

Lessons Learned - A Progress Report

Where the ends are agreed, the only questions left are those of means, and these ... are technical, that is to say, capable of being settled by experts or machines like arguments between engineers and doctors.

Isaiah Berlin, "Two Concepts of Liberty", Oxford lecture (1958)

The past five years or so have witnessed an unprecedented attempt by governments and international agencies to combat corruption. These efforts began against a history of a determined refusal to accept that corruption was anything more than "a little local difficulty". East Asia aside, there was a dearth of experience in tackling the problem with any success, scant research had been undertaken and there had been little academic debate. Corruption was simply not taken seriously.

With the recent realisation of the extent and gravity of the problem has come widespread action. But looking back over the past five years or so, what have we learned? Where is the plethora of success stories? What has been seen to work, and what has been seen to fail?¹

The list of suggested "lessons learned" given here is by no means exhaustive.² It lists some of the salient ones. Nothing is more certain than that we all have much more to learn.

1 None can claim moral superiority

There was a time when Western Europeans in particular would regard themselves as being morally superior when it came to corruption. "They do things differently abroad," the argument ran. "We have to do things there we would not dream of doing at home".³ They can no longer pretend to such moral superiority. The involvement of their exporters in systematic corruption throughout the world, and the degree to which their own political institutions have been corrupted through "black" money, have caused most of them to revise their views.

2 Everyone has to address the problem for themselves and in their own way

Reform efforts have to be home-grown and locally-driven. They can be encouraged and fostered by outside partners (e.g. donors), but the drive and the leadership must come from within. Internal corruption must be dealt with from within, and corruption in international business transactions has to be dealt with from both sides of the equation. There is no "one size fits all" solution.

1 The opinions expressed are those of the author. However, they are informed among other things by a Development Forum Internet discussion organised by the World Bank (which took place at the end of 1999 and into early 2000) as a follow-up to the 9th International Anti-Corruption Conference held in Durban, South Africa, in October 1999.

2 This chapter will be kept up-to-date in the Internet version of this Source Book: <http://www.ytransparency.org>. Suggestions for inclusion in revisions are welcome and should be emailed to jeremypope1@compuserve.com.

3 Speaking on the BBC in May 1994, Lord Young of Graffam, the former Conservative British Cabinet Minister for Trade and Industry and then-executive chairman of Cable & Wireless,

defended bribes in business. "The moral problem to me is simply jobs," he said. "Now when you're talking about kickbacks, you're talking about something that's illegal in this country, and that - of course, you wouldn't dream of doing.... But there are parts of the world I've been to where we all know it happens. And if you want to be in business, you have to do - not something that is morally wrong... In many countries in the world the only way in which money trickles down is from the head of the country who owns everything. Now that's not immoral, or corrupt. It is very different from our practice. We must be very careful not to insist that our practices are followed everywhere in the world". See TI Newsletter, June 1994

3 There are no "quick fixes"

There is no such thing as a "quick fix". There may be areas in which quick wins can be gained - such as streamlining procedures in customs administration, opening up public procurement to make it more transparent, prosecuting a large number of corrupt officials or frying a few "big fish" - but there is no over-all "quick fix". Combating corruption is a long and arduous process.

4 There is no place for exit strategies for donors

Anti-corruption strategies do not have fixed time-frames. Where donors are involved they should not be looking for an early exit, but must be prepared for a sustained period of involvement.

5 A clear overall strategy and good public relations are needed

A piecemeal approach to reforms is as reliable as a scattergun. The strategy must be all-embracing and should address all aspects of the national integrity system. Once a determined effort gets under way, public perceptions can be adversely affected by reports of Commissions of Inquiry or by seeing senior officials being prosecuted for serious offences. If the reform process is not accompanied by an appropriate public awareness and information programme, impressions can be formed that things are going from bad to even worse. It is crucial to pay special attention to public relations from the outset. Public expectations must be managed and the political risks contained.

