


Making Anticorruption Agencies More Effective

National anticorruption agencies, which could be a vital force in preventing corruption, are frequently so politicized that they are ineffective. In this article, two officials of Transparency International discuss how anticorruption agencies can become key players in the war against bribery.

Jeremy Pope and Frank Vogl



MOST development institutions today are promoting good governance in an effort to ensure the success of the projects they are helping to finance. Their focus is on curbing corruption among government officials—the abuse of public office for private gain. But the challenges of preventing and curbing corruption are, if anything, becoming more complex. Transparency International’s experiences and those of its national chapters leave little doubt that the rising number of anticorruption initiatives being developed are running up against a massive wall of corrupt practices.

Transparency International’s Corruption Perception Index and Bribe Payers Index show that bribe taking in many developing and transition countries is extensive, primarily because of low public sector salaries, senior public officials’ and politicians’ de facto immunity from prosecution, and greed. Meanwhile, transnational corporations’ propensity to pay bribes is considerable. To be effective, antibribery initiatives must recognize and confront these realities.

Although national anticorruption agencies can be critical in preventing corruption before it becomes rampant, not only are they difficult to set up but they often fail to achieve their goals once they have been established. They may be so beholden to their political masters that they dare not investigate even the most corrupt government officials; they may lack the power to prosecute; and they may be poorly staffed.

One key to success in building effective anticorruption agencies rests in the willingness of the proponents of good governance to share their experiences and to work together to develop greater knowledge of best practices. Our experience suggests that international organizations can make a major contribution on this front, but only if they work in partnership with national authorities and civil society, which, in turn, need to embrace business, academia, and a broad range of nongovernmental organizations. This can happen only when the organizations themselves approach the challenge with a fresh and open mind.

If major anticorruption initiatives are to be firmly anchored, there need to be distinct national government agencies dedicated to curbing corruption. These agencies must command public respect and be credible, transparent, and fearless. They must be subject to review by a free press and by civil society—indeed, they must be accountable to the public. But they must also be given considerable political independence so that

they cannot be removed at the whim of an enraged political elite.

A prime challenge in many countries is to mobilize the necessary political will to establish such agencies. The World Bank, the IMF, and bilateral aid agencies may call upon governments to establish anticorruption agencies as components of good governance programs and may even make loans conditional on the establishment of such agencies. But these agencies are not likely to succeed unless they are strong enough and politically independent enough to win the public's respect. Reforms therefore need to be firmly grounded within a particular country and not imposed from the outside.

New public procurement approaches

Anticorruption agencies need to focus on public procurement, which gives rise to some of the most egregious abuses. A recent survey in leading emerging market countries that was commissioned by Transparency International and carried out by Gallup International found that public works and construction are widely perceived to be the sectors most riddled by corruption, followed by the defense sector. On a scale of 0 to 10, with 10 being corruption free, the perceived level of corruption in public works and construction was 1.5, while defense scored a miserable 2.

Recently, Transparency International started to work with the government of Nigeria to devise ways of tackling corruption in public procurement. Drawing on the experience of New York City, where efforts to drive organized crime out of the school-construction industry have been successful, a working group established by the Nigerian government

determined that bidders should be required to disclose all commissions by affidavit and on oath and that the names of all agencies involved in procurement proceedings should be published. Further, contracts should state that a substantial percentage of the purchase price will be forfeited to the government as liquidated damages should there be any breach. By focusing on changing the way contracts are written, the government was able to avoid the legislative battles that would have occurred had it tried to get new procurement rules passed by parliament, while ensuring that the new requirements were clearly stated in bidding documents.

Hong Kong SAR as a model

Nigeria has a long way to go, but it can be encouraged by examples of effective approaches in other countries. National anticorruption agencies, for example, can go far beyond merely identifying and prosecuting corrupt officials, vital as this is. They can also assist in creating an environment in which large public works proceed without corruption. They can operate in ways that command the respect of contractors and contribute to the building of a business environment that is imbued with integrity. Although these aspirations sound utopian, they can be realized, as Hong Kong SAR has demonstrated.

