

## Session Two

### NATIONAL AND INTERNATIONAL STRATEGIES FOR REDUCING CORRUPTION

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#### Summary

The OECD's excellent work on corruption in international business transactions focuses on a lacuna in current law in most OECD countries. If I as a citizen of one country bribe you as an official in another, I am not guilty of a crime in my country. The OECD recommends that individual countries should develop appropriate laws and policies to deal with this problem, and the OECD will monitor progress.

This conception of both the problem of corruption (bribery in international business transactions) and the way of addressing it (legal reform) may seem limited. True, international bribery can involve big money, and it can add 15 per cent or more to the cost of major procurement contracts and public works. But as serious as the effects are, they are small when contrasted with the *systematic* corruption of legal systems, economic management, the delivery of public services, and policy making that plagues many developing countries. Systematic corruption can disastrously skew incentives, undermine voluntary compliance, deter investment, and render democracy ineffectual.

Systematic corruption is not inevitable or intractable, even in the poorest settings. Nor must we wait a generation for education, moral reform, cultural change, or other supposed long-run remedies. This paper summarizes a perspective for dealing now with systematic corruption -- a perspective that focuses on corrupt systems rather than corrupt individuals. The paper outlines a *framework for policy analysis*, which emphasizes incentives, monopoly, discretion, and accountability.

A framework provides guidance but not specific steps, which experience suggests must be developed in each country, by local people. *Participatory diagnosis* involving top policy makers and citizens has proven successful. In two-day workshops, local people work together through (a) successful case studies of anti-corruption efforts from other countries, (b) frameworks for appraising corrupt systems, and (c) their own analysis of the types of corruption present in the given country or government agency. This process has proven useful in demystifying corruption, devising practical strategies, and generating ownership.

The components of an anti-corruption campaign vary, but they often include such elements as:

- experiments with incentive reforms in the public sector;
- mechanisms to enhance accountability, especially through the involvement of business and citizens;
- enhancing capabilities in investigation, prosecution, and the judiciary;
- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative requirements; and
- structural reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.

Implementing these strategies requires political and managerial acumen. How might political will be generated, and how might the cynical culture of corruption be broken? In many countries, where ruling parties are known for corruption and top leaders suspected, helping the government attack corruption requires several pieces of convincing: (a) that something practical can indeed be done; (b) that doing it will not be political suicide, but in fact can become good politics domestically and internationally; and (c) that international help will be available, including a measure of political insulation. Once a government wishes to act, it must attack the culture of corruption, for example by "frying big fish" (apprehending a few big offenders to signal that impunity is over) and taking other high-profile steps. These political dimensions of fighting corruption are important parts of an effective national strategy. They, too, require specification in a given situation, a task of the utmost delicacy.

Despite the sensitivity of devising and implementing strategies against systematic corruption, international organisations can help -- and indeed already do help, through support for democratic reforms, more competitive economies, and improved governance. International aid can be allocated to countries willing to undertake reforms to address systematic corruption. International organisations can sponsor policy research where each country agrees to involve its private sector and civil society in investigations of corruption in a few areas, such as revenue raising, procurement, and the justice system. International organisations can help assemble and share examples of best practice and frameworks for policy analysis -- what might be called "tool kits" for fighting corruption.

International cooperation in the private sector may also be important in fighting corruption. The private sector is part of the problem and part of the solution. A promising idea is to help the business community develop standards of conduct and credible self-enforcement mechanisms, with international linkages and assistance.

The international community is also part of the problem and part of the solution. And it is in this light that the OECD Recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption's sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries -- especially the bribes their citizens pay -- that developing countries will be willing to accept international assistance in addressing systematic reform.

## **1. Introduction**

What is the problem of corruption, why is it surfacing now as an international priority, and what can individual countries and the international community do to control it? The present paper focuses on the last question, but in order to do so must briefly address the first two.

### ***a. What is the problem?***

What is the problem of corruption? Much of the OECD's recent work on corruption, as well as that of the new international NGO Transparency International, focuses on "corruption in international business transactions."<sup>2</sup> A major example is bribery, where an international firm pays a government official to obtain a contract. Such bribery is only part of a generalised phenomenon of corruption, which now seems to threaten democratic and economic reforms in the former communist countries, in Africa and in some parts of Latin America and Asia. In some countries or sectors of countries, the "rules of the game" are delegitimised by the perception and the reality that corruption can sway policies as well as particular contracts, can reshape legislation, and can make a mockery of the justice system.<sup>3</sup> Systematic corruption generates economic costs

by distorting incentives, political costs by undermining institutions, and social costs by redistributing wealth and power toward the rich and privileged. When corruption undermines property rights, the rule of law, and incentives to invest, economic and political development are crippled.<sup>4</sup>

Tackling international bribery will only make a small dent in systematic corruption. Even if countries could agree upon and promulgate ideal laws against bribery in international business transactions and ideal codes of conduct for both public and private sectors, effective *action* must be complemented by changes in strategy, policy, and management. For these reasons this paper suggests that we ask ourselves what changes in strategy, policy, and management might reduce systematic corruption.

