

7th ICAC Symposium
Fighting Corruption – A New Perspective

**Fighting international bribery - successes and
failure**

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Which are the most corrupt countries in the world?

CPI 2018
(position)

TI GCB
(% of people
paying bribes)

WB WGI 2015
(control of corruption-
- percentile rank)

Somalia (180)
South Sudan (178)
Syria (178)
Yemen (176)
North Korea (176)
Sudan (172)
Guinea Bissao (172)
Equat. Guinea (172)

Yemen (77%)
India (69%)
Liberia (69%)
Tajikistan (50%)
Cameroon (48%)
Morocco (48%)
Sudan (48%)
Nigeria (48%)

South Sudan (0,5)
Lybia (1,0)
Somalia (1,4)
Syria (1,9)
Sudan (2,4)
Yemen (2,9)
Angola (3,8)
Afghanistan (4,8)

Which are the least corrupt countries in the world?

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WB WGI 2015
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Denmark	(1)	UK	(0%)	New Zealand	(100)
New Zealand	(2)	Japan	(0,5%)	Finland	(99,5)
Finland	(3)	Botswana	(1%)	Norway	(99)
Singapore	(3)	Mauritius	(1%)	Sweden	(98,6)
Switzerland	(3)	Sweden	(1%)	Denmark	(98,1)
Sweden	(3)	France	(2%)	Switzerland	(97,6)
Norway	(7)	Hong Kong	(2%)	Singapore	(97,1)
Netherlands	(8)	Portugal	(2%)	Luxembourg	(96,6)
<i>Hong Kong</i>	<i>(14)</i>				

Perception VS hard data

Simple question: can a long series of unreliable surveys produce reliable information?

Simple fact: at a certain stage, perception (=virtual reality) turns into a (real) reality.

Monitoring of international AC standards

- Global: UNODC IRM (implementation of UNCAC), weak monitoring system
- Global: OECD WGB (implementation of the OECD Convention), „gold standard“ of monitoring
- Regional (Europe): Council of Europe GRECO (implementation of Council of Europe AC standards), strong monitoring system
- Regional (Americas): OAS MESICIC (Implementation of the Inter-American Convention against Corruption), weak monitoring system

OECD Working Group on Bribery

- 44 members
- monitoring conducted through 2 peers from the group
- evaluations divided into four phases (the first one dealing with initial assessment of countries' national legislation, the second one with the assessment of practical application and implementation of the OECD Convention and related documents, the third one with up-to-date assessment of the countries' structures to implement the Convention and 2009 Recommendation, and the fourth – current - one, with tailor-made approach on progress on recommendations from previous phases, detection of foreign bribery, enforcement of foreign bribery and engagement with legal persons)
- on-site visits are mandatory
- there is a rigorous follow-up on the implementation of recommendations and sanctions (mainly „blame and shame“) are provided
- full texts of the reports are published (in French and English)

Exporting Corruption: Transparency International Progress Report 2018 on the enforcement of the OECD Anti-Bribery Convention

Since 1999*:

- 22 countries with 39,6% world exports with little or no enforcement (China, Japan, South Korea, Hong Kong, Singapore, India, Russia, Spain, Belgium, Mexico, Ireland, Poland, Turkey, Denmark, Czech Republic, Luxembourg, Argentina, Chile, Israel, Slovak Republic, Finland, Colombia, Slovenia, Bulgaria, Estonia)
- 11 countries with 12,3 world exports with limited enforcement (France, Netherlands, Canada, Austria, Hungary, South Africa, Chile, Greece, Argentina, New Zealand, Lithuania)
- 4 countries with 3,8% world exports with moderate enforcement (Brazil, Australia, Sweden, Portugal)
- 7 countries with 27% world exports with active enforcement (US, Germany, Israel, Italy, Norway, UK, Switzerland)

* Costa Rica, Iceland, Latvia and Peru are not listed

Investigations in numbers

OECD WGB statistics on foreign bribery as of December 2016:

443 individuals and 158 entities were sanctioned under criminal proceedings between 1999 and the end of 2016

At least 125 individuals were sentenced to prison

At least 121 individuals and 235 entities were sanctioned in different proceedings for other offences related to foreign bribery (ML, accounting) in 8 Parties

At least 53 individuals and 95 entities have been sanctioned in administrative and civil proceedings for foreign bribery in 4 Parties

Around 500 investigations in 29 State Parties were taking place at the end of 2016, the same as prosecutions against 125 individuals and 19 entities in 11 State Parties

Some facts about international bribery cases*

- The four main sectors involved in foreign bribery cases are the extractive (19%), construction (15%), transportation and storage (15%) and information and communication (10%) sectors.
- Almost half of the cases involved bribery of public officials from countries with high to very high levels of human development.
- In 41% of cases, management-level employees paid or authorised the bribe, whereas the company CEO bribed in 12% of cases.
- Bribes were promised, offered or given most frequently to employees of public enterprises (27% of cases), followed by customs officials (11%), health officials (7%) and defence officials (6%).
- In the majority of cases, bribes were paid to obtain public procurement contracts (57%), followed by clearance of customs procedures (12%).
- The bribes were considerable: on average, bribes equalled 10.9% of the total transaction value and 34.5% of the profits.
- One in three cases came to the attention of authorities through self-reporting by defendant companies or individuals. The next most common sources were law enforcement authorities (13%) and mutual legal assistance between countries (13%).
- Companies that self-reported became aware of the foreign bribery in their international operations primarily through internal audits (31% of cases) and merger and acquisition due diligence procedures (28% of cases).
- Prison sentences were handed down only to 80 individuals who were found guilty of foreign bribery; the longest combined prison sentence imposed to date in a case involving a conviction for conspiracy to commit foreign bribery is 13 years for one individual.
- In total, there were also 261 fines imposed on individuals and companies, with the highest combined fine against a single company (Siemens AG) totalling EUR 1.8 billion.
- The highest monetary sanction imposed against an individual in a foreign bribery case was a forfeiture order amounting to USD 149 million.