Michael Wiehen and Peter Rooke, members of Transparency International's Board of Directors, recently examined the procurement processes involved in developing Hong Kong SAR's Airport Core Program (ACP), which included construction of the Hong Kong airport, as well as of high-speed rail and road connections, a major suspension bridge, and a cross-harbor tunnel. The total capital cost of the ACP exceeded HK\$160 billion (US\$20.6 billion at the current exchange rate of US\$1 = HK\$7.75), making it one of the largest infrastructure projects ever undertaken anywhere in the world. The ACP was virtually free of corruption, owing to several factors:

- Hong Kong SAR's clear, strict Prevention of Bribery Ordinance and strong Independent Commission Against Corruption (ICAC), which has impressive legal powers and a staff of about 1,350 professionals;
- clear rules and effective control mechanisms for selecting and procuring consultant and construction services and equipment supplies, supervising and monitoring the implementation of contracts, enforcing the accountability of government staff as well as of consultants and contractors, and resolving disputes;
- the establishment, for ACP purposes, of special institutions such as the New Airport Projects Coordinating Office (since dissolved), which had a dispute-resolution team that stepped in whenever problems occurred, and the Engineering and Associated Consultant Selection Board, which is also involved in non-ACP projects; and
- a favorable working environment, including appropriate salaries for civil servants, a high degree of professionalism and pride among the officials, and a relatively small society

Transparency International

Transparency International, founded in 1993, is a not-for-profit, nongovernmental organization dedicated to curbing corruption. Its headquarters are in Berlin. National chapters of Transparency International exist, or are being developed, in more than 70 countries. The organization works to strengthen civil society leadership and to forge coalitions—led by civil society and embracing business, government, and academia—in efforts to curb corruption. Transparency International has participated actively in building international support for the Organization for Economic Cooperation and Development's Anti-Corruption Convention, which came into force in February 1999, and other legislative actions to criminalize the payment of bribes. At the same time, Transparency International works to stimulate the development and expansion of anticorruption programs by national governments and international organizations and to build a base of knowledge and best practices that can be widely used in these efforts. Transparency International's research and its national integrity source book, working papers, and overall information base can be found on its website, <http://www.transparency.org>.

in which businessmen caught offering bribes or otherwise trying to manipulate the processes find it difficult to obtain other business, making corruption a high-risk activity.

The ICAC has been pivotal to the success of transparent public procurement in Hong Kong SAR. Its work is carried out by three departments. The Operations Department carries out the investigation and prosecution of offenses; the Corruption Prevention Department examines the practices and procedures of government departments and public bodies and makes recommendations on how opportunities for corruption can be eliminated or reduced; and the Community Relations Department is responsible for educating the general public about the evils of corruption, instilling positive values in Hong Kong's youth—starting as early as kindergarten—providing advice to business organizations on drawing up codes of conduct, and harnessing support for the ICAC.

Other successful anticorruption agencies are found in Australia, Botswana, Malawi, Singapore, and South Africa (under the post-apartheid government). However, most countries are just starting to think about setting up anticorruption agencies, so there is an urgent need to establish clear guidelines of best practice.

Guidelines

The starting point should be identifying the core role of anti-corruption agencies. Given that prevention is always better than prosecution, a small investigative and monitoring unit with appropriate authority and political independence may be much better placed than other government agencies to ensure that effective preventive steps are identified and taken.

Research by Transparency International suggests that to operate successfully, an anticorruption agency must have the following:

- political support not only from a country's president but also from a broad array of national political leadership;
- the political and operational independence needed to investigate the highest levels of government (some agencies that have failed—for example, those in Tanzania and Zambia—are housed within the president's office and therefore have scant opportunity to tackle corruption involving the national political leadership);
- access to documentation and the power to question witnesses; and
- leadership with great integrity.

Further, credibility and effectiveness depend on the exemplary behavior of the anticorruption agency itself. It must act, and be seen to act, in conformity with international human rights norms. It must operate under the law and be accountable to the courts.

A test for a government establishing an anticorruption agency is whether it would find the agency's actions acceptable if it were the political opposition rather than the party in power. An enduring formula, which seems fair and workable to everyone, whether in or out of government, needs to

be found. This requires, for example, that the agency have significant powers of investigation, prosecution, and deterrence, independent of political parties and government leaders. Accountability is critical to the agency's success, as are checks on its power and the method used for selecting its leadership. Anticorruption agencies will fail if they can be subjected to political direction and used as a weapon to attack critics of the government. Safeguards have to exist as well as to ensure the agency does not itself become a source for extortion and corruption.

Who should run national anticorruption agencies? Certainly not the hand-picked supporters of politicians in power. Such leaders could, at best, be relied upon not to rock the boat; at worst, they could be deployed to intimidate political opponents. Appointment procedures need to address the issue of whether the proposed mechanism sufficiently insulates the process to ensure that persons of integrity are given the leadership and that they are protected from political pressures while they are in office. Approaches widely used to provide security of tenure to high court judges could be applied here.

Checks and balances

In designing an anticorruption agency, one should consider how, in theory, the new agency would act in the worst-case scenario: that is, in response to allegations of major corruption by the nation's president. Lawmakers, after all, need to reflect on the issue of public distrust if the president is seen to be above and beyond the jurisdiction of the anticorruption authority. Establishing an agency with a special provision in its statute that highlights the power to investigate and assist the prosecution of all public officials, irrespective of rank, can strengthen a new agency and send a vital signal that builds public support from the start. A country's leaders need to accept that their successors may not share their standards and that the agency must be empowered to deal with corruption in high places.

