

- Summary -

**Supporting
Anti-Corruption Reform
in Partner Countries
Concepts, Tools and Areas for Action**

Heather Marquette, Rachel Flanary,
Sumedh Rao and Dominic Morris

August 2011



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INTRODUCTION

Corruption serves as a major impediment to development. Resources intended to address the basic development needs of millions of poor people around the world are diverted and misallocated through various forms of corrupt practices. Donors are becoming increasingly aware of the relationship between corruption and development and taking measures to mitigate these effects.

This concept paper emphasises that a shared consensus between partner countries, policy-makers and academics is critical. Donors should situate themselves in a position from which they are able to provide the necessary analysis and support required by partner countries in their own anti-corruption efforts.

The main objective of this paper is to provide insights into the current thinking on anti-corruption in developing countries in order to enable the EU staff (at the Commission, EEAS and in EU Delegations) :

- Acquire useful tools to analyse corruption in a given local setting;
- Become better equipped to support the implementation of anti-corruption strategies and policies; and
- To better identify relevant anti-corruption measures so as to improve the mainstreaming of anti-corruption in European Commission development assistance.

CHAPTER ONE: MAIN CONCEPTS

Section 1: Definitions typologies and forms of corruption

Definitions of corruption vary according to the approaches, aims and needs of policy-makers and generally fall under one of three categories: legal, socio-economic and anthropological. A better understanding of each of these approaches, including their policy relevance and their criticisms, by policy-makers will help improve programme design. The aim of this section is to demonstrate that corruption – because of its multidimensional nature – cannot be understood through only one category of definition. Therefore, these approaches to defining corruption must be understood as complementary rather than competing.

1.1 Defining corruption

How corruption is defined affects how it is viewed, which policy approaches are adopted, and which approaches are deemed to be legitimate. Consensus on a definition of corruption has been sought at the international level for many years, but how corruption might be defined in different contexts has not been addressed adequately. This has a considerable impact upon the efficacy of donors' anti-corruption programming.

1.1.1 Main features of legal approaches to defining corruption

Corruption is traditionally defined as an offence under criminal law, criminalising an individual behaviour such as active and passive bribery or certain related practices, such as the abuse of public position and favouritism.

The diversity of legal definitions of corruption at national level resulted in a lack of effective and equivalent protection against international corruption and organised crime. Consequently, international anti-corruption conventions establishing common definitions of corruption-related offences were developed to respond to the need for more harmonised and more effective criminalisation of corruptive behaviours and improved international judicial cooperation.

In recent years specific anti-corruption legislation has been developed covering broader issues, such as access to information, conflict of interests, whistleblower protection, procurement, anti-money laundering and freedom of expression. In some cases, anti-corruption agencies have been established.

1.1.2 Main features of socio-economic approaches to defining corruption

In appreciating the role of the individual, and their place within society, socio-economic approaches consider corruption as the result of rational choices made by individuals. Definitions examine the interplay between motivation, power and opportunity in an attempt to understand why individuals choose to engage in corrupt behaviour.

Definitions for corruption include:

- **'The abuse of public office for private gain'**¹ by the World Bank. This definition extends corruption to non-monetary advantage, such as nepotism or influence peddling.
- **'The misuse of public power, office or authority for private benefit'**—through bribery, extortion, influence peddling, nepotism, fraud, speed money or **embezzlement**² by the UNDP. The UNDP's definition goes beyond the World Bank's, establishing the various acts that are believed to actually constitute corruption.
- **'The misuse of entrusted power for private gain'**³ by Transparency International. Large corrupt transactions may not always involve public office. The focus on 'entrusted power', emphasised by Transparency International, can be seen to refer to any form of legitimate formal authority and therefore no longer limits corruption to the public sector alone.
- **'The abuse of entrusted authority for illicit gain'**⁴ by Norad. This definition shifts focus towards the 'illicit' nature of corrupt transactions whether private or otherwise. The term 'entrusted authority' attempts to recognise a spectrum of power ranging from the formal to the informal, thus covering the spectrum from individual to systemic corruption in neo-patrimonial states.
- **The European Commission definition.** Perhaps the broadest attempt to define corruption under a socio-economic approach comes from the European Commission. In addition to the specific legal definitions provided by the two protocols (1996 and 1997) on the protection of EU financial interests, the European Commission Communication

¹ 1 World Bank, 1997. 'Helping Countries Combat Corruption : The Role of the World Bank, Washington DC', available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corprtn.pdf>

² UNDP, 1998. 'Fighting Corruption to Improve Governance'.

³ See http://www.transparency.org/news_room/faq/corruption_faq.

