

EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES

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Co-financed by



ISCTE, Lisbon
14-16 May 2008

FAILING ANTICORRUPTION AGENCIES – CAUSES AND CURES

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Introduction

Anticorruption agencies are usually created when corruption has spread so widely and the police are so corrupt that offences of bribery are no longer investigated or prosecuted. In a desperate attempt to stop the rot the government establishes the anticorruption agency, half believing that the problem will then disappear. New laws, new corruption offences, more severe penalties, a new agency but still the problem gets worse. Many of these agencies fail dismally to have any impact. Very few can be said to have succeeded at all. Why?

Let me indicate some of the reasons and then go on to suggest what might be done

The reasons for failure

The causes of failure fall into broad categories relating to political considerations, realism in objectives and expectations, strategic vision, the anticorruption laws, implementation policies and practices, public confidence and staying in control of the problem.

Weak political will

Even if the determination to tackle corruption was initially strong (usually from a government newly in power) it often diminishes as the realities of office, the vested interests in the status quo and the pressure of more immediate tasks bear on the actions of government. No steps are taken to protect and sustain that fragile political will.

Lack of resources

The anticorruption initiative competes with other even more demanding causes for the limited financial and personnel resources available. Time and again agencies fail for lack of resources. Without adequate resources the agency cannot do its job.

Political interference

Well-intentioned but overly detailed monitoring of the operational activities of the agency leads to ineffectiveness. Sometimes the interference is deliberately intended to aim the agency at political opponents who therefore have every interest in hampering its work. Sometimes the interference is done through an instinct of self-preservation.

Fear of consequences

Often related to self-preservation, fear of the pain caused by effective enforcement drives the government to curb the agency's operations.

Non belief in benefits

A reluctance to accept that real benefits – economic, social, administrative and political – will accrue leads to questioning whether the painful effort is worthwhile.

Unrealistic aim and expectations

The erroneous belief that corruption can be eradicated and the expectation that it can be achieved in a short time are inevitably disappointed and result in discouragement.

Traditional reliance on enforcement alone

The understandable reaction to the extensive criminality of corruption is the enactment of more offences, severer penalties and stronger

investigative powers that erode human rights, ignoring the numerous lessons of experience that enforcement alone never deals with corruption but on the contrary tends to make matters worse.

Failure to understand nature of corruption

The mistake of relying on enforcement is the result of failing to understand the nature of corruption, that it is secretive and complicitous, that it is not a crime that leaves an aggrieved “victim” in the usual sense who is likely to provide information about the crime and give evidence in court, and that anyway people often do not see it as a crime and so are unlikely to be concerned to help the authorities. In addition, people have only a vague idea of the harm caused by corruption – the causal connection between corruption and many of the ills of society is difficult to see.

Lack of strategy

Failure to understand the nature of corruption makes policymakers fail to realize that corruption cannot be dealt with by enforcement alone, as one might deal with burglary or rape. Countries continue to try to deal with corruption by investigating, prosecuting and sentencing. Only recently have some tried to prevent corruption by eliminating the opportunities for behaving corruptly and to change people’s attitude to corruption.

Inadequate law

Often the laws against corruption are inadequate in that they are either overly complicated and unintelligible or they do not contain some basic offences. For example, the law applies only to public officials and not to the private sector, or only to the receiver of a bribe and not the giver, or does not prohibit public officials from soliciting or receiving gifts – gifts that cannot be proved to be an inducement or reward. Sometimes the law is created as an elaborate instrument aimed at the wrong target. An example is the system of declarations of assets that legislators and public officials are required to make.

Lack of coordination

Even when a country recognises that fighting corruption requires more than merely enforcing the laws and has a strategy involving the elements of prevention and public education, the strategy fails because its elements are not advanced together, are not coordinated and thus fail to reinforce each other.

Lack of focus, not sole function

Fighting corruption is sometimes made the responsibility of a body which already has other functions. The Auditor General or the Comptroller

General, the Ombudsman, the Commissioner for Human Rights, the Ministry of Education and even the State Revenue Service have all been pressed into service. Not surprisingly, the fight against corruption is not and cannot be the most important item in their portfolios.

Given the wrong responsibility

Sometimes an anticorruption agency is created but is given additional responsibilities that distract it from its main function. Examples are the policing of election regulations, not merely electoral bribery, and “economic crime” or “fraud” or “misappropriation of public funds”. Another example is “disciplinary or administrative offences”. The most common error stems from a belief that corruption can be defeated by good governance reforms; the anticorruption body is made responsible for supervising good governance reforms, which serve only to distract it from aiming at corruption

Not given sole responsibility

A common mistake is to fail to make the anticorruption agency the only body responsible for investigating corruption allegations. Instead of channelling all such allegations in one direction, other agencies are expected to take a hand – the police, the audit department, the revenue services, even the public service administration. The result is usually incompetent investigation half-heartedly done.

