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[Global Corruption Report 2007] Enforcement of anti-corruption laws

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12 Enforcement of anti-corruption laws: the need for performance monitoring

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Central to any successful comprehensive anti-corruption policy is the deterrence of corrupt behaviour. Allegations of bribery, influence peddling, money laundering and other violations must be investigated and, when the evidence warrants, prosecuted. Courts must expeditiously, but fairly, adjudicate the resulting cases, and the penalties imposed on those convicted must be sufficient to dissuade others from similar acts.

To ensure that anti-corruption laws are indeed being effectively enforced, governments need to begin monitoring the enforcement process. Enforcement data can help administrators discover trends and allocate limited resources based on actual enforcement activities and developments rather than on perceptions. Bottlenecks in processing individuals through the various steps in the criminal justice system can be identified and resources allocated to relieve them. Statistical outliers and precipitous trends can help identify areas warranting further investigation and possible corrective action.

The World Bank is developing tools to help countries improve the ways in which they monitor the enforcement of their anti-corruption laws.² Preliminary work discloses a number of issues that complicate the effective monitoring of enforcement. In some countries corrupt officials may be charged with bribery but end up being convicted of, or agreeing to plead guilty to, tax evasion or lying to the police. Without careful cross-checking of data, such cases may be incorrectly catalogued. Nor is the criminal law the only avenue of enforcement. Public servants guilty of corruption are typically fired and often lose their pensions and other accrued benefits under administrative proceedings. A complete picture of the enforcement regime must pick up such non-criminal actions as well.

Despite these challenges, an objective in the monitoring of anti-corruption laws is to provide performance measures that can be acted upon. These are in contrast to such indicators as perceptions of corruption. At least in the short run there is very little policymakers can do to change perceptions of corruption. By contrast, an actionable indicator is one that is within a country's power to address. Thus, if a country finds that it has an inordinately low rate of convictions for corruption offences, it can improve its score by such steps as providing better training to prosecutors and judges and more carefully selecting cases for prosecution.

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2 This work is supported by the Dutch government.

An important part of the World Bank's project involves the development of a body of data that will capture, by way of two or more indicators, tangible efforts to enforce corruption legislation, as well as a nation's commitment to monitoring enforcement and realisation of anti-corruption goals. To this end the Bank is focusing on the primary government corruption enforcement institutions – anti-corruption agencies, prosecution services, and the courts. The World Bank research is then asking: To what degree are they investigating and prosecuting allegations of corruption? What percentage of complaints is investigated? How many investigations mature into prosecutions? How many result in convictions? And within this, are anti-corruption institutions monitoring these questions and to what degree and certainty?

Results

The data below illustrate some of the corruption enforcement monitoring results to date. Table 1 contains some enforcement statistics from anti-corruption agencies. These agencies are often created as an independent investigative commission, other times a special division of the president's office. It can be seen that Nigeria's anticorruption agency gathers data at each stage of the enforcement process – from investigation all the way to conviction or acquittal. Data posted on the agency's website show that in 2005 the government initiated 209 investigations. That same year prosecutions were begun in 14 cases, and one court case ended with an acquittal. In contrast, Colombia has an anti-corruption programme run from the president's office, but no agency that specifically monitors or reports enforcement levels.

Table 2 indicates the results for another corruption enforcement institution, namely that for the prosecutor's office of the government. Prosecutorial offices of government are largely responsible for enforcement of national corruption laws; however, few have taken the steps necessary to increase enforcement, or to actively set and monitor enforcement objectives. The mandate of more powerful corruption agencies often overlaps with prosecutors' offices, but rarely to the extent that they usurp all corruption enforcement responsibilities of the office. Thus it is important that countries have monitoring at both agency and prosecutor's office level. The data in Table 2 indicate, again, varying treatment across the sample countries. While Armenia monitors corruption investigations and prosecutions to the conviction level, Colombia monitors only up to the prosecution level. Further, while Nigeria's anti-corruption agencies monitor at all levels, its prosecution office does no reporting.

Enforcement monitoring is not a panacea. The collection and publication of enforcement data could encourage informal quotas and therefore provide a perverse incentive for unwarranted enforcement actions. A functioning and independent judiciary is one safeguard against this concern. A second is appropriate policies on promotion and publishing of data, with sufficient aggregation and time lag so as not to place perverse incentives on current law enforcement activities. Aggregation of data and delay in publication can also address any concern that publication of enforcement statistics could compromise current investigations.

Enforcement statistics can also be easily misinterpreted. They are not reliable indicators of the prevalence of corruption because their variation may result from contradictory causes.

Prosecution rates may decrease because there is less corruption to prosecute. They may increase because of greater citizen cooperation, better detection, or an increase in actual corruption. Tracking the number of investigations and prosecutions also does not address the quality and merit of these enforcement activities. Investigations and prosecutions for political purposes and without regard for due process can occur under the guise of anti-corruption efforts. The data must therefore be reviewed in combination with a country's human rights record and the due process rights afforded to the accused.

Yet, with all these caveats, it is clear that better, more comprehensive monitoring of the enforcement of the anti-corruption laws is a necessary element in an anti-corruption programme.