U4 Expert Answer

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Anti-corruption commitments for developed countries

Query

We are interested in measures and approaches that fall under the category of "anticorruption through the North", i.e. actions developed countries like Germany could/should take in their own country to reduce the likelihood of corruption occurring in partner countries. How well is Germany doing?

Purpose

The German Government is seeking information for the updating of its anti-corruption strategy for German development cooperation.

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Summary

In an increasingly globalised world, there is a broad consensus that developed countries have a key responsibility to prevent international corruption and promote a better use of resources. Three major levels of interventions can be envisaged in this regard.

The first level of intervention consists of addressing the supply side of corruption by applying global anti-corruption conventions and initiatives at home. The aim is to tackle bribery and corruption in the private sector as well as to address weak transparency and accountability in international trade, taxation and export credit regimes that may facilitate corruption. Targeting the supply-side of corruption can be done by supporting the ratification and full implementation of legally binding international anti-corruption instruments or supporting voluntary initiatives such as the OECD guidelines for multinational enterprises, the UN Global Compact or the Extractive Industries Transparency Initiative (EITI). Germany has somewhat of a mixed record in this regard. While the country is an active enforcer of the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions, it is one of only two G8 countries that has yet to ratify the UN Convention against Corruption (UNCAC).

Combating money laundering and closing international loopholes that facilitate tax evasion and illicit flows is a second important dimension that developed countries should incorporate into their anti-corruption efforts. While Germany is committed to strengthening its anti-money laundering framework, it is not fully in line with the FATF recommendations, especially with regard to sanctioning for non-compliance with anti-money laundering requirements. Moreover, Germany's efforts

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to curb tax evasion, while improving in recent years, are largely lagging behind the recommendations of international expert groups and non-governmental organisations (NGOs).

Thirdly, development assistance can also contribute to support the fight against corruption by creating positive incentives for change, ensuring the transparency of aid flows, promoting a policy dialogue on governance and supporting partner countries' efforts against corruption. Among these areas, Germany could strengthen its efforts in terms of aid transparency which emerges as a fundamental element of aid related anti-corruption interventions. While Germany is a member of the International Aid Transparency Initiative (IATI), a global standard for disclosure of flows, it still has yet to fully implement the agreement's measures.

Introduction: Anti-corruption as an international issue

The reduction of trade barriers that is part and parcel of the globalisation process and the related free flow of goods, people, and money have created new incentives and means for worldwide corruption, with a devastating impact on emerging economies. As developing countries become more involved in the world economy, multinational firms can threaten the integrity of global markets and undermine governance and corruption within developing countries by engaging in large scale bribery in international transactions. Corrupt leaders can also use the international financial system to divert national wealth for their own benefit as well as conceal the proceeds of corruption and illicit gains in financial centres around the world. Finally, companies may use existing financial regulations and loopholes to facilitate tax evasion, withholding revenues that are fairly entitled to the governments of the countries where they have operations – and which could go towards development.

At the same time, globalisation has also contributed to exposing the extent to which corruption is embedded in international economic exchanges. Given the transnational nature of bribery and corruption in the global economy, there is a growing awareness of the necessity to fight corruption equally on a global scale. Subsequently, a number of international instruments have been adopted by the international community to address both the supply and demand side of corruption.

There is a broad consensus that developed countries have a key responsibility to prevent international corruption and promote the better use of resources. A report issued by the Africa All Party Parliamentary Group, a network of UK parliamentarians concerned with Africa, reflects this concern. The report offers recommendations on how the UK could improve its efforts to prevent and combat corruption in Africa (Africa All Party Parliamentary Group, 2006). The report envisages three major areas of intervention:

1) Tackling the supply side of corruption;
2) Tackling the laundering of the proceed of corruption;
3) Safeguarding aid from corruption to make sure that it is not lost to corruption or does not inadvertently support corrupt leaders.

Among other recommended measures, the report calls for taking appropriate measures to reduce the risk of UK businesses engaging in bribery in developing countries, strengthening the ability of the UK and its Dependencies and Overseas Territories to return assets taken from developing countries, and coordinating in a better way the anti-corruption activities undertaken by different government departments and enforcement agencies.