6 Codes of ethics and "Citizens' Charters"

These must not be used as decorations but used as agents of change. Codes of ethics are useful, but only where they are "bought into" by the staff in question. They must be involved in the drafting of them, and training programmes for all must be conducted. Training programmes need to be highly participatory and involve the discussion of hypothetical situations, and perhaps with some role playing. Mere lectures or hand-outs are ineffectual. Similarly, Citizen's Charters can have the effect of making highly visible commitments to the public, and constitute a challenge to a government agency to deliver what it promises. This means that the commitments in the Charters should be realistic. The Charters themselves must be publicised so as to reach the relevant members of the public.

7 Streamlining bureaucratic procedures

Red tape should be cut, bureaucratic requirements reassessed and kept to a minimum. Staff in sensitive positions should be rotated and, in particularly vulnerable areas, contact between staff and the public depersonalised to reduce the chances of personal relationships developing. Customs, for example, is just one of several areas which lends itself to such a streamlining of procedures. Where personal contact is necessary, the introduction of elements of unpredictability as to which particular official may handle a matter or client reduces the potential for bribery. The introduction of computerisation can advance these processes while enhancing the monitoring of the speed with which goods are cleared, identifying delays and enabling the reasons for any delays to be investigated. However, in many countries the cumbersome bureaucracy has developed, not haphazardly, but precisely with the creation of bribe-taking opportunities in mind. These reforms may be self-

evident but they are none-the-less difficult to achieve.

8 Whistleblowers must be encouraged and protected

Aggrieved citizens, and "whistleblowers" inside the administration, can be encouraged to complain to new institutions such as anti-corruption commissions or Ombudsman offices, or

Kenya government tears up corruption 'list of shame'

NAIROBI, Kenya (Reuters) — Kenya's government has removed a list of corrupt politicians from a parliamentary report on graft after winning a rowdy vote in the assembly, MPs said on Wednesday.

The unprecedented "list of shame," published in May, linked some of President Daniel arap Moi's closest aides and relatives to corruption and scandal.

Vice-President George Saitoti and cabinet minister Nicholas Biwott had been on the list, as had Moi's son Philip.

But on Tuesday, ruling party MPs with the help of some opposition members passed an amendment to the select committee report, removing dozens of names of leading politicians and civil servants.

Two MPs exchanged blows, and allegations of bribery were shouted across the floor of parliament before the government finally won the vote, the Daily Nation newspaper reported.

The select committee had recommended that those listed should be investigated and brought to court if necessary.

But the government argued that those named were not given a chance to defend themselves. The report will now be retained only as a record of parliament with the names of individuals struck off.

19 July 2000

through telephone “hot-lines”. Unless they do, necessary actions will be delayed, perhaps indefinitely. Complainants must be assured that their complaints will be taken seriously, and that they themselves will not be placed at risk. In some countries, social taboos about “denouncing” fellow citizens have to be overcome. Raising public awareness in these matters is much talked about, but is left almost entirely to civil society to address.

9 Continuous monitoring is needed

Experience shows that, for example, in police corruption, it is not enough to clean up a corrupt force. Unless processes are established for continuous monitoring, sooner or later a force will subside once more into a morass of corruption and require yet another extraordinary effort to try to rehabilitate it. It is not enough to remove corrupt officials without also removing opportunities and ensuring that honest officials are being appointed to positions of trust. “Integrity testing” can help ensure that honest officials are identified and considered for promotion.

10 Focus on “the system” not simply on “bad apples”

To win public cooperation, a reform programme should focus on getting “the system” right rather than simply taking individuals out. In a situation of systemic corruption, the corrupt individual is not a single “bad apple” and removing him or her will not save the barrel – the whole barrel needs to be addressed or else the person replacing the “bad apple” will be subjected to the same temptations. Prevention can be more effective and infinitely more economic than investigation and prosecution. At the end of the day, a government must have competent staff available and capable of discharging the affairs of state within a functioning institutional framework and subjected to an effective enforcement regime.

