Implementing International Anti-Corruption Conventions

Bryane Michael
Implementing the International Anti-Corruption Conventions: A Global Perspective

Bryane Michael, Linacre College and American University of Paris

The material in this presentation is licenced by the author used a Creative Commons licence. Feel free to use this material for teaching or for critique. Graphics used in the presentation may be protected by proprietary copyright (which I use under “fair use.”) I do not indemnify the user of these slides in case the holders of proprietary copyrights which to assert their property rights.
The Basic Set Up for Corruption

Bribery Test
1. Has an extra payment been made for the quantity, quality, speed, friendliness and informativeness of a service which the service user has an administratively defined right to?
2. Was the ex-post delivery of the public good or service made on the ex-ante expectation of an extra-payment?

irrespective of time or intermediaries
The OECD Convention

- Criminal Law
  - evidential burden: beyond a reasonable doubt
  - complicity; *mens reus* and *mens actus*
  - judicial system treatment
- Foreign country jurisdiction
  - extradition

*bribe any foreign official, break home’s criminal law*
CoE and UN Criminal Conventions

- **Coe Convention**
  - criminalises corruption in country where crime committed
  - wasn’t crime before

- **UN Convention**
  - ditto
  - important asset recovery mechanism
CoE Civil Law Convention

- Aggrieved parties can sue for harms from corruption
- Potentially most effective provision
  - self-enforcing and monitorable
  - Provides financial incentives to govt.
Greco and 20 Principles

- Mutual monitoring (like OECD Working Group)
  - raising public awareness, promoting criminalization, promoting independence of corruption fighting bodies, seizure of assets linked to corruption.
From Chateau La Muette to High Street

Figure 3: Implementing International Conventions Against Corruption in the Continental Legal Tradition

Negotiation at International Sphere (at OECD, Council of Europe, UN, etc)

- Traditions of justice and jurisprudence
  - Ratification by national Parliament
  - Elaboration of implementing regulations
    - Ministry of Justice
    - Ministry of Interior
    - Development Ministry
    - Ministry of Justice

- Administrative courts

Corpus of executive regulations aimed at preventing corruption

Challenge is development of a regulatory tradition and NOT BETTER LAWS!
The Model Anti-Corruption Programme

Parliament endorsed National Anti-Corruption Action Plan

This model is now a decade old and without robust positive results
Despite Rapid World-Wide Dissemination, Few Results

- Anti-Corruption programmes not reducing corruption
- Stevens and Rousso
  - Omnibus: National AC strategy (adopted, involved NGOs, multi-branch), AC-AP, and ACA
  - Legal: CS Law, Fin Disc, FoI Law, Party Finance
  - Conventions: Stab-Pact, OECD, CoE’s 4 Cons.

Regression Results

<table>
<thead>
<tr>
<th>Omnibus</th>
<th>Bribe tax (f')</th>
<th>Bribe tax (df/dt)</th>
<th>Bribe customs (df/dt)</th>
<th>Bribe courts (df/dt)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Conventions</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

First wave useful for “awareness raising” but not “capacity building”
Why are Legal Frameworks so hard to put in place?

**Law-making**

Vote appropriate anti-corruption legislation, Vote integrity legislation for members of parliaments, Ensure that appropriate oversight legislation is adopted, Lobby their governments to sign and/or ratify relevant international instruments, Promote the passage of freedom of information legislation, Promote the passage of freedom of information legislation, Promote party-funding and electoral campaign legislation that fosters transparency.

**Oversight**

Reinforce mechanisms within parliament for bringing government to account, Ensure that the process for preparing and executing the national budget is transparent and provides for safeguards against government misuse of public funds and resources, Promote the creation of watchdog agencies such as the Auditor/Controller General, Ombudsman, etc, Ensure that the opposition is adequately represented in the parliamentary structures, Institute transparent and stringent mechanisms for the approval of senior government and public officials.

**Representation (interaction with civil society)**

Encourage the public to denounce and condemn corruption and promote or participate in the promotion of high standards of probity and moral integrity through public awareness campaigns.

