

Empowering the Victims of Corruption through Social Control Mechanisms



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Abstract

For poor people at the village level, petty corruption involving a payment of as little as \$10 for a free medical service can have devastating effects on their lives. What makes the situation even worse is that most of the people who are faced with inadequate services and corrupt officials are also denied access to justice and other public services.

Corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a troubling fact that, in many countries, it is precisely those institutions which are perceived as corrupt. The social effects of such fact-based perceptions of corruption undermine the legitimacy of the State and democracy itself.

The present article emphasizes the importance of improved checks and balances facilitated through:

- (a) An integrated approach that is evidence-based, comprehensive, inclusive, non-partisan and impact-oriented;
- (b) The empowerment of the victims of corruption through improved access to credible social control mechanisms;
- (c) Establishment of new strategic partnerships within civil society and between civil society and the State; and
- (d) Systematic and transparent monitoring of levels, types, location, causes, cost and remedies of corruption.

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I. INTRODUCTION

In many countries, applicants for driver's licences, building permits and other routine documents have learned to expect a "surcharge" from civil servants. At a higher level, bribes are paid to win public contracts, to purchase political influence, to side-step safety inspections, to bypass bureaucratic red tape and to ensure that criminal activities are protected from interference by police and other criminal justice officials. These are just a few examples. The direct and measurable consequences of corruption are more pervasive and profound than these examples suggest. After years of research and discussion, a broad consensus among scientists, practitioners and politicians has been established based on the conclusion that corruption is one of the main obstacles to peace, stability, sustainable development, democracy and human rights around the globe. Widespread corruption endangers the stability and security of societies, undermines the values of democracy and morality and jeopardizes social, economic and political development.

There is a growing tide of awareness throughout the world that combating corruption is integral to achieving more effective, fair and efficient government. More and more countries view bribery and cronyism as a serious roadblock to development and are asking the United Nations to assist them in acquiring the tools to curb such practices. The Vienna-based Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the United Nations Secretariat has launched a Global Programme against Corruption, with pilot projects in selected countries in Africa, Asia, the Middle East, Latin America and Eastern Europe.

It is now commonly accepted that corruption is pervasive, affecting developed and developing countries alike and unduly influencing a wide range of both public and private sector activities. While systemic and widespread corruption is still viewed by most as a crime problem and criminal and penal measures remain central elements of anti-corruption strategies, it is now recognized that corruption is often rooted in deeper social, cultural and economic factors and that those factors must also be addressed if the fight against corruption is to succeed. It is also recognized that the deleterious effects of corruption go far beyond harm to individual victims. They represent a serious obstacle to enhancing economic growth and to improving the lives of the poorest segments of the population in developing countries and those with societies and economies in transition. Development agencies have come to understand that corruption not only erodes the actual delivery of aid and assistance, but undermines the fundamental goals of social and economic development itself.

This broader understanding of the nature of corruption has led those confronted with it to look for more broadly based strategies against it, such as the implementation of operational social control mechanisms at the national and local levels. Reactive criminal justice measures are now supplemented by social and economic measures intended not only to deter corruption, but also to prevent it. The recognition that public sector and private sector corruption are often simply two aspects of the same problem has led to strategies that involve not only public officials, but also major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and, in many strategies, civil societies in general. To address the

bribery of public officials, for example, efforts can be directed not only at deterring the payment and the receipt of the bribe, but also at reducing the incentives to offer it in the first place.

In developing countries, corruption has hampered national, social, economic and political progress. Public resources are allocated inefficiently, competent and honest citizens feel frustrated and the general population's level of distrust rises. As a consequence, productivity is lower, administrative efficiency is reduced and the legitimacy of political and economic order is undermined. The effectiveness of efforts on the part of developed countries to redress imbalances and foster development is also eroded: foreign aid disappears, projects are left incomplete and ultimately donors lose enthusiasm. Corruption in developing countries also impairs economic development by transferring large sums of money in precisely the opposite direction to what is needed to address poverty. Funds intended for aid and investment instead flow quickly back to the accounts of corrupt officials, which tend to be in banks in stable and developed countries, beyond the reach of official seizure and the random effects of the economic chaos generated by corruption at home. The reverse flow of capital leads in turn to political and economic instability, poor infrastructure, education, health and other services and a general tendency to create or perpetuate low standards of living. Some of those effects can be found in industrialized countries, although there the ability of various infrastructures to withstand and, in some cases, to combat corruption is greater.

Corruption is also enhanced by the presence of organized crime at the domestic and international levels. Apart from the obvious incentives for organized criminal groups to launder and conceal their assets, various forms of corruption allow such groups to minimize the risks and maximize the benefits of their various criminal enterprises. In the case of organized crime, corruption is even more dangerous because of the ever present high likelihood that criminal organizations will "capture" the State's decision-making capacities and policies. Officials can be bribed to overlook and sometimes even participate in the smuggling of commodities ranging from narcotics to weapons to human beings. Often, junior public officials who will not accept bribes find themselves threatened and if a junior official takes action, such as seizing contraband or arresting smugglers, the attention of organized crime simply shifts to attempts to corrupt prosecutors, judges, jurors or others in a position to influence the case. In any case, official corruption is an essential input for the growth of organized criminal activities with the capacity to pose a significant international security threat to social and political stability through the illicit traffic of, among other things, narcotics and nuclear, chemical and biological materials, alien smuggling and international money-laundering operations.

A. Is it getting worse or better?

The surveys of victims of corruption conducted in Bolivia (CIET International 1998a), Mauritius (CIET International 1998b), Nicaragua (CIET International 1998c), Uganda (CIET International 1998d), Ukraine (Langseth and Stone 1998), and the United Republic of Tanzania (CIET International 1996) all show that petty corruption and administrative corruption in most countries are showing high levels of prevalence at the interface between the State and the public. Based on the surveys it is possible to conclude that corruption in health, education and law enforcement is high, but not

necessarily increasing, unless the country is confronted with severe political, economic or social challenges, including war or other disasters (see figure I for examples from Eastern Europe). There is also a need to take into account the effects of the increased public awareness due to increased media attention, which does not necessarily mean increased levels of corruption. If anything, increased awareness, combined with increased public confidence in the State, should result in reduced corruption.

Figure I. Difference in rates of prevalence of bribery, 1996-1999 (percentage)

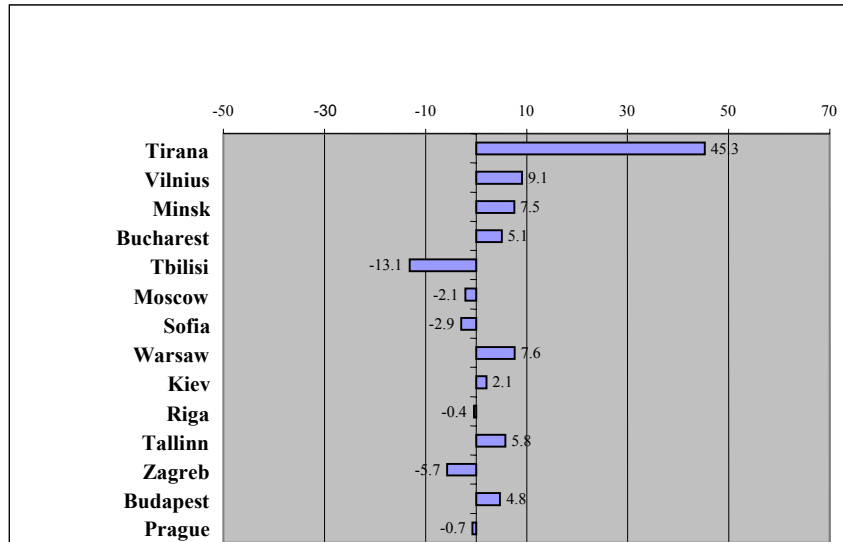


Figure I shows data on one-year rates of prevalence of bribery from the 1996 and 2000 International Crime Victim Surveys of the United Nations Interregional Crime and Justice Research Institute. Even excluding Tirana from the analysis (59 per cent in 2000) and taking into account that the war in Kosovo and the transit of international aid may have created increased local opportunities for corruption, it should be noted that only five cities (Kiev, Moscow, Prague, Riga and Sofia) showed variations limited within the +/- 3 per cent range, while much bigger differences were observed in all other cities. The five cities that ranked at the top in 1996 all showed either stable or lower rates in 2000, as did Prague. According to some of the national coordinators who commented on the results of the surveys in their respective countries and cities, on some occasions higher rates of corruption may correspond to higher levels of awareness and should thus be welcomed as the sign of a first step in the direction of success of anti-corruption policies. According to those commentators, in some countries where in the past corruption may have been considered endemic, citizens interviewed may have failed to identify episodes of requests for bribes as corrupt behaviour, while this has become easier in the presence of aggressive awareness campaigns that highlight citizens' rights to service delivery by the public administration. In that respect, the apparent inconsistency of figure I may be translated into variations on a scale of reactions that may vary depending on the original situation in 1996 and what has happened over the past four years. Should this prove to be true, a sharp decrease in corruption rates may follow.

