

# Implementing the UN Convention against Corruption (UNCAC) Combating Corruption through Development Cooperation

## Tackling corruption – a new issue?

For a long time any mention of corruption was taboo in development cooperation: only in the mid-1990s did the issue begin to be discussed. This was partly made possible by the ending of the Cold War – before then the geopolitical position of many partner countries was more important than the behaviour of corrupt elites. The internationalisation of business requires comparable competitive conditions that cannot be undermined by corruption. Pioneers in the fight against corruption are Transparency International, the World Bank and the Global Programme against Corruption initiated by the UN Office on Drugs and Crime and the OECD Convention on combating bribery of foreign public officials in international business transactions.

## Corruption is an expression of bad governance

Corruption is a **hindrance to development** and undermines poverty reduction policies: it is an expression of bad governance. Corruption impedes the development of the private sector and – since it creates legal instability, distorts competition and increases costs – deters investors. Moreover, because political institutions are vulnerable to corruption, the development of democracy is endangered. Ultimately the legitimacy of the entire state is called into question: the performance of public institutions is weakened and public resources are wasted instead of being used for sustainable development from which all sections of the population benefit. The **effects** of this are felt most by the poor and by women and children – access to public services and resources, on which they are particularly dependent, becomes disproportionately more difficult or more expensive for them. This affects, for example, access to education and health services or to water.

## What is corruption?

There are different definitions and manifestations of corruption. Transparency International, for example,

defines corruption as “the misuse of entrusted power for private gain”. The BMZ (German Federal Ministry of Economic Cooperation and Development) position paper defines it as the “behaviour of people who are entrusted with public or private tasks and who, by failing to respect their obligations, acquire unjustified advantages”. The manifestations of corruption include active and passive bribery, embezzlement, misappropriation, favouritism and nepotism. A distinction can also be made between grand and petty corruption, and between situational and structural or systemic corruption.

## Causes of corruption

The **causes** of corruption are also many and varied. The principal causes are poverty, low incomes and lack of prospects. Greed, opportunities for corruption as a result of inadequate institutional control mechanisms, and people’s criminal energy are also important motives. Bad governance, reflected in a lack of transparency and accountability and in the inadequate involvement of society in democratic and decision-making processes, contributes to corruption. Other causes, such as nepotism or corrupt practices that are generally accepted, are specific to particular countries. Local culture often turns a blind eye to such practices and thus encourages acceptance of the behaviour of corrupt decision-makers. Paradoxical as it may sound, plentiful natural resources can also be a cause of corruption if they are exploited by elites at the expense of the general population. In the new African oil states poverty has not been reduced despite the wealth of natural resources; this is a consequence of the prevalent corruption.

## Is corruption increasing?

It might well be thought that corruption is on the increase: one has only to consider the numerous reports that make national and international news, in particular the major scandals that regularly come to light – for example, in the automotive supply industry – and the cases of political corruption, as well as the machinations

of the international waste disposal industry. Is such a verdict true, or is it rather the case that tighter controls, greater public awareness and more investigative journalism are resulting in the discovery of more incidents and giving rise to increased opposition and protests, thereby making it seem that corruption has increased?

A rise in the number of corruption cases shows that laws and preventive measures, media initiatives and the activities of civil society organisations such as TI are having an effect. However, they also reveal the extent of corrupt practices and demonstrate that corruption is an everyday phenomenon in many countries; it is sanctioned by governments and needs to be seen in the context of power structures and the exercise of authority.

### International and regional agreements and initiatives

International conventions and regional agreements seek to enshrine anti-corruption measures in law. They address both the prevention and the prosecution of corrupt practices. Since the end of the 1990s a number of regional agreements with specific contents and goals have been adopted. The most important universal anti-corruption convention is the United Nations Convention against Corruption (UNCAC), which was adopted at the end of 2003 and entered into force at the end of 2005. That now provides the international framework for tackling corruption. Other international agreements are:

- OAS Inter-American Convention against Corruption (1997)
- OECD Anti-Bribery Convention (1999)
- ADB-OECD Anti-Corruption Initiative for Asia-Pacific (2000)
- UN Convention against Transnational Organized Crime (2000)
- Council of Europe Criminal Law Convention on Corruption (2002)
- Council of Europe Civil Law Convention on Corruption (2003)
- African Union Convention on Preventing and Combating Corruption (2003)
- Extractive Industries Transparency Initiative, EITI (2003)
- G8 Declaration on Fighting Corruption and Improving Transparency (2004)

### Development policy framework and approach

There is a close link between the problems of corruption and the current development policy discussions on aid effectiveness and scaling up within the context of the **Paris Declaration**. Corruption and lack of transparency are highlighted as major challenges for the implementation of the Paris Declaration.

**The Millennium Development Goals** make no explicit mention of corruption. Attainment of the goals will, however, be impossible – or will be more difficult and absorb more resources than would otherwise be necessary – if corruption in areas such as education and health is widespread. Corruption needs to be taken into account in the reduction of poverty and in the guaranteeing of human rights, democracy and good governance, as well as in the sphere of peace, security and disarmament.