***b. Why now?***

This symposium is only one more important piece of evidence that the international community is now openly discussing a problem that even a decade ago was virtually taboo.<sup>5</sup> Why is corruption surfacing now as an international priority? I have not encountered a fully convincing explanation. One possibility is that corruption is growing worse. But why? One argument cites the rapid rise of international trade and international communications, so that people are exposed to economic temptations as never before. Another points to the democratic and economic reforms that have swept the world, which have created new opportunities for corruption by rapidly changing the accustomed rules of the game and, in many cases, because policy changes are often not accompanied by sufficient development of the institutions and the public-sector incentives needed to make free markets and democracy work.

Or are we simply becoming less tolerant of corruption? One idea is that we perceive corruption to be a greater obstacle now that the Cold War has abated and economic policies and multiparty politics are roughly “got right.” Another possibility is that we blame corruption for the fact the neither freer markets nor democratic reforms have yet lived up to expectations, in order that we can avoid admitting that those policies and politics may *not* be right everywhere. Or perhaps because political reforms have granted new freedoms to document and complain about corruption, we are made more aware of it.

I raise this second question “why now?” not to resolve it but in the hope that after pondering it for a moment we can set it aside. Whatever the reasons for today’s greater concern over corruption, it is a change we should welcome. Simply put, corruption constrains economic and political development. Our work together at this symposium to distinguish different kinds of corrupt phenomena and analyze how we can work together to fight them is hardly an academic undertaking. It is an opportunity to catalyse badly needed change on a problem that has for too long been overlooked.

***c. What works?***

Which brings us to the third question: What *can* be done by individual countries and by the international community to attack deeply rooted corruption?

## 2. National Measures

### *a Legal reforms*

#### *1. A legal lacuna*

The OECD's preparatory work for this symposium usefully focuses on a void in existing national and international law. If I as the citizen of one country bribe an official in another country, I may not be guilty of an offence in my country. The OECD background papers make three important points about this lacuna.

First, there are good reasons in legal theory, and reasons (if not always good ones) in domestic politics, for restricting the application of the law in this way.

Second, there is apparently not the will among the developed countries to agree upon a law such as the U.S. Foreign Corrupt Practices Act, which does count bribery abroad as an offence at home. International organisations are limited in what they can do to forge that will.

Third, it is nonetheless true that almost every country, even the poorest, does have laws against bribery that could be applied to both local bribe-taker and foreign bribe-giver, if there were sufficient will and competence to apply them.

These three points suggest a strategic question: How can the international community help what OECD documents call the "victim" countries of international bribery to effectively apply the laws they already have against such transgressions?

The OECD recommendation includes several possibilities, which are included in the agenda for this symposium. Countries could pass new laws concerning: the tax deductibility of bribes (or commissions above some small percentage of the value of the contract); the accounting requirements of companies participating in large-scale public contracts; banking and financial provisions to improve the availability of data relevant to investigations of bribery; simpler and more transparent rules concerning bidding, licensing, eligibility for subsidies and tax breaks; and others. The OECD documents are persuasive that there is room for international progress in each of these areas.

Nonetheless, I wish to suggest two caveats. First, as noted earlier, progress in these areas will not attack the most serious manifestations of corruption in developing countries. Second, in most cases the principal obstacles to fighting corruption are not better laws.

#### *2. Four examples of needed legal reforms*

When most of us consider how to reduce corruption, our reflex is to think of legal measures. Better laws can make a difference. Let me provide several examples, before explaining why I think that anti-corruption efforts must go beyond legal reforms.

##### (a) Financing political parties and campaigns

In many countries campaign financing involves coerced payments, and sometimes straight graft, which benefit a party if not a particular corrupt individual's bank account. When such behaviour becomes systematic, even an "honest" political party may feel compelled by the corruption of its competitors to shake down businesses with implicit promises or threats. In the past in countries such as Bolivia and the



Philippines, parties have used their members in public agencies such as the customs bureau or the internal revenue service to siphon off public funds for their political war chests. In Venezuela, parties and local politicians set up "foundations" and non-government organisations into which public funds for "local development" can be channelled, without the usual government auditing procedures.

Pressures for these sorts of corruption can be reduced through strict limits on campaign activities and party finances, both externally audited, coupled with the public funding for campaigns and mandatory, balanced time allocations on television and radio. (For the record, I would put several OECD countries at the head of the list of nations that would benefit from reforms in campaign financing.)

#### (b) Laws against illicit enrichment

Another example concerns the illicit enrichment of public officials. Corrupt activities can be tracked in several ways: the actual transaction, the change in policies or practices that the corrupt activity entails, and large increases in the wealth of public officials. In some countries government officials can be prosecuted not only for direct evidence of having received a bribe -- evidence which is always difficult to obtain -- but also for possessing wealth beyond what can be explained as the result of lawful activities. Some countries have even reversed the burden of proof: a government official may be required to demonstrate that his wealth, and perhaps that of his immediate family, was acquired legally. In some countries there is no need to prove the individual is guilty of a crime.

Obviously, illicit enrichment laws carry risks. The power to demand proof can be misused. Excellent potential candidates for public office may be deterred by the possibility of having to open up their finances and the finances of their families to public scrutiny. And it may not be too cynical to note that in very corrupt situations such a law will drive corrupt officials to hide their wealth in secure places beyond the country's borders, which in the limiting case could leave corruption unaffected but reduce domestic investment and consumption.