⁴ Norad, 2008. 'Anti-Corruption Approaches, a Literature Review'. Evaluation Department.

of 2003 adopts the UN interpretation of corruption as '**the abuse of power for private gain**'⁵. In doing so, the Communication goes further in recognising the 'supply side': the role of the private sector and the support of necessary efforts to improve integrity and corporate social responsibility. It is important to note that this definition arises from a European Commission Communication, which is a policy-making tool, and thus is not a definition approved at the EU level with a specific legal basis.

1.1.3 Anthropological approaches to defining corruption

The anthropological approach to defining corruption focuses on the motivations, organisation of power and the contexts where corruption takes place. It considers corruption as a cultural, moral and legal phenomenon, emphasising the roles played by norms, rules, customs and perceptions of corruption within a given society. Anthropological approaches provide critical insights in terms of programmatic design and policy dialogue.

With an anthropological approach, corruption is both a product of individual interactions and the systems in which they interact. Corruption is therefore a phenomenon that changes across time and societies, which needs to be treated contextually and diachronically. **Corruption is not a relativistic concept considered as acceptable within certain cultures but not in others.** Indeed, corruption is condemned widely all around the world regardless of the culture within which it occurs, but **what is actually understood to be corrupt depends on the context.**

In many countries, the public sees corruption as a way for poorly paid civil servants to survive⁶. In an environment where corruption is so pervasive, an individual who does not engage in corruption may be dismissed as a fool. The behaviour of such a person may even be considered selfish since he or she does not take advantage of his or her position to collect bribes that could be shared amongst kin or colleagues⁷. In some countries, there may be an ambivalent attitude toward corruption where it is judged according to a scale of acceptance that operates in the society: 'while a good appetite is normal', it was opined, 'gluttony is deplorable'. This 'moral economy of corruption', arguably governs and regulates the ethical construction of corruption⁸.

1.2 Typologies of corruption

There are a number of useful forms and typologies of corruption, but these typologies are not mutually exclusive, and there is some overlap between different types. However, the following typologies are useful in terms of understanding various corrupt transactions in terms of their level and impact.

- **Grand versus petty corruption:** Grand corruption is largely attributed to poor accountability and transparency and generally pervades the highest levels of national government. Petty corruption occurs at the citizen-state level of interface, where citizens seek to evade restricting regulations or when officials extort money from them.
- **Bureaucratic / administrative versus political corruption and state capture:** This is where the implementation of policies at the point of citizen access is altered by non-elected public officials through practices such as bribery. Political corruption and state capture occur 'when [high level officials and other] groups are able to influence/exploit the rules and regulations set by the state in ways that allow them to extract undue [...] benefits'⁹. State capture occurs most frequently in neo-patrimonial systems—hybrid systems with both patrimonial and formal rational-legal institutions.
- **Active versus passive corruption:** Active corruption refers to the individual/organisation that funds the transaction act (i.e. a bribe is offered/paid [the 'supply side']), while passive corruption refers to the receipt of proceeds from the act by the public official (i.e. accepting the bribe [the 'demand side'])¹⁰. These terms do not determine who instigates the acts.
- **Corruption driven by need versus corruption driven by greed:** Corruption motivated by need is seen as a means for public servants to supplement meagre income. Conversely, grand corruption is motivated by 'greed' for the accumulation of vast wealth rather than survival.
- **Incidental versus systemic corruption:** The incidental model emphasises individual agency in acts of corruption and where corruption happens but is not 'built into' the system. Systemic interpretations of corruption propose that rather than acting independently, actors actually operate as part of a system, co-ordinated to maximise the collection and distribution of rents. Systemic approach advocates contend that when corruption is systemic, an individual is likely to engage in corruption regardless of personal moral disapproval of it or its costs for society at large. The costs to an individual for being honest in such instances may be unbearably high compared with being corrupt.

5 From EC Communication on Corruption [COM(2003)317]: 'The Communication adopts the definition of corruption used by the United Nations' Global Programme against Corruption, i.e. "abuse of power for private gain"', available at http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33301_en.htm

6 Kodi, M., 2008. 'Corruption and Governance in the DRC During the Transition Period (2003-6)', Pretoria: ISS, available at http://www.ipocafrika.org/index.php?option=com_content&view=article&id=56&Itemid=86

7 Blundo, et al., 2006

8 Blundo, G. & Olivier de Sardan, J.P., 2001. 'Sémiologie populaire de la corruption', Politique africaine, 83.

9 Norad, 2008.

10 UNODC, 2004. 'UN Anti-Corruption Toolkit', Vienna, available at http://www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf

- **Quiet corruption:** The World Bank (2010) recently coined the phrase 'quiet corruption' to articulate the behaviour on the part of front-line service providers that includes the 'deliberate bending of the rules for personal advantage'. This could include activities such as absenteeism or deliberately poor performance of duty.

1.3 Forms of public sector corruption

The United Nations Office for Drugs and Crime (UNODC) has developed a taxonomy to delineate the most commonly agreed forms of public sector corruption. These definitions are generally the same as those in the United Nations Convention against Corruption.