11 Escaping from the past – amnesties?

Escaping from a corrupt status quo is extremely difficult. Many powerful interests have reason to fear if a new dispensation is going to be unduly threatening to them. Amnesties are unpalatable, but may be unavoidable, at least in the context of small infractions by junior officials. Although the question of amnesties is problematic, there is much to be said for “letting sleeping dogs lie”. Some senior staff may need to be removed or disciplined but more junior staff, other than those who have been seriously abusing positions of trust, should not feel that they are at risk. Until workable solutions can be developed, the question of the past will remain one of the largest single stumbling blocks to any reform.⁴

12 Leadership is vital but not enough – coalitions of interests can help

Without leadership from the top, any attempt to achieve major reforms in an environment of systemic corruption will be bound to fail. Personal leadership is vital, and a leader must be seen to be “walking the talk”, and not just mouthing platitudes.⁵ However, just as laws alone will not suffice to achieve reform where corruption is systemic, so, too, is leadership not enough. Coalitions can be created to support leadership, but there is a danger where they embrace interests whose pasts are not “pure”. Yet if only “saints” are admitted to a coalition there will probably be far too few. What is important is that coalition partners commit them-

4 A general amnesty in Hong Kong provoked such a negative reaction that the whole reform process was endangered, thereby forcing the terms of the amnesty to be varied. Today the debate is whether “public hearings” accompanied by a form of immunity, and perhaps bolstered by a “tax” levied on declared illicit wealth, would be effective and publicly acceptable. The rich corrupt might be left with the choice of paying an affordable tax and legitimising their wealth while facing the potential humiliation of a public hearing conducted along the lines of those in the Australian state of New South Wales. Or, alternatively, quietly settling up their accounts with the state.

5 “I always think of Malaysia’s Prime Minister when it comes to giving a lead. He decided that the increased wearing of the veil

by Muslim women in the public service was giving rise to anonymity. The way to tackle this was to insist that all public servants – irrespective of sex, title and position – wear a conspicuous name badge. So Dr Mahathir went on national television and announced the new rule. And there, in front of the cameras, he pinned his own badge to his lapel – where it has stayed ever since. And throughout the civil service the rule has been followed from that day through to this.” Jeremy Pope, Ethics, Accountability And Transparency: Putting Theory In To Practice, Workshop on Civil Service Reform in Anglophone Africa, held in Cape Town, South Africa, 24–28 April 1995 (EDI-World Bank, Washington, 1995).

selves to building a new future and, having made that commitment, that they be held to it.

13 Civil society has been overlooked...

There appears to be a correlation between high levels of corruption and low levels of civil society activity. Efforts to assist the emergence of a creative and vibrant civil society call for the development of both a legal framework within which civil society can establish its institutions free of government interference and control, and for the building of a positive dialogue between civil society and governments. This is not always easy to achieve, particularly in an emerging democracy, as it may cut across preconceived notions of how government decisions should be developed and imposed. One way of testing the genuineness of a government's anti-corruption pledges is to see whether the government is prepared to work with civil society.

14 ... but NGOs themselves can be sources of corruption

In a number of countries, NGOs have sprung up ad hoc, simply to tap into the assistance dollars which external donors have been prepared to provide to organisations for developmental efforts conducive to the strengthening of civil society. NGOs must be transparent and accountable in their own practices. NGOs, no less than official institutions, cannot be taken at face value and need to be monitored for transparency.

15 Legislatures – when the watchdog becomes the thief

A serious flaw has emerged in a number of countries where the Legislature is not only a “watchdog” over official expenditure, but its Members are actively involved in spending public money (which they vote to themselves) and in letting public contracts (when they should be overseeing the process). This combination of “watchdog” role with that of the Executive gives rise to conflicts of interest and effectively poisons the body politic. It also breeds contempt for democratic institutions among the public at large. Unless these contradictions are resolved satisfactorily (e.g. by effecting a clear separation of powers) it is doubtful whether effective anti-corruption reforms can be achieved in those countries.

16 Political party funding remains a problem

The issue of political party funding has been largely ignored by the international community, perhaps because political parties in most industrialised countries thrive on illicit funding. Some argue that the best way to restrict the influence of “money politics” is not so much to restrict money flowing in to a political party, but to restrict the amount of expenditures and what money can be spent on. The change of Taiwanese government in March, 2000, however, has shown that an affluent political party with large investments and powerful cronies can none the less be voted out of office. This encourages the belief that the manipulation of political party funding need not necessarily be an insuperable barrier to changes of government.

17 Independent agencies without security can be toothless

The institutions of Ombudsman and of Auditor-General are attractive in theory but can only function effectively if their office-holders are protected from arbitrary removal by the very Executive they are required to be watching and reporting on. Constituencies outside the political processes have to be built to defend these office-holders and where necessary make their voices heard.