The anti-corruption action plan approved by the Group of 20 countries (G20) at their meeting in Seoul in 2010 echoes these concerns. It calls for the adoption and enforcement of laws against foreign bribery, international cooperation in preventing illicit flows into G20 financial markets, tracing and recovering stolen assets and the protection of whistleblowers (G20, 2010). Building on existing international instruments, the action plan contains a commitment to ratify and fully implement the United Nations Convention against Corruption (UNCAC), including its provisions on foreign bribery, anti-money laundering, asset recovery, extradition, access to information, civil society participation and whistle-blower protections.

These two efforts by countries point to key areas of concern for the North to address and develop measures to mitigate. The following sections develop them further.

1 Applying global anti-corruption instruments at home

Developed countries must address the supply side of corruption. This involves combating bribery and corruption in the private sector as well as understanding

how international trade, taxation and credit regimes facilitate corruption. It also requires that domestic institutions meet international standards to effectively prevent corruption and enforce regulations at home.

The OECD acknowledges the need for these actions on the part of developed countries by stating "*Donors recognise that corruption is a two-way street. Action is needed in donor countries to bear down on corrupt practices by home-based companies doing business internationally. (…) Donors need to work more effectively within their own domestic environments with key relevant departments responsible for trade, export credit, international legal cooperation and diplomatic representation, as well as with the private sector*". (OECD, 2006).

Given this imperative, a number of international instruments – both legally binding and voluntary – have been developed in recent years to promote a common approach to anti-corruption at the global level that brings together the demand and supply dimensions.

Legally binding international anti-corruption conventions

By setting out an international framework of internationally agreed rules and standards, anti-corruption conventions provide useful tools for development assistance agencies concerned about corruption, providing guidance for anti-corruption work at the country level as well as facilitating international cooperation in the control and sanctioning of corruption (see U4 convention theme page). Donor agencies can use international agreements to check the performance and raise the standards of domestic institutions by making sure that they are fulfilling their obligations under the various conventions they are party to. This can increase donors' credibility when requiring effective action against corruption in partner countries. Conventions can also provide relevant standards for the work of donor agencies, including by taking into account provisions on procurement, public finance management, civil society participation, codes of conducts, the hiring of public officials, etc.

OECD Convention on Bribery of Foreign Public Officials in International Business Transactions

The OECD Convention is focused on addressing the supply side of bribery. It covers a group of countries that account for the majority of global exports and foreign investment. It obligates signatory states to define foreign bribery as a crime and to punish acts of bribery in international business. The Convention also requires states parties (i.e. countries ratifying or acceding to a convention) to establish the liability of companies and to prohibit accounting practices that use deductions (i.e. facilitation payments) or other methods to account for or to hide the bribing of foreign public officials. Finally, the Convention contains provisions on anti-money laundering and international cooperation. A follow-up review process has been established to monitor and promote the full implementation of the convention.

The Convention was ratified by Germany in 1998 and came into force in 1999. In Transparency International's sixth annual Progress Report on Enforcement of the OECD Convention (2010), Germany performs very well, being one of the only seven "active enforcers" of the convention. This was based on the fact that 117 major cases (on a cumulative basis) have been pursued in court, of which 93 have been concluded and 30 have led to convictions (Transparency International, 2010a).

The report also identifies areas where the country could improve, including:

- The significant inadequacies of the legal framework, including lack of criminal liability for corporations and inadequate sanctions;
- Some (not significant) inadequacies in the enforcement system;
- Access to information about cases and investigations, as neither the federal Government nor individual *Bundesländer* (states) report on foreign bribery cases and allegations;
- Facilitation payments, which are not prohibited by law for foreign bribery, only for domestic bribery.

The report concludes by providing a set of key recommendations, including the ratification and implementation of UNCAC and the two Council of Europe Conventions on corruption, the introduction of criminal liability of legal persons, strengthening the rules of export credit insurance on bribery and establishing a central register for the purpose of debarring corrupt companies from public contracts.