Additional problem with the demand side

WGB findings from December 2018:

- enforcement actions do take place on the demand side, but public officials are known to have been sanctioned in only one fifth of the 55 schemes covered by the survey,
- the information flow between demand-side and supply-side enforcement authorities is often slow,
- exchange of information between demand-side and supply-side enforcement authorities was not a source of detection in this sample of cases,
- the media plays a major role in international information flow,
- sanctioning public officials for bribery poses the same enforcement challenges as sanctioning supply-side briber (insufficient evidence, statute of limitations,..),
- demand-side actions occurred mainly under criminal law; disciplinary actions under administrative law are reported to be rare.

Current problems in the global AC efforts

- absence of mandatory provisions in the UNCAC (i.e. articles 18, 19, 20, 21, 22, 24, 33,..)
- some countries don't want to join global AC efforts and use this as a competitive advantage
- some countries join the global/regional AC efforts only to protect their image
- countries' „anti-corruption“ activities are sometimes directed towards other goals (e.g. for protection of economic interests of companies or countries, for elimination of political competitors, economic espionage,..)
- due to their sovereignty it is impossible to force countries to do something in the AC area (and they know it!)
- fighting corruption seriously is a real and genuine priority only of a limited number of governments
- in Europe, accession to the EU has proven to be the strongest incentive for countries to fight corruption, however, after the accession the motivation has gone. Still, some countries are engaging a lot in the last years (France, the Netherlands, Germany, Lithuania, Latvia,..)
- there are no substantial standards in many important areas (whistle-blowers' protection, negotiated agreements,..)
- 60% of international bribery cases involving legal persons end with negotiated agreements, whereby responsibility of individuals is very often simply „forgotten“
- despite the fact that there will be no significant development in the AC efforts without involvement of the private sector, governments still do not accept companies as equal partners in those efforts
- the key for successful AC activities in the future is proper engagement of the private sector
- constant threats to successful AC agencies
- AC „industry“ itself is exposed to corruption risks
- lack of equal treatment of all countries of the world
- sustainability of AC measures is not ensured

Consequences of growing nationalism?

- some developments in Central Europe (Hungary, Poland, Romania,...) are extremely worrying,
- those countries are stepping away from the already achieved international anti-corruption and rule-of-law standards under the pretext of sovereignty,
- when confronted with pressure of international organisations, they support each other uncritically, sometimes blocking the whole decision-making process (invented in „normal“ times for „normally behaving“ countries) of those organisations,
- at a closer look it becomes very clear that referring to anti-globalism („my country first“, „sovereignty above all“, „Sorosists are dangerous“,...) in the area of anti-corruption is nothing else but a cover up for very questionable, sometimes even corrupt practices of those governments.

The OECD (WGB) is developing new standards

.....mainly in the area of liability of legal persons through:

- positive incentives for developing and maintaining compliance programs, for voluntary self-disclosure (USA!) and for full cooperation with law enforcement authorities
- basic principles on non-trial resolutions (settlements)
- improving cross-border cooperation (especially in multijurisdictional cases),
- enhancing the system of sanctioning („harmonisation“ between different countries),
- recognising different preventive efforts (i.e. high level reporting mechanisms (Colombia, Ukraine), collective action (e.g. Fair Player Club in Korea), education and continuous training, building real culture of integrity).

The most popular proposals (February 2018)

International cooperation, including mutual legal assistance

Multijurisdictional cases

Whistle-blowers' protection

Voluntary disclosure of foreign bribery allegations

Liability of legal persons

Transparency of beneficial ownership

Asset recovery

Detection

Guidance for companies: risk management, compliance, internal controls, self-reporting

Negotiated settlements

Independence of law enforcement

Incentives for anti-bribery compliance

Cooperative witnesses and investigative means

Sanctions for natural and legal persons, including confiscation and debarment

Measures to prevent foreign bribery

Evidentiary requirements in foreign bribery cases

Quantification of the proceeds of foreign bribery

Demand side/bribery solicitation

The OECD (WGB) also developed new „sanctions“ for non-compliant countries

Such as:

- diplomatic interventions,
- refunding of unnecessary costs,
- internal increased due diligence warning,
- external increased due diligence warning,
- publication of the most important non-implemented recommendations.

In addition to what we already have:

- repetition of monitoring phases,
- different letters to national authorities,
- public statement,
- high-level mission.

Solutions?

- educating politicians and calling them to responsibility
- „production“ of young anti-corruption fighters should never stop
- building and using public support is important
- understanding that without strict application of the rule of law equally against all perpetrators there will be no respect for preventive measures
- achieving positive results in the fight against corruption will enhance citizen's trust into their governments, which will have positive consequences in many other areas
- understanding that governments (in the widest sense), private sector and the NGOs share the responsibility for fighting corruption
- not only talking about fighting corruption but also doing it
- changing terminology from „fighting corruption“ to „increasing integrity“ sometimes helps
- fighting corruption is a marathon, not a sprint (and our enemy never sleeps!)
- the world is changed by millimeters, not by meters
- giving up (in the fight against corruption) is not an option

THANK YOU!

Questions?

Suggestions?

Comments?

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