council of Europe convention is considered one of the most comprehensive treaties in this field, because it covers not only foreign public officials but also the “passive side” of bribery, and public officials and parliamentarians not only of member states but also of non-member contracting countries to the convention.

The Council of Europe also elaborated a Civil Law Convention on corruption in 1999. This convention is the first attempt to define common principles and rules at an international level in the field of civil law and corruption. Furthermore, the Council of Europe also established a monitoring mechanism, the “Group of States against Corruption - GRECO,” which was operationalised in May 1999 and involves 21 member states. GRECO aims at improving the capacity of its member states to fight corruption by following up through a dynamic and flexible process of mutual evaluation, and peer

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58 M.L. Salazar, “The Council of Europe Criminal Law Convention on Corruption,” Proceeding of the Milan Conference, p. 4.

pressure through the 20 Guiding Principles<sup>59</sup> for the fight against corruption and the implementation of the international legal instruments to be adopted. States that will become Parties to the Criminal Law Convention or other instruments will automatically enter into the obligation to participate in GRECO, and to accept monitoring procedures defined under its system. GRECO provides a flexible, dynamic and efficient mechanism to ensure compliance with undertakings in the field of corruption, and defines a master-type procedure which can adopt the different instruments under review.

## **F. The World Bank<sup>60</sup>**

The topic of anti-corruption has recently generated substantial academic interest as well as support from the highest levels of the World Bank and the international community. The Bank publicly defined its role on the subject in September 1997. Since that time, corruption has become an increasingly important consideration in the Bank's lending activities.

This new Comprehensive Development Framework (CDF) is founded upon the premise that corruption is a major hindrance to economic development and as a result governance issues have to be addressed as an important part of the development framework. More and more development experts have come to the conclusion that it is impossible to alleviate poverty without first curbing corruption.<sup>61</sup> The Bank is concerned "not with the exercise of state powers in the broad sense but specifically with the appropriate management of the public sector and the creation of an enabling environment for the private sector" (World Bank, 1997).

The framework for addressing corruption guides the Bank at four levels:

- Preventing fraud and corruption within Bank-financed projects;
- Helping countries that request support in their efforts to reduce corruption;
- Greater consideration of corruption in country-assistance strategies, country-lending considerations, policy dialogue, analytical work, and in the choice and design of projects; and
- Adding its voice and support to international efforts to reduce corruption.

The ultimate goal of the Bank's strategy on corruption is to help countries move from systemic corruption to an environment in which a well-performing government minimizes corruption's negative effects on development. The strategy is based on action coming from three directions: (a) economic policy reform, (b) institutional strengthening

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59 Resolution (97)24 on the 20 Guiding Principles for the Fight Against Corruption adopted by the Committee of Ministers at its 101st session (6 November 1997)

60 Langseth and Pope, *Building Integrity to Fight Corruption: Learning by Doing*. Human Resources in Development Seminar; University of Manchester, June 1999.

61 This is especially the case in countries like Nigeria where 10% of GNP is diverted or Indonesia where the leakage on donor programs is estimated between 25%-30%.

and (c) international action. The model assumes that corruption is a function of weak institutions and of policies that create economic rents.

### **G. Other Bodies and Mechanisms**

In 1975 the International Chamber of Commerce's produced its "Rules of Conduct" on extortion and bribery. Since then it has tirelessly promoted, regularly updated and disseminated these rules.

To address the problems of corruption in the states in transition, it is necessary to promote economic growth, build strong democratic institutions, and engender popular support for democracy. The European Commission and the Council of Europe have launched a joint-programme, OCTOPUS, aimed at strengthening and developing legislation and competence, and improving co-operation among judicial authorities and law enforcement agencies of these countries.<sup>62</sup> The OECD and the European Union are undertaking another joint initiative for these states, the SIGMA Programme, which provides advice on building modern systems of public administration in 13 central and eastern European countries.<sup>63</sup>

