

March 2008

Combating Corruption: A Private Sector Approach

The participation of the private sector in the fight against corruption is key to success. The most effective anti-corruption programs engage the private sector in institutional reforms that promote competitive markets and good governance. The business community can take positive action both in the public arena – by advancing legal and regulatory reforms and transparency in government – and in the private sector – through improved corporate governance, better information, and voluntary standards.

This toolkit introduces important concepts, explains how to address the underlying causes of corruption, and suggests concrete areas in which the private sector can lead governance reform. It includes:

- Costs and causes of corruption
- Stages in the fight against corruption
- Demand-side and supply-side ways to fight corruption
- Case studies of anti-corruption programs in Bulgaria, Colombia, and Serbia

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published by the

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The Center for International Private Enterprise is one of the four core institutes of the National Endowment for Democracy. CIPE has supported more than 1,000 local initiatives in over 100 developing countries, involving the private sector in policy advocacy and institutional reform, improving governance, and building understanding of market-based democratic systems. CIPE provides management assistance, practical experience, and financial support to local organizations to strengthen their capacity to implement democratic and economic reforms. CIPE programs are also supported through the United States Agency for International Development.



The National Endowment for Democracy (NED) is a private, non-profit organization created in 1983 to strengthen democratic institutions around the world through nongovernmental efforts. The Endowment is governed by an independent, nonpartisan board of directors. With its annual congressional appropriation, it makes hundreds of grants each year to support prodemocracy groups in Africa, Asia, Central and Eastern Europe, Latin America, the Middle East, and the former Soviet Union.

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The activities described in this toolkit were funded by the National Endowment for Democracy.

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Introduction

Corruption occurs in all societies, but threatens the economic and political fortunes of developing countries the most. Bribery, conflicts of interest, and illegal deals impose heavy costs on the economy while distorting development policies and undermining confidence in public institutions.

The Center for International Private Enterprise (CIPE) believes that private sector participation in the fight against corruption is key to success. Although some companies may benefit in the short term from corrupt deals, corruption causes most companies to suffer in the long term from higher costs, greater insecurity, and an inhospitable business climate. Companies have good reasons to join this fight and can tackle the supply side of the problem in ways that governments cannot.

Equally important, CIPE believes that corruption must be treated as the product of institutional failures, not simply individual moral failings. Building a system of strong, balanced institutions is the best way to reduce corruption. This means creating a set of reliable incentive structures that reward honesty and transparency and punish bribery and abuse of public office. The private sector can make extremely valuable contributions to reforming political and economic institutions.

Definition

Broadly defined, corruption is the abuse of entrusted power for personal gain. However, three specific conditions must apply for an act to be considered corrupt:

1. The arm’s-length principle is violated. The two parties in a transaction display bias for working with each other that is inconsistent with impartial treatment.
2. The bias, or conflict of interest, must be intentional.
3. There must be some advantage for both parties to commit this violation. This advantage need not be monetary in nature; it could involve favoritism or non-monetary gifts.

Corruption occurs not only in transactions between private actors and public officials, but also in transactions involving two or more private parties. The so-called commission payments by suppliers to a company’s procurement staff are a good example of private sector violations.

Results from CIPE’s Anti-corruption Programs

CIPE and its partners have mobilized the private sector against corruption and have found solutions to the institutional problems that cause corruption.

Center for the Study of Democracy (CSD), Bulgaria

Administrative corruption was slashed in half in Bulgaria after CSD and the coalition it founded focused national attention on the issue.

National Association of Entrepreneurs (ANDE), Ecuador

ANDE initiated a judicial review process that eliminated 1,310 outdated and conflicting laws regarding commercial transactions.

Colombian Confederation of Chambers of Commerce (Confecamaras), Colombia

Colombia’s new Procurement Law incorporated private sector recommendations that enhanced competitiveness and transparency.

Transparency International and CIPE, Argentina

Leading water sector companies, managing 80 percent of water distribution in Argentina, signed an anti-bribery sector agreement based on the Business Principles for Countering Bribery.

Costs of Corruption

Both business and society bear the costs of corruption. Here is how:

- **Resource misallocation.** Resources that could be put to productive uses are instead devoted to corruption. Firms waste time and resources on rent-seeking – cultivating relationships with officials and spending on bribes. Officials make biased investment decisions that do not serve the public interest, and taxpayers swallow the cost.
- **Lower investment.** Foreign and domestic investors are scared off by unpredictable costs. Rampant corruption signals to potential investors that the rule of law, and thus property rights, are very weak in the country, making an investment there a risky proposition. Lower investment means lower growth.
- **Reduction in competition, efficiency, and innovation.** Rent seeking means that favored companies do not compete on market signals alone, while new firms face high barriers to entry. Consumers end up paying in terms of higher prices, lower quality, and limited product offerings.
- **Unresponsive policies and poor administration.** Lawmakers in corrupt systems use their powers to help rent-seekers, not the citizenry as a whole. Bureaucrats are not held accountable for their performance and actually have incentives to delay services in order to extract bribes.
- **Lower employment.** By forcing businesses into the informal sector, creating barriers to entry, and increasing the costs of doing business, corruption essentially reduces private sector employment, because firms are less likely to grow. Small businesses are hit especially hard.
- **Exacerbated poverty.** Corruption lowers the income potential of the poor because there are fewer private sector opportunities. It also limits their access to quality public services such as healthcare and education.