Premature delivery

Too often an anticorruption agency is expected to be operational at the moment that the law creating it comes into force. Insufficient time is allowed to select and train personnel, establish operational systems and prepare manuals of operation. The result inevitably is that the newly born agency cannot cope. Its inability to deliver what is expected squanders valuable goodwill.

Overwhelmed by the past

The past is especially a problem in countries that have suffered widespread corruption for many years. The government announces a new initiative and launches an anticorruption agency that will deal with the problem. Public expectation is raised. The agency opens its doors for business. Two things can happen. Either the new agency is swamped by information from the public that it cannot properly deal with, much of it going back years. For want of time and resources current corruption goes unchecked. Alternatively resentment from influential sectors of the community builds up against the effective action taken on past misdeeds and the political will to continue the fight fades.

Minimal community involvement

If little has been done to involve the community in the work of the agency, the inevitable result is that the public comes to distrust the agency and provides no information about what is going on. Without that information the agency's investigative powers are useless. Furthermore, its preventive and educational work is likely to be ignored for lack of public support.

Lack of transparency

Some of the fight against corruption requires confidentiality if it is to be effective. Strong investigative powers are needed. But the combination of strong powers and confidentiality easily breeds suspicion in the public mind that the agency is abusing its position. Without a conscious effort to open up to public scrutiny in those areas of its work where it can do so, the agency grows secretive. Only exceptionally can it then remain effective.

Insufficient accountability

Any government body in receipt of public funds should be required to account for the way it has spent that money. An anticorruption agency which regards itself as an exception is doomed to fail. Failure to account for its implementation of the strategy and for the conduct of its officers will alienate the public. Without community support it cannot do its job.

Confidentiality not preserved

Informants are usually reluctant or fearful. The source of information dries up if confidentiality is not assured or even if the informant is required to identify himself before his complaint can be investigated.

Selectivity in investigations

Anticorruption agencies are often tempted to be selective in the allegations they investigate, if only from an understandable desire to prioritise in order to stretch scarce resources to maximum effect. If they do so, they almost certainly lose public support. First, putting aside a minor allegation will deter the complainant from returning, perhaps with a much more important matter. Second, what appears minor quite often turns out to be important when investigated. Thirdly, picking and choosing what to investigate and what not to investigate raises suspicions of improper motives, if not of corruption. Fourthly, numerous minor acts of corruption can be as harmful to the wellbeing of the country as is one major act. Finally, an anticorruption agency that investigates only some acts of corruption proclaims to all that some corruption does not matter, that double standards apply. This selectivity in investigation contributes to loss of public confidence in the agency.

Failure to develop public trust

Anticorruption agencies are often established at a time when the public is sceptical, distrustful or even hostile about state institutions. But time and again these agencies do little to develop public trust. Often they are unaware of the vital need to do so.

Lack of strict code of values and discipline

In an atmosphere of pervasive corruption it is easy for the agency's staff to live and work and behave no differently from the rest of the community. No particular code of conduct is made to apply to them, no discipline prevails, no disciplinary action is taken. Those appointed to uphold the values set out in the law are no different from the rest of the community.

Loss of morale

In such an atmosphere it is hardly surprising that the morale of the staff of the agency sinks. There is no pride in the institution or in the job.

Agency itself becomes corrupt

Before long corruption begins to spread in the agency itself. When that happens, it only remains to bury that particular anticorruption initiative, the sooner the better.

What's to be done?

From what has been described so far, what needs to be done to give the next anticorruption initiative a chance of success should be obvious. The lessons are there to be applied next time.

Back to the drawing board

Assuming that the situation in the country has not improved and that the police are as corrupt as ever, the first thing to be done is to return to the drawing board and rethink the problem and its solution.

The offences

The bribery offences should apply to everyone in the community. They should sanction both parties to the corrupt transaction, not just one. They should apply to corruption in the private sector as well as in the public sector. The acceptance of a gift by a public official should be an offence even if it cannot be proved to have been a bribe.

National strategy, clear, comprehensive and coherent

Having realised that corruption is a complex phenomenon, the conclusion should follow that fighting it requires a strategy – clear, coherent and

comprehensive. It is now recognised that the strategy must comprise three elements:

the laws enshrining our community values on corruption must be enforced, of course;

corruption must be prevented by eliminating from the systems in which we work and live the opportunities for corruption;

we must educate everyone about corruption and we must involve the community and get people to join the fight.

