SYMPOSIUM
of the Anti - Corruption Academic (ACAD) Initiative
Moscow, 30-31 October 2015

Compendium
of the papers submitted by the participants

Vienna
2015
Preface

From 30 to 31 October 2015, 109 academics and experts from 35 countries representing 79 institutions took part in the Symposium of the Anti-Corruption Academic (ACAD) Initiative, organized jointly by the United Nations Office on Drugs and Crime (UNODC), the Moscow State Institute of International Relations (MGIMO), and the Rule of Law and Anti-Corruption Centre (ROLAC), Doha, Qatar. During the Symposium, MGIMO announced the establishment of the MGIMO Academic and Research Anti-corruption Center.

The ACAD initiative is a collaborative academic project which seeks to support academics to teach and conduct research on corruption related issues. The initiative has developed a menu of academic resources, teaching modules, syllabi, case studies, educational tools and reference materials that can be used by universities and other academic institutions to develop or enhance their academic programmes. More information can be found here:

http://www.track.unodc.org/Education/Pages/ACAD.aspx

The participants of the Symposium of the ACAD initiative:

*Highlighting* the importance of anti-corruption, ethics and integrity training for all students, public officials and professionals, as recognized in article 13 of the UN Convention against Corruption;

*Convinced of* the important role of academia and education as an effective way to build integrity and to prevent and combat corruption using multidisciplinary and action learning approaches;

1. *Recommend* that UNODC and academic institutions, as a part of the Anti-Corruption Academic Initiative, and in cooperation with relevant partners, continue to develop and share academic materials in the field of anti-corruption related education for universities and other academic institutions;

2. *Recommend* that academic institutions develop and teach anti-corruption courses and programmes for a wide range of disciplines and students and to integrate anti-corruption elements into other academic courses;

3. *Encourage* competent educational authorities to facilitate accreditation of anti-corruption courses;

4. *Recommend* that relevant national, regional, international and civil society organizations work with academia to support the teaching of anti-corruption and the dissemination and promotion of academic materials to the fullest extent possible;
5. *Recommend* that ACAD members support and promote ethics and integrity learning in secondary and primary schools;

6. *Recommend* that ACAD members share experiences and expertise on anti-corruption education through academic exchanges, workshops and networks, at the regional level and/or on different thematic areas;

7. *Recommend* that the ACAD members continue updating and improving the resources available on the ACAD homepage, including the UNCAC Model Course and materials in different languages;

8. *Recommend* that ACAD members and relevant national, regional, international and civil society organizations promote in-depth research of the scope, causes and risks associated with corruption, and the effectiveness of anti-corruption measures;

9. *Recommend* that UNODC and other relevant stakeholders continue developing capacity-building initiatives, including new knowledge products and technical tools, subject to the availability of resources, to identify comparative good practices in the field of anti-corruption education and to facilitate the exchange of expertise and lessons learned among academics, universities and other academic institutions and stakeholders in the context of the ACAD initiative.
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AN OVERVIEW OF CORRUPTION PREVENTIVE POLICIES IN THE ARAB WORLD IN ACCORDANCE WITH ARTICLE FIVE OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) WITH A FOCUS ON ACCESS TO INFORMATION AND SOCIETAL PARTICIPATION

By Dina Wafa

The Arab region tends to be characterized by a social contract patronage yet several variances may be observed. In general, their scoring on international indices indicates high levels of corruption. Although twenty-one states have ratified the UNCAC, yet Transparency International Corruption Perception Index (CPI) showed that three Arab states scored above the world median of 50 in the 2012 report, which decreased to only two in the 2013 report (Jamali et al., 2013; Transparency International, 2014). Additionally, the World Bank Governance Indicators, expectedly, also show correlated low rankings for Arab states on transparency, voice, accountability and control of corruption. Another measurement, which seems to be highly correlated, is that of access to information, which is the foundation of accountability and citizen voice. This article attempts to overview corruption in the Arab world in accordance with article five of the United Nations Convention Against Corruption (UNCAC) prevention methods mainly focusing on preventive policies beginning with access to information and societal participation (UNCAC, 2014). The study shows the prevalence of political and socio-economic and institutional factors that deepen the regions paternalist social contract and create a rich culture for the manifestation of corruption.

Article 5 of the UNCAC prompts states to put in place policies and practices to prevent corruption through a comprehensive strategy. Policies adopted entail:
A comprehensive and coordinated approach from the systematic collection and collation of quantitative and qualitative information … to a strategy that sets overall goals… [Whereby] active participation of society in supporting such strategy in its development and subsequent implementation has to be ensured (UNCAC, 2014).

Access to Information as the foundation for accountability and corruption prevention

Literature implies that access information is the foundation of democratic governance and accountability and is a basic citizen right (Almadhoun, 2012; ANSA-AW, 2013; Integrity Research Consultancy, 2013; Mustonen, 2006; UNDOC, 2014; Universal Declaration on Human Rights, 1949; International Covenant on Civil and Political Rights, 1966; African Charter on Human and Peoples’ Rights, 1981; and Arab Charter on Human and Peoples’ Rights, 2004). An informed community is better able to engage in public debate to voice their concerns and hold their government accountable. Thus access to information reflects on the citizens’ ability to hold their governments accountable and on governments’ legitimacy. Cultivating access to information and in turn transparency would drive toward a transformation of the existing social contract patronage in the Arab world. Figure I below shows a clear correlation between access to information, social progress (transparency, voice and control of corruption) and the corruption perception index.

The Arab Charter on Human Rights concurred the right to access information in 2004. Furthermore, with the recent changes in the region several states have taken steps toward ratifying access to information conventions and legislature. Today, following the unrest in the region, several Arab countries have taken considerable steps toward the right to access information by including it as a citizen right in their constitutions. Others are working on adopting facilitative legislation. Translating this into actionable steps and raising awareness may lead toward a transformation of the existing social contract patronage. With the power of information, citizens are better enabled to hold their governments accountable. Yet evaluation shows a lack of clarity and exemptions.
Correlation of access to information to corruption and development in the Arab world

Sources: Social Progress Index, 2014; Transparency International, 2014

It was only in light of the turbulence in neighboring countries that Morocco made several citizen empowering changes including incorporating Article 27 in its new constitution in July 2011, to become the first Arab state to include a provision on access to information in its constitution (FOIA.net, 2013). The article states that:

Citizens have the right to obtain information held by public administration elected agencies agencies tasked with the administration of public utilities. Such right cannot be restricted except by law for the purpose of protecting national security the State’s internal and external security and private life for the prevention of infringing upon basic rights and freedoms provided for in the constitution and for the protection of the sources of information precisely set by the law (Almadhoun, 2012).

Soon Egypt followed by including access to information in Article 68 of its newly passed 2014 constitution. Nevertheless access to information provisions, include unclear national security exemptions. In Jordan although civil society have placed considerable pressure to include access to information in Article 15 of the constitution. These demands were not met in the September 2011
amendments. The article was reworded to include only an obligation to secure freedom of opinion and freedom of the press within limits of the law, which is quite similar to Lebanon’s Constitution Article 13 (Almadhoun, 2012; FOIAnet, 2013; and Integrity Research Consultancy, 2013).

Tunisia the leading country of the Arab Spring has yet to pass its post revolution constitution, and has adopted several interim decrees on access to information. Yet still faces several challenges. Decree no 41 on Access to Administrative Documents was passed on May 26, 2011, and Decree no 115 for a new press law in November 2011; yet Tunisians continue to perceive the changes as cosmetic with a general absence of political will (Almadhoun, 2012; FOIAnet, 2013; and Integrity Research Consultancy, 2013). The decrees lack the implementation procedures, institutional entity and enforcement mechanisms. In January 2012 Assabah newspaper claimed it was denied information by both the Ministries of International Cooperation and of Finance regarding a an investment agreement between a Qatari investor and the government (Almadhoun, 2012).

In Libya the interim National Transition Council (NTC) published a draft charter in August 2011 for the transition period. The draft chart is anticipated to cover the interim transition period until a new constitution is passed through a public referendum. The draft charter Article 13 guarantees, “freedom of opinion for individuals and groups, freedom of scientific research, freedom of communication, liberty of press, printing, publication and mass media” (Freedom House, 2012a). A positive start considering the history of restrictions suffered. Nonetheless, it still falls short of best practice standards, as it does not explicitly outline freedom to access and impart information to all citizens without discrimination.

Stating access to information rights in constitutional charters is a positive step, however more important is institutional access through actionable steps. Legislation of access to information is still ripe for development. Jordan was the first Arab country to pass an access to information law with Law no 47 of 2007 (FOIAnet, 2013; Integrity Research Consultancy, 2013; UNESCO, 2013). A law that has its limitations attributed to its vagueness, and exemptions; which is a shared attribute across the region. In Morocco, as well, various laws have their limitations, vagueness and exemptions. Press and publication laws, Public Service and Administration Modernization Law, the Electoral Lists law, the Public Procurement Decree, the Archives Law, the Environment Law and the Municipal Organization Law fall short of setting up a proper mechanism of access, and were drafted in isolation of civil society groups (Almadhoun, 2012 and Transparency International, 2013b).
Vagueness, exemptions and limitations are not the only limitations in legislations some are faced with restrictive penal articles that continue to counter accessibility. Jordan’s Article 68 of Civil Service Law of 2007, Provisional law on Protection of State Secrets and Documents No. 50 of 1971, Article 21 of Anti-corruption Law of 2006, Article 9 of Financial Disclosure Law of 2006 and Article 11 of Cyber Crime Law of 2010; and Morocco’s Penal code of 1962 and Statute of Public Service of 1958 provide further limitations as they prohibit individuals and public officials from disclosing information without authorization to do so (Almadhoun, 2012 and Integrity Research Consultancy, 2013). Amendments are ongoing to Access to Administrative Documents held by Public Authorities Decree, which was introduced on May 26, 2011, stating “any individual person or legal entity shall have the right of access to the administrative documents”. The Decree continues to be amended yet has not yet incorporated sanctions for violations among other drawbacks, which are mainly blamed due to adaptation without proper consultation with various stakeholders (Almadhoun, 2012).

In Egypt no access to information laws yet exists. In 2008 the United Group law group proposed a draft law, which was disregarded, and in 2012 Toby Mendel, president of the Center for Law and Democracy and a World Bank consultant proposed another draft, which was dismissed since the parliament was dissolved at that time. In March 2013 the minister of justice announced a final draft, which has yet to be passed once the new parliament is elected. Yet a quick analysis seems to indicate that the new draft though it identifies the demand and supply of information process and the founding of a National Information Council and information commissions yet it does not set a clear time frame, methods of appeal, exemptions, nor who has access (Transparency International, 2013a).

Yemen ratified its Access to Information bill in July 2012, which MEPI and other international partners had helped facilitate the drafting process (FOIAnet, 2013; and MEPI). The bill holds some controversy as it has been described as “one of the most comprehensive access to information laws in the world” and as containing a number of deficiencies (MEPI and Transparency International, 2013c). The shortcomings listed include failure to mention appeal, harm and public interest tests. Iraq on the other hand is finalizing its draft in cooperation with civil society (FOIAnet 2013); while Bahrain continues to work with the loosely worded Press Law of 2002 stating free access of information “without prejudice to the requirements of national security and defending the homeland” (Freedom House, 2012b); and countries like Lebanon and Mauritania still have no access to information law (Freedom House, 2013; Wickberg 2012).

Legislative limitations are further enhanced with implementation procedures and lack of public awareness on both the demand and supply end. In Jordan, according to a study by Al-Urdun
Al-Jadid Research Center in 2010 in Jordan, only approximately fifty percent of the ministries and sixty percent of the journalists were aware of the existence of the access to information law; and in another study by the Arab Reporters for Investigative Journalism in 2010 only five percent of journalists made use of it. A finding that is contrary to that of the case of Morocco where journalists are aware of their legal right to access information but fear the consequences of utilizing a confrontational approach (Almadhoun, 2012).

The institutional capacity to implement access varies across the region, which may reflect seriousness in implementation and/or in the forecasting of implications. In Tunisia every ministry has a citizen liaison office responsible for disseminating information and receiving complaints. Additionally, the National Center for Documentation is responsible for providing information on economic, social, cultural and politic affairs to the general public (Almadhoun, 2012). In both Egypt and Yemen, although both included access to information in their new charters, yet they are lagging on all implementation plans from enabling legislation, publishing budgets to creating a public body for disclosing information, outlining access procedures and appeal system, raising awareness and capacity building of public personnel (IBP 2012; and Transparency International, 2013a and c). The results of the 2012 OBI are quite dismal as only a few Arab states actually publish significant budget information, while fewer still provide enabling means for public participation (IBP, 2012). The 2012 Open Budget Index lists seven Arab countries as providing scant or no information, including Egypt, Algeria, Tunisia, Yemen, Iraq, Saudi Arabia and Qatar; with Morocco and Lebanon in a slightly better position since they are listed as providing minimal information showing how that the political environment can affect access (IBP, 2012).

A comparison of the general state prior to the Arab Spring and post the Arab Spring shows that access to information seems to continue to be the most pressing element for civil society organizations in the region. In 2006 the final statement of the Second Civil Forum Parallel to the Arab Summit in Rabat included the following in its recommendations: A call for the free flow of information and freedoms of expression, and that “the main obstacle precluding reform in the Arab World is the fact that most of the Arab governments lack the political will necessary to embark on these reforms” (Rishmawi and Morris, 2007). Regrettably, even after the Arab Spring the same demands continue as in a study from November 2012 - May 2013 in seven Arab countries: Egypt, Jordan, Lebanon, Morocco, Palestine, Tunisia and Yemen to explore citizens capacity to hold their governments accountable; findings highlighted access to information as the principal pillar (ANSA-AW 2013).
Political and social challenges to societal participation

Political and institutional challenges face the Arab world as they mainly depend on a paternalist social contract, or what is termed a rentier state, whereby the state is the main source of welfare and services in exchange for political allegiance (AKR, 2009; Beck, 2013; Beblawi, 1987; Jamali et al, 2013). The economic, social, political, and institutional challenges facing the Arab states, though with varying degrees, tend to create an imbalance in the accountability cycle and fuel both the demand and supply of a corrupt environment creating an imbalance of distorted market. This is reflected in the 2014 -2015 Global Competitiveness Index where only three Arab states score more than 5.0, namely UAE, Qatar and KSA. In the case of Qatar and UAE, this clearly correlates with their scorings on the CPI and world governance indicators on transparency, voice and control of corruption.

We may generally divide the Arab states into two main categories. One category is that of the semi-rentier states where the state and public sector are more influential than the private sector and civil society since the state is mainly in charge of subsidizing various sectors of society and re-allocating financial means (Beblawi, 1987; Beck, 2013). Most of semi-rentier states also benefit from political aid due to their strategic locations, e.g. Egypt, Somalia, Syria, and Yemen (Beblawi, 1987; Transparency International, 2009). The other category is that of rentier states, and these are mainly the Gulf states, where oil rents rather than taxes are the main source of revenue, whereby again the state becomes more influential (Beblawi, 1987; Transparency International, 2009). Others also depend on external location rent such as the Suez Canal in the case of Egypt (Beblawi, 1987).

In both rentier and semi-rentier states citizens’ power and demand for accountability is weakened and thus enhances corruption. The state becomes the main power for allocating resources through subsidies and protection, and the citizens’ tax paying power is quite diminished. Poverty and national culture foster an environment whereby “citizenship becomes a source of economic benefit” through the states allocation of financial means for “loyalty and allegiance” (Beblawi, 1987) creating a crosscutting paternalistic state in the region (AKR, 2009; Beck, 2013; Beblawi, 1987; Jamali et al, 2013; Transparency International, 2009). The state power is further enhanced as the private sector also heavily depends on the protection and subsidization of the state, which again weakens its power and thus rendering the state more influence (Beblawi, 1987; Beck, 2013).

Creating a participatory approach is necessary to create a balance of power to enhance accountability and combat corruption. Yet civil society groups and the media in the region seem to
struggle to assume their role as watchdogs and advocates for change. Creating an enabling environment and a committed political will is necessary for facilitating a transparent and accountable system driving toward a transformation of the existing social contract patronage in the Arab world.

A strong civil society mobilizes citizens and is able to demand government responsiveness and accountability. On the other hand, a weak, or a stifled civil society would hamper reform and result in a weak citizen voice, and lower government responsiveness. Media also plays an important role when strengthened and allowed freedom. In general civil society and media in the Arab region face several challenges that limit their role as watchdogs and weakens the social dialogue.

In order to assume their role as partners in development, civil society rely on institutionalizing access to information, and a broad enabling environment. Yet they have to play a leading role in creating this enabling environment and as advocates for promoting access to information. However, a glance at the history of civil society in the region reveals several impediments to their existence. Civil society in the region fall within broad categories of philanthropy, and a few focusing on issues of public interest such as human rights, good governance, democratization and transparency (Behr and Siitonen, 2013; Rishmawi and Morris, 2007).

An overview of civil society in the region shows common challenges including restrictions on the scope of activities, funding, access, and defamation campaigns, which in turn limit their impact and effectiveness. In several Arab states, civil society organizations are by law, prohibited from engaging in political activities. Additionally almost all organizations are registered with the government and receive government funding. In countries such as Oman and Kuwait have no more than approximately fifty associations who are mainly focusing on gender issues; with the exception of one project on access to information and the Kuwait Economic Society that focuses on improving anti-corruption and transparency methods in Kuwait (Business Anti-Corruption Portal, 2014; FOIAnet, 2013; and Rishmawi and Morris, 2007). Iraq on the other hand has approximately twenty-six civil society organizations associated with the Commission of Integrity aiming at assessing corruption and institutions abidence with UNCAC accordance, yet its legislation prohibits the publication of defamation reports by the media (Business Anti-Corruption Portal, 2014). While countries like Lebanon continue to follow one of the oldest laws of association in the region, that of the Ottoman rule in 1909 with a limited scope and require registration with the Ministry of Interior, and in Saudi Arabia and Mauritania they are organized around a kinship basis with both civil society and media none formally active on corruption issues; and civil society in Morocco seem to enjoy a
relatively higher freedom as the number of organizations continue to grow (Business Anti-Corruption Portal, 2014; BTI, 2014; FOIAnet, 2013; Wickberg 2012).

In countries of the Arab Spring such as Libya and Yemen civil society work is growing though with a tendency toward tribalism. Meanwhile civil society in Egypt and Tunisia had an active role in bringing abut change in the past period, though currently they are facing restrictive regulations and defamation campaigns. The majority of the more than 30,000 civil society organizations in Egypt works in philanthropic fields or is a mix of associations such as professional syndicates and trade unions (Behr and Siitonen, 2013). These traditional organizations mainly depend on membership fees, charities, and some government funding, typically regarded as a reward for compliance to government controlled NGOs, or the so-called GNGOs (Behr and Siitonen, 2013). Few civil society organizations adopt the role of watchdog, and they usually face several forms of repression and difficulties in acquiring funding. Furthermore the strict supervision and control of the media to filter information and hold a close grip of public opinion (Khamis and Vaughn, 2011), thus, threatens citizen voice and engagement, and in turn anti-corruption measures. However, in Tunisia, post 2010 more than 2,700 new organizations were founded (Behr and Siitonen, 2013; and Rishmawi and Morris, 2007). Currently, a national coalition of lawyers, media practitioners, bloggers and CSOs are assuming watchdog roles through working on fostering public awareness of the right of access to information and on advocating for implementation of the decree law (Almadhoun, 2012).

Conclusion

Some positive steps have been taken toward combating corruption in the region, as most of the Arab countries have ratified the UNCAC, have instated anti-corruption bodies, and applied some legislation to combat corruption. Yet the results of several studies show that the Arab states’ rankings are well below the world average with a few limited exceptions (TI, 2013; Schwab, 2014; Social Progress Index, 2014). Combating corruption becomes more challenging since the right to access information in the region is quite limited, civil society is weakened and media freedom is limited, thus curbing the citizens’ voices in the region.

The economic, social, political, and institutional challenges facing the Arab states, though with varying degrees, tend to create an imbalance in the accountability cycle and fuel both the demand and supply of a corrupt environment creating an imbalance of distorted market. With the recent changes in the region several states have taken steps toward ratifying access to information conventions and legislature. Yet evaluation shows a lack of clarity and exemptions.
A participatory approach is necessary, yet civil society groups and the media continue to face restrictions in the region as they struggle to continue their role as watchdogs and advocates for change. Creating an enabling environment and a committed political will is necessary for facilitating a transparent and accountable system. Increased transparency in service delivery promotes citizens’ ability to monitor governments, which would drive toward a transformation of the existing social contract patronage in the Arab world.

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ASSET RECOVERY

By Miodrag Labovikj

Introduction

The United Nations and other relevant organizations make significant efforts to the problem of cross-border transfers of corruptly derived assets and the return of such assets. Asset recovery is an important tool in the fight against corruption. The UNCAC, particularly Art. 51-59 and other international instruments are solid ground in the process of asset recovery. Some authors note that efforts to prosecute international corruption and money laundering cases and to successfully recover criminal assets have made considerable progress over the last five years. So, we have seen a clear increase in action: cases under investigation with assets at stake have increased exponentially. Ten years ago, there were fewer than 60 foreign bribery offenses under investigation. Today there are over 500 ongoing investigations being conducted by over 50 different countries. However, not all challenges have been overcome and despite the heightened attention to asset recovery, the undeniable empirical facts show that little money has effectively to date been recovered to the affected countries. In addition of that claim, The World Bank estimates that 20 billion to 40 billion USD is stolen every year from developing countries and hidden overseas through high-level corruption.\(^1\) The Stolen Asset Recovery Initiative (StAR) estimates that only 5 billion has been recovered in the past 15 years (between 0.8% and 1.6% of stolen assets).\(^2\) In preparing for the Fourth High-Level Forum on Aid Effectiveness in Busan, Korea (December 2011), the OECD and the Stolen Asset Recovery (StAR) initiative surveyed OECD countries to take stock of their commitments on asset recovery. The survey measured the

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\(^3\) Dr., Full professor at Faculty of Security-Skopje, Republic of Macedonia
amount of funds frozen and repatriated to any foreign jurisdiction between 2006 and 2009. It
found that during this time, only four countries (Australia, Switzerland, the United Kingdom and
the United States) had returned stolen assets, totaling USD 276 million, to a foreign jurisdiction.
These countries, plus France and Luxembourg, had also frozen a total of USD 1.225 billion at the
time of the survey. In 2012, the OECD and StAR launched a second survey measuring assets
frozen and returned between 2010 and June 2012. In this time period, a total of approximately
USD 1.4 billion of corruption-related assets had been frozen. In terms of returned assets, a total
of USD 147 million were returned to a foreign jurisdiction in the 2010- June 2012 period. This is
a slight decrease from the USD 276 million recorded from the last survey round.

Asset recovery in corruption cases includes the uncovering of corruption and the tracing,
freezing, confiscating and returning of funds acquired through corrupt activities to the legitimate
owners. But, there are several barriers to asset recovery. Once stolen assets are transferred
abroad, recovery is extremely difficult. In developing countries, this difficulty results from
limited legal, investigative, judicial and cultural capacity as well as inadequate resources. The
main obstacle to returning stolen assets to these countries is being able to provide solid enough
proof that the assets were obtained through corruption. Corruption cases are almost impossible to
prove through direct evidence especially in the cases where the perpetrators are the highest level
of actual politicians who have immunity. Also, corruptive offences can be difficult to detect and
prove due to their covert nature, and because both parties to the transaction do not want the
offence to be exposed. Moreover, MLA procedures are challenging for developing nations and
nearly impossible for failing states due to the complexity and variety of formatting requirements.
The MLA process is time-consuming and often hindered by the difficulty of tracing the location
and ownership of assets. Moreover, when the central authorities for MLA are themselves corrupt,
their potential to wreak havoc in MLA procedures is boundless.

Corruption cases are often difficult to prove through direct evidence because the perpetrators are
skilled and devious schemers who may utilize the services of lawyers and accountants to disguise
the trail of the funds. Painting the complete financial picture of the corrupt official and isolating
his legal income to more clearly identify expenditures from unknown sources can be important
facts when presented at trial. This type of circumstantial evidence will, of course, have to be
combined with other evidence – pieces of the puzzle – to demonstrate that the money flows from unknown sources came from illegal or corrupt activities. The Organization for Economic Cooperation and Development (OECD) has stated ‘Proving the requisite intention is not always an easy task since direct evidence (e.g., a confession) is often unavailable. Indeed, bribery and trading in influence offences can be difficult to detect and prove due to their covert nature, and because both parties to the transaction do not want the offence exposed. Therefore, the offender’s mental state may have to be inferred from objective factual circumstances.

In certain civil law jurisdictions, the power to order the restraint or seizure of assets subject to confiscation may be granted to prosecutors, investigating magistrates, or law enforcement agencies. In other civil law jurisdictions, judicial authorization is required. In common law jurisdictions, an order to restrain or seize assets generally requires judicial authorization, with some exceptions in seizure cases. International cooperation is essential for the successful recovery of assets that have been transferred to or hidden in foreign jurisdictions. It will be required for the gathering of evidence, the implementation of provisional measures, and the eventual confiscation of the proceeds and instrumentalities of corruption. And when the assets are confiscated, cooperation is critical for their return. International cooperation includes “informal assist,” mutual legal assistance (MLA) requests, and extradition. Confiscation may be property based or value based. Property-based systems (also referred to as “tainted property” systems) allow the confiscation of assets found to be the proceeds or instrumentalities of crime requiring a link between the asset and the offense (a requirement that is frequently difficult to prove when assets have been laundered, converted, or transferred to conceal or disguise their illegal origin). Value-based systems (also referred to as “benefit” systems) allow the determination of the value of the benefits derived from crime and the confiscation of an equivalent value of assets that may be untainted. Some jurisdictions use enhanced confiscation techniques, such as substitute asset provisions or legislative presumptions to assist in meeting the standard of proof. The enforcement of the confiscation order in the requested jurisdiction often results in the confiscated assets being transferred to the general treasury or confiscation fund of the requested jurisdiction (not directly returned to the requesting jurisdiction).
Disscusions

If UNCAC is applicable, the requested party will be obliged under article 57 to return the confiscated assets to the requesting party in cases of embezzlement of public funds or laundering of such funds, or when the requesting party reasonably establishes prior ownership. If UNCAC is not applicable, the return or sharing of confiscated assets will depend on domestic legislation, other international conventions, MLA treaties, or special agreements (for example, asset sharing agreements). Many jurisdictions, such as Canada, Australia, Italy, the US and South Africa, maintain asset forfeiture funds to ensure adequate funding for asset recovery. Confiscation laws may require confiscated assets to be liquidated and the proceeds to be paid into these accounts. Canada’s fund is known as the Seized Property Proceeds Account, South Africa’s is called the Criminal Assets Recovery Account and the US has the Assets Forfeiture Fund.3

Article 35 of UNCAC creates an international obligation to provide private actors with the right to initiate civil proceedings: Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those, responsible for that damage in order to obtain compensation. However, Article 35 does not provide special standing or a special right of action for private litigants and is subject to sovereignty and domestic law. As pointed out by Abiola A. Makinwa in Private Remedies for Corruption, this means that private rights of action “exist only to the extent provided under domestic laws and processes.” Makinwa also points out that Article 35 applies only where a causal link exists between the claimant and the wrongdoing. As a result, Article 35 on its own “gives a very limited right of redress to only a very particular group of people”.4

The Arab Spring has helped focus attention on international asset recovery. As long-standing governments began to tumble in Tunisia, Egypt and Libya in early 2011, banks and governments the world over started freezing billions of dollars held by these countries’ previous leaders and their associates. For example, a mere hour after Egypt’s ex-president Hosni Mubarak stepped

3 [http://www.justice.gov/criminal/afmls/].
down in February 2011, the Swiss government ordered its banks to freeze his assets held in
Switzerland on suspicion that they were the proceeds of corruption. Other OECD member
countries followed suit. The European Union ordered an EU-wide freeze of assets linked to
Tunisia’s ex-president Zine El Abidine Ben Ali in January 2011, and of assets linked to ex-
President Hosni Mubarak in March the same year. Despite the heightened attention to asset
recovery following the Arab Spring, relatively few assets have to date been returned to the
affected countries, and the process of recovering the stolen assets is proving to be both long and
cumbersome. The main obstacle to returning stolen assets to these countries is being able to
provide solid enough proof that the assets were gained through corruption. As a response to these
challenges, several OECD member countries have aided the process of bringing forth asset
recovery cases and delivering such proof. Switzerland has sent judicial experts to both Egypt and
Tunisia; US investigators and prosecutors have visited Egypt, Libya and Tunisia to work directly
with their requesting country officials; and Canada has provided assistance on asset recovery to
Tunisian officials.

To ensure full compensation and deterrence when punitive damages are not applicable, other
jurisdictions have tried to use the concept of social damages. In some jurisdictions, a social
damage may be defined as the loss that is not incurred by specific groups or individuals but by
the community as a whole. This could include damages to the environment, to the credibility of
the institutions, or to collective rights including health, security, peace, education, good
governance, and good public financial management. It is different from damages to collective
rights, which belong to a restricted and identifiable group of individuals or legal entities. Social
damage can be pecuniary and non-pecuniary.

Financial disclosure requirements for public employees are also useful in asset recovery.
Disclosure can provide evidence of a predicate offence if discrepancies exist between an
official’s disclosed finances and other records. Robert J. Currie and Joseph Rikhof recommends
that States create a criminal offence around non-reporting to support asset recovery actions.5

There is no substitute for an in-depth and thorough enquiry being carried out in the first instance by the domestic authorities in the victim country. Such an enquiry should preferably be carried out by a body with coercive powers. In the Abacha case, Nigeria set up a Special Investigation Panel (SIP), headed by its Assistant Commissioner of Police. The SIP uncovered much valuable information subsequently used in requests for mutual legal assistance (MLA). It also indicated to requested countries that Nigeria was taking proper steps to investigate the crimes of the Abacha family ‘at home’. The MLA requests, which were made to a number of countries, produced many and varied responses, by no means all of which were helpful to Nigeria. For example, it took the Home Office, the designated central authority for receipt of such requests in the United Kingdom, some four years to transmit the requested information to Nigeria. They were twice subjected to judicial review applications brought before the UK courts by the Abacha family, and numerous technical objections to the request were raised by Home Office lawyers in the early stages. Similar difficulties were raised in other jurisdictions, and that is why, to this day, there are monies still trapped in jurisdictions such as Luxembourg, Liechtenstein and even the United States.

The offence of illicit enrichment assists in asset recovery by relaxing proof burdens. Prosecutors only need to prove that a defendant cannot justify their illicit funds through legitimate income sources. Article 20 of UNCAC requests states to consider establishing a criminal offence of illicit enrichment. Because the offence has the potential to deteriorate the presumption of innocence and the privilege against self-incrimination, critics discourage creation of the offence in states with a weak rule of law and weak governance. Canada has stated it will not implement an illicit enrichment offence because such an offence would violate the presumption of innocence in its Constitution. Prosecutorial discretion also makes the offence vulnerable to abuse.6

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Conclusion

So, the real question is: Are there solutions for such complexity conditions? The science must go on facing with challenges and researching new opportunities for a new and the best solutions. So, the financial investigation is considering as the best method of identifying the proceeds of corruption and making the connection to the corrupt activity. But, in most cases, practice shows and experience confirms, it will not always lead directly from the private sector bribe giver to corrupt government officials. Sometimes, the payments will be hidden by numerous shell companies, trusts and nominees in the off shore countries, which still represent “black loopholes” in the international financial system. There are many open challenges about that and about - Illicit enrichment (UNCAC, Art. 20), which is not only an emerging tool, but also, as a vanguard offence in the asset recovery process. In that regard, though dual criminality is generally not required (UNCAC Art. 46(9), nevertheless, request may be refused under certain circumstances. For instance, the offences of illicit enrichment have not been criminalized in all jurisdictions. One of the possible ways for resolving the problem may be by employing a conduct-based approach. This approach involves re-examining the criminal conduct in order to fit the conduct into the criminal law framework of the requested jurisdiction.

However, in the my point of view, illicit enrichment remains the best remedy for overcoming the difficulty, which appears from the inability for proving connection between unknown sources and illegal or corrupt activities. Illicit enrichment is indirect criminal offense, for which is not necessary to prove predicate criminal offense. It is particularly recommendable offense for developing countries, where due to weak institutional capacities and lack of rule of law, it is impossible to ensure proofs for the actual politicians from the highest institutional level and their associates from the business sector. More relevant argument for this thesis is the fact that the main perpetrators of this offence are very often businessman in very close relationship with high level politicians. As is well known (UNCAC, Art. 20), the public officials are only foreseen as a perpetrators of the mentioned offense. So, in the context, not only in the theoretically-descriptive, theoretically-critical and theoretically-interpretative function of the science, but also in the context of normatively-prescriptive and practically-applicative function of the science, maybe we can considerate the opportunity, the subjects of the actions of this crime not to be only
public officials, but also businessmen who have disproportionate wealth that can not reasonably explain in relation to his or her lawful and taxable income.\textsuperscript{7}

\textsuperscript{7} Miodrag Labovikj, The Power corrupts, De Gama, Skopje, 2006

Miodrag Labovikj&marjan Nikolovski, Organized crime and corruption, Faculty of Security, Skopje, 2010
CORRUPTION AND THE ENVIRONMENT – THE CASE OF “JUGOHROM FEROALLOYS” IN TETOVO MACEDONIA

By Besa Arifi

Introduction

Different studies have established the fact that there is a very strong link between corruption and (un)protection of the environment. Thus, the UNODC through the campaign Act Against Corruption Today indicates among other things that: “Corruption also makes it possible for environmental and social safeguards to be ignored or bypassed1.”

In a different study conducted by Transparency International2, some trends that characterize cases of environmental corruption are identified:

- Environmental corruption is especially prevalent in countries where there is low economic development.
- Corruption is prevalent across a wide spectrum of political systems, yet it is most severe in countries with weak democracies.
- Weaknesses in governance structures inhibit good governance and facilitate corruption in the environmental field.

In the Preamble of UNCAC the concern of the state parties “about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering3” is clearly indicated. It is well known that environmental crime is an important part of the economic crime in modern day societies.

Republic of Macedonia is a state party to the UNCAC having signed this important document in 2005 and ratified it in 2007. Furthermore, it is also a state party to the

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PhD, Assistant Professor at the Faculty of Law, SEEU
UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. However, contrary to the main pillars of the Aarhus Convention and international standards, there is a situation where a factory that produces ferrosilicon and is owned by a company called “Jugohrom Ferroalloys”, situated in Jegunovce, a village close to the city of Tetovo, firmly refuses to introduce filters in order to stop the air pollution in the region of Pollog that was well known for its fresh air in the past. There have been many studies that show the severe health problems caused by air pollution that will be explained in this article. By European standards, the highest amount of Particulate Matters PM10 allowed in the air is 50µg/m3. In Tetovo, there are almost 0 days in the entire year that go below this level, whereas, in wintertime, the levels of PM10 reach 1000µg/m3. The main source of air pollution in this region (although not the only one since there are other ecological problems in the city including: use of old and out of standard vehicles that emit gases, lack of public transportation, inappropriate waste management as well as lack of gasification which results in the use of wood for warming) is alleged to be the mentioned factory because of working without filters and producing 30 tons of dust (containing particulate matters and other dangerous matters) on daily basis. This kind of functioning of a company violates the above-mentioned Aarhus Convention, the Constitution of RM and a dozen of laws and bylaws that will be explained in the article. Yet, the government, despite the protests and reactions of the civil sector and the population, continuously tolerates it.