Mechanisms

In CIPE's view, corruption is structured like any other economic transaction in the marketplace, and obeys the laws of supply and demand. The demand for corruption, or graft, is determined by the willingness on the part of a provider to provide the proscribed services at a specific cost. The supply of corruption is determined by the willingness of the recipient to part with money or non-monetary gifts in exchange for receiving these services. The two functions intersect at a given price that serves as a valuation of the proscribed services. Comprehensive solutions address both the demand side and the supply side.

Businesses pay bribes for a variety of reasons. Typically, they are faced with inefficiencies – red tape, for example – and seek to expedite what would otherwise be legal services. Once bribery becomes widespread, it becomes difficult for individual businesses to stand up to the problem; they rightly fear that they cannot win on their merits alone in unfair competition. In many countries, government inspectors illegally extort extra payments from businesses. Thus, businesses are both victims of corruption and participants in it. How can this harmful cycle be broken? Institutional solutions that promote fair market competition and accountability make it easier for the average business to compete cleanly and prosper.

Causes of Corruption

Corruption has multiple roots, but generally can be attributed to the poor design of institutions. Some of the deepest roots include:

- **Unclear, complex, and frequently changing laws and regulations.** When laws are contradictory or require heavy interpretation, the discretionary power of officials is amplified, increasing the risk that they will make arbitrary, self-serving decisions. When laws are unpredictable, entrepreneurs do not know their rights and obligations, so they cannot comply fully nor defend themselves against illegal inspections. Corruption then becomes a means to circumvent inefficiency and arbitrary official actions.

- **Lack of transparency and accountability.** When deals are made behind closed doors, it becomes impossible to assess the criteria behind decisions, whether they serve the public interest and respect the law. If violators on both the public and private sides conceal their transactions, they escape being held accountable.
- **Lack of competition.** Companies producing in a monopolistic or cartel-dominated market have strong incentives to win government favor for their narrow interests, especially if the government mandates monopolies. Such an environment engenders rent-seeking behavior and inefficiency. A lack of political competition compounds the problem by eliminating accountability.
- **Low public sector wages.** When officials cannot meet what they perceive as their daily needs through their salaries, they resort to corruption to supplement their income. Simply raising the wages of officials, however, will not curb corruption so long as opportunities to abuse the system persist.
- **Inadequate, inconsistent, and unfair enforcement of laws and regulations.** Even if laws to combat corruption are on the books, lax enforcement can invite abuse. A weak justice system, low penalties, and high costs of compliance will render laws ineffective.

Stages in the Fight against Corruption

Successful anti-corruption efforts are undertaken with a comprehensive strategy. The strategy must reflect a country’s own circumstances. In general, here are the steps that must be taken:

- **Break the taboo against discussing corruption.** Dispel the myths that sustain corruption, such as the myth that corruption is inseparable from tradition and culture. Explain the corruption’s negative effects on business performance and society.
- **Demonstrate how corruption occurs.** Identify the root sources, the points where corruption is most likely to occur, and the mechanisms by which it occurs.

Legal Simplification in Ecuador

The National Association of Entrepreneurs (ANDE) initiated reform in 2000 to change the direction of business and institute “clean” practices. The ANDE studies showed that there are over 92,250 legal norms with overlapping, unclear, and contradictory laws, which are left to the discretion of government officials for implementation. Because Ecuador is legally a civil code country, the courts have not been able to reconcile the law or create precedents. ANDE recommended creating a seven-member judicial commission empowered to codify and reconcile law and to draft and executive decree to eliminate overlapping and duplicative regulations from the records. The Commission for Legislation and Codification has since been appointed in the National Congress and works to ensure that future laws are consistent with the Constitution.

Despite the political turmoil that plagues relations between the private sector and government in Ecuador, ANDE has been able to eliminate approximately 1,310 outdated or conflicting laws regarding commercial transactions. More important, perhaps, was the clear enunciation of the guiding principles underlying the legal simplification effort, including the importance of creating and maintaining juridical security; the primacy of the Constitution as the basis for the validity of subsequent rules, norms, and decrees; consistency across executive branch agencies in their rule-making; and better transparency and accountability for the decisions reached by public sector officials. ANDE continues to work with the Chamber of Commerce of Quito to pressure the government to adopt legislation that would eliminate still more conflicting laws now on the books.

Transparency International's Business Principles for Countering Bribery

Transparency International and Social Accountability International, supported by CIPE, developed the Business Principles as a private sector tool to combat bribery. Prior to the Business Principles, there was no standard framework specifically addressing principles and practices for combating corruption in the private sector. CIPE provided a crucial link to business organizations around the world with the capacity to widen the impact of the principles.

CIPE and Transparency International promoted the Business Principles for Countering Bribery in seven countries and raised awareness of anti-bribery standards in the business community. Now the principles have been accepted as part of the 10th principle of the U.N. Global Compact on anti-corruption. The Business Principles have been used as a basis for the anti-bribery principles developed by the Partnering against Corruption Initiative (PACI) convened by the World Economic Forum. The principles have further been used in the development of corruption criteria for the global investment index FTSE4Good, produced by the Financial Times and the London Stock Exchange.

The Business Principles for Countering Bribery

- The enterprise shall prohibit bribery in any form whether direct or indirect
- The enterprise shall commit to implementation of a Programme to counter bribery

Aims

Provide a framework for good business practices and risk management strategies for countering bribery. Assist enterprises to:

- a. eliminate bribery;
- b. demonstrate their commitment to countering bribery;
- c. make a positive contribution to improving business standards of integrity, transparency and accountability wherever they operate.