The International Monetary Fund (IMF) also plays an important role in the area of combating corruption. The Interim Committee of the IMF adopted the "Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles" in 1999 which followed the "Code of Good Practices on Fiscal Transparency" developed in 1998. The object of these codes is to increase the transparency of the public and financial sectors. In order to increase the transparency of its own operation, the IMF released Public Information Notices (PINs), many policy papers, summaries of Board discussions, the external auditors' reports on IMF surveillance and other activities. Increasing transparency is, however, constrained at times by the IMF's original and important role as a confidential advisor to member countries.<sup>64</sup>

International law enforcement co-operation is also important to enhance accountability and transparency. Following the "Lima Declaration" in 1997,<sup>65</sup> international organisations with mandates in the area of combating corruption, including INTERPOL and the World Custom Organization, should take steps to strengthen international law enforcement co-operation. The initiative taken by INTERPOL was launched during the first international conference on corruption-related crime in April 1998.<sup>66</sup> The initiative involved consulting a group of experts embracing two components, a number of law

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62 Y. Grau, "The Role of the European Commission in the Fight against Corruption," Proceedings of the Milan Conference, p. 5.

63 B.W Edes, "Promoting Integrity in the Public Sector-the Contribution of the OECD," Proceedings of the Milan Conference, p. 13.

64 V. Tanzi, "Transparency, Governance and the Role of the IMF," Proceedings of the Milan Conference, p. 3.

65 In September 1997 Transparency International organised in Lima, Peru, the 8th International Anti-Corruption Conference (IACC) that produced the Lima Declaration. The document represents a first attempt of the international community to articulate a broad strategy for combating corruption, at the international and national levels, involving in all sectors of the civil society. The 9th International Conference was held in Durban, South Africa, from 10 - 15 October 1999 under the title "Global Integrity: 2000 and Beyond." It produced the Durban Commitment that builds on the Lima Declaration, assesses the progress made and identifies a number of courses of action to which the 1,600 participants committed themselves. The 10th IACC will take place in Prague in 2001.

66 The 1st International Conference on Corruption-Related Crime (Lyons, April 1998).

enforcement practitioners and an advisory anti-corruption group. The mission statement of the INTERPOL group emphasises that: (i) Law enforcement sees itself as an integral part of the community;(ii) Both reactive and proactive actions should be employed in order to combat corruption effectively; and (iii) This battle has to be fought by the community as a whole.<sup>67</sup>

Other institutions, such as the Commonwealth Secretariat<sup>68</sup> and the Organization of American States (OAS), have also implemented their own instruments. The Commonwealth Secretariat has established a “Commonwealth Expert Group on Good Governance and the Elimination of Corruption in Economic Management.” This Expert Group had prepared its own report and a document entitled “Promoting Good Governance and Combating Corruption—Framework for Commonwealth Principles.” The Organization of American States has promoted the Inter American Convention against Corruption (1996). The Convention is aimed at fighting corruption to strengthen democratic institutions, prevent distortions in the economy, improprieties in public administration, and damage to the civil society.

Although each institution has its own objectives and institutional framework, the effects on the legislation and practice of parties should be complementary and mutually corroborative. Co-ordination, sharing information, and mutual understanding among international organisations are also important to enhance the effectiveness of the international fight against corruption.

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67 R.e. Kendall, “The International Experiences and Activities,” Proceedings of the Milan Conference, p. 11.

68 The trust level between the public and a country’s anti corruption agencies is a critical variable determining to what anti corruption policies, measures and tools will help curb corruption. In Hong Kong where 66% of the public is willing to report corruption there is a good chance for a complaint system or a “hot-line” to work. If the same tools was introduced in Lebanon, where only 12% of the public is trusting the government enough to report corruption, the impact would be quit different.



## IV. RECOMMENDATIONS

Demand for good governance is increasing throughout the developing world. From local and national governments to donor institutions, corruption is one of the greatest obstacles to development. The Programme presented in this paper works to empower individuals, communities, and governments by disseminating knowledge. This, in turn, results in greater government accountability and transparency, which are integral to building institutional capacity and improving service delivery. The Programme helps governments work more efficiently and helps the entire society participate in building an enabling environment for equitable and sustainable growth resulting in timely and cost effective services delivered to its public.