This article aims to analyze the link between corruption and environmental and economic crime. “Jugohrom Ferroalloys” will be used as a case study analyzing the conflict between the way of its functioning and the existing legal provisions and international standards in this field. Correlation will be made to a very popular case regarding corruption in Macedonia, SEC v. Elec Straub et al., in order to discuss the issue of corruption related to major companies that operate in this state.

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5 A number of them can be found through the full citations given in the Bibliography of this article.
8 Ijazi, I. (2014) Presentation on air pollution in Tetovo. Bar Camp Tetova 2015. [https://www.youtube.com/watch?v=mEPW08qw2zU](https://www.youtube.com/watch?v=mEPW08qw2zU)
1. **International provisions regulating anti-corruption and environmental protection**

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.”

Apart from being ultimately true, these words found in the Foreword of UNCAC given by the former Secretary General of UN, Kofi A. Annan establish the true nature of corruption explaining its’ “corrosive effects on societies”. Furthermore, he explains that: “Corruption is found in all countries - big and small rich and poor - but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development”.

Therefore, UNCAC obliges the parties on several undertakings in order to prevent corruption, thus, clearly asking for criminalization and law enforcement efforts, encouraging international cooperation, demanding asset recovery and technical assistance and information exchange. In regard to mechanisms of implementation, UNCAC established the Conference of the State Parties to the Convention and the Secretariat. Having in mind the dangerous nature of this crime and the fact that it is commonly linked to organized crime, terrorism and economic crime; furthermore, taking into consideration the enormous effects of the crime of corruption, mentioned so eloquently in the words of Mr. Annan, the mechanisms of implementation of this Convention may seem considerably soft. Contemplation on an international body eligible to decide on major corruption cases is crucially necessary, especially having in mind that these cases are rarely solved in complete before national jurisdictions.

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10 Ibid.
However, as Mr. Annan appoints in the last part of his Foreword, “It is only a beginning11.”

When discussing the effect that corruption has on the environment, it is crucial to have in mind the provisions of a very important document of the United Nations Economic Commission for Europe (UNECE) that is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. This Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment providing the following requests for the state parties, which constitute the famous three pillars of this Convention:

“The Parties to the Convention are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective. The Convention provides for:

- the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
- the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organizations to comment on, for example, proposals for projects affecting the environment, or plans and programs relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making");
- the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice")12.”

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11 Ibid. p. iv.
12 What is the Aarhus Convention? http://ec.europa.eu/environment/aurhus/
As mentioned earlier, Macedonia is a party of UNCAC and UNECE Aarhus Convention. Based on these Conventions and other ratified international instruments, Macedonia has developed strategies to implement these international provisions. Major reforms of the Criminal Code and the Criminal Procedure Code have been undertaken and new institutions have been founded. However, when it comes to implementation in practice of these provisions, serious problems occur, as it will be shown in the following subtitles where specific cases will be discussed. At the end of the day, who needs good laws that look good on paper but are never implemented in practice?

2. Corruption and pollution in Macedonia

Based on information accessed from reliable and publicly available international sources, Macedonia does not rate quite well in corruption indexes and especially not in pollution indexes. Thus, in the Corruption Perception Index of Transparency International, Macedonia rates as following in the last years:

Table 1. CPI, Republic of Macedonia

<table>
<thead>
<tr>
<th>Year</th>
<th>Rank</th>
<th>Score</th>
<th>Surveys used</th>
<th>CI Lower</th>
<th>CI Upper</th>
<th>Previous Year Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>62</td>
<td>41</td>
<td>5</td>
<td>33</td>
<td>47</td>
<td>38</td>
</tr>
<tr>
<td>2011</td>
<td>69</td>
<td>39</td>
<td>6</td>
<td>36</td>
<td>43</td>
<td>41</td>
</tr>
<tr>
<td>2012</td>
<td>69</td>
<td>43</td>
<td>6</td>
<td>35</td>
<td>51</td>
<td>39</td>
</tr>
<tr>
<td>2013</td>
<td>67</td>
<td>44</td>
<td>6</td>
<td>36</td>
<td>52</td>
<td>43</td>
</tr>
<tr>
<td>2014</td>
<td>64</td>
<td>45</td>
<td>6</td>
<td>35</td>
<td>55</td>
<td>67</td>
</tr>
</tbody>
</table>

Source: Transparency International CPI

Although some improvement can be noticed, Macedonia stands still in the 60+ ranking of CPI in the last five years.

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14 The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory’s score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country’s rank indicates its position relative to the other countries and territories included in the index. [http://www.transparency.org/cpi2013/results](http://www.transparency.org/cpi2013/results)
In the Air Quality Index found in [http://aqicn.org/city/macedonia/tetovo/](http://aqicn.org/city/macedonia/tetovo/), Macedonia, and particularly Tetovo rank very high in pollution with rates of PM10 continuously higher that 500µg/m3. Furthermore, the monthly reports of the Ministry of the Environment and Physical Planning of RM show that in 2015 there have been 285 days with PM10 Index above the allowed limit.

3. Struggling with suffocation

The figures mentioned above are frightening if we have in mind that in the winter season, the PM10 particulates in the air in Tattoo reach 1000µg/m3 and that basically in two/thirds of the year, the population in Tetovo suffocates in air pollution that causes serious health problems. This issue is considerably understudied in this region and except for several unpublished master studies thesis, and some locally conducted research, there are no other scholarly articles in this topic. However, there are numerous scholarly articles based on research conducted elsewhere that proves the direct link between high levels of PM10 particulates and carcinogen deceases and mortality. Furthermore, the problem can be seen with bare eyes and common sense conclusions can be drawn from the sight.

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17 Tetovo suffocates: Air Pollution, the silent killer. [http://www.independent.mk/articles/13599/Tetovo+Suffocates+Air+Pollution+-+the+Silent+Killer](http://www.independent.mk/articles/13599/Tetovo+Suffocates+Air+Pollution+-+the+Silent+Killer)
18 Air pollution and lung cancer incidence in 17 European cohorts: prospective analyses from the European Study of Cohorts for Air Pollution Effects (ESCAPE); PUETT, RC; et al. Particulate matter air pollution exposure, distance to road, and incident lung cancer in the nurses’ health study cohort; HAMRA, GB; et al. Outdoor particulate matter exposure and lung cancer: a systematic review and meta-analysis; MCDONNELL, WF; et al. Relationships of mortality with the fine and coarse fractions of long-term ambient PM10 concentrations in nonsmokers; PAPATHOMAS, M; et al. Examining the joint effect of multiple risk factors using exposure risk profiles: lung cancer in nonsmokers, etc. Full citation of articles given in the Bibliography section.
Photo 1, Areal view of Tetovo in August 2015

©Elmedina Abdullai

Photo 2. “Jugohrom Ferroalloys” in February 2015

©Hadis Bajrami

As it can be seen from the photos and other materials publicly available, the Ferro-silicate factory “Jugohrom Ferroalloys” is considered to be the main source of air
pollution in the Pollog Region where the city of Tetovo is situated. The problem with this institution is that it operates entirely contrary to all environmental standards adopted by the Macedonian government, and it continues to do so year after year making false promises that it will install filters in order to reach the above mentioned standards. April 30, 2015 was the last deadline given by the Government of Macedonia to this company to achieve the needed standards, or to stop functioning until done so, however, the standards were not reached, the filters were not installed, and the factory continues to work and to emit the dangerous and carcinogen PM10 particulates.

Two NGO activist groups have organized different protesting marches and other events against the irresponsible and illegal behavior of the company. The NGO “Eco-Guerilla” has been the first to address this problem and organize different events to raise the awareness regarding the air-pollution in Tetovo.

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19 Important information regarding the functioning and the ownership of this company can be found in the article “Air-Pollution from Jugohrom-Jegunovce, Macedonia” provided by the Environmental Justice Atlas available from this link: https://ejatlas.org/conflict/jugohrom-jegunovce-air-pollution-macedonia
20 Official website of the NGO Eco-Guerilla http://ecoguerilla.mk/
The second activist group that operates in this regard is the Mother and Child movement (Lëvizja “Nëna dhe Fëmija”) consisted mainly of mothers who organize different events and protesting marches in defense of children’s right to a clean environment.
Although attended and supported by a large number of citizens, these protests have been continuously ignored by the Government officials as well as by the Company “Jugohrom Ferroalloys”.

4. Breaking the law in all possible ways

If the national legal provisions of Macedonia are analyzed very interesting conclusions can be drawn regarding the way in which “Jugohrom Ferroalloys” operates:

1) This company directly violates three articles of the Constitution of RM: Article 8 provides that “proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development” is one of the fundamental values of the constitutional order of this country. Article 43 provides that “Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the

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environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.” Article 55, par. 3 specifies that “The freedom of the market and entrepreneurship can be restricted by law only for reasons to defend the Republic, the protection of the natural and living environment or public health.”

2) This company also directly violates articles 218, 230 and 234 of the Criminal Code of RM that incriminate pollution of the living environment, endangering the living environment and severe crimes against the environment.

3) This company directly or indirectly violates 23 provisions of the Law on living environment of RM

4) This company directly or indirectly violates 25 provisions of the Law on the Quality of Ambience Air

5) The three pillars of the Aarhus Convention are severely violated by the way this company operates and is tolerated to do so by the government. Namely, there is no access to environmental information, since the company does not provide any information regarding the pollution it causes to the environment (the official webpage of the company is inoperable for several years), furthermore, the Government and the Ministry of Environment do not provide any information regarding the decision on which this company is allowed to function making it illegally a top-secret document; there is no public participation in environmental decision-making, since the public opinion in this matter is continuously disregarded and ignored both by the company and by the state; and finally, the third pillar access to justice, is entirely violated since there have been two legal actions against this company that have reached no results. The first attempt was by a political party with environmentalist political platform called DOM that issued a criminal charge against the company to the Prosecution of first instance in Tetovo. The Prosecution dropped the criminal charge giving a ridiculous explanation that the crimes under article 218 of the Criminal Code are not charged ex officio22! That is entirely not true and it is very indicative how a normal Prosecution office reached such a scandalous decision. The second attempt was that of the NGO Eco Guerilla that also issued a criminal charge in the State Prosecution in

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22 Notification by the Prosecution Office of first instance in Tetovo, nr. VII.KO.br.700/14, of December 5, 2014.
Skopje in spring 2015, however, that charge received no further information due to the newly created political situation in the country as a result of the so called “bombs of the opposition” that allegedly revealed scandalous corruption within the judiciary and prosecution (further explanation in the next subtile). That might be the only logical explanation to the outrageously incorrect notifying answer provided by the Prosecution office in Tetovo for the criminal charge of DOM mentioned above.

Furthermore, the European Commission in the Annual Progress Reports has criticized Macedonia on its environmental standards. The 2014 Report states the following critiques:

“Public consultation and coordination with civil society remain insufficient. Access to environmental information still needs to be improved. Only limited progress has been made to date in implementing the national plan for the protection of air quality. Air pollution levels (PM) significantly above EU limits were recorded during a sustained period last winter23.”

Being exposed to this kind of pollution for a very long time in the year represents a serious violation to the right to life and the right to health and healthy environment that are protected by the European Convention on Human Rights and the ECtHR.

Last but not least, this way of continuous exposure to such high rates of pollution makes living in this environment particularly dangerous and close to genocidal actus reus. Therefore “Stop the ecological genocide” is a common maxim of the protesting citizens of Tetovo.

5. The ever tolerating Government

The Government of RM has been tolerating the way of functioning of “Jugohrom Ferroalloys” for too long at the cost of the life and health of its citizens. Year after year Tetovo and surroundings are exposed to severe air pollution more than 55% of

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which is caused by this company (according to local studies\textsuperscript{24}). The informal explanations that the Government tolerates this kind of functioning due to the importance of the metallurgy industry to the country’s economy is unacceptable since this kind of continuous exposure of the citizens to pollution has long-term health consequences for them. There is only one logical explanation of this situation, and that is alleged corruption.

Macedonia is known to be a highly politicized country. Politics very evidently interferes with every profession and activity. The last year has been a difficult one for Macedonia; having in mind the continuous scandals of alleged corruption published in the so-called bombs of the project of the opposition party “The truth about Macedonia”. As a result, the government is planned to resign on January and new elections are expected in April 2016. Most of the scandals revealed by the opposition refer to corruption in judiciary and prosecution. Therefore, under the supervision of the international community representatives (Ambassadors of EU and USA) the Parliament elected a Special Prosecutor who is supposed to deal with the cases related to the wiretapping scandals published by the opposition.

On the other hand, the case before the United States District Court of New York on which the Security and Exchange Commission of USA sued Elek Straub and others from Magyar Telecom for violations of the Foreign Corrupt Practices Act reveals serious charges of bribery of public officials in Macedonia. The bribery practices revealed in this case show the outrageously high rate of corruption within government officials in regard to foreign investors and companies.

Allegations on corruption related to “Jugohrom Ferroalloys” do not end with simple analogy to the very popular case of Magyar Telecom. Instead, there are indices that are believed to indicate close relations between officials of the governing coalition in power and "Jugohrom Ferroalloys", such as:

- The online newspaper Kurir (considered a very close media to VMRO-DPMNE, the ruling Macedonian Party) cites the Directing production

\textsuperscript{24} Ijazi, L (2014) Presentation on air pollution in Tetovo. Bar Camp Tetova 2015.  
https://www.youtube.com/watch?v=mEpW08qw2zU
engineer in “Jugohrom Ferroalloys”, M.R, who states that: “Jugohrom has a large number of employees most of which come from the municipalities of Jegunovce and Tearce. The factory will continue working while preparing the filters that will be installed in the stoves, only when the filters will be installed/montaged the factory will shortly stop working in order to continue right after.” The article explains that new employments will be conducted in this company. It has been published in March 2015 and to this date, nothing about filters has been seen ore done in Jugohrom. This is not the first time officials of this company state that filters are going to be installed soon, they have been repeating the same words year after year without truly materializing them. Coming from this newspaper, this article is a direct political propaganda of the government coalition. The interesting thing is that Mr. M.S who gave the above cited statement, appears under number ten in the election list of possible members of parliament of the Albanian political party currently in power (DUI) in the last elections of 2014 in the electoral unit 6. On the other hand, the Commercial Director of this company is V.S., who is also the President of the Macedonian National Futsal Team and is alleged to be a close person to VMRO (the Macedonian ruling party of the governing coalition). It is very ironic that the Commercial Director gave an interview for a local media in 2014 stating that “Ecology is an unbreakable part of the functioning of Jugohrom”. If that statement were true, we would not have the situation seen in the above pictures for all these years on. In other words, stating that ecology is an unbreakable part of functioning of a factory that refuses to install filters and produces 30 tons of dust per day, which spread uncontrolled in the entire region, is truly an insult to one’s intelligence. These persons clearly indicate the close relations between the governing coalition and the top management of “Jugohrom-Ferroalloys” which can be interpreted that the Macedonian government is allegedly involved in these high rates of pollution intoxicating 200.000 citizens in the Pollog region.

A video published by the NGO CIVIL (which can be accessed through this link), displays anonymously conducted interviews with workers of “Jugohrom Ferroalloys” who claim that Jugohrom Management has been demanding from the staff to vote for a specific political party, underlining that, if otherwise, they would lose their jobs. The staff has been pointing to a wave of employments in the pre-election period in 2014 and, as they say, over-employment has occurred. They say that the newly employed persons are known party activists. Moreover, they also point to the fact that during the local elections in 2013, they have been going through same pressures. They testify that during those elections, one of the directors has been walking door-to-door, calling the staff to vote for a candidate for a mayor, coming from a specific political party. Apart from being terribly morbid, these interviews show that in case these allegations are true, then the governing parties have been using Jugohrom to pressure the population to vote for them abusing their existential needs, furthermore continuously intoxicating them and slowly but surely murdering them. The company has of course completely denied the allegations given in this video as untrue and has accused the NGO Civil for being non-professional and deluding.

These allegations are very hard to prove in a situation where the entire country is in a political crisis. However, disclosing the truth about this issue should be one of the most important priorities of the Special Prosecutor who should use all the existing measures in the Criminal Procedure Code and respective laws on protection of witnesses, victims and collaborators of justice as well as the broad competences provided in the Law on the Special Public Prosecutor. The question remains: how far can individuals go to pursue their greediest intentions at the cost of the life and health of common people?

By now, there is not a court case that would definitely and directly prove any corruptive practices between the “Jugohrom Ferroalloys” and the Government officials. On the other hand, the case SEC v. Straub proves clearly that a large scale of corruption exists related to political parties that are part of government coalitions, past

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and present. If the consequences of the corruption explained in *SEC v. Straub* are analyzed, it can be established that they consist of purely financial consequences for the population of Macedonia. However, in the case of “Jugohrom Ferroalloys” the consequences are much more than simply financial, they are existentially linked to the right to life and the right to health and are closely bordered with genocidal actions. These fundamental rights of such a large part of citizens are endangered continuously by the way of functioning of this factory. Simply based on common sense, the amount of alleged corruption in this case is surely tremendous.

**Conclusion**

Apart from being corrosive to the financial system and the economical development of a country, corruption when linked to the failure to implement environmental policies becomes genocidal. Corruption related to environmental issues remains an understudied area where a lot on new research needs to be developed. A very important criminological feature is the issue of the dark figure of crime. Environmental corruption surely represents a large part of this dark figure. If no strict legal and social action is taken, that dark figure will turn into a dark future for mankind, which aiming to increase the wealth through sacrificing the nature and the living environment will soon come to a point of understanding that money cannot be eaten, that money cannot be breathed.

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CORRUPTION IN SOUTH EASTERN EUROPE
TEACHING ANTI-CORRUPTION IN THE REGION

By Ugljesa Ugi Zvekic

Introduction:
Short Regional Geopolitical History and Present The South Eastern European region consists of 9 countries (Slovenia, Croatia, Bosnia and Herzegovina, Albania, Serbia, Montenegro, Macedonia (Former Yugoslav Republic of), Bulgaria, Romania, Greece and Kosovo¹. They were colonies of the Austro-Hungarian and the Ottoman Empire; seven entities were part of the former Yugoslavia (Slovenia, Croatia, Bosnia and Herzegovina; Montenegro; Macedonia; Serbia and Kosovo); three (Albania, Bulgaria and Romania) belonged to the Warsaw Pact and Eastern European economic community (although Albania later pulled out); only Greece was a western democratic country with market economy (but it also had its authoritarian period under the military junta in the period 1967 – 1974). The region participated in both the First and the Second World Wars and in both suffered a lot in terms of the civilian deaths and economic damage; indeed, some claim that the World War I was triggered by the assassination of the Archduke Ferdinand and his wife Sofia in Sarajevo (Bosnia and Herzegovina, at that time part of the Austro-Hungarian Empire) on 28 June 1914.

In all ex-communist countries the regime and the economic model have changed by the end of 80s/beginning of 90s; yet, the former Yugoslavia was dismantled through a tragical conflict involving Slovenia, Croatia and Bosnia and Herzegovina as well as the NATO military interventions in Bosnia, and Herzegovina, Serbia and Kosovo. In Romania, the overthrow of the communist regime also had violent dimensions.

Majority of the population in the South Eastern Europe is of Slavic origin but Greece, Albania, Romania and Kosovo are non-Slavic. In addition to being multi-ethnic the region has Roman-Catholics, Orthodox Christians and Muslims. It is indeed a multi-ethnic and multi-confessional region. It was historically characterized by divisions, tensions and conflicts. The term „balkanization“ came to stand for divisions, complexities, conflicts and instability.

Today, five countries of the region are members of the EU – Greece, Slovenia, Bulgaria, Romania, and the last one being Croatia. Other half of the countries are on the waiting list

¹ Kosovo as per UN Security Council resolution 1244.
² Adjunct Professor, University of Belgrade; LUISS, University of Rome; Senior Advisor, Global Initiative against Transnational Organized Crime; Academic Council of the United Nations Systems
with different status. This is bringing more stability in the region although it is still politically unstable (in particular the Western Balkan part of it) and economically weak. The South Eastern European region has much of common history and legacy and much of common future. Such an interesting political, administrative and economic configuration of the region presents ample opportunities for exchange of experience and learning from each other. This opportunity regards also understanding and learning about corruption and anti-corruption in the region. It is a sort of almost perfect classical research design.

**Corruption in the region**

The discussion of corruption and organized crime will focus on the Western Balkans namely, Albania, Bosnia and Herzegovina, Montenegro, Macedonia, Serbia and Kosovo. A number of crime trends and features can be noted, such as:

1. Limited crime threats
2. Perennial corruption at the public administration level and also embezzlement of public funds
3. Balkan Route – drug trafficking/tobacco smuggling/arms trafficking/migrant smuggling/prostitution – right now the second main refugee route to Europe
4. National, ethnic and regional organized crime groups linked with international organized crime (Turkish; Colombian; German; Dutch)
5. All of the Western Balkan countries rate relatively badly on the TI CPI but within the SEE region, the EU countries rank better than the non-EU countries.
6. All of the countries are facing the problem of organized crime and corruption
7. Some of the SEE EU countries: Croatia, Slovenia, Bulgaria, Romania have undertaken splash anti-corruption operations involving former top level politician (e.g. prime ministers; ministers; party chiefs)
8. There is a lot of corruption at the lower public administration level, including police, customs, education and health
9. There is a lot of corruption and organized crime in the financing and implementation of public work projects; banking system; construction industry; and in particular PRIVATIZATION, CUSTOMS and TAX EVASION
10. There is a manifest political will to deal with corruption (often an electoral slogan)
11. Anti-Corruption legislation was passed
12. Anti-Corruption agencies were established

13. EU placed chapter 23 and 24 as the first in the process of accession thus giving great prominence to the anti-corruption and anti-organized crime/rule of law/human rights

An bird-eye look at the TI Corruption map shows that the SEE Region is perceived to be vulnerable to corruption risks although to a lesser extent than some other Eastern European and Central Asian sub-regions.
According to the CPI in 2014, the perceived level of corruption in the Western Balkan region illustrates that the majority of countries from the Balkan region are located on an average level with ranks from 64 to 80 out of 175 points. Albania with a rank of 110 and Kosovo also with a rank of 110 stand out. Having on mind that the South Eastern Europe is equally divided among five EU members (Greece, Slovenia, Bulgaria, Romania and Croatia) and the non-EU members (The Western Balkans); the EU members on average have much better TI ranking than the non-EU members which pints out that reducing public administration corruption which is usually reflected through the TI CPI is one of the requirements to join the EU and it can be met.
In accordance with the findings from TI but also the UNODC surveys (2010) on both population and businesses in the Western Balkan region, bribery has one of the highest prevalence rates (13%).

Figure 1. Annual prevalence rates for different types of crime.

Source: UNODC (2011), „Corruption in the Western Balkans: Bribery as experienced by the Population“.

The second crime field which is mostly prevalent in the western Balkan region is „Theft“ with a prevalence rate of slightly over four per cent. What should be noted is the enormous difference of eight percent points regarding the occurrence of conventional crimes like theft and assault, on the one hand, and bribery, on the other. Corruption is therefore a serious issue in the context of the regional security picture.
The second crime field which is mostly prevalent in the western Balkan region is „Theft“ with a prevalence rate of slightly over four per cent. What should be noted is the enormous difference of eight percent points regarding the occurrence of conventional crimes like theft and assault, on the one hand, and bribery, on the other. Corruption is therefore a serious issue in the context of the regional security picture.
Further, it was outlined that the most important issues in the Western Balkan region are perceived to be unemployment (33%), poverty (20%) and then corruption (19%). Another outstanding issue concerns the performance of the government (15%) which may also be connected to the aforementioned issues. Infrastructure, education, the environmental deterioration and ethnic equality concern few Balkan adults. There is no doubt that on the agenda of public opinion concerns corruption is ranked very high.
Figure 3. Percentage distribution of bribes paid by purpose of payment (2010).

For citizens bribery is used as an effective instruments to: to speed up procedures (45%), to receive better treatment (.28%), to avoid the payment of a fine (16%) and the finalization of a procedure (12%). Further, a connection with illicit elements and those who pay bribes is always visible, for corruption is mostly a partnership composed of a corruptor and a corrupted. As a result, the center of the problem was located in public administration as to make it function efficiently for the clients it needs to be bribed-

Similarly, the business paid bribes to public administration (nearly 40%) to speed up procedures, whereas more than 15% of bribes were paid with no specific purpose. To receive better treatment, less than 15% of bribes were paid. Also the finalization of procedures was listed among the reasons of bribing, accounting for some 12%.

Within public administration sector there are certain occupational categories and public institution that are more vulnerable to corruption.
Figure 5. Prevalence of bribery by public officials receiving the bribe.


Public officials receiving bribe are mostly police officers (11, 5 %) but also doctors (9 %) and customs officers (6, 5 %) besides judges or prosecutors (5 %).
Figure 6. Percentages distribution of bribe-paying businesses that pay bribes to selected types of public official


Not only citizens, but also businesses pay a vast amount of bribes to public officials, as has been depicted in figure 6. Correspondingly, nearly 30 per cent of bribes paid by businesses are directed towards municipal or provincial officers, closely followed by tax/revenues officers (27 per cent). Members of the parliament or government as well as judges or prosecutors are among the least bribed public officials with less than 5 per cent. As a result, it was stated that the largest share of bribes is paid to local public officials, further reinforcing the impact corruption exercises public administration sector including tax revenues.

As pointed out above much of the perceived corruption is centered within public administration in the Western Balkans which clearly identifies it as a target for much of the anti-corruption work in particular in view of the accession to the EU.

**Anti-Corruption Teaching in the Region**

Generally speaking anticorruption teaching at the university level is rather sporadic in the region. There are few universities in which there is more systematic teaching of anti-corruption (such as in Romania, Greece, Bulgaria, Macedonia and in Serbia). However, to the best of the knowledge of the author only in Serbia the anti-corruption teaching is based on
UNCAC model in the framework of the Master in European Integration and the recently (2014) established Anti-Corruption Legal Clinic at the Law School, University of Belgrade. In order to promote anti-corruption education and within the framework of the Academic Anti-Corruption Initiative (ACAD), UNODC and the Rule of Law Center (ROLAC) hosted a South Eastern European Regional Expert Meeting in Doha, Qatar on 27-28 May 2015. It was attended by 20 professors from the universities in Slovenia (Ljubljana), Croatia (Zagreb and Split), Bosnia and Herzegovina (Sarajevo and Tuzla), Montenegro (Podgorica), Macedonia (Skopje and Tetovo), Albania (Tirana), Bulgaria (Sofia), Serbia (Belgrade), Kosovo (Prstina) and Greece (Athens). In addition a number of international experts from Australia, USA, European Union, UNDP, UNODC and ROLAC attended as well.

It was the first of the regional meetings organized within the framework of ACAD and with the most generous hospitality of ROLAC.

The SEE ACAD Regional Expert Meeting was a unique opportunity to exchange experience, views and ideas about the corruption risks in the region, the regional cooperation and teaching of anti-corruption at the university level.

The Regional Expert Meeting adopted a set of recommendations:
In order to promote regional exchange of experience and ideas special emphasis was placed on the establishment of the SEE ACAD Regional Network and the Summer School. Under the guidance of UNODC efforts are underway to start off the Regional Network and to organize the first SEE ACAD Regional Summer School next year (2016). Regarding present experience in the SEE Region with UNCAC-based anti-corruption courses special mention should be made of the Anti-Corruption Legal Clinic which started last year at the Law School, University of Belgrade, Serbia.

**LEGAL CLINIC Basic Facts**

Following first UNCAC course (May 2014) and August 2014 ACAD Workshop, the Legal Clinic was founded.

- Special form of education for seniors and graduate students (23 students)
- Teachers, judges and staff from the Anti-Corruption Agency
- UNODC – Law School Certificate
- FORMAT
- Theoretical Part: Presentations and Discussions
- Practical Part: Internship and work with clients
Concluding Observations: Political Economy of Organized Corruption
STUDENTS’ PRESENTATIONS

- Economy and Corruption
- Culture and Corruption
- Politics and Corruption
- Compatibility of Serbian Anti-Corruption Regulations with UNCAC
- Assessment of UNCAC segment

EUROPEAN LEGISLATION AND PRACTICE

- European Union anti-corruption convention, instruments, standards and procedures
- Council of Europe anti-corruption conventions, instruments and procedures
- European Human Rights Court and Corruption
- Students’ Presentation and Discussion on:
  - Major anti-corruption challenges in Serbia as per European standards
  - European Union anti-corruption requirements
Concluding Observations: Organized Corruption in the Western Balkans
And its Consequences for Anti-Corruption Teaching
Corruption is becoming less and less an individual act as there is a need for organization, division of labor and for people who act, launder and in the end legalize the profits. The distinction between active and passive corruption is more and more fading. The process occurring in the Balkan region was fueled by the fall of the Berlin Wall which enormously affected the rest of the world. Respectively, the part of Eastern Europe experienced a “wild-west” privatization which refers to the ex-communist party nomenclature and organized crime buying formerly state-owned real estate like factories, enterprises and land. This process led to the legalization of the representatives of the old regime and organized crime in a new environment as businessmen and still affects the ability to prevent and control organized crime and corruption. On the other hand, organized crime in the Balkan region was traditionally involved in drug trafficking and smuggling of cigarettes and later on also focused on human trafficking and arms trafficking (in particular during the Yugoslav wars), Attention was also called to the process of legalizing profit through money laundering. In the real estate business, banking, gambling industry and the financial markets. Corruption plays an important instrumental role in the process of the legalization of illicit gains. The main problem in the future will be entry of the organized crime in the financial market through the acquisition of shares and the use of corruption for “trading in influence”. Moreover, it was warned that this phenomenon is particularly difficult to fight on a local and on an international level and will require more partnerships with corporate sectors, thus demanding the companies to take responsibility for the illicit flow of money within their enterprise. Furthermore, this would pose the problem of interference of the government in the market economy which is a totally different economic model that might be prompted by the penetration of the new modalities of operation of organized crime and corruption. Therefore, in teaching anti-corruption it is important not to divorce it from other illicit activities and developments nor from other legal responses remedies and instruments such as anti-organized crime ones (e.g. UNTOC), money-laundering and terrorism. Summing up, organized crime and corruption go hand in hand. This is particularly evident in the Western Balkans with certain level of political and economic instability. The Yugoslav war and the privatization of the economic sector provided ample opportunities for organized crime to launder, to corrupt and to legalize its presence. Today it is not anymore the question of police and judicial capacity to tackle organized crime and corruption. It is the matter of political commitment and good public and corporate management – good governance. This has clear implications for the teaching of anti-corruption in the region.
CORRUPTION IN SPORT – A NEW FIELD FOR PUBLIC POLICY

By Adam Masters
By Adam Graycar

Introduction

Corruption in sport is evolving into a global public policy issue. Barely a day goes by without media reports of corruption in one sport or another. A recent and disturbing case has been the exposure of the ‘live-baiting’ practice in greyhound racing in Australia. Live baiting involves the use of live rabbits strapped to the mechanical lures, the dogs chasing them down and tearing them apart. In Australia live-baiting has extended beyond the traditional use of rabbits to include possums and piglets (Meldrum-Hanna, 2015). This has led to the suspension of several dog trainers in three Australian states and a series of government inquiries in Queensland (MacSporran, 2015), New South Wales (Special Commission of Inquiry into the Greyhound Racing Industry in New South Wales, 2015) and Victoria (Perna, 2015). On the international stage, the importance of sport corruption as a global issue is also evident in the choice made by Transparency International (TI) to focus its 2015 Global Corruption Report on sport. Sport thus joins a pantheon of fields\(^1\) in which corruption is recognised as problematic on a global scale.

The history of sporting corruption is longer than most people realise. The golden era of corruption free sport never existed. Doping can be traced back to the ancient Olympics, when ‘athletes drank various herbal teas and oils and used mushrooms to enhance performance’ (Martin de Sanctis, 2014, p.10) – a practice reintroduced with the modern Olympiad in the late nineteenth century, albeit with new pharmacological products (Martin de Sanctis, 2014, p.10). In Australia, race and match-fixing also have long lineages. According to the journalists Rothfield and Adams (2014), the arrival of individual ships in the first fleet that brought convicts from Britain to colonise New South Wales was the subject of heavy wagering. One captain sailed 1,000 nautical miles out of his way and dragged its anchor in the sea to rig the result of this unofficial race (p.vii).

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\(^1\) Since its inaugural edition in 2003, TI’s *Global Corruption Reports* have focused on corruption in the fields of access to information (2003); politics (2004); construction and post conflict reconstruction (2005); health (2006); judicial systems (2007); water (2008); the private sector (2009); climate change (2011); and education (2013).

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\(^\ast\) The Australian National University
\(^\ast\) Flinders University
**Defining Corruption in Sport**

Much of the focus on anti-corruption has aimed at the corruption of public officials. However, in cases such as the scandal surrounding the allocation of host rights for the 2018 and 2022 *Fédération Internationale de Football Association* (FIFA) World Cup, the traditional notion of bribery has been turned on its head. No longer can corruption be viewed simply as private citizens corrupting public officials for private gain – to win the host rights for major sporting events allegedly required *public* officials to use *public* funds to corrupt the decision-making processes in private organisations. Therefore, a broad definition of corruption in sport is required to capture the multitude of variances in deviant behaviour:

Corruption in sport equates to *the deviation from public expectations that sport will be played and administered in an honest manner*. Within this definition, playing sport encompasses both athlete preparation and actual competition. The term ‘administered’ includes multiple levels of sports administration—individual athletes, teams, clubs, leagues, competitions, national associations, public officials and international organisations—from public and private spheres. It also includes the making and implementation of sport rules and by-laws. Further, administration incorporates all levels of refereeing or adjudication associated with sport—on and off field refereeing, tribunals, panels, courts and the like. Honesty includes the discrete handling of information related to an athlete or team and not taking advantage of that knowledge (i.e. misusing insider information for gambling). Finally ‘public’ equates to fans and non-fans alike – including (and in many cases, especially) those engaged in legal and illegal gambling (Masters, 2015).

This definition purposely excludes concepts of fairness in sport – as results are often perceived as unfair by fans. Based on ‘public expectations’, it provides a foundation for the development of appropriate public policy for preventing corruption in sport.

**Global Trends**

Returning briefly to doping, over the past century, four trends in society and sport explain the growth in the abuse of drugs by athletes. These are the (1) professionalization (or de-amateurisation) of sport and the pursuit of winning over amicable participation; (2) politicisation as exemplified by the drug abuse prevalent in international sporting competition during the Cold War as either side attempted to prove themselves culturally superior to the other; (3) commercialisation, in particular following the communication revolution that
enabled broader societal access through radio, television and the internet; and (4) medicalisation with the development since the 1960s of sports medicine, often used as a cover for doping (Paoli & Donati, 2013, p.2). Three of these trends – professionalization, politicisation and commercialisation – are arguably also drivers of most other types of corruption in sport. Furthermore, these three trends illustrate how sport relates and interacts within the three broad sectors of a community – civil society, business and government. Understanding the nexus of sport within the community provides a frame to help identify where policy intervention may be necessary.

![Diagram of the sporting nexus in society]

*Figure 1: The sporting nexus in society*

Source: developed by authors.

Civil Society is the home of amateur sport. Sector 1 of Figure 1 represents the many interactions between business and amateur sport. For example, local business or even
transnational corporations will sponsor amateur sporting clubs as part of their corporate social responsibility (Frederick, 2006), which is not an entirely philanthropic exercise as marketing rights are typically exchanged for this support. Other arms of civil society have a stake in sporting integrity. Transparency International operates in Sector 3, lobbying both business and government to take measures to improve the integrity of sport (TI, 2014). Sector 4 represents the space where civil society and government interacts. This may be government funding of sport to achieve public goods such as community engagement (Long, 2005), public health or crime reduction (Cameron & MacDougall, 2000).