- **Bribery:** This is 'the bestowing of a benefit in order to unduly influence an action or decision'.
- **Fraud:** This is 'any behaviour designed to trick or fool another person or entity for one's own or a third party's benefit'¹¹.
- **Embezzlement:** This is the 'taking or conversion of money, property or valuable items by an individual who is not entitled to them but, by virtue of his or her position or employment, has access to them'¹².
- **Favouritism:** Favouritism itself is 'the normal human inclination to prefer acquaintances, friends and family over strangers'. In relation to corruption it is specifically 'when public officials demonstrate favouritism to unfairly distribute positions and resources'. Nepotism and cronyism are two forms of favouritism. Nepotism occurs where public officials offer unfair favours to family members, while cronyism refers to the favourable treatment of friends¹³.
- **Extortion:** This relies on a process of coercion where a person, company or institution forces another party 'to pay money or other valuables in exchange for acting or failing to act'¹⁴.
- **Abuse of discretion:** This is where officials utilise their 'vested authority to give undue preferential treatment to any group or individuals, or to discriminate against any group or individuals for personal gain'¹⁵.
- **Conflict of interest:** This is when the personal interests of a public official improperly influence decision-making and the performance of an official's duties and responsibilities.
- **Illegal contribution:** These occur when political parties or a government receives bribes in exchange for non-interference—or alternatively favouritism—towards those making the contribution.

Section 2: Causes and consequences of corruption

Understanding how and where corruption is most likely to occur, what the key drivers of corruption are and how it affects societies, is an important but challenging task.

2.1 Causes of corruption

There are several domestic and external mechanisms underlying the emergence and development of corruption.

- **Level of economic development and poverty:** There is no firm, fixed correlation between any particular level of economic development and the incidence of corruption¹⁶. The absence of economic development encourages corruption, and the prevalence of corruption restricts development and compounds poverty.
- **Unintended consequences of economic liberalisation:** The expansion of the private sector, through market liberalisation, necessitates more frequent interaction with the public sector and hence may increase the number of opportunities for private agents to bribe public officials. Corruption also occurs within the private sector in commercial transactions. International trade may generate new opportunities for corruption, since bribes can be paid by foreign companies to obtain domestic contracts or by domestic companies seeking to gain privileged access to foreign markets¹⁷.
- **Unintended consequences of state intervention:** State intervention may in certain contexts foster corruption through excessive red tape (i.e. excessive and/or poorly-designed bureaucratic rules), taxation and reduced competition. Decentralisation can also increase corruption with its transfer of greater power to local government, allowing for greater intimacy and frequency of interaction between individuals and corruptible officials.
- **Weak institutions:** Weak institutions do little to hold corrupt politicians and officials to account or to prevent systematic corruption. The absence of institutionally driven checks and balances are likely to foster a climate conducive to systemic corruption.
- **Lack of accountability and transparency:** Corruption thrives where accountability and transparency mechanisms, particularly within institutions, are minimal. Corruption is both a cause and an effect of unaccountable institutions¹⁸.
- **Inequality:** Corruption fosters division, creating and sustaining 'fault lines' between those who benefit and those who do

¹¹ *Ibid.*

¹² *Ibid.*

¹³ See <http://www.u4.no/helpdesk/faq/faqs1.cfm>

¹⁴ UNODC, 2004.

¹⁵ *Ibid.*

¹⁶ See <http://www.u4.no/helpdesk/faq/faqs1.cfm#3>

¹⁷ Tanzi, V., 1998. 'Corruption Around the World: Causes, Consequences, Scope and Cures'. *IMF Staff Papers*, 45 (4), available at <http://www.imf.org/external/pubs/ft/staffp/1998/12-98/pdf/tanzi.pdf>

¹⁸ See <http://www.u4.no/helpdesk/faq/faqs1.cfm#3>

not¹⁹. In relation to gender and corruption, low levels of corruption may restrict male-dominated networks and, therefore, improve women's access to higher positions. Evidence suggests that women are no more or less likely to condemn or condone corruption than men; in many developing countries, they may simply lack access to the same networks and opportunities for corruption²⁰.

