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# **Anti-Corruption Beyond Illusions: The Pressing Need to Make a Difference**

## **1 Introduction**

Despite normative developments, substantial funding, human capital investments and proliferation of governmental, private sector, NGO and other initiatives in support of anti-corruption, results in the last two decades are far short of expectations. In some respects, we even make steps backwards. This chapter outlines the initially promising steps, indications that the anti-corruption movement is not making adequate progress, challenges we continue to face, lessons we ought to learn from these and concludes with suggestions on how to move forward. The argument is against formalistic legalisms and for a renewed focus on the ultimate goals and objectives of anti-corruption efforts.

## **2 Promising Start**

An anti-corruption momentum started building right after the end of the cold war and the turn of the century, when the World Bank, the OECD, the United Nations and other institutions turned attention to cross-border crime and gave corruption a high priority. Blind eyes to corrupt regimes on national security grounds gradually regained their sight, while corruption in Eastern Europe and other parts of the world made headlines pointing to susceptibilities to gross misconduct created by waves of privatization and deregulation. Globalizing forces activated criminogenic potential from legal, technological, political, cultural and other asymmetries. These did not just produce crime opportunities but also motives to take advantage of them, vulnerabilities to victimization and control weaknesses (Passas, 1999). Transnational crime and corruption came to be recognized also as security threats and serious impediments to economic growth and development.

Corruption found itself in the center of international norm creation starting with the OECD anti-bribery convention (1997), continuing with the Council of Europe conventions (1999), the UN convention against transnational organized crime (2002), culminating with the UNCAC (2003). Regional instruments include the OAS (1996), EU (1997), African Union (2003) and Arab (2010) conventions. National laws, some with extraterritorial reach – like the US

FCPA, were introduced in the UK (Bribery Act), France (Sapin-II) and elsewhere. Moreover, soft law, principles, standards, good practices and guidance were issued by the OECD, the International Chamber of Commerce, the FATF, the UN Global Compact, ISO, the World Economic Forum and numerous civil society organizations. So, we have a good deal of laws, documents and texts to guide us.

At the same time, very substantial financial resources have been invested, particularly as the anti-corruption community has been working together with those dealing with rule of law, good governance and sustainable development issues (Passas, 2014). Multilateral and bilateral institutions as well as private companies have been busily assisting in the implementation of the UN, OECD and regional conventions, building capacity, providing technical assistance and offering educational programs – to the point one can speak of the emergence of a veritable “anti-corruption industry”.

With all this deployment of human capital, financial resources and normative frameworks, one would expect very significant progress against corruption. Yet, signs that things are not going as well as expected are everywhere.

Most metrics need to be interpreted with caution, but they all show little overall improvement. The World Bank Institute’s governance and control of corruption scores for the entire world is essentially flat for the last several years, including for the group of low income countries (<https://info.worldbank.org/governance/wgi/Home/Reports>). In the last couple of decades, multiple indices and sources point to flat or lower scores in developing countries, despite numerous reforms and support from the international community. In many of these countries, corruption remains a problem or is getting worse. CPI [corruption perception index] scores for sub-Saharan countries are lower than at the start of the anti-corruption campaign, while Global Integrity observes that the implementation of laws and announced reforms is inadequate (see Johnston, 2005; Persson et al. 2013 citing several sources at pp. 450 and 454).

In many countries where laws are implemented, inconsistency and the targeting of political opponents show how risky anticorruption can be. They sometimes undermine democracy itself (Andersson and Heywood, 2009). There are plenty of examples from Brazil and Europe to many parts of Africa: “Indeed, whether in Benin, Burkina Faso, Niger, Nigeria or Senegal, for most people, this fight against corruption is only a pretext to eliminate political opponents and to keep political allies in check” (Hounkpe, 2018). The lack of effectiveness of many policies, measures and interventions is reflected in findings that ratification of the UNCAC, establishment of anti-corruption commissions or laws regulating political finance make no difference or are negatively correlated with

the control of corruption (Mungiu-Pippidi and Dadasov, 2017; Mungiu-Pippidi, 2011; 2015).

At the same time, kleptocrats and top officials in many countries enjoy de facto immunity as often the efforts focus on comparatively minor offenses and low-level officials. Financial controls have been failing to prevent the laundering of corruption proceeds (Global Witness, 2009; Raggett, 2020) with the recent cases of Danske Bank and Deutsche Bank showing how anti-money laundering controls have been inadequate, whistleblowers get ignored, and massive amounts of suspect funds with not properly researched beneficial owners flow through banks based in countries that are supposed to be models of good governance (Bendtsen, 2019; Bruun and Hjejle, 2018; Enrich, 2020).