In Figure 1, business is represented by professional sports. This can also be described as the sport market, estimated to be worth US$141 billion in 2015, including sponsorship, gate revenue, media rights and marketing (PWC, 2011). Business will often seek to engage in public-private partnerships with government and civil society (Sectors 2 and 3). These are often required to achieve major outcomes such as the construction or redevelopment of stadiums or other costly sporting infrastructure (Jennings, 1996; Long, 2005), or staging significant events such as the Olympics.

As well as the roles described above, government also has a regulatory function over sport. This is often a ‘light touch’ approach as over regulation may render amateur sporting competitions unfeasible. For example, the drug testing regimen for professional sport can be imposed on multi-million or multi-billion dollar professional leagues, whereas requiring it of a local competition would create an unnecessary cost for little gain in an area where the risk is low.

**TASP**

Corruption in sport is complex and any analysis requires a systematic approach. Graycar (2015) has developed an analytical tool, which takes the corrupt event as the unit of analysis. The tool identifies four dispositions for each event – the Type of corrupt behaviour, what Activity has been corrupted, the Sector in which a corrupt event occurs and the Place it occurs. Application of TASP (Type, Activity, Sector, Place) to corruption in any field – in this case sport – enables the analyst to focus on specific aspects of the problem. Table 1 expands Graycar’s original TASP by the addition of sport-related references in the bullet points.
Table 1  
*Corruption typology: Corrupt behaviours in four dispositions for sport*

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type/s</strong></td>
<td>Bribery, Extortion, Misappropriation, Self-dealing, Conflict of interest, Abuse of discretion, Patronage, Nepotism, Cronyism, Trading in influence, Pay to play, etc.</td>
</tr>
<tr>
<td></td>
<td>• match-fixing – betting related</td>
</tr>
<tr>
<td></td>
<td>• match-fixing – non-betting related</td>
</tr>
<tr>
<td></td>
<td>• doping – to improve performance</td>
</tr>
<tr>
<td></td>
<td>• insider information – for gambling purposes</td>
</tr>
<tr>
<td></td>
<td>• ring-ins – the surreptitious substitution of better athletes, animals or teams</td>
</tr>
<tr>
<td></td>
<td>• nobbying – doping or physical interference to hamper performance</td>
</tr>
<tr>
<td></td>
<td>• salary cap abuses – corruption by clubs</td>
</tr>
<tr>
<td></td>
<td>• scalping – a form of extortion</td>
</tr>
<tr>
<td></td>
<td>• tanking – giving up a match, losing intentionally or not competing, often to rig end of season results for promotion or relegation</td>
</tr>
<tr>
<td></td>
<td>• host rights bribery to secure prestigious events</td>
</tr>
<tr>
<td><strong>Activity/ies</strong></td>
<td>Appointing personnel, Buying things (procurement), Delivery of programmes or services, Making things (construction / manufacturing), Controlling activities (licencing / regulation / issuing of permits), Administering (e.g. justice), etc.</td>
</tr>
<tr>
<td></td>
<td>• participation in sport (athletes)</td>
</tr>
<tr>
<td></td>
<td>• fan behaviour (e.g. lasers used to blind on-field players)</td>
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<tr>
<td></td>
<td>• refereeing on-field</td>
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<td></td>
<td>• referee behaviour and administration off-field</td>
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<td></td>
<td>• venue maintenance including field or ground preparation</td>
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<td></td>
<td>• sports medicine</td>
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<td></td>
<td>• team administration</td>
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<td></td>
<td>• club administration</td>
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<tr>
<td></td>
<td>• league administration</td>
</tr>
<tr>
<td></td>
<td>• sports policy – agenda setting</td>
</tr>
<tr>
<td><strong>Sector/s</strong></td>
<td>Local government, Construction, Health, Tax administration, Environment and water, Forestry, Customs and immigration, Welfare systems, Agriculture, Urban Planning, Legal systems, etc.</td>
</tr>
<tr>
<td></td>
<td>Divisible by sport and distinguishable between professional and amateur</td>
</tr>
<tr>
<td></td>
<td>• football</td>
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<tr>
<td></td>
<td>• baseball</td>
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<tr>
<td></td>
<td>• rugby</td>
</tr>
<tr>
<td></td>
<td>• cricket</td>
</tr>
<tr>
<td></td>
<td>• boxing</td>
</tr>
<tr>
<td></td>
<td>• billiards etc.</td>
</tr>
<tr>
<td><strong>Place/s</strong></td>
<td>Countries, Regions, Localities, Cities / Towns, Organisations, Workplaces, etc.</td>
</tr>
<tr>
<td></td>
<td>• on-field</td>
</tr>
<tr>
<td></td>
<td>• off-field</td>
</tr>
<tr>
<td></td>
<td>• training</td>
</tr>
</tbody>
</table>

Source: Masters (2015); modified from Graycar (2015); Graycar and Sidebottom (2012, p.386); Graycar and Prenzler (2013, p.11).

These lists are by way of example only and are not intended to be exhaustive. The example of live baiting in greyhound racing given at the opening of this paper demonstrates a form of
sport corruption we had not considered when originally compiling this table. Greyhound racing in Australia began in the 1860s as coursing – with the dogs running in a straight line chasing live animals. By the 1880s courses were enclosed and spectators were charged admission to watch the races and wager on them. The sport underwent a major change in the 1920s in the United States with the opening of oval racetracks and starting boxes – similar to horse racing tracks and mechanical lures (McEwan & Skandakumar, 2011, p.56). However, by the time the mechanical lures were introduced, the use of live animals for training was already embedded in the culture of the sport.

Animal cruelty in greyhound racing is corrupt because it distorts the honest administration of the sport. The problem for contemporary policy-makers is as follows. According to many trainer, a dog trained with live-baiting is more likely to chase a mechanical lure than one that hasn't. This belief is not supported by any scientific evidence (Perna, 2015, p.16). The practice is banned by the racing authorities and illegal under animal welfare legislation – the excuses offered does not make it any less corrupt. There is of course the catch 22 that underperformance by a greyhound usually results in its destruction. This then raises moral and ethical questions over the sport as a whole, which is addressed elsewhere (McEwan & Skandakumar, 2011). However, trainers arguing that live-baiting is a necessity to compete is as invalid an argument as that put forward by cyclists using drugs during the nineties.

A TASP analysis of live-baiting would be: Type/s – live baiting, animal cruelty; Activity – animal training; Sector – greyhound racing; Place/s – off-field, training, Victoria, New South Wales, Queensland. Note that the descriptors in the first three dispositions are not present in Table 1 above. It should be remembered live-baiting is not the only form of corruption associated with greyhound racing. Race-fixing, the doping or nobbling of dogs, ring-ins, manipulation of gambling markets (ICAC, 2000) and the influence of organised crime have all previously plagued the sport (For a collection of media reports and anecdotes see Rothfield & Adams, 2014).

Once broken down with TASP, a clearer direction for policy response emerges. Place identifies the jurisdiction with the responsibility to respond. In this case, the Australian states of Victoria, New South Wales and Queensland. Sector focuses where the attention should be, not sport overall, nor even animal racing, but specifically on dog racing, combined with the Places of off-field and training (which is also the Activity). Finally, Type identifies the deviance which is offensive to public values – in this case animal cruelty. It should be
remembered that values change from place to place and therefore responses must vary. What is considered cruel in one place may not be thought of as cruel in another.

**Responsive Regulation to Control Corruption in Sport**

In effect, what has recently occurred in Victoria, New South Wales and Queensland can be viewed as part of the process of responsive regulation. The concept of responsive regulation was articulated by John and Valerie Braithwaite along with their colleague Ian Ayres (Ayres & Braithwaite, 1992). Responsive regulation can shape behaviour and compliance. The essence of responsive regulation is ensuring that people know what is expected of them, and praising and encouraging them to make things happen correctly, and progressively introducing sanctions if codes are breached or processes flaunted. This differs from the economic approach, which uses deterrence to discourage some choices, and provides incentives to make other choices more attractive. Responsive regulation also differs from a law enforcement approach, it is built on knowledge and integrity, with back up measures – that may include law enforcement – to ensure compliance.

The basic building block is a regulatory pyramid.

![Diagram of regulatory pyramid](image)

*Figure 2: Example of a regulatory pyramid

Source: Update of Ayres and Braithwaite (1992, p.35)*
Each step of the pyramid represents an escalation of sanction for non-compliance. However, it is also important to provide supports for compliance.

The logic of regulatory pyramids relies on the peak of the pyramid to activate these compliance principles. The peak of the pyramid represents the ultimate constraint on pursuing a course of action that is in breach of the rules. Providing it is a credible sanction those being regulated believe that the regulator can and will use this power, it serves a number of functions. In a societal sense, it signals the seriousness of a breach of rules. It reminds those being regulated of their obligations and of the course of action they should pursue, as agreed in the social compact at the base of the pyramid. Should social pressures fail, economic pressures come into play. It is costly to escalate to the top.

Braithwaite puts together pyramids of supports alongside the pyramids of sanctions as shown here in the supports and sanctions applied to the regulation of medicines.

*Figure 3: Pyramids of supports and sanctions in the regulation of medicines.*

As sanctions and supports are unpacked, at the bottom of a pyramid stakeholders are educated and rewarded with reduced monitoring obligations if they comply. By the middle of the pyramid more intensive monitoring is brought in, as well as assistance with complying, and it is here that penalties are first introduced. At the top of the pyramid stakeholders are subject to the full force of the law. They are prosecuted, and their benefits withdrawn / licences revoked. This pyramid provides the model for understanding the policy response to the current crisis in greyhound racing.

Problems in greyhound racing are not new. Over recent years there have been a series of inquiries, usually followed by industry commitments to act to improve animal welfare, reduce the involvement of criminal elements and become more accountable (For details of of recent inquiries, see McEwan & Skandakumar, 2011). The revelations in February 2015 on the investigative series Four Corners: Making a Killing (Meldrum-Hanna, 2015) pushed the regulatory response of governments up the pyramid. The documentary sits between the ‘education and persuasion about a problem’ level and ‘shaming for inaction’. Particularly as the practices of live-baiting and massive dog culling, including unwanted excess puppies, had proven game changers for public acceptance of greyhound racing in the United States. Greyhound racing is only legal in 11 American states, four of which have no active facilities (Grey2K USA, 2015).

However, the issue of public confidence in the future of the greyhound racing industry remains: how to prevent this from happening again and how to restore public trust. Punishing individuals does not do anything to correct the absence of institutional safeguards to prevent this from happening again. It is reasonable for people to think that if there was an opportunity before, it will still exist, and be attractive to someone in the future who thinks themselves clever enough not to get caught.

A responsive regulation approach starts with a discussion of what has gone wrong here. It is an inclusive discussion. And there can be many of these discussions. In this case those caught live-baiting should be invited to small group meeting with others involved in greyhound racing to explain how this happened. Why they felt their actions were justified. How these would be constituted needs to be shaped by context – the discussion needs to focus on particular egregious and unfair acts of corruption, not the general problem. How is this fair? Who was hurt by this? What would have prevented this from happening? Not everyone will take part. The purpose is to have enough take part to reach a cultural consensus that this should never have happened and no-one wants it to happen again.
Responsive regulation is useful in this context because it involves listening to those most closely involved who know most about what is wrong with the system. They are given opportunity to see for themselves that their actions caused harm. Not everyone will, but some will. What happens with lecturing and top down control is a giant abrogation of responsibility. Those who are guilty claim it is all unfair and no-one has listened to their point of view, those who do the right thing are insulted by the inference that they are not trustworthy and new controls need to be introduced. Authority has no-one on their side. Out of these discussions will come suggestions for institutional measures for correction.

There can be a regulatory pyramid for what a racing organization will do to manage live-baiting; another for other forms of animal cruelty. Each specific problem needs a regulatory pyramid with discussion of the problem at the bottom, and then with increasing pressures to comply as one goes up the pyramid. Along with increasing pressures to comply – put on probation, or subject to regular review, there will be opportunities to declare inappropriate actions. So, if a problem is not declared, one can expect more intrusive intervention than if one declared it.

Currently, many sports are run with incentive to conceal unpleasantries, supposing they will be fixed by lower-level management. Sometimes they don’t have the skills and problems fester. The idea of using responsive regulation is always to create pressure and give opportunity to declare and discuss opportunities of corruption before they happen and thereby steer everyone away from behaving corruptly. In effect it becomes too difficult and too costly to engage in corruption.

While discussions are taking place at the base of the pyramid to prevent further instances of corruption, there needs to be some action (apart from the prosecutions) to ensure the conversations are taken seriously. Internal random checks by senior executives, external oversight, internal codes of conduct, scrutiny of practices. But again, these must involve the entire sport and have the cooperation of the players (in this case trainers) and sports managers. If imposed, the reaction is to fend off the intrusion, to game play the demands rather than assume responsibility for making things right.

Two of the three inquiries into Australian greyhound racing triggered by Making a Killing have been completed. In Victoria, some trainers have been criminally prosecuted and lost their licences, providing illustrative examples of those who make it to the top of the sanction pyramid. However, in the Victorian case the rest of the industry is now subject to the recommendations of the Perna (2015) report. Recommendation two represents the escalated
sanctions on the industry as a whole: “That GRV [Greyhound Racing Victoria] introduce a regulatory framework for all premises and persons involved in the rearing, education, breaking in and training of Greyhounds” (Perna, 2015, p.104). This creates further sanctions to deter unwanted behaviour in the upper levels of the pyramid.
Another of Perna’s recommendations highlights some of the difficulties in expecting this sport to self-regulate. Recommendation eleven is “That the Local Rules, appropriate GRV policies and GRV processes are amended and/or introduced to ensure the mandatory reporting of prima facie criminal offences to the relevant law enforcement body such as Victoria Police and RSPCA Victoria” (Perna, 2015, p.109). This recommendation is premised on the lack of whistle blowing within the industry and a “wall of silence” Perna encountered during his inquiries. While whistle blowing is an appropriate response to corrupt practice in other sectors (for example, see Roberts, Brown, & Olsen, 2011 for their work in whistle blowing in the public sector), it has proven ineffective in this case, with only one of six hundred respondents to a survey by GRV citing live-baiting as an issue (Perna, 2015, p.12). The failure of effective whistle blowing strategies can be attributed to both the geographic dispersal of training facilities and individual trainers and the cultural wall of silence. The sport of greyhound racing is thus unlike an organisation or team sport where those with integrity have the opportunity to directly observe and positively influence those with less integrity. In short, self-regulation in this sporting market has failed and further public policy intervention is required to address the corruption in this particular jurisdiction.

Conclusion

The UNCAC focuses on criminalisation (chapter III) and has sufficient scope to capture corrupt behaviours that have emerged in the sporting world. Article 21 of the UNCAC – *bribery in the private sector* – needs to be universally adopted to tackle transnational sporting corruption. However, this represents the top of the sanctions pyramid. The recent events in Australian greyhound racing have seen individuals criminally prosecuted and stripped of their licenses. If the industry proves incapable of lasting and effective reform it is entirely possible Australia will follow the example of many US states in removing state sanction for the industry. There are many places for ‘light touch’ public policy intervention using a responsive regulatory approach to circumvent sport from becoming corrupted to the point article 21 becomes the only solution.
We thank Alexandra McEwan at the Australian National University for her insights and suggestions.

References


COURT SYSTEM AND ANTI-CORRUPTION IN VIETNAM

By Cong Giao

(This is a revised and updated report on judiciary pillar – a part of NIS report of Vietnam – which is developed by the author and his colleagues for the Towards Transparency, Vietnam)

1. The Court System of Vietnam: An Overview

In the past, the court system of Vietnam is structured as follows: The Supreme People’s Court (SPC) has the authority to act as a court of cassation,2 to reopen proceedings3 and to guide and supervise the trials and the laws applied by the whole court system; Provincial People's Courts have the authority to conduct first-instance trials, appellate trials, act as a court of cassation and can reopen proceedings; District People's Courts have the authority to conduct first-instance trials; Military courts4 have the authority to adjudicate cases in which the defendants are members of the military in active service and other people who serve in the army or engage in military activities; and Other courts as determined by law, including special courts set up by the National Assembly in exceptional circumstances.

However, based on the 2013 Constitution and the Vietnamese Communist Party (CPV)’s Resolution No. 49-NQ/TW on the Strategy on Judicial Reform towards 2020, the reorganisation of the court system is made in the new Law on Organization of People’s Court (LOPC), which was adopted by Vietnam’s National Assembly (NA) on November 24, 2014, and effective from 1 June 2015. Under the new LOPC (Article 3), the structure of people’s court is divided into four adjudicating levels: The Supreme people’s court; Superior people’s

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2 Cassation means to reverse a judicial decision on a point of law. This power is more restricted than an ordinary appeal, where all aspect of a case (including factual issues) can be considered.
3 Proceedings can be reopened when new circumstances or evidence is discovered which may substantially change the facts upon which the original judgment were based.
4 Including central Military courts, Military courts of military regions, and Division Military courts.
5 Article 102.2 of the 2013 Constitution leaves the structure of the court system more open, providing only that the ‘People’s Courts include the SPC and other courts prescribed by a law’.
6 The CPV’s Resolution No. 49-NQ/TW sets underway for the court system to be re-organised into four different levels according to their jurisdiction. District People’s Courts will be replaced with Regional People’s Courts (in some cases merging several District People’s Courts into one Regional People’s Courts), who retain their authority to conduct first-instance, but their jurisdiction will be expanded to deal also with administrative cases. Provincial People’s Courts will be merged into Appellate Courts, who will conduct first-instance trials and appellate trials. High Courts will be established from the three existing appellate courts to support the handling of appellate trials, to act as courts of cassation and to reopen proceedings See, Bảo tồn tình Chinh phu, ‘Regional People’s Courts and Procuracies will be established’, 28 November 2012, http://baotho.vn/Hoat-dong-cua-lanh-dao-Dan-g-Nhu-mooc/Chuan-bi-to-chuc-Tou-an-va-Vien-Kiem-sat-khu, vnp/155512.xps [accessed on 27 June 2015].

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court; Court of provinces and centrally-run cities; and Court of rural districts, urban districts, town, provincial, cities and the equivalent. The introduction of a superior people’s court into the structure of the court system further leads to reforms to the duties and powers of other people’s courts in Vietnam.

Under the new LOPC, the SPC consists only of the Judicial Council (from 13 to 17 members including the Chief Justice, Deputy Chief Justices and other judges), assisting apparatus and training institutions. It is expected that by removing the specialized and appellate court from the structure of people’s court, the SPC can reduce its powers over appellate trials. There are four significant powers that are now entrusted to the SPC (Art 20 of the new LOPC), which are: (i) To supervise the adjudicating work of other courts; (ii) To make overall assessment of the adjudicating practices of the other courts, ensuring the uniform application of law is enforced in the conduct of trials; (iii) To manage people’s courts organizationally and ensure independence of the courts from one another; and (iv) To submit to the National Assembly laws and resolutions; to submit to the National Assembly Standing Committee ordinances and resolutions in accordance with the law.

Reflecting on the allocated powers of the SPC, the cassation and reopening trial decisions of its Judicial Council are of the greatest significance and importance, and come into enforcement immediately. Furthermore, as for the appearance of the new superior people’s court, its duties will be as follows: (i) To conduct appellate trials of cases in which the first-instance judgments, or decisions of people’s courts of provinces or centrally run cities within their territorial jurisdiction which have not yet taken legal effect, are appealed or protested against in accordance with the procedural law; (ii) To conduct the trial according to cassation or reopening procedure of cases in which judgments or decisions of people’s courts of provinces, centrally run cities, rural districts, urban districts, towns, provincial cities, or the equivalent authority within their territorial jurisdiction which have taken legal effect are protested against in accordance with the procedural law.

As for the new LOPC, court of provinces and centrally-run cities no longer have the right to conduct a trial according to cassation or reopening of a case anymore, as those duties have now been allocated to the Superior people’s court. The remaining court does not change its duties.

To implement the new LOPC, the National Assembly Standing Committee (NASC) issued Resolution No.81/2014/QH13 (Resolution No.81) on implementation of LOPC on November
24, 2014. Resolution No. 81 provided further clarification for adopting the new adjudicating levels as regulated in Resolution No.81. Until the effective date of the new LOPC, the Chief Justice of the Supreme people’s court shall prepare the organization structure, personnel and other necessary conditions for the new adjudicating levels (Art 1.1 of Resolution No.81). The Judicial Council of the Supreme people’s court has to transfer its duties and power to that which is newly established, in accordance with the new LOPC (Art 2.1 of Resolution No.81). In the Meeting on May 14, 2015, NASC decided to establish three (03) main Supreme people’s courts (in Ha Noi, Da Nang and Ho Chi Minh City) based on the current appellate courts of the Supreme people’s court. This will ensure the adaptability related to the structural organization, facilities and personnel of the new Supreme people’s court established under the new LOPC.

2. Resources, Independence of Court System and Impact on Anti-corruption

Resources

Legal provisions are in place to ensure that sufficient resources are allocated to the court system and the SPC is involved in the allocation of resources to the sector. However, the court system relies heavily on the National Assembly (NA) and the Government in deciding its personnel and budget allocation.

Judges receive salary increases in accordance with a salary grade applied to all State officials. The current legal framework does not provide against income reduction of judges; or specifically for the adjustment of salaries against inflation. Base salaries for State officials are calculated by multiplying the minimum salary with a factor corresponding to their position, title and seniority grade. However, adjustments can be made by the Government to the minimum wage to account for inflation, which automatically increase salaries in the court system. This usually occurs every three years and is rarely subject to the subjective influence of the superior staff.

The law does not secure a fixed proportion of the State budget for the court system. The court system follows the general budget system applied to all state agencies. In the past, its total payroll is decided by the NA’s Standing Committee upon the request of the Chief

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8 Articles 37 to 45, 2002 Law on State Budget, No. 01/2002/QH11.
Justice of the SPC, however, according to the new LOPC (Article 96), annual budget for operation of the court system is submitted to the NA by the Government, after consultation with SPC. Only in case of conflict between the Government and the SPC, the SPC’s Chief of Judge can propose the budget for its court system.

After its final annual budget is approved, the SPC develops a detailed budget allocation for its subordinate courts and units for verification by the Ministry of Finance before it can be implemented.

In practice, budget allocation to the court system has consistently increased during recent years, salaries for court officials are categorised at the highest level in the salary scale and various initiatives are being developed and implemented to improve the courts’ infrastructure and use of information technology. Nonetheless, the court system continues to face serious staff shortages and challenges in attracting qualified staff.

### Annual Operational Budget of the Court System

<table>
<thead>
<tr>
<th>Year</th>
<th>Regular Expenditure</th>
<th>Capital Expenditure</th>
<th>Total Operational Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>2,360 billion VND (around 118 million USD)</td>
<td>490 billion VND (around 24.5 million USD)</td>
<td>2,850 billion VND (around 142.5 million USD)</td>
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<td>2013</td>
<td>2,311 billion VND (around 115 million USD)</td>
<td>444 billion VND (around 22 million USD)</td>
<td>2,755 billion VND (around 138 million USD)</td>
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<td>2012</td>
<td>1,656 billion VND (around 82 million USD)</td>
<td>490 billion VND (around 24.5 million USD)</td>
<td>2,146 billion VND (around 107 million USD)</td>
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<tr>
<td>2011</td>
<td>1,469 billion VND (around 73 million)</td>
<td>400 billion VND (around 20 million USD)</td>
<td>1,869 billion VND (around 93 million USD)</td>
</tr>
</tbody>
</table>

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9 Article 45, 2002 Law on Organisation of the People’s Courts.
10 Section IV.1.5, Circular No. 59/2003/TT-BTC of Ministry of Finance dated 23 June 2003 Guiding the implementation of Decree No. 60/2003/ND-CP Guiding the implementation of Law on State budget. See also Report No. 05/BC-TA of the SPC dated 18 January 2013 Summarizing the activities in 2012 and major tasks in 2013 of the court sector.
Sources: Resolutions on central State budget allocation for 2011, 2012, 2013 and 2014. Because the proportion of capital expenditure is not high enough, limitations remain in the courts’ infrastructure. The people’s courts in the two largest cities Hanoi and Ho Chi Minh City have to share their offices with the SPC. Furthermore, due to the current economic downturn, 16 construction projects for the courts have been delayed. File management systems have been adopted for managing criminal, civil and family law cases and for court personnel, but these systems are not being systematically applied and are generally only used by the SPC and a number of provincial people’s courts. They have not yet reached the courts at the district level. However, a number of initiatives are underway to promote the use of information technology at the local level and to improve infrastructure and staff development.

Judges and court clerks are currently categorised as type A (the highest type) in the salary scale for cadres and civil servants across all State agencies. On top of their base salary, judges and court clerks receive a responsibility allowance with the rate varying among court levels. For example, judges receive an allowance of 10,000 VND (0.50 USD) for each day spent at trial. Accordingly, the current base salary (not including additional allowances) of a newly-appointed district judge is 2,691,000 VND (134.50 USD) per month and the base salary of a newly-appointed provincial judge is 5,060,000 VND (253 USD) per month. A number of judges have indicated that these salary levels are insufficient, even to afford basic

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15 Decision No. 171/2005/QD-TTG dated 8 July 2005 of the Prime Minister on Responsibility allowance to judges, court clerks and court examiners and Decision No. 72/2007/QD-TTG of the Prime Minister dated 23 May 2007 on specialized allowances for judiciary positions and inspectors in Military.

16 Decision No. 41/2012/QD-TTG of the Prime Minister dated 5 October 2013 on Allowance for persons participating in the trials and sessions resolving civil matters.

17 Using the multiplier of 2.34 x 1,150,000 VND.

18 Using the multiplier of 4.40 x 1,150,000 VND.
living expenses. Furthermore, the official income of court officials is considerably lower than the income of lawyers working in big cities.

Low salary levels have been widely cited, including by those in the sector, as one of the main reasons for both corruption and ‘brain drain’ within the court system. Current staffing numbers show that the court system faces significant difficulties in attracting qualified personnel to fill vacant positions. Shortages of judges and court clerks, weak qualifications of judges and the failure to attract competent staff are issues which are repeatedly raised at the court’s annual conferences. In recognising the shortage of staff in the court system, the NA Standing Committee approved a Resolution in March 2012 supplementing 1,713 additional positions to the local People's Court system for the years of 2012 and 2013. Earlier concerns that the judiciary would find it difficult to recruit an adequate number of staff as many people with a bachelor of law prefer to work in other agencies, organisations or enterprises rather than for the court system appear to well founded, as by September 2013, the courts were still 1,198 judges short of the NA Standing Committee’s targets.

A Judicial Academy, established by the Government in 2004, has since 2007 organised professional trainings for 2,500 judges, prosecutors and lawyers annually. In addition, the Training School for Court staff under the SPC also organises professional short term training courses on trial skills for incumbent judges and jurors. However, the court system itself has

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20 Legal consultant fees for small firms range from 500,000 VND (25 USD) per hour to 700,000 VND (35 USD) per hour for complex cases handled by well known law firms. See, for example: Lawyer and Principles Applied to Calculate the Legal Service Fee, Dragon law firm, (http://www.vanphongluatsu.com/phi-the-huat-su-vn-vi-vn-cach-tinh-phi-dich-vung-luat-la) [accessed on 27 June 2014]; and Lawyer Fee and List of Legal Services, Tri Tue Luat Law Firm, (http://www.tritueluat.com/hsuanphi-huat-su.html) [accessed on 27 June 2015].


28 Training School for Court Staff, 1 Year to Look Back and Move Forward, the SPC, (http://www.toan.gov.vn/portal/page/portal/tndt/trungtamnhoc/11607079/p_page_id=11607079&pers_id=11723751&folder id=&item_id=14157917&rp_detail=1) [accessed on 22 April 2015].
noted that ‘professional training for court staff in the past years has not met the requirements of new situations and not focused on emerging topics in adjudication.’

**Independence**

Since *Doi Moi (Renovation, 1986)*, the court system has been vested with increasing power to settle disputes of different kinds, obtaining jurisdiction over civil cases in 1989, economic-crime cases in 1993, labour-related cases in 1994 and administrative cases in 1998. Independence was further enhanced in 2002, following the transfer of the management of courts at district level from the Ministry of Justice to the SPC.

However, due to various reasons, the courts are not completely independent under law from executive and legislative institutions in their operations and the procedure for reappointment of judges exposes judicial activities to the intervention of different actors.

The court system is anchored in the 2013 Constitution. However, instead of explicitly specifying the courts’ independence, the Constitution only provides that ‘during trials, judges and jurors are independent and subject only to the law.’ Furthermore, Article 2 of the 2013 Constitution provides for the unified power of the State, which is delegated to State agencies for coordination and control in the exercise of legislative, executive and judicial powers. As a result, the judiciary is not independent from the Government or the NA, as all three powers are unified under the State, thought the 2013 Constitution also provides that the People’s Courts is not only an adjudication agency but also an agency exercising judicial power.

Based on the principle of power centralisation, the court system depends heavily on the NA and is also influenced by the State President and People’s Council at all levels. The NA has the power to determine the organisation and activities of the court system; to abrogate formal written documents issued by the SPC that run counter to the Constitution, the law, and resolutions of the NA; and to elect, suspend and revoke the position of the Chief Justice, Deputy Chief Justice and judges of the SPC. The State President appoints, removes and dismisses the Deputy Chief Justice and judges of the SPC.
In the past, judges are appointed for a 5-year term, which was short and placed local judges at dependent position before agencies and individuals responsible for reviewing them for new terms. Consequently, that negatively impact independence of judges in hearing. Judges too short term also negatively influence the organization and management of the judiciary, costing time and material for the reappointment. However, the situation was changed. According to the new LOPC (Article 74), the first term of local judges is 5 years; in case of re-appointment, the next term is 10 years.

When the tenure of a judge ends, they can be re-appointed, but they need to follow the procedure for appointing a new judge (see below). Appointments are made based on a list of criteria including both professional experience and personal integrity. In addition to possessing a law degree and well-trained competency in trials, judges must demonstrate loyalty to the country and the Constitution of the Socialist Republic of Vietnam, possess good moral qualities, be incorruptible and honest and resolutely protect the socialist legal system. These provisions allow significant discretion to those making appointments.

In the past, Vietnam does not have an independent specialised agency in charge of the appointment, removal and dismissal of judges. Three types of provisional judge selection councils are established to assist the State President and the Chief Justice in this task. These councils include a representative of the court sector; representative of Ministry of Home Affairs and Ministry of Defence (for judges of the SPC and judges of the Military Court); Chairman or Vice-Chairman of the provincial People’s Committee (for judges of provincial and district courts); representatives of the Vietnam Fatherland Front (VFF) and the Vietnam Lawyers Association (VLA). The selection of qualified persons is to be decided by the judge selection council (agreed by more than half of the total number of their members) without the participation of independent non-government organisations or public hearings.

This mechanism, together with fixed term appointments, limit the independence of judges by providing ample opportunity for undue influence on the activities of judges who are forced to work to please the representatives of the selection council to ensure that they are re-appointed in the following term.

38 Articles 20, 21 and 22, Ordinance No. 02/2002/PL-UBTVQH11.
39 Article 5.1, Ordinance No. 02/2002/PL-UBTVQH11; and Joint Circular No. 01/2011/TTLT-TANDTC-BQP-BNV.
40 The VFF is a mass organisation which is connected to the Communist Party of Vietnam. See the Civil Society pillar for further information.
41 Articles 25 to 28, Ordinance No. 02/2002/PL-UBTVQH11.
42 Articles 25.2, Ordinance No. 02/2002/PL-UBTVQH11.
The new LOPC (Article 70) provides to set up a national council for selection and supervision of judges at all levels. However, members of the new council almost remain unchanged, which include: Chief Judge of the SPC, 01 Deputy Chief Judge of SPC, the Chief Judge of the Central Military Court, the Chief Judge of the High People’s Court, 01 representative of the Central Committee of the VFF, 01 representative the Office of the President, 01 representative of the Ministry of Justice, 01 representative of the Ministry of Defense, 01 representative of the VLA.

A judge can be removed from office for health reasons, family reasons or other reasons that make them unable to complete the task; or can be dismissed if they violate laws or regulations on ethics. In this case, the opinions of the competent judge selection councils are required to dismiss judges. Furthermore, judges can face criminal sanctions (up to 10-15 years imprisonment) and be banned from holding certain posts for up to five years, for issuing ‘illegal judgments and decisions’, such as those which are inconsistent with regulations in the Penal Code or constitute a serious violation of criminal procedures during trial. They can also be required to pay financial damages when wrong decisions were made in a proceeding.

Despite its increasing independence in the past two decades from other state institutions, particularly the executive, the court system remains heavily dependent on the CPV, the legislature and executive bodies in almost all matters related to its organisation, personnel and operations. There are a number of reported incidences of intervention in the adjudication of the courts. The practice of the courts seeking guidance and direction in deciding verdicts from CPV agencies or local authorities is common.

At present, the judiciary is the least independent amongst the key branches of power in Vietnam because it is heavily dependent on the CPV, the legislature and executive bodies in all matters related to its organisation, personnel and funding. Interference from outside agencies is common that a senior leader has recently requested to avoid the interference of local authorities at all levels in the court’s activities. Although there are no regulations

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43 Articles 29 and 30, Ordinance No. 02/2002/PL-UBTVQH11.
44 Article 31.4, Ordinance No. 02/2002/PL-UBTVQH11.
46 Article 8, Ordinance No. 02/2002/PL-UBTVQH11.
requiring judges to hold CPV membership, in practice only CPV members are appointed as judges.\textsuperscript{48}

Official figures on the number of judges dismissed before the end of their tenure are not provided in the SPC’s annual report. However, the media does report on the dismissal and disciplining of judges. The media have also reported on a few cases where CPV agencies have directly interfered in the adjudication of the courts. An example is the handling of a corruption case in Do Son, Hai Phong province in 2006. In this case, the district CPV Secretary, Nguyen Van Thuan, suggested that the court should consider and ensure consistency with previous and similar cases. Earlier in the investigation and initiation stage, the Hai Phong People’s Committee sent an official letter to the investigation body and the Supreme People’s Procuracy recommending that the defendants be granted exemption from criminal liability.\textsuperscript{49} Since early 2013, the Central Steering Committee for Anti-Corruption (CSCAC) determined to provide guidance on anti-corruption activities. Accordingly, CPV agencies of the Public Security Force, the Supreme People’s Procuracy and the SPC have given guidance to coordination activities to speed up the investigation, prosecution and adjudication of serious corruption cases\textsuperscript{50} and these agencies have to report on the resolution of such corruption cases to CSCAC.\textsuperscript{51}

The practice of ‘asking for directions in the adjudication of cases’\textsuperscript{52} is common, as many judges are reluctant to decide the verdict independently. Instead, they consult the opinions of the court’s leaders or, – in particularly complicated cases – wait for ‘guidance and direction’ from superior courts, CPV agencies or local authorities. According to a recent survey, two thirds of judges interviewed took into account the opinions of the superior court or the leaders of the courts when deciding a case while more than a quarter of respondents

\textsuperscript{50} Report No. 80-BC/BCDTW of the CSCAC dated 15 May 2014 on the Outcome of anti-corruption activities as of 2013 and tasks for the time coming, p.8.
\textsuperscript{51} Article 2.8, Regulation No. 163-QD/TW of the Central Committee dated 1 February 2013 on Functions, missions, authorities and working mode of the CSCAC.
\textsuperscript{52} “Asking for direction in adjudicating cases” is the circumstance when the inferior court consults the superior court on the direction to adjudicate a case if it finds difficulties in the proceedings or evaluation of evidence, etc. In practice of Vietnam, inferior courts, to avoid responsibilities, sometimes abuse this mechanism and sometimes the superior courts “direct” the inferior courts rather than provide “guidance” to them in adjudicating cases. Abuse of such mechanism violates the principle of independence of courts. On this issue, see Tuoii Tre online, “‘Ask for Direction in Adjudicating Cases’: Should or Should Not?”, 19 May 2005, (http://tuoiitre.vn/Chinh-tri-xa-hoi/Phap-luat/89380/An-thinh-thi-ten-hay-khong.html) [accessed on 15 January 2013].
considered the opinions of the local authorities.\textsuperscript{53} This is partly attributed to the fact that the proportion of verdicts adjusted or abrogated is used in reviewing and appraising judges in their re-appointment.\textsuperscript{54} As described above, the practice of deciding appointments and particularly re-appointments of judges in the selection council often runs counter to the independence of the judiciary.