When it comes to grand corruption, the international community has been taken by surprise: the amount of money being diverted is much larger than anybody had expected. The fact that two countries, Nigeria and the Russian Federation, have over a 10-year period seen more than \$250 billion (*Financial Times* 1999) looted by corrupt leaders and diverted to banks in the North, the equivalent of the World Bank budget in the same period, is not known by most people. This will make corruption into one of the greatest challenges of the present time and there is a sense that things are getting out of control, since it is being discovered that (a) the amounts are much larger than expected; (b) there seems to be a stronger link to organized crime than expected; and (c) there seems to be less political will in the North to regulate the international banks.

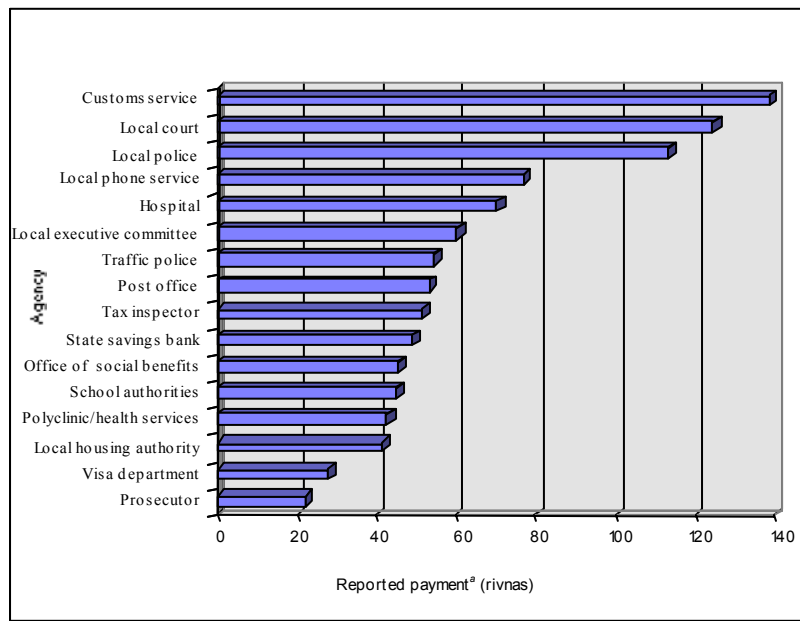
In fact, a significant proportion of grand corruption schemes are enhanced by the “capture” of state institutions by organized criminal groups. As a result of globalization and its related deregulation of financial transactions and widespread privatization schemes, the public sectors in developing countries have ceded their jurisdictions in the regulatory and state control of areas within which organized crime has now taken economic prevalence through a “licit” economic presence in, for example, the banking and energy sectors. The acquisition of those financial and business interests by organized criminal groups has been achieved mainly through grand corruption schemes in which corrupt politicians and organized criminal groups merge their interests with the goal of “capturing” the State. This represents the dark side of globalization, fostering the growth of corrupt practices as seen in figure I.

According to the *New York Times* (2001), as much as \$1 trillion in criminal proceeds is laundered through banks worldwide each year, with about half of that moved through American banks. In developing countries such as Nigeria, this can be translated into \$100 billion stolen by corrupt regimes over the last 15 years (*Financial Times* 1999). Even if Nigeria, for example, were to receive the help necessary to recover its stolen assets, it is debatable whether it would make sense to put the money back into a systemically corrupt environment without first trying to increase the risk, cost and uncertainty to corrupt politicians who would again abuse their power to loot the national treasury.

B. In some countries it might get worse before it gets better

A serious warning signal for any nation facing systemic corruption is when there is evidence that the younger generation shows more tolerance towards corrupt behaviour than the older segments of the population. This was one of the disturbing facts revealed by a national integrity survey conducted in Ukraine in 1998 (Langseth and Stone 1998). That survey clearly demonstrates that integrity is a serious and measurable problem for the quality of public services in Ukraine (see figure II). On the negative side, it shows that no agency excels in service quality or integrity. It also shows that dealing with public agencies often involves multiple visits, meetings with multiple officials and substantial delays in resolving problems or receiving services. The study also demonstrates that the most dissatisfied citizens never complain and it identifies the agencies that are perceived to be least receptive to citizens’ complaints. In addition, it measures one important dimension of agency integrity, the propensity to accept bribes. Finally, it shows that citizens regard the national integrity of Ukraine as the worst in the region and, perhaps, the worst in the world.

Figure II. Unofficial payments required to resolve a problem, Ukraine, 1998



^a Average per household making a payment.

The findings of the study have some clear positive implications for public sector reform and, more specifically, for a national integrity strategy:

(a) The high correlation of rankings on agency service quality and agency integrity suggest that improving agency integrity is a critical dimension of improving the quality of services, as evaluated by citizens. In other words, it matters to people not only that services are delivered, but that they are delivered honestly;

(b) Responses provide a number of measures of service quality and integrity. These provide a baseline or benchmark against which to evaluate the impact of subsequent reforms. Equally important, they highlight the agencies that need urgent reform, based on their poor or slow service or the corrupt behaviour of their officials;

(c) The findings show that citizens' attitudes and expectations also play a role in corruption. The alarming trend of younger adults being more accepting of bribery than older adults suggests that efforts must be made to shift citizens' attitudes and expectations. One aspect of such efforts must be a focus on improving public sector attitudes and behaviour in order to reduce the actual effectiveness of bribery in obtaining government services. A second part must focus on changing citizens' attitudes and behaviour in order to reinforce the idea that bribery is unacceptable and ineffective. To the extent that citizens try to obtain benefits to which they are not entitled, law enforcement efforts must focus on both sides as well, thus increasing the probability of detection and punishment for both receiving and paying bribes;

(d) Respondents rate the performance of local government bodies somewhat higher than national-level bodies. This suggests the possibility that decentralization of the financing and delivery of services may improve their responsiveness to citizens' needs and also their performance. Since even many local agencies rank quite poorly, however, it is clear that reform is required at all levels of government;

(e) Citizens report that the leading reason they use public services is the lack of any alternative: public agencies have a monopoly on the particular service.

Where citizens have a choice of private alternatives to public services, a significant percentage of citizens use them: for home repairs, medical services and banking a substantial percentage of respondents used private services as an alternative. This suggests the importance, wherever possible, of introducing private competition into the provision of public services;

(f) Finally, the true magnitude of corruption and poor service is only suggested by the current study. Earlier studies of private enterprises suggest more pervasive bribery in interactions between businesses and public officials. Whether corrupt behaviour is more inviting with regard to enterprises or considered more acceptable, its consequences for Ukraine's development are severe: suppressed and distorted investment, a bias against the development of small firms and a severe loss of foreign investment. Thus, whatever urgency is implied by the current study is only magnified by integrity issues relating to the Government's oversight of businesses.

The findings pose a daunting challenge for government at a time when top leaders are expressing renewed commitment to anti-corruption efforts. On the one hand, it suggests that "Operation Clean Hands", which began in April 1997, still has far to go in addressing the problem of corruption and abuse of public power in Ukraine. However, the current survey also provides a more concrete basis on which to develop targeted reform efforts and to measure their progress. Further empirical work could add to that understanding by providing greater detail on the quality of services by locality, by means of a larger sample and more refined questions.

II. HOW TO EMPOWER THE VICTIMS OF CORRUPTION

A. The integrated approach

Corruption is now understood to be a frequent phenomenon, to different degrees, within virtually every country on the planet. In many countries, corruption is known to be so widespread and pervasive that it can only be effectively addressed by using strategies that are comprehensive in nature and successfully integrate reforms with one another and in the broader context of each country's social, legal, political and economic structures. At the international level, it is also understood that many transnational aspects of corruption exist that cannot be effectively dealt with by countries acting alone and will instead require measures developed and implemented by the global community as a whole. As a result, the approach being taken by the Centre for International Crime Prevention now includes not only programmes to assist individual countries, upon request, but also the development of a comprehensive international legal instrument against corruption, which is intended to bring about a high degree of global standardization and integration of anti-corruption measures (see General Assembly resolutions 54/128, 55/61, 55/188 and 56/...).