- **Democracy or the lack of democracy:** In democratic systems—by enabling increased voter scrutiny of political decisions, enhancing freedom of the media, increasing electoral competition and fostering civic engagement—cases of corruption are more likely to be exposed, integrity enforced and political accountability improved. At the same time, electoral competition may give rise to corruption by increasing the needs of political parties to raise funds. The negative relationship between corruption levels and democracy thus depends on how well institutionally entrenched the democracy is in a given country.
- **Unintended consequences of international corporations and 'Foreign Direct Investment' (FDI):** International corporations and Foreign Direct Investment (FDI) can undermine local business and financial institutions as well as feeding political and administrative corruption through bribery and State capture. International corporations can use their economic power to unduly influence policy-making and legislative decisions in their favour in order to escape domestic economic regulations and secure privileged conditions for doing business and access to domestic markets.
- **Offshore banking, tax havens and money laundering:** Offshore financial banking facilities and tax havens are generally located in small, physically and legally isolated, independent jurisdictions, opaque in nature with ambiguous constitutional status and are the principal vector for the proceeds of corruption, organised crime, drug trafficking or tax fraud.
- **International organised crime:** Corruption of administration, in particular law enforcement agencies, can enable organised crime to facilitate and sustain both its illicit and licit activities. At the same time, international organised crime investments in illegal activities that need to be secured or protected against loss through the bribery of, for instance, politicians, judicial authorities, police and custom officers.

2.2 Consequences of corruption

The consequences of corruption are not limited to economic inefficiencies; corruption also reduces the provision of welfare in society, undermines democracy and political institutions, contributes to social inequalities and conflict, may amount to a violation of human rights and have a potentially devastating impact upon the environment.

- **Hampering economic growth and development:** Corruption serves to compromise and hinder effective, equitable and efficient management of public finances and long-term economic stability. It may narrow a country's tax base, distort market signals and divert resources from their intended purpose. Corruption can strongly deter investment by decreasing the expected returns of foreign and domestic investments due to a risky and uncertain business environment. Corruption negatively impinges on aid effectiveness and the willingness of the donor community, and their constituencies, to provide aid and development assistance.
- **Jeopardising poverty reduction and welfare:** Corruption can undermine access to public services, such as education or health, and to utilities, such as electricity or water, or public housing. Corruption can allow entities to escape protocols that ensure responsible disposal of waste or divert away resources allocated to environmental programs or conservation initiative. Environmental damage leads to more immediate concerns for the livelihoods, health and well-being, and—when taking into account the high correlation between natural resource exploitation and armed conflict—the safety of local communities.
- **Increasing social costs:** Corruption undermines economic growth, a prerequisite for the eradication of poverty and inequality, and fosters macroeconomic instability. Corruption hurts the poor—who cannot protect their assets—erodes the tax base and affects the government's ability to maintain social spending. Corruption weakens the institutional capacity to fight poverty by undermining the ability of a government to design and effectively and efficiently implement poverty reduction strategies. It is detrimental to social cohesion by separating the rich from the poor and promoting rivalries and jealousies between ethnic groups and communities.
- **Weakening democracy:** Corruption can subvert the public interest by encouraging an emphasis on personal gain that can damage the way citizens and future generations of elites consider politics. It can pervert the conduct and results of elections, disenfranchise the poor and marginalised social groups and reduce political competition. It can provoke political unrest and public mistrust in political institutions/processes, undermine the quality of public policies and transparency in political decision-making, and contribute to the disaffection of the international community—with the government risking isolation by the international community.
- **Conflict:** In both conflict and post-conflict environments, corruption is likely to play an important and dynamic role. It can foster political instability and lead to coup d'états or civil wars.
- **The unintended impact of development assistance:** Corruption undermines international donor agencies' developmental efforts. Increasing the flow of aid can increase the levels and costs of corruption though this may be because new aid flows free up domestic funds for other purposes. Donors are often faced with the dilemma that, in spite of all the control mechanisms that they can introduce into their assistance programmes, it is generally impossible to guard against all of the risks of corruption. In the end then, donors need to balance the risks of engagement with the benefits of aid distribution.

19 Chetwynd, E., Chetwynd, F., & Spector, B., 2003. 'Corruption and Poverty: A Review of Recent Literature', available at <http://www.u4.no/document/literature/corruption-and-poverty.pdf>

20 Al-hassan Alolo, N., (2007). 'Gender and corruption: testing the new consensus', *Public Administration & Development*, 27: 227-37.

CHAPTER TWO: ADDRESSING CORRUPTION IN A GLOBALISED WORLD

This section situates corruption within a global context, examining the evolution of international efforts to recognise and prevent corruption and the progress of these efforts.

Section 1: International and regional conventions and instruments

The Historical Context

The 'legal' landmark recognition of corruption in Europe goes back to the Napoleonic Code of 1810, which introduced penalties to combat corruption in public life. Since then, little was done to address the issue internationally until it gained popularity during the 1970s. Following a number of corruption scandals involving Western-owned multinationals abroad in the 1970s, the US was the first nation to criminalise the extraterritorial payment of bribes by domestic companies in the form of the US Foreign Corrupt Practices Act (FCPA) of 1977. Individuals found guilty are subject to incarceration, fines or both.

In the post-Cold War period, there was an increasing international consensus that the corrupt practices of multinational companies and other actors had negative effects on developing countries. These included the following: undermining economic prospects, fostering inequality and exacerbating poverty, creating disadvantages for foreign domestic firms, creating greater inequality between poor and rich countries by transferring money that could be used for poverty eradication into the hand of the rich, damaging the environment, undermining democratic institutions and fostering illicit trafficking (drugs, weapons, minerals, and so forth).

