

Corruption and Its Impact on Emerging Democracies: Georgia

Institutions of Accountability to Control Endemic Corruption

December 4, 2000

Washington, DC

**Dr. Larry Diamond,
Senior Research Fellow, Hoover Institution,
Stanford University**

Corruption is bad for development. Leaving aside the morality of bribe-taking, influence-peddling, embezzlement, and other abuses of power for personal or narrow group gain, corruption exacerbates inequality, desecrates the rule of law, and undermines the legitimacy of democratic regimes.

Human beings are prone to self-seeking behavior. What constrains behavior and makes it conform with the larger collective ends includes the laws that form the core of norms and institutions. Even if laws are far-reaching and effectively enforced, the occasional criminal, clever, or risk-taking individual will always tempt fate and use political or state office for private gain. So corruption can never be completely or permanently eliminated. The question is, how can it be controlled? And more to the point: for many countries in the developing and post-communist worlds where corruption impedes economic growth, foreign investor confidence, and democratic (or any other kind of regime) stability: how can a country move from a situation where corruption may be the norm to a situation where corruption is morally intolerable and behaviorally rare?

Why Focus on Institutions?

If there is one overarching lesson from research and country experience on corruption, it is that endemic corruption will not be reversed and controlled with moral crusades. People respond to incentive structures, not moral appeals. Officeholders will not abstain from corruption unless it no longer appears in their interest to behave corruptly. To control corruption **the expected utility, or benefit/cost ratio, for the individual officeholder of obeying the law must be higher than the expected utility of behaving corruptly.** In particular, the expected costs of engaging in corruption - which are very low or near zero in an endemically corrupt society - must be dramatically increased. The only way that the expected costs of corruption will increase is if officeholders perceive a credible threat that corrupt conduct will be discovered and punished.

Therefore, if corruption is to be controlled, corrupt officials have to be exposed and punished frequently and severely. Control of systemic corruption requires that public officials perceive a substantial risk that if they engage in corrupt conduct they will lose their offices, forfeit illegally acquired wealth, and even go to prison.

Implementing these sanctions against corruption requires an institutional framework to control corruption. As endemic corruption is a systemic disease that can only be controlled with a systemic cure: a single institution such as a counter-corruption commission will not do. There are three great challenges for institutional design to control corruption. First, agencies are needed to monitor conduct and expose wrongdoing. Second, a system is needed to assess charges of wrongdoing and punish wrongdoers if they are convicted. Third, a framework is necessary for constituting and insulating watchdog agencies so that they cannot be subverted by the very actors they are supposed to control.

Effective and durable corruption control requires multiple, reinforcing, and overlapping institutions of accountability. And for situations of endemic corruption, these need to be of three kinds: horizontal accountability (by which some agencies of government scrutinize and check others), vertical accountability (by the electorate and civil society) and external accountability (in the form of vigorous international scrutiny and support).

Institutions of Horizontal Accountability

The Law: The first institution is the law, which must prohibit all forms of bribery, nepotism, and misuse of public funds. Although comprehensive anticorruption legislation is necessary, it is not sufficient. Improper enrichment of public officials cannot be detected unless their own personal and family finances are transparent. Effective corruption control requires that higher-level elected officials, political appointees, civil servants, military officers, and police officers declare their assets upon taking office, and every year thereafter, and whenever their assets change in some significant, defined way (as through a major sale or stock transaction). These declarations should be publicly filed with the counter-corruption commission. To ensure public confidence in the process - and facilitate the overlapping arena of vertical accountability - the declarations of assets must be available, ideally through publication in the newspapers of top officeholders' assets declarations. Endemic corruption cannot be controlled without this vital step.

Anti-Corruption Bodies: The second institution is a **body charged with scrutinizing the conduct of public officials and monitoring their assets declarations** to look for signs of malfeasance. This body must be charged not only with receiving but also monitoring and verifying the assets declarations of the president or prime minister, national-level ministers, members of parliament, state or provincial governors, state legislators, and other elected and appointed public officials above a certain level. (A truly comprehensive effort in a large country will also provide for the commission to have branch offices at the provincial level to monitor elected local government officials). The commission must then have the staff to investigate annually on a random basis some significant percentage of these assets declarations, and systematically, the declarations of the country's highest officials.