Nonetheless, in Hong Kong the leverage obtained by a change in the law concerning illicit enrichment helped turn around the battle against corruption, as part of a wider-ranging package that included preventive measures, better enforcement, and public education and participation. A useful precedent internationally is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr. 1 and 2).<sup>6</sup> The principle of forfeiture of assets applies, with the onus of proof on the accused. Because of possible abuses with regard to accusations of corruption, this reversal of the onus of proof probably should be restricted to the evidence and be made rebuttable.

#### (c) Laws relating to disclosure and penalties

"Sanctions by administrative authorities may not merely reinforce the threat of criminal prosecution but may constitute an even more credible threat."<sup>7</sup> Criminal sanctions against corruption have not had great success against corporate bribery. But if bribery reporting is made mandatory to regulatory and tax authorities, the prospects change. Compared with police, these agencies usually have access to better information and have more expertise. It is relatively easier for them to impose sanctions. Such agencies may also play on a divergence of interests within corporate structures (auditors and board members who may be reform-minded or merely self-protective).

A variety of informational requirements might be considered, and the OECD background documents mention several. The balance must be kept: obtain more information but also make sure not to create dysfunctional transactions costs -- and make sure that enforceability is a prime consideration. Reporting requirements might be combined with self-policing by private corporate groups (see below).

(d) Laws affecting the ways anti-corruption efforts are structured

A fourth example: better laws can decisively affect the way anti-corruption campaigns are structured. For example, some countries such as Hong Kong and Singapore have set up anti-corruption agencies, whose job is to co-ordinate a government-wide effort. On a less grand (and less expensive) scale, anti-corruption statutes may simultaneously (1) create an anti-corruption “czar” from among existing agencies (such as the chief prosecutor, the controller general, the minister of justice, and so forth) and (2) enable and require various kinds of co-ordinating mechanisms and oversight functions, to ensure that the different parts of the effort are articulated and that the public has the ability to monitor what the anti-corruption effort entails. An exemplary anti-corruption statute of this kind, in my opinion, is the draft law prepared by the unsuccessful Colombian presidential candidate Andrés Pastrana for the 1994 election.<sup>8</sup>

3. “Better laws” are insufficient

There are many other examples of better laws that can help control corruption, such as when a flat tax or a simplified licensing law reduce the scope of illicit activities. But in my experience discussions of anti-corruption efforts are sometimes unhelpfully dominated by legal deliberations.

“Better laws” are usually insufficient to reduce corruption. In 1989, I interviewed a score of senior World Bank officials concerning corruption in Bank operations and in the countries with which the Bank worked. Typical was the judgment of one senior public works expert. He pointed out that Ecuador’s procurement laws were the most advanced and sophisticated in the world. Nonetheless, he said, corruption plagued government procurement there. He gave other examples where differences in laws could not explain differences in the corruption and inefficiency that he had seen in ministries of public works. Other Bank officials confirmed this insight.<sup>9</sup>

Consider, too, Mexico’s recent experience in fighting corruption. When Miguel de la Madrid became president in 1982, one of his first acts was to promulgate a new administrative law. His anti-corruption strategy, entitled *renovación moral*, coupled legal reform and ethical exhortation. Despite some successes, many observers believe that de la Madrid’s efforts against corruption were not as effective as he had hoped. President Carlos Salinas’s initiatives had more impact, and yet they relied hardly at all on new laws.<sup>10</sup>

What other approach might supplement a legal perspective? Instead of seeing corrupt activities as deviant behaviour by unethical individuals, we might examine them as the economic behaviour of calculating actors in *corrupt systems*. Instead of seeing the preferred response as legal reforms and better rules, we might consider how to reform corrupt systems through improved information, incentives, competition, and participation. In this approach, better rules and laws help to the extent that they enhance information flows, induce competition and reduce monopoly, and avoid perverse incentives while creating virtuous ones. But “better laws” comprise only a subset of the desired strategy.<sup>11</sup>

## ***b. Analysing corrupt systems***

### ***1. Think systems, not individuals***

Corruption is the misuse of office for non-official ends, usually personal enhancement although sometimes solely for the benefit of one's company or political party. It can occur in public and private organisations, can involve acts of omission as well as acts of commission, can be internal to an organisation (for example, theft and embezzlement) or involve the organisation's clients (for example, extortion, speed money, and kickbacks). As with other social ills such as pollution or disease, corruption involves questions of degree. It exists almost everywhere, but the forms of corruption and their extent differ, and therefore so do the social harms that corruption creates.

Corruption is a crime of calculation, not passion. Although it is true that different individuals react differently to the temptations of corruption, and many public and private officials refrain from corruption even when the temptations are great, it is crucial for fighting corruption to recognize that as temptations rise so do levels of corruption. As a first approximation, officials will be tempted to engage in corruption when the size of their corrupt gain is greater than the penalty if caught times the probability of being caught. The penalty includes the wage and other incentives they must sacrifice if they lose their jobs, as well as the severity of the punishment. And officials will have the opportunity to garner corrupt benefits as a function of their degree of monopoly over a service or activity, their discretion in deciding who should get how much, and the degree to which their activities are accountable. A stylised equation holds:

$$\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$$

One can therefore reduce temptation and opportunity by varying these parameters.