In 1997, OECD member countries decided to curb bribe-giving in international business with the creation and ratification of the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Following this, a number of multilateral conventions have since been negotiated, adopted and ratified. These conventions set individual standards and requirements for the prevention and detection, as well as the investigation and sanctioning, of corrupt behaviour and have also sought to establish frameworks for international cooperation in the fight against it. Such Conventions are also intended to provide civil society with a useful tool with which to hold governments to account.

The United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC), which entered into force on 14 December 2005, is one of the most recent and extensive Conventions to specifically recognise and tackle corruption. UNCAC comprehensively requires that States' Parties put in place and implement effective, coordinated anti-corruption policies that promote the participation of non-state actors and set forth the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. While the Convention does not explicitly define corruption, it sets out to define and criminalise the actions of corruption to which its provisions apply.

The primary aim of UNCAC is the provision of a comprehensive, universally accepted legal instrument to prevent and combat corruption. A self-assessment system has been developed by the UN Office on Drugs and Crime (UNODC) to help State Parties and signatories to the Convention regularly report on progress. The Conference of the States Parties to the Convention decided in November 2009 to establish a review mechanism in order to complement the self-assessment system.

In September 2005, the European Community, represented by the European Commission, signed the 2003 UNCAC and ratified it in November 2008. Therefore, the EU as represented by the European Commission is now party to the Convention.

Regional Conventions

- **Inter-American Convention against Corruption of the Organisation of American States (OAS):** The first summit of the Americas and the Organisation of American States (OAS) undertook and adopted the Inter-American Convention against Corruption in 1996. The Convention is structured around two key objectives: the development of preventative measures and the repression of corrupt practices.
- **OECD Convention on Combating Bribery:** The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions represents an instrument primarily focused upon the 'supply side' of corruption transactions. In defining and criminalising the act of bribing foreign officials, the Convention makes bribery a predicate offence. Member signatories are obliged to establish the illegality of the bribery of public servants within their national legal frameworks in tandem with the means and measures to 'prevent, detect, investigate, prosecute and sanction foreign bribery.'²¹
- **Council of Europe Criminal Law Convention on Corruption:** The Council of Europe Criminal Law Convention on

21 See http://www.oecd.org/document/13/0,3343,en_2649_34859_39884109_1_1_1,00.html

Corruption came into force in 2002. The Convention is the first attempt to define common international rules in the field of civil law and corruption. It requires State Parties to 'provide in their domestic law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation'.

- **African Union Convention on Preventing and Combating Corruption:** Adopted by the Second Ordinary Sessions of the assembly of the Union in Maputo, Mozambique in 2003, the African Union Convention²² on Preventing and Combating Corruption entered into force on 5 August 2006²³. States Parties are required to submit reports detailing compliance with the Convention to the AU's Executive Council. National anti-corruption authorities also must report to the Advisory Board annually on progress in its implementation. The States Parties are requested to build partnerships with the African Commission on Human and Peoples' Rights, African civil society, and governmental, intergovernmental and non-governmental organisations in order to facilitate dialogue in the fight against corruption and related offences.

Practical guidance on how to use the conventions in European Commission work

The following are the steps that lead from the negotiation of a convention and its actual implementation by States Parties²⁴ and the role the EU can play:

- **Negotiation:** This step has no role for the EU to play.
- **Adoption:** This step has no role for the EU to play.
- **Signature:** In a country that has not yet signed the relevant conventions, the EU should make this issue part of its dialogue with the government. A joint approach involving other donors and non-state actors should be supported by the EU to lobby the government.
- **Ratification or Accession:** Once it has been established that a particular country has not ratified or acceded to a given convention, the EU, acting jointly and in coordination with other donors, should include this issue in their dialogue with the relevant representatives. The EU should also give support to the lobbying activities of non-state actors.
- **Deposit of Instruments of Ratification or Accession:** The EU, working with other donors, may include this issue in its dialogue. It should also support the lobbying activities of the non-state actors to this end.
- **Entry into Force:** It is important that the EU and other donors discuss in detail with partner states what their responsibilities will entail prior to and after the 'entry into force' of conventions.
- **Implementation into National Law:** The EU, in conjunction with other donors, notably UNODC, needs to include in its dialogue the implementation of the convention to which the country is party. Technical support in the form of legal experts and mentors may need to be provided by the European Commission to the relevant institutions of the partner countries that lack national expertise in this area.
- **Wider Integration into Institutional Structures, Policy and Practice:** The EU, alongside other donors, could provide the funding for providing relevant expertise to set up, staff and equip these transformed or new institutions; implement the new policies; and apply the new practices and policies.
- **Monitoring mechanisms:** The EU and other donors can provide the necessary support to enable these countries to fully participate in, and comply with, these monitoring mechanisms. Non-state actors also need support in order for them to contribute effectively to the development and implementation of the review processes.