Scrutiny must be comprehensive if it is to be effective, and if the threat of detection is to be credible. This requires a lot of resources: accountants, investigators, and lawyers trained in the ways that wealth is moved, accumulated, and hidden, along with computer specialists and other support staff to back them up. Not only does a counter corruption commission need a lot of well trained staff, it needs to pay them enough to deter temptation and establish a high esprit de corps. There is no way to control corruption without spending money to build institutions.

Scrutiny, however, is not enough. If credible evidence of wrongdoing emerges, there must be the institutional means to try the suspected offender and impose punishment on the guilty. The single most common and crippling flaw in systems of corruption control is an inability to enforce this function free from interference by the highest levels of government. The counter-corruption commission should have the ability to prosecute officials who have allegedly violated ethics laws independently. One of the most important changes introduced by Thailand's democratic constitution of 1997 was to grant the National Counter Corruption Commission independent prosecutorial authority, even if it means overruling the attorney general. Critics may argue that

trying public officials outside the normal judicial process undermines the rule of law. And, of course, in a democracy the power to deny someone his freedom, through imprisonment, should only be exercised by the judiciary. But it makes sense to enable a counter-corruption institution to impose punishing civil penalties, including forfeiture of office and assets, through due process, even if the judicial system would be able to do this as well, and more.

Ombudsman's Office: The Ombudsman's office receives and investigates public complaints of abuse of office. Members of the public or the press should have a right to - indeed be encouraged to - bring evidence to the counter-corruption commission if they believe a public official has misrepresented his or her assets or abused their office. But there needs to be a supplementary channel of public access to government authority if power is being abused and the counter corruption commission does not seem to be doing its job. If the system is working well, the ombudsman may occasionally come upon evidence that the counter corruption commission does not have, or that reinforces investigations the commission has already opened. Ideally, these offices would cooperate. But in a context of systemic corruption, mutual suspicion may be a functional, if not ideal, substitute for cooperation. Members of the counter corruption commission should know that they themselves could be exposed to public outcry if they fail to move aggressively on evidence of corruption. And the Ombudsman's office should know that it has to meet the same standards of honest public conduct as all other officials, or it will itself be held accountable.

Public Audits: Independent, systematic audits of public accounts constitute a highly specialized field of public administration. Clearly, it is not enough simply to monitor the personal accounts of public officials. A dense, overlapping system of accountability requires that all major government bureaus, agencies, and ministries have their accounts regularly audited. To conduct these checks, each major government agency or bureau should have its own auditing office and inspector general. Finally, the government should have an office of the auditor-general with the authority to conduct external audits on a periodic or random basis, and audit any agency at any time when there is evidence of wrongdoing.

The Judicial System: Like the other agencies of horizontal accountability, the judiciary must be independent if it is to be effective in controlling corruption. Here is a major target for investment in institution building. An effective judicial system requires well trained, capable judges, clerks, prosecutors, and defense attorneys, and enough of them to keep case loads to a level that is consistent with vigorous justice and due process. They need the support of law libraries, computerized information systems, professional bar associations, law schools, and judicial training institutes. All of this takes money.

If these horizontal institutions are the nerves and muscles of corruption control, why would politicians let them function effectively? What will ensure their operational autonomy? This is crucial in designing institutions to control corruption, and it begins with the power to appoint. If a country cannot get high quality, professionals in these positions, all is lost from the start. It should be underscored that this seemingly modest problem - who will appoint, if not guard, the guardians - is absolutely fundamental, and there would be much value to facilitating an exchange of ideas among developing democracies. Thailand offers an example of fresh constitutional thinking on this issue. Thailand's constitution provides for a nonpartisan upper chamber of parliament, the Senate, whose members are elected for six-year terms (forbidding immediate succession) and are expressly forbidden to have any party membership or political appointment (including in a state enterprise). This arrangement is intriguing because it is the nonpartisan Senate which has responsibility for appointing members of "independent agencies mandated by the Constitution to promote transparency and accountability," such as the Constitutional Court, the National Counter Corruption Commission, the Election Commission, Ombudsmen, the National Human Rights Commission, and the State Audit Commission. Developing countries with serious accountability problems should ponder and adapt this model.