**Improve the incentives** facing public officials. In many countries pay levels have fallen so low that officials literally cannot feed their families without moonlighting or accepting side payments. Moreover, the linkages between pay and performance, and promotion and performance, have badly eroded. I believe that in many countries weak incentives are now the foremost institutional factor constraining the public sector.

In the next decade I believe we will see remarkable reforms in public sector pay, first in rich countries and later in developing countries, especially (1) the development of new ways to measure performance and (2) experiments-that-become-policies which base part of pay on performance. There are already encouraging examples, even in developing countries, of performance-based pay leading to improvements. What is needed are steps to change the conditions in which institutional reforms take place, such as improved information. Elsewhere I have tried to outline practical strategies for incentive reforms.<sup>12</sup>

**Increase the effective penalties for corruption.** Because of ineffective investigatory, prosecutory, and judicial capabilities, accusations of corruption seldom stick. If they do, the penalties are often minimal in practice (for example, the official is fired). As a result, the expected penalty for engaging in corrupt activities is insufficient to deter transgressions. A key step is to strengthen the capacity and improve the incentives of the police, prosecutors, and judges.

**Limit monopoly.** Promote competition in the public and private sectors. Avoid monopoly-granting regulations when possible (especially exchange controls and quantitative restrictions on imports). Open the economy to international competition.



**Clarify official discretion.** Simplify rules and regulations via what are called “bright lines” circumscribing what is permitted and what is not. Help citizens learn how public systems are supposed to work (through brochures and manuals, help desks, laws and rules in ordinary language, publicity campaigns, the use of citizen-service-providers, etc.). Improve citizens’ oversight of officials’ actions.

**Enhance accountability and transparency.** Promulgate clear standards of conduct and rules of the game, which make accountability easier. Encourage greater competition and openness in bidding, grant-giving, and aid projects. Strengthen internal auditors, government accounting, ombudsmen, inspectorates, specialised elements of the police, and specialised prosecutors. Involve citizens, unions, NGOs, the media, and business in a variety of ways, including citizen oversight boards, hot lines, inquiry commissions, and so forth. Generate and disseminate information about public service effectiveness. Commission external audits. Encourage self-policing by the private sector in procurement, contracting, regulating, and so forth.

To these headings may be added two more: the **selection of officials** for their moral and ethical character as well as their competence, and the encouragement of a more ethical “**corporate culture**” by exhortation, indoctrination, and example.<sup>13</sup>

These headings form a kind of “checklist for policy making” regarding corruption. A lesson from anti-corruption efforts is that although one can learn from general guidelines like these, specific measures must be devised by politicians, bureaucrats, and citizens in each locale. As a recent example, consider the recommendations of a Chilean commission (Box 1). These are still quite general and require a detailed working out. If locals must be involved in analysing the problems and devising the solutions, is there a proven *process* through which local people -- including government officials and people from business, labour, the press, and the church -- can do so?

## *2. Participatory diagnosis*

In many countries, I have seen workshops emphasizing “participatory diagnosis” help generate this analytical mentality -- and help local people devise practical strategies for reducing corruption. Such workshops can and perhaps should occur at many levels, but it is important that the first one involve the highest levels of government. Ideally, the president issues the invitations for the workshop.<sup>14</sup> The president invites ministers, military leaders, legislators, judges, police leaders, and perhaps people from the private sector (heads of labour unions, business groups, religious organisations, and so forth). The ideal number of participants is 20 to 25. The ideal format is a two-day retreat, but an alternative is 10-15 hours spread over the course of a week.

In such workshops, policymakers and officials are assisted in

- a) working through a case study of an effective anti-corruption campaign,<sup>15</sup>
- b) developing a systems approach to corruption,
- c) examining a second success story, where the politics of reform is crucial (more on this below), and finally
- d) facilitating their analysis of their own situation: types of corruption and their causes; how extensive; an analysis of alternatives building on the checklist of monopoly, discretion, accountability, incentives, the selection of officials, and the corporate culture; the politics of improvement; and concrete steps by participants in the next three months. One analyzes systems, rather than particular individuals or transgressions.



Such workshops have worked in more than a dozen countries, through no personal mystique but by helping local policymakers structure their thinking about anti-corruption activities and come up with their own locally appropriate lines of attack. It is remarkable how frank officials become when the focus is on corrupt systems rather than individuals. The abiding points are three: changing the way people think about corruption, using their indispensable local knowledge to design workable preventive measures and political strategies, and developing ownership of an anti-corruption campaign.

### *c. On the politics of fighting corruption*

#### *1. Overcoming corrupt equilibria*

The idea of such a workshop, and a list of proposed anti-corruption measures such as Box 1, may engender a sceptical reaction. "What if the people on top are themselves corrupt? What if international business people have powerful incentives to do the corrupting? If the people on top in the public and private sectors are benefiting, can reforms have a chance of taking hold?" The worry is that corrupt officials on top are monopolists unwilling to sacrifice their rents, and international and local businesses people are locked in an *n*-person prisoners' dilemma where the dominant strategy is to bribe. A corrupt equilibrium results, where rulers and top civil servants gain and some private companies gain, but society loses.