International initiatives in the area of natural resource management (NRM): Indirect instruments helping in the fight against corruption

The existence of natural resources raises the possibility that various competing social and political groups may attempt to gain control over them to facilitate rent-seeking. In addition, the institutional arrangements relating to natural resource management may provide opportunities for corrupt activity. It is not necessarily the presence of natural resources by themselves that leads to the resource curse but the likelihood of such resources being exploited to greater facilitate processes of patronage and rent-seeking by opportunistic institutions. The most important institutions are those responsible for the allocation of public revenues and those which hold politicians to account for their management of public funds and thus restrict the possibilities of state-capture by governments.

A number of initiatives have been developed over the last few years to address the problems of governance and corruption that resource-abundant countries face.

- **Extractive Industries Transparency Initiative:** The Extractive Industries Transparency Initiative (EITI) was launched in 2002 by a coalition of governments, companies, non-state actors, investors and international organisations²⁵. The EITI is

²² It is important to recognise that both the Southern African Development Community (SADC) Protocol against Corruption (2001) and the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption (2001) were pioneering predecessors to this important regional convention. However, the protocols have had mixed results with the SADC Protocol being signed in 2001 as the first sub-regional anti-corruption treaty in Africa; whereas, the ECOWAS Protocol remains yet to be signed.

²³ To date, thirty-one Member States have ratified and are state parties to the Convention.

²⁴ The following explanation of the steps is summarised from Dell, G., 2006. 'Anti-corruption conventions in Africa: What civil society can do to make them work', Berlin: Transparency International, available at <http://www.transparency.org>.

²⁵ See <http://www.eitransparency.org>

a voluntary initiative aimed at improving governance in countries endowed with oil, gas and minerals through the verification and publication of company spending and government revenues from the extractive industry sector—with a view to ensuring that natural resources benefit all.

- **Kimberley Process Certification Scheme (KPCS):** To reduce the financing of conflict and other illicit activities through diamond trading, a UN resolution was passed supporting an international rough diamond certification scheme. The KPCS was created in November 2002 and entered into force in January 2003. The KPCS demands that certificated countries only trade with other participants who fulfil the requirements of the KPCS and all rough diamond exports must be accompanied by a KP certificate that guarantees they were not produced in conflict-ridden areas. Compliance with the requirements of the scheme is monitored through 'review visits', annual reports and the regular exchange and analysis of statistical data on diamond production and trade.
- **Forest Law Enforcement, Governance and Trade:** Responding to public concerns on the issue of illegal logging and deforestation, the European Commission adopted an EU Action Plan for Forest Law Enforcement Governance and Trade (FLEGT) in 2003. The intended impact of FLEGT was to reduce illegality in the international timber sector, improve governance in the forestry sector of timber producing nations and encourage importers to take responsibility for ensuring a credible verification process.

Section 2: The EU approach

Combating and preventing corruption is an integral part of the EU's internal and external policies. Internally, it is a priority in respect of existing Member States (MS) and also forms a key aspect of the *acquis communautaire* for accession countries. Externally combating and prevention is a priority in respect of the EU's approach to international relations. Addressing corruption challenges thus requires a coherent set of policies between our internal strategies and practises at the EU level and the policies and measures implemented in third countries.

The EU has addressed the fight against corruption as follows:

- Article 29 of the Treaty on European Union mentions preventing and combating corruption as one of the ways of achieving the objective of creating and maintaining a European area of freedom, security and justice;
- 1995 Convention on the Protection of the European Communities' Financial Interests and its protocols of 1996 and 1997, as well as the 1997 Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union; 2003 Communication on an EU anti-corruption calls for the detection and punishment of all acts of corruption, the confiscation of illicit proceeds and reduces opportunities for corrupt practices through the establishment of transparent and accountable public administration standards as well as promotes anti-corruption clauses within cooperation agreements and external aid programmes;
- 2003 Council Framework Decision on combating corruption in the private sector aims to ensure that both active and passive corruption in the private sector are criminal offences in all EU Member States, that legal persons may also be held responsible for such offences, and that these offences incur effective, proportionate and dissuasive penalties;
- 2011 Communication on fighting corruption in the EU sets up a mechanism for the periodic assessment of EU Member States' efforts in the fight against corruption.

Corruption is a major impediment to development; research suggests that resources intended to address the basic development needs of millions of poor people around the world are diverted and misallocated through various forms of corrupt practices. Therefore, the European Commission works on strengthening governance and fighting against corruption in developing countries. 2006 Communication on Governance in the European Consensus on Development recalls that: "Good governance means more than tackling corruption. Though the EU takes an extremely firm stance on this matter, viewing corruption as a major obstacle to achieving development goals, it sees it as a symptom of poor governance and of a lack of transparent, accountable management and control systems".