Institutions of Vertical Accountability

Horizontal accountability needs to be stimulated and reinforced by pressure and scrutiny from below and from outside. And in a situation of systemic corruption, these additional sources of pressure and scrutiny must be massive and sustained or horizontal accountability will be gutted and left to rot.

Electoral Accountability: One vital, though imperfect, means for controlling corruption is a competitive and transparent electoral process. Of course, one of the most common motives for political corruption is to amass the campaign war chests necessary for reelection. But an ability to throw out the worst offenders is one vital means for containing corruption. And the most extreme forms of corruption often extend into the electoral process, using any means to win elections (including buying not only votes but electoral officials) precisely because so much is at stake in controlling power. If vertical accountability is to be real, then, an instrument of horizontal accountability is needed in the form of an independent, electoral commission capable of displeasing the ruling party. This institution also needs resources—human, technical, and financial—and a lot of training.

An Independent Mass Media: This is another crucial entity of vertical accountability. Transparency, virtually by definition, requires free and open flows of information. Without a free and pluralistic press, transparency is not possible. Controlling corruption requires a press that is free from intimidation and restraint; a press that has the resources to investigate rumors and evidence of corruption; and a press that has the maturity, restraint, and professionalism to eschew loose and sensationalist charges based on any whisper of malfeasance. This latter point needs emphasis, because if the press is constantly accusing without credible evidence, it will discredit itself and the whole quest for accountability. For much of the developing and post-communist world, it will take many years to develop the needed levels of press pluralism, capacity, and responsibility, even if a climate of freedom exists. Investigative reporting requires training and a lot of resources that few newspapers and magazines can afford.

Non-governmental Organizations: Vertical accountability also requires non-governmental organizations in civil society building new practices of good governance. A variety of civic associations (bar associations, women's organizations, student groups, religious bodies, election monitoring and human rights groups) may form coalitions to lobby for constitutional changes to improve governance, while also working to monitor the conduct of public officials. Transparency International has demonstrated the vital and creative role that international civil society can play in forming coalitions with domestic constituencies for good governance and accountability.

External Accountability

Two significant gaps remain in the system outlined above. One is generating the incentives to put these institutions into place. The other is finding the resources to enable these institutions to function effectively. For most developing countries where corruption has been widespread, if not endemic, these problems require extensive international scrutiny and support.

Scrutiny: International donors and even corporate actors need to monitor systematically the conduct of governments and public officials with whom they do business. Effective monitoring requires coordination and information sharing. Businesses and donor organizations should have a central international agency to which they can report demands for bribes and other improper conduct by public officials in any particular country. Because bribery is an exchange that requires a giver as well as taker, an honest public official should equally have an international place to which he can report an offer of a bribe from an international firm. An institution that is universally respected ought at least to gather this information, if not investigate it. Now that the OECD has adopted a convention banning bribery in international business transactions, the time is ripe.

Increasingly, in a global economy, corrupt transactions transcend borders. Increasingly, international action is needed to monitor and combat the problem.

Support: International donors should reassess their level of involvement in states that do not show a serious interest in addressing corruption. For those states that appear serious about implementing a comprehensive institutional agenda to control corruption, there will be huge resource needs. They will have to staff, equip, train, and remunerate counter-corruption commissioners and investigators, auditors, judges, public prosecutors, electoral commissioners, and ombudsmen. Private newspapers and civil society organizations seriously interested in holding these structures accountable and helping to make them work will also have acute needs for resources.

This amounts to an expensive institutional apparatus, in human and financial resources. In situations of systemic corruption and an institutional vacuum, it cannot be constructed overnight. These institutions, along with the independent central banks and effective state bureaucracies more generally, constitute the real, indispensable infrastructure for development. Funding socioeconomic development without having these macro-political institutions in place is like building a gravel road on a treacherous cliff. Comparative development in recent decades shows that open and accountable political institutions matter as much for economic growth as for viable politics.

This note is a summary of a presentation made at the Bank in November 1998 by Dr. Larry Diamond, Senior Research Fellow, Hoover Institution, Stanford University. Dr. Diamond used this text as the basis for his CSIS Georgia Forum December 4, 2000 presentation.