In such a situation what can be done? The reflexive answer is "nothing." But consider the analogous question, "Why would national leaders ever in their self-interest undertake free-market reforms, privatisation, and the like, all of which sacrifice their personal control over the economy?" And yet such reforms have swept the world, as has a remarkable "third wave" of democratic reforms.

It is true that some governments resist good governance. But in the decade ahead the paradigmatic problem will not be how to induce governments to do something about corruption. Instead, increasing numbers of governments will be asking the international community for help in improving customs and tax agencies, cleaning up campaign financing and elections, reducing bribery and intimidation in legal systems and the police, and, in general, creating systems of information and incentives in the public sector that foster efficiency and reduce corruption. The international community can accelerate this process, *provided we can develop analytical tools and examples of best practice, and can generate an international consensus that fighting corruption is important for economic and political development.*

We must be sensitive to the politics of fighting corruption.<sup>16</sup> In many countries, leaders are of two minds. They do appreciate and decry the costs of systematic corruption. But they also recognise that a lone actor has little chance to make a difference, even a minister or perhaps a president; and they are aware of the personal and party benefits of the corrupt system. To assist them in moving toward a long-term solution, several almost psychological steps are necessary.

First, leaders must see that improvements are possible without political suicide. Here is where the workshops mentioned above, with their examples from other countries and an analytical framework for analysing corruption, can be particularly helpful. This point is also applicable in international deliberations, where political sensitivities may also short-circuit the consideration of systemic reforms. An international workshop can be useful in validating the idea that corruption is not just one country's problem (or one party's, one leader's, the public sector's...) and in generating a practical approach to a problem too often relegated to exhortation.

### Box 1

#### Forty-one Chilean Recommendations for National Measures to Fight Corruption

In July 1994 the Chilean Commission of Public Ethics presented its report to the President, "Public Ethics: Probity, Transparency, and Accountability at the Service of the Citizens." Here is a summary of its 41 recommendations.

1. Draft and implement a national policy of public ethics.
2. Give constitutional status to principles of honesty and transparency in public office.
3. Incentives of public service: Raise the status of public servants and their pay. Improve the merit system.
4. Establish a public sector code of honesty.
5. Assign jurisdictional boundaries and responsibilities in the public sector.
6. Create offices of internal affairs in the public sector to issue information and receive complaints.
7. Review procedures to determine administrative accountability.
8. Prohibit trafficking in influences and the misuse of privileged information.
9. Improve regulations governing conflicts of interest among public duties.
10. Improve the regulations that govern conflicts of interest between public duties and private activities.
11. Have the judicial branch provide more information to the public. Set up a system to hear complaints about improper behaviour by court officials. Eliminate irregularities and favouritism.
12. Strengthen ethical self-regulation within all branches of government.
13. Require the declaration of assets and personal interests for people entering or leaving public service.
14. Strengthen prohibitions against personal interests influencing public decisions.
15. Regulate the transition of public servants to the private sector, to prevent conflicts of interest.
16. Regulate the acceptance of gifts, payment for speeches, and the payment of travel expenses for public servants.
17. Remove local and national legislators from office when they use influence over public decisions for their own benefit.
18. Extend the legislation on conflict of interest to cover higher officials, including the President.
19. Use blind trusts as an option for the assets of high-level officials.
20. Reinforce congressional oversight in the House of Representatives.
21. Review and streamline administrative procedures and regulatory content. Penalize procedural delays.
22. Have private accounting firms carry out selective audits supervised by high-level federal officials.
23. Publicize information on management performance and the profits (or losses) of state enterprises.

24.	In order to increase public control over government management, use greater transparency, link resources to goals, provide information to the public and NGOs.
25.	Eliminate secret government accounts and discretionary executive spending unless fully justified.
26.	Review and strengthen municipal control and oversight mechanisms for contracts, competitive bidding, concessions, and contract awards.
27.	Draft and enact a framework law on contracts and competitive procurement.
28.	Bring greater objectivity to municipal procurement.
29.	Create a computerised adjudication system for state bidding to ensure transparency and the lowest purchase price on all items.
30.	Define criminal penalties for influence peddling, insider trading, and illegal enrichment. ✖
31.	Strengthen mechanisms to report acts of corruption.
32.	Improve legislation against the crimes of bribery, extortion, and conflicts of interest, which may not be covered under criminal law. ✖
33.	Reform the procedural code in order to introduce oral arguments into criminal proceedings, expedite court proceedings, and make them transparent. Create an executive branch public prosecutor's office so the judicial branch can remove itself from investigations.
34.	Create an Office of Anti-Corruption Prosecutor.
35.	Record and publicize contributions, over a predetermined amount, to political parties and campaigns, and introduce transparency into campaign funding in general. Elected candidates should declare funding sources. Political parties must use a single bank account and be denied banking secrecy privileges.
36.	Limit campaign expenditures and the length of campaigns. Prohibit televised campaign spots.
37.	Recognize and introduce public campaign financing in gradual stages.
38.	Enact a freedom of information law.
39.	Require government agencies to release regularly to the public their balance sheets and reports of activities.
40.	Introduce active ethical instruction into curriculum at all levels of the educational system.
40.	Encourage ethical self-regulation of professional associations, trade unions, and other civic groups. Strengthen their internal codes.