Within individual countries, other conditions may also be seen as desirable and in many cases necessary to support successful strategies. These include:

(a) *Basic democratic standards.* Democratic reforms are often seen as necessary elements of development projects. In the context of anti-corruption efforts, basic political accountability is seen as an important control on political corruption. Since such corruption usually involves putting individual interest ahead of the public interest, the reaction of voters made aware of such abuses deters them and if abuses do occur allows for the replacement of corrupt politicians in elections;

(b) *A strong civil society.* Generally this includes both the ability to obtain and assess information about areas susceptible to corruption (transparency) and the opportunity to exert influence against corruption where it is found through social control mechanisms. This includes forums such as free communications media, which, in detecting and publicly identifying corruption, create political pressures against it; public budget hearings; civil society control boards; public regulation commissions; and judicial monitoring systems. Such mechanisms are designed to monitor the provision of public services while also assessing the problem of corruption, assisting in developing countermeasures and providing objective assessments of whether such measures are effective or not;

(c) *The rule of law.* As with many of the controls on corruption, independent courts, accountable legislatures, transparent prosecutorial capacity and an effective police force are all necessary but not sufficient conditions alone to enhance the rule of law. In such an environment, laws can be enacted and enforced ensuring the translation of social preferences into public policies addressing the public and not just the private interests of the powerful and wealthy. This is true for both criminal law safeguards on corruption and for civil proceedings, which are often used to seek financial redress in corruption cases;

(d) *Policy integration.* This includes integration between anti-corruption strategies and other major policy agendas in each country and integration between the efforts of different countries and the international community as a whole. The legislation reinforcing anti-corruption offences, for example, should not conflict with other priorities on the part of the law enforcement officers, prosecutors and judges expected to enforce it.

B. Requirements for anti-corruption strategies

Lessons learned from countries where anti-corruption programmes have been pilot tested suggest that the key to reducing poverty is an approach to development that addresses quality growth, environmental issues, education, health and good public sector governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be inclusive, comprehensive, integrated, evidence-based, non-partisan, transparent and impact-oriented (Langseth 2001a), and the same is true for anti-corruption strategies.

Inclusive and comprehensive

Including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. This is true not only for senior officials, politicians and other policy makers, but also for the general public. Bringing victims of corruption into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making and gives a greater sense of “ownership” of the policies that are developed. In societies where corruption is endemic, it is those individuals who are most often affected by corruption and who are most likely to be in a position to take action against it, both in their everyday lives and by supporting political movements against it.¹

The establishment of strategic partnerships has also proved to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between non-governmental organizations and international aid institutions, such as the partnership between the World Bank and Transparency International or that between Amnesty International and the United States Government in Latin America, which have resulted in excellent national and international anti-corruption awareness-raising.

Integrated

While the need for integration is manifest, the means of achieving it in practice are not as straightforward and are likely to vary from country to country. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements and for effective communications between those involved once the process of implementation begins. Broad participation in identifying

¹ One example of this is the Independent Commission against Corruption in Hong Kong (since 1997 the Hong Kong Special Administrative Region (SAR) of China). Over the past 25 years it has conducted workshops involving almost 1 per cent of the population each year. This gives those consulted input, allows policy makers to gather information and generally raises popular awareness of the problem of corruption and what individuals can do about it.

needs can assist in identifying patterns or similarities in different social sectors that might be addressed using the same approach. Broad participation in developing strategies ensures that the scope of each element is clearly defined and the responsibility for implementing it clearly established, but also that each participant is aware of what all of the others are doing and what problems they are likely to encounter.² Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they have the expertise and resources to do so when they are needed. Such conditions would ensure that laws are not just enacted but also enforced through appropriate implementation mechanisms. Effective communications between the participants—using regular meetings, for example—can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule and that any unforeseen problems that may arise during the process can be dealt with.

Transparent

Transparency in government is widely viewed as a necessary condition both for effective control of corruption and more generally for good governance. Populations should have the right to know about the activities of their Government so as to ensure that public opinion and decision-making (e.g. in elections) is well-informed. Social control mechanisms involving the operational participation of prestigious civil society representatives do usually serve that purpose. For example, social control boards monitoring court-related activities have reduced perceptions of occurrences of bribery by 59 per cent over a period of two years in Costa Rica, while police commissions including members of civil society have reduced perceptions of corruption by 78 per cent in San Jose, California, in the United States (see Buscaglia 2000b).

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

Non-partisan

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

² United Nations pilot projects have successfully used national integrity system workshops for this purpose.

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

Evidence-based

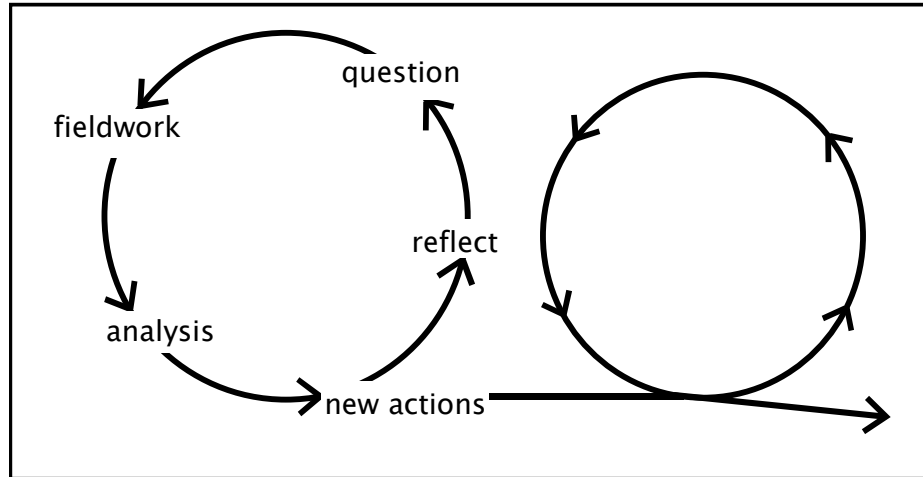
It is important for strategies to be based on concrete and valid (measurable) evidence at all stages, including preliminary assessments of the extent—types, levels, location, cost and causes—of corruption in order to establish clear baselines and the assessment of whether or not objectives have been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

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

It is important for the process of gathering and assessing evidence to be seen as an ongoing process and not as a one-time event. One term used to describe this is “action research”, which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation” (Seymour-Rolls and Hughes 1995). A great deal of literature exists outlining and reviewing the concept of “action learning” (“action research” or “action planning”).

Common among most is the concept of creating dialogue among different groups to promote change through a cycle of evaluation, action and further evaluation, an iterative process illustrated in figure III.

Figure III. Cyclical research process



Source: Yoland Wadsworth, "What is participatory action research?" *Action Research International*, Paper No. 2, 1998. Available on-line at <http://www.scu.edu.au/schools/sawd/ari/ari-wadsworth.html>

The Global Programme against Corruption applies the action learning method both in testing its new approaches and its dissemination of lessons learned from the pilot projects and experiences elsewhere. The Programme was set up in response to the need to provide assistance to countries and Governments seeking to reduce corruption and build integrity.

Specifically, the Centre for International Crime Prevention, through its Global Programme against Corruption, facilitates and assists client countries in their attempts to build integrity in order to fight corruption. In fostering collaborative efforts among all stakeholders in a given society, the Global Programme against Corruption helps to determine the shared goals and purpose of government, public and private sectors using national and local integrity workshops. Those goals are identified through a variety of instruments, discussed below, which include comprehensive assessments of corruption, national integrity system workshops, national and local integrity strategies and anti-corruption action plans addressing preventive, institutional development, awareness-raising and enforcement measures. Each of those instruments is predicated upon broad-based participation both to maximize the local "ownership" and to increase the objectivity and relevance of the reform.

It is critical that clear and realistic goals be set and that all participants in the national strategy be aware of those goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid baseline and progress data make this difficult, but it is nonetheless critical. Initial evidence is used to provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished monitors progress, identifies areas that may need more attention or a different approach and supports ongoing revision of

the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas. Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

C. Lessons learned from experiences helping to empower victims

During the past 10 years, policy makers and scholars have devoted increasing attention to the causes and impact of corruption on public and private socio-economic affairs. As a way of summarizing the issue, the most relevant applied policy studies show that corrupt practices are encouraged by the following factors:³

(a) The lack of free access by citizens to government-related public information;

(b) The lack of systems to ensure relative transparency, monitoring and accountability in the planning and execution of public sector budgets, coupled with a lack of social and internal control mechanisms in the hands of civil society and autonomous state auditing agencies, respectively;

(c) The lack of public sector mechanisms able to channel the social preferences and specific complaints of the population to the agencies involved in those complaints;

(d) The lack of social and internal mechanisms applied to the quality control of service delivery;

(e) The lack of social control mechanisms aimed at preventing grand corruption schemes, usually seen when the State's policies are "captured" by vested interests.