In the **German government's Program of Action 2015**, priority area no. 9 "Ensuring the participation of the poor – strengthening good governance" highlights the intensification of the government's cooperation with other interested governments, business and civil society in the coherent tackling of corruption as an area for action.

The **Development Policy Action Plan on Human Rights 2004–2007** includes as criteria and mechanisms for the implementation of the human rights based approach in German development cooperation the human rights principles of transparency and accountability, which are also important in the context of tackling corruption. The provision of support to governmental and non-governmental bodies in partner countries in the implementation of the UN Convention against Corruption is named as a concrete measure.

### Federal Ministry for Economic Cooperation and Development (BMZ) position paper

The German Federal Ministry of Economic Cooperation and Development (BMZ) develops the guidelines and the fundamental concepts on which German development policy is based. It lays down - amongst other things - the long-term strategies for cooperation with the various actors involved and defines the rules by which these are translated into practice. The **BMZ position paper** on combating corruption in German development cooperation (version: June 2002) makes clear that the Ministry adopts an approach that targets various different levels: the internal prevention of corruption in BMZ and its interface organisations, the international and multilateral level and the national level in partner countries and in Germany.

Through the support of **international agreements and initiatives against corruption** – such as the African Union Convention on Preventing and Combating Corruption, the UN Convention against Corruption (UNCAC), and the African Peer Review Mechanism (APRM) – a significant contribution to the creation and maintenance of international standards can be made. Early 2005 saw the start of a **convention project** through which BMZ is promoting the process of ratification and implementation of the UN Convention against Corruption by providing support to governmental and non-governmental institutions in selected developing and transition countries. BMZ is thus contributing to the use of the UNCAC as a global and universal instrument for tackling corruption in development cooperation.

### Approaches to tackling corruption

In **working with other donors** it is particularly important to adopt a coherent approach to dealing with countries in which corruption is a widespread problem; joint learning processes also need to be promoted. This coherent approach must include mutual accountability – that is, donors must act in a transparent and accountable manner in dealing with partner countries and their populations; they must clamp down on corrupt business practices in their countries and tackle money laundering.

In **OECD/DAC GOVNET** initial steps have been taken by drawing up Principles for Donor Action in Anti-

Corruption. The operational implications are explored in a Policy Paper on Anti-Corruption that is based on these principles. The work of the **Utstein Group** on harmonising approaches to development cooperation has led to the setting up of the U4 Anti-Corruption Resource Centre as a knowledge management service for the six U4 partner countries: Canada, England, Germany, The Netherlands, Norway and Sweden. The U4 Anti-Corruption Resource Centre provides a virtual dialogue platform for the discussion of strategic and practical aspects of anti-corruption measures and organises training events for partners.

A starting point for **political dialogue** with partner countries is provided by an anti-corruption clause that Germany, following an OECD recommendation, has since 1997 included in the protocols of government negotiations and in all inter-governmental development cooperation agreements. This clause condemns corruption and expresses the intention to make joint efforts to prevent and combat corruption. In addition, the above-mentioned international and regional agreements and initiatives that have been made since then can be used as a basis for political dialogue.

If political will, ownership and leadership are present in the partner government, national strategies such as **poverty reduction strategies** or explicit anti-corruption strategies and national reform efforts should provide a starting point for bilateral cooperation. There are, however, very few countries that have been entirely successful in coherently linking the identification and analysis of corruption as a *cause* of poverty with elements of such *strategies*.

### Technical cooperation

Within the field of **bilateral official technical cooperation** BMZ is currently supporting a large number of projects that are explicitly or implicitly relevant to the prevention and combating of corruption. At present some 80 technical cooperation projects have explicit or implicit anti-corruption components. Many projects address corruption indirectly through the promotion of good governance. Examples of the implicit tackling of corruption are provided by projects dealing with legal pluralism and legal stability in Ghana, South Africa, Kenya, Afghanistan, Peru and Columbia. The combating of corruption is an issue in the promotion of business. This is reflected in the Business Climate Survey in the SADC countries and the Business against Crime initiative; it also forms part of projects aimed at modernising public administration in Indonesia and South Africa, where integrity pacts between official bodies, civil society organisations and business associations are being promoted and administrative reforms are being implemented.

The topic also forms part of decentralisation and municipal development processes, for example in Columbia, where the UN Convention against Corruption and the issue of corruption in general are discussed openly with the partners. The criticism that the decentralisation of government tasks and decisions simply leads to the decentralisation of corruption can only be countered by the introduction of transparent procedures and monitoring systems at local level.