In addition to the above factors, the independence of the courts is further limited by the lack of provisions on professional secrecy and immunity of judges, and the absence of an independent agency or professional organisation which can help to protect the interests and the independence of the courts.\textsuperscript{55}

3. Governance of Court System and Anti-corruption

Transparency

Basic transparency provisions are in place, mandating open trials, announcements of judgments and publication of legal documents. However, these provisions do not require the appointment, transferral or dismissal of judges to be publicised.

According to current laws, all legal documents issued by the SPC must be published in the Official Gazette within no more than two working days.\textsuperscript{56} Information on the activities of the courts must also be provided to press agencies and other individuals or organisations upon their request.\textsuperscript{57} All cases adjudicated by the people's courts must take place in public. Closed trials can be held when they are necessary to protect State secrets, the traditions and customs of the nation, or when a legitimate request for confidentiality has been made by one of the parties involved in the case. However, judgments and sentences handed down in closed trials must be still pronounced publicly.\textsuperscript{58} Although the courts must announce judgments handed down, including the reasons for the judgment \textsuperscript{59}, they are not required to publish judgments in any other form beyond their announcement.

\textsuperscript{54} Discussion on Applying the Percentage of Verdicts Being Adjusted or Abrogated in Commendation in the Court Sector, the SPC, (http://www.toan.gov.vn/portal/page/portal/tandtc/BAiViet?p_page_id=1754190&p_cates=1751909&item_id=3143487&article_details=1) [accessed on 15 October 2013].
\textsuperscript{56} Article 2 and 78, 2008 Law on Promulgation of Legal Documents, No. 17/2008/QH12.
\textsuperscript{58} Article 103.3, the 2013 Constitution; Article 18, 2003 Criminal Procedure Code; No. 192/2003/QH11; Article 15, 2004 Civil Procedure Code, No. 24/2004/QH11 (amended 2011); and Article 17, 2010 Law on Administrative Procedures, No. 64/2010/QH12.
\textsuperscript{59} Article 238 and 239, 2004 Civil Procedure Code; Article 164 and 165, 2010 Law on Administrative Procedures; and Article 224 and 226, 2003 Criminal Procedure Code.
Documents contained in the case file or presented during inquiry\textsuperscript{(60)} must be announced during the hearing. The requirement to announce case documents also applies to civil cases and administrative cases under certain circumstances.\textsuperscript{(61)} The prosecutor and participants in a civil proceeding are entitled to read the trial transcript directly after the conclusion of the court session,\textsuperscript{(62)} but there are no further requirements to publish trial transcripts or figures relating to adjudications. The SPC has recently issued Decision No. 74/QD-TANDTC which recommends that cassation decisions handed down by the Judicial Council of the SPC are posted on the SPC’s website and published in a ‘collection of precedents’.\textsuperscript{(63)} Apart from such regulations, under the law, each sector, including the judiciary, has its own lists of documents categorised as top secret or secret, which therefore cannot be accessed by the public.\textsuperscript{(64)} Judges are subject to the same asset declaration provisions applied to officials in other State agencies.\textsuperscript{(65)} Asset declarations can be used in the appointment, demotion, dismissal and disciplining of judges; or as evidence to verify allegations of corruption.\textsuperscript{(66)}

The current legal system in Vietnam does not clearly specify the workings of judge selection councils or their responsibility for disclosure of information. There are no legal provisions requiring the courts to disclose information on the appointment, transfer or dismissal of judges. To strengthen the transparency of the court system, regulations requiring the courts to publish judgments, data on adjudication work and information on the appointment, transfer or dismissal of judges should be put in place.

Most transparency provisions have been implemented in practice and the SPC has made active efforts in recent years to begin publishing decisions and data on its activities. However the public remains unable to access judgments, trial transcripts, detailed information on adjudication work and information on the appointment, dismissal and transfer of judges as these are not required by law to be published.

The Chief Justice of the SPC provides biannual reports on the activities of the entire court system to the NA and the NA Standing Committee. These reports are fairly comprehensive and cover most of the activities of the court sector including the handling of criminal, civil and administrative cases; training activities; and some information on budget spending.

\textsuperscript{60} Article 214, 2003 Criminal Procedure Code.
\textsuperscript{61} Article 227, 2004 Civil Procedure Code and Article 153, 2010 Law on Administrative Procedures.
\textsuperscript{62} Article 211, 2004 Civil Procedure Code.
\textsuperscript{63} Article 1.2.2(b), Decision No. 74/QD-TANDTC of the SPC dated 31 October 2012 Approving the project on ‘Developing precedents of the SPC’.
\textsuperscript{64} Decision No. 30/2004/QD-BCA(A11) of Minister of Public Security dated 8 January 2004 on List of State secrets in the court sector and Decision No. 01/2004/QD-TTg of the Prime Minister dated 5 January 2004 on List of top secrets in the court sector.
\textsuperscript{65} Article 7.8, Decree No. 78/2013/ND-CP of the Government dated 17 July 2013 on Transparency of assets and income.
\textsuperscript{66} Article 10.2, Decree No. 78/2013/ND-CP.
However, these reports are not usually accessible to the public. However, for the first time, the 2012 reports (full report and summary report) were made available on the SPC’s website after the reports were submitted to the NA.67 Summaries of the annual reports on the activities of some Provincial People’s Courts have also been uploaded on the websites of Provincial People’s Committees.68 In practice, selection councils do not frequently publish reports on their activities.

Most legal provisions on transparency of the judiciary have been implemented. For example, conducting public trials and public pronouncements of judgments; and legal documents on organisational structures, functions, operations and professional guidelines are publicised on the website of the SPC and the Provincial People's Courts.69 However, since their publication is not required by law, judgments (including the reasons for judgments), trial transcripts and detailed data on adjudication work (including the categorisation of cases and the number of cases involving lawyers) are not widely published in practice. The public also cannot access sufficient information on the appointment, dismissal or transfer of judges, beyond what is reported in the media.

The SPC has gathered and published seven volumes of collective decisions made by the supervisory Judicial Council of the SPC from 2003 to 2009 and is preparing to publish a "collection of case law" in two stages, from 2013 to 2017 and from 2018 to 2023.70 In recent years, the SPC has also started publishing some of the cassation decisions of the Judges’ Council and Economic Court on its website.71 At present, the SPC operates two websites,72 where the public can access information about organisation, activities and reform tendency of the court system.

However, data on the activities of the court system is only partially published. Currently, only statistics on criminal trials are published on the SPC’s website and are available for internal access only. For example, access to the web page on the management and statistics

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67 Find such reports at Reports and Academic Papers, the SPC, [http://toan.gov.vn/portal/page/portal/ tandtc/545500/3827663] [accessed on 29 June 2014].
69 Example on publication of professional guidelines, the SPC, [http://www.toan.gov.vn/portal/page/portal/ tandtc/545500/thd] [accessed on 28 June 2014].
71 Decisions issued by the Economic Tribunal, the SPC, [http://toan.gov.vn/portal/page/portal/tandtc/545500/3382453] [accessed on 22 April 2013].
system of criminal cases of the People’s Courts\textsuperscript{73} requires a username and password and only some bodies directly under the SPC (such as the statistical agency, specialised courts, appellate courts, the Southern standing agency of the SPC), and the district and provincial courts have access to it.\textsuperscript{74} At present, the data of the number of cases tried since 2006 is made public in the form of a chart.\textsuperscript{75} Overall, members of the public face great difficulty in accessing unpublished precedents.

Furthermore, openness and transparency of information has mainly been driven by the SPC, rather than throughout the entire court system. Only a few local courts have websites providing information on disputes and court activities.\textsuperscript{76} This is illustrated by the fact that only 6 out of 63 provincial courts’ websites are linked to the SPC’s website.\textsuperscript{77} Given the partial transparency of the whole court system, the overall score for this indicator is low.

**Accountability**

Accountability of the courts and judges are afforded through clear reporting lines to legislative and executive bodies and strict penalties applied to violations of judicial procedures. However, opportunities for public oversight over judicial activities are limited by restricted access to court judgments and reasons and the absence of an independent complaints mechanism.

There is no independent mechanism to resolve complaints made against court officials. The Chief Justice of the SPC is accountable to and reports to the NA (or to the NA Standing Committee and the State President when the NA is not in session).\textsuperscript{78} The Chief Justices of the local People’s Courts are accountable to and report to the People’s Councils at same level and also report to the direct superior courts.

There are specific provisions that require judges to explain their decisions. Under law, a judgment of first instance trials shall contain an introduction, contents of the case and assessment of the courts and the final judgment.\textsuperscript{79} Accordingly, in the section on the assessment of the courts, the judge must provide the reasons and legal provisions on which

\textsuperscript{73} System on Management and Statistics of Criminal Cases of the Court System, the SPC. [http://hs.toan.gov.vn/SPC] [accessed on 28 June 2014].
\textsuperscript{74} According to a Guide on using case management software of the SPC.
\textsuperscript{75} Statistic on Number of Cases Being Brought to the Courts, the SPC. [http://toan.gov.vn/portal/page/portal/andtc/5901712], [accessed on 18 March 2013].
\textsuperscript{77} They are provinces and cities under the central government such as Nam Dinh, Thua Thien Hue, Ha Tinh, Vinh Long, Hung Yen, Ho Chi Minh City. Using internet search only finds out 3 more websites: website of the People's Court of Hanoi, Bac Ninh and Quang Ninh province.
\textsuperscript{78} Article 105.2, 2013 Constitution.
\textsuperscript{79} Article 238, 2004 Civil Procedure Code and Article 164, 2010 Law on Administrative Procedures.
their decision was based. Nevertheless, the laws do not specify any sanctions for cases where a judge does not explain or does not explain clearly the legal basis for their decision.

Judgments must be pronounced at the hearing, delivered to the defendant, the procuracies at same level, the defense counsel, sent to persons being tried in absentia as well as the police agencies at same level. In case the defendant, related parties or other participants in the proceeding do not understand Vietnamese, the court is obliged to provide an interpreter. Violation of these provisions may lead to the annulment of the judgment or a retrial. Such violations can also make the judge subject to disciplinary sanctions.

Judges may be disciplined for violating adjudication procedures, regulations on moral qualities or the list of prohibited acts (see Integrity indicator). Disciplining can take place through downgrading in evaluation, censuring, warnings or removal from office. As discussed in the Independence indicator, judges can face up to 10-15 years imprisonment for issuing ‘illegal judgments and decisions’, such as those which are inconsistent with regulations in the Penal Code or which constitute a serious violation of criminal procedures. Since judges must be re-appointed after the end of each tenure, any disciplinary measures faced may also cause further difficulties for them in being re-appointed for another term.

Complaints against procedural decisions/actions made by judges are subject to 2003 Criminal Procedure Code, 2004 Civil Procedure Code and 2010 Law on Administrative Procedures. Accordingly, complaints against judges and the Deputy Chief Justice shall be resolved by the Chief Justice of the court. If the complainants disagree with the resolution, they can lodge further complaints with the direct superior court. Complaints against procedural decisions/actions made by Chief Justice shall be resolved by the direct superior court. In this case, the direct superior courts shall make the final resolution. Under regulations on civil procedures and administrative procedures, complaint resolution decisions must be sent to the complainants and the procuracy at the same level. Complaints against judges and court activities are received by the SPC’s Inspection Board who then forwards the complaints to specialised courts or other units under the SPC for resolution. There is no independent body

80 Article 229, 2003 Criminal Procedure Code.
81 Article 61, 2003 Criminal Procedure Code.
82 Articles 6 and 30, Ordinance No. 02/2002/PL-UBTVQH11.
84 Article 331, 2003 Criminal Procedure Code; Article 396, 2004 Civil Procedure Code; and Article 254, 2010 Law on Administrative Procedures.
85 Article 396, 2004 Civil Procedure Code; and Article 254, 2010 Law on Administrative Procedures.
86 Article 1.2, Decision No. 16/2003-TCCB of the SPC dated 17 February 2003 on Assistance apparatus of the SPC.
charged with resolving complaints, instead complaints are resolved within the court system. Therefore, in order to improve accountability within the court system, an independent agency should be established to investigate complaints against judges and other court officials.

When there is a violation in legal proceedings, the victim can receive compensation from the Court; and the judge may be liable to pay partial or full compensation to the State budget depending on the type and seriousness of the violation. However, there is a lack of clear guiding documents on the implementation of compensation liability and the current procedure to claim compensation is lengthy and complex. For example, people can only request compensation if they possess a document from the competent agency identifying the violation of the official on duty. To obtain such a document, the victim has to follow a complicated procedure which requires significant time and cost. Even if all procedures are completed, the compensation settlement is slow as the competent official may not fully understand the specific procedures, especially in the case of compensation requests of enterprises or foreigners. These shortcomings affect the accountability of the entire State apparatus, including the court system.

Accountability

Judges, especially at first instance trials, are required to explain their decisions in accordance with the structure guided by the SPC. However, there are no statistics or information available on the disciplinary sanctions applied to judges for failing to provide the legal grounds for their decision. According to a local expert, violations of procedural regulations regarding public pronouncement of judgments, delivery of judgments and use of language are not common. Some violations being recorded in the court system involve failure to provide notification to parties to the proceedings, on indictment, the decision to prosecute or to bring the cases to the courts. According to media sources, in 2004, 10 judges were disciplined, with one judge receiving criminal sanctions. Between 2006 and 2013, on

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87 In accordance with Article 16 and 18 of Decree No. 16/2010/NĐ-CP of the Government dated 3 March 2010 Detailing and guiding the implementation of Law on responsibility of State compensations; and 2009 Law on State Compensation Liability, No. 35/2009/QH12. 
89 Article 4, 2009 Law on State Compensation Liability.
average of 30 court officials were disciplined each year, mostly for committing criminal violations (such as committing fraud or for receiving bribes), violations of legal proceedings, wrongly applying legal regulations and violations of professional ethics.

There are a number of cases where judicial agencies, including the courts, have admitted their errors and compensated those who are treated unfairly in handling procedural activities. By 30 September 2012, three years after implementation of the Law on State Compensation Liability, 165 compensation requests were received and 122 requests were handled 122 by State agencies, with the total compensation value of 15.9 billion VND (7.5 million USD). However, it is difficult to determine exactly how many of these cases involved compensation for violations by the court system, although available figures suggest that this number remains only a small proportion of the overall figure. For example, the media reported that between January and October 2011, the SPC paid compensation in eight cases, the majority of which involved violations of criminal proceedings. Furthermore, judges involved in miscarriage of justice often face light sanctions for their wrongdoing.

Lack of transparency of data related to the court’s activities has been identified as a key hurdle to accountability, as limitations to obtaining even basic statistics makes it difficult for external observers to examine the performance of the courts, and even within the court system itself, it is unclear how court statistics are being used as management tools.

4. Integrity of Court System and Anti-Corruption

Regulations on the behaviour of judges and other court staff are scattered across a code of conduct and various legal documents. While these provisions together cover conflicts of

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interest and asset declarations, a number of other important aspects, including post-
employment restrictions are missing.

The court system has had a code of conduct in place since 2008, which contains a list of
prohibited behaviours, including explicitly forbidding court staff from hindering and
unlawfully intervening into the handling of corruption cases and disclosing confidential
information on corrupt acts to the accused. The code of conduct applies to all staff in the
court system, including judges, court clerks and administrative officials. There are no
exclusive provisions for judges, meaning that the code of conduct is quite general and lacks
specific provisions regulating the unique roles and responsibilities of judges. For example,
the code of conduct does not contain any regulations preventing judges from receiving
reimbursements and honoraria in connection with privately sponsored trips, gifts and
hospitality.

However, the behaviour of judges is also regulated by a number of other legal documents.
For example, the 2002 Ordinance on Judges and Jurors of the People’s Courts clearly
prohibits judges from advising accused, defendants, litigants or others participating in the
proceedings; unlawfully intervening in the resolution of a case; and requires that judges must
step down from cases where there exists a conflict of interest (for example where their
relatives are a party to the legal proceedings) or a violation of legal proceedings. In
addition, the 2003 Criminal Procedure Code allows defendants and other relevant parties to
request to change the judge if there are clear grounds to suggest that the judge may not be
impartial in the trial process. Failure by a judge to step down may constitute a ‘serious
violation of legal proceedings’, meaning that the decision can later be reviewed by a
higher court. Citizens can also submit a complaint against the lack of impartiality of the
judge to competent persons.

Judges are also required to declare and disclose their assets and income in the location where
the judge usually works. Asset declarations can be used in deciding their re-election,
appointment, demotion, dismissal and discipline; or in the evaluation and verification of

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85 Article 4.2, Decision No. 1253/2008/QD-TANDTC on Code of conduct of cadres and civil servants in the court sector.
81 Article 15, Ordinance No. 02/2002/PL-UBTVQH11.
82 Article 43 and 46, 2003 Criminal Procedure Code.
83 Article 4.2(i), Joint Circular No. 01/2010/TTTLT-VKSNDTC-BCA-TANDTC of the Supreme People’s Procuracy, Ministry of
Public Security and the SPC dated 27 August 2010 Guiding the implementation of provisions of Criminal Procedure Code on returning
the case files for additional investigation.
85 Article 274, 2003 Criminal Procedure Code.
charges of corruption. As described in the Public Sector pillar (transparency indicator), asset declarations are not legally required to be made available to the wider public.

In addition, Vietnamese law sets out employment restrictions for judges for the duration of their term, but no such regulations apply after judges leave office.

Although existing integrity provisions for judges and court staff have been applied, they appear to have little effectiveness in practice as incidences of fraud and bribery during trials have been commonly reported.

Heads of units under the SPC and Chief Justice of People’s Court of provinces and central cities are responsible for inspecting the implementation of codes of conduct. In practice, there are a number of cases where judges have been dismissed for violating codes of conduct and behavior regulations. For example, the Chief Justice of the Phu Ninh District People’s Court was dismissed for requesting money from a party involved in the proceeding, and a judge of the Khanh Hoa Provincial People’s Court was dismissed for contacting a person involved in the proceeding and requesting to borrow money from a lawyer involved in the case.

As in other State agencies, income and assets have been disclosed by judges in accordance with the manner required by law. However, it is difficult for declarations to be scrutinised in practice, due to the fact that declarations only undergo verification when their accuracy is challenged and are not required to be publically available outside the judge’s place of work. See the Public Sector pillar (transparency indicator) for further information.

Since there are no legal regulations on post-employment restrictions, many judges after retirement have gone on to work for the lawyers’ association, law offices, law firms, social organisations or private businesses. This creates an opportunity for judges to take advantages of their professional associates and influence of the previous position for their personal interests, or for the interests of their future clients and employer.

The effectiveness of the existing code of conduct and other behavioural regulations applied to judges appears to be limited. Chief Justice Truong Hoa Binh of the SPC has recognised the

106 Decree No. 78/2013/ND-CP.
107 Article 37, 2005 Anti-corruption Law.
108 Article 12, Decision No. 1253/2008/QD-TANDTC.
phenomenon of ‘buying justice’ as commonly taking place. In recent years, the media has increasingly reported on incidences where court staff have received or demanded bribes, and fraudulently swapped court documents and exhibits. In the three years from 2010 to 2012, annually there are a number of judges handled for taking bribes. In 2013, 22 per cent of urban citizens who had contact with the judiciary paid a bribe, increasing from 16 per cent in 2011. Furthermore, the amount of bribes paid to the judiciary was higher than the amount paid to any other sector surveyed, with the average bribe paid to the judiciary costing 4.6 million VND (230 USD). As a result, a number of studies show that there is a lack of trust in the court system. According to the 2012 Provincial Competitiveness Index report, on average less than 25 per cent of enterprises are willing to use the courts to resolve their dispute.

Given that situation, efforts are needed to promote the integrity of the judges and other court officials and strengthen the inspection on the implementation of codes of conduct within the court system.

5. Executive Oversight and Corruption Prosecution of the Court System

Executive Oversight

A legal foundation has been developed over recent years which gives the courts the jurisdiction to provide a level of oversight over State administrative agencies. This oversight is limited in practice due to the restricted independence and inferior position of the judiciary. Furthermore, the courts do not have jurisdiction under law to review the acts of Government and the Prime Minister; nor to review the constitutionality of laws drafted by the executive body.

111 “Buying justice” is a terminology which has wide connotations in Vietnam. It is normally understood that lawyers, court clerks, or others attempt to bribe and collude with judges to obtain lighter and more favorable sentence for the accused or the person concerned.
117 United State Agency for International Development (USAID) and Vietnam Chamber of Commerce and Industry (VCCI), Provincial Competitiveness Index, (Hanoi, 2012), p.90.
The introduction of the Law on Administrative Procedures in 2010 considerably increased the jurisdiction of the court system to provide oversight over State administrative agencies. Administrative courts have been set up under the system of the SPC and Provincial People’s Courts to try lawsuits initiated against administrative decisions and acts. Their jurisdiction covers a wide list of State administrative acts and decisions, with exceptions made for acts and decisions pertaining to State secrets in the fields of national defence, security and foreign affairs as classified by the Government; and acts and decisions relating to internal issues. Although their jurisdiction only arises when a lawsuit is initiated against a specific decision or act made by a State administrative agency, the Law on Administrative Procedures has made it easier for people to initiate lawsuits against administrative decisions and acts. Six months after the law came into force, one law firm in Hanoi documented and filed nearly 200 administrative lawsuits at different levels across several provinces and cities.

These new provisions, together with the transfer of management of district courts from the Ministry of Justice to the SPC and the reorganisation of the court system under the Judicial Reform Strategy towards 2020 have reinforced the position of the courts to oversee the actions of State administrative agencies.

However, the Law on Administrative Procedures only gives administrative courts the jurisdiction to review decisions and acts committed by agencies up to and including the ministerial level. Administrative courts do not have the jurisdiction to review decisions made by the Government and the Prime Minister. In addition, no court has the authority to review the constitutionality of legal documents issued by State agencies, including executive agencies – who draft 90 per cent of laws and ordinances submitted to the NA (see Executive pillar – Role: Legal System indicator). Earlier drafts of the 2013 Constitution initially planned for the establishment of a Constitutional Council (a political rather than a judicial institution) to fill this gap. However, this clause was not included in the final version passed by the NA due to a lack of consensus on its set-up, with most of the NA deputies preferring to strengthen the role of the NA (especially the NA Legal Committee) in safeguarding the constitutionality of laws.

\[\text{118} \text{ Article 18 and 27, 2002 Law on Organisation of the Courts; Article 28, 2010 Law on Administrative Procedures.} \]

\[\text{119} \text{ Article 28, 2010 Law on Administrative Procedures.} \]


The effectiveness of judicial reviews by administrative courts is limited in practice. This is partly due to hesitation by the courts to deal with cases initiated against administrative agencies or powerful individuals.123 Judgments delivered by administrative courts have shown bias towards the defendant administrative agencies124 at the expense of the people initiating the case, who tend to be treated unfairly.125 In addition, despite the fact that there is a specialised institution in charge of managing the implementation of administrative judgements126 and that failure to implement decisions delivered by the courts can result in financial penalties, disciplinary sanction or even criminal liability,127 administrative courts face significant challenges in the enforcement of their judgments. In some instances, the people’s committee failed to cooperate with the court requests meaning that the courts could not even bring case for trial.128 There are many instances where administrative agencies have failed to execute judgments made against them.129 As of the beginning of 2014, two and a half years after the Law on Administrative Procedures came into effect, 359 notices have been given urging the enforcement of administrative judgments, but only 55 responses were received from relevant administrative agencies on the implementation of the judgments.130

One study showed that, on average, only 23.7 per cent of enterprises believe that the legal system provided mechanisms to appeal officials’ corrupt behaviour while an average of 63.8 per cent of enterprises are confident that the legal system will uphold copy rights and contracts.131 However, the effectiveness of the judicial review process is undermined by people’s lack of trust in the court system. This was acknowledged by Chief Justice Truong Hoa Binh of the SPC before the NA Standing Committee in March 2013, who recognised that the number judicial review of administrative acts have been limited, partly due to the low level of trust that people place in the court system.132

124 Ibid.
126 The General Department of Civil Judgment Enforcement under the Ministry of Justice.
127 Article 247, 2010 Law on Administrative Procedures.
131 USAID and VCCI, 2012-90.
Corruption Prosecution

Courts have traditionally been criticised for dealing only with petty corruption and failing to deliver strong punishment for corruption cases. This changed dramatically from late 2013, when the courts handed out a number of death and life imprisonment sentences to those involved in a number of high profile corruption cases. This change is linked closely with the CPV’s efforts in giving direction to the adjudication of corruption cases to strengthen the fight against corruption. Nonetheless, the courts continue to be perceived to be driven by the desire to ‘protect the State’, rather than the interest of justice.

According to report of the SPC, in 2012, People’s Courts and Military courts at all levels have conducted first instance trials for 321 cases with 733 defendants related to corruption. Other available figures show that since 2009, the courts have tried more than 150 to 300 corruption cases annually, involving more than 300 to 700 defendants. However, courts have widely been criticised for addressing only petty corruption and for failing to hand out severe punishments. This can be reflected in both the relatively low number of officials at the central level being tried (0.3 per cent of cases in 2010) compared to the number of officials at commune and ward levels (30.9 per cent), and the relatively light sentences being handed out. For example, as shown in the table below, suspended sentences and sentences of less than three years of imprisonment constitute the substantial majority of sanctions applied to defendants for corruption related crimes.

Sanctions applied to corruption crimes* between 2009 to 2013

<table>
<thead>
<tr>
<th>Year</th>
<th>Warning</th>
<th>Fine</th>
<th>Probation</th>
<th>Suspended sentence</th>
<th>Sentenced to 3 years’ jail</th>
<th>Sentenced to over 3 to 7 years’ jail</th>
<th>Sentenced to over 7 to 15 years’ jail</th>
<th>Sentenced to over 15 to 20 years’ jail</th>
<th>Life imprisonment</th>
</tr>
</thead>
</table>

133 Report No. 80-BC/BCTW.
134 Alan Doig, Dao Le Thu and Hoang Xuan Chau, Criminalising Corruption: A Study of International Practice and Application for Viet Nam, 2013, p.16.
136 For example, according to Government Inspectorate and World Bank, Corruption from the Perspective of Citizens, Firms, and Public Officials - Results of Sociological Surveys, (Hanoi: National Political Publishing House, 2012), 90 per cent of people believed that corrupt people are not severely punished.
<table>
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<tr>
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<th>2011</th>
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<tr>
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<td>3</td>
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</tbody>
</table>

Source: Table produced based on statistics from Alan Doig, Dao Le Thu and Hoa Xuan Chau (2013), *Criminalising Corruption: A Study of International Practice and Application for Viet Nam*, p.17 using summarised statistics of the Vietnamese People’s Court.

*These include all corruption and other position related crimes under articles 278 to 291 of the Penal Code.

However, the court system in the past year has increasingly adjudicated a number of high profile corruption cases and delivered severe penalties. Between November 2013 and May 2014, five people received the death penalty for corruption related charges. This included Duong Chi Dung, the former Chairman and Mai Van Phuc, the former General Director of Vietnam National Shipping Lines (Vinalines - a State owned shipping company);^138^ Vu Viet Hung, the former director of a branch of Vietnam Development Bank;^139^ Vu Quoc Hao, the former General Director of Agribank Financial Leasing Company No 2 (ALC II);^140^ and Dang Van Hai, the former Chairman of the Board of Members of Quang Vinh Co Ltd.^141^ Many more have received lengthy prison sentences for their crimes. The media has also

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^138^ Both were found guilty of embezzlement and intentionally violating State regulations on economic management causing serious consequences. Their sentences handed down by the Hanoi’s People's Court and upheld on appeal to the SPC on 7 May 2014: see VietNamNet, ‘Death Penalty Upheld for Vinalines Ex-Chairman Duong Chi Dung’, 7 May 2014, (http://english.vietnamnet.vn/fms/society/101682/death-penalty-upheld-for-vinalines-ex-chairman-duong-chi-dung.html) [accessed on 29 June 2014].

^139^ Sentence was handed down by the Dak Nong Provincial People’s Court on 13 March 2014for taking bribes and misappropriation of assets and violating credit lending regulations: see Viet Nam News, ‘Disgraced Bank Head Given Death Sentence for Corruption’, 14 March 2014, (http://vietnamnet.vn/society/252523/disgraced-bank-head-given-death-sentence-for-corruption.html) [accessed on 29 June 2014].

^140^ Sentence handed down by the Ho Chi Minh City People’s Court on 13 November 2013 for embezzlement, abusing his position and power while on duty and intentionally isolating State regulations on economic management and causing serious consequences: see TuoiTre Newspaper, ‘2 Get Death as First of Vietnam Top Corruption Cases Tried’, 16 November 2013, (http://tuoitrenews.vn/society/15159/2-get-death-as-first-of-vn-top-corruption-cases-tried) [accessed on 29 June 2014].

^141^ Sentence handed down by the Ho Chi Minh City People’s Court on 13 November 2013 for swindling to appropriate assets, abusing his position and power while on duty and intentionally isolating State regulations on economic management and causing serious consequences: see TuoiTreNews, ‘2 Get Death as First of Vietnam Top Corruption Cases Tried’, 16 November 2013, (http://tuoitrenews.vn/society/15159/2-get-death-as-first-of-vn-top-corruption-cases-tried) [accessed on 29 June 2014].
reported that the percentage of defendants receiving suspended sentences for corruption related crimes, during the first 6 months of 2014, decreased by more than 50 per cent.  

Furthermore, given the characteristics of the handling of anti-corruption cases in Vietnam, where responsibility for inspecting, investigating, prosecuting and adjudicating corruption cases are spread across several different agencies and the courts only have the authority to adjudicate cases which are brought to the courts, low conviction figures cannot be solely attributed to the courts. A key issue in Vietnam is collusion and cover-up before investigation and prosecution, before the case reaches the courts. Therefore, ‘the courts should not be blamed too much for not effectively preventing corruption in Vietnam’. This appears to be supported by GI’s statistics which show that from 2009 to 2010, more than 96 per cent of anti-corruption cases proposed for prosecution by law enforcement bodies were tried by the courts, although this number has dropped in recent years.  

Nonetheless, the court system in Vietnam essentially protects the State and to some extent the legal interests of civil parties instead of being a driving force protecting justice. In September 2012 the courts sentenced Hoang Khuong (Nguyen Van Khuong) – a well-known investigative journalist – to 4 years imprisonment for giving 15 million VND (750 USD) in bribes to a police officer. Hoang Khuong has maintained that the bribe was brokered as part of an investigation to expose police corruption which culminated in an article published in Tuoi Tre detailing the transaction. As described in the Media and Political Parties pillars, the courts have also continuously brought to trial individuals who have aggressively criticized the Government on the level of corruption. This has led to strong criticism both within the country and internationally, where the courts have been seen as a double edged sword. A domestic journalist noted that: ‘the trial of Mr. Hoang Khuong was a backward step that is inconsistent with the idea of judicial reform’.  

There have been instances of collaboration between Vietnamese courts with foreign judicial authorities with a stake in the case, such as with Japanese authorities in the case of Pacific

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143 Interview with an expert in Institute of Legal Science, Ministry of Justice, Hanoi, 10 December 2012.  
144 Alan Doug, Dao Le Thu and Hoang Xuan Chan, 2013:16.  
Consultants International. However, the extent and effectiveness of international cooperation by judicial agencies in Vietnam are still very limited. This is due to a lack of material and technical conditions, skills and experiences on international cooperation, language barriers and disparities in political and legal regime.

6. Concluding Remarks

The court system of Vietnam is generally endowed with stable resources, its budget allocation has consistently increased each year and salaries for court officials are amongst the highest out of all State agencies.

Independence is the major weakness of the court system of Vietnam while it remains heavily dependent on the CPV, the legislature and executive bodies in almost all matters related to its organisation, personnel and operations. Judges are currently appointed on fixed term tenures and must regularly undergo a selection process for reappointment. This has pushed courts to seek guidance and direction from superior courts, CPV agencies and local authorities before deciding their final judgments.

Basic transparency provisions are in place, mandating open trials, announcements of judgments and publication of legal documents. In recent times, the Supreme People’s Court has also made a number of active moves to begin publishing case law and limited court statistics. These all create positive impact on anti-corruption of the court system. However, gaps in regulations on transparency have made it difficult to ensure the independence and accountability of the court system, as the appointment, transferral and dismissal of judges are not required by law to be publicised and the public cannot access court statistics, judgments and reasons other than the announcement during trial.

Behaviour regulations for all court staff, including provisions covering conflicts of interest and asset declarations are in place. However, a number of important aspects, including post-employment restrictions and specific provisions regulating the unique roles and

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148 In this case, four former officials of a Japanese consulting firm were arrested in August 2008 for offering bribes worth 820,000 USD to a Vietnamese official in charge of awarding Japanese Overseas Development Aid contracts.
responsibilities held by judges are absent. In practice, lack of integrity in the court system is a serious issue as corruption is common, weakening public trust in the judiciary.

Over the past year, a number of high profile corruption cases have been brought to trial, resulting in severe penalties. Nonetheless, the court’s dual role in providing effective oversight over the executive’s actions and prosecuting corruption is significantly constrained by its lack of independence.

In general, the court system of Vietnam is now in transition towards creating better conditions for the fight against corruption. However, the transition process is slow and impeded, thus, the ability to prevent corruption of this system in the coming years will remain weak.
CRIME AND CORRUPTION IN SPORT: A STUDY IN MATCH FIXING

By Jack Anderson

Introduction

One of the most celebrated and quotable coaches in sports history was the American football coach Vince Lombardi and one of his most famous quotes was: “If winning isn’t everything, why do they keep score?” The premise of this paper is: “If the result is pre-determined, why do they keep the score?” Match fixing, as an example of corruption in sport, robs sport of an elemental part of its attractiveness and namely its controlled unpredictability. This paper examines the integrity threat posed to sport by match fixing for financial (gambling-related) advantage and does so in 4 ways: first, an explanation of what is meant by the phrase “integrity in sport” is provided; second key features and patterns of match fixing in sport are identified; third, the enhanced threats posed by online gambling platforms and possible money laundering are highlighted; and finally, suggestions are given as to how the risks associated with all of the above may be assessed and minimized.

Before the above 4 steps are taken, two further introductory points are of note. It is probably best at this point to sketch out what the integrity threat posed to sport by match fixing entails. Simply put, and this will be explored elsewhere in this paper, there is a view that criminal syndicates operating in jurisdictions in Asia, where gambling is largely unregulated, are targeting players and officials in leading (European) sports events and leagues in order to fix the results of games for financial advantage on the sports gambling markets. How real that threat is, its exact source and the principal means by which international sport can minimise the associated risks are all key aspects of this paper.

\footnote{School of Law, Queen’s University, Belfast.}
The above, in Euro-centric terms, is often called the “threat from the East” but this paper also serves as a reminder of the “threat from within” in the sense that match fixing and/or the gambling-related rigging of matches has long been part of the historical fabric of sports such as football. For example, just prior to conscription in Britain for World War I, a match between Manchester United and Liverpool was rigged with a 2-0 score line bet on heavily in advance by certain players and officials. Suspicions were raised when the crowd booed the obvious lack of effort on the pitch by the players. The subsequent investigation, which revealed the some players were motivated by the fact that the league was soon to be suspended for the war, led to life bans for some of those involved.