At the same time, some of the most important policy lessons learned in the course of the last decade show that:

(a) Curbing systemic corruption is a challenge that will require strong measures, greater resources and more time than most politicians and corruption fighters will admit or can afford. Very few anti-corruption policies, measures and tools launched today are given the same powerful mandate and/or financial support as the often-cited Independent Commission against Corruption in Hong Kong (Langseth 2001b);

(b) Raising awareness without adequate enforcement may lead to cynicism among the general public and actually increase the incidence of corruption. Citizens who are well informed through the media about types, levels and location of corruption but who have seen few examples of cases reported where perpetrators are sent to jail may be tempted to engage in corrupt acts where high profit and no risk appears to be the norm. It is therefore essential for any anti-corruption strategy to balance awareness-raising—with enforcement. The message to the public must be that the misuse of public power for private gain is (i) depriving citizens of timely access to government services; (ii) increasing the cost of services; (iii) imposing a "regressive tax" on the poorest

³ For a review of these factors, see Langseth (2000a), Chong and Calderón (1998), Buscaglia (1998) and Ades and di Tella (1996).

segments of the population; (iv) curbing economic and democratic development; and (v) a high-risk/low-profit activity (that is, corrupt persons are punishable by jail sentences and fines). The challenge is how best to communicate that message to the population at large;

(c) Social control mechanisms are needed in the fight against corruption (Buscaglia 2001b). Those mechanisms must include not only strategic anti-corruption steering committees but also operational watchdogs working within government institutions composed of civil society and government officials working together. Those operational mixed watchdog bodies must cover monitoring and evaluation of local and central government affairs such as budget-related policies, personnel-related matters, public investment planning, complaint matters and public information channels. The next two sections provide specific examples of how such mechanisms have already produced positive results;

(d) Public trust in anti-corruption agencies and in their policies is essential if the public are to take an active role in monitoring the performance of their Government. In a survey conducted by the Independent Commission against Corruption in Hong Kong SAR in 1998, 84 per cent (66 per cent in 1997) of the interviewees stated that they would be willing to submit their name when filing a complaint against or blowing the whistle on a corrupt official or colleague. It is even more impressive that the relationship of trust that had been built up systematically over 25 years has not changed much since Hong Kong became a Special Administrative Region of China in 1997. If anything, when surveyed about what they feared most after the handover, the public in Hong Kong considered increased corruption to be one of the major threats.

Examples of how countries have applied best practice to curb corruption

This section draws from the lessons outlined above and includes examples of how countries have applied them and succeeded in reducing their levels of systemic corruption within specific state institutions through a combination of good public sector governance and social control mechanisms. Specifically, perceptual and objective indicators are described that measured differences in the frequencies of corrupt practices and institutional effectiveness before and after reforms were implemented in five countries.

The failure of the State to control corrupt practices internally and its failure to impede the “capture” of policy-making bodies by the very vested private and public interests that foster corruption has generated the need to establish civil society safeguards designed to complement the State’s auditing capacities and to monitor specific institutions of the State on an ordinary basis. Such social control mechanisms have normally been focused on budget planning and on areas related to public services. The record of the success of such mechanisms is mixed. Provided personnel receive the appropriate training, the indicators of social control effectiveness show the kind of impressive results given in table 1. In fact, the social control mechanisms operate as bodies that interact with specific agencies of the public sector and are entrusted with the monitoring of public agencies’ performance and the channelling of suggestions and complaints related to service delivery. As such, the social control mechanisms do follow the integrated approach to empower victims of corruption described above. Social control “panels” or boards are usually composed of civil society representatives elected by specific neighbourhood councils. In some cases, representatives share the

board with representatives of the State. The civil society representatives are usually known for their integrity, social activism and experience in dealing with the areas to be monitored by the social control board (e.g. utilities). Civil society representatives, their roles, characteristics, responsibilities and attributes are frequently formally legalized through either local laws, as in Venezuela, or national laws, as in Bolivia.

Table 1. Average two-year changes in corruption-related indicators before and after establishment of social control mechanisms, 1990-2000 (percentage)⁴

	<i>Perceived frequency of corruption</i>	<i>Access to institution</i>	<i>Effectiveness</i>	<i>Transparency</i>	<i>Administrative complexity</i>
Chile					
Municipality of Santiago	-10.5	31.0	29.0	13.7	-5.2
Special Crimes Unit, Office of the Special Prosecutors	-18.1	11.4	5.9	7.2	-1.8
Costa Rica					
National Judicial Branch	-25.9	9.0	12.9	6.0	-22.4
Venezuela					
Municipality of Campo Elias	-9.1	15.9	7.3	7.5	-9.5
United States of America					
San Jose Police Department	-7.4	27.1	9.4	8.4	-9.5

The reform-related experiences of Chile, Costa Rica, Singapore, the United States and Venezuela provide best practices on how such civil society mechanisms have an impact on the frequency of corruption, transparency, access to institutions and effectiveness in service delivery. As regards indicators of perceived frequency of corruption, access to institutions, effectiveness in service delivery and transparency within the police force in the city of San Jose (California, United States), the municipal authorities in Merida (Venezuela) and Santiago, and the judicial sectors in Costa Rica and Chile, the study examined those impact indicators before and after selected internal institutional reforms were introduced to address the following three areas:

- (a) Simplification of the most common administrative procedures;
- (b) Reduction of the degree of administrative discretion in service delivery;
- (c) Implementation of the citizens' legal right of access to information within state institutions;
- (d) The monitoring of quality standards in public service delivery through social control mechanisms.

Reforms in those four areas were implemented in cases monitored by social control boards where at least half of the membership was composed of civil society representatives who were already trained in technical aspects dealing with the institutions involved. In no case were civil society representatives selected by the State and in all cases the social control boards included representatives from the institutions

⁴ These pilot studies were all conducted through different national and international institutions. Chile's municipal pilot study was technically supported by the Inter-American Development Bank between 1999 and 2001; Costa Rica judicial pilot studies were all self-financed; Chile's prosecutors' training and pilot study in the border areas with Argentina and Brazil were technically supported by the United States Department of Justice; and Venezuela's municipal pilot study in Campo Elias was technically supported by the World Bank Institute between 1997 and 1999. For more references and details, see United Nations 2001 and Buscaglia 2000b.

to be monitored. Surveys and institutional reviews were conducted in order to determine the perceptual and objective indicators, respectively. The results of implementing reforms in the locations mentioned are summarized in table 1.

Table 1 shows the two-year percentage changes in perceived frequency of corruption, access to institutions, effectiveness, transparency and the users' perception of administrative complexity applied to the services provided by the municipal services in Chile and Venezuela, judicial services in Costa Rica, prosecutors' services in Chile and police services in the city of San Jose (United States). The percentage changes reflect two-year changes at any time during the period 1990-2000. The perceived frequencies were provided by direct users of the services at the point of entry (i.e. at the exit point after interacting with the public sector institution involved). Table 1 shows significant two-year drops in the frequencies of perceived corrupt acts, defined here as occurrences of bribery, conflict of interest, influence-peddling and extortion. As one can see, frequencies of corruption decrease, ranging from 25.9 per cent in Costa Rica's judicial sector to -7.4 per cent in the San Jose city police force. Moreover, an additional 15.9 per cent and 31 per cent of those interviewed in Venezuela and Chile respectively perceived improvements in access to municipal services. The two-year increases in the Chilean users' perception of improvements in the effectiveness of special prosecutors and in the municipality of Santiago's service delivery range from 5.9 to 29 per cent, respectively. One can see that the two-year increases in the proportion of those users perceiving improvements in the transparency applied to service-related proceedings range from a 13.7 per cent increase in the municipality of Santiago to a 6 per cent increase in the proportion of those interviewed who perceive a significant improvement in the delivery of court services in Costa Rica.

Finally, a large number of studies have already shown a relationship between increases in an institution's administrative complexity and more frequent occurrences of corruption (see Buscaglia 1996). Each of the institutions listed in table 1 provided data to calculate the differences in the administrative complexity applied to the most common procedure followed by users in each institution (e.g. building permits in the municipality of Santiago). The objective (hard-data) indicator for each of the institutions involved here was calculated through a formula taking into account three factors: (a) average procedural times; (b) number of departmental sections involved in processing the service; and (c) number of procedural steps needed by users in order to complete the procedure. The changes in the administrative complexity indicator were calculated for the same period (1997-1999) in all countries. The percentage change decreases are shown in the last column of table 1, ranging from -22.4 per cent in Costa Rica's courts to -1.8 per cent in administrative complexity in the Office of the Special Prosecutors in Chile.

It is noteworthy that, in all these cases, the heads of the pilot institutions selected were all known for their integrity, political will and capacity to execute previous reforms. It is essential to select the most appropriate ground to implement such reforms in an environment within which civil society representatives are also willing and able to receive technical training and possess a basic level of organization. In most of the cases studied, social control boards were not just in charge of monitoring the above indicators, but were also responsible for channelling and following any users' complaints dealing with service delivery. The boards met on a weekly to monthly basis.