Development of a Programme for Countering Bribery

- An enterprise should develop a Programme reflecting its size, business sector, potential risks and locations of operation, which should, clearly and in reasonable detail, articulate values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control.
- The Programme should be consistent with all laws relevant to countering bribery in all the jurisdictions in which the enterprise operates, particularly laws that are directly relevant to specific business practices.
- The enterprise should develop the Programme in consultation with employees, trade unions or other employee representative bodies.
- The enterprise should ensure that it is informed of all matters material to the effective development of the Programme by communicating with relevant interested parties.

Scope of the Programme

- Bribes
- Facilitation Payments
- Political Contributions
- Gifts, Hospitality, and Expenses
- Charitable Contributions and Sponsorships

Programme Implementation Requirements

- Organization and Responsibilities
- Raising Concerns and Seeking Guidance
- Business Relationships
- Communication
- Human Resources
- Internal Control and Audit
- Training
- Monitoring and Review

The full text of the Business Principles is available at
www.transparency.org/global_priorities/private_sector/business_principles

- **Mobilize key constituencies and build anti-corruption coalitions.** Promote a healthy dialogue between the private sector and government to ensure that policies designed to curb corruption address the real needs of the business community.
- **Prepare action plans with specific anti-corruption policies.** Focus on a well-defined area to concentrate public attention and demonstrate the possibility of success.
- **Implement anti-corruption policies.** Business should lead by example in promoting transparent relationships with authorities and adopting internal controls in operations. Voluntary standards are a means to disseminate good practice. On the other side of the balance, the government should be monitored and held accountable for policy implementation and enforcement.

Ways to Fight Corruption

Effective ways to address the problem can be found on the demand side as well as the supply side. Measures on both sides aim at correcting institutional weaknesses and harmful incentives. Be sure to focus on the underlying causes.

Demand-side measures (public sector):

- **Streamline laws and regulations.** Eliminate or reconcile duplicative and conflicting commercial laws in order to reduce barriers to doing business along with incentives to pay bribes. One method is to grant independent commissions of judges the authority to reconcile or strike down inconsistencies. Business associations and think tanks, too, can create inventories of legal barriers and duplicative regulations that need to be changed on a priority basis.
- **Establish sound procurement codes.** For the sake of integrity in public contracting and fair competition, transparency must be built into procurement. Procurement codes should require open bidding and tenders. Bids should be open

to public scrutiny, and civil society should participate in monitoring procurement processes.

- **Integrate the informal sector into the mainstream economy.** Large informal economies emerge when conflicting laws and regulations make compliance impossible, particularly for small firms. Informal firms can be brought into the mainstream by lowering the barriers to starting and operating a formal business, for instance, by streamlining business registration procedures. Another approach is to exempt small firms from certain regulatory requirements.
- **Simplify tax codes.** Simplifying tax codes reduces corruption in two ways: by limiting the ability of officials to use discretion in applying tax regulations, and by reducing tax evasion (increasing tax compliance) through lowering taxes. This is also a good route to reducing the shadow economy.
- **Introduce civil service reforms.** A living wage for civil servants that is competitive with private sector salaries reduces the demand for extra payments. At the same time, professional standards, training, and performance monitoring should be implemented. The authority of inspectors should be carefully defined so inspectors do not overstep their bounds.
- **Promote clear rules on conflict of interest for the public sector.** In many countries, it is still possible for government officials to hold additional paying positions in private or state firms, or to accept consulting fees from private firms. At a minimum, such relationships should be disclosed and the officials barred from making decisions affecting those firms. In addition, officials should be restricted from moving into positions in firms doing business with the ministries or agencies with which the officials serve.

Supply-side measures (private sector):

- **Institute better standards for corporate transparency and accountability.** By making

companies transparent and holding corporate decision-makers accountable for their actions, corporate governance makes it hard for companies to furnish bribes. The practice of good corporate governance ensures that managers act in the interest of a company, board members exercise good judgment, investors receive timely and relevant information, and decisions are made in consultation with stakeholders. It also breaks the hold of vested interests that inhibit the proper functioning of markets and democratic political institutions.

- **Standardize accounting and auditing standards.** Internationally accepted accounting standards facilitate comparisons by investors, thus increasing transparency and confidence. Auditing standards should call for internal company audit functions and the inclusion of outside directors on audit committees.
- **Engage civil society.** Involving think tanks, business associations, and other non-governmental organizations in the reform process is vital to spreading understanding of the costs of corruption and building demand for change. These are key players in promoting accountability in both the public and private sectors.
- **Expand access to information.** Frequent changes in regulation and opaque procedures often force business owners to resort to corruption as a survival strategy. Improving business access to regulatory information and educating entrepreneurs on their responsibilities and rights can help entrepreneurs comply with the

law and say “no” to extortionate demands from bureaucrats.

- **Promote independent media.** Economic journalism training equips journalists with tools of analysis to detect fraud and corruption. Journalists can be a major deterrent to corruption, especially in privatization programs and in government procurement. Freedom of information laws should be strengthened to help the media in their watchdog role.
- **Adopt voluntary standards.** Voluntary standards are an excellent means to communicate appropriate practices throughout the private sector and coordinate the private sector response to corruption. The Business Principles for Countering Bribery are a leading standard developed by Transparency International and Social Accountability International with the support of CIPE.

Sources

- Boris Begovic, “Corruption: Concepts, Types, Causes, and Consequences,” *Economic Reform Feature Service* (March 21, 2005).
- Aleksandr Shkolnikov and Andrew Wilson, “Dispelling Corruption Myths: What Works and What Doesn’t,” *Economic Reform Feature Service* (June 8, 2005).
- John D. Sullivan, “Combating Corruption: A Policy Tool Kit.”
- John D. Sullivan and Aleksandr Shkolnikov, “Combating Corruption: Private Sector Perspectives and Solutions,” CIPE Economic Reform Issue Paper (September 22, 2004).