To be sure, an anticorruption agency typically cannot prosecute presidents in office because they usually have immunity under the country's constitution. Impeachment proceedings are generally a matter for a national legislature. Accordingly, the framework of an anticorruption agency can be fashioned to enable the agency to provide reports to the leadership of the legislature, if there are reasonable grounds to believe that the president has committed an offense and if there is prima facie evidence admissible in a court of law.

Similarly, the relationship between an anticorruption agency and the office of public prosecutions is critical. Agencies must be seen to have real impact leading to prosecutions and convictions. Otherwise, as has happened in several countries, they will be widely viewed as a farce. A country must have legislation that ensures the political independence not only of the anticorruption agency but also of the judiciary and the public prosecutors.

Ensuring accountability is probably the most difficult issue related to building successful anticorruption agencies.

Some authorities, such as Hong Kong SAR's ICAC, have established arrangements that ensure public participation in policy formulation and oversight. By providing for such an arrangement (which could take the form of a committee chaired by the minister of justice), the anticorruption framework would encourage transparency. In Hong Kong SAR, a file that has been opened cannot be closed without the consent of the external oversight committee, which includes representatives of civil society and the private sector. This protects against corruption inside the agency.

Reaching beyond formal processes, a successful agency needs to have a charter that provides for the involvement of a wide range of people and interests in the formulation of prevention policies and their execution. In this way, various stakeholders become involved in the prevention process, and their own institutions—in both government and the private sector—can be mobilized in support of the agency's efforts. The agency's work has to be seen as meaningful, which requires that the agency be as open as possible with the press and that it publish frequent reports on its activities.

Should a new law be retroactive?

Anticorruption agencies are established to solve problems that are widely recognized. They come into being to confront, in all cases, years of corruption. Should they be focused only on the future, or should they also look to the past and investigate previous public officeholders and others who are perceived to have benefited at the public's expense?

There is no certain answer, but it is evident that if a new anticorruption agency delves too deeply into past corruption it may become so overwhelmed by outstanding investigations inherited from the police that it is wholly unable to focus on the present. The legislation establishing the Hong Kong ICAC overcame the problem by stating that the commission should not, with a few exceptions, deal with matters prior to its January 1, 1977 establishment.

Conclusion

While an effective national anticorruption agency that enjoys the public's trust and that is respected by business is difficult to establish and maintain, it is all too easy to undermine. Ultimately, an anticorruption agency will be deemed successful if a nation's citizens see major public works contracts completed on time, according to plan, and with enough transparency to convince even the most skeptical observer that bribery has not been a factor. As a corruption-free, transparent project, Hong Kong's ACP has enhanced the stature of the ICAC. By contrast, Jamaica's independent contractor general's repeated reports to parliament on abuses in public procurement seem to have been consistently ignored by those on both sides of the political spectrum, undermining the credibility of Jamaica's efforts at reform.

Transparency International is convinced that greater in-depth knowledge of the successes and failures of national anticorruption agencies can be valuable. This conviction



Jeremy Pope is Executive Director of Transparency International with overall responsibility for international research and national integrity programs.



Frank Vogl is President of Vogl Communications, Inc., and Vice Chairman of the Board of Directors of Transparency International.

derives from the recognition that internationally coordinated efforts to curb corruption are still in their infancy and that, to ensure action and rapid results, lessons learned and best practices must be disseminated as broadly as possible.

This is not merely an academic issue. When Nigeria's President Olusegun Obasanjo was elected in the spring of 1999, he turned to many international organizations, including Transparency International, for assistance in curbing corruption, inviting detailed suggestions on how to build a new anticorruption sensitivity in the government and the institutions to support it. He has taken the advice offered and put many ideas into practice that are now being tested.

The better the advice that can be given to new leaders across the globe who are determined to confront corruption, the greater will be the chances of scoring real successes. The demand for expertise is formidable; the level of real knowledge remains at a premium. Only by pooling research and experience between public sector organizations, at the national and multilateral levels, and civil society, business, and academia can best practices be widely determined and disseminated. Building effective anticorruption agencies is one priority area where progress is being made. **F&D**

Suggestions for further reading:

Jeremy Pope, 1999, "The Need for, and Role of, an Independent Anti-Corruption Agency," *Transparency International Working Paper* (<http://www.transparency.org>).

Jeremy Pope, ed., 1996, *National Integrity Systems: The TI Source Book* (Berlin: Transparency International); available on Transparency International's website in English and Spanish (<http://www.transparency.org>).

Peter Rooke and Michael H. Wiehen, 1999, *Hong Kong: The Airport Core Programme and the Absence of Corruption* (<http://www.transparency.org>).