In all cases, local or national laws were enacted with the sole purpose of providing institutional identity and formal legitimacy to the boards. Finally, the social control boards provided an operational and implementing arm to the objectives and policies validated by civil society through national or local integrity meetings, focus groups and national and municipal integrity steering committees. In that respect, one must note that the well-studied advisory boards of the Independent Commission against Corruption in Hong Kong represent a more passive form of social control compared with the boards in the case studies mentioned above.

Challenges in measuring the impact of anti-corruption strategies

The social control boards were in all cases responsible for monitoring the data-gathering and analysis during and after policy reforms were implemented. The indicators listed above are just a beginning in the monitoring of anti-corruption reforms. There are many challenges involved in measuring the impact of anti-corruption strategies, policies and measures accurately. Monitoring efforts by the public need to be as accurate as possible, though specialized analytical skills and access to relevant data can be costly and difficult to obtain.

Firstly, collected data must be analysed by a competent and independent institution capable of extracting the true essence of the data collected, which can then be analysed so as to highlight differences and identify so-called best practices. To do this in a credible manner, availability of resources will always be an issue. This holds true even for monitoring mechanisms based on international instruments, since it is not always evident that the secretariats of the organizations concerned have the necessary resources to ensure effective support and analysis of such mechanisms.

Secondly, current international monitoring mechanisms are unevenly distributed throughout the world. In some regions, countries tend to participate in more than one monitoring exercise, while in other parts of the world there are no operational monitoring mechanisms at all, as, for example, in most parts of Asia. Of course, the other extreme involves instances where there are multiple mechanisms applicable to the same region and the challenge then arises as to how to avoid duplication of effort.

Thirdly, monitoring can never be an end in itself. Rather, it should be an effective tool to bring about changes in international and national policies and improve the quality of decision-making. If the monitoring exercise is linked to an international instrument, the primary objective should be to ensure proper implementation of the technical aspects of the instrument and then the practical impact of its implementation. Monitoring can thus serve two immediate purposes: it helps to reveal any differences in interpretation of the instruments concerned and it can stimulate swift and effective translation of the provisions of those instruments into national policies and legislation. If it is determined that incomplete or ineffective implementation has occurred, sanctions can be imposed to motivate stronger efforts at success. Accurate monitoring is therefore critical with respect to launching any successful anti-corruption initiative.

In the case of the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for European Cooperation and Development, for example, a built-in sanction requires that reports of the discussions on implementation be made available to the public. Such publicity can be an important mechanism in helping promote more effective measures. Reference can be made in this regard to the publicity surrounding the perception indices of

Transparency International. Even though the indices simply register the perceived level of corruption as seen primarily by the international private sector, they gain wide publicity. However, although the Transparency International indices are useful to a certain extent, a distinct disadvantage is that they (a) do not always reflect the real situation; (b) do not involve the victims of corruption in the countries surveyed; (c) offer little or no guidance of what could be done to address the problem; and (d) can discourage countries from taking serious measures when their anti-corruption programme efforts are not seen as being successful by an improved score against the Transparency International index.

Fourthly, monitoring exercises cannot be separated from the issue of technical assistance and it is critical for monitoring not only to address levels of corruption, but also its location, cost, cause and the potential impact of different remedies. Furthermore, since the trust level between the public and anti-corruption agencies is critical for the success of anti-corruption efforts, public trust levels should also be monitored.

It may be the case that participating countries agree on the need for implementing the measures identified as best practices, but lack the financial, human or technical resources to implement them. Under those circumstances, monitoring exercises would be much more effective if they were accompanied by targeted assistance programmes. It should be added, however, that not all measures require major resources, especially in the context of preventive measures, where much can be done at relatively low cost.

Most of the data collection done by the traditional development institutions is based on an approach that can be described as data collection by outsiders for outside use. Generally conducted by external experts, international surveys tend to be done for external research purposes. International surveys help spark debate about those countries which fare badly. Such surveys help to place issues on the national agenda and keep them at the forefront of public debate. However, international surveys are comparative and fraught with statistical difficulties.

One positive aspect, however, has been that international surveys have highlighted the need for national surveys and these are now being undertaken with increasing thoroughness. With public awareness of levels, types, causes and remedies of corruption dramatically improved over the last five years, the utility of collecting data about corruption is to increase the accountability of the State towards its citizens by establishing measurable performance indicators that are monitored transparently and independently over time.

D. Other measures to empower the victims of corruption

The policy proposals presented here are aimed at empowering individuals, communities and Governments by disseminating knowledge. This, in turn, results in greater government accountability and transparency, which is integral to building institutional capacity and improving service delivery. This 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 the public.

Organizations in the public and private sector at the local and national levels must adopt various measures if they are 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. The following is a list of measures or initiatives that should be developed and implemented at various levels in the public and private sectors (Langseth 2000b). The measures must address policy and systemic issues as well as the behavioural and cultural aspects of change.

In this context, three strong internal forces have been harnessed to drive the anti-corruption movement: decentralization, high-level political will and the introduction of enforceable internal and external checks and balance mechanisms.

Decentralization with strong social control

Local authorities tend to be more amenable to rapid change and more open to broader participation. The recent emphasis on integrity planning meetings at the district level in Uganda coincides with the increasing importance of the district in delivering decentralized services. The participatory workshops at the district level are experimenting with techniques for developing implementable and realistic action plans for the most important public services such as health, education, police and judiciary services.

Political will at the national and municipal levels

The will to fight corruption at both the national and the subnational level has been observed to ebb and flow with the electoral cycle. National and municipal leaders facing an election are more susceptible to civil society and international demands and more motivated to lead national or municipal efforts against political corruption. The longer a leader has been in power, the more he/she comes under pressure from peers, party, colleagues, clan and family members to tolerate corrupt behaviour.

High-level political will is maximized when there is strong pressure from civil society. Outside facilitation can help: the involvement of staff from international aid institutions and Transparency International has been highly visible and sustained. The administration is aware of the importance of the perceived integrity of the country for both private sector investment and continuing involvement of the international aid community.

Increased checks and balances

The third internal force that can increase the risk for public servants who intend to misuse their public powers for private gain is an empowered civil society. By systematically feeding the country assessment back to civil society through district- and community-level integrity meetings, civil society was empowered to ask questions and demand change. Empowerment through increased awareness was especially effective in Uganda when civil society obtained district-specific information that could be compared with a national average.

E. Focusing on the judicial sector: Increased access to justice

Democracy functions as a system with interrelated formal and informal institutional mechanisms serving the purpose of translating social preferences into public policies. Corrupt practices within the public sector distort that translation of social preferences

into public policies and thus hamper the development of democratic systems. Enhancing the effectiveness of society's dispute resolution mechanisms is also a way to address social preferences through public policies in the judicial domain (Buscaglia 1996). Judiciaries are entrusted with translating social preferences instilled in the laws into the judge's legal interpretation contained in court rulings. It is therefore necessary to ensure that the institutions responsible for the interpretation and application of laws are able to attract those parties who cannot find any other way to redress their grievances and solve their conflicts.

In order to avoid cultural, socio-economic, geographical and political barriers to access to the court system, the judiciary must adopt the most effective substantive and procedural mechanisms capable of reducing the transaction costs faced by those seeking to resolve their conflicts, including the reduction of corrupt practices. If barriers to the judicial system caused by corrupt practices affect the socially marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult and disputes consume additional resources.⁵

It is clear by now that a centralized and state-monopolized "top-down" approach to law-making and conflict resolution has caused social rejection of the formal legal system among an increasing proportion of marginalized segments of the population in developing countries who perceive themselves as divorced from the formal framework of public institutions. That "divorce" reflects a gap between the "law in the books" and "law in action" found in most developing countries. Such a "top-down" institutional legal framework, which has shown scant capacity to translate the law in the books into law in action for dispute-resolution purposes, imposes excessive corruption-fostering procedural formalisms and administrative complexities on court users. Such a state of affairs damages the legitimacy of the State, hampers economic interaction and has a negative effect on the poorest segments of the population (see Buscaglia 1996, pp. 24-29). This kind of environment also blocks the filing and resolution of relatively simple cases brought by the socially weakest segments of the population. As a result, large segments of the population who lack the information or the means to surmount the significant substantive and procedural barriers seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflict. In that context, social control mechanisms applied to the judiciaries have emerged in several countries.

Judicial sectors in countries affected by systemic corrupt practices are ill prepared to foster social development. In those cases, the most basic elements that constitute an effective judicial system are missing. Such elements include (a) predictable judicial discretion applied to court rulings; (b) access to the courts by the population in general, regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies (Buscaglia, Ratliff and Dakolias 1995). The increasing corruption-related time delays, backlogs and uncertainty associated with expected court outcomes have hampered the access to justice to those court users who lack the financial resources required to face the licit and illicit litigation costs.

⁵ Norms are here understood as coordinating mechanisms for social interaction (see Buscaglia 1996, pp. 24-29, and Cooter 1996, pp. 141-172).