At the country level, while taking into account the conditions in specific countries, the European Commission fights against corruption in its external actions through the following measures:

- Supporting the public administration reform and the management of public finances, in particular in the case of budgetary support to the partner country;
- Supporting the improvement of the business and investment climate and customs reform;
- Supporting the fight against economic/financial crime (capacity-building for law enforcement and judicial authorities, as well as specialised bodies such as anticorruption commissions), as well as support to Justice and Security reforms (including police reform);
- Supporting the civil society and media as watchdogs, as well as Supreme Audit Institutions and Parliaments in exercising their oversight and control functions.

CHAPTER THREE: ASSESSING CORRUPTION AND MONITORING ANTI-CORRUPTION

Assessing corruption or monitoring anti-corruption efforts can help mitigate risks inherent in development programmes and projects. There has been a proliferation of governance tools and indicators recently and though there is quite an abundant literature providing guidance relating to governance assessments, there is, as yet, little guidance centred on corruption. This chapter provides guidance for policy-makers seeking effective assessments of corruption or anti-corruption efforts.

Section 1: Introduction

Corruption is highly variable and dependant on context; therefore it can only be measured indirectly and requires nuanced and tailored measurements.

The following are key questions when designing an assessment:

- What is the particular purpose of the assessment?
- What is the level or focal point of the analysis?
- What data is most suited?

Thinking through these questions allows finding an assessment tool that meets the objectives and is suitable for the context. There is currently a wide range of what is called in the following as the users of corruption and broader governance indicators, including development agencies and practitioner, government and civil society, academics and researchers, international advocacy and human rights organisations, media and international investors. Different users have different objectives based on their organisations, task mandates and objectives.

With this growth of users, there has also been a growth in the number of purposes for corruption assessments. Since their conception, the application of corruption assessments has evolved from using corruption assessments primarily to help promote the fight against corruption, to using them to compare levels of corruption over time and space, to using them to provide a comprehensive and nuanced assessment of corruption issues in a specific context²⁶.

Policy-makers increasingly turn to corruption assessments to identify where and what action can be taken to combat corruption. As opposed to the wider corruption or governance indicators, these so-called actionable indicators aim to drill down to specific governance elements to identify opportunities for reform. It is better, if at all possible, to seek out 'action-worthy' indicators - indicators that not only highlight opportunities but also guide policy-makers towards the most worthwhile reforms. **When designing corruption measures, it is important that the tools and indicators used are fit for the purpose for which they are intended.**

Section 2: Purpose

There are now a large number of tools and indicators available for corruption assessment. Though many of them have similar names, they often have distinctly different purposes. **Clearly identifying the purpose or objective of the assessment is a crucial first step to preparing an assessment.** Common purposes include diagnosis, early-warning, awareness-raising, coalition-building, monitoring, research guidance, policy dialogue, fiduciary risk and programme failure.

When defining the purpose, another aspect that is essential is to **consider the area of focus.** In particular, is the area 'corruption' or 'anti-corruption'? Measuring corruption is based on perceptions and experiences of the general population, public sector, private sector and/or experts. Anti-corruption or integrity assessment is based on compliance monitoring of local, national or international policies and conventions as well as diagnostic assessments of institutions, processes and/or sectors at the local level. There may also be a need to focus on a particular sector, such as the public sector, or a specific institution. **Tools, especially some of the most popular tools, are suited to raising awareness of corruption but not to guiding policy-makers on suitable reform.**

²⁶ Heinrich, F. and Hodess, R., 2011, 'Measuring Corruption', in Graycar, A. and Smith, R. (eds), 'Handbook of Global Research in Corruption', Cheltenham: Edward Elgar

Section 3: Level

There are different levels at which the assessment could focus for which different tools would be appropriate.

There is significant overlap between levels (e.g. Global Integrity can be multi-country, supranational and multi-level). Levels can be defined as supranational, multi-country, national, sub-national, sectoral, organisational and multi-level.

Levels of corruption and perceptions of corruption can vary significantly between levels. A corruption assessment with a focus or emphasis on a particular level may not be generalisable. This is especially the case in relation to the public and private sectors where inclusion or exclusion of the private sector perceptions in an assessment can significantly affect the results.

Section 4: Data collection method

Good data is essential for a good assessment; however, corruption as an illicit activity is often intentionally obscured, making it hard to obtain good data. Furthermore, in developing countries there may not be the capacity to gather relevant data. **Corruption assessments are designed to make assessments based on limited data, but the choice of data source ultimately affects the outcome.**

4.1 How is the information gathered?

Assessments on anti-corruption are determined by what data is collected, how it is collected and by whom.