There are a number of areas that demand the attention of governments. These include: (i) the organised crime/corruption nexus; (ii) the use of off-shore banks for the purpose of laundering money; (iii) illicit business contributions to political campaign funds; (iv) jurisdictional problems arising in the investigation and prosecution of transnational corruption schemes; and (v) the development of expertise in the investigation and prosecution of complex corruption cases

Organisations in the public and private sector at the local and national level must adopt various measures **in order** to achieve success in the fight against corruption. Economic development, democratic reform, a strong civil society with access to information and presence of the rule of law appear to be crucial for the effective prevention of corruption. Following are a list of measures or initiatives that should be developed and implemented at various levels within the public and private sectors.<sup>69</sup> The measures **must** address both policy and systemic issues and behavioural or cultural aspect of change. In order to address both aspects in a holistic and integrated manner, measures have been organised as follows: (i) Public Sector or executive measures; (ii) Law Enforcement measures; (iii) Legislative measures; (iv) Private sector measures; (v) Civil society measures; and (vi) International measures.

### Public Sector (executive) Measures

- “open up” government to the public by: (i) inviting civil society to oversee aid and other government programs; (ii) establishing and disseminating service standards, (iii) establishing a credible complaints mechanism;
- deliver services closer to customers (increase transparency and thereby increase accountability);
- implement civil service reform that (i) professionalize the civil service and increase focus on integrity and results, (ii) consumer rights to replace patronage, (iii) meritocracy to replace nepotism;
- enforce access to information;
- focus on prevention projects which educate society to the evils of corruption and

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69 P. Langseth. presentation at the 9th IPAC conference in Milan, November 1999.



- instil a moral commitment to integrity in dealings with business and government officials;
- create a specialised independent anti-corruption commission which focuses on prevention (research, monitoring education, training and advice) but also has investigative powers;
- strengthen state institutions by: (i) simplifying procedure (ii) improving internal control, monitoring, enforcement and efficiency (iii) establishing the right incentives and remuneration;
- develop and strengthen independent investigative, legislative, judicial and media organisations;
- provide protective measures for witnesses and whistle-blowers;
- provide independent audit and investigative bodies supported by sufficient human and financial resources; and
- develop or strengthen administrative remedies such as confiscation of illicit assets.

#### Law Enforcement Measures

- enforce the independence of the judiciary and the prosecution;
- increase the transparency and accountability in the judiciary;
- ensure integrity and accountability of the judiciary by: (i) predetermine assignment of judges; (ii) secure independence of public prosecutors; (iii) increase transparency through computerization; (iv) transparent monitoring of declared assets of judges;
- increase internal oversight and supervision; and
- secure the integrity of the judiciary through: (i) the enforcement of code of conduct, (ii) monitoring of declared assets and (iii) strengthening the internal disciplinary bodies.

#### Legislative Measures<sup>70</sup>

- enforce the independence of the legislative;
- pass and enforce necessary anti-corruption laws: (i) campaign financing; (ii) independence of supreme audit bodies; (iii) freedom of information, (iv) conflict of interest legislation, (v) freedom of the media and freedom of expression; (vi) whistleblower and witness protection; (v) shift burden of proof regarding

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<sup>70</sup> P. Langseth. presentation at the 9<sup>th</sup> IPAC conference in Milan, November 1999.

confiscation of illicit enrichment (vi) decrease discretionary powers of the executive; (vii) amnesty, (ix) investigative powers for enforcement to conduct integrity tests or other investigative measures;

- secure the integrity of the legislative through: (i) the enforcement of code of conduct, (ii) monitoring of declared assets and (iii) strengthening the internal disciplinary bodies;
- strengthen public accounts committee (PAC) to oversee the supreme audit bodies reporting to Parliament; and
- strengthen the anti-corruption watchdog agencies reporting to the legislative by: (i) securing the independence of AC agencies; (ii) building credible complaints mechanism; (iii) enforcing integrity.

#### Private Sector Measures

- Educate, aid and empower businesses to be able to refrain from participating in illicit behaviour as either the victim or perpetrator of corrupt transactions;
- promote ethical standards in business through the development of codes of conduct, education, training and seminars;
- develop high standards for accounting and auditing and promote transparency in business transactions;
- develop clear legislation, regulation standards so that the line between legal and illicit activities is a clear one;
- develop normative solutions to the problem of criminal responsibility of legal persons; and
- (businesses themselves must) develop sufficient internal control mechanisms, train personnel and develop sanctions for transgressions.