The five countries shown in table 2 have established social control boards as part of their judicial reform drives. Their social control boards, composed of civil society representatives at the local level, have varied in nature and scope. The numerical results shown in table 2 are preliminary conclusions of a recent jurimetric field study.⁶ For example, in some countries the civil society boards were proposed as simply civil society-based court-monitoring systems (Costa Rica and Singapore), while in other cases they were recognized and performed their conflict-resolution function as alternative, informal mechanisms (Chile, Colombia and Guatemala).

Table 2. Average two-year changes in corruption-related indicators before and after establishment of social control mechanisms (percentage)

	<i>Perceived frequency of corruption</i>	<i>Access to institution</i>	<i>Effectiveness</i>	<i>Transparency</i>	<i>Administrative complexity</i>
Chile					
(National civil courts—3 pilot studies)	-28.7	19.0	5.0	93.0	-56.9
Colombia					
(3 pilot studies)	-2.5	16.4	8.2	17.4	-12.5
Costa Rica					
(National courts—12 pilot studies)	-7.9	6.2	3.7	18.5	-23.8
Guatemala					
(7 pilot studies)	-9.4	32.6	9.5	41.9	-71.3
Singapore					
(National judicial branch—4 pilot studies)	-6.3	8.4	9.2	8.4	-12.7

For example, in the case of Colombia, 3.7 per cent of those interviewed for the survey showed proof that they had attempted to access formal court-provided civil dispute-resolution mechanisms (compared with 4.9 per cent of the same poorest segment of the population in urban areas nationwide), while only 0.2 per cent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (involving mainly title survey errors and alimony cases) through the court system. In Colombia, 91 per cent of those requesting court services during the period 1998-1999 were within the upper ranges of net worth, while only 9 per cent of court users were in the lowest 10 per cent range of measurable net worth within the region. In contrast to that low demand for court services, 8 per cent of those interviewed in Colombia in 1999 and 7.5 per cent of those interviewed in 2000 gave specific and detailed instances of using community-based mechanisms (mostly neighbourhood councils and complaint panels) in order to resolve land title/commercial and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community-based conciliation and neighbourhood complaint boards that is also common in the other four countries sampled here. In the case of Colombia, the social judicial control bodies are so-called complaint panels or boards and are composed of three prominent local

⁶ The study covered 10 countries in Africa, Asia and Latin America. It was designed and conducted by the Center for International Law and Economic Development, University of Virginia School of Law, United States.

residents selected by neighbourhood councils (*parroquias vecinales* or *comunas*) and, as such, enjoy a high level of popular legitimacy. Although the boards' decisions are not legally binding, their decisions receive tacit approval by municipal authorities. In fact, survey bureaux usually formally refer to the boards' findings in order to substantiate their own rulings, which clearly indicates the local authorities' recognition of the boards' rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the boards' decisions.

In all cases, the civil society-based bodies emerged and were "recognized" by Governments as a result of the increasing gap between the demand and supply of court services. At the same time, they served the purpose of monitoring the progress of judicial reforms. Specifically, the boards have performed two functions within the judicial domain:

(a) In some countries, such as in Chile, Colombia, Costa Rica, Guatemala and Singapore, the boards have served the purpose of resolving civil disputes (mostly family and commercial cases) through informal means;

(b) In Costa Rica and Singapore, the social control boards have also monitored the functioning of pilot courts during judicial reforms.

The performance of the first role specified has clearly enhanced access to justice in civil cases and, judging from the indicators gathered and shown in table 2, the frequency of perceived corruption has been reduced and institutional legitimacy enhanced.

It is clear from table 2 that all percentage indicators of institutional performance, obtained through court surveys, have shown significant improvement. The social control boards were designed with variable numbers of civil society representatives and in three cases (Chile, Colombia and Guatemala) represented alternative mechanisms intended to resolve family and commercial disputes mostly in rural regions where poverty was the most prevalent. Yet the indicators above refer to improvements in pilot courts experiencing administrative, organizational and procedural reforms (to be specified in the next section) in jurisdictions in which informal mechanisms to resolve disputes by civil society monitoring bodies were also introduced and implemented. On the other hand, in those same countries, there were also pilot courts introducing the same types of organizational, administrative and procedural reforms in areas where no informal monitoring or dispute-resolution mechanisms existed. One could test the hypothesis that pilot courts monitored by civil society and in areas where informal dispute-resolution mechanisms exist (e.g. the municipality of San Pablo de Borbur in Colombia) perform better than other courts subject to the same internal reforms but not subject to civil society monitoring. Two country experiences give us the chance to compare court reforms in areas with no civil society components with court reforms with civil society components. The results shown in table 3 are striking. In a comparison of courts undergoing the same internal organizational, administrative and procedural reforms in regions with no social control boards with pilot courts implementing the same types of reform in regions with social control boards, significant differences were found in the indicators of perceived frequencies of corruption, access to justice and transparency of court proceedings.

Table 3. Differences in indicators between courts with and those without social control mechanisms, 1990-2000 (percentage)^a

	<i>Perceived frequency of corruption</i>	<i>Access to institution</i>	<i>Effectiveness</i>	<i>Transparency</i>	<i>Administrative complexity</i>
Colombia (3 pilot studies)	-5.3	7.1	4.9	10.2	-0.2
Guatemala (7 pilot studies)	-3.2	17.4	5.2	31.2	-0.5

aThe percentages are computed for each category by subtracting the average indicator for the courts with social control from the indicators from the courts without social control.

The numerical results are based on surveys conducted with court users at the point of entry. Survey results indicate that court users, drawn in this case from the lowest income levels (i.e. the bottom quartile in each region) did experience significant differences in their experiences when comparing courts with and those without social control. This analysis was only performed in 2 of the 10 countries selected for the jurimetric study. The differences in the perceived frequencies of corruption when comparing courts with social control and those without social control are striking (and tested for significance through the Friedman test), however. For example, the access to institutions perceived by court users in Guatemala's courts subject to social control is 17.4 per cent higher than in courts not subject to social control bodies such as those described above. The same applies to differences in perceptions of transparency in court proceedings, differences in administrative complexity and to the differences in the effectiveness of the provision of court services.⁷

F. Increased integrity in the courts

When judiciaries are constrained by corrupt practices, the biased interpretation and application of the laws impairs one of the most potentially effective tools in the fight against corruption, namely, the courts. This represents the most damaging of all types of corruption. Judicial corruption can be defined as the use of adjudicational authority for the private benefit of court personnel in particular and/or public officials in general. Such distorted use of the court system undermines the rules and procedures to be applied in the provision of court services. Judicial corruption in most developing countries takes many forms. For the purpose of simplifying the explanation below, court-related corrupt behaviour is divided into two types. Many well known practices can be included in the following two types of corruption:

⁷The survey conducted by the Center for International Law and Economic Development, University of Virginia, focused on the poorest segments of the population in the five countries sampled. The study also aimed at comparing the poorest households' net worth (i.e. households within the bottom 25 per cent of the regional socio-economic range) before and after their access to formal and informal conflict-resolution mechanisms in cases dealing with land title/survey-related disputes and alimony payments. Precise indications were then sought of how and why dispute-resolution mechanisms affected the average household's net worth as one of the possible determinants of poverty conditions. The sample sizes all covered between 5 and 10 per cent of all court users within each pilot court selected. Differences in indicators and their statistical significance were tested by using the Friedman test and other standard regression techniques. The differences are all statistically significant at the 5 per cent level (see Buscaglia 2001b).

(a) Administrative corruption occurs when court administrative employees violate formal administrative procedures for their private benefit. Examples of administrative corruption include cases where court users pay bribes to administrative employees in order to alter the legally determined consideration and proceedings of court files and discovery material, where court users pay court employees to accelerate or delay a case by illegally altering the order in which the case is to be attended to by the judge or even cases where court employees commit fraud and embezzle public or private property in court custody. Such cases involve procedural and administrative irregularities;

(b) The second type of abusive practice involves cases of operational corruption, which are usually linked to grand corruption schemes where political and/or considerable economic interests are at stake. This second type of corruption usually involves politically motivated court rulings and/or undue changes of venue where judges stand to gain economically and in relation to their career as a result of their corrupt act. Such cases involve substantive irregularities affecting judicial decision-making.

It is interesting to note here that all countries where judicial corruption is perceived as a public policy priority experience a mix of both types of corruption. That is, the existence of administrative court corruption usually fosters the growth of operational corruption and vice versa.