REFORM Case Study

No. 0801 January 31, 2008

Exposing Corruption in Serbia

At a glance

- The Center for Liberal-Democratic Studies (CLDS) developed a superior methodology for exposing the sources of corruption and attacking the problem at its roots. The method employed surveys of corporate managers and federal officials as well as tools of economic analysis.
- CLDS shone light on the worst problem areas in the customs administration and the judicial system, then created recommendations for reform.
- Analysis and advocacy helped catalyze a new customs law in 2004, which implemented many of CLDS's recommendations.



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CLDS

The Center for Liberal Democratic Studies (CLDS) is an independent think tank based on the cooperation of numerous leading experts in social sciences in Serbia (economics, political science, law, and social philosophy). CLDS was founded to promote democracy, individual liberty, economic development, and the rule of law. The center's activities include reform of the political system, economic transition issues, building civil society, protection of human and minority rights, and citizen education.

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Part I: Exposing Corruption in the Customs Authority

Introduction

Widespread corruption was a major problem for Serbia at the turn of the millennium. Efforts to establish a working democracy depended on extricating the government bureaucracy from Milosevic-era cronyism and consolidating the rule of law. The customs office was among the most corrupt organizations in Serbia, where estimates of corrupt transactions as a percent of all transactions ran to 50 percent or higher.

With assistance from the Center for International Private Enterprise (CIPE), the Center for Liberal-Democratic Studies (CLDS), an independent think tank based in Belgrade, analyzed Serbia's lingering problem of corruption. CLDS produced a white paper to be used as a blueprint for reducing the incidence of corruption within the customs administration. The paper – published in 2002 under the title “Corruption in the Customs Administration” – was a catalyst for wide-ranging reforms within the customs administration.

CLDS took on corruption from an unconventional angle, viewing it as an economic transaction that is determined by the rules of the marketplace – it has its own supply and demand factors. Accordingly, CLDS posed that corruption among federal customs administration officials in Serbia could be fought by methods that discourage these factors. Although it would be impossible to completely eliminate it, corruption could be made less profitable for both customs officials and the businesspeople who were willing to offer bribes.

Background

Much of the corruption within the customs administration was linked to corruption within society at large. During the 1990s, a large-scale “gray” economy emerged because trade laws left over from the socialist past had not been reformed. This made

the legal trade of goods a difficult undertaking and made bribery a lucrative proposition for traders who eased the process of getting goods across the border. At the same time, state employees' salaries stagnated or decreased following the socialist period, thus encouraging employees to supplement their income through other means, including corruption. These two trends were revealed in rampant, large-scale corruption at customs checkpoints throughout the 1990s.

Corruption had a number of pernicious effects on the customs process. The primary economic effect was to deprive the state of control over its foreign trade policy. The state also lost revenue, which had to be made up in other ways (such as increasing consumption taxes or creating new transaction costs for businesses). On the political front, corruption weakened institutions and slowed political progress as it involved more and more officials. Finally, the country became known among outsiders as a haven for dirty money. The social effects of corruption placed higher financial burdens on lower-income citizens, who were forced to shoulder more than their weight in taxes because other avenues for tax collection were blocked.

CLDS Survey Findings

After conducting surveys of customs administration staff and managers of Serbian companies that trade internationally – 300 federal customs officials and 290 private and state-owned enterprises – CLDS discovered a number of issues that led to high corruption levels. The survey found that only 20 percent of the customs officials reported complete knowledge of the relevant customs regulations. More than 65 percent reported they had difficulty enforcing customs regulations. Interviews with company managers revealed some improvement in the performance of Serbian customs officials over three years prior to the 2002 survey as measured in terms of predictability. However, 25 percent of respondents said the customs officials' behavior was still at least somewhat unpredictable. The main problems that influenced corruption in customs activities, according to business owners, were a general moral crisis within Serbia, inefficient internal controls, and the small salaries customs officials took home.

Customs officials were aware of the corruption problem within society and within customs offices in general, but more than half denied that corruption took place within their work units. To many of those surveyed, the difficult period of economic transition seemed to justify the prevalence of corruption within Serbia. Many of the businesspeople surveyed evaded clear answers to questions about the size and extent of corruption and their companies' interaction with the customs administration.

CLDS concluded that the biggest corruption problem facing the Serbian customs administration was ineffective internal controls that proved insufficient to check abuses by customs officials. While there were laws on the books that provided adequate protection against illegal transport of goods, due to the wide discretionary powers of officials at the customs points, the laws were not enforced.

CLDS Recommendations

CLDS recommended a three-pronged strategy for combating corruption within the customs administration. The first step constituted legislative reform, including deregulation and liberalization of trade, aimed at decreasing incentives to engage in corruption. The second step involved better leadership, which would foster greater transparency and weed out corrupt behavior. Finally, an overhaul of the system of motivation among customs administration employees would discourage corrupt behavior. Reforming the system of motivation might include raising low salaries of employees, conducting more rigorous control, implementing stricter penalties for offenders, and promoting ethical behavior. These and similar measures aim to change the corruption equation from "small risk, large reward" to "large risk, small profit."

The CLDS white paper advised customs offices to follow a reform template developed by the World Customs Organization, which proposed simplifying the tariff schedule, implementing selective controls in areas of high risk, and making greater use of information technology. To strengthen internal controls, the study suggested a random rotation of customs officers as well as new employment guidelines and stiff internal audits.