Almost 50 years later in mid April 1964, an English newspaper, the *Sunday People*, broke the story of self-confessed football “fixer” Jimmy Gauld. Gauld, a former professional player, had been involved for most of that decade in the rigging of games. An investigative journalist at the *Sunday People*, who wrote numerous stories on match fixing in lower league football in England in the 1960s, eventually convinced Gauld to sell his story and turn from conspirator to informer. In that 1964 exclusive, Gauld revealed to the newspaper that three leading players, including two England internationals, were part of his betting ring to fix matches. The England internationals, Peter Swan and Tony Kay, were said to have bet on their own team - Sheffield Wednesday - to lose a match against Ipswich on 1 December 1962. Ipswich duly won the game and the conspirators were alleged to have won £ 100 each.

One year later, a court case followed the newspaper’s revelations and Swan and Kay were imprisoned for four months and initially banned from playing any officially recognised football for life. In total 33 people faced prosecution for match rigging and ultimately another eight players also received terms of imprisonment ranging from six months to four years.

Fifty years, almost to the day after the Swan and Kay revelations in the *Sunday People*, the UK’s National Crime Agency announced that seven players from Football League clubs in north-west England had been arrested in connection with alleged spot-fixing in matches. These arrests were made in conjunction with the re-arrest of six other men – including former Premier League player DJ Campbell – originally detained but later bailed in December 2013, again on suspicion of involvement in spot-fixing but also in relation to allegations of bribery and money laundering. The National Crime Agency said that its investigation into the matter (subsequently dropped) was based in part on material it had received from an investigation by
the Sun on Sunday newspaper, which published allegations that players had not tried to fix the result of games but rather had corruptly influenced specific elements of match and namely by intentionally getting a yellow or red card, i.e. a spot fix.

These (historical) examples from football, which are echoed in other sports, inform the present understanding of match fixing in sport, which to paraphrase the International Olympic Committee’s President in 2011, now poses the number one integrity threat to sport.

1. Sport’s Integrity

The standard dictionary definition of the term “integrity” is that of “the quality of being honest and having strong moral principles”. As utilised in a modern sporting context, the term integrity has a slightly different meaning to that of “moral uprightness”. The integrity threat posed by match fixing relates, I believe, principally to the impact that any whiff of corruption may have on a sport’s brand. Corruption corrodes quickly and a sport that is poorly governed and permits corruptive practices is vulnerable to decline. For example, if this EASM conference was being held in Dublin 50 years ago, the great sporting highlight of that year would no doubt be discussed i.e., Muhammad Ali’s famous “phantom punch” in his rematch against Sonny Liston in May for the WBC version of the heavyweight championship of the world? Today, and in a room full of sports “nerds”, who can tell me the name of the current WBC heavyweight champion?

Professional boxing has lost its lustre – due principally poor governance. Similarly, if spectators, if sponsors, if TV companies do not believe what is occurring in the ring or on the field of play etc, then they will take their money and support elsewhere to the detriment of that sport. In a hugely competitive sporting environment, sports cannot afford this “integrity” drift. Doping-related corruption provides a stark commercial example of this: in 2009, German TV companies paid €20million for a three year deal to cover the Tour the France; when German TV returned to the sport in 2015, the related TV contract was worth only €5m. More relevantly, it is also of note that after 3 years of match fixing scandals and bribery allegations involving leading players and officials, the India Premier League’s brand value dropped from an estimated $4.93m in 2010 to $2.99m in 2013.
In short, corruption corrodes a sport’s brand quickly and leaves it vulnerable to commercial instability hence the concern about match fixing emanating from all levels of sport from the International Olympic Committee to national governing bodies.

2. Key features and patterns of match fixing in sport

Betting scandals from the historical to the contemporary have at least one common characteristic: they are premised on or facilitated by the supply of inside information. Match fixing regulation is to sport as insider trading is to stock exchange regulation. A straightforward illustration of same is the decision in 2012 by the International Olympic Committee (IOC) Ethics Commission to investigate the behaviour of Irish sailor Peter O’Leary who in December 2012 escaped being banned by the IOC despite winning a four figure sum after betting on an opponent to win in the same event he was competing in at Beijing Olympics in 2008. O’Leary placed two bets worth a total of € 300 on the British pair of Iain Percy and Andrew Simpson to capture the gold medal in the Star class at odds of 12-1, and won € 3,600. The IOC Ethics Commission decided that he should only be warned because his actions did not impact on the final result. In most leading sports (e.g., football) it is now standard that relevant participants are prohibited from betting, either directly or indirectly, on their sport at any level.

Beyond banning players from betting on their own sport, there is also a need continuously to educate players and raise their awareness on issues relating to match-fixing. That awareness-raising is twofold in nature. First, it applies to inside information and the need to portray clearly to players that even the most seemingly trivial information (e.g., the injury status of a teammate, state of pitch, possible tactical formation etc) released informally by that player on social media or to his or her family or entourage may influence betting patterns. Second, awareness-raising also relates to what might be called the “grooming” of young players by third parties e.g., the manner in which third parties provide initial financial support for an emerging young player and/or supply that player with gifts or other in-kind support with the long term view of grooming that player for gambling purposes through, for instance, that player effecting a spot-fix, such that that player may be termed a “gambling mule”.

The above matter of “grooming gambling mules” asks questions as to the governance of sports such a football and the manner in which poor governance relating to the regulation of
agents, third party player ownership and private equity investment in clubs may be providing avenues for the grooming of players.

The perception that a sport has a poor regulatory ethos and is one that tolerates conflicts of interest and ignores bad practices increases that sport’s vulnerability to match-fixing. As mentioned previously, the example of the Indian (Cricket) Premier League epitomises this link between poor governance, conflicts of interests, vulnerability to betting scandals and commercial detriment. In terms of regulatory review, Transparency International has consistently urged and advised sport on the adoption of better accountability mechanisms in order to minimise the associated risks.

Bad practices include a regulatory ethos that does not protect a principle that is fundamental to this matter of sporting integrity and which is based on the simple premise that every time a participant performs, they should do so “on merit” i.e., to the best of their ability and capacity. Examples of non-performance, which do not necessarily involve match fixing but may be symptomatic thereof, include “tanking”; a process whereby players or teams fail to perform on their merit in order to avoid a stronger opponent in a later part of the tournament in question. Infamous examples of the first include the draw between Germany and Austria at the FIFA World Cup of 1982 which ensured that both teams, to the detriment of Algeria, progressed to the next round and also the initial disqualification of eight badminton players from the women’s doubles competition at the London Olympics of 2012 after being accused of "not using one’s best efforts to win". All four pairs were initially accused of deliberately attempting to lose group games, in an attempt to manipulate the draw for the knockout stage.

With regard to a player effecting a betting conspiracy, it must be noted that episodic games, such as cricket, tennis and snooker and where an individual participant has significant control over certain plays, are particularly vulnerable and especially to spot-fixing type scams e.g., and as revealed at the Court of Arbitration for Sport hearing in CAS 2011/A/2621 David Savic v Professional Tennis Integrity Officers, Savic, a professional tennis player, was given a life ban from his sport on proof that he offered an opponent US$30,000 if that opponent would agree to lose the first set, and with Savic offering to lose the remaining sets so that the opponent could win the match.
Moving away from players for a moment, in a professional sport such as football, the least paid person on the pitch and yet the person with the greatest control over the flow and indeed outcome of the game is the referee. The targeting of referees by illegal gambling conspirators is a long standing feature of match fixing. Forty years ago, the Sunday Times (London) reported on how the notorious Hungarian fixer Dezso Solti had offered US$5,000 and a car to a Portuguese referee to help Juventus through the second leg of their European Cup Semi-final against Derby County FC from England. A decade ago, the actions of a German referee Robert Hoyzer and his links with a criminal syndicate based in Croatia demonstrated the dangerousness and effectiveness of targeting referees.

Beyond referees, the profiling of players who might be vulnerable to match-fixing approaches includes those with gambling-related problems and addictions, who may then effect a sport or match fix in order to pay off accumulated gambling debts. It also includes, and this is a point made increasingly by representative bodies such as FIFPro, players who do not have their salaries paid on time, or partly paid or not at all, and thus may be vulnerable in the sense that their personal financial vulnerability may lead concomitantly to their professional vulnerability to approach by match fixers. In FIFPro’s so called “Black Book on Match fixing”, it was noted that no less than 55% of the players who were approached for match fixing did not have their salaries paid on time.

Moreover, and a somewhat underestimated aspect of player vulnerability to match-fixing approaches, is that of inequality of pay within a squad or a sport e.g., a professional player who, relatively speaking and compared to peers in a squad or internationally, is poorly paid. This point was made at the Court of Arbitration hearing CAS 2011/A/2364 Salman Butt v International Cricket Council (and relating to spot-fixing in cricket by named Pakistan international players). One of the arguments made in mitigation of the relatively lengthy bans imposed on the players was that Pakistan players were uniquely exposed and vulnerable to spot fixing because their earnings were lower than other international players. For instance, they were not permitted to play in the lucrative India Premier League and Pakistan could not host home Test games due to the 2009 terrorist attacks in Lahore thus substantially limiting their earning power.

Similarly in sports such as snooker and tennis where an international tour is in place for players, those at the elite top 16 or 32 (seeded) level, earn substantial amounts in prize
winnings and associated commercial opportunities but the drop off down the rankings is thereafter quite steep and thus players at the lower levels may be frustrated into the temptation to fix low ranking matches. At the aforementioned Court of Arbitration for sport hearing in CAS 2011/A/2621 David Savic v Professional Tennis Integrity Officers, for instance, it was noted that in a 10 year career as a tennis professional Savic’s direct earnings were in or around, a relatively paltry, US$86,000.

3. Online betting and Money Laundering

The traditional view of betting scandals – bribing key players or officials such as a goalkeeper or referee in a football match – is as old fashioned and unwieldy a conspiracy as the betting company that operates without an online presence. The growth of online betting gambling platforms and exchanges, and the widening of traditional sports betting markets has, in parallel, increased the vulnerability of sport to the spot fix and to the spread-bet. Given the breadth of betting options now available, the ethical, moral and legal vulnerabilities for sport, whereby a player (who himself may have gambling problems or who perceives himself to be poorly paid or is playing in a league match of little consequence or has gambling debts or addiction problems or all of the above) can be approached to do a specific thing at a specific point in a game, which will not necessarily affect the outcome of that game (such as conceding the first penalty in rugby or throwing a set in tennis or a frame in snooker or a no ball in cricket or getting a red card) must be highlighted.

The threat posed by spot fixing is, at first instance, particularly acute e.g., in aforementioned CAS award of CAS 2011/A/2364 Salman Butt v International Cricket Council, the odds of the exact sequence of events that the guilty players admitted to manipulating as a spot-fix were estimated to be 512,000 to 1. In short, if one had prior knowledge of the players’ actions, then for a €2 euro bet, one could have become a millionaire. The general point being that for the sake of a series of simple, apparently innocuous, plays, having no significant impact on the final outcome of the game in question, the odds were hugely in favour of the fixers. It must be noted here however that the likelihood of any regulated betting company accepting such an unlikely bet of such odds would be negligible, though spot-fixing is often the first step in entrapping or grooming a player into more sophisticated and lucrative fixes.
Overall, the sophistication of the modern sports betting markets has fundamentally changed the debate on illegal betting on sport, as aggravated by the fact that such betting can be facilitated wirelessly and remotely online from jurisdictions where betting is not regulated. At its worst what we have here is an analogy to the “dark net” which hides online the transnational crimes of sophisticated international criminal syndicates interested in pornography and paedophilia. What links all of the above is not only the sophistication of the modern sports betting industry but its lucrativeness. In 2012, the licensed UK gambling market was worth €12 billion; the European gambling market worth €90 billion in 2012; and best estimates are that including illegal and legal markets worldwide, the sports betting industry is worth anywhere between £435b to £625 billion (i.e. US $1 trillion: 70% on football). Moreover, it is estimated that there are over 400 million different sports betting odds movements worldwide per day.

The integrity threat to sport posed by these vast flows of money are linked then to the fact that international law enforcement agencies (such as Interpol) and individual researchers (notably such as Mr Declan Hill) make fairly arresting claims about the threat posed to sport by criminal syndicates based in south-east Asia who are targeting sports events in Europe for match fixing purposes. There is no doubt as to the threat posed by the above and the associated secondary criminality of transnational economic crime, money laundering and tax evasion. A recent report by SportAccord (a representative body for both Olympic and non-Olympic international sports federations as well as organisers of international sporting events) using statistics from a 2011 United Nations Office on Drugs and Crime (UNODC) meta-analysis of global money laundering, suggested that sports betting could now be used to launder more than €11.000million worldwide and that the winnings of fixed matches could represent up to € 6.8 billion or six times more than the total global trade in illegal small arms. A more recent survey from Sorbonne University in 2014, estimated that organised crimes launders some 100 billion euros a year through sport.

The susceptibility of online gambling to money laundering should not be underestimated and it reflects the seriousness of this integrity threat both to sport and society. Aggravating factors in online gambling’s susceptibility to money laundering include: the virtuality of online gambling products and the related cash flows; (3) the internationalisation and complexity of these cash flows and the related complexity of the payment processing; (5) the vast amount of legal and illegal players in the gambling market; (6) unharmonized law and legal uncertainty
in a global gambling context; (7) the relatively high pay-out percentages and tax-free winnings in many jurisdictions; (8) the associated criminality such as identity theft; (9) the facilitation of money laundering through gambling platforms by match-fixing in sport and (10) in overall combination, the very low risk of detection as well as abnormally low costs of money laundering (compared to the more traditional means of laundering).

Of particular reiteration is the fact that global agreement or harmonisation on sports gambling regulations appears a nigh impossible task. Paradoxically, in many of the countries from where this illegal activity emanates, betting is prohibited and thus governments deny point blank that there is a problem. The EU, to take one example of a supranational body with an interest in this topic, has long recognised the above stated challenges in the context of the continuing development of online technology on platforms such as the internet, mobile phone technology, and digital TV. Further, the EU has recognised that different forms of gambling services can operate across borders (i.e. a diversity of regulatory frameworks) and can also operate outside the control of Member States’ competent authorities and thus expose consumers to risks.

In recognition that the prevailing regulatory, societal, and technical issues cannot be undertaken adequately by Member States individually, the European Commission has set out a comprehensive action plan encompassing a number of complementary initiatives in its 2012 Communication “Towards a comprehensive European framework for online gambling”. Amongst other things, the Commission announced that it would adopt a Recommendation on best practices in the prevention and combatting of betting-related match fixing and one which is aligned with the recent Council of Europe Convention on the Manipulation of Sporting Events.

4. Risk Assessment and Minimization

What are the lessons that sport can learn in a preventive way about match-fixing incidents; and how can law enforcement agencies, sports authorities and the regulated betting industry cooperate collectively to best minimise the risks emanating from match fixing?

Best practice suggests that an anti-match fixing system has, similar to the Olympic rings, five interlocking elements.
Education

The first element revolves around players who are well educated on the dangers of match-fixing and who have access to a confidential, protected disclosure, whistle blowing system e.g., the IRB’s Keep Rugby Onside campaign at www.irbintegrity.com. Prevention through education is the key and not just finger-wagging at elite players as to the consequences of betting on their own sport but face-to-face education of younger academy players about the dangers of being groomed by third parties who attempt to both money launder and image launder through sport. It is of note that in its 2013 training assessment on match-fixing prevention, Interpol Sport emphasised the importance of face-to-face education programmes.

Rule Updates

Second, sports bodies should amend their rules and, where appropriate, their standard contracts with players so as to best facilitate the investigation of match-fixing e.g., prohibiting players from betting on their sport; by obtaining access to players’ phone records; entering into memoranda of understating with betting companies; and rigorously defining what may be considered “inside information” in the specific context of their sport. This sound regulatory platform will help the necessary monitoring (physical and online) of vulnerable participants as carried out, preferably, by a dedicated sports integrity unit. It must be noted that defining “inside information” with due proportion is, in a world where one’s privacy of communication is narrowed hugely by the demands of social media, very tricky for a sports organisation.

Enforcement

Third, and closing the circle, sports bodies should enforce their rules as underpinned by appropriate sanctions for those players or the entourage found guilty of match fixing. Relying on criminal prosecutions and state intervention is not enough – in fact, such are the resources, expertise and time that have to be dedicated to such economic crime, national law enforcement agencies are very reluctant to take unilateral action on this issue and thus sport should rely, primarily, on its own sports specific investigations and sanctions, which, to be
honest, are often much more effective and enduring than those that can be offered by the criminal law.

*Integrity Units*

The fourth element has already been mentioned in passing and it is that sports bodies should establish and properly resource, either solely or in partnership with other sports, dedicated integrity units e.g., the integrity units in British horse racing, international tennis and snooker. France is the only country thus far to embrace the establishment of a national sports betting integrity unit for all sport. This move was premised on the need to establish a regulatory body with the necessary statutory authority and resources to act as “clearing house” for the commercially and security-sensitive information that might be supplied to sport by betting companies or law enforcement agencies relating to this type of crime.

*Joint-up Approach*

Good practice on match-fixing minimisation tends to be collaborative in nature and includes formal means of dialogue and cooperation between sport governing bodies, betting companies, gambling regulators and law enforcement agencies. This collaborative approach assists in the development of what can be called an anti-corruption continuum of prevention, intervention and deterrence. In sum, collaboration between the above stated four partners is vital in order to risk assess integrity threats (prevention); disrupt such threats (intervention); and/or apply the appropriate sanctions (in a prosecutorial manner if necessary) to those involved (deterrence). Equally however, there is a need at times both for sport and national agencies not to forget the wider context in which the fight against match-fixing occurs and including the prevention of money laundering activities by criminal syndicates, the protection of minors whom might be groomed for illegal betting purposes, the conflict of interests associated with sport’s growing reliance on gambling operators for sponsorship and related TV advertising, and even the wider ethical and moral issues associated with irresponsible gambling.

**Conclusion**

The solution to match-fixing minimisation lies within and outwith sport.
First, within leading and well-resourced sports, anti-corruption or integrity regulations are generally now of a very sophisticated and comprehensive standard and, at first instance, appear surrounded by the necessary administrative structures and compliance capacity in order to realise the regulatory objective and including means of liaising with national regulators and law enforcement agencies. Good administrative practice includes prevention programmes (risk management assessment and training programmes); information gathering tools such as a confidential, protected disclosures facility and including a single point of contact for the collection and processing of information; comprehensive investigative procedures and policies as accompanied by timely and proportionate disciplinary proceedings and sanctions.

In sum, good practice in this area is reflected in an integrated and clearly defined betting integrity decision making framework. In turn, that framework reaches outside sport in four ways: first, memoranda of understanding between betting companies and sports bodies with the agreement to share information and intelligence in a timely and regular fashion on suspicious betting patterns; second, a similar information sharing arrangement between betting companies and national gambling regulators as part of the condition of licence granted to that betting operator and sometimes including the right to refuse or even veto the offering of certain types of bets; third, the coordination (in terms of the analysis of and response to the information gathered) by the national gambling regulator (and typically by a dedicated sports betting integrity unit within that national regulator); and fourth, the culmination of this process with a view to ascertaining whether there is any potential criminal activity involved.

A key point of future debate is whether all of the content of the above two paragraphs should be coordinated by a World Anti-Corruption Agency for Sport, along the lines of the World Anti-Doping Agency?

Finally, and to return to paraphrasing Vince Lombardi, the perfect solution to match fixing in sport is not attainable, but “if we chase perfection we can catch excellence.”

By Marat Zhumagulov

“Incorruptibility of public officials and transparency of their activities are the basis for the success of the anti-corruption policy”. (Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025)

Dear participants of the First Anti-Corruption Academic Initiative (ACAD) Symposium let me to greet you on behalf of the Academy of Public Administration under the President of the Republic of Kazakhstan.

The geography of the participating experts at the Anti-corruption Symposium on the study of scientific developments in the field of anti-corruption on the basis of the Moscow State Institute of International Relations is simply amazing!

Providing opportunity for creative communication, exchange of experience and information in teaching of anti-corruption disciplines with representatives more than 150 people from 32 countries, including Russia, Iran, Austria, the United Arab Emirates, Brazil, Macedonia, Uganda, Nepal, Belarus, Moldova, Albania, Italy, Tunisia, Switzerland, the USA, Canada, Argentina, Armenia, Gabon, the United Kingdom, Jamaica, Nigeria, Mexico, Kazakhstan, Germany, Uzbekistan, Kyrgyzstan, Qatar, Australia, Chile, Azerbaijan, Thailand, China, Armenia, Tajikistan, Vietnam, Egypt, Greece, Serbia and other countries pleasantly pleases.

As the representative of scientific community of Kazakhstan I would like to share with you those practices which we have today and also what we put into the maintenance of anti-corruption policy of our state.

By the head of state is defined the format of the further statehood strengthening and development of Kazakhstan's democracy in the Strategy “Kazakhstan – 2050”, including the unconditional eradication of corruption as a phenomenon. “The state and society should stand united against corruption¹. Corruption is not just an offense. It undermines confidence in the effectiveness of the government and is a direct threat to national security”.

Creation in August, 2014 of the Agency for civil service affairs and anti-corruption (hereinafter – Agency) as the authorized government body which united in itself regulatory and

¹ Address by the President of the Republic of Kazakhstan, Leader of the Nation, N.Nazarbayev “Strategy Kazakhstan-2050”: new political course of the established state"
law-enforcement functions in the field of civil service and anti-corruption became the direct proof of sequence actions of Kazakhstan to eradication of this evil. The authority of the Agency includes not only functions of regulation management issues in the field of civil service and provision of state service, also within provision by the legislation of the Republic of Kazakhstan, management and interindustry coordination and other special executive and approval functions for the prevention, identification, suppression, disclosure and investigation of corruption crimes and offenses.

In the performance of Agency on April 14, 2015 the Chairman of Agency - Kayrat Kozhamzharov noted that “one of the important factors in realizing the potential of professionals is the quality of training and retraining of civil servants”\(^2\).

In this regard, the important part in this question in Kazakhstan is given to Academy of public administration under the President of the Republic of Kazakhstan (hereinafter – Academy) and especially in anti-corruption training of civil servants. I developed the Standard program of civil servants training on anti-corruption\(^3\) (hereinafter - Standard) in November 2014, which provides multi-channel study of modern directions of public administration modernization, the bases of the anti-corruption legislation focused on prevention and suppression of corruption manifestations in civil service.

Distinctive feature of this program that it have both squeeze and at the same time full block of the modules, which studying by the persons who for the first time arrived to an administrative state position of the corp. "B", for the first time appointed to a senior position of the corp. "B", who for the first time arrived on administrative civil service of the corp. "A" will fix in sense of justice at civil servants anti-corruption outlook and allow to develop skills for prevention of corruption in the civil service.

Within the specified Standard program as the form of trainings and a case studies considered topics such as: the nature of corruption, reasons and conditions of corruption offenses; implementation of anti-corruption provisions in the light of the Address by the President of the Republic of Kazakhstan to the people of Kazakhstan "Strategy "Kazakhstan – 2050" in the national legislation; recommendations of the Istanbul Anti-corruption Action Plan of the Organization for Economic Co-operation and Development; United Nations Convention against Corruption Signature and Ratification; anti-corruption expertise of normative legal acts; ethics and anti-corruption behavior in civil service; psychology of anti-corruption behavior; job


analysis and psychogram of civil servant; corruption and its consequences (political, economic and social) for the state and society; organizational and legal means of prevention of corruption in the field of civil service; structure and preventive and repressive aspects of the Law of the Republic of Kazakhstan "On Anticorruption Efforts"; measures of the state control and supervision in the prevention of corruption mechanism, etc.

At the same time among the main objectives of the program, we have carried on acquiring skills to:

- prevention and elimination of the conditions promoting commission of corruption offenses;
- rendering the state services excluding a corruption component in actions of civil servants;
- development of knowledge on intersectoral coordination and other special executive and approval functions in order to the prevention, identification, suppression, disclosure and investigation of corruption crimes and offenses;
- promotion among civil servants material, career and other types of encouragement from commission of lawful actions by them;
- existence of the increased risk of committing acts of corruption in civil service;
- stimulation of civil servants to have zero tolerance to corruption actions;
- the formation of anti-corruption awareness;
- punishment inevitability of civil servants for corruption offenses and compensation of harm from the results of corruption acts by civil servants;
- assistance in realization of citizens right and organization the access to information on corruption and their lighting on a regular basis in the media.

The result is expected to create real prerequisites for the productive work of civil servants in the prevention of corruption in the system of public authorities, with the exception of the commission of corrupt misconduct, administrative offenses and crimes, the real strengthening of public confidence in the government and civil servants through improving the quality and availability of the state services.

It should be noted that the educational component of the Academy is aimed at practice-oriented results. So, in practical area by means of implementation of the program receiving knowledge by civil servants of a complex will be reached on:

- the main provisions of anti-corruption policy in the Republic of Kazakhstan;
- practical skills of the civil servant by anti-corruption behavior model;
✓ application of both organizational and legal measures for prevention, identification, suppression, disclosure and investigation of corruption administrative offenses and crimes;
✓ exact qualification of corruption disciplinary, administrative offenses and crimes;
✓ elimination of the conditions generating corruption in civil service;
✓ application of the practical knowledge while ensuring the realization of the rights, freedoms and lawful interests of individuals and legal entities;
✓ providing fully access of mass media allowed information on the existing of corruption in the civil service, etc.

In conclusion, I would like to point out that the image of a true patriot of the state in the face of civil servants will be formed in the Academy at projection on his outlook, compliance with ethical standards, namely honestly dispose of power and authority; to work for the benefit of the state, not for the sake of their own pockets; not to be afraid of a question "What do you live?"; to live and work in full consent with requirements of the law; to serve his country so that under no circumstances not to lose trust of the people, citizens of the country; to be an example of justice, modesty, to be able to behave among people; leading the team to exclude the creation of conditions for the appearance of conflict of interest;

- quickly to counteract persons who try to please to personal interests, harm the society and the state and making corruption acts.

The specified criteria of an image of the civil servant of Kazakhstan were sounded earlier by the Head of state N. Nazarbayev at the Anti-corruption forum in 2008 and didn't lose the relevance today.
SEMINAR METHODS OF DELIVERING ANTICORRUPTION KNOWLEDGE IN CLASSROOM: A NEPALESE EXPERIENCE

By Prakash C Bhattarai
By Mahesh Nath Parajuli

Context and Needs

Nepal is a small country with an area of 147 thousand square kilometers and surrounded by two Asian giants India and China. This country of about 27 million people has traditionally been an agricultural country but now remittance has also been an important source of income for many families CBS, 2012). Politically, in present days, Nepal is in transition and thus the future direction of this country is not yet clear. Despite accepting the parliamentary democracy for a short in 1960, politically Nepal remained an autocratic state till 1990. In 1990 a mass movement changed it into a country with constitutional monarchy with a democratically elected government at place. But power struggle and resulting instability continued which eventually removed the monarchy in 2008 and reestablished democracy. A jumbo 601 Constituent Assembly was first elected in 2008, which failed to draft the constitution because the political leaders could not compromise. A second Constitution Assembly was elected in 2013 and it produced a constitution in September, 2015. However, the situation has not been improved yet. The inhabitants of southern plane area of Nepal did not satisfy with the constitution and continuously under agitation from the last one month. The situation is worst now by the blockage of Indian government blaming that the plain area of Nepal has security threat for their business. In the area of education, the first modern school was established in Nepal about 150 years ago, and an expansion of schools for the masses began during 1950s. However, the country is facing much problem with corruption although leaders and general public routinely speak against corruption. Nepal is committed to UN Convention against Corruption and there are various notable legal provisions such as the Good Governance Act 2008, the Right to Information Act 2007, the Audit Act 2048, the Anti-money Laundering Act 2008, the Prevention of Corruption Act 2002,

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¹PhD, Kathmandu University School of Education, Nepal
²Prof., PhD, Dean, Kathmandu University School of Education
dozen other Acts and their amendments and institutions specifically focused on controlling corruption are in place. Yet corruption is increasing. The public perception is that no official work can be done without paying bribe. According to TI-Global Corruption Barometer (GCB) 2013, 57% respondents said corruption increased a lot in Nepal over the past two years. The 2014-report of Corruption Perception Index (CPI) gave Nepal a score of 29 out of 100 (a scale in which 0 stands for highly corrupt and 100 for very clean) and placed the country in the 126th position in the rank list of 175 countries. In south Asia, Nepal’s position is ahead only of Bangladesh and Afghanistan. Nepal, with a score of 31, was ranked 116th in 2013.

Although there is rampant corruption in Nepal, there are some notable educational practices to deliver the course modality against corrupt practices. Out of them, there is a university anticorruption education targeting to impart practical anticorruption knowledge to class participants. In one of the practices, anticorruption lessons are facilitated through seminar methods. I am describing the context of university, classroom and the way of delivering integrity knowledge and its effectiveness. At first, I am presenting the context of university and classroom.

**School Context, Course and Anticorruption Modality**

This anticorruption education is imparted in a class of Master in Philosophy (M.Phil.) level students of Kathmandu University School of Education. There are four specializations within the program: educational leadership, development studies, English and mathematics education. Among these specializations, there is a three credit course named EDUC 545: Theory and Practice in Education and Development(Understanding educational processes: Contributions to development) which is facilitated during fall semester. There were altogether six following units in the course.

- Concepts and meaning of development
- Growth of development theories
- Alternative discourses of development
- Development actors
- Decentralization and participation in education and development
- Gender and development
As the facilitators of the course were interested to deliver knowledge of anticorruption and integrity, they added an additional unit “integrity in education and development”. This was additional to the objectives of the course. The earlier objectives of the course were:

- Develop an understanding of the different meanings, concepts, theories and practices of development and their relationship with the processes of education or schooling.
- Critically realize the roles of education or schooling in local and national development agendas as well as in bringing changes in social practices and behaviors.
- Recognize the role of different other agencies, concepts, arguments and strategies in the processes of education and development.
- Identify the areas of tensions between international agendas and ideologies and national and local agendas, practices and knowledge base.
- Acquaint with various tools and techniques or researching and practicing education and development.

Along with the above objectives, another objective “Recognize and critically analyze the issues of anticorruption and integrity in education and development” was added to introduce the concept of anticorruption and integrity.

**Delivery of the Course Modality and Feedback**

The course was delivered in the following stages:

**The First Class**

In the first introductory class of the course, the notion of integrity and anticorruption was introduced along with the other concerns of the course. Particularly the following concerns relating to anticorruption and integrity were discussed:

- Contextual meaning and of anticorruption and Integrity
- Problem centered and solution focused approach of anticorruption
- Reason-centered and consequence focused approach
- Anticorruption and higher education

In the first class, the assignment scheme was also discussed. One of the assignments among five others was related to anticorruption in which each three to four students were asked
to form a group and then they were asked to prepare a paper on anti-corruption after a field work in the area of their interest. In the last few classes, the students were suggested to present their paper in the seminar style of classroom. The deadline of paper submission was within two months. However, to speed up the process, the students were asked to submit the brief concept paper within two weeks of the first class.

**After Two Weeks**

All the assigned groups submitted the papers and the facilitators provided feedback to the students. The feedback was particularly for the possible risks associated to the field work.

**After One Months**

Based on the concerns of the students as they did not find articles, the facilitators sent them 20 articles relating to anticorruption and integrity to support the students in their effort of exploring on these notions. In the meantime, one of the facilitators approached Mr. Fredrik Galtung, President of Integrity Action for a volunteer guest lecture as he was in Nepal to carry out his project of integrity. His knowledge and experience on measurements and metrics pertaining to corruption, fraud and organizational integrity provided a guideline to the students.

**After Two Months**

The paper was submitted in the due date. In the meantime, a field visit to a Himalayan city Chautara, was carried out. The visit was, in fact, not for the integrity paper but to explore the blending of theoretical knowledge with the practices which the students had learnt in classes. Although integrity was not much focused job for that field, students found several issues of integrity that became the agenda of discussion.

**After Three Months**

The eight groups presented their works in 10 minutes time. There was discussion and feedback to the papers. The class was in seminar style which had one chairperson from the students and one Master of Ceremony (MC) who conducted the session. Here the chairperson managed the session. After each presentation, there was discussion on the paper. The course facilitators also provided feedback to the papers.

**On the Final Class**

One of the facilitators of the class engaged to evaluate of modality through FGD. At first, the facilitator shared the process of seminar methods that the students overcome during the seminar for the particular unit. The sharing was also for legitimizing the process in which students
internalized the whole process and some of them surprised that they went through these stages. A Focus Group Discussion (FGD) was carried out for 45 minutes to get the feedback of the students about the modality. The themes of FGD were:

- Importance of integrity in the field of education and development
- Benefits of this learning to your life/career
- Strengths of course modality
- Weaknesses of course modality
- Possible reforms in course modality
- Implication of this methods in other: areas, discipline, levels
- Other possible ways of delivering the module in relation to seminar methods

The facilitators presented the seminar methods of learning integrity in relation to types of learning (Bloom’s Taxonomy of Learning).

- Affective: impact upon values, attitudes, knowledge, skills and behavior
- Cognitive: impact on attitudes, laws and regulations, history, culture
- Behavioral (or psychomotor): new skills (analytical and practical) can actually apply the new skills to cope with integrity challenges.

These types of learning were linked to the possible knowledge and skills the students get during the course. The following chart was presented for the same.

<table>
<thead>
<tr>
<th>Cognitive</th>
<th>Affective</th>
<th>Behavioral</th>
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<td>Problem centered</td>
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<tr>
<td></td>
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<td>Action Learning</td>
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There were three thoughts of the students:

- We covered all aspects
- We are in behavioral stage
• We have somehow covered the action learning too

Final Exam

A question for integrity was asked. It covered 15 out of 100 full scores. The question was case based to find the solution of the anticorruption problem. The solution was rooted to theoretical constructs. The question was as follow:
Suppose, through an innovative and successful approach of an NGO, the residents of a municipality have found a way to resolve major corruption issues with rubbish collection services. In the successful approach, a consortium of university professors carried out a research to identify the major problems and issues. The professors also worked to prepare the monitoring tools and training manuals. This led to community monitors being recruited and trained to analyze local service provisions. A joint working group brought together local government officers, political party members, residents and community based organizations to discuss the monitors’ findings, and agree a way forward. In this connection, discuss the integrity issues within the problem and explain why the innovative approach of the NGO was successful. What theoretical approach/s guided to resolve the problem?