#### Independent (civil society) Measures

- Increase education, awareness and involvement of the civil society to mobilise civil society organisations (media, NGOs, professional associations, research or university institutes) to research and monitor good governance;
- create and strengthen (NGO) networks to share information on local, regional and national initiatives;
- strengthen civil society to empower citizens to demand integrity and fairness in government and business transactions;
- develop good databases and networks for ensuring analysis and monitoring of corruption trends and cases as well as information exchange among different agencies dealing with corruption; and
- build/maintain an independent, professional and free media with a “nation

building role by: (i) capacity building; (ii) enforce integrity through introduction and monitoring of code of conduct; (iii) encouraging owners/editors to allow balanced reporting and (iv) encouraging the media to police itself.

#### International Measures

- Exchange information on regional and national “best practice” initiatives;
- develop, ratify and incorporate international instruments to encourage and strengthen anti-corruption programmes at the national level;
- consider the development of a comprehensive UN anti-corruption convention;
- establish adequate monitoring systems;
- establish simplified and transparent competitive public procurement procedures and encourage the adoption of international rules in this area;
- adopt international rules in the area of off-shore banking regulations and international investment; and
- increase co-operation in the investigative, prosecutorial and judicial realms.

## V. LOOKING BACK: WHAT LESSONS HAVE WE LEARNED?

Perhaps the most significant achievement in the “governance area” over the last 10 years has been the shattering of a taboo that shrouded corruption from discussion, particularly in diplomatic circles and intergovernmental institutions. The topic is now out in the open and a potentially powerful coalition has emerged from this debate. Interest groups that never collaborated previously in preventing corruption now recognize that governments alone cannot hope to contain corruption.

The support and participation of an active but independent civil society must be attained. Governments must allow new *checks and balances* to be established including:

Timely, broader and easier access to information;

- an independent judiciary with integrity;
- a legislative that represents the public and provides the correct role model;
- a result-oriented and clean executive; and
- a strong civil society empowered by a free, clean and independent media.

### **History has revealed the following valuable facts**

- Economic growth is not enough to reduce poverty. Poverty alleviation will not occur without a broader, integrated and holistic strategy for change
- The misuse of power for private gain seems to be endemic and everywhere.
- Curbing systemic corruption is a challenge that will require stronger measures, more resources and a longer time horizon than most politicians and “corruption fighters” will admit or can afford.
- Left unchecked, corruption will only increase and make the poorest and least educated poorer. Where personal risk and punishment are minimal, the risk of corruption naturally increases.
- Raising awareness without adequate and visible enforcement will lead to cynicism among citizenry and possibly increase the incidence of corruption.
- Recent corruption cases exposed by the World Bank, the UN and other multilateral and bilateral organizations have shown that the misuse of public power for private gain can occur in any society or organization, even where there are well laid checks and balances.
- A country’s national institutions do not work in isolation. Where they do, they will fail in their totality. A transparent and integrated system of checks and balances, designed to achieve accountability among the various arms and agencies of government, disperses power and limits opportunities for conflicts of interest.
- Public trust in government, anti-corruption agencies and anti-corruption policies

and measures is key when a country invites the public to take an active role in monitoring the performance of its government. For example, in Hong Kong, according to a 1999 community opinion survey, 99% of the population said they supported its Independent Commission Against Corruption, 66 % of the population said they were willing to file a complaint or “blow the whistle” on a corrupt official or colleague, and 75% of those people said they were willing to also identify themselves when reporting suspected corruption. Without public confidence in anti-corruption policies and measures, complaint systems will fail, investigative media reports will remain officially unfounded and anti-corruption trials will be viewed as mere political show-casing.

### **The Overriding Lessons**

Perhaps the overriding lesson is that we still have much to learn. Success stories are few, and it is not enough to point to Singapore and Hong Kong. These are small city-states with governance practices and values that would not always work or be accepted in other environments. We have learned much about failure, and these lessons are valuable because they can help reformers and the civil society to avoid repeating discredited approaches.

