

# **Horizontal Accountability And Corruption Control**

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The unfortunate fact—not only about transition economies but all societies—is that corruption flourishes in the absence of institutions to expose and punish it. Human beings are prone to self-seeking behavior. What constrains behavior and makes it conform to the larger collective purposes of society are norms, rules, and institutions. Norms are the values about right and wrong that become widely shared in the society. But norms of responsible, public-oriented conduct in office will not become embedded if they are not reinforced by laws, and by institutions to implement those laws. Today, virtually every country has rules against bribery, embezzlement, nepotism, and other abuse of public office for private gain. But where the rules are not enforced, and there is no serious, predictable institutional capacity to enforce them, then norms may evolve to the point where corruption becomes expected and routinely demanded. Actors throughout the social, economic, and political systems reorient their behavior accordingly, and there emerges a “culture of corruption” that is completely divorced from the formal rules and institutions.

Even if laws are far-reaching and effectively enforced, the occasional criminal, clever, or risk-taking individual will always tempt fate and use political or state office for private gain. So corruption can never be completely or permanently eliminated. The question is, how can it be controlled? And more to the point for many countries in the developing and post-communist

worlds where corruption impedes economic growth, foreign investor confidence, and democratic (or any other kind of regime) stability, how can a country move from a situation where corruption may be the norm to a situation where corruption is morally intolerable and behaviorally rare?

### **Why Focus on Institutions?**

If there is one overarching lesson from research and country experience on corruption, it is that endemic corruption will not be reversed and controlled with moral crusades. People respond to incentive structures, not moral appeals. Officeholders will not abstain from corruption unless it no longer appears in their interest to behave corruptly. To control corruption **the expected utility, or benefit/cost ratio, for the individual officeholder of obeying the law must be higher than the expected utility of behaving corruptly.** In particular, the expected costs of engaging in corruption—which are very low or near zero in an endemically corrupt society—must be dramatically increased. The only way that the expected costs of corruption will increase is if officeholders perceive a credible threat that corrupt conduct will be discovered and punished.

If corruption is to be controlled, corrupt officials have to be exposed and punished frequently and meaningfully, according to laws and legal processes that are transparent, predictable, and neutrally administered. To be meaningful, punishment must be severe enough so that the costs it imposes are sufficient to deter most individuals from reaping what are often huge illicit rewards. In effect, control of systemic corruption requires that public officials perceive a substantial risk that if they engage in corrupt conduct they will lose their offices, forfeit

illegally acquired wealth, and even go to prison. Frequency of exposure and punishment is also crucial. If punishment is severe but rare, most potentially corrupt officials—those who are not restrained simply out of a personal commitment to the public good—will calculate that the small risk of exposure and punishment will be justified by the probability that they can become very rich while escaping any serious sanctions. Finally, it is vital that the system for monitoring and exposing corruption not itself be riddled with corruption, favoritism, or politics. If there is frequent and severe punishment, but not by means that are fair and transparent, corrupt officials may judge that they can evade punishment by cultivating the right political connections. And in any case, the campaign against corruption will lose credibility and support in society if the rules are not perceived to apply fairly to all, but rather the more powerful and better connected appear immune from justice.

The control of corruption thus requires a **system of justice and accountability**.

Endemic corruption is a systemic disease that can only be controlled with a systemic cure: a single institution such as a counter-corruption commission will not do. There are three great challenges for institutional design to control corruption. First, agencies are needed to monitor conduct and expose wrongdoing. Second, a system is needed to assess charges of wrongdoing and punish wrongdoers if they are convicted. Third, a framework is necessary for constituting and insulating watchdog agencies so that they cannot be subverted by the very actors they are supposed to control.