An increasingly important aspect of technical cooperation is the field of public finance, in particular the promotion of tax administration and government monitoring institutions such as courts of auditors. Help is also provided in strengthening special state prosecutors in their work of combating corruption. Examples from Ghana and Indonesia, where GTZ is involved at the interface of prevention and law enforcement, or from Kenya, where an automated and anonymous complaints system has been set up, show that these institutions are increasingly gaining in strength. Through ongoing projects GTZ also supports initiatives of Transparency International that aim at the broader mobilisation of representatives of civil society in connection with their demands for good governance. Good governance is highlighted as an issue in almost all projects with sectoral relevance and in all projects that relate explicitly to aspects of the modernisation of government or the promotion of democracy and the rule of law; this increases the implicit emphasis on anti-corruption measures. This may not, however, be immediately visible, since project monitoring does not normally include any explicit corruption risk analysis; evaluation of changes effected during the term of the project is therefore difficult. Moreover, the primary aim of technical cooperation is to improve the performance of institutions; technical cooperation does this by fostering participation, transparency and accountability, and it is not necessarily possible to conclude from this that corruption has been prevented or combated. Whether or not this is a problem can only be judged by considering the terms of the project's or programme's original commission.

There is an issue as to whether a corruption code, similar to poverty and gender codes, should be introduced. This needs to be considered anew in the light of the draft of the World Bank's new anti-corruption strategy, international financial institutions' stronger focus on corruption and the debate on governance in technical cooperation being conducted by the EU Commission and the Development Assistance Committee (DAC) of OECD.

### What else can technical cooperation do?

The combating of corruption is part of the promotion of good governance and it needs to be established as a cross-sectoral issue. Can that be achieved? Would it not be better to offer help in combating corruption as a more targeted element of technical cooperation? Where do acute needs arise in technical cooperation, and how are they manifested? Basic resources are also required for this approach.

In technical cooperation the focus is on the strengthening of prevention, since this can increase the barriers to bribery and openness to corruption. Are there alternative, intelligent and more effective approaches that could be adopted in technical cooperation? Issues to be discussed, for example in the context of the promotion of the rule of law, include the question of whether asymmetric punishment – which punishes the initiator of corrupt practices but not the beneficiary of an unfair advantage – is an approach to prevention. Such an approach could increase the risk and have both a punitive and a preventative effect, as it would ultimately provide an incentive to the beneficiary. This could be an answer to

the question of whether donor criminality could be limited in this way.

Additional reform measures that also come under the heading of good governance are the protection of whistleblowers, the appointment of ombudsmen in public administration and in business, and the introduction of company liability for corruption. Conflicts of interest that arise for public officials, businesses or civil society must be made public. Political corruption and lobbying in the sense of bringing influence to bear in political circles must become matters of general public awareness; this can perhaps be achieved through the promotion of civil society institutions.

It must be made clear that, despite all appearances, corruption does not pay. Monitoring the transposition of

anti-corruption conventions into national law and administrative and business practice helps to establish a unified international approach to the combating of corruption; it should be included in relevant programmes. And, finally, the decisive issue is the implementation of the agreements reached in dialogue with partner institutions.

## References

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### Info box

The World Bank Institute estimates the **global costs** of corruption to be US\$ 1 billion annually. Transparency International estimates that at least US\$ 400,000,000,000 is lost annually simply through **bribery in the awarding of public contracts**.

Mohamed Suharto, president of Indonesia between 1969 and 1998, tops a **list of probably the ten most corrupt political leaders**. During his presidency he allegedly misappropriated between US\$ 15,000,000,000 and 35,000,000,000 – in a country where GNP amounts to less than 700 US \$ per head annually.

According to Transparency International's **Corruption Perceptions Index (CPI) 2006** the most corrupt countries in the world include Haiti in bottom place among the 163 countries studied. Myanmar, Guinea, Sudan, Chad, Bangladesh, Côte d'Ivoire and Cambodia were judged to be highly corrupt. The three least corrupt countries are Finland, Iceland and New Zealand, which share the top place. Germany has a CPI index of 8.0; in 16th place, it maintains its place among the least corrupt countries.

According to Transparency International's **Bribe Payers Index 2006**, companies in the new export economies and emergent countries – India, China, Russia and Turkey – are the biggest payers of bribes. According to this Index, the building industry and the arms industry are the sectors in which bribery is most widespread.

According to Transparency International's **Corruption Barometer 2006**, the most corrupt institutions continue to be political parties, parliaments, police forces and the judiciary.

Since 2000 more than € 6 million has been made available to support organisations of the **United Nations** (UNDP PACT, UNODC) and of **Transparency International** in combating corruption. In December 2005 Germany concluded a trusteeship agreement with the World Bank relating to the payment of € 500,000 into the Multi-Donor Trust Fund of the **Extractive Industries Transparency Initiative (EITI)**.

**UNODC** successfully concluded a pilot project on **integrity in the judiciary of Indonesia** in two provinces. UNODC is also being supported in drawing up a commentary and technical guidelines on the **Bangalore Principles for Judicial Conduct**. These guidelines were adopted by ECOSOC in mid-2006 as Standard UN Principles. They make a direct contribution to the implementation of the UN Convention against Corruption.

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