Coordination

The strategy has to be given every chance to succeed. We know that if its three elements are advanced together from the beginning they are a stronger force than if each element acts separately. So their implementation must be coordinated. A person or body will have to do that job of coordination. And if the reasons for failing the first time included the fact that the elements were entrusted to different agencies which lacked dedication to the task, the job of coordinating and implementing the strategy will have to be made the responsibility of one agency – one agency dedicated to fighting corruption and given no other tasks that might detract from its central duty.

Improved laws – offences, investigative powers, evidentiary provisions

A review of the anticorruption laws will have to be carried out and changes made where necessary. The objective is to have clear, basic offences, adequate penalties, strong investigative powers and evidentiary provisions in aid of successful prosecution.

An independent and accountable agency

The agency will be created by law. The law will both provide for its independence and specify the methods by which it is to be accountable to the community. It will also provide for the agency to be properly resourced from public funds voted by the legislature. It will provide for the appointment and removal of the head of the agency and make the agency responsible for coordinating and implementing the strategy.

Proper selection of personnel

The agency cannot afford to have working for it anyone whose integrity is in doubt. Ability and dedication are not enough. A selection procedure that includes positive checking is therefore essential. The head of the agency will be the appointing authority.

Decent terms of employment

For most of the personnel second jobs to supplement public service salaries will not be permissible. So agency staff must be paid enough for a decent standard of living and be provided with adequate working conditions.

Code of conduct and discipline

If agency staff is to be treated as an elite corps, they must behave accordingly. They must know from the beginning that they will be expected to conduct themselves to a high standard. They must also know that their conduct will be monitored and that lapses of discipline will not be overlooked. Serious misconduct or questionable integrity will lead to dismissal. The head of the agency will be its disciplinary authority.

Operationalisation

This time the agency will be better prepared and will open its doors for business only when it is ready to deal efficiently with its responsibilities.

Community involvement

The most serious mistake made the first time will not be repeated. The government now knows it cannot take on corruption without community support. This time the community will be involved from the outset. First, in proposing ways in which the strategy is to be implemented. Second, in serving on advisory committees that will offer guidance to the agency on developing each element of the strategy and, as representatives of the community, monitor the way the agency does its job. The leaders of every part of the community will be enlisted to take the message to their own people and get them on side.

Accountability

Proper accounts audited by the public auditor, an annual report to the executive and the legislature, and answerability for the conduct of subordinates will all be features of the new agency. The advisory committees will report separately.

Transparency

Confidentiality will be kept to the minimum necessary to do the job properly. Everything that can be made public will be. Consistently with that policy, enquiries from the press and the public will be dealt with promptly and accurately.

Confidentiality

Where confidentiality is necessary, everything will be done to maintain it and to make that clear to the public.

A fresh start

This time the leadership of the country will consider the advantages and risks of making a break from the past and starting afresh. It is a decision that can be taken only at the top. It will be taken at the outset and, whatever the decision, it will be explained to the people.

Adequate funding

Knowing now that corruption cannot be fought effectively without an investment of scarce national resources, the political resolve will keep this national problem on the agenda and be translated into voted public funds.

Lessons from elsewhere

Those responsible for implementing the strategy will be alert to the lessons to be learned from other countries, both their mistakes and their successes. Anything that could improve the chances of success should be heeded.

Leadership

The simple but highly effective lesson of leadership by example will be encouraged at every level, the example from the very top being the most effective.

Benchmarks for measuring achievements

This time the agency will keep figures of what it does and will publish them. The public will be regularly sounded out, not only about what it thinks of the corruption situation in the country and of the agency itself, but more importantly what the individual's own attitude is to corruption. Over time the extent of true success, the change of personal attitude to corruption, will be tracked in these surveys.

Realisation that beating corruption takes time and resources

This time the policymakers and legislators know that the battle cannot be won in a day. They know it will take time and resources. But they also know the rewards of success are worth the investment. And once on top of corruption, the country will have to stay on top. That means that fighting corruption becomes a permanent item of public expenditure.

Chances of success?

Despite the lessons learned and applied, the new, better anticorruption agency cannot guarantee success. Anything could go wrong. But the prospects of the agency making a real contribution to winning the battle are brighter.

Closing remarks

This list of things that go wrong and things that could be put right is not comprehensive. No doubt other reasons could be advanced why so many anticorruption agencies are ineffective. And it must be emphasized that an anticorruption agency is not in itself the answer to a beleaguered country's corruption problems. An agency can ever only be a part of the solution. But it is the part on which success depends.