Strengths

• “We understood the concept and ideas can be reflected in practice”, a student,
• “We can identify the integrity concerns of our society and we know the challenges in integrity”, a student,
• In our context, it is of national interest,
• Integrity is cross cutting issue,
• I realized there are several issues of integrity in every sector- a student,
• All were taken as granted before,
• I worked in an NGO but did not realize such problems before,
• This area can be brought to other levels,
• We can bring this seminar method above bachelor level in any faculties, and
• “I am teaching in school. I contextualized this method of learning in school and got successful.” – a female teacher.
Weakness

- Some areas of integrity were identified but several areas were left- how can we cover many?
- Process of seminar class- Some chair of the session provided much time to some groups while some did not
- The role of the chair could be pre-planned
- One long class to list integrity issues would be better at first- it can be a guideline to prepare paper
- In presentation, all group members could participate
- “Integrity is creating a viable alternative” Galtung : Issues have not raised to this level- a student

Possible Reforms

- Students can be assigned to write 1000 words article to send it to media for publication
- There can be intensive field work and action learning which was not possible in this time for limitation of resource.
- A separate full course on integrity can be useful for the implication of integrity knowledge in their career or life.
- Presentation can be done through poster which we did not – a student
- Role play/ such as drama within 5 to 7 min with dialogue
- Gallery exhibitions can be one of the alternatives
- Guest lecture (international and Nepalese) can be another strategy
- Writing/sharing our own activities of a day- identify the integrity violations can be an alternative to understand integrity
- Integrity can be looked from the eastern philosophy which has not been much prioritized- a student
**Output of the Modality**

- 8 papers of anticorruption issues of various sectors: Teachings, NGO, Local Development Body, Peoples’ Participation, Financial Sector etc
- Students’ learning through their own presentation
- Producing a Journal Article on Seminar Methods of Sharing Anticorruption Knowledge-pedagogical paper
- Possibility of contextual replication in the other settings
- A course was recently introduced in master’s level: Integrity in educational management and leadership
- A module of integrity was introduced in Master in Sustainable Development

**Facilitators’ Reflections**

- One of the good methods of delivering integrity knowledge
- Assigning field work on integrity: May be a risk and should be handled tactfully
- Resource constraints to understand context
- Books, journals, articles constrains in the third world
- Within the constraints: Seminar method- one of the viable alternatives to deliver anticorruption and integrity knowledge in higher education
SPORTS CORRUPTION: JUSTICE AND ACCOUNTABILITY THROUGH THE USE OF THE UNCAC AND THE UNTOC

By Nikos Passas
By Catherine Ordway

The corruption scandal currently engulfing football’s international governing body, the Fédération Internationale de Football Association (FIFA), and the recent allegations of bribery in order to host the 2006 World Cup in Germany¹ raise a number of issues. Allegations in recent years of bribery, embezzlement, misappropriation, money-laundering, vote rigging and other abuses of power within several international sports federations demand that this type of misconduct be investigated and prosecuted. In the absence of a comparable international integrity oversight body similar to the World Anti-Doping Agency (WADA), it is timely to examine the applicability and potential usefulness of existing international instruments.²

Given that the United Nations Conventions against Corruption (UNCAC) and against Transnational Organized Crime (UNTOC) represent the most comprehensive global standards and have the highest number of States Parties (177 and 185 respectively, as of October 2015), this paper examines in detail the applicability of these instruments to the most prominent and challenging sports corruption instances revealed in recent times. The misconduct covered by these instruments and their mutual legal assistance frameworks, in addition to innovative provisions on dual criminality, asset recovery and the definition of an organized criminal group, can significantly enhance international cooperation and effective law enforcement. In this way, justice, accountability and greater transparency will be boosted on a global scale.


¹ Dr., Professor and Co-Director of Institute for Security and Public Policy, Northeastern University
**Professor of Practice, La Trobe University
The application of United Nations Convention Against Transnational Organized Crime (UNTOC)

The United Nations Convention Against Transnational Organized Crime (UNTOC) was adopted in November 2000 and came into force in 2003. As of October 2015, 185 states have ratified it and are parties to it. It constitutes an acknowledgement that cross-border misconduct requires close international cooperation to tackle it. States parties are mandated to introduce, if they do not already have, four basic criminal offences3. The UNTOC provides an extensive facilitative legal basis and framework for extradition, mutual legal assistance, international cooperation in law enforcement and capacity building through information exchanges, training and technical assistance. The four basic UNTOC offences are:

- participation in an organized criminal group (Art. 5)
- laundering of proceeds of crime (Art. 6)
- corruption (Art. 8)
- obstruction of justice (Art. 23)

States parties must criminalize all of these acts. It must be emphasized that transnationality and involvement in an organized criminal group need not and should not be elements of these offences in domestic law (Art. 34 (2)).

3 Art. 5. Criminalization of participation in an organized criminal group
1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity: (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group; (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: a. Criminal activities of the organized criminal group; b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above described criminal aim; (b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.
2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.
3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this

Convention.
The term “organized criminal group” is defined as a structured group of three or more persons that exists for a period of time, acts in concert and aims to commit serious crimes (i.e. crimes punishable by deprivation of liberty of at least four years or a more serious penalty – Art. 2(b)) or other offences covered by UNTOC, in order to obtain a direct or indirect financial or other material benefit (Art. 2)\(^4\). A structured group does not require a formal organization, membership or structure, but it has to be more than just: “…randomly formed for the immediate commission of an offence” (Art. 2(c)).

Participation in an organized criminal group is essentially agreeing to commit a serious crime for financial or material benefit or knowingly taking part in criminal or related activities of an organized criminal group to contribute to a given criminal aim. States Parties can adopt different approaches to conspiracy or association, but the important point is that domestic law is expected to ensure that all serious crimes committed by organized criminal groups are covered.\(^5\)

In this context, it is interesting to consider the criminal prosecutions initiated by both the United States and Switzerland against high ranking members of the international football association. FIFA, based in Zurich, Switzerland, owns the rights to the men’s and women’s World Cups and is the custodian of what is known as ‘the world game’. On 27 May 2015, the US Department of Justice announced that it had indicted nine FIFA officials and five sports marketing executives for criminal enrichment, conspiracy and corruption through racketeering, bribery, wire fraud and money laundering.\(^6\) The 47-count indictment alleges that the co-conspirators systematically paid, and agreed to pay, well over US$150 million in bribes and kickbacks to obtain lucrative media and marketing rights to international football tournaments over a 24-year period. The highest ranking FIFA official named is the previous President of the football association for the

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\(^4\) Ideologically motivated offences are thus not covered.
\(^5\) One non sport benefit of this clause is that it addresses inchoate offences, such as those relating to piracy, which is not otherwise covered by the United Nations Convention on the Law of the Sea (UNCLOS).
Americas (CONCACAF), and President of the Caribbean Football Federation, Jack Warner.

It is clear that the fourteen-man conspiracy alleged by the US can be considered to be an organized criminal group for these purposes, even though many of those involved are not US citizens. On 25 September 2015, the Swiss Office of the Attorney General (OAG) commenced criminal proceedings against FIFA President Joseph S. Blatter on ‘suspicion of criminal mismanagement’ and on ‘suspicion of misappropriation’ (Arts. 158 and 138 of the Swiss Criminal Code). These proceedings relate to a broadcasting agreement between Blatter and Warner in 2005, and a 2011 payment made by Blatter to Michel Platini, President of the Union of European Football Associations (UEFA). It is not yet clear whether the purpose for making these corrupt payments was to secure his presidential position (vote rigging), or whether it had other criminal motivations, such as money laundering.

The offence of money laundering includes acts designed to obscure the criminal source of assets through conversion or transfers (‘layering’). The offence covers the concealment of the nature, source, location, disposition, movement or ownership of crime proceeds. To the extent that this is consistent with the fundamental legal principles of States Parties, the offence covers also the knowing acquisition of crime proceeds as well as participation, association, conspiracy, attempts, aiding, abetting and facilitation of money laundering (Art. 6).

The mandatory offence of corruption covers the promise, offer, giving, solicitation or acceptance of any undue advantage to/by a public official in order to act or refrain from acting in any matter relating to the official’s public duties (Art. 8). UNTOC

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also provides for the optional offence of bribery of foreign public officials or officials of international organizations – which is mandatory under the OECD convention on Combating Bribery of Foreign Public Officials in International Business Transactions – and other types of corruption, such as the abuse of power, abuse of function, illicit enrichment, etc. \(^9\) (See the discussion on the UNCAC below).

It is interesting to consider in this context whether the definition of “officials of international organizations” could apply to paid or unpaid representatives of bodies such as FIFA, WADA or the International Olympic Committee (IOC) for example. An obvious application of this in a sports context relates to allegations that the self-confessed doper and seven time Tour de France winner, Lance Armstrong, paid a bribe to the international cycling federation (UCI).\(^10\) While doping is not a criminal offence in Switzerland, unlike some other jurisdictions, the claim made by fellow team members Floyd Landis and Tyler Hamilton, to the United States Anti-Doping Agency that Armstrong bragged that he had made a ‘donation’ to the UCI to make the positive drug test from the 2001 Tour de Swiss “go away” could theoretically fall within this Art. 8.\(^11\) In this case however, the Cycling Independent Reform Commission examined these claims and ultimately found that, while Armstrong had made a US$25,000 donation to the UCI in 2002, and that accepting this donation may not have been a prudent course of action for the UCI given the allegations surrounding Armstrong at the time, there was no evidence of a ‘positive’ drug test from this event, and the UCI had not committed any offence.\(^12\)

In addition, the UNTOC can be applied to any offences that are:

- transnational

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\(^{9}\) The last mandatory UNTOC offence is obstruction of justice: the use of force, threats or intimidation or promise, offer or giving of undue advantages, in order to interfere with giving of evidence or testimony or to interfere with exercise of duties of judicial or law-enforcement official in connection with proceedings on any UNTOC offence.


• constitute serious crimes; and
• are committed by an organized criminal group

A crime is considered transnational when it is committed (a) “...in more than one State”; or (b) “...in one State but a substantial part of its preparation, planning, direction or control takes place in another State”; (c) “in one State but involves an organized criminal group that engages in criminal activities in more than one State” or (d) “...in one State but has substantial effects in another State” (Art. 3(2)).

Thus, sports crime and corruption can be addressed through the UNTOC in multiple ways. The most straightforward ones would be whenever offenders act as or participate in an organized criminal group, launder the proceeds of their crime, bribe public officials or obstruct justice. These are quite likely scenarios given the social organization of different types of sports misconduct as outlined above. Unless profits from these offences are recycled into criminal enterprises or informal economies, proceeds of crime would have to be laundered before they can be enjoyed in open and legitimate transactions. Public officials in different positions may play a role in receiving or giving bribes, turning a blind eye or facilitating the commission of sports crimes, tampering with evidence, obstructing justice, assisting in the disposal of assets, money laundering or resisting investigation of alleged offences.

Examples of such misconduct in the sport setting include allegations that national or state government officials bribed members of international sports organizations to obtain the right to host major events in their cities. The scandal relating to the IOC awarding the rights to host the 2002 Olympic Winter Games to Salt Lake City rocked the Olympic movement. In exchange for their votes, IOC members were found to have been variously bribed through the provision of medical care for relatives, workplace internships or scholarships at major universities for their children, expensive guns and majorly reduced land deals.13

The UNTOC can also apply to any ‘serious crime’ that is transnational and committed by an organized criminal group. This is at the discretion of States parties, which need to make sure that sports-related offences are criminalized and punishable by four years of imprisonment or more severe penalties. This means these offences could equally apply to ‘cheating to win’ (for those jurisdictions which criminalize sport doping offences\textsuperscript{14}), and to ‘cheating to lose’ (match-fixing offences, such as those criminalized by Australian states\textsuperscript{15}), as well as to corruption and fraud offences. Therefore, not only does the UNTOC provide for the main offences but it also affords a framework for dealing with the proceeds and instrumentalities of these crimes. This is a central issue for control, as the international community will be able to reduce or remove the incentives for sports-related crime when it can be established where the money or advantages go, who makes illicit payments, and who benefits from them.

One case study which can be considered in this context is the public funding sponsorship of the US Postal Service cycling team and the admission of systemic doping by Lance Armstrong and the team.\textsuperscript{16} This involved what is being termed ‘sporting fraud’ over a number of years from 1998 and implicated 12 athletes and five support staff.\textsuperscript{17} This can also be considered to be trans-national in the sense that the US Postal team competed internationally, and received prize money and sponsorships fraudently outside of the US, including using Swiss bank accounts and other devices intended to avoid detection.

Whenever available, any of these options outlined above would allow States to establish jurisdiction and benefit from extensive possibilities with respect to extradition, mutual legal assistance (esp. regarding victims, witnesses, seizure and confiscation of proceeds and instrumentalities of the offence, evidence located in the requested State


\textsuperscript{15} The majority of States and Territories in Australia have enacted legislation to create a crime a match-fixing, attracting a maximum penalty of 10 years in jail, in accordance with the National Policy on Match-Fixing in Sport, Australian Commonwealth Government, (June 2011) http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport [last accessed 19 October 2015]


party, etc.), international cooperation, the use of special investigative techniques (e.g. undercover and proactive investigations), and joint investigations.

The UNTOC provisions harmonize extradition under existing treaties and other arrangements and make extradition available for all UNTOC offences. States Parties cannot refuse extradition solely on the basis of fiscal matters. The UNTOC also contains an aut dedere aut iudicare (extradite or prosecute) obligation (Art. 16(10)). It is noteworthy that the obligation to “submit the case without undue delay to its competent authorities for the purpose of prosecution” springs from “the request of the State Party seeking extradition”. Extradition may be refused when the requested State has “substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons”.

The UNTOC provisions on mutual legal assistance are comprehensive (see Art. 18) and quite useful. States Parties must “afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered” by UNTOC (Art. 18(1); emphasis added) and include (Art. 18 (3)):

(a) Taking evidence or statements from persons;
(b) Effecting service of judicial documents;
(c) Executing searches and seizures, and asset freezing;
(d) Examining objects and sites;
(e) Providing information, evidentiary items and expert evaluations;
(f) Providing original or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
(h) Facilitating the voluntary appearance of persons in the requesting State Party;
(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

States Parties are able to rely on these UNTOC provisions and establish a legal basis for mutual legal assistance (MLA) as an alternative to other existing instruments or even in the absence of any bi-lateral or other arrangements. For the purposes of requesting and extending MLA, it suffices that the offence is one covered by UNTOC (see above) or that “the requesting State Party has reasonable grounds to suspect that the [serious] offence ..., is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group” (Art. 18(1)).

Most MLA requirements are operational, rather than legislative, but Parties must have in place the legal powers needed to produce and deliver assistance. Under UNTOC, States Parties are required to designate a central authority to receive, execute or transmit legal assistance requests and cannot refuse MLA on the grounds of bank secrecy. Further, more direct liaison arrangements are allowed for other forms of cooperation. For example, under Art. 27, States Parties can:

- establish and enhance channels of communication
- cooperate in inquiries concerning the identity, whereabouts and activities of suspects; the movement of proceeds of crime or instrumentalities
- exchange information on:
  - specific means and methods used by organized criminal groups
  - general trends, analytical techniques, definitions, standards and methodologies

Investigative measures are also supported by the UNTOC, including agreements on joint investigations (Art. 19), domestic and international/cooperative use of special investigative techniques - such as controlled deliveries, electronic or other forms of surveillance and undercover operations (Art. 20) – and measures to encourage those involved in transnational organized crime to cooperate with law enforcement authorities (Art.26). In the anti-doping setting, WADA encourages signatories to the World Anti-
Doping Code to enter into collaborative and information-sharing arrangements with law enforcement\textsuperscript{18}. WADA itself has signed a Cooperation Agreement with the International Criminal Police Organization (INTERPOL)\textsuperscript{19} and a Memorandum of Understanding with the World Customs Organization (WCO).\textsuperscript{20}

UNTOC is replete with additional provisions regarding practical measures to enhance and facilitate international cooperation. For instance, provisions with application to practical events include those regarding the confiscation of money, property or other assets deriving from UNTOC offences (Art. 12-14), as well as assistance and protection for witnesses and victims (Art. 24-25)\textsuperscript{21}.

In short, the UNTOC may provide a common framework for States Parties around the world, when they wish to investigate, prosecute and generally control sports crime and corruption in a collaborative manner. On the other hand, this proposition is not simple in its execution due to a series of challenges in UNTOC’s effective implementation.

**UNTOC Implementation Challenges**

In terms of implementation, the UNTOC is not a simple document. Because it is comprehensive and covers a lot of ground, its implementation relies not on a single government body, but rather multiple units and agencies, including Ministries of Justice, Finance, Foreign Affairs, as well as law enforcement, supervisory and other bodies. This has challenged the capacity of many countries that may have the political will to


\textsuperscript{19} Cooperation Agreement between WADA and INTERPOL, 2 February 2009, \url{http://www.interpol.int/content/download/9287/68584/version/2/file/INTERPOL_WADA.pdf} [last accessed 18 October 2015]


\textsuperscript{21} A detailed outline of the UNTOC provisions can be found in the Legislative Guide for the Implementation of the UNTOC, which is available in all UN languages (\url{http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html}).
implement but lack the means. As a consequence, States Parties need technical assistance, which may not always be available in a timely fashion.  

The number and scope of different instruments that countries are called upon or required to implement and comply with have generated a ‘regulatory tsunami’. In addition to UNTOC, there are thirteen universal counter-terrorism instruments, the UNCAC, sanctions and counter-proliferation of weapons of mass destruction under Chapter VII of the UN Charter, Financial Task Force (FATF) Recommendations, just to mention a few. As a result, many governments are overwhelmed and severely stretched. Even at the level of reviewing requirements, progress, accomplishments and needs, several countries, including those in Southeast Asia (which in the sport environment have also been besieged with match-fixing scandals), have reported a need for technical assistance. Reports to the United Nations by States suggest that most technical assistance is needed for training and capacity-building (25 per cent), legal assistance (20 per cent), strengthening of international cooperation (16 per cent) and assistance in complying with reporting requirements (16 per cent).

In the cheating to lose, match-fixing, setting in sport, in the absence of a sport convention, similar calls for support could have been answered in part through the FIFA-Interpol training and capacity building center recently established in Singapore. Instead of accepting money from implicated organizations such as FIFA however, the UNTOC could provide the mechanism to assist countries, such as Singapore and Malaysia, to implement novel witness protection solutions, such as that posed by journalist and

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22 See for example the technical assistance and legal assistance needs illustrated in Figures 1, 2 and 3 in UNODC, Overview of technical assistance needs identified by States in their responses to the questionnaires/checklist on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto2009, CTOC/COP/WG.2/2009/2, http://www.unodc.org/documents/treaties/organized_crime/CTOC_COP_WG.2_2009_2_E_revised_Feb_2010.pdf [last accessed 18 October 2015]
academic, Declan Hill. In his blog post on 23 September 2015, Hill proposes that, instead of funding expensive conventions, such as the recent International Centre for Sport Security (ICSS) “Financial Integrity and Transparency in Sport Forum”\(^2\) (which Hill characterizes as ‘dead catting’ and ‘image laundering’ exercises\(^3\)), the Qatari-funded organization could instead pay to house convicted match-fixers such as Singaporean match-fixer and inventor of the ghost game, Pal, or Malaysian national, Dan Tan, to give evidence against all sports (and public) officials involved in criminal offences.\(^4\)

Unfortunately, thus far, the identified needs of States Parties have not always been at the top of priority lists both by the donor community and governments. As has been pointed out, the strengthening of law enforcement and prosecutorial activities, services and institutions especially against serious organized crime and corruption is comparatively neglected (van Dijk, 2008). In addition to these issues, when available, the quality of technical assistance extended to different countries and agencies is quite diverse and occasionally leaves room for significant improvement.

Coordination of work conducted even within one capital city is another difficulty. This is partly because of the independent actions of the numerous implementing government agencies requesting and receiving assistance. Partly it is also due to the fact that most bi-lateral aid agencies do not work closely with those of other countries.

Finally, the political will – a *conditio sine qua non* for effective implementation – is not always strong enough, because the fight against the main UNTOC offences is not

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\(^4\) D Hill, “Requiem for a Fixer”, Blog, 23 September 2015, [http://declanhill.com/requiem-for-a-fixer/](http://declanhill.com/requiem-for-a-fixer/) [last accessed 18 October 2015]: “Take the money they spend on one of their interminable conferences where they gather a group of people to speak nonsense to each other. Take the money for just one of those conferences and give it to Pal. Let him take his family and move to Sri Lanka. Give Pal enough money to be comfortable. Here is his one condition. He has to fly around the world and testify against all sports officials, players and referees that he bribed. All the league officials. All the FIFA-connected people. All the team owners who used to pay him to organize the fixes. All the internationally-ranked players and referees that he corrupted. If he is caught lying – even once – in his testimony, he goes back to Singaporean prison, this time for twenty years.

Pal’s potential testimony (like Dan Tan) would truly clean up the sport. It would strike a significant blow against the organized criminals inside football. However, it is a blow that the sporting establishment is desperate not to have happen. Better for them that fixers like Pal and Tan are shut up where no one can hear them. Now the sporting establishment can carry on with their nonsensical battle against fixing and the corrupt elements in their midst can continue to ruin the sport.”
everywhere considered as a top priority. For example, currently, criminalizing doping as defined via the Anti-Doping Rule Violations in the World Anti-Doping Code, is unlikely to attract significant support (except in some jurisdictions for those most serious or ‘aggravated’ doping offences such as seen in the Armstrong case above)\(^29\) and match-fixing, even where distinguished from simply sports gambling or tanking, has very little legislative appetite internationally.\(^30\) Nonetheless, provided the sports offences of concern are criminalized domestically with a penalty of four years or more, UNTOC may hold promise as a novel tool for controlling a whole range of sports misconduct primarily because it does not involve curtailing signatory States sovereignty (see Art. 4\(^31\)).

**United Nations Convention against Corruption (UNCAC)**

The UN Convention Against Corruption could be another good option, if sports misconduct can be connected to any of its offences. The offences covered by the Convention are distinguished between those that are mandatory (States parties are obligated to establish domestic legislation criminalizing these) and those that are non-mandatory (which remain at the discretion of the States parties). Mandatory Offences include:

- Active bribery of public officials (Art. 15 [a])
- Passive bribery of public officials (Art. 15 [b])
- Active bribery of foreign officials and officials of international organizations (Art. 16 [a])
- Money laundering (Art. 23)
- Embezzlement, misappropriation and other diversion of public property (Art. 17)
- Obstruction of justice

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\(^31\) Art. 4. Protection of sovereignty.

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.
Non-Mandatory Offences are:

- Passive bribery of foreign officials and officials of international organizations (Art. 16 [b])
- Illicit enrichment (Art. 20)
- Abuse of function (Art. 19)
- Trading in influence (Art. 18)
- Private to private bribery – active and passive (Art. 21)
- Embezzlement in private sector (Art. 22)

The UNCAC elaborates much further the corruption-related offences which are also covered by UNTOC and provides for several additional offences, which have indeed proved very practical and popular in many countries, especially those which relate to illicit enrichment. The offence of the bribery of foreign public officials and that regarding officials of international organizations should be especially helpful in the sports environment. Everything stated above with respect to the linkages of sports crimes with UNTOC offences applies also to UNCAC, but some further advantages of applying UNCAC should be underlined.

As of October 2015, the UNCAC has 177 States parties and enjoys a great deal of momentum and genuine acceptance in the global South, thanks to its path-breaking chapter on asset recovery and repatriation. The anti-corruption agenda has been linked for obvious reasons to that of public procurement, development, rule of law and good governance. The implementation of the UNCAC thus benefits from significant activity and synergies with the development community, where the prevailing concerns are those of institutional reforms and economic growth. The goals of the anti-corruption and development communities are the same or entirely consistent (Passas, 2014), and as a result many more resources are devoted to UNCAC-related reforms than for other international legal instruments.

Another substantive advantage of the application of UNCAC is the advanced mutual legal assistance (MLA) and international cooperation framework it provides for willing States parties, which can make processes and exchanges even easier in practice. For example, dual criminality (which is required by UNTOC) is relaxed by allowing the
existence of different legal definitions, provided that the basic acts are the same in the jurisdictions concerned. Also States Parties are required to provide MLA even in the absence of dual criminality, if they are asked to apply non-coercive measures. Parties are also allowed to collaborate on their own initiative, even if there is no dual criminality and encouraged to exchange information informally and even without a previous request from another State party.\textsuperscript{32}

However the challenges to the implementation of UNCAC are substantial. In addition to those challenges listed with respect to the implementation of the UNTOC, which are even more applicable to the broader and more comprehensive UNCAC. Its chapter on prevention chapter (Chapter II, Art. 5-14), which constitutes a blueprint for good governance in general, contains so many measures, policies and practices that the full and effective implementation of the UNCAC for most countries is a long-term project. By a long list of metrics (WBI, Global Integrity, TI CPI, etc.), despite substantial investment in resources, technical assistance and capacity building, the world can and should do a much better job at improving its response against corruption and lack of integrity in business, sport and government.

**Conclusion**

The main point of this paper is that the contemporary manifestations of sports crime and corruption are not adequately addressed by laws and frameworks developed with these offences in mind. Alternative approaches ought to be considered, including the resort to comprehensive, global instruments enjoying global consensus support, which can enable extensive international cooperation and practical solutions, as a range of crimes can be defined as convention offences or offences that can be tackled on the basis of these conventions. The UNTOC and the UNCAC hold pragmatic promise despite the serious implementation challenges on the ground, which make progress incremental and slow. One essential vital condition is that we develop genuine political will to activate the use of these Conventions for sports crime control.

The final points to raise here toward assisting with the planning of such creative applications and assisting with the good work of many donor organizations and government agencies are lessons drawn from international implementation practice and experience. Precisely because of the significant activity necessary for some time to come, three main guidelines should be taken into consideration.

First, countries and government bodies may express political will to implement these complex conventions, but the best results can be expected when officials are convinced about the concrete benefits they will derive in terms of their own priorities and policy objectives. Incentives are thus of paramount importance. When countries see for themselves the multiple applications and usefulness of these conventions (for example with respect to improved economic growth, foreign investment, rule of law and a criminal justice system that is better able to raise revenue and mete out justice), efforts will be better resourced and supported.

Second, efforts must revolve around a strategy. These projects are long term, while political necessities demand short-term accomplishments. A well-constructed strategy would set long-term objectives and ensure the smaller scale programs and projects meet their targets but are also instrumental and conducive to the attainment of ultimate goals. In this way, momentum and credibility will grow, legitimacy will be strengthened and the process will become sustainable.

Third, this strategic effort must be based on outreach and consensus that includes all stakeholders, including the private sector, sports governance institutions, civil society, academia, and quite importantly, the private sector. Where everyone participates and owns the overall project, the long-term success will be based on a more solid foundation and will benefit all contributors.

Sports crime and corruption could thus be tackled through these innovative UN instruments, but the best outcomes for all types of security and other serious crime threats will be achieved through the concerted and thoughtful efforts described above.
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TRANSPARENCY AND FIGHT AGAINST PUBLIC PROCUREMENT CORRUPTION IN NIGERIA: ASSESSMENT OF THE IMPACT OF THE PUBLIC PROCUREMENT ACT, 2007

By Solomon I. Ifejika

Abstract
Public procurement has generally been known as one major source of all the socio-economic crises ravaging the Nigerian state. Indeed, the bulk of the corruption and illegal practices that have sabotaged all efforts by successive governments in Nigeria, civilian and military, to engender concrete development strides and alleviate extreme poverty among the citizens over the years take place within the procurement circle. The country suffers losses of enormous amounts of financial resources in the procurement sector due to systemic corruption and related sharp practices in the award and implementation of public contracts. The inherent weaknesses of the country’s public procurement system and practice, particularly the lack of a modern law on public procurement paved way for this undesirable state of affairs. Against this backdrop, the Nigerian National Assembly enacted a law- the Public Procurement Act, 2007 to enthrone greater transparency and checkmate the instances of corrupt practices in the procurement system, so as to ensure that the government obtains commensurable value for the large fiscal expenditures often incurred on the provision of essential public goods, works and services in the country. The Act also aims at achieving higher operational efficiency in the country’s public procurement sphere. Since its enactment in 2007, the Public Procurement Act has been into active effect in the field of public procurement. This paper, therefore, evaluates the impacts of the Nigerian Public Procurement Act, 2007 on improving transparency and curbing corruption in the procurement system and procedures. The study finds that, despite the enactment and application of the Act since 2007, stakeholders and actors in the field of public procurement still manipulative procedures such that corruption is yet to be completely eradicated in the system. The paper is purely theoretical and qualitative. Hence, it is based on data derived from secondary sources. The descriptive analytical method was employed to analyze the data. This was

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necessary in order to provide useful insights based on objective and valid arguments, draw conclusion, and make useful recommendations in line with the findings of the study.

**Key Words:** Corruption, Development, Transparency, Public Procurement, Public Procurement Act, 2007, Public Procurement Corruption.

**Introduction**
Transparency and accountability are critical elements in resource governance. The role of these values in public sector finance management is fundamental and pivotal. Resource management in the public sector constitutes an important aspect of governmental activity upon which the progress of any nation rests. Consequently, efficient and effective public financial and/or resource management practice and system is paramount to both developed and developing countries. Resources are generally scarce. Thus, the ability of a nation to prudently manage the limited available resources at its disposal and curtail undue wastages is a major determinant of the level of success that would be achieved by such nation. To this extent, therefore, the principles of transparency and accountability are generally considered as important values in public governance in all countries. However, these tenets are undoubtedly problematic as they are associated with much controversy in developing nations, especially in Africa.

Public procurement is the most active business part of governance; it consists of the direct financial dealings of government with the private sector locally and internationally. The significance of public procurement to any country is underscored by the fact that it constitutes the largest proportion of government annual financial expenditure everywhere in the world. Unsurprisingly, it was estimated in 1998 that the value of government procurement market was about US$2,000 billion, which was equivalent to 7% of world gross domestic product (GDP) and 30% of world merchandise trade (Organization for Economic Cooperation and Development, 2002:8). Moreover, most western industrialized nations spend as much as much at least 10% of their gross domestic product (GDP) on public procurement (Trionfetti, 2003: 224). The case in developing countries raises more serious concern. Public procurement in developing countries generally constitutes the largest proportion of government total financial
expenditure, for example, 40% in Malawi and 70% in Uganda, compared with a world total average of 12-20% (Development Assistance Committee, 2005:18).

In Nigeria, public procurement accounts for about 65% of government yearly budget spending (Ahmed, 2011). Public procurement in Nigeria also accounts for about 70% of government daily activities (Attah, 2011). Public procurement is thus highly essential and critical to both developed and developing countries. However, this is much truer about developing countries given the huge volume of financial resources usually allocated to the procurement sector in those countries. Despite these facts, public procurement systems and practices in developing countries, particularly in Africa are undeniably known to be crude, unprofessional, inefficient and ineffective; serving as the major channel of economic and financial drain on the economies. The single most important factor for explaining this undesirable situation is the prevailing incidence of high level corruption necessitated by the lack of a modern law on public procurement and opaque procedures that permeates the award and execution of government contracts. This is in sharp contrast with the situation in most developed countries where public procurement takes place within a framework of international obligations, such as the World Trade Organization’s Agreement on Government Procurement or the Procurement Directives made under regional agreements such as the European Union or the North American Free Trade Agreement (Agaba and Shipman, 2006).

In Nigeria, to be specific, corruption in public procurement due to lack of effective legislation and regulation was responsible for the loss of as much as 60 kobo out of every N1 spent by the government on public procurement (Punch, 2013). Consequently, it was established that in Nigeria, “An average of $10 billion was being lost annually due to fraudulent practices in the award and execution of public contracts, through cost inflation, and lack of procurement plans…” (Punch, 2013). This rising spate of corruption and related sharp practices in public procurement became plausible because, prior to 2007, public procurement in Nigeria was dependent on the Treasury Circulars of 1958, which lacked clear-cut and adequate provisions on guidelines for implementing government procurement. The inadequacies of the Circulars hence made public procurement an area most prone to corruption than other spheres of the country’s national life (Onyema, 2011). Against this backdrop, on the country’s return to civil rule in 1999, the government of the then President Olusegun Obasanjo, driven by the zeal and enthusiasm to
tackle corruption in the public sector generally, took pragmatic steps that culminated in the enactment by the Nigerian National Assembly of the Public Procurement Act, 2007, among other important legislations in the field of public finance management. By enacting the Act, the aim of the government was and is still to shun corruption and enthrone transparency, accountability, probity, prudence, value for money, efficiency and effectiveness in the country’s public procurement system and practice.

This paper is basically motivated by the need to examine or assess the role and/or impact of the Nigerian Public Procurement Act, 2007 in curbing corruption and institutionalizing transparency in the procedures for award and execution of government contracts in the country. To achieve this objective, the paper is structured into six sections, with the introductory part constituting the first section. The second section deals with the conceptual issues relating to the meaning of public procurement corruption. The third section consists of the evolution and reasons for the enactment of the Nigerian Public Procurement Act, 2007, while the fourth section dwells on the impact and/or achievements of the PP Act in enhancing transparency and combating procurement corruption in the country’s procurement sector. The fifth section interrogates the factors militating against the effectiveness of the PP Act in the current fight against procurement corruption. The sixth section constitutes the final conclusion of the paper and its recommendations on how to make the PP Act a more viable and stronger instrument for eradicating corruption and establishing the desirable level of transparency in the Nigeria’s public procurement system and practice.

**Understanding Public Procurement Corruption**

Corruption is problematic in terms of finding a universally acceptable definition by all or most scholars in the field. This is largely for the reason that the term has many dimensions – social, moral, governmental/public sector corruption, among other aspects. Be it as it may, the focus of this paper is on governmental or public sector corruption. One of the most common definitions of corruption in public sector as offered by the International Monetary Fund (IMF) and World Bank conceives the term as “the abuse of public office for private gain” (Bareebe, 2010). Similarly, Ekiyor (2005) sees corruption as the unlawful use of official power or influence by any individual holding public office to either enrich himself or further his course and/or any other person at the expense of the public. In the submission of this paper, corruption in the public
sector can succinctly be defined as the violation of generally laid-down rules and regulations for any reason.

Public procurement is a governmental activity carried-out in the public domain. It involves the process by which government procuring entities procure goods, works and services using public funds (FRN, 2007). Wittig (1999) sees it as, “A business process within a given political system, with distinct consideration of integrity, accountability, national interest and effectiveness”. In the views of the NPPU (2005), public procurement is the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. In the context of this paper, public procurement is construed as the means by which government hires services and acquires works and items needed for proper functioning of the government and provision of essential goods to the public.

Corruption in public procurement means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution (FRN, 2007). It entails any form of activities resulting in outright maneuvering or manipulation of formal procedures for award and execution of public contracts. Corruption in public procurement usually manifests in a myriad of forms, such as connivance by contractors and government procurement officials to inflate contracts sums, awarding of contract to a preferred or favoured contractor, supplying of sub-standard goods or items, using low-quality material and delivering of poor quality works by contractors, abandonment of project after receiving initial payment, untimely completion of works or projects, contract splitting, falsification of documents, among many other related under-hand practices in the procurement process. It should be noted that no country is completely free of public procurement corruption. The phenomenon manifests in all countries, howbeit in differing degrees and dimensions.

**Evolution and Reasons for the Enactment of the Nigerian Public Procurement Act, 2007**

The Nigerian national Public Procurement Act 2007 is the major products of the Country Procurement Assessment (CPA) field work commissioned and undertaken in the procurement sector by the Federal Government with the assistance of the World Bank in the year 2000. Nigeria, prior to her return to democratic rule in 1999 did not have a designated formal and modern law on public procurement. What existed rather was the Treasury Circulars of 1958. The Circulars were crude and out-fashioned to address modern day realities in the country’s
procurement sector. Moreover, the guidelines provided by the Circulars were mainly on public expenditure management and not on public procurement per se. Therefore, the Circulars were inadequate and weak in terms of providing sufficient and clear-cut guidelines on public procurement (Onyema, 2011).

The inadequacies of the Circulars consequently pave way for all sorts of corrupt practices leading to enormous losses and wastages of financial and economic resources on the part of the government. The government, as it was ascertained, was losing 60 kobo on every N1 spent in attempt to execute public contracts and provide basic social services to the citizens (Onyema, 2011). Corruption became systemic and embedded in the procurement sector such that the bulk of corrupt practices in Nigeria were undoubtedly linked to public procurement (Attah, 2011). The continuous low rating of Nigeria by Transparency International (TI) and other international anti-corruption organizations, among the most corrupt nations of the world were also located within the ambit of weak governance embedded in a weak public procurement system, which has hampered the development of the country (Attah, 2011).