G. Political aspects of court related anti corruption reforms

International experience in successful anti-corruption reforms in countries such as Chile, Costa Rica and Singapore indicate that a consensus among the main political forces in a country is first necessary as a fundamental prerequisite before implementing administrative, organizational and/or procedural reforms of the more technical type usually aimed at enhancing transparency and accountability in judicial proceedings. That is, a broad-based consensus among the main political forces in the executive and the legislative domains is needed to guarantee judicial independence as a necessary condition before one can implement other more technical reforms to the court system. This is because the most common types of operational corruption mentioned above involve the use of judges and court personnel as means to enhance the power base of politicians or to bias decisions in favour of other powerful economic interest groups. One has then to understand the political resistance to judicial independence as the result of the unwillingness of executive branches and legislatures to abandon a court system frequently used as a tool to settle political scores or to consolidate political bases. A political consensus at the highest levels involving all parties in, for example, a national integrity committee, is thus the first and most important step to enhance the capacity of the courts to interpret and apply the laws in an unbiased fashion. This important step involves a political consensus aimed at balancing judicial independence and judicial accountability, but, as many well-developed judicial systems have shown, the balance between the two is difficult to achieve. Certainly, policy makers must design protective devices to safeguard independence without going as far as to neutralize the incentives provided by a system of democratic accountability to be applied to judges. Effective judicial accountability is also key to the protection of the interests of the economically and politically weakest citizens and groups in a democracy, who are the usual victims

of corrupt practices. A framework guiding the reaching of such a political balance must first identify the main areas where undue pressures are most likely to hamper the judges' capacity to adjudicate in an effective and unbiased manner.

It is the lack of judicial independence that mostly affects the weakest members of a society (i.e. the victims of corruption) by the common occurrence of seeing courts being "captured" by the most powerful private and public groups. Identification of those areas where court independence is being hampered is therefore necessary. Certainly, it would be naive to think that constitutional provisions prescribing the separation of powers would be enough to guarantee judicial independence. In fact, constitutional provisions in that respect are not even a necessary condition to attain judicial independence. Countries such as Israel, New Zealand, Sweden and the United Kingdom of Great Britain and Northern Ireland—all countries with recognized high levels of judicial independence—do not possess constitutionally entrenched judicial independence.

Four main areas have been identified by judges and scholars over the years (Stevens 1993) as being key to preserving judicial independence.

The first area consists of safeguarding the structural domain of the court system. In other words, avoiding the creation and modification of judicial institutions by outside forces without the judiciaries' consent.

The second area most likely to delineate the nature and scope of judicial independence falls within the personnel-related domain. Personnel-related aspects cover all policies establishing the rules associated with appointments, remuneration and removal of judges and support personnel. Despite the normal political elements that are necessarily involved in the selection of judges in a democratic system, it is also necessary to establish a "wall of fire" after a judge is appointed. This "wall" protecting court personnel from vested interests is built through a predictable and meritocratic judicial career system for all jurisdictional and administrative personnel in matters involving promotions, transfers, modes of discipline, professional evaluation, training and continuing education. These are areas where the independence of judges is usually threatened by external and/or internal forces. Security of tenure is the main element in this domain. Yet, in this respect, policies sponsoring security of tenure and limited-term appointment do not contradict each other, nor does the security of tenure required by judicial independence clash with mandatory retirement age. For example, the best practice judicial reforms mentioned in the previous section, such as those in Chile, Costa Rica and Singapore, have all included some type of limitation to the tenure of those judges exercising the extraordinary power of judicial review in the country in order to instil in them the incentive to design judicial policies reflecting the interests of all litigants, regardless of their political and economic class. In fact, judges' limited-term appointments are used to balance democratic accountability and judicial independence. It is noteworthy that, regardless of the choice of judicial staffing system—that is, whether appointment by elected politicians, election by the people or professional career appointment—all of the three main appointment mechanisms are subject to undue pressures coming either from outside or from inside the judiciaries.

The third area where judicial independence is at stake is court administration. Clearly, the management of courts and judges is an area where the balance between judicial independence and democratic accountability must be reached given the fact

that courts and judges supply a public service funded by public monies. In that respect, there must be some kind of accountability regarding how well court services are managed and how well the money is spent. The common rule in best practice countries is to have the executive branch and the legislature share responsibility with the judicial branch for administering the courts without controlling administrative aspects related with adjudication. That is why the delineation of annual judicial budgets, case assignments and case-related court scheduling should be three administrative functions under the strict purview of judicial authorities without any kind of intervention from other branches of government or outside interest.

Finally, judges' independence is usually hampered by the more common direct pressures on the judges' adjudicational domain. Examples include threats to the personal safety of judges, "telephone" justice, where executive officials place pressure on judges in order to bias adjudication, or bribery.

H. Technical aspects of court related anti corruption reforms

Once the elements protecting the independence of courts from political forces are introduced, other technical elements dealing with the administrative, organizational and procedural aspects of court reform must then also be addressed. For example, recent studies assert that the lack of consistency in the criteria applied to court rulings in similar types of case across and within jurisdictions is crucial in explaining the high occurrence of corruption (e.g. case-fixing) affecting the economically weakest litigants (Buscaglia 2000a). It is clear that, throughout countries experiencing high levels of judicial corruption, unjustified substantive discretionality in judges' rulings is caused very much by the lack of information systems providing an updated account of doctrines and jurisprudence compatible with enacted or rescinded laws. One of the main complaints voiced by victims of corruption in many countries is the high and uncertain cost of going to court owing to the lack of predictability of court outcomes. The lack of clear laws and regulations (e.g. contradictions found in laws, procedures and operational manuals) are considered the primary reason for the abuse of discretion found within the judiciary. Even when rules do exist, sometimes they may not be well specified or they may fail to be enforced. Of course, excessive discretionality can also be linked to the political pressures on the judiciary and patronage-related occurrences. Inconsistencies and contradictions involving the legal and constitutional frameworks are also common. Drafting of new laws by national and sub-national legislatures in a legal vacuum and with disregard for past laws is a commonplace occurrence. Additionally, there is usually a lack of technical and common-sense procedures in the law-making process by legislatures that also affects judicial decision-making. A common perception of a vicious circle is present in those countries where judges disregard the latest legal enactments and the legislatures disregard past laws and jurisprudence in their law-making process. This generates inconsistencies and uncertainty in the process of adjudication. Moreover, many studies of judiciaries worldwide also show inadequate recording of cases and lack of dissemination of rulings and jurisprudence, coupled with a perceived incapacity to generate consistent legal interpretations (Buscaglio and Ratliff 2001). The lack of a consistent interpretation in similar rulings many times fosters the perception of corrupt practices where rulings are also perceived to be bought and sold (i.e. case-fixing) and where the

weakest groups in a society are systematically discriminated against.⁸ In such a context, the judiciary is less able to foster the rule of law and does not generate precedents in checking for arbitrary government administrative decisions. Therefore, the technical enhancement of the supreme courts' capacity to supply effective judicial review is also required. It is a proven fact that abusive substantive discretionality is caused by the presence of legal inconsistencies and the lack of information technology providing an easily accessible jurisprudence database. The fact that many judges' rulings are based on outdated or flawed laws explains the wide range of allowed judicial rulings causing the perception of undue substantive discretionality and consequent case-fixing throughout the region.

In the procedural and administrative domains, corrupt practices cannot be directly measured through "hard" indicators because of the secretive nature of the interactions between court personnel and court users. Yet it is always possible to assess first-hand perceptions of how frequent specific types of corrupt practice are among all of those individuals interacting within the court system (i.e. judges, court personnel, litigants and their lawyers). The existence of operational and administrative corruption can then be measured through surveys of judges, court employees, litigants' lawyers and businesses with a record of supplying and demanding court services. A recent jurimetric study applied to Latin America found that if these three groups of interviewees were asked to describe irregularities and significant correlations could be found among the perceptual patterns of the three groups, then this would represent a significant step in assuring reliable measures of corrupt practices (Buscaglia 2001a). The survey questions must then be designed in such a way as to measure the perceived relative frequency of having encountered each type of corrupt behaviour in the operational and administrative spheres.