The choice and method of data collection has profound impacts on the results. Various methods and combinations of methods can be employed to gather information. The main methods are: desk-study, interviews, focus group, postal surveys, internet surveys and expert coding of narrative reports.

4.2 What types of data can we get?

Anti-corruption tools and indicators employ one of the following types of data: objective—indisputable facts, such as policy measures; perception—based on people's opinions; and composite indicators—a mixture of objective and perception measures.

In relation to perception data, those outside of the area may have strongly differing views to those within it. **Indicators, and especially anti-corruption indicators, have underlying normative assumptions that are important to take into account.**

Perception data may be most valuable where objective measures are weak or non-existent, but it is prone to bias. There are time lags, with perceptions often slow to change. Some environments stifle dissent or contain a culture reluctant to air criticisms or negative opinions. An increased awareness of corruption following a recent or well-publicised series of incidents of corruption may mean more acts are classified as corruption, building a strong but false sense of corruption. A high-profile anti-corruption drive may increase the perception of corruption just when corruption is actually starting to be effectively combated. **Perception data must be thus interpreted in respect to the context.**

Some indicators are effectively proxy measures for aspects of corruption that are difficult or impossible to measure. Proxy measures, for example—the number of corruption cases brought to trial over a given period, use indirect 'signals' of corruption or measure anti-corruption processes or institutions. The link between proxy measures and what they purport to measure can be contestable. **Proxy measures may not behave in a similar fashion to the target issue and respond differently to anti-corruption programming.**

4.3 Data sources

Anti-corruption tools and indicators are based on four types of data, which are based upon first-hand knowledge or direct experience. These include written de jure provisions, event reports, narrative reports and surveys. In addition to these first-hand or primary sources, there are other secondary sources, such as academic studies, political economy analyses, integrity assessments, external risk assessments, national Audit / Auditor-General reports, and public Anti-Corruption Agency/Commission reports.

The choice of data source can have an impact on relations between the assessor and the assessed. Engaging with the country under review and incorporating locally-produced documentation can help build capacity and support local review processes.

4.4 Challenges of anti-corruption tools and indicators

Though governance indicators are widely used, in many cases it seems users do not grasp their strengths, limitations and possible alternatives. **No single source of data or tool will offer a definitive measurement, and an accurate and valuable assessment depends on an understanding of the various tools and indicators and tailoring them to the context.** Users should be aware of the areas of confusion and the limitations and pitfalls of tools and indicators:

- Avoid over-reliance on popular but often inappropriate indicators, such as Transparency International's Corruption Perception Index and the World Bank's Governance Indicators
- Be aware what makes up an indicator
- Do not try to reduce the unquantifiable to numbers
- When required, choose indicators that are designed to guide policy
- Ensure that input and output indicators complement each other
- Ensure that your indicators address the needs of the poorest and women
- When appropriate, measure integrity (i.e. the effectiveness of existing corruption safeguard mechanisms) rather than measuring corruption
- Take into account differences between *de jure* (i.e. written provisions) and *de facto* (i.e. the day-to-day implementation of such provisions)
- Do not assume causation where there is only correlation
- Be aware of data limitation

Section 5: Practical Steps

Corruption assessments can be quite straightforward. It is often not necessary to take extensive measures to undertake a corruption assessment. The following steps outline the key steps required—some of which users may have already carried out (i.e. step one through existing political economy analyses) or will have been carried out on their behalf (i.e. step three through the GATEway Project).

Step 1: Understand the political economy

Assessments should take place with a sound understanding of the country's political economy that would help identify scope for change and to ensure that the areas assessed would be in control of policy-makers.

Step 2: Identify purpose, level and suitable data

It is necessary to think through what is the purpose of the assessment and identify which level will be targeted. The overall purpose of the assessment will help in identifying the level of analysis and type of data required.

Step 3: Explore the range of tools and identify and adapt the most appropriate

It is important to have a comprehensive understanding of the available tools and their indicators. The Transparency International GATEway Project aims to undertake this and provide a database of accessible tools. Users must identify tools and indicators that most suit those.

Section 6: What are the best written resources to help choose tools and indicators?

There is a wide (and often confusing) range of literature available relating to the available tools and indicators on assessing corruption. As a starting point, the following resources are recommended:

- GATEway Project, available at <http://www.transparency.org/tools/gateway>
- Governance and Social Development Resource Centre (GSDRC), available at <http://www.gsdrc.org/>
- U4 Anti-Corruption Resource Centre, available at <http://www.u4.no/>
- UNDP, 2008. 'A User's Guide to Measuring Corruption Guide', UNDP Oslo Governance Centre
English: http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption.pdf
French: http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption_french.pdf
Spanish: http://www.undp.org/oslocentre/docs08/users_guide_measuring_corruption_spanish.pdf
- World Bank Governance & Corruption (GAC) in Projects Database, available at <http://go.worldbank.org/C4SVHWDD00>

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