Extensive training for employees and distribution of the rules of conduct would serve the same function. Combined with increased wages, these measures would turn many officials away from soliciting small-time bribes.

Ultimately, CLDS called for the liberalization of foreign trade as the best long-term solution to containing corruption in the customs administration. By simplifying rules and procedures, liberalization decreases opportunities for corruption among customs office employees and facilitates understanding of customs regulations by the individuals and firms that use customs services. Institutional strengthening of the customs authority and better internal oversight mechanisms serve as complementary steps to decrease the incidence of corruption and improve citizens' faith in government overall.

Advocacy for Change

Following the publication of the report, CLDS embarked on an advocacy campaign to implement the changes it proposed. It held a number of media events, most notably a press conference in Belgrade that included the Serbian minister of finance. Moreover, a number of CLDS staff served as advisers for an anti-corruption campaign undertaken by the Serbian Government.

The advocacy campaign was extremely successful. As the public became aware of the extent of corruption within customs, a public outcry forced the government into action. A new customs law was swiftly passed by Parliament and took effect in January 2004. The law implemented many of the suggestions made by CLDS, including greater use of IT in customs procedures, risk-control methods, and stricter punishment for officials found guilty of engaging in corruption.

CLDS followed up this campaign with innovative anti-corruption initiatives – such as a project to expose the sources of corruption in the judicial system – in partnership with CIPE. CLDS President Boris Begović has also carried the lessons learned fighting corruption in Serbia to other countries as well, visiting Argentina in 2004 at CIPE's invitation to share his expertise. While

corruption remains a problem in Serbia, in its focus on the customs administration, CLDS demonstrated the efficacy of exposing the source of corruption and provided a blueprint for fighting it.

Part II: Exposing Corruption in the Judiciary

Introduction

Serbia's justice system was perceived by the public as one of the most corrupt branches of the government. Corruption within the justice system debilitated the rule of law and the business climate, leading to biased justice and poor economic performance. Judicial incompetence and corruption reduced protections for property rights and magnified insecurity. As a consequence, entrepreneurs and firms faced high interest rates and enormous transaction costs, while the public lost confidence in the courts, the laws, and the state.

In 2004, the Center for Liberal-Democratic Studies (CLDS), with financial and technical assistance from the Center for International Private Enterprise (CIPE), analyzed the judicial system in Serbia, published a plan to fight corruption in the system, and urged Serbian lawmakers to implement the reforms proposed. In order to diagnose the susceptibility of the judiciary to systematic corruption, CLDS gathered information on judicial frameworks, rules, and procedures that presented potential for abuse, as well as estimates and indicators of corruption in practice. Using this information, CLDS was able to shine light on specific areas for reform and focus the attention of stakeholders on solutions.

A View from the Outside

In order to gauge the attitudes of the business and legal communities toward corruption within the judiciary, CLDS commissioned two surveys in 2004. The first survey collected data from 235 firms in Serbia that had recently engaged in litigation. Three-quarters

of those surveyed regarded the judiciary as slow and about half perceived it as unreliable, incompetent, and dishonest. The survey revealed that the greatest problems in judiciary operations were slowness and inefficiency. The average litigation lasted 1,036 days. Nearly 25 percent of respondents reported they had to make additional payments in order to obtain regular court procedures. The largest share of responsibility for corruption in the judiciary (voiced by two-thirds of respondents) was placed on prosecutors, judges, and attorneys, who had "large" or "significant" responsibility.

To combat corruption in the judiciary, entrepreneurs suggested a number of measures. These included higher standards in the selection of judges, stricter supervision of the judiciary, disciplinary measures, greater emphasis on reporting of irregularities, and greater public awareness of court operations.

A View from the Inside

The second survey included 220 judiciary professionals from all over Serbia. Respondents included court presidents, judges, prosecutors, attorneys, and other judiciary employees involved in the daily routine of commercial courts. The survey clearly indicated that judiciary professionals were not ready to confront problems of corruption and inefficiency. Respondents tended to shift the blame for the poor functioning of courts onto the citizenry and its unrealistic expectations of the justice system. They completely denied the use of prohibited means and procedures – including corruption – to influence court processes. Only a quarter of the professionals were ready to admit that they were frequently faced with attempts to manipulate court proceedings or documentation.

Twice as many respondents thought the judiciary was not independent as those who perceived the judiciary to be completely independent of outside influences. Attorneys were the group most critical of the judiciary. Almost 80% of attorneys believed that judges prolong cases unnecessarily. The vast majority of the survey respondents claimed that the greatest

pressure to act corruptly occurs on the officials responsible for the enforcement of court judgments.

According to the judiciary professionals, the most efficient measures for preventing judicial corruption would be stricter criteria for the selection of judges, better salaries, and better monitoring and control.

Factors in Judicial Corruption

By compiling and analyzing data from the two surveys, the study identified the major factors responsible for corruption in the judiciary. Procedural rules within the judiciary and legislative inaction in the face of a growing need for reform were singled out as major reasons for corruption. Specifically, judges were provided with significant discretionary powers unchecked by sufficient control and monitoring mechanisms. In many cases, legal procedures were undermined as sentencing was carried out according to state directives directly from the executive branch. Inefficiency in court operations made it easier for officials to conceal corruption, while low pay aggravated the problem.

Although the study found that the public perception of corruption in the judiciary was largely justified, it discovered that incompetence and inefficiency posed problems of an equal magnitude.