The belief that corruption can be eradicated quickly and permanently inevitably leads to false expectations that result in disappointment and distrust. It must be understood that curbing corruption requires adequate time, resources, dedication and integrity.. Moreover, efforts can not stop once corruption has been identified and controlled. Localities will have to continue to build integrity and to maintain vigilance. Thus, fighting corruption will become a permanent item of public expenditure.

## VI. CONCLUSION

Corruption has debilitating effects upon society. It undermines the efficient allocation of financial resources for economic development and alters the composition of public expenditure. In addition to the detrimental effects on economic growth, corruption jeopardises free trade, distorts competitiveness and undermines the stability upon which the free market system is based. Corruption further jeopardises the credibility of governments and their institutions and provides a breeding ground for organised crime to flourish. Moreover, it is a phenomenon that transcends national boundaries, affecting the public and private sector, and businesses and public officials can be either the perpetrators or the victims of corrupt practices.

Strategies to fight corruption do not reside solely with criminal justice but rather should also be co-ordinated with economic and social policies and the development of civic political culture. Because it is a process and a relationship, the state, its public administration and the citizens all share a responsibility in preventing and controlling it.

A number of mechanisms exist to fight corruption at various levels (local, national, transnational) within both the public and private sectors. International instruments, in the form of declarations, conventions and codes promote transnational co-operation and delineate prohibited and punishable offences. These instruments, however, are limited and “legal loopholes” must be filled with national legislation. In spite of limited “success stories,” widespread implementation of anti-corruption measures and monitoring mechanisms has been scarce. This fact supports the need for a comprehensive UN convention addressing corruption.

In concluding, the future success in curbing corruption lies in an emphasis on prevention rather than oppression, and where necessary, administrative or civil penalties rather than a penal approach. First, awareness must be raised among citizens, businesses and public employees of the dangers of corruption. Then a moral commitment to and demand for integrity in government and private enterprises must be generated and encouraged. Public sector reforms, private sector initiatives and law reform efforts should emphasise prevention as well as prosecution. And finally, co-operation must be generated between businesses and between public and private sector organisations at the local, national and transnational level to ensure success in fighting corruption.

### **These facts have led to the following conclusions;**

- It takes integrity to fight corruption. Any successful anti-corruption effort must be based on integrity and credibility. Where there is no integrity in the very system designed to detect and combat corruption, the risk of detection and punishment to a corrupt regime will not be meaningfully increased. Complainants will likely not come forward if they perceive that reporting corrupt activity exposes them to personal risk.
- Building integrity and credibility takes time and consistency. It is fair to say that, in the eyes of the public, most international agencies have not demonstrated sufficient integrity to fight corruption. These agencies have not accepted that integrity and credibility must be earned based upon “walk rather than talk”. The true judges of whether or not an agency has integrity and credibility are not the

international agencies themselves but rather the public in the recipient country.

- It is important to involve the victims of corruption. Most donor-supported anti-corruption initiatives primarily involve only the people who are paid to fight corruption. Very few initiatives involve the people suffering from the effects of corruption. It is therefore critical to do more of what ICAC in Hong Kong has done over the past 25 years. For example, the ICAC interfaces directly (face to face in awareness raising workshops) with almost 1 % of the population every year.
- Identifying and recovering stolen assets is not enough. According to the New York Times, as much as \$1trillion in criminal proceeds is laundered through banks worldwide each year with about half flowing through American banks. In developing countries such as Nigeria, this can be translated into US\$ 100 Billion stolen by corrupt regimes over the last 15 years. Even if Nigeria, for example, receives the necessary help to recover its stolen assets, reasonable people would be hard-pressed to advocate its return back into a systemically corrupt environment without trying to first increase the risk, cost and uncertainty to corrupt politicians who would most likely again abuse their power to loot the national treasury.
- Governments must improve and enforce money laundering legislation to reduce the opportunities for corruption. Money laundering and corruption seem to be treated as different problems. The media frequently links ‘money laundering’ to illicit drug sales, tax evasion, gambling and other criminal activity. When politicians accept the idea that lack of opportunity and deterrence are major factors helping to reduce corruption, it follows that when ill-gotten gains are difficult to hide, the level of deterrence is raised and the risk of corruption is reduced.

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