18 Access to information

Some governments have recognised transparent access to information as the most effective tool for curbing corruption and have enacted appropriate legislation. Government agencies can be required to post details of the services they provide and the official charges for them. Indonesia is an example where local information displays with details of development projects

have equipped the public with the information they need to keep a watchful eye on what is taking place.

19 Sound records management

Public access to information requires sound records management. So, too, does holding individual public servants to account. A government agency should be charged with overseeing public sector document handling processes by individual departments and making provision for the archiving of spent documentation.

20 The media and whistleblowing journalists

Most murders of journalists in recent years have been attributed to their investigating corruption cases and there is thus a need to render their work less risky as well as to raise standards of professionalism. Several institutions are running training courses in investigative journalism. However, in many parts of the world the media itself is blighted by corruption. The media is an “integrity pillar” which requires serious attention.

21 “Naming and shaming” seems attractive but doesn’t seem to work

Efforts to “name and shame” in the Kenyan Parliament drew a blank earlier in a 2000 when a committee report which “named names” had all the names censored, and some of those “named” threatened to sue newspapers who published details – even though the information was already in the public domain. In India, the Vigilance Commissioner resorted to the Internet to post the names of hundreds of officials suspected of corruption. At best the jury is still out. The flamboyance with which the President of the Nigerian Senate, voted out of office in August, 2000, protested his innocence in the face of overwhelming evidence of malpractice, suggests that political leaders may have much thicker skins than do those who strategise to combat corruption. In any event, extreme care is needed to avoid any appearance of denying individuals a fair chance to defend themselves.

22 Is addressing inadequate salaries enough?

It stands to reason that inadequately paid public servants must be more vulnerable to temptation than those who are paid well. However, the depressing truth emerges that many of the most corrupt officials are in leadership positions which they have abused to amass large fortunes through “grand corruption”. Salaries, then, are more a question for those in low positions, whose insistence on payments for services may be seen by their peers as a form of “user pays”. Surveys suggest that people may be ready to pay for the services they receive, provided the fees are affordable and legal. What they bitterly resent is being subjected to extortion. One observer has noted that: “The evidence is at best unclear whether increasing public sector wages can reduce corruption. Yes, within a comprehensive package of civil service reform, proper compensation and incentives can play a role, but an in-depth look at country specific data does not support the notion that merely increasing official salaries to existing staff in corrupt agencies helps.”⁶

23 But increasing pay may at least be a part of the answer....

Real wages have declined in the public sector in many countries over substantial periods of time. In several cases this decline has been mirrored by declines in the efficiency of the public sector. One study shows that higher wage levels carries with them the chance to recruit better skilled people into government service, raising the quality of the services provided and, as described in the paper, the amount of tax collected. Simply raising tax rates may not raise additional state income; enhancing the skills of those involved in collecting it can.⁷

6 Daniel Kaufmann of the World Bank Institute.

7 Nadeem Ul Haque and Ratna Sahay, Do Government Wage Cuts

Close Budget Deficits? Costs of Corruption, IMF Staff papers Vol. 43 No. 4 December 1996.

24 Independent revenue authorities

Independent revenue authorities can be established with closely monitored and well-paid staff, employed outside the public service salary structures. These authorities can boost the collection of revenue and enable a developing country to pay its officials and service the financial needs of its institutions more adequately.⁸

25 Do retirement benefits, especially for leaders, help?

Logic suggests that a lack of security in retirement is a factor in the corruption equation. However, when it comes to those in the most senior positions the anecdotal evidence to the contrary is depressing. In Zimbabwe, where controversial and excessively generous “retirement packages” were enacted for a large number of senior party figures, it seems to have had no impact whatsoever on the level of “grand corruption”, which has, if anything, increased. Perhaps because members of the extended families, rather than the leaders personally, have been the beneficiaries, there has been no willingness to end the looting.