Solutions

CLDS laid out a comprehensive plan to restructure and reform the judicial system and roll back corruption. The first plank of the reform plan was upgrading legislation. This would involve completing the substantive legal transformation of Serbia as well as overcoming the policy instabilities and inconsistencies of the transition period. It would further require an overhaul of procedural legislation to reduce delay and improve the cost-effectiveness of proceedings.

Increasing transparency of the judicial process was the second plank of the recommendations. Publishing all verdicts and judges' opinions justifying the decisions, for instance, would be a useful first step. This would make it harder for judges to shirk accountability and raise public confidence in the process.

The third plank that CLDS suggested concerned better working conditions for the judiciary. Continuous training for judges and adequate pay for judiciary employees were cited as necessary to the fight against corruption. CLDS also highlighted the lack of a code of ethical conduct for judges in Serbia.

Results

The study findings were publicized at a press conference in Belgrade on September 18, 2004. The conference was attended by the Serbian Prime Minister, as well as the Chairman of the National Assembly. Moreover, one of the consulting judges on the study was appointed to the presidency of the national Supreme Court, thus making the reforms outlined above more likely to be implemented. The chief achievement of CLDS to this date was to synthesize the voices of all the key stakeholders in the judicial reform process into a concrete action plan that has a good chance of being implemented. The methodology of the project is easily transferable to other areas of governance and other countries.

Sources

Boris Begović, Boško Mijatović, and Drago Hiber, editors, *Corruption in Judiciary* (Belgrade: Center for Liberal-Democratic Studies, 2004).

Boris Begović, and Boško Mijatović, *Corruption at the Customs: Combating Corruption at the Customs Administration* (Belgrade: Center for Liberal-Democratic Studies, 2002).

REFORM Case Study

No. 0802 January 31, 2008

Building a Coalition against Corruption

Nafisul Islam

At a glance

- By building a coalition of public and private stakeholders, the Center for the Study of Democracy (CSD) brought anti-corruption efforts to the forefront of the policy agenda.
- Coalition 2000 initiated an annual action plan inspired by CSD's approach to regulatory reform and better governance. The coalition's action plan became a primary influence on the first National Anti-corruption Strategy.
- Administrative corruption in Bulgaria was slashed to half its 1998 level.



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The U.S. Agency for International Development (USAID) is an independent federal government agency that receives overall foreign policy guidance from the Secretary of State. Its work supports long-term and equitable economic growth and advances U.S. foreign policy objectives by supporting economic growth, agriculture and trade, global health, democracy, conflict prevention, and humanitarian assistance. It works in close partnership with private voluntary organizations, indigenous organizations, universities, American businesses, international agencies, other governments, and other U.S. government agencies.



The Center for the Study of Democracy (CSD) is an interdisciplinary public policy institute dedicated to the values of democracy and market economy. It is a non-partisan, independent organization fostering the reform process in Bulgaria through involvement in policymaking and civil society. CSD's efforts focus on influencing economic policy as well as performing a watchdog function with respect to the reform process. These objectives are pursued through a range of research and advocacy activities, practical assistance for institutional development and relevant legislative reform, and training programs.

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CIPE's programs with CSD were funded by the National Endowment for Democracy.

Coalition 2000 received additional funding from the United States Agency for International Development.

This case study was first published in CIPE's 2007 book, *Strategies for Policy Reform: Experiences from Around the World*.

Introduction

Bulgaria's transition to democracy and a market economy in the 1990s was severely constrained by corruption. As state resources were privatized, institutional weaknesses left openings for corruption and allowed the influence of former communist *nomenklatura* and organized crime. Corruption reached every sphere of life and weakened public confidence in democracy. According to a survey by the Center for the Study of Democracy (CSD), 57 percent of adult Bulgarians believed that politicians were primarily interested in securing special privileges for themselves and their friends. Eighty-six percent of the survey respondents believed they had to bribe doctors in order to receive medical services.

CSD, a Bulgarian public policy institute, looked to curb corruption through initiatives in certain key areas. Among their strategies were promoting corporate governance, engaging private businesses in anti-corruption efforts, and advocating for institutional reform in the privatization process. CSD had partnered with the Center for International Private Enterprise (CIPE) in policy advocacy and public-private partnership initiatives since the early 1990s, including the development of a pilot anti-corruption campaign. The success of those initiatives prepared CSD to lead the establishment of an anti-corruption group, Coalition 2000.

In 1997 CIPE provided CSD with the seed money to establish this coalition, which aimed to create a cooperative platform of public and private institutions. This all-inclusive platform combined the input and efforts of various stakeholders irrespective of their political or institutional affiliation. Since its inception, Coalition 2000 has been the most prominent example of a public-private partnership in the area of anti-corruption in Southeastern Europe.

Structuring a Solid Foundation

The institutional structure of Coalition 2000 was designed to ensure transparency, efficient implementation, and optimum partnership between stakeholders. The three major bodies of the coalition are the policy forum, the steering committee, and the secretariat.

The policy forum is perhaps the most important element of Coalition 2000. The forum comprises around 100 prominent representatives from state institutions, non-governmental institutions, and international partners. The forum convenes once a year to review progress and set guidelines for future work. These meetings work toward building political and social consensus between public and private institutions on the implementation of the larger initiative. The steering committee is charged with coordinating the activities and output of the coalition. This committee is composed of representatives from both the public and private sectors, including senior government officials, members of parliament, senior judges, trade union leaders, and business representatives. The secretariat is responsible for providing day-to-day operational management for the coalition's programs and activities. The secretariat also surveys developments and initiatives – both locally and internationally – in the field of anti-corruption and informs the steering committee of these trends. Together, the three bodies oversee the activities of Coalition 2000.