Effective and durable corruption control requires multiple, reinforcing, and overlapping institutions of accountability. And for situations of endemic corruption, these need to be of three kinds: horizontal accountability (by which some agencies of government scrutinize and check other parts of the government), vertical accountability (by society, empowered with means to

review and evaluate official conduct), and external accountability (in the form of vigorous international action to combat bribery and corrupt financial transactions across borders). Mainly here, I focus on horizontal accountability, but I will have a few words to say about the other two forms. It is important to emphasize as well that controlling corruption is not simply about monitoring and punishment. It also requires reducing the scope for rent-seeking and arbitrary exercise of state power, through market reforms that promote competition, streamline regulations, and reduce (or make more neutral and transparent) the interference of the state in economic life. And it entails reform and professionalization of the civil service, through enhanced training and pay and reductions in the size of the state bureaucracy, so that the state can afford to pay the kind of salaries that will attract better trained civil servants and thus reduce some of the pressure to abuse the powers of office in order to enhance personal income. These reforms are vital, but I will leave them to other contributors to discuss.

### **Institutions of Horizontal Accountability**

*The Law:* The first institution of accountability is the law, which must prohibit all forms of bribery, nepotism, abuse of power and misuse of public funds. Although comprehensive anticorruption legislation is necessary, it is not sufficient. Improper enrichment of public officials cannot be detected unless their own personal and family finances are transparent. Effective corruption control requires that higher-level elected officials, political appointees, civil servants, military officers, and police officers declare their assets upon taking office, and every year thereafter, and whenever their assets change in some significant, defined way (as through a major sale or stock transaction). These declarations should be publicly filed with a counter-

corruption commission (see below). To ensure public confidence in the process—and facilitate the necessary exercise of vertical accountability—the declarations of assets must be available, ideally through publication in the newspapers or on the Internet of top officeholders' assets declarations. Endemic corruption cannot be controlled without this vital step.

*Anti-Corruption Bodies:* The second institution is a **body charged with scrutinizing the conduct of public officials and monitoring their assets declarations** to look for signs of malfeasance. This body must be charged not only with receiving but also monitoring and verifying the assets declarations of the president, prime minister, ministers and sub-ministers, agency heads, and other elected and appointed public officials above a certain level. In a large country, separate or subsidiary (branch) anti-corruption bodies will be needed to scrutinize the conduct of similar types of officials at the provincial and municipal levels. The commission must then have the staff to investigate annually on a random basis some significant percentage of these assets declarations, and systematically, the declarations of the country's highest officials.

Scrutiny must be comprehensive if it is to be effective, and if the threat of detection is to be credible. This requires a lot of resources: accountants, investigators, and lawyers trained in the ways that wealth is moved, accumulated, and hidden, along with computer specialists and other support staff to back them up. Not only does a counter-corruption commission need a lot of well-trained staff, it needs to pay them enough to deter temptation and establish a high esprit de corps. There is no way to control corruption without spending money to build institutions.

Scrutiny, however, is not enough. If credible evidence of wrongdoing emerges, there must be the institutional means to try the suspected offender and impose punishment on the guilty. The single most common and crippling flaw in systems of corruption control is an

inability to enforce this function free from interference by the highest levels of government. The counter-corruption commission should have the ability to prosecute officials who have allegedly violated ethics laws independently. (One of the most important changes introduced by Thailand's democratic constitution of 1997 was to grant the National Counter Corruption Commission independent prosecutorial authority, even if it means overruling the attorney general). Critics may argue that trying public officials outside the normal judicial process undermines the rule of law. And, of course, in a democracy the power to deny someone his freedom, through imprisonment, should only be exercised by the judiciary. But it makes sense to enable a counter-corruption institution to impose punishing civil penalties, including forfeiture of office and assets, through due process, even if the judicial system would be able to do this as well, and more.