26 Do laws alone do the trick?

Certainly, laws alone do not offer a quick route to curb corruption, except perhaps where they are conferring on courts a jurisdiction they have not had before: to review the legality of administrative decisions taken by officials.⁹ Repeatedly, Legislatures have passed new anti-corruption laws with great fanfare, and have regarded the job of reform (or at least the chimera of corruption reform) as a job completed. But laws are failing in every country where corruption is systemic, and they fail more from lack of enforcement than from any inadequacies in the laws themselves. There are also ways of achieving reforms, even in public procurement, without changing the law, but using contracts and civil penalties to ensure that standards of conduct improve.

27 ...where the Rule of Law is faltering...

There is an inherent contradiction in trying to use a corrupt judicial system to uphold the Rule of Law. Institutional elements of the Judiciary, particularly appointment, removal and accountability aspects, have to be provided for. The Office of the Ombudsman may offer a way of introducing redress that can be quick and effective, and not be subject to the distortions that may hamstring a judiciary, but questions of judicial independence and judicial integrity have to be addressed from the outset.

28 But there still needs to be better laws

That said, there still need to be laws that are workable. The burden of proof which is placed on a prosecutor should not be unnecessarily demanding. Affording an accused a fair trial does not mean making it impossible for a prosecutor to prove his or her guilt.¹⁰ Laws of evidence need to be kept up-to-date and consideration given to introducing the specific offences which in Hong Kong were a key to the success of the anti-corruption initiative there.

29 Time limits for prosecutions need to be realistic

“Grand corruption”, especially, can be slow to be revealed, and prosecution cases can take a long time to prepare thoroughly. For these reasons, time limitations for prosecutions to be brought, or for cases to be concluded, need to be realistic. In some countries it is virtually impossible to prosecute a case to its conclusion.

8 The Internet version of this Source Book includes a major study on the experiences with these institutions in Ghana, Tanzania and Uganda: <http://www.transparency.org>.

9 E.g. in Latvia.

10 For example, a law that requires that the prosecution prove not only that a handsome gift was paid by a customer to a public servant, but also that the giver received a corrupt benefit in

return, places a burden on the prosecution which it will often not be able to discharge. Frequently the gifts are given ahead of time, or after the event. Creating the connections can be tenuous, and in the context of a criminal trial, inadequate. Is it not enough that a junior customs official, with no other known means of income, is driving a new Mercedes?

30 The "illicit enrichment" law

One particular law which has proved to be effective in some countries is that of "illicit enrichment" which is effectively: the possession by a civil servant of inexplicable wealth. This law, coupled with a functioning legal and judicial system, spearheaded the Hong Kong reforms. However, some Legislatures have refused to enact such laws, ostensibly on the grounds that they may infringe human rights. In reality, however, refusals to enact such a law seem to stem from a desire to preserve the status quo.

31 Monitoring the assets of public officials

There is widespread belief that this is potentially an effective tool for containing corruption, but the case to date has only been made on paper. Parliamentarians are remarkably shy when it comes to enacting laws to provide for the monitoring of the assets and incomes of senior officials. When laws are enacted, declarations are seldom required to be made public. They are, still less, routinely investigated for their accuracy. Initiatives in this area are being followed closely.

32 The scope of immunities and privileges reviewed

In many countries immunities and privileges of senior public figures effectively shield them from the Rule of Law. Indeed, in some countries, criminals opt for elected office simply to gain immunity. These privileges and immunities need to be reassessed and their scope minimised to practical requirements. They are not granted to honour an individual, but to enable an individual to discharge his or her duties effectively.

33 The growing opportunities afforded by the Internet

The Internet can help build more open systems. Legislatures can establish web sites which enable citizens to interact with their elected representatives and serve to keep them informed of parliamentary business. Government departments can post their documentation. Reformers can advertise their national anti-corruption plans to the world at large, and monitor the progress being made very publicly. The Internet can be used for on-line public tendering, opening the information flow, and reducing opportunities for making potentially corrupt personal contacts. Of course, the usefulness of the web in this respect is limited by the number of people who may have access to it. Much of the Internet's potential is presently denied to many in the world's poorest countries, but growing numbers there do have access to the web, and any gains made by rendering their institutions and individuals more accountable should help to promote the interests of all.