The government no longer denies that corruption exists and is implementing an active strategy against it. Administrative corruption has been slashed to half its 1998 level. CSD's Corruption Monitoring System demonstrated that corruption can be measured and that measurement is crucial to developing successful solutions.

Creating a Plan for Action

The Anti-corruption Action Plan for Bulgaria was one of the first initiatives of Coalition 2000. The plan's goal was to reform the design and implementation of anti-corruption policies in Bulgaria. It laid out a detailed explanation of the coalition's approach to reform: creating a favorable institutional and legal environment, increasing transparency, enhancing civic control, and changing public perceptions. The plan was a cooperative effort from the beginning.

Key stakeholders—including government ministers, foreign ambassadors, heads of NGOs, and members of inter-governmental organizations—participated in the draft preparation of the plan before it was endorsed by the policy forum in November 1998. The Action Plan is assessed and revised annually to include any changes in the strategy or policies of the coalition.

The policy agenda set by the Action Plan allowed the coalition to comprehensively address policy areas most vulnerable to corruption. It outlined steps to reform public administration, the judicial system, the privatization process, and regulation of private enterprise. Antonio Vigilante, Resident Coordinator of the United Nations in Sofia, described the Action Plan as “more than an anti-corruption plan; this is a plan for good governance as well.”

Regulatory regimes were identified as one of the primary causes of the high incidence of corruption between businesses and government. CSD’s main initiatives against corruption aimed to make licenses, permits, and registrations fewer in number and easier to obtain. CSD’s advocacy work on legislative reform in the field of privatization, supported by CIPE, was instrumental to the success of the regulatory reforms in the 1998 Action Plan.

Cutting Corruption, Monitoring Progress

One notable achievement of the coalition has been bringing anti-corruption to the forefront of the policy agenda. There had been virtually no discussion in Bulgaria about this issue prior to CSD’s work. Due to CSD’s activism in this area, the public is now less tolerant of rent seeking and demands increased accountability from public officials. This widespread awareness and vigilance largely explains why administrative corruption has been slashed to half its 1998 level.

Measuring corruption, through CSD’s Corruption Monitoring System (CMS), was an important method the coalition used to raise awareness. The system is a set of quantitative and qualitative monitoring instruments designed to generate information about the scope and dynamics of corruption. The CMS

also measures related perceptions about corruption among the public, public sector officials, and other professional groups. The system’s main product is the Coalition 2000 Corruption Index (CI), which summarizes the general dimensions of corruption and corrupt behavior, and is published on a quarterly basis. The qualitative and quantitative surveys of the CMS have confirmed that political elites as well as the public recognize corruption as a major impediment to democratic and free market systems.

Anti-corruption is now a strategic concern of the Government of Bulgaria. The government’s first comprehensive anti-corruption document—the National Anti-corruption Strategy—was prepared with the active participation of Coalition 2000 and was largely based on the 1998 Action Plan. In early 2006, CSD was the primary institutional participant in drafting the government’s three-year anti-corruption strategy, which called for a comprehensive mix of prevention and enforcement. The national strategy also led to the development of a system of indicators to monitor progress and actual impact, based on CSD’s monitoring system.

Coalition 2000 was a strong proponent of the institution of the ombudsman, now accepted as a key element of a transparent governance mechanism. Since the election of Bulgaria’s first ombudsman in April 2005, this office has investigated a significant share of complaints received. Within the first year and a half, the ombudsman received nearly 2,500 individual complaints and alerts. In almost 97 percent of the cases, the ombudsman took action regarding the specified matter. Most complaints referred to property issues such as land restitution, but there were considerable numbers of complaints pertaining to social issues, public services, and administrative services.

Coalition 2000 has made great strides in establishing the fight against corruption as a mainstream concern on the policy agenda, and in evaluating its progress. Today, government in Bulgaria no longer denies that corruption exists, and is implementing an active strategy against it. The public, once accepting corruption as a matter of fact, is now verifiably less tolerant, demanding increased accountability in public

service. CSD's Corruption Monitoring System has demonstrated that corruption can be measured and that measurement is crucial to developing successful solutions.

Sources

Coalition 2000, "Anti-Corruption Reforms in Bulgaria" (Sofia, 2005).

Coalition 2000, "Creating an Enabling Anti-Corruption Environment" (Sofia).

Coalition 2000, "Local Initiatives in the Period 1999-2000" (Sofia, 1999).

Coalition 2000, "The Coalition 2000 Process in 1999" (Sofia, 1999).

REFORM Case Study

No. 0803 January 31, 2008

Creating Frameworks for Anti-corruption and Ethics

Nafisul Islam

At a glance

- The Colombian Confederation of Chambers of Commerce (Confecámaras) was a leading advocate for the reform of Colombia's Procurement Law No. 80 and successfully promoted guidelines that enhanced competitiveness and transparency in public procurement.
- Confecámaras engaged the private sector in anti-corruption initiatives, including Transparency Pacts ultimately adopted by 77 mayors and governors.
- 1,855 businesspeople subscribed to an Ethical Code of Conduct developed by Confecámaras.



published by the

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The Colombian Confederation of Chambers of Commerce (Confecámaras) works to achieve mutual cooperation between public and private sectors. Confecámaras promotes entrepreneurial development and represents common interests of its comprising chambers of commerce in both national and international fora.