***Ombudsman's Office:*** The Ombudsman's office (or a public complaints commission) receives and investigates public complaints of abuse of office. Members of the public or the press should have a right to—and indeed be encouraged to—bring evidence to the counter-corruption commission if they believe a public official has misrepresented his or assets or abused his office. But there needs to be a supplementary channel of public access to government authority if power is being abused and the counter-corruption commission does not seem to be doing its job. If the system is working well, the ombudsman may occasionally come upon evidence that the counter corruption commission does not have, or that reinforces investigations the commission has already opened. Ideally, these offices would cooperate. But in a context of systemic corruption, mutual suspicion may be a functional, if not ideal, substitute for cooperation. Members of the counter-corruption commission should know that they themselves could be exposed to public outcry if they fail to move aggressively on evidence of corruption.

And the Ombudsman's office should know that it has to meet the same standards of honest public conduct as all other officials, or it will itself be held accountable.

**Public Audits:** Independent, systematic audits of public accounts constitute a highly specialized field of public administration. Clearly, it is not enough simply to monitor the personal accounts of public officials. A dense, overlapping system of accountability requires that all major government bureaus, agencies, and ministries have their accounts regularly audited. To conduct these checks, each major government agency or bureau should have its own auditing office and inspector general. Finally, the government should have an office of the auditor-general with the authority to conduct external audits on a periodic or random basis, and audit any agency at any time when there is evidence of wrongdoing.

**The Judicial System:** Like the other agencies of horizontal accountability, the judiciary must be independent if it is to be effective in controlling corruption. Here is a major target for investment in institution building. An effective judicial system requires well-trained, capable judges, clerks, prosecutors, and defense attorneys, and enough of them to keep case loads to a level that is consistent with vigorous justice and due process. They need the support of law libraries, computerized information systems, professional bar associations, law schools, and judicial training institutes. The laws themselves must be clearly codified and publicly accessible. All of this takes money.

**Parliament:** An elected national legislature, and similar bodies at the provincial level, constitutes an important link in the chain of horizontal accountability. Horizontal accountability

works best when there are densely overlapping realms of oversight and scrutiny. The national legislature or congress provides another vital realm of oversight, particularly when it is organized into committees with the statutory authority and expertise to oversee particular ministries, agencies, and areas of public policy. These committees should have the legal power to obtain information and receive testimony from executive agencies under their jurisdiction, and the relevant public officials should be answerable to these committees for their conduct. An important tool of oversight is the capacity of a parliamentary committee to conduct an investigation, for which some considerable trained staff is necessary.

If these horizontal institutions are the nerves and muscles of corruption control, why would politicians let them function effectively? What will ensure their operational autonomy? This is crucial in designing institutions to control corruption, and it begins with the power to appoint. If a country cannot get high quality, professionals in these positions, all is lost from the start. It should be underscored that this seemingly modest problem—who will appoint, if not guard, the guardians—is absolutely fundamental. The more insulated from political control are the means for appointment of members of agencies of horizontal accountability—such as the counter-corruption commission, the audit agency, the ombudsman’s office, and the entire judiciary—the better the prospect that these bodies will be given independent, vigorous, professional leadership. Insulation is crucial. Means must be found of appointing, constituting, and funding these bodies so that the executive officials and agencies they are to scrutinize do not compromise them from the outset by imposing on them weak or politically pliant leadership. Once appointed, oversight officials, judges, and prosecutors should have long tenure in office,

and should only be removable for clear misconduct or breach of responsibility, and then only by procedures that are deliberate and transparent.

One way that some political systems insulate these bodies is by making some of them appointed by and accountable to the legislative or judicial, rather than executive, branch. The national audit agency, for example, can be responsible to the Congress, which may also have its own budget office to evaluate the budgeting projections and decisions of the executive branch. The judiciary may be given control over its own appointments and promotions, through an insulated, merit-based process of recruitment, evaluation, and advancement, and might also be given the responsibility of supervising the counter-corruption commission. Some countries may need to innovate, even by constituting a supreme oversight body that insulates, appoints, disciplines, funds, and oversees all the specialized agencies of horizontal accountability.