34 Procurement is a battle-ground

The field of public procurement has been a battleground for corruption fighters. It is in public procurement that most of the "grand corruption" occurs with much of the damage visibly inflicted upon the development process in poorer countries and countries in transition. Although initially there were sceptics who fought against the "islands of integrity" approach, successes are increasingly being recognised. "Islands of integrity" is a process in which voluntary agreements are made, involving bidders and the government, to restrict opportunities for corruption in a particular project. The use being made of the Internet for public procurement by the city of Seoul and in Mexico is likewise promising.

35 The commissions bidders pay to agents should be declared...

Some thought that legislation requiring disclosures of commissions would undermine international competitive bidding and that some corporations would not wish to abide by such a rule. However, where such a requirement has been introduced, there has been little evidence of it having such negative effect. The honest have nothing to hide, and if the corrupt fold their tents

and leave, the field is better without their presence. The experience in New York City has been an inspiration to corruption fighters, and is being followed in Nigeria.

36 ... and corrupt bidders should be blacklisted

Blacklisting firms caught bribing can be a potent weapon. Of course, this requires that due process be observed, and that penalties be proportionate. But there can be no doubt that the international corporations blacklisted by Singapore in the 1990's received a considerable shock, and that in the future others will think twice before attempting to bribe Singaporean officials. The World Bank subsequently went down the same path. It posts the names of blacklisted firms and individuals on its web site. This remedy works best in countries where the Rule of Law is functioning properly and adequate appeal mechanisms are in place.

37 International problems require international solutions

To the surprise of many Americans, a survey by TI in 1999 showed that the US Foreign Corrupt Practices Act, passed as long ago as 1977, is not having the effect that had been supposed. American companies exporting into key emerging markets were shown to be about as corrupt as German exporters, operating without any such deterrent and with the added advantage of tax deductions for the bribes they paid. It would seem that unilateral action by a single government, even of the world's most powerful nation, is insufficient to impact on a global problem. Rather the problem requires a coordinated international response. Hence, the need for international accords such as the OECD Convention Against the Bribing of Foreign Public Officials in International Business Transactions. The intentions of this Convention must be translated into reality.

38 International agreements require monitoring

It is not enough to sign a Convention. The Convention must be put into effect. Where a Convention strikes at a country's successful export strategies, it is not altogether surprising that some exporting countries may be less than enthusiastic about the goals of the accord. On the other hand, those who support the aims of a Convention may regard some competitor countries with suspicion and need reassurance that they are not falling into a trap. Close evaluation and monitoring of implementation and enforcement, both by the governments involved and by civil society and the private sector, becomes a *sine qua non*.

39 Surveys can measure and identify successes and failures

Reform programmes should be monitored for desired results. Monitoring requires effective measurement and is best done through surveys – and with the data being made public. Surveys can measure the impact of corruption on business, public perceptions, and, by targeting selected service providers, measure the levels of corruption in the services being provided. These surveys can be international, national or local, but their practical utility increases the closer they get to the grass roots. By comparing the results from agencies in differing parts of the country, the least efficient, and perhaps most corrupt, can be identified and steps taken to redress their performance. International surveys help raise the issue on the national agenda and keep it at the forefront of public debate. However, international surveys are comparative and fraught with statistical difficulties, and so are of limited usefulness. One of their most valuable aspects has been to raise the issue of corruption on the national political agenda, and to highlight the need for national surveys which are now being undertaken with an increasing thoroughness.

Final thoughts

The task of achieving sustainable anti-corruption reforms will be a long and arduous one. That the stakes are high is beyond dispute. Yet just how much time we have to make a significant impact on the phenomenon is uncertain.

On the one hand, it could be that the people in the most corrupt countries lose heart, lose faith in democratic practices and turn to authoritarianism, seemingly as a logical reaction to democracy's failure. There is, of course, no reason to suppose that a further round of autocracy will be any less disastrous than it has been in the past.

On the other hand, too, the international community may start to dilute their commitment to the cause. Other issues may attract their attention and may seem to offer more immediate responses to their interventions.

But one thing is clear. If we all – governments, civil society, the private sector and international organisations – do not grasp the opportunities we now have to confront corruption effectively, then the chances will pass. Corruption will steadily and inexorably undermine the new democracies and will continue to impact negatively on human rights, the environment and all aspects of globalisation. The stakes, surely, could not be higher than they now are.