Other effects of anti-corruption efforts include bureaucratization and regulatory complexity, which occasionally does little to counter fraud and mismanagement but effectively creates new incentives to circumvent the rules and to engage in corrupt practices (Anechiarico and Jacobs, 1996; Claro and Passas, 2013). In government agencies and private companies, we find compliance practices to be formalistic rather than driven by ethical norms and values, resulting in mere-law-based compliance and “lawful but awful” practices (Passas, 2005). Further, some societies in transition witness anomie effects as one set of rules breaks down, before new ones get institutionalized, which leads to opportunities for serious misconduct and corruption, and to weakened controls (Passas, 2000).

Moreover, increased journalistic inquiries and NGO watches make corruption more visible adding to a sense that things are getting worse, thereby potentially contributing to demoralization and deviance amplification through perceptions that politicians and political institutions are fundamentally corrupt (Persson et al., 2013). Experience of crises, corruption and lack of meritocracy fuel migration (Poprawe, 2015) and brain drain thereby depriving societies of human capital and the most important members who can contribute to economic growth and development.

### **3 Contributing Factors**

If so much law, guidance, energy and financial resources cannot move the needle, perhaps we need to go back to the drawing board and rethink how we do anticorruption. The first lesson to draw is that perhaps we rely too much on law. Agreeing to harmonized minimum standards and introducing legal and other measures are essential first steps, but they are by no means sufficient. Indeed, throwing law and lawyers at the problem does not make corruption

disappear. Numerous examples of reforms in public procurement systems illustrate how there are diminishing returns when too many rules and procedures render public-private engagement too burdensome and at times undesirable. Throwing law at the problem clearly does not solve it.

A multi-disciplinary approach is essential for both appreciating the challenges in each region and for constructing appropriate policies that reflect local circumstances, traditions and preferences. Proper attention, in other words, must be paid to *context*. We do not have to go back to old debates on whether corruption is grease or sand in the wheels of society and the economy (Meon and Weill, 2009) to consider the fact that bribery may solve problems people face in everyday life. Whether it is speed money, favors for a job, money for a hospital bed or admission to a university, such exchanges address practical problems that do not go away by edicts and criminal laws. Reforms and policies that appear reasonable in abstract, can be unfair and counterproductive if enforced rigidly in fragile environments where jobs, access to health and education, security and government services are in short supply. Short-term benefits of widespread and normalized law violations constitute a force of resistance against formal anti-corruption efforts (Persson et al. 2013). As I stressed in an online lecture, “you cannot fight corruption on an empty stomach” (Passas 2015 TEDx talk: <https://www.youtube.com/watch?v=d4Dj0qdWLnk>). Anti-corruption and socio-economic development must be pursued in parallel prioritizing problems and policy objectives, thoughtfully sequencing initiatives, and regulating with a compassion. Strict and out-of-context implementation of standards encourages illusions of compliance, where everyone pretends to observe the laws, but breaks them the minute controllers look the other way.

This does not mean a free for all. It means that anti-corruption requires a strategy for a long period where some infractions and crimes will be given higher priority. On the other extreme, there are “zero tolerance” approaches adopted by under-resourced aid organizations (Johnsøn, 2016) whose work is often fragmented, uncoordinated and free of quality controls (Passas, 2007). Zero tolerance from the start of a project clashes logically with the need for multigenerational anticorruption efforts: if it will take years to accomplish the goals of integrity and accountability, how could it be expected that the first programs will be executed in impeccable fashion?

Another challenge is related to the metrics and indicators of corruption that inform policy. The proliferation of corruption measurements has not been accompanied by improved accuracy (UNDP, 2008). Yet yardsticks with questioned underlying assumptions or methods are often used by companies and government agencies for important decisions. For example, the UK

Department for International Development sought to combat corruption in sub-Saharan countries relying on IMF neoliberal analyses linking corruption with excessive military spending and procurement. Other donors had earlier employed a benchmark of 2 % of GDP as the threshold. This led to off-budget spending, numerous practices circumventing the standard and further distortions to already unreliable statistics in different regions. Applying the same measure to all countries has had counter-productive effects. Some countries had high defense budgets but low corruption; others had low military budgets but high corruption. Some countries faced domestic terrorism, turmoil or war requiring more resources than others. This context-free approach ignored the critical role of bribe givers and financial intermediaries from the West so it was put on the backburner (Willett, 2009).

The debates on methods and assumptions underlying corruption and governance metrics need not repeating here, but it is worth citing two empirical issues not so widely mentioned. Firstly, Iceland was for two years in a row listed by CPI as the least corrupt country in the world. The following year, it went bankrupt largely due to clientelist, self-serving and unethical practices (Erlingsson et al., 2013). Secondly, countries are ranked on perceptions about domestic activities, excluding considerations on how their corporate and individual citizens are allowed to behave overseas. So, it has come to the point where some of the most significant corruption- and serious misconduct-related bank offenses are perpetrated by actors headquartered and regulated in some of the “least corrupt” jurisdictions (e.g., Danske Bank, Deutsche Bank, HSBC, BNP Paribas, JP Morgan).