*Source:* Accountability, Phase II, No. 4 (December 1994), p. 9, with some editing



Second, leaders must develop a strategy that recognizes that not everything can be done at once. The anti-corruption effort might begin where the public perceives the problem acutely (for example, with extortion in the Philippines' Bureau of Internal Revenue; the licensing bureau in Venezuela; police and courts in many countries). One should undertake behind closed doors a kind of benefit-cost analysis, assessing those forms of corruption where the economic costs are the greatest (for example, corruption that distorts policies as opposed to who gets a specific contract) but also taking into account where it is easiest to make a difference. A good rule of thumb is that to be credible an anti-corruption campaign must have some tangible successes within six months.

Third, leaders need political insulation. Sometimes international collaboration can help provide it, as countries together admit a common problem and move to address it ("corruption is not just our problem"). The OECD's recommendation helps all countries recognise that corruption is an international problem requiring an international solution. At home, leaders can cloak themselves in popular outrage over corruption by seeming to be compelled to take action, even when this hurts powerful members of the establishment.

Finally, the private sector itself can help overcome a corrupt equilibrium. The greatest enemy of corruption is the people. If only they are consulted, citizens are fertile sources of information about where corruption occurs. The mechanisms for consulting them include citizens' oversight bodies for public agencies, the involvement of professional organisations, hot lines, call-in shows, educational programs, village and borough councils, and so forth. Business groups should participate in confidential diagnostic studies of how corrupt systems of procurement, contracting, and the like actually work -- where the emphasis is on systems and not individuals. Finally, self-policing by the private sector, especially when supported with international investigatory capabilities (and credibility), can help businesses say "no" to requests for bribes.

## *2. Breaking a culture of corruption*

Once leaders are interested in change, they must first of all convince a cynical public that the rules of the game will henceforth be enforced. One way of doing so is "frying big fish": punishing a few high-level offenders from the public and private sectors, preferably from one's own political party.

Here are some examples. Hong Kong used to be awash in corruption. Then in 1973 a new Independent Commission against Corruption was formed. It had new teeth, and new eyes. It possessed powers to investigate suspected offenders and had new means for obtaining information about the wealth of public servants. But despite its powers, at first no one believed that the ICAC would succeed any more than previous efforts to rewrite laws and create investigatory bodies. Credibility came when the ex-police chief of Hong Kong was extradited from retirement in England and punished in Hong Kong. The ICAC also prosecuted the ex-number two and scores of other high-ranking police officials. To a sceptical public and a hardened civil service, frying these big fish sent a credible signal: "The rules of the game really have changed."

Mexico's President Carlos Salinas also created new capabilities of investigation and enforcement. But his efforts too were originally greeted with disbelief. They did not gain credibility until his enforcers pounced on the notorious head of the Pemex syndicate, on a leading narcotics trafficker, and on three high-powered business people who had fiddled with the Mexican stock exchange. One of the latter was the head of Salinas's political campaign in one state. The message: If these big fish can be caught and fried, political impunity is a thing of the past.

Besides frying big fish, other high-profile actions may be effective in creating a sense of momentum, in signalling the end of a culture of impunity:

- setting up an Independent Commission Against Corruption in the Hong Kong model or an anti-corruption "czar" who coordinates a government-wide effort against corruption;
- enacting the OECD measures mentioned above;
- aligning one's country with the new international NGO Transparency International as a so-called "island of integrity," including a new standard of conduct for public officials and for private firms engaged in government work, coupled with creation of a self-policing mechanism for private firms that participate in government transactions;
- assigning a key activity to an international agency while retraining and reorganisation take place (for example, Bolivia assigned procurement to two international firms, while Indonesia gave the collection of customs duties to the Société Générale de Surveillance);
- a dramatic offer to eradicate coca growing -- a major source of corruption -- in exchange for international assistance that guarantees today's coca farmers attractive prices for alternative crops for five years (my proposal for Bolivia, alas not acted upon);
- an experimental program in revenue collection agencies, where officials share a proportion of additional tax revenues generated above some target in the next two years (this worked in Bolivia in the mid-1980s).

Such measures may help create the political conditions under which the *longer-term structural reforms* outlined earlier can be effective in preventing corruption (and more generally, to improve governance).

#### *d. Summary of national measures*

Bribery in international business transactions is a small albeit important part of the corruption that undermines economic and political development. Some legal issues do need addressing: campaign and party finance, laws against illicit enrichment, making corruption a violation under administrative as well as criminal law, and laws affecting the way government structures the fight against corruption. But in the face of systematic corruption, changing the laws may make little difference, nor will moral exhortation. Systematic corruption is a problem of systems, not of unethical individuals. Fighting it requires a strategy, which means several things. First, anti-corruption efforts must emphasize systematic reforms of incentives, competition, bureaucratic discretion, and accountability. Second, the details of the strategy must be developed locally. The paper describes a participatory process involving top policy makers and citizens, which has proved successful in a variety of contexts. Third, a host of political obstacles must be overcome. In particular, one must rupture the culture of impunity by "frying big fish."