Beholding the unimpressive situation and the obvious distortions that corruption in general had caused to the economic and social life of the country, the Federal Government under Chief Olusegun Obasanjo, the first Nigerian President at the dawn of the Fourth Republic, made practical effort at tackling the evil of corruption in every sphere of the country’s national life. This necessitated the commissioning of the Country Procurement Assessment field work in the procurement system by the government. The filed work was a diagnostic exercise led by the World Bank with the inclusion of some home-based economic and financial experts and professional bodies (Ekpenkhio, 2003). The World Bank led team was requested to examine Nigeria’s Financial and Public Procurement Systems and related activities, fashion-out ways of assisting the Nigerian Government with a process of enthroning efficiency, accountability, integrity and transparency in Government Procurement and Financial Management Systems. The aim of the diagnostic exercise was and is still to reduce the scope of corruption in Nigeria’s public procurement system and to improve the efficiency of the public expenditure management system (Attah, 2011, Ekpenkhio, 2003).

At the end of the field work, a report was produced known as the Country Procurement Assessment Report (CPAR). One of the major findings of the Country Procurement Assessment
Report (CPAR) was that Nigeria lacked a modern law on Public Procurement and permanent oversight body to provide guidance and monitor purchasing entities. In view of this, the recommendations of the team as contained in the CPAR, suggested among other things, that Nigeria needed a procurement law based on UNCITRAL, the United Nations Commission for International Trade Law model, and a body to serve as the regulatory and oversight institution on public sector procurements (Ekpenkhio, 2003). Moved with enthusiasm to implement the recommendations of the Country Procurement Assessment Report (CPAR), a Proposed Bill on Public Procurement was sent to the Nigerian National Assembly by the executive arm in 2003. However, it took until May 31, 2007 before the Bill was passed into Law, and on June 4 of the same 2007, it was fully signed into law by the Late President Umaru Yar’adua (Onyema, 2011).

Having undergone proper scrutiny and endorsement by the National Assembly, the Bill became the Nigerian national Public Procurement Act; it took effect from the same day it was signed into law in 2007 and has been in operation as the principal legal framework for public procurement at the Federal level till the time of writing this piece. The Act also established a procurement regulatory and oversight body known as the Bureau of public Procurement (BPP) in line with the recommendations of the Country Procurement Assessment Report (CPAR) for a permanent institution on public procurement. The Bureau of Public Procurement is main driver and custodian of the Public Procurement Act and all public procurement activities at the national level (Onyema, 2011). The aims of the Public Procurement Act and its regulatory agency, the Bureau of Public procurement (BPP) are to eradicate corruption in all its forms and entrench important values of good public procurement practice and system, such as transparency, accountability, value for money, competition, egalitarianism, fairness, integrity, efficiency and effectiveness in the Nigerian public procurement sector.

**Impact of the PP Act in Enhancing Transparency and Curbing Procurement Corruption**

In view of the important task and goal of curtailing corruption and enthroning transparency in the Nigerian public procurement system, the first and famous concrete effort worthy of note about the Public Procurement Act, 2007 is that its drafters exhibited great measure of diligence in laying-down transparent and well-known procedures for the award and execution of government contracts. To enhance the transparency of the procurement process, section 19 (a-j) of the Act contains important provisions on the formal guidelines for implementing public
procurement by all procuring entities (MDAs) in the country. The said section stipulates that, subject to regulations as may from time to time be made by the Bureau of Public Procurement, under the direction of the National Council on Procurement, a procuring entity shall, in implementing its procurement plans:

(a) advertise and solicit for bids in adherence to this Act and guidelines as may be issued by the Bureau from time to time;

(b) to invite two credible persons as observers in every procurement process one person each representing a recognized;

(i) private sector professional organization whose expertise is relevant the particular goods or service being procured, and

(ii) non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations;

(c) receive, evaluate and make a selection of the bids received in adherence to this Act and guidelines as may be issued by the Bureau from time to time;

(d) obtain approval of the approving authority before making an award;

(e) debrief the bid losers on request;

(f) resolve complaints and disputes if any; obtain and confirm the validity of any performance guarantee obtain a; “Certificate of ‘No Objection’ to Contract Award” from the Bureau within the prior review threshold as stipulated in section 3 of this Act; execute all Contract Agreements; and

(j) announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time (FRN, 2007).

To consolidate this effort, the Act goes further in section 24-38 to spell-out a long range of stages and/or methods which a procuring entity must adequately adhere to in procuring goods, works and services. (See the affected sections of the Nigerian Public Procurement Act, 2007 for details). By the provisions of these sections, the Act basically aims at establishing popularly known transparent processes of awarding and executing procurement by all government procuring entities (MDAs) unlike the pre-Public Procurement Act era, where no clearly spelt-out
provisions were made in this regard. It becomes clear, therefore, that the drafters of the Act made commendable effort at making the process of public procurement in Nigeria more open and transparent than ever.

On the issue of corruption, the Nigerian Public Procurement Act is rather very much audible as evident in its tactics aimed at combating the unwanted trend in the country’s procurement system. To shun hydra-headed beats of corruption and its related sharp practices in the procurement sector, the PP Act in section 57 (1-13) (see details in the PP Act, 2007) enunciates the general standard code of conduct for all persons in the field of public procurement operating whether as official of the Bureau, a procuring entity, supplier, contractor or service provider. As stated in the Act, it is mandatory that the conduct of these stakeholders should at all times be governed by the principles of honesty, accountability, transparency, fairness and equity. Section 53-54 of the Act tagged “Public Procurement Surveillance and Review” stipulates the step-by-step approach or processes of investigating any suspected act of misconduct or violation of the provisions of the Act in the process of implementing procurement by any participant.

Expectedly, the Act is not also silent on issues bothering on punishment of offenders or contraveners of its provisions, whether they are public officers (Officials of MDAs, Staff of the Bureau) or contractors in the field of procurement. Section 58 (5) of the PP Act spells-out in clear terms the punishment applicable to any public official who violates any provision of the Act or engage in any act constituting corrupt practices as contained in section 58 (4) (refer to the Act for details) of the Act. According to the PP Act in the affected section, that is, section 58 (5),

Any person who while carrying out his duties as an officer of the Bureau, or any procuring entity who contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative punishment of: (a) term of imprisonment of not less than 5 calendar years without any option of fine; and (b) summary dismissal from government services (FRN, 2007).

Similarly, there are also provisions in the PP Act for punishing non-public officials (i.e., participating contractors) on the account of indulging in corrupt practices to advance their selfish
interests in the procurement process. In doing this, the PP Act makes a distinction between individual liability and company liability. Section 58(1) of the Act unequivocally states that, “Any natural person not being a public officer who contravenes any provision of this Act commits an offence and is liable on conviction to a term of imprisonment not less than 5 calendar years but not exceeding 10 calendar years without an option of fine” (FRN, 2007). As regarding companies, section 58 (6) of the Act has it that:

Any legal person that contravenes any provision of this Act commits an offence and is liable on conviction to a cumulative penalty of: debarment from all public procurements for a period not less than 5 calendar years; and a fine equivalent to25% of the value of the procurement in issue (FRN, 2007).

The Act in section 53 (4) contains specific provisions stipulating the process for blacklisting or debarring corrupt business entities (natural individuals or legal personalities) from participating in the bid for government contracts. The provisions of the Act with regards to the processes of debarment or blacklisting of business entities from participating in the procurement process is quite significant in that, prior to the enactment of the Act in 2007, no specific or general legislation in Nigeria governed the processes. However, with the turn of the new procurement regime anchored on the PP Act, 2007, the entire legal context has changed. A significant development under the new procurement regime is that a clear procedure is laid-down to regulate the process of blacklisting or debarring business entities found to have deployed corrupt practices in pursuit of their business interests in Nigeria (Blacfriars, 2008).

Beholding all these innovative provisions of the PP Act of 2007, it becomes uncontestable that the Act is in itself the strongest instrument for combating corruption and institutionalizing the desired level of transparency under the new public procurement regime in Nigeria. Notwithstanding, the PP Act, no matter how strong, cannot and does not apply it provisions nor regulate the procurement procedures and practice by itself. It is a mere policy document. Its effectiveness in addressing the problem of corruption in the procurement system is completely dependent on the level functional effectiveness of the Bureau of Public Procurement (BPP), which is the main body established by the Act under section 3(1) of the Act to regulate and
administer the law in the procurement process. The Bureau has the responsibility for enforcing and ensuring strict compliance with the Act by all stakeholders in the procurement process. Thus, while the Public Procurement Act, 2007 serves as the principal legal framework for the conduct of public procurement in Nigeria, the Bureau of Public Procurement (BPP) provides the institutional mechanism for public procurement oversight and regulation in the country.

A fact worthy of mention here is that, since the establishment of the Bureau following the enactment of the PP Act in 2007, the agency has so far recorded some identifiable successes in view of the goal of combating corruption and entrenching transparency in the Nigerian procurement sector. The procurement body recorded these concrete achievements by enforcing the provisions of the PP Act on corruption in the course of performing its oversight functions on the procurement process. Before submitting this section of the paper, mentioning some of the successes of the Bureau would help to appreciate the impacts of the PP Act, 2007 in tackling the problem of public procurement corruption in Nigeria. In the first place, with the new law on public procurement, transparency and integrity have become notable features of the Nigerian procurement system. Indeed, there is a consensus among all stakeholders in Nigeria’s procurement sector that the procurement procedures have unarguably become more transparent and open than ever before. Contractors, suppliers and bidders now enjoy equal opportunity of winning government contract on the basis of merit irrespective of whom they are (Ezeh, 2011).

In carrying-out its procurement review functions in line with the Act, the procurement activities of government procuring entities (MDAs) are now subjected to proper scrutiny by the Bureau of Public Procurement with the aim of ensuring greater level of transparency, accountability, best value for money, efficiency and effective, and other elements that bring worthy results (Onyema, 2011). The general weariness for mischiefs among Nigerians and advocacy by members of the procurement community for better transparency and probity in the procurement sector under the new regime has led to increased petitions against MDAs to the BPP and the country’s two main anti-corruption agencies - EFCC and ICPC, including litigations at the High Courts in search of redress and fairness (Onyema, 2011). Corruption and related illegal practices, which earlier constituted causes of huge wastages that bled the country’s economy has drastically reduced to a barest minimum (Ekpenkho, 2003; Onyema, 2011). Through the application of the “Due Process” mechanism in its procurement oversight functions,
the Bureau of Public Procurement has enthroned an integrity and credibility-based procurement system and practice in Nigeria (UNODC, 2013).

The agency has salvaged the country from incurring colossal financial losses due to inflated contract costs. In the periods between 2009 and 2014, the Bureau through its vetting exercise saved Nigerian Government the total of N659 billion that would have been siphoned by unscrupulous elements through corrupt practices in contracts awards (Ezeh, 2015). Moreover, as part of the ways of demonstrating its determination to eradicating corruption in the procurement system and averting its devastating effects on the economy, the Bureau has recently sent a list of more than 50 companies suspected of seeking government contracts with forged documents and making false claims about their competencies and capacity to the Independent Corrupt Practices Commission (ICPC) for investigation (Bureau of Public Procurement, 2012). These actions by the Bureau have given strong signal and serve as note of caution to entities seeking to do business with Nigerian Government about the reality of the revolutionary changes in the legal background for public procurement in the country.

Fear of the severe penalties or debarment in the case of companies, by the Bureau of Public Procurement now saturates the public procurement sector and serves as a restraint to the corrupt tendencies of stakeholders in the procurement process – public officials and business corporations. “Awareness of the provisions of the Act and of procurement rules is on the rise, mainly through the sensitization and training programs of the BPP” (Public Private Development Centre, 2011). The advent of the Public Procurement Act of 2007, has in short, placed Nigeria at a vantage position in the on-going crusade for transparency and fight against public procurement corruption. With the tempo being sustained, there is much prospect that Nigeria will completely overcome the trend in the nearest future.

**Causes of the Ineffectiveness of the PP Act in the Fight against Procurement Corruption**

The Nigerian Public Procurement Act, 2007 has no doubt made significant impact in the field of combating corruption and institutionalizing better openness in the country’s procurement system and practice. However, the potentials of the Act in actualizing these objectives are still greatly undermined by certain appalling developments under the new procurement policy regime. Effort is made under this section of the paper at examining these challenges before suggesting effective
possible strategies for ameliorating them in order to further improve the efficacy of the PP Act. Some of the key factors limiting the operational effectiveness of the PP Act include:

**Low Compliance Level:** Minimal adherence to the PP Act by the Government, Ministries, Departments and Agencies (MDAs), Contractors as well the Bureau itself is one major factor weakening the potency of the policy document in achieving its objectives in the procurement system (Fayomi, 2013; Public Private Development Centre, 2011). The Nigerian Government’s reluctance to fully implement the provisions of the PP Act is both an indication of disregard for the rule of law and lack of political will on the part of the Government and is giving rooms to anomalies in procurement circle (Onyekpere, 2010). This is particularly with respect to the Government’s refusal to inaugurate and establish the National Council on Procurement (NCP) as provided for in section 1 of the Act, after more than seven years the Act came into effect, to exercise oversight powers over the operations of the Bureau of Public procurement with the aim of ensuring adequate implementation and enforcement of the Act in the procurement process. This state of affairs is in itself corruption and negligence to the Act as it defeats its essence and limits its effectiveness (Punch, 2013). Moreover, the MDAs, contractors and service providers are still yet to fully come to terms and willingly accept the new procurement order since it is to them inimical to their underhand practices. To this extent, they still find means of frustrating and manipulating the procurement process in order to carry-out their normal “business as usual” (Onyema, 2011). “Evidence suggests that there are still cases of inadequate procurement planning, manipulation or misuse of prequalification and bid evaluation procedures, wrongful award of contract, price manipulation, misuse of variation clauses, etc.” (Public Private Development Centre, 2011).

**Low Acceptance at Sub-National Level:** The Public Procurement Act, 2007 is Nigeria’s national or Federal Government own legal framework for implementing procurement programs and activities. However, to enhance the effectiveness of the PP Act, set general standards, harmonize policies, pursue the same goals and achieve even transformation and progress in the procurement practice in the country as a whole, the State Governments are urged to replicate the Act in their domains. This is in order to evolve a common procurement policy adopted by all tiers or levels of government across the country. Unfortunately, only a few State Governments have adopted and replicated the Public Procurement Act till date (Elombah, 2012). To be precise,
of the 36 States and 774 Local Governments that make-up the Nigerian Federation, only about 24 States have domesticated the new law, while no single Local Government has replicated in their spheres (Adeyeye, 2010; 2012). In the light of this, the goal of enhancing transparency and winning the current war against public procurement corruption in the country as a whole might remain mere dreams rather than realities. Eradicating corruption in public procurement circle at the national level will be an incomplete job and make less meaningful impact if the Federal Government’s effort is not complemented by State Governments across the country to sanitize and align their procurement system and policies with that of the Federal Government.

**Poor Enforcement of the Act by BPP:** The inadequate role of the Bureau of Public Procurement (BPP) in terms of enforcing the PP Act is another notable obstacle to the viability of the law in addressing the problem of corruption in the procurement system. It was alleged, for instance, that the Bureau of Public Procurement has not been debarring or blacklisting companies and business entities found guilty of indulging in procurement corrupt practices (Business Anti-Corruption Portal, 2013). In short, the Bureau of Public Procurement itself has been accused of being the major impediment to the smooth and effective operation of the PP Act (Forum for Transparency in Government Procurement, 2013; Ahmed, 2011). It has also been established against the Bureau’s claims that the agency derails in complying with the provision of the Act under section 5(p) for not conducting procurement audit bi-annually and sending same to the National Assembly (Public Private Development Centre, 2011). The two Nigerian anti-corruption agencies – EFCC and ICPC have not also helped matters. There has not been prompt prosecution and discharge of verdict on procurement corruption and related cases by the anti-graft bodies (Onyema, 2011; Public Private Development Centre, 2011). Apart from the delay in prosecuting and discharging public procurement cases, the BPP, EFCC and the ICPC have been barking instead of biting. Hence, the Act appears to be more like a mere formal document rather than a container of rules capable of changing the society.

**Poor Oversight and Monitoring by the Legislature and CSOs:**

The in-activism and poor monitoring of the implementation and application of the PP Act by the Nigerian National Assembly (Legislature) and Civil Society Organizations (CSOs) raises serious concern about the possibility of sustaining and consolidating the impacts of the Act in the country’s procurement system. The legislature is the arm of the government that represents the
Citizenry within the wider ambit of the country’s constitution. Section 88 of the Nigerian 1999 Constitution confers wide and unfettered powers on the National Assembly to carry out investigations to expose and stop corruption (Public Private Development Centre, 2011). The legislature, by virtue of the provisions of the Act under section 5 (a) is also directly saddled with oversight function on the procurement process. Similarly, the PP Act also provides in section 1 (1) (f) for the inclusion of CSOs and professional bodies for better public representation in the procurement process and to ensure greater transparency and adequate adherence to the provisions of the Act. However, the roles of the National Assembly and the Civil Societies Organizations (CSOs) designated to the procurement sector in discharging their oversight and monitoring function have been generally unimpressive (Attah, 2011; Public Private Development Centre, 2011). One major reason for the poor performance of the CSOs in this regard is the lack of capacities and technical knowledge or competence on procurement operations (Attah, 2011). Most of the representatives of the CSOs working on the area of public procurement are yet to get acquainted with the provisions of the PP Act and the workings of the new procurement system. This limits their capacity for effective monitoring and reporting on government procurement, and puts them at improper position to detect any abuses of the Act by the MDAs, contractors or staff of the Bureau in the procurement process. MDAs also often times allow very limited access to CSOs to observe their procurement activities; sometimes they completely deny CSOs access during procurements (Onyema, 2011, Public Private Development Centre, 2009; 2011).

On the other hand, the House Committee on Public Procurement in the National Assembly has not been functionally pro-active. Evidences reveal that it has not been insistent and consistent in demanding the Bureau of Public Procurement to conduct and present before it the bi-annual audit of government procurement activities as stipulated in the Act (Public Private Development Centre, 2011). In other words, the ineffectiveness of the Legislature further encourages the Bureau’s non-compliance with the provision of the procurement law. Aside its poor performance, a more worrisome trend is that the National Assembly and the Judiciary have themselves been in the act of breaching the PP Act (Public Private Development Centre, 2011). Section 15(1) of the PP Act provides that the “provisions of this Act shall apply to all procurement of goods and services carried out by (a) the Federal Government of Nigeria and all procurement entities …” (FRN, 2007). This implies that the Act applies to all procurement
operations of all Federal Government institutions with no exclusion, neither for the National Assembly nor the Judiciary. The only exception is in section 15(2), where the Act states that: “The provisions of this Act shall not apply to the procurement of special goods, works, and involving national defense or national security unless the President’s express approval has been first sought and obtained” (FNR, 2007). Therefore, the provision in the section 15(1) (a) encapsulates the National Assembly for being part of the Federal Government. Nevertheless, the legislators and administration of the National Assembly and the Judiciary exclude themselves from the application of the Act. The two institutions do not conduct their procurement activities in line with the provisions of the Act and this suggests impunity, contempt, hypocrisy, and disrespect for the rule of law. The development creates a moral contradiction and dilemma for their constitutional roles of law making, oversight and judicial adjudication (Public Private Development Centre, 2011).

**General Lack of the Knowledge of the Provisions/Contents of the Act by Citizenry:**
Despite the effort of the Bureau of Public Procurement at sensitizing the general public about the PP Act in order to increase awareness of the knowledge of the provisions of the Act, awareness level is still relatively very low among Nigerians (Public Private Development Centre, 2011). This is coupled with the fact that public procurement is characteristically technical and not too many Nigerians have the knowledge or are conversant with the developments in that sphere of governmental operation (Public Private Development Centre, 2011). As a consequence, only a few Nigerians have knowledge of the existence of the country’s new procurement law vis-à-vis its statutory provisions. This constrains the expected contributions of individual Nigerians in playing voluntary “watch-dog” role over the implementation of the PP Act in a bid to ensure adequate adherence and compliance to the new policy document by all players in the country’s procurement system.

**Conclusion and How to Improve the Effectiveness of the Act**
This paper has examined the role of the Nigerian national Public Procurement Act, 2007 in enthroning desirable level of transparency and combating the phenomenon of corruption in the country’s public procurement system. It is among the major findings of the study that corruption and opaque procedures had been the main causes of economic and financial wastages, as well as the inefficiency and ineffectiveness of the nation’s procurement sector in the pre-Public
Procurement Act, 2007 era. However, with the advent of PP Act, the legal framework for public procurement in Nigeria has changed; corruption and its related sharp practices have been reduced to an appreciable level in the country’s public procurement practice. The processes of award and execution of public contracts have become more open than before; enormous financial savings have been made into the government coffers, and there is a growing effort at institutionalizing better practice of ensuring best value for government money, integrity, egalitarianism, competition and merit in carrying-out government procurement in the country.

Notwithstanding, there are certain notable limitations to the effectiveness of the PP Act, 2007 in achieving its paramount goals and objectives in the procurement system. Chief among these barriers include those identified and examined in the body of the paper. Nevertheless, it is the optimism of this paper that these challenges can be adequately overcome and the PP Act further strengthened for greater impacts if necessary actions are taken. In view of this, the position of this paper is that, to make the Nigerian Public Procurement Act, 2007 a viable and effective instrument for enhancing optimum level of transparency and combating the menace of corruption in the country’s public procurement system and practices, the following measures should be properly applied and adhered to:

The Bureau of Public Procurement (BPP) must wake-up to its statutory responsibility of enforcing and ensuring strict compliance with the PP Act by all actors in the Nigerian procurement system, including government procuring Ministries, Department and Agencies. The Bureau being the regulator of the PP Act should also ensure that itself adheres absolutely to the provisions of the Act in the discharge of its functions as a mark of example to other participants in the field. It should ensure timely conduct and submission of the bi-annual procurement audit to the legislature as stipulated in the Act. The agency should also give appropriate value orientations to its personnel to ensure that they are persons of good moral integrity standing, who would not sacrifice the interest of the entire public on the altar of their own selfish desires.

The Nigerian Federal Government should prove it readiness and sincerity to address the problem of corruption in the country’s public procurement system by showing maximum respect for the rule of law. The Government must take urgent and necessary actions to inaugurate and establish the National Council on Procurement (NCP) as provided for in the Public Procurement Act, 2007. This is of utmost important because the existence and operation of the Bureau of
Public Procurement (BPP) with the National Council on Procurement (NCP), whose establishment is provided for by the Act to exercise oversight on the Bureau suggests that the Government has ulterior motive and embedded interest in the procurement sector. All political inferences by the presidency including the undue influences of the Federal Executive Council (FEC), which now appears to have usurped the position of the National Council on Procurement (NCP), should quickly be abrogated.

The Sub-National or State Governments have a very critical and indispensible role to play in ensuring that the rationale behind the enactment and existence of the Public procurement Act, 2007 in the country are adequately achieved. State Governments across the Nigerian Federation should endeavor to adopt and domesticate the Public Procurement Act in their jurisdictions so as to align their procurement practices and systems with that of the Federal Government. Harmonizing and evolving common procurement practice at state and federal levels would help to make the war against procurement corruption worthwhile and facilitate the achievement of the goals of the Public Procurement Act, 2007 nation-wide.

The civil society organizations (CSOs) representing the Nigerian citizens in the public procurement sector should train and re-train their representatives to immensely improve their capacities and competences for effective and meaningful monitoring and reporting on government procurement activities. Heads of government Ministries, Departments and Agencies found in the act of denying civil society organizations full access to observe and monitor their procurement operations should be made to answer questions in respect of that before the appropriate authorities. Similarly the EFCC and ICPC should inculcate the practice of timely prosecution and discharge of public procurement cases. The Bureau should begin to apply appropriate disciplinary penalties against actors found guilty of indulging in procurement corruption; the agency must begin to debar or blacklist business entities involved in corrupt practices so as to instill sense of caution and business discipline in the procurement market.

The legislature needs to be superlative in the discharge of its statutory public procurement oversight functions in a bid to save-guard the interest of the public that it represents. The House Committee on Public Procurement in the National Assembly should be insistent and consistent in demanding the Bureau to always conduct and present before it the bi-annual audit of government procurement activities as provided for in the Act (Public Private Development Centre, 2011).
More importantly, as the law-making and adjudicating institutions of government, the National Assembly and the Judiciary must begin to act by example by shunning every act of disregard to the PP Act. They must ensure that their procurement activities are always fully subjected to the provisions of the Act in order to salvage their moral integrity as makers and custodians of the general law of the country.

The Bureau of Public Procurement and relevant government authorities should also organize intensive value and ethical re-orientation programs in order to sensitive the MDAs and Contractors on the dangers of corruption and its accompanying illegalities in the procurement process. There is also the need for increased information dissemination and education on the new public procurement law so as to increase general awareness and knowledge, and enhance public access to procurement information in the country (Public Private Development Centre, 2011). This would help to arouse public interest in the procurement sector and position the Nigerian masses to properly follow-up on the implementation of PP Act and make case for better accountability and transparency in the procurement process.

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USE AND MISUSE OF REGULATION IN FIGHTING BETTING RELATED CORRUPTION IN SPORT – THE GERMAN EXAMPLE

By Fatma Rebeggiani
By Luca Rebeggiani

Introduction
Betting related corruption in sport has increased considerably during the last years, heavily driven by the globalization and digitalization of the worldwide betting market. Since this problem puts the whole process of commercialization of sport in danger, it has already been tackled in various ways by major sport federations including FIFA and UEFA. One of the most important measures taken is the application of computer based fraud detection systems (FDS) in order to identify and report possible betting related manipulations in sports easily and promptly. National authorities have also started to justify regulatory measures in the sports betting markets with the need of limiting betting related match-fixing. In many cases, several types of bets shall be banned, especially side bets, which are regarded as particularly prone to manipulation. One of the most blatant examples of this kind is Germany, where after a careful opening of the sport betting market, the ban of almost all live bets (including even bets on goals scored in football) is under discussion, motivated by the potential threat for the integrity of sport. This paper discusses the appropriateness of this approach, analysing recent data on sport betting. We will draw conclusions on the regulation of betting markets whose validity is not restricted to Germany.

The Problem
It is difficult to determine whether the problem of betting related corruption in sport has grown during the last decades or not. It probably has, due to the increased possibilities offered by the internet (including live-bets) and the increased professionalization of most sports. Obviously, match-fixing has always been a problem and some sports may have experienced higher corruption in earlier times than nowadays, where increased transparency makes at least some scandals public.

What surely has increased is the danger faced by sport and society: Betting related manipulation puts the whole process of commercialization of sport in danger, and since many professional sports have reached astonishing economic dimensions, potential losses have grown exponentially. Therefore, it has already been tackled in various ways by major sport federations including FIFA and UEFA.

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1 One insightful and well-documented early example of betting related match fixing is the “big Good Friday football fix” of 1915 (Forrest, 2015).
2 Bremen International School for Social Sciences
3 Fraunhofer FIT & FOM University of Applied Sciences
One of the most important measures taken is the application of computer based fraud detection systems in order to identify and report possible betting related manipulations in sports easily and promptly.

A recent study by T.M.C. Asser based on Sportradar data reports 1,625 cases of probably manipulated matches in professional football in the period May 2009 – November 2014 (T.M.C. Asser, 2015, p. 26). Recent scandals include a large investigation in lower divisions in Italian football and many matches in Eastern European leagues, but also Swedish football has been hit by a relevant amount of allegedly fixed football matches (Federbet, 2015).

The Wrong Solution

As described by Ben Van Rompuy (T.M.C. Asser, 2015, Ch. 2), many European countries are using, or plan to use, the threat of betting related manipulation to tighten their betting market regulations. In particular, several types of bets, especially side bets,\(^2\) shall be entirely banned in several countries because they are regarded to be more vulnerable for manipulation.

One striking example is Germany, where sports betting is in general rather strictly regulated, being treated as a part of the highly regulated gaming sector. Until 2012, the state monopolist *Oddset* was the only legally acting company in the market. A new state treaty then allowed private betting companies to enter the sports betting market legally via state-issued licenses. However, after 3 years by now, none of the planned licenses has been granted to any company, leaving the whole market in a legally unregulated “grey area”: Companies are “tolerated” and have to pay taxes, but their legal status is still uncertain, which causes a very difficult situation for private business in this sector.

While in former times the strict German legislation was motivated especially by the aim of controlling the problem of gaming addiction,\(^3\) the new state treaty adds the limitation of match fixing as another main target. This serves as a justification for imposing strict measures, up to forbidding certain types of bets. The state law is in this respect rather unclear (Albers, Böhm & Rebeggiani, 2015), but the responsible agencies of the interior ministries of the Länder are increasingly urging private companies to ban all types of side bets, including bets on goal scores.

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\(^2\)We define side bets as all types of bets not directly correlated to the final result of a match, e.g. bets on yellow cards or corner kicks in football. However, we regarded this approach more as a tactical move to preserve the state monopoly than as a sincere concern for fighting gambling addiction. This was shown e.g. by the fact that slot machines located in “amuse- ment halls” or pubs, the gambling type which in clinical studies normally emerges as the major cause for addiction, was not classified as “gambling” and therefore not regulated at all by the old state treaty (Rebeggiani, 2010).
in football. Following this (highly controversial) interpretation, only bets on final results actually seem to be acceptable.

Some insights from economic and statistical analysis

The main problem with the approach described above is the danger of forcing considerable parts of the sports betting into a “grey” or even illegal market, with no possibility for the government of imposing taxation or any other kind of regulatory measures. Under the previous regulatory regime, which imposed a strict monopoly with the public company Oddset as only supplier, up to 95% of the German sports betting market was unregulated (Figure 1), leaving the state with considerable losses of tax revenues and without any control over addiction problems or possible criminal involvements.4

![Graph](image)

**Figure 1**: Grey and legal betting market in Germany 2009 (turnover in bill. EUR)

Data: Goldmedia, University of Hohenheim

The situation has changed since the partial liberalization of the betting market in 2012, but the proportion of a grey/illegal market in Germany is still high. It can be estimated at about 50%. Besides unregulated internet offerings and illegal bookmakers, especially (mostly illegal)

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4 Figure 1 shows two estimates for the grey market in Germany, a business-data based estimation from Goldmedia and a survey-based one from the University of Hohenheim. Even following the more conservative latter one, the share of the grey market would have been 86% of the whole of the betting market in Germany. For more details on both surveys, see Rebeggiani and Rebeggiani, 2013, p. 158-159.
betting terminals are increasingly popular. A common feature of this illegal supply is its broad range of bets offered and their attractive odds.

Another questionable underlying assumption is the unreflected belief in the fact that side bets are always more subject to manipulation. This is certainly true if one looks at the supply side in the manipulation market, i.e. at the players and referees ready to engage in betting combines.

According to standard microeconomic theory, the supply of match-fixing actions rises when probability of detection is lower, the probability of cheating attempts being successful is higher, and the financial loss, if manipulations are detected, is low. ⁵ Thus, manipulation via side bets is rather attractive, because of the smaller loss of sporting glory and the easier realization of a fix by a few insiders (Rebeggiani and Rebeggiani, 2013).

Alas, things start to change if one takes into account also the demand side of betting related fraud (Forrest, 2013), i.e. how many criminals are willing to put their money in such combines in order to launder it or to earn more. Then, it becomes clear that liquidity in the market is a crucial variable. Betting related match fixing needs large markets, on the one hand in order to realize sufficient profits. On the other, in order to avoid an easy uncovering by fraud detection systems. Where is most of the liquidity in sports betting concentrated? In “normal” betting markets, i.e. what provider call primary bets (especially bets on match odds and on total goals scored). Figure 2 shows data from the betting exchange platform Betfair. ⁶ More than 87% of the overall volume of the market was staked in the primary betting market, 11.4% in the derivative or secondary betting markets and only 1.5% in markets for side bets.

This means that the volume of the “frightening” market for side bets, which is so often cited by lawyers and politicians as main threat for the integrity of sports, is negligible. It must be also kept in mind that private suppliers react rather quickly when they notice strange movements in the allocation of bets, by changing odds or completely withdrawing the bet. Manipulation is therefore, at least with bets placed at regulated European operators, not necessarily possible on a large scale. Another reason why side bets are not always offered by bookmakers is, probably, that most of the events underlying side bets (corners, yellow cards etc.) are hardly predictable and have more a random character. Therefore, the calculation of appropriate odds by the operator may be difficult.

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⁵See Forrest, McHale & McAuley, 2008 for a detailed model description and Rebeggiani and Rebeggiani, 2013, for an application to recent cases.
⁶Data was collected in the period January-April 2014 and covers bets on English football Premier League games, probably the league with the highest stakes in the world. Ongoing research by the author is investigating whether data from other main private companies show a different pattern that that of Betfair or not.
Figure 2: Liquidity in different types sports betting markets (Betfair, January-April 2014) Data: Betfair (T.M.C. Asser, 2015, p. 21)

Another database collected by Sportradar about betting related manipulation show that most of the possibly detected cases of betting related match-fixing occurred in fact in markets for primary bets. Out of the 1,625 probably fixed matches detected by the FDS, only six cases (0.37%) concerned side concerned side bets. 7 All others occurred in primary betting markets, in most cases involving more than one of the main betting types: match odds, total goals scored, and Asian Handicap bets (Figure 3). Thus, empirically there seems to be no particular vulnerability of side bets, while manipulation cases are concentrated in the highly liquid primary betting markets and are also often associated with Asian Handicap bets. Of course, this very simple analysis is only the first step and further empirical studies will be necessary, but one should bear in mind that Sportradar’s FDS is one of the leading monitoring tools in the world, covering most of the international betting market.

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7 As already mentioned, this figure reflects the number of suspect games in the period May 2009 to November 2014. These were less than 1% of all football matches monitored by the FDS in that period. Out of these 1,625 matches, 1,468 are included in a particular database, designed to analyse particularly suspicious cases (see e.g. Figure 3).
Furthermore, the Sportradar data fail to detect any particular vulnerability of live bets: The percentage of live bets involved in match-fixing attempts is very similar to that of pre-match bets. Concerning the type of matches, most of the allegedly manipulated games are national league club matches (88%), much more than international club matches or national teams’ games (Figure 4). Even more surprising, the first leagues account for more than three quarters of all fixing attempts, while only 22% of the suspect matches took place in second or lower divisions. This is, again, a result which is hardly compatible with the pure supply side based theory described above, which would predict more fixed matches in lower divisions, where publicity and therefore detection probability is lower, while salaries and therefore potential costs of match fixing are also lower. What, in contrast, is again confirmed as being very relevant is market liquidity, which is absolutely needed for match fixing attempts. Since liquidity is concentrated in betting markets attached to first division football, also most of manipulation cases take place there.
A Better Solution
The first conclusion drawn from the present analysis is a scepticism towards all regulatory measures which would drive significant portions of the markets into “grey” or completely illegal areas. The case of Germany has shown that regulation which is excessively strict may lead to the state’s loss of control over nearly the entire betting market. Many of the policy measures currently under discussion in Germany and other European countries would significantly deteriorate the business conditions for private betting companies, since complete bans on live bets and goal scorer bets would hit some of the most popular segments.
This paper argues furthermore that an effective prevention of betting related corruption needs to enforce a legal regulation covering the whole of the betting market and at the same time provide strong incentives for behaviour in compliance with the law, e.g. by introducing specific penal sanctions for manipulative activities in sports (e.g. match fixing, doping, sports related violence). The first component needed is therefore the creation of a legal basis for criminal prosecution, which clearly enlists all types of sport fraud and the penalties for them. This framework should be located on the ground of ordinary law and not in the field of sports regulations managed by the respective federations.
Finally, the supervision of betting markets (including fraud detection systems) should be delegated to an independent authority. In this case, Germany should follow the example of Italy and France, where such institutions are already operative and exert a considerable power. The same applies to the sanctioning of suspected cheaters, which should not be left to the sport
federations alone. Experiences from other fields of self-administrating sport federations are not very encouraging. Especially the example of doping prosecution shows in our view, that the self-regulatory ability of sports is weak when own commercial and non-commercial interests are possibly endangered.