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Introduction

Drug trafficking and terrorism are often portrayed as the most severe threats to Colombia's economic and political progress. But in a survey conducted by the Colombian Confederation of Chambers of Commerce (Confecámaras) and the Corona Foundation, more than 37 percent of Colombians identified corruption as the country's main problem. Confecámaras pioneered the Probidad ("integrity") project in late 1999 to fight corruption in the public sector and change the culture of business in Colombia. The goal of the project, a multi-faceted private sector initiative supported by the Center for International Private Enterprise (CIPE), was to promote business ethics and develop a transparent business culture. It also sought to respond to pervasive corruption by forming legal and regulatory foundations for ethical business.

The private sector had always played a minor to insignificant role in challenging Colombia's pervasive corruption, mainly due to a fear of political retribution. Confecámaras became the first private sector organization to undertake a dedicated anti-corruption campaign in Colombia; because of its initiative there is today a greater awareness of corruption and its relationship to the private sector.

CIPE encouraged Confecámaras to drive a policy advocacy campaign that would engage both the public and private sectors on the issue and create a better environment for ethical business. When the Probidad project was initiated, a substantial portion of Colombia's government resources were distributed through public contracts. The absence of transparent rules and regulations in the procurement process created opportunities for widespread corruption. These circumstances spurred the Probidad project to work toward curbing corruption with a particular focus on restructuring the procurement process.

Confecámaras began its initiative by conducting three anonymous surveys on corruption that included more than 1,500 respondents in 15 cities in Colombia. The surveys helped gauge the perceptions of businesspeople concerning the local procurement processes. The anonymous format of the surveys

allowed respondents to comfortably engage in open discussion on businesses' initiation of and participation in corruption. The results suggested that the timing was right for reform and that it could be effectively initiated by the private sector. Although the majority of the business leaders participating in the survey acknowledged their involvement in unethical business practices, 62 percent said that they were ready to accept the costs of committing to higher ethical standards. The surveys served as a platform from which other anti-corruption initiatives were launched.

From Surveys to Results

Confecámaras took the lead in developing five key frameworks for its two primary objectives: combating corruption in general and addressing procurement problems specifically. One of these frameworks was the development of Transparency Pacts in early 2003, just before the democratic elections for governors and mayors. The Presidential Program against Corruption invited Confecámaras to participate as a strategically in the development of these pacts. The initiative aimed to solidify political candidates' public commitment to transparency. It resulted in a total of 77 elected mayors and governors committing to transparent practices. To complement this process, Confecámaras mobilized citizen organizations to form follow-up committees that would gauge compliance with the Transparency Pact after the elections.

It is now mandatory for all government agencies to adhere to new guidelines for enhancing competitiveness and transparency in the procurement process. The private sector has become actively engaged in anti-corruption.

Not long after the Transparency Pacts project, Confecámaras developed the Ethical Code of Conduct, a voluntary measure to promote higher standards of integrity in business transactions and to provide protection for firms that are subjected to extortion attempts. For its pilot program in November 2003, Confecámaras selected 10 small- and medium-sized enterprises (SMEs) in Bogota that had subscribed to the code. This pilot program evaluated the effectiveness

of the code and incorporated the findings in a revised version. In 2005, Confecámaras published the “Guide for Ethical Management of SMEs,” and followed up with workshops in six cities to promote the guide and explain how ethics could be a competitive tool for businesses. In all, 1,855 businesspeople subscribed to the code and its principles.

Confecámaras was also successful in developing public-private partnerships at the local level. In the city of Manizales, the municipal government made Integrity Pacts mandatory for most large-scale public bids. The city’s new process included an oversight committee comprising participating public sector businesses and agencies, local chamber of commerce representatives, and Probidad project staff . The committee evaluated the procurement process and disclosed any falsified contracts. This process greatly increased the levels of transparency in Manizales’ public procurement system. During the project, 12 Integrity Pacts were signed between the municipality of Manizales and the governor’s office. The initiative was well-received by local business leaders, who aided in revising the procurement process at the same time as making private-public partnerships more transparent.

Probidad advocated at the national level for legislative reform toward transparency in the procurement process. In 2002, the Colombian Government began investigating ways to strengthen and improve the procurement process and to create a new procurement law. Confecámaras was invited to participate in a series of meetings along with other experts on procurement law. As a result of this process, in September 2002 the government promulgated Decree No. 2170, which established new rules for the prevention of corruption in the public procurement process. The decree included five business community recommendations gathered by Confecámaras. All five of these recommendations

were incorporated as mandatory requirements in the decree. They addressed the need to publicize the terms of reference of each public bid, expand public awareness, encourage the participation of civil society, ensure objective selection on direct purchases, and strengthen electronic contracting procedures. The decree made it mandatory for all government agencies to adhere to the new guidelines for enhancing competitiveness and transparency in the procurement process.

Creating Sustainable Foundations

Confecámaras and its Probidad project led the way in developing frameworks for combating corruption and introducing higher ethical standards into the procurement process. Its reputation is now well known in many arenas. Recently, Confecámaras was a leading advocate for the reform of Colombia’s Procurement Law No. 80, expected to pass in 2007. The reforms were modeled after the Probidad project’s surveys on corruption. Almost all congressional debates on the Procurement Law made reference to research and recommendations produced by Confecámaras; additionally, Confecámaras created key alliances with other private sector actors in support of the legislative changes. The most important changes that were approved included the elimination of automatic concessions and the promotion and strengthening of local SME participation in public bids.

The most far-reaching impact of Probidad has been its success in actively engaging the private sector in anti-corruption initiatives. The Probidad program generated a new relationship between the public and private sectors and introduced a new, more systematic understanding of corruption and ethics into Colombian society. Its code of conduct is regarded as the backbone of strategies to encourage business ethics and promote a new class of business leadership in Colombia.