### 3. International Measures to Reduce Corruption

Despite the obvious sensitivity of devising and implementing strategies against systematic corruption, international organisations can help -- and indeed already do help, through aid for democratic reforms, more competitive economies, and the improvement of governance. But a more focused effort is needed. If the past fifteen years were notable for macroeconomic and macropolitical reforms, the next fifteen years will be the era of *institutional adjustment*:

- In the private sector, not just the declaration of "competitive markets," but the improvement of market institutions, especially vis-à-vis the poor.
- In public administration, not just (or even) less government and fewer employees, but systems of information and incentives which encourage productivity, decentralisation and participation, and which discourage rent-seeking and abuse.
- In democratic policies, not just multi-party elections, but limits on campaign financing, legislative reform and strengthening, and improvements in local governments.
- In legal systems, not just better laws and constitutions, but also systematic initiatives to improve the honesty and capacity of police, prosecutors, and judges.

These topics are obviously sensitive and context-specific, and there is less agreement internationally about the nature of the reforms to be pursued, compared with, say, the move to multi-party democracy. But the dynamics of reform in this area will not, I believe, require that all countries agree to the same anti-corruption agenda -- or even that all participate. The problem will be less and less how to persuade sovereign governments to "do something" about corruption but *how* to do it. The momentum is toward a systematic attack on systematic corruption. In coming years donor nations will face ever greater pressures from their citizens not to aid countries perceived as corrupt. At the same time, the new wave of democratically elected governments in the developing world will be looking to the international community for help in controlling bribery, extortion, kickbacks, fraud, and other forms of illicit behaviour. They are recognizing that neither free markets nor multi-party democracies will succeed if the institutions of the private and public sectors are riddled with systematic corruption. And as a few countries make progress in fighting corruption, others will follow.

Outsiders can assist in a variety of ways, ranging from the indirect and subtle (support for civic associations, training for legislators, the management of justice systems) to the direct and forceful (the EBRD only gives loans to countries with suitable political systems). This symposium will no doubt produce a host of useful suggestions. Space constrains me to focus on three categories for organizing a new international effort against corruption.

#### ***a. Support three stellar national programs against corruption***

International aid should be allocated to countries willing to undertake reforms to address systematic corruption. As an illustration to stimulate reflection, suppose the DAC countries created a program that promised seven years of special and significant support to the three developing countries that proposed the best national strategies against corruption. To help kindle interest in this "contest" DAC countries would fund international and local *workshops* in "participatory diagnosis," as described above. Then *cross-country studies involving both the private sector and the government* might focus on key areas such as revenue raising, procurement and public works, and the justice system. The focus would be on the vulnerability of systems to corruption, rather than on particular individuals. Participating countries would share the results of these studies, and national and international measures would then be designed to remedy structural defects. At this stage, interested countries would prepare their *national strategies against corruption*. Three of the



strategies -- perhaps one each from Africa, Asia, and Latin America -- would be supported by special funds from the DAC countries. Other country strategies, or components thereof, might well be supported by other donors -- and, of course, by the participating countries themselves.

The measures to be included in an anti-corruption strategy would depend on the context, but they would often include:

- experiments with incentive reforms in the public sector;
- mechanisms to enhance accountability, especially through the involvement of business and citizens;
- enhancing capabilities in investigation, prosecution, and judging;
- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative law; and
- administrative reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.

***b. "Tool kits"***

The international community can help to assemble and disseminate examples of best practice, as well as frameworks for policy analysis -- a combination that might be called "tool kits" for fighting corruption.

For example, working together, the OECD countries and others might select aspects of corruption, and more broadly participatory development and good governance, that are (1) close to their priorities as bilateral donors, (2) important to emerging democracies, (3) perhaps less the comparative advantage of international agencies such as the United Nations or the World Bank, and (4) areas where it is believed that we can all learn from each others' experience. Three areas might be given priority in controlling corruption: revenue raising, including tax and customs agencies; the justice system broadly construed; and government procurement, licensing, and contracting. A fourth topic might be added where many OECD countries themselves have much improvement to make: the interfaces between money and politics, including political contributions, party finance, and campaigns.

In each of these areas, countries working together would try to create tool kits containing the following:

- Analytical frameworks for diagnosing and dealing with corruption (generic frameworks but also specific ones for tax administration, customs administration, police, prosecution, judges, procurement, contracting, and so forth).
- Case studies of best practice and success in reducing corruption, at different levels of government and in different sectors and domains.
- Participatory pedagogies, which means a variety of devices to enable citizens, business, NGOs, the media, and government employees all to learn about, and teach each other about, corrupt systems and what to do about them.

The international community might also provide financial support for international institutions working for the control of corruption. For example, international NGOs might help organize the participatory workshops, provide backstopping for thematic studies of corrupt systems, and help validate and disseminate case studies of best practice.

*c. Strenuously pursuing the OECD recommendation*

The international community should also take steps that acknowledge that international actors are also part of the problem and part of the solution. It is in this light that the OECD recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption's sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries -- especially the bribes their citizens pay -- that developing countries will be willing to accept international assistance in addressing systematic corruption.