Further, most measurements center on bribery, even though other forms of corruption can be more prevalent and damaging, such as conflicts of interest, regulatory capture, inappropriate lobbying, etc. (e.g., top agency appointments of former industry representatives and lobbyists in the USA). If we adopt a substantive definition of corruption as the abuse of public or private power, office or function for private benefit, more grave malpractices enter the picture, including lawful but awful corporate activities (Passas, 2005) and consequential misconduct by Western banks. Snyder (1993) has noted the logrolling of interest groups and banks to promote imperial projects in the past, adding to the odious debt and financialization literature (Howse, 2007; Shaxson, 2019; Wong, 2012), arguments about trade deals that disserve developing nations (Tandon, 2016), the bailout of N. European banks while pretending to save Greece (Passas, 2015; Varoufakis, 2017), all the way to covid-19 related Wall street bailouts (Taleb and Spitznagel, 2020).

Even where we believe we have a good chance to succeed, results are not satisfactory. For example, expectations were raised with the establishment of collective action initiatives (UN Global Compact, 2015) in the hope that state and non-state actors can collaborate and coordinate their activities towards more integrity in business, government and society. Yet, the term “collective action” remains widely misunderstood and misapplied. Public information about them is imperfect: some have no website, others do not state their objectives, activities or progress. This makes it impossible to gauge success and assess or challenges. Most of them do not provide any assessment method for themselves to evaluate progress and need for adjustments. An evaluation of the Extractive Industries Transparency Initiative, which held out to be among the most successful, found that it has had actually no impact in governance or development (Sovacool et al. 2016), which was confirmed by personal interviews with compliance officers and government officials.

#### **4 Concluding Thoughts on the Way Forward**

All these problems show up in the COVID-19 test of the governance quality at all levels and in all countries. If this is an equalizer crisis in one respect, it is that the same yardsticks are to be used for all leaders: what they knew at early stages, how they responded with available means, what they did to prepare their society and protect the collective interest they were elected or appointed to serve, how responsive and responsible they have been when the virus waves hit their society and how well they collaborate with each other.

True, political will is not always genuine, resources are scarce and inadequate, economic and political asymmetries daunting, while government still have to deal with regulatory tsunamis as they implement multiple international conventions. However, the pressing need to deal with the current pandemic offers opportunities for change and reform. Resilience should mean more than preservation and return to the old normal. As the world adapts to a new reality, we ought to strive for a more socially responsible governance that can better manage and prevent risks (remember there is a climate issue to take care of too).

Efforts toward better governance should be part of a long-term strategic approach, based on a proper diagnostic informed by consensual-knowledge building processes, science and empirical evidence. Collaborative efforts should bring together government agencies, companies, international organizations, academia and civil society. Anticorruption can gain traction through systematic, evidence-based and theory-informed initiatives reflective of economic and cultural specificities. Policies must set proper priorities that are realistically

sequenced, monitored with proper performance indicators and widely communicated. This entails a balanced approach that takes into consideration the wider context, drawing on lessons learned from the anticorruption and peace building field (Philp, 2008). This would be instrumental to both crisis management and stronger legitimacy for the longer term.

Along the way, newly identified vulnerabilities will likely lead to adjustments and adaptations. Resolution of immediate challenges and small successes must be used to build momentum in order to tackle demoralization and brain-drain. It is essential to resist the temptation to throw law at the problem (esp. transplanted or uncritically imported laws; Thoumi and Anzola, 2010; 2012) and place more emphasis on ultimate objectives rather than typolatric and formalistic success criteria. Doing nothing is preferable to mechanistic or thoughtless rule making, which creates problem laws and institutions that grow roots and lead to vested interests that render reform harder in the future.

As we walk along this path, we ought to leave behind baseless assumptions and corporate “neosocialist” policies. There are shining examples that show the way, such as islands of integrity from La Paz to Thailand and the Balkans (MacLean and Vasilache, 2019; Cutler, 2017), “I paid a bribe” websites and participatory budgeting initiatives. Promising models have sprang from projects geared toward the creation of share value (generation of economic value in ways that also create value for society by addressing its needs and challenges; see Porter and Kramer, 2011) within ethical frameworks (Reyes et al., 2017). Collective impact initiatives assist organizations from different sectors to agree to solve a given social problem through a common agenda, aligned efforts, and the use of common success measures (Kania and Kramer, 2011). We can try and apply this to anticorruption as well. In the COVID-19 period, we can find governance examples in Taiwan that serve well the public interest and health (Tu, 2020). These and many other cases can serve as templates, stimulus and inspiration for the global community to deal with corruption as well as pandemics, climate change and other challenges lying ahead.

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