**Conclusion**

The planned law against sports fraud, which is soon to be brought in the German *Bundestag*, represents in our view a step in the right direction. For the first time, German prosecutors will be able to rely on a legal basis covering doping and other corruption issues. It is, however, rather unclear, how effectively this basis will be used. As in most other European countries, there remains a multitude of open governance issues when many interests collide, as it is the case for professional sport and gambling. On the one hand, the interplay between sport federations, bookmakers and the government (including police) will be crucial for effectively fighting corruption in sports. On the other, an efficient regulation of gambling sector remains a hard-to reach goal, mostly because of the diverging interests of the involved stakeholders (private suppliers, monopolists, and the government). Only if these two challenges will be addressed properly, the application of the new legal tools will deliver the desired results for fighting betting related corruption in sport.
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VULNERABILITY TO CORRUPTION: AN APPROACH TO
TEACHING LEGAL STUDENTS

By Pavel Sascheko

Abstract
Detecting factors of vulnerability to corruption is an important part of activities of lawyers who
deal with development of legal measures aimed at decrease of the risk of corruption. Thus,
teaching issues related to vulnerability to corruption is an important part of anti-corruption
education of legal students. This paper is aimed at describing key elements in teaching legal
students to detect vulnerability to corruption. Some teaching methods for studying defects of
legal environment causing vulnerability to corruption are examined in the paper.
Keywords: corruption, vulnerability to corruption, teaching methods, legal students, legal
defects, corruption risk

Introduction
Detecting factors of vulnerability to corruption is one of the crucial steps towards providing
legality of the activity of any legal entity and one of the tasks of lawyers who work for state and
private legal entities. Lawyers are in charge of development of anti-corruption regulations. They
interact with law enforcement agencies in the issues related to combating corruption, carry out
other functions connected with detecting fields of activities of a legal entity vulnerable to
corruption and develop legal measures aimed at decrease of the risk of corruption. Therefore
teaching issues related to vulnerability to corruption should be an important part of anti-
corruption education of legal students.

At the same time legal education today mainly focuses on studying of various branches of law
(Criminal Law, Civil Law, Family Law, etc.). As a rule the disciplines concerning fighting
against corruption are included in training programs of educational institutions of law
enforcement agencies only. In order to improve anti-corruption education of all students,
including legal students, on February 6, 2015 the Ministry of Education of the Republic of
Belarus approved the Model Curriculum of academic discipline "Fighting against Corruption".
Basing on the Model Curriculum, universities are obliged to design their own curricula. In this
regard law faculties need to specify concrete aspects of anti-corruption studies taking into
account the specifics of future activities of legal students.

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In accordance with the Model Curriculum one of the tasks of the anti-corruption course is the development of practical skills of students in identification of corruption risks and improvement of abilities to organize interaction with government bodies. Lectures and seminars are specified as forms of education in the Curriculum.

Studying of various aspects of detecting vulnerability to corruption can be conducted within topic 4 "Prevention of Corruption" of the Model Curriculum. Implementation of the Model Curriculum requires creation of effective practical training for legal students in order to develop skills of detecting vulnerability of various objects (processes) to corruption, identification of key factors causing such vulnerability and designing measures to decrease it.

This paper examines key aspects of vulnerability to corruption and outlines some methods for teaching legal students. In the first section of the paper the most typical forms of anti-corruption activities of a lawyer are considered, and some specific features of vulnerability to corruption which should be taken into consideration for purposes of legal student teaching are defined. The second section provides key information on different aspects of vulnerability to corruption which should be brought to legal students’ notice during lectures. In the third section some methods for teaching the topic are outlined.

**Teaching Legal Students to Detect Vulnerability to Corruption: Core Features**

The following key elements play an important role in teaching legal students on detecting vulnerability to corruption: 1) specifics of anti-corruption activities of lawyers; 2) specifics of the topic (legal aspects of vulnerability to corruption).

*Specifics of anti-corruption activities of lawyers*

First of all, lawyers deal with normative-and-legal environment which means that they consider economic operations, procedure of employment, procedure of resolution of conflict of interests and other types of activities through a prism of legal regulations.

Anti-corruption activities of a lawyer are connected not only with application of existing regulations, but also with enhancing of legislation. Defects of legal acts cause vulnerability to corruption. Elimination of such defects can be performed by legislative amendments.

In some specific cases lawyers are obliged to detect vulnerability to corruption. For instance, according to Article 199 of the Code for Criminal Procedure of the Republic of Belarus an investigator of a law-enforcement body shall take measures to eliminate causes and conditions that have facilitated the commission of an offence. The causes and conditions include factors which lead to vulnerability to corruption. In order to eliminate such factors an investigator is entitled to issue directions for the elimination of the causes and conditions in question to the body or official authorized to eliminate them. Within one month after the date when the directions were issued, the investigator shall be notified of the outcome of the measures taken.
Article 199 of the Code for Criminal Procedure of the Republic of Belarus also predetermines activities of the legal entity which received the directions issued by the investigator. Such activities usually require participation of a lawyer, e.g. changes can be made in local legal regulations with the view of eliminating factors that caused vulnerability of the legal entity to corruption.

Specifics of the topic (legal aspects of vulnerability to corruption)
Legal students should focus on studying defects of law which form factors of vulnerability to corruption, e.g. gaps, contradictions, violation of systemacity, defects of legal drafting methodology, incorrect use of legal terminology, etc. While studying these issues students should pay specific attention to tracing influence of legal regulations on circumstances of commission of different types of corruption offences. They should also compare legal regulation with anti-corruption standards.

Therefore, training of legal students should be based on legal acts, legal documents and criminal cases. Teaching situations should be similar to real professional anti-corruption activities of a lawyer. Theoretical information should include not only legal theory but also some criminological issues.

Vulnerability to Corruption: Key Points for a Lecturer
The topic «Vulnerability to Corruption» comprises the following issues:
- definition of vulnerability to corruption;
- types of objects which are vulnerable to corruption;
- characteristics of vulnerability to corruption;
- measuring vulnerability;
- connection of vulnerability to corruption with the mechanism of criminal behavior;
- defects of legal acts as factors causing vulnerability to corruption.

Vulnerability to corruption is inability of an object to resist corruption that may result in danger of: 1) transformation of an object into a corrupted object; 2) commission of a corruption offence; 3) transformation of an object into a victim of corruption; 4) use of an object as a condition that facilitates the commission of a corruption offence.

Definition of vulnerability to corruption
The term "vulnerability to corruption" should be distinguished from the terms "victimity", "susceptibility to corruption" and "corruption risk". "Vulnerability to corruption" has several distinctive features. In contrast to "victimity" it covers transformation of an object into a corrupted object or commission of a corruption offence, or use of an object as a condition that facilitates the commission of a corruption offence. Unlike "corruption risk" or "susceptibility to
corruption", the term "vulnerability to corruption" means not only an opportunity, but real commission of an offence.

*Types of objects which are vulnerable to corruption*

"Vulnerability to corruption" is applicable to different types of objects (state, region, position in public office, public procurement procedure, social group, legal entity, etc.).

For instance, A.V. Polukarov and A.V. Kurakin note that healthcare system is vulnerable to corruption because of a significant amount of legal entities and individuals who are payers, suppliers and patients.

Article 7 (1) (b) of the UNCAC states that:

"Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions; ".

Some provisions concerning vulnerability of procurement to corruption are included in the Technical Guide to the United Nations Convention against Corruption: "Procurement is acknowledged to be a process vulnerable to corruption, collusion, fraud and manipulation.". 3

The term "vulnerability to corruption" can also be found in domestic legislation. For example, item 2 of the State Program on Strengthening of the Fight against Corruption for 2002-2006 (approved by the Decree of the President of the Republic Belarus, 02.10.2002, No. 500) provides for preventive actions directed at effective prevention of corruption in the most vulnerable fields (law-making activity, licensing, certification of goods and services, etc.).

*Characteristics of vulnerability to corruption*

Levels of vulnerability to corruption can vary (high, average, low) in respect of various corruption offences and types of corruption behavior (e.g. high vulnerability to abuse of power and low vulnerability to bribery or nepotism).

Vulnerability to corruption is characterized by dynamics. Changes in vulnerability can be quantitative (increase/decrease in vulnerability, transition from vulnerability to real susceptibility), and qualitative (increase in vulnerability for bribery and decrease in vulnerability to abuse of power).

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Measuring vulnerability

Traditionally criminology uses external and internal characteristics of corruption offences as well as statistical methods for measuring corruption (crime rate, structure of crime, dynamics of crime, etc.).

As stated in the Technical Guide to the United Nations Convention against Corruption "States Parties should design the strategy on the basis of a risk assessment that should be founded on relevant information or statistical data. Useful data may include audit reports on public bodies which may give indications of corrupt use of public funds or demonstrate deficiencies in control or accounting procedures. Other statistical data appropriate to the circumstances of the State will also be relevant. Special research to identify causes, trends and vulnerabilities should be commissioned. The information and data should form the basis of a risk or vulnerability assessment that identifies the trends, causes, types, pervasiveness and seriousness or impact of corruption. This will help develop a better knowledge of the activities and sectors exposed to corruption, and the basis for the development of a preventive strategy, buttressed with relevant policies and practices for better prevention and detection of corruption. ".

Vulnerability to corruption and the mechanism of criminal behavior

The mechanism of criminal behavior includes several stages: development of motivation; decision-making stage, planning; execution of the decision; post-criminal behavior.

Development of motivation and making a decision to commit a corruption offence can be connected with characteristics of an object vulnerability of which is estimated (possibility to find accomplices and to conceal traces, etc.). Some characteristics of an object can hinder development of the motives. Features of an object in some cases significantly influence planning or execution of a criminal plan (e.g. in case of unexpected obstacles). Any object which is assessed as vulnerable to corruption can be considered from the point of view of post-criminal behavior (for instance, impossibility to conceal an offence). Protective mechanisms which reduce influence of shortcomings in legal regulations can also be assessed through a prism of the mechanism of criminal behavior.

Defects of legal acts as factors causing vulnerability to corruption

Legal defects are the factors which cause vulnerability to corruption. Some examples of such defects are given in the Technique of Carrying out the Anti-Corruption Examination of Regulations and Drafts of Regulations (approved by the Resolution of the Government of the Russian Federation, February 26, 2010, No. 96), e.g.:

- width of discretion – absence or uncertainty of terms, conditions or grounds of decision-making, existence of the duplicating powers of government body, local government or organization (their officials);
- selective change of scope of rights – possibility of unreasonable establishment of exceptions from the general rule for citizens and organizations at discretion of government bodies, local governments or organizations (their officials);
- absence or incompleteness of administrative procedures – lack of rules for commission of certain actions by government bodies, local governments or organizations (their officials);
- standard collisions – contradictions between rules that create possibility of discretionary choice of the rules applicable in a concrete case;
- linguistic uncertainty – use of ambiguous terms, etc.⁷

Some Teaching Methods for Legal Students

Main objective of a lecture is to give legal students some theoretical information on vulnerability to corruption. Seminars, practical trainings are directed at development of practical skills in typical situations.

The following ways of teaching legal students on detecting vulnerability to corruption can be offered for seminars and practical trainings:

- students are asked to analyze a legal act and reveal defects in it which present factors causing vulnerability to corruption;
- one group of students develops a legal act, for instance, regulating procurement or employment procedure. Others are asked to discover factors (including legal defects) causing vulnerability of the procedure to corruption. The results of the work are discussed afterwards.

It is expedient to develop skills necessary to detect vulnerability to corruption in non-standard situations in order to enhance creative skills and promote further research. For these purposes such forms of education as writing of a paper or thesis can be used.

Specific attention should be given to development of the necessary moral qualities, including via understanding consequences of corruption. Students are asked to give real examples of factors of vulnerability to corruption which they or their friends have faced in their life. Discussion of cases where shortcomings of a legal regulation finally led to commission of a corruption offence is important as well.

It is necessary to pay attention to psychological challenges which a lawyer faces in professional activities. Legal students need to develop skills of overcoming counteraction, e.g. using the game method of training. For instance, one student plays a role of a lawyer who reveals corruption vulnerability, and another plays a role of a person counteracting. Techniques for neutralization of counteraction to measures aimed at fighting against corruption are discussed after the game.

**Conclusion**

Gaps, contradictions, violations of systemacity of legal regulation cause vulnerability of different objects and types of activities to corruption. Lawyers deal with normative-and-legal environment and legal aspects of vulnerability to corruption. Therefore, training of legal students on detecting vulnerability to corruption is highly important nowadays. It is reflected in new educational activities on national level (e.g. via inclusion of relevant courses in the curricula). Such training should be focused on defects in legal environment of management, economic activity, hiring process, etc. Comparison of legal regulation with anti-corruption standards and the mechanism of criminal behavior is important in education of legal students as well. Methods for training legal students should be connected with legal material and situations which take place in real anti-corruption activities of lawyers, e.g. with situations where lawyers detect vulnerability to corruption in the process of application of legal acts or in the process of drafting amendments in order to eliminate shortcomings in legal regulation.
CHALLENGES OF DESIGNING ANTICORRUPTION COURSE: IN-BETWEEN PUBLIC & CRIMINAL LAW

By Mirela P. Bogdani

**Purpose** - This paper will focus in presenting the challenges for establishing the course of Law & Anti-Corruption in Albanian higher education institutions, faculties of law and social sciences, as well as the core curricula and materials that will reflect public policy aspects of the course in an broad-spectrum approach *versus* criminal law regulations in a specialized and precise technique.

Information along the paper will be organized in two core parts:

- first there will be a presentation of the overall anti-corruption policy and efforts in Albania, in all main sectors, in line with EU requirements and also international treaties and regulations that Albania had ratified such as UN Convention Against Corruption, Council of Europe Civil and Criminal Law Conventions on Corruption of the Council of Europe, as well as the reform for combating and preventing corruption in public and private sector, including legal amendments on provisions that criminalize corruption for state officials and/or corruption behavior.

- second there will be presented the challenges of lectures while designing the anti-corruption curricula's/courses such as law, development and corruption, and/or other aspects of anti-corruption policies, including legal aspects, in order to become more comprehensive and deliver the full picture of information on many 'faces' and angles of corruption, to students of human sciences, lawyers and other professionals.

**Methodology** - The main research technique relevant for the paper findings and conclusions, is the desk review and comparative research approach, which will facilitate exploring the online and other information on international well-established standards and components of anti-corruption issues, law and development. Additional information will be presented also from the

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personal and group experience while designing the course of anti-corruption, law and development in Albanian context.

Conclusions - Main conclusion of the paper will be drawn by analyzing the situation in Albania with regards to anti-corruption efforts in line with EU requirements and standards and the analytical approach that more than a matter of criminal law, anti-corruption course falls within the broad specter of public policy making, therefore this curriculum fits better with the general public law developments.

Key words - Anti-corruption, public policy, criminalization of corruption, academic course, justice reform, EU integration.

I. Anti-corruption policy in Albania - general background

Corruption in Albania, as in many other countries of South-east Europe has been in the focus of public debate, and on the policy agenda of national and international institutions, since it had proven to be such an intractable issue. European Commission Progress Reports for Albania had continuously put emphasis on the fight against corruption and organized crimes, linked to judicial reform\(^2\) and the fact that Albanian Government should play a leading role on the process, which is essential for the EU integration in order to advance and attain progress.

Corruption and the domino effects it constantly produces, especially to fresh and un-consolidated democracies, such Albania, has gained significant attention in development discourse and practice. Anti-corruption training is identified as a useful approach to fostering the development of broad based alliances for demanding reform and addressing demand side for anti-corruption issues, in the public and private sector as well as in civil society\(^3\). Anti-corruption training has not yet been concepted and mainstreamed into traditional development assistance therefore not yet fully integrated in universities and/or schools curricula's.

Albania is undergoing a robust reform in judiciary, which naturally comprises also fight against corruption in justice related sectors as well as other public institutions and private sectors. In this regard, it would be of crucial importance that students in general and more specifically law


\(^3\) For more see 'Anti-Corruption Training and Education', U4 Brief, CMI Micheleisen Institute, www.u4.no/publications/anti-corruption-training-and-education.
students be well-informed and educated with the reforms' standards, with the theoretical and practical approach of prevention and fight against corruption, with the role of media and civil society as vital components in this process, with public awareness and outreach on the matter, as well as with the potential trend of future technical assistance professional involvement in the framework of justice reform, rule of law, democracy consolidation, development, economic growth, leading towards EU accession. All these knowledge could be delivered in a more fashionable and well-designed university course that could be easily absorbed and debated over in universities auditorium, especially in law schools by legal experts and professionals in the field. Further down, the paper will present some evident progresses that Albania has reached dealing with anti-corruption and development, that could be easily integrated within the anti-corruption course and approach in a legal and public policy prospective, for legal students.
I. 1. Legal Framework on anti-corruption issues in Albania

I. 1.1. Legal framework - *International standards*

Albania had ratified the United Nations Convention against Corruption / UNCAC\(^4\) and the Council of Europe Civil and Criminal Law Conventions on Corruption\(^5\). Corruption in Albania had been criminalized, and the legal framework comply with the country's obligations deriving from Criminal Law Convention on Corruption promoted by the Council of Europe. Active corruption is penalized with prison terms ranging from between six months to three years, and passive corruption can result in one to twelve years imprisonment, depending on the public sector involved\(^6\).

Several amendments to the Criminal Code were adopted in March 2012 and included provisions both on acts of corruption by foreign public officials and on imposing harsher penalties for corruption in the private sector. In 2012, Albanian Parliament also amended the Constitution which included restrictions on the immunity of high-level public officials and judges. However, these amendments had led to very few sporadic cases where the parliament gave the authorization for initiation criminal proceedings against MP's. Criminal Code currently includes 21 articles sanctioning and punishing the criminal offences of corruption whereas the European Convention includes 13 articles (*11 of which are their sub-versions*). As above, Albania has properly approximated the criminal legislation to the Criminal Convention of the Council of Europe and GRECO recommendations for combating active and passive corruption. These measures constitute encouraging achievements in the legal reform\(^7\).

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\(^4\) UNCAC was signed on Dec, 2003 and ratified on May, 2006 - for more info see [https://www.unodc.org/unodc/en/treaties/CAC/signatories.html](https://www.unodc.org/unodc/en/treaties/CAC/signatories.html)


\(^6\) Art. 164/a & b of Criminal Code of Albania - corruption (active & passive) in private sector, Art. 244, 244/ a, 245, 259, 259/a, 260 corruption (active & passive) of public officials, of foreign public officials working in Albania, high public officials and local government officials elected by citizens', Art. 312 active corruption of testimonies, translators and experts during trial proceedings, Art. 319 (a/b/c/d/h/e) corruption (active and passive) of judges, prosecutors and other high justice sector officials, corruption of judges' or other court officials in international courts, corruption of arbiters (Albanian and foreign ones), as well as corruption of members of foreign jury members.

I. 1. II. Constitutional amendments on judicial reform with anti-corruption focus

Justice Reform process had addressed many amendments\(^8\) of the Albanian Constitution for reforming judiciary in Albania, reforming prosecution, criminal justice issues, aiming overall to reduce the level of corruption in institutional level as well as to restore public trust in judiciary. This package had been drafted already and prior to general consultation and wide spread public outreach had been sent to the Venice Commission for an advisory opinion on the matter, which is expected to be delivered by the end of this year (2015). An important part of justice reform is linked to Anti-corruption issues - the Analytical Document drafted by experts examines and address explicitly the fight against corruption, with regards to integrity of justice officials, the efficiency of criminal offences provided by Criminal Code, professionalism and efficiency of the work performance of prosecutors and judges, appropriate level of support in terms of financial sources and human resources into disposal of prosecution office and/or judiciary\(^9\).

Along with Albanian Constitution, it is anticipated to be amended also some other laws aiming with anti-corruption focus\(^10\), such as Criminal Code, Criminal Procedures Code, Law on Declaration and Audit of Assets, Law on Preventing Conflict of Interest in Exercising Public Functions, Law on Organization and Functioning of National Judicial Conference, as well as other laws that would partially tackle and address anti-corruption measures.

I. 1. III. Ethical issues and legal framework

Albania’s legal anti-corruption framework comprises also the Law on Conflict of Interests of (2005)\(^11\) and the Law on Access to Information (2014)\(^12\), but the quality of the law and its application have been undermined by inconsistent application of the legislation, widespread

\(^8\) For more see 58 draft amendments of Albanian Constitution, prepared by the Commission of High Level Experts, (national and international), http://reformanedrejtesi.al/sites/default/files/constitutional_amendments_en.pdf


\(^10\) Supra http://reformanedrejtesi.al/kuadri-lgjor-i-grupit-te-antikorrupsonit


\(^12\) Supra http://www.dap.gov.al/attachments/article/709/119%202014%20-%20Per%20drejten%20e%20informimit.pdf
corruption and limited transparency. This framework commenced by approving initially the law on Code of Ethics in Public Administration (2003)\textsuperscript{13} that regulates the conduct of civil servants. Apart from that, was approved (\textit{later on amended}) the Law 'On the declaration and audit of assets, financial liability of elected people and some other public officials'\textsuperscript{14}, which require high-ranking officials to declare their assets in order to audit them and catch cases of assets disproportionate to the official's salary. Pursuant the relevant legislation [\textit{Law on Prevention of Conflicts of Interest in the Exercise of Public Functions and the Law on the Rules of Ethics in the Public Administration}], a public official is supposed to act in professional manner, to be impartial and independent, to be well-mannered and to keep confidentiality of the services provided, as well as to disclose information as per the legal requirement of freedom of information; a public official is not allowed to accept any gifts, money or services for performing their service duties. Civil servants are allowed to accept gifts only of a symbolic traditional value or traditional hospitality of a value which is not clearly defined by the legislation. In the case of an offered unfair advantage, a public official must report to their superior, otherwise would risk a fine \textit{[between ALL 10,000 (USD 100) and ALL 100,000 (USD 10,000)]}. Code of Ethics also provides the rules that a public official should comply with, even after leave public office.

I. 1. IV. Government Strategy on Anti-corruption

Albanian Government adopted a National Anti-Corruption Plan\textsuperscript{15} 2015-2020. The document is based on three pillars - preventive approach, punitive and educational approach. However, the implementation of the Anti-Corruption Plan lacked proper monitoring and follow-up\textsuperscript{16} on the results, even though the document itself had provided a detailed Action Plan in coordination with domestic and international stakeholders, institutions and foreign projects. So far, governmental

\textsuperscript{13} \textit{Supra} http://www.dap.gov.al/images/Ligjet/ligji_per_rregullat_e_etikes_ne_administратen_publike.pdf
\textsuperscript{14} The law was initially approved on 2003 and later on amended on 2005, 2006 (\textit{twice}), 2012 and 2014 (\textit{twice}). For more see http://www.hidia.gov.al/ligji-nr/
efforts to tackle corruption are sporadic due to lack of cooperation between different state actors and selectively applied penalties\textsuperscript{17}.

In the context of strengthening the preventive approach to corruption, the strategy sets as a short term priority for the creation of new legal framework on whistle-blowers as well as the establishment of an implementing agency. The new legislation aims to narrow down and make more detailed the existing legislation by extending it to public employees and private entities.

Managing public complaints are seen as a crucial element in the fight against corruption in the new strategy. Among other measures, the strategy also foresees an overall assessment of the anti-corruption legislation and the institutions in charge of implementing it, and corruption proofing of legislation – a practice which will be used for the first time in Albania.

Albania is also part of the Regional Anti-Corruption Initiative\textsuperscript{18} / RAI, a platform for the government, civil society and international organizations for exchanging expertise and know-how on the subject and for coordinating efforts between and within government branches.

\section*{I. 1. V. Role of High Inspectorate for Declaration, Auditing of Assets and Conflict of Interest / HIDAACI}

HIDAACI is an independent agency, that collects asset declarations from public officials and identifies cases of conflict of interests. HIDAACI 2014 Report stated that there had been audited 1496 subjects, from which had been fined 474 subjects (\textit{around 7 times more compare to year 2012 - for 2013 there had been none officials fined})\textsuperscript{19}, and and had been filed 114 criminal charges to prosecution office (\textit{around 7 times more compare to year 2011 (16 officials) and around 20 times more compare to 2012 (only 6 officials) - for 2013 there had been no officials charged to prosecution office})\textsuperscript{20}.

HIDAACI made progress on the inspection of suspicious declarations and a number of investigations of corruption cases and increased subsequent prosecution of low and mid-level

\textsuperscript{17} Supra.

\textsuperscript{18} For more info refer to rai-see.org


\textsuperscript{20} Supra pg. 11, para. 3.
officials, however, convictions remain low. Progress Report for Albania, for 2014\(^{21}\), stated that there is still a need to improve significantly HIDAACI's audit capacity as well as an increase of number of inspectors. It would be advisable for the HIDAACI to do both full audits of assets disclosure and checks based on suspicion of unjustified enrichment. The institution remains at high risk of political and other undue influence, and its independence and accountability need to be strengthened in view of its significant potential contribution to strengthening the prevention of and fight against corruption. Regarding conflicts of interest and asset declarations, the Council of Europe’s Group of States Against Corruption GRECO stated in its fourth evaluation round report that regulations remain highly complex, and that legal certainty has been undermined by frequent amendments, which are often subject to contradictory interpretation.

In this regard, so far HIDACI had not been visualized neither by public not by other international organizations as a strong institution that can effectively combat corruption, even though last year its activity had shown quantitative progress on the number of cases investigated and the fines imposed upon subjects that had violated the law.

**I. 1. VI. Whistle-blowers Law - a new tentative approach to prevent corruption**

Pursuant to some good practices within Europe, there is an attempt in Albania to draft the law on Whistle-blowers (*ringing the bell* - a phrase used in Netherlands), which means bringing forward of things that are wrong in a public institution or company. This was an initiative from Netherlands Embassy experts' and relevant Albanian state institutions (*National Coordinator for Anti-corruption and Ministry of Justice*)\(^{22}\). Draft law had been prepared together with a group of experts of Utrecht University, who have also conducted research on the best existing experiences within Europe.

The current draft seems very innovative and comprehensive. An important aspect of it, is that provides for an 'implementation phase' chapter, which will be crucial and also the mostly difficult part. Draft law anticipates to fully comply with current Albanian legislation, by

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\(^{22}\) For more info see http://albania.nlembassy.org/organization/blogs/albanian-whistleblowers-draft-law-in-process.html - funded by the Dutch Rule of Law Programme.
guaranteeing on one hand the principles of transparency and the right of individuals to address corruption, and at the same time the confidentiality, data protection and privacy principles, by reflecting a sound balance of these principles.

Another aspect of interest is that the draft law involves public administration, as well as the private sector, based upon the fact that companies that have clear internal complaint mechanisms, tend to have more respect for the rights of their workers and human rights in general. Throw this law, is anticipated the development of a system where there is more protection and proper investigation, and as consequence less fear to talk. On this regard, everybody is expected to be on board and create a climate where an act of corruption is highly unacceptable, rather than something that is noticed every day.

So far the draft seems to be ready for approval, but since it reflects an innovative approach for Albanian society and a new mentality, it might be difficult to be fully applied in practice.

II. Educational issues - importance of teaching anti-corruption courses and challenges while designing the course

'Combating corruption (in the justice system) is not realized only with political campaigns and rhetoric, but with strong political will, collectively and with thoroughly preventive, educational, organizational and structural measures, as well as through the application of criminal punishment, and bringing before justice in particular senior public and justice officials.\(^{23}\) Combating corruption seems to be an 'wide-ranging' approach, it seems to be a 'war' structured by many battles and in many directions, at the same time in order to be effective and achieve results. Educational measures and approaches are one of these many directions, through which students could cultivate the knowledge on anti-corruption issues, policies, and also be educated with some civic-democratic values, which are important for preventing corruption.

II. I. Is there any specific reference on educational issues of anti-corruption?

Educational approach had been in the focus of UNCAC\(^{24}\), which had been ratified by Albania and therefore is a binding legislation, where in Article 7/(d) provides that 'Each state party shall,
where appropriate and in accordance with the fundamental principles of its legal system (d) promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions'. In this regard, as in many other disciplines, including law, anti-corruption issues should be part of education and training modules - the concern is at what level and stage of education such curricula could be taught. Considering the level of corruption in Albanian society, the best approach is to start to talk about anti-corruption issues in classes once you start talking on issues such as democracy, rule of law, rules according to which are governed cities, states, institutions, code of ethics, etc, even with some very basic level of knowledge of anti-corruption legal background, international standards and legislation on these issues, the role of the government and other institutions that deal with anti-corruption issues, the bad influence of corruptive practices, the law enforcement agencies - the course could be as broad, or as narrow as deemed by the school teaching authorities.

UNCAC, also in Article 13, which proclaim participation of society in anti-corruption issues provides that 'Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by: (c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula'.

As UNCAC manifest, school and university dedicated curricula on anti-corruption educational programs, represents only a part of the promotion of active participation of all people, as individuals or organized in different entities, either being part of public administration or private sector, since the foremost goal of all activities is to raise awareness on corruption issues, as well as in final stage to prevent and combat it. In this regard, anti-corruption courses and curricula could also be taught and discussed in a more condensed fashion or in sections also out of school’s
(high schools and colleges) auditorium, with different communities, non-government organizations, journalists, or other professional organizations to address people's concern on corruption issues and how it could be prevented and/or combated.

When it comes to universities, especially law schools and other social-oriented profile higher education institutions, is of crucial importance that corruption/anti-corruption issues could be broadly and deeply discussed in dedicated curricula, since these entities prepare future public and private officials and specialists to serve to public. Anti-corruption curricula, in their designing stage, require an 'all inclusive' approach in the sense that they are to be structured and elaborated by legal perspective, social, economic, political, philosophical, and/or other perspectives, as per the target groups of students and their interest or specialization. Recently in Albania had been established the School of Public Administration25, that aims to train the current public administration staff as well as prepare in terms of initial training also future public official of all levels. In this regard, a dedicated training and/or module for anti-corruption issues, would be more than useful to be taught, in an 'all inclusive' fashion module, adjusted according to public official work profile as well as their ranking hierarchy. The same dedicated module on anti-corruption issues could be applied also in specialized Albanian Training Institutions, such as School of Magistrates26 and School of Advocates, as per their specific programs, in both initial and continuous training programs. Therefore prosecutors, judges, attorneys, would have deeper knowledge as well as a better perspective on anti-corruption issues.

Important recommendation of the Council of Europe is the consolidation of educational work with the public and especially with the youth to boost their awareness for reporting any corruption cases in the justice system. A crucial assistance to prevent corruption in judiciary authority can be provided by media, TV, press etc. The role of lawyers is also decisive for the prevention of corruption practices at the justice system. In this regard, the entities whose major focus is training of public officials and/or legal professionals, could serve as centers of excellence since have all the required potential to organize legal education of the public through legal

25 ASPA / Albanian School of Public Administration  http://aspa.gov.al/al/
26 For more refer to 'Overall Assessment of the Anti-corruption Framework in Albania (ACFA) -The anti-corruption set-up in albania: Findings and Conclusions, January 2015, 'Investigation, prosecution and adjudication', pg. 26-29.
awareness practices (via publications, seminars, conferences etc.), in cooperation with the Law Faculties (public and private).

Anti-corruption curricula could not only be designed based on criminal law provisions that list all criminal behaviors on corruption but in a much more broader context. It could include also the international law and standards, regional legal framework on anti-corruption issues, the role of Government /Executive Power on the matter along with dedicated institutional structures and in-line Ministries, the role of prosecution office and the investigative procedures on anti-corruption issues, the role of judiciary, the role of law enforcement agencies, the role of public and private official in preventing corruption, the role of investigative journalism in corruption cases, the role of civil society organizations on public awareness campaigns and/or training their target community/audience, as well as other issues reflected from other prospectives such as social, political, economical, development, transition, historic, apart from the legal prospective. These curricula could be developed and taught on regular classes as well as in online platforms, such as the courses offered by RAI / Regional Anti-corruption Initiative.27

The undergoing reform on the judiciary in Albania and in all other sectors for improving the efficiency and increasing the professionalism of public and private services by avoiding corruptive practices, reveals one angle of the approach to comply with EU tradition and core values of European integration. This first approach is a direct one, aiming to tackle corruption and heal in the best way possible the wounds it had caused for so long in Albanian society. The second complementary angle of the approach, is the instigation of 'education philosophy' on anti-corruption issues, policies, EU standards, and most recent developments in this area, on the purpose of preventing corruptive practices. Albanian society is also interested to take preventive measures against corruption rather than its occurrence and punishment of persons. The people’s philosophy 'prevention is better than cure' is a guiding principle for preventive measures against corruption cases. Recommendations of the Council of Europe have attached primary importance to the prevention of corruption through comprehensive social, economic, education and cultural

27 For more see http://rai-see.org/online-training/ - Online courses are offered on topics such as:
- Concepts and definitions of corruption and anti-corruption;
- Linkages between anti-corruption and development;
- Norms, standards and frameworks at the global, regional and country level to fight corruption and
- UN’s niche in anti-corruption programming using UN Convention against Corruption as an entry point
reforms of the justice system and other sectors of the society. These reforms underlie the general prevention concept\textsuperscript{28}.

Finally we can conclude that corruption has gained significant attention in development discourse and practice. While anti-corruption training is identified as a useful approach to fostering the development of broad-based alliances for demanding reform and addressing demand side anti-corruption issues (\textit{in the public and private sector and in civil society}), anti-corruption training is still very much in its infancy; anti-corruption training has not yet been mainstreamed into traditional development assistance (e.g. technical assistance); and also within development agencies there is scope for increasing anti-corruption training and broadening the audience\textsuperscript{29}.


\textsuperscript{29} For more info see Anti-Corruption Training and Education, U4 Brief, CMI Anti-Corruption Resource Centre.
III. Conclusions

As discussed above, Albania suffers a high level of corruption in all sectors, especially in public administration. Corruption and the domino effects it constantly produces has gained significant attention in development discourse and practice. Anti-corruption training is identified as a useful approach to fostering the development of broad based alliances for demanding reform and addressing demand side for anti-corruption issues, in the public and private sector as well as in civil society. Anti-corruption training has not yet been concepted and mainstreamed into traditional development assistance therefore not yet fully integrated in universities and/or schools curricula's.

Nowadays, Albania is undergoing a robust reform in judiciary, which naturally comprises also fight against corruption in justice related sectors as well as other public institutions and private sectors. In this regard, it would be of crucial importance that students in general and more specifically law students be well-informed and educated with the reforms' standards, with the theoretical and practical approach of prevention and fight against corruption, and all related issues/topics of interest. All these knowledge could be delivered in a more fashionable and well-designed university course that could be easily absorbed and debated over in universities auditorium, especially in law schools by legal experts and professionals in the field. As described along the paper, there are many faces of corruption, and therefore many ways and initiatives taken by Albanian institutions along with international institutions to prevent and combat corruption. In this regard, anti-corruption efforts in line with EU requirements and standards should be reflected in anti-corruption university curricula, in the broader specter of public policy making, falling more and more under the sphere of public law developments, rather than being considered solely and exclusively as a matter of criminal law.

Recently in Albania had been established the School of Public Administration' which could accommodate a dedicated training and/or module on anti-corruption issues, to be taught, in an 'all inclusive' fashion module, adjusted according to public official work profile as well as their ranking hierarchy. The same dedicated module on anti-corruption issues could be applied also in
specialized Albanian Training Institutions, such as School of Magistrates and School of Advocates, as per their specific programs, in both initial and continuous training programs. Therefore all legal professionals (prosecutors, judges, attorneys, etc.) would have deeper knowledge as well as a better perspective on anti-corruption issues.

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