Several recent applied studies have shown that court organizational structures coupled with patterns of abuse of discretion related to procedural and administrative matters make judiciaries prone to the uncontrollable spread of systemic corrupt practices at every level (Buscaglia 2001a, pp. 45-50). For example, "hard data" objective indicators measuring, through the review of court files, how frequently courts abuse their substantive, procedural and administrative discretion have been related to the frequencies of corrupt practices. Policies countering corruption within the judiciary should be able to detect such sources of corrupt incentives. In short, in the technical domain of anti-corruption court reforms, recent studies have determined that the capacity to engage in the types of corrupt practice described above will be fostered:

(a) By the lack of transparency and limited predictability in the allocation of internal organizational roles to court employees (e.g. judges concentrating a larger number of administrative tasks within their domain without following written procedural or formal guidelines). In that context, the enhanced capacity of a court official to extract illicit proceeds will depend on the higher concentration, widespread informality and unpredictability in the allocation of administrative tasks to court personnel within each court. Therefore, it may also be expected here that the enhanced capacity of a court official to extract illicit proceeds also depends on the judges' and

⁸ For different examples of corruption-driven discrimination against the weakest economic or political groups, see Buscaglia 1997a, 1997b and 2001b, p. 59, and Buscaglia and Ratliff 1997.

court personnel's capacity to engage in abuse of substantive/procedural discretion coupled with the presence of added procedural complexity;

(b) By the added number and complexity of the administrative and legal procedural steps coupled with unchecked procedural discretion and arcane administrative procedures (e.g. judges and court personnel not complying with procedural time limits or disregard for procedural guidelines in dealing with discovery material as established in the penal code);

(c) By the lack of judicial information about the prevailing jurisprudence, doctrines, laws and regulations as a result of defective court information systems and antiquated technology coupled with the lack of information technology aimed at enhancing the transparency of court proceedings (e.g. through computer terminals aimed at providing users with anonymous on-line corruption-reporting channels);

(d) By the lack of mechanisms to resolve disputes on the one hand, coupled with the absence of operational social control bodies, as described above, with the capacity to monitor and compete with the official court services and, therefore, reduce the capacity of courts to engage in corrupt practices.

(e) Finally, it is also clear that the lack of effective judicial review mechanisms in upper-level bodies (i.e. appellate and supreme courts), together with deficient information systems applied to everyday court administrative proceedings, also adds to the failure of most internal control systems (e.g. auditing) applied to court rulings in particular and to court services in general. Overall, the coexistence of all the pernicious conditions described here creates an environment where victims of corruption cannot find redress for their grievances and are subject to more frequent abuses. From a more technical standpoint, the combination of organizational, administrative and procedural reforms and the incorporation of social control mechanisms has proved to be capable of reducing the degree and scope of corrupt practices in the courts. Yet, as stated above, all these technical reforms require a previous major political consensus fostering judicial independence, as well as democratic accountability, as a prerequisite.

1. A national and international account of recommended measures

In order to address anti-corruption reforms in a holistic and integrated manner, policy measures based on best international practices can be classified as follows (Langseth 2000b):

Public sector (executive) measures

1. "Opening up" government to the public by (a) inviting civil society to oversee aid and other government programmes through social control mechanisms as explained above; (b) establishing and disseminating service standards; and (c) establishing a credible complaints mechanism, all in accordance with the social control experiences introduced in the last two sections of the present article.

2. Delivering services closer to customers (increasing transparency and thereby increasing accountability).

3. Implementing civil service reform that will (a) professionalize the civil service and increase focus on integrity and results; (b) replace patronage with consumer rights; and (c) replace nepotism with meritocracy.
4. Enforcing access to information.
5. Focusing on prevention projects that educate society to the evils of corruption and instil a moral commitment to integrity in dealings with business and government officials.
6. Creating a specialized independent anti-corruption commission that focuses on prevention (research, monitoring education, training and advice), but also has investigative powers.
7. Strengthening state institutions by (a) simplifying procedures; (b) improving internal control by applying best practice auditing and accounting standards; and (c) establishing the right incentives and remuneration.
8. Developing and strengthening independent investigative, legislative, judicial and media organizations.
9. Providing protective measures for witnesses and whistle-blowers.
10. Providing independent audit and investigative bodies supported by sufficient human and financial resources.
11. Developing or strengthening administrative remedies such as confiscation of illicit assets.

Law enforcement measures

1. Enforcing the independence of the judiciary and of prosecutors in accordance with the principles introduced in the previous two sections.
2. Increasing the transparency and accountability of the judiciary through the mechanisms described in the above sections.
3. Ensuring integrity and accountability of the judicial sector in general by (a) conditioning the tenure of judges to an initial temporary appointment followed by a permanent appointment subject to annual evaluation conducted by a social control board and a judicial council; (b) securing the independence and accountability of public prosecutors; (c) increasing transparency through the computerization of police records, prosecutors' files and court files; and (d) introducing a transparent system to monitor the declared assets of judges.
4. Increasing internal oversight and supervision through so-called organizational and functional auditing
5. Securing the integrity of the judiciary through: (a) the enforcement of a code of conduct; (b) monitoring of declared assets; and (c) strengthening internal disciplinary bodies.

Legislative measures

1. Enhancing the quality of law-making by enforcing the independence and the legal-technical proficiency of the legislature.
2. Passing and enforcing necessary anti-corruption laws (a) to regulate campaign financing; (b) to regulate and guarantee the independence of supreme audit bodies; (c) on freedom of information; (d) on conflict of interest; (e) on freedom of the media and freedom of expression; (f) on whistle-blower and witness protection; (g) to shift the burden of proof regarding confiscation of illicit enrichment; (h) to decrease the discretionary powers of the executive branch; (i) to regulate amnesty-related

proceedings; and (j) to allow the random application of integrity tests or other investigative measures.

3. Securing the integrity of the legislature through (a) the enforcement of a code of conduct; (b) monitoring of declared assets; and (c) strengthening internal disciplinary bodies.

4. Strengthening the public accounts committee to oversee the supreme audit bodies reporting to parliament.

5. Strengthening the anti-corruption watchdog agencies reporting to the legislature by (a) securing the independence of anti-corruption agencies; (b) building a credible complaints mechanism; and (c) enforcing integrity.

Private sector measures

1. Educating, aiding and empowering businesses to be able to refrain from participating in illicit behaviour as either the victim or perpetrator of corrupt transactions.

2. Promoting ethical standards in business through the development of codes of conduct, education, training and seminars.

3. Developing high standards for accounting and auditing and promoting transparency in business transactions.

4. Developing clear legislation and regulation standards so that the line between licit and illicit activities is a clear one.

5. Developing normative solutions to the problem of criminal responsibility of legal persons.

6. Developing, by business itself, sufficient internal control mechanisms, training personnel and developing sanctions for transgressions.

7. Creating a business consultative body aimed at proposing policies to the public sector agencies designed to punish and prevent corruption in the interaction between private and public sectors (e.g. by proposing a code of ethics in financial transactions).

Independent (civil society) measures

1. Enhancing the education, awareness and involvement of civil society.

2. Mobilizing civil society organizations (media, non-governmental organizations, professional associations and research or university institutes) to research and monitor good governance through social control mechanisms.

3. Creating and strengthening (non-governmental organization) networks to share information on local, regional and national initiatives to fight corruption and to improve public sector governance.

4. Strengthening civil society to empower citizens to demand integrity and fairness in government and business transactions.

5. Developing 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.

6. Building and maintaining independent, professional and free media with a nation-building role by (a) capacity-building; (b) enforcing integrity through the introduction and monitoring of a code of conduct; (c) encouraging owners and editors to allow balanced reporting; and (d) encouraging the media to police themselves.

International measures

1. Exchanging information on regional and national best practice initiatives.

2. Developing, ratifying and incorporating international instruments to encourage and strengthen anti-corruption programmes at the national level.
3. Considering the development of a comprehensive United Nations convention against corruption.
4. Establishing adequate international monitoring systems to determine how national systems comply with ratified conventions and protocols.
5. Establishing simplified and transparent competitive public procurement procedures and encouraging the adoption of international rules in this area
6. Adopting international rules in the area of offshore banking regulations and international investment.
7. Increasing cooperation in the investigative, prosecutorial and judicial realms.

III. CONCLUSION

One critical factor that is too often overlooked is the fact that it takes integrity to fight corruption. Perfect anti-corruption strategies are not going to result in curbed corruption if the authorities advocating the strategy are perceived by the public to lack integrity. Both national and international bodies involved in fighting corruption need the confidence and support of the general public to succeed.

Although most people will agree with this position, the fact of the matter is that despite all the surveys done every day, there is still scant research carried out regarding the level of trust between the general public and national and international anti-corruption agencies.

A broader understanding of the nature of corruption has led those confronted with it to look for more broadly based strategies against it. Strategies should be holistic, addressing all the factors that facilitate or contribute to corruption and all the possible options for measures against it, and integrated, in the sense that, once identified, all of the elements of an anti-corruption strategy must be developed and implemented in mutually consistent and reinforcing ways, avoiding conflicts or inconsistencies. The authors' case studies on the implementation of social control mechanisms applied to judiciaries, police forces and municipal authorities have already shown relative success in anti-corruption reform drives. It is now clear that reactive criminal justice measures must now be supplemented by social and economic measures intended not only to deter corruption, but also to prevent it by reducing the incentives to become involved in it. Moreover, the recognition that public sector and private sector corruption are often simply two aspects of the same problem has led to strategies that involve not only public officials, but also major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and, in many strategies, civil societies in general. To address the bribery of public officials, for example, efforts can be directed not only at deterring the paying and receipt of bribes, but also at reducing the incentives to offer them in the first place. This requires a partnership between victims of corruption and a critical mass of honest public officials in key institutions working together as stakeholders (Langseth 2001b).

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