## Notes

1. Professor of economics, University of Natal, Durban, South Africa. An American and formerly a professor at Harvard and Yale Universities, his six books include *Adjusting to Reality: Beyond "State vs. Market"* in *Economic Development* (ICS Press, 1991; Editorial Sudamericana, 1994), *Tropical Gangsters* (Basic Books, 1990), and *Controlling Corruption* (U. of California Press, 1988; Editorial Sudamericana, 1994; Jorge Zahar Editor, 1994; French edition forthcoming from Nouveaux Horizons). FAX (27-31) 260-2587. E-mail: gaard@superbowl.und.ac.za
2. OECD documents refer particularly to "illicit payments," "bribery in international business transactions," and "illicit payments in international commercial transactions." (I do not cite specific OECD documents because they are marked "Restricted.") Transparency International refers to itself as "the coalition against corruption in international business transactions." See also *Accountability and Transparency in International Economic Development: The Launching of Transparency International in Berlin*, May 1993, ed. Fredrik Galtung (Berlin: German Foundation for International Development and Transparency International, 1994).
3. Two authors have recently and independently drawn the distinction between one sort of corruption that is analogous to a foul in sports, and another sort which is the breakdown of the rules defining and enforcing fouls, where the sports contest virtually collapses. The latter is the systematic phenomenon of corruption that they fear is undermining development. Moreno Ocampo calls it "hypercorruption." Werlin's label is "secondary corruption," and he compares it to alcoholism. See Luis Moreno Ocampo, *En Defensa Propia: Cómo Salir de la Corrupción* (Buenos Aires: Editorial Sudamericana, 1993); and Herbert W. Werlin, "Understanding Corruption: Implications for World Bank Staff," August 1994, unpublished ms. available from the Public Sector Management Division of The World Bank. Another valuable source is Jean-François Bayart, *L'État en Afrique: La politique du ventre* (Paris: Fayard, 1989).
4. Corruption exists in all countries and, as recent events have revealed, is a major problem in many rich nations. But corruption tends to be more damaging in some developing countries because it has a more devastating effect on property rights, the rule of law, and incentives to invest. For analyses of various indicators of corruption and their negative effect on investment and growth, see Paolo Mauro, "Corruption, Country Risk, and Growth," Paper Prepared for Research Seminar in Positive Political Economy, Harvard University/Massachusetts Institute of Technology, November 1993. For a theoretical model of systematic corruption, see Andrei Schleifer and Robert Vishny, "Corruption," *Quarterly Journal of Economics*, 1993, pp. 599-617, and Jean Tirole, "Persistence of Corruption," IPR55, Working Paper Series (Washington, DC: Institute for Policy Reform, October 1992).
5. Among the documents from recent international conferences on corruption, one of the most valuable practical contributions is United Nations, *Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation, Practical measures against corruption*, manual prepared by the Secretariat, A/CONF. 144/8, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 29 May 1990.
6. See article 5, section 7.
7. United Nations, *Crime Prevention and Criminal Justice in the Context of Development*. . (fn. 6 above), p. 28, to which I am indebted for the ideas in this section.
8. Andrés Pastrana Arango, "Estatuto contra la Corrupción," (Bogotá: Nueva Fuerza Democrática, 1993).
9. Robert Klitgaard, "Corruption and the World Bank," Division of Public Sector Management and Private Sector Development, The World Bank, December 1989.



10. See Vlad Jenkins, "The 'Untouchables' of President Salinas," in *Dealing with Corruption and Intimidation in Criminal Justice Systems: Cases and Materials*, ed. Philip Heymann and Robert Klitgaard (Cambridge: Harvard Law School Program in Criminal Justice, 1991).
11. Sometimes, perversely, new laws increase opportunities for corruption by restricting information flows, creating mini-monopolies in government (such as the granting of licenses and permits), or increasing rent-seeking incentives.
12. Robert Klitgaard, "Incentive Myopia," *World Development*, Vol. 17, No. 4 (April 1989); Robert Klitgaard, "Information and Incentives in Institutional Reform," in *Economic and Political Institutions for Sustainable Development*, ed. Christopher Clague and Mancur Olson, forthcoming.
13. A detailed checklist for policymakers appears in my *Controlling Corruption* (Berkeley and Los Angeles: University of California Press, 1988) and *Adjusting to Reality: Beyond "State vs. Market" in Economic Development* (San Francisco: ICS Press and International Center for Economic Growth, 1991). These are hardly the last words on the subject. In particular, more subject-specific checklists and guidelines would be valuable for specific areas such as procurement, tax collection, police reform, and so forth. See also the United Nations publication mentioned in fn. 5 and the as-yet-unpublished manuscript of Philip Heymann entitled "Fighting Corruption" (Harvard Law School, 1993). Valuable documents have also been prepared by Transparency International.
14. But this is not essential. In one country the Chief Justice of the Supreme Court was the convener; in another, the Minister of Planning.
15. Cases can be found in *Controlling Corruption and Dealing with Corruption and Intimidation* . . .
16. For reasons of space but not importance I omit here the phenomenon of using anti-corruption initiatives cynically to attack political opponents and curry favour with the international community.