*Note: This graph presents the arithmetic means of the individual scores in the paper. These results are for illustrative purposes only given aggregation problems.*

---

**Incentive Compatibility of IPU’s Recommendations**

<table>
<thead>
<tr>
<th></th>
<th>PC</th>
<th>E</th>
<th>PS</th>
<th>HC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law-making</td>
<td></td>
<td></td>
<td>3.0</td>
<td></td>
</tr>
<tr>
<td>Oversight</td>
<td></td>
<td>4.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Representation (interaction with civil society)</td>
<td>4.5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Laws must be “incentive compatible”
**Kosovo in Comparative Perspective**

**Figure 11: Assessing the Quality of Anti-Corruption Action Plans**

<table>
<thead>
<tr>
<th>Country</th>
<th>Specificity</th>
<th>Relevance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ukraine</td>
<td>2.3</td>
<td>3.4</td>
</tr>
<tr>
<td>Moldova</td>
<td>3.9</td>
<td>4.1</td>
</tr>
<tr>
<td>Kosovo</td>
<td>1.8</td>
<td>3.2</td>
</tr>
<tr>
<td>Romania</td>
<td>2.6</td>
<td>3.8</td>
</tr>
<tr>
<td>ADB-OECD</td>
<td>1.9</td>
<td>3.6</td>
</tr>
<tr>
<td>OECD/Istanbul</td>
<td>1.4</td>
<td>3.2</td>
</tr>
</tbody>
</table>

Source: author. (one is the lowest score and five is the highest). See Michael (2004) for a detailed computation of these scores and a further discussion of the methodology.
The Problem with “Enforcement”

Figure 11: The Distortionary Effects of Anti-Corruption Regulations

- $ tax revenue
draws tax revenue untied to public goods provision to create and enforce regulations
detracts time and resources from other projects, leading to real harms
distorted markets

demoralisation

causes decrease in work effort which can reduce dept efficiency

highly qualified staff exit

sub-optimal service delivery and excess taxes create inefficiencies

civil servant
colleague
Criminalisation is not the (only) Answer (for some CEE countries)!

Under OECD Convention, criminal offense to engage in corruption

Criminalising corruption could decrease detection, prosecution and conviction

- **Detection**: Less likely to report
- **Prosecution**: More investigation required, transfer of file to MoJ
- **Conviction**: Higher standard of proof required than administrative sanctions

Recommend a dual or triple system of remedies
Administrative/managerial procedures against corruption

- Increases odds of detecting
  - Whistleblowing
  - *Respondeat Superior*
  - *Complicity*

- Increases odds of prosecuting
  - Balance of probabilities
  - Retification not retaliation

- Complementary, not overlapping lines of authority

---

**Diagram:**
- **Administrative remedies**
  - **Judicial remedies**
  - **Internal Security / Ombudsman Remedies**
  - **Line manager remedies**
A Better Way: Risk Analysis

Figure 15: Corruption Risk Management in a Border Setting

Internal Security Personnel  
Border Guards And Customs Officials  
Border crossers with goods

- 2% sampling
- 5% sampling
- 3% sampling

- $1 million
- $4 thousand
- $500 thousand
- $60 thousand
Anti-Corruption Agencies

- ACAs can help coordinate cases of anti-corruption BUT...
  - Internal Security Agencies can provide more effective remedies
  - Politicisation of centralised service

Diagram:
- Centralised:
  - ACA completely in charge
  - MoJ or MoI as "ministry of last resort"
  - "Case management"
  - Self-enforcement
- Decentralised
Toward an Optimal AC system

- Given corruption offences span agencies, optimal allocation of anti-corruption work
- Based on “transactions costs” and “core competencies” of relevant depts.
- Jurisdiction set based on effectiveness
AC Training: Implicit Strategic Focus Emerging From the Case Studies

<table>
<thead>
<tr>
<th>Area</th>
<th>Albania</th>
<th>Czech</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Poland*</th>
<th>Russia</th>
<th>Serbia</th>
<th>Ukraine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integration</td>
<td>Low</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>Low?</td>
<td>Low</td>
<td>?</td>
<td>High</td>
</tr>
<tr>
<td>Retraining</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High?</td>
<td>Yes</td>
<td>?</td>
<td>High</td>
</tr>
<tr>
<td>Level</td>
<td>?</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>?</td>
<td>?</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>Certification</td>
<td>?</td>
<td>Yes</td>
<td>?</td>
<td>Yes</td>
<td>Yes</td>
<td>?</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>Quality assess</td>
<td>?</td>
<td>Yes</td>
<td>?</td>
<td>High</td>
<td>Yes</td>
<td>Yes?</td>
<td>?</td>
<td>Yes?</td>
</tr>
<tr>
<td>University</td>
<td>High (TIPA)</td>
<td>High</td>
<td>Medium</td>
<td>High</td>
<td>High?</td>
<td>?</td>
<td>Medium</td>
<td></td>
</tr>
</tbody>
</table>

Source: (6)

*Every country has an implicit AC learning structure*