### **Institutions of Vertical Accountability**

Horizontal accountability needs to be stimulated and reinforced by pressure and scrutiny from below and from outside. And in a situation of systemic corruption, these additional sources of pressure and scrutiny must be massive and sustained or horizontal accountability will be gutted and left to rot.

***Electoral Accountability:*** One vital, though imperfect, means for controlling corruption is a competitive and transparent electoral process. When citizens have the ability to remove public officials who do not function effectively or serve the public interest, they generate an important incentive for those officials to avoid corruption. Of course, corrupt officials will also

try to corrupt the electoral process, buying votes and bribing officials so that they can obtain through fraud the election or reelection that they could not honestly win. Hence, in a system of competitive elections, horizontal accountability is also needed in the form of an independent, electoral commission that administers elections in a neutral, impartial, and transparent manner that is fair to all contestants. Like other institutions, an electoral commission or agency needs adequate human, technical, and financial resources to be effective.

***An Independent Mass Media:*** Transparency, virtually by definition, requires free and open flows of information. Without a free and pluralistic press, transparency is not possible. Controlling corruption requires a press that is free from intimidation and restraint; a press that has the resources to investigate rumors and evidence of corruption; and a press that has the maturity, restraint, and professionalism to eschew loose and sensationalist charges based on any whisper of malfeasance. This latter point needs emphasis, because if the press is constantly accusing without credible evidence, it will discredit itself and the whole quest for accountability. For much of the developing and post-communist worlds, it will take many years to develop the needed levels of press pluralism, capacity, and responsibility, even if a climate of freedom exists. Investigative reporting requires training and a lot of resources that few newspapers and magazines can afford. Because of its ability to reach citizens quickly and vividly, television news (partly through the news magazine format) has a promising role to play.

***Non-governmental Organizations:*** Vertical accountability also requires non-governmental organizations in civil society building new practices of good governance. A variety of civic associations (private business chambers, bar associations, other professional

associations, women's organizations, student groups) may form coalitions to lobby for legal and constitutional changes to improve governance, while also working to monitor the conduct of public officials. Transparency International has demonstrated the vital and creative role that international civil society can play in forming coalitions with domestic constituencies for good governance and accountability.

### **External Accountability**

The problem of corruption is no longer anywhere simply a national one. Corrupt transactions frequently involve international business. And very corrupt officials—those who amass fortunes in the millions and even hundreds of millions of dollars—invariably transfer at least part of their assets to financial institutions and investments abroad. Thus the challenge of combating corruption must involve international cooperation and international responsibility. The wealthy industrialized countries must, for example, take seriously the OECD “Convention on Combating Bribery of Foreign Officials in International Business Transactions” to do what they have not done to date: set up serious mechanisms to monitor international business transactions and punish the payment of bribes by their own corporations. Transnational businesses in key sectors must forge credible commitments to collectively forego the payment of bribes in their competition for contracts. And most of all, rich and poor countries alike must come together in a new effort to construct a global rule of law, beginning with a comprehensive assault on corrupt flows of money across borders. This will require intensified efforts to open up banking to independent oversight, and to require banks themselves to assume responsibility for reporting suspiciously large and unsubstantiated deposits and transfers. In short, the banks must

stop looking the other way when they receive dirty money, whether it be from drug trafficking, corruption, money laundering, or other forms of international crime.

***Support and cooperation:*** There is a huge institution-building agenda ahead for any country that decides to get serious about controlling corruption. Such a country will need to staff, equip, train, and remunerate counter-corruption commissioners and investigators, auditors, judges, public prosecutors, electoral commissioners, legislative staff, and ombudsmen. Private newspapers and civil society organizations interested in holding these structures accountable and helping to make them work will also need to enhance their skills. There is a large and promising agenda here for international exchange and cooperation.

In an increasingly globalized economy, fighting corruption is a global interest, and it will involve global cooperation and engagement. This cooperation will be more effective if it is based on an honest recognition of the shared responsibility we all have to improve governance, improve transparency, and build a rule of law that is truly global.