The Council of Europe convention and anti-corruption instruments

The Council of Europe (CoE) has developed several anti-corruption related instruments for its member

states. The CoE Criminal Law Convention lays out what states parties should do in the areas of criminalisation and international cooperation. The CoE Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. In particular, it requires states to provide legal remedies, including compensation, for persons who have suffered damage as a result of acts of corruption. Other anti-corruption related instruments include the "Twenty Guiding Principles in the Fight against Corruption", the "Recommendation on Codes of Conduct for Public Officials" and the "Recommendation on Common Rules against Corruption in the Funding of Political Parties". The Group of States against Corruption, GRECO, was conceived as a flexible and efficient follow-up mechanism for the Convention and related instruments. It is tasked to monitor the observance of these anti-corruption frameworks, through a process of mutual evaluation and peer pressure[1].

Germany signed the Council of Europe Criminal Law Convention on Corruption when it was introduced in 1999. In December 2009, GRECO published its *Third Evaluation Round Report on Germany*, which criticised the fact that most German bribery offences (including for foreign bribery) are too narrowly defined and should be expanded. The GRECO report also indicated that "*a particular source of concern is the fact that certain categories of persons (including members of parliament and local council members who are not officials) are subject to limited anti-corruption provisions. This could generate the impression, within the wider public, that parts of German society are not subject to the same rules as the rest of the population, when it comes to the preservation of integrity in social, political and business relations*" (GRECO, 2009).

Among its 20 recommendations, GRECO urges Germany to broaden the incrimination of active and passive bribery of parliamentarians, foreign public officials and persons employed at the international level. It also urges German authorities to broaden the incrimination of bribery in the private sector, criminalise trading in influence and harmonise and extend the rules on the jurisdiction of Germany over corruption offences. In the second half of 2011, GRECO will assess the implementation of these recommendations.

UNCAC

UNCAC provides a global framework to prevent, criminalise and prosecute corruption and to enable countries to help each other with mutual legal assistance and asset recovery. To date, it is the most promising anti-corruption instrument at the international level, comprehensive in its coverage and detailed in its measures. The Convention obliges states parties to implement a wide range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, detection and sanctioning of corruption, as well as the cooperation between state parties on these matters. Of all existing anti-corruption conventions, the UNCAC has the most extensive provisions on the ways, means and standards for preventative measures to combat corruption in the public and private sectors.

As such, UNCAC provides a model for anti-corruption legislation and a framework for mutual assistance and information exchange, as well as an international benchmark to help advance domestic reforms. The Convention contains standards that were negotiated and agreed upon by a vast number of nations, helping to establish global rules and standards on corruption. UNCAC also helps to foster better coordination and increased policy coherence of anti-corruption strategies, both at the national and international levels. The Convention takes into consideration the responsibilities of both partner and donor countries and calls to address both the demand and supply side of corruption. It can be used as a useful common reference in donor/partner policy dialogues on corruption, particularly when it comes to discussions about aid and corruption.

Germany signed the UNCAC in 2003 but has not yet ratified the Convention. Of the G20 countries, only Germany, India, Japan and Saudi Arabia have not fully ratified the UNCAC. Among the G8, it is only Germany and Japan that have failed to ratify it.

The UN Convention against Transnational Organised Crime (UNCTOC)

Adopted in November 2000, UNCTOC recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat it. In terms of prevention, the Convention calls for effective measures to promote integrity, prevent the corruption of public officials and

[1] Full membership of the GRECO is reserved for those who participate fully in the mutual evaluation process and accept to be evaluated.

provide public authorities with adequate independence. It also requires states parties to criminalise corruption and implement effective measures to detect and punish the corruption of public officials. UNCTOC criminalises money laundering and establishes a domestic regulatory and supervisory regime for banks and other financial institutions to combat the problem. States are also called on to fight corruption in the private sector. Finally, to address cross-border aspects of organised crime, the UNCTOC provides for a broad framework for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training. Germany signed the convention in 2000 and ratified it in 2006.

Voluntary international initiatives to combat corruption

In addition to global legal frameworks, there are voluntary instruments and initiatives that exist which have been used to facilitate changes in country and company practices when it comes to corruption, both at home and abroad. These mechanisms have helped to establish a baseline of accepted norms that the public and private sectors can prescribe to and implement in a country. While their adoption is voluntary, these measures can be effective in promoting self-regulation and raising the bar on what are considered to be acceptable operating principles.

The OECD guidelines for multinational enterprises

The OECD guidelines for multinational enterprises set out what companies can do to meet standards on human rights, labour conditions, the environment and anti-corruption. Established in 2000, they define standards of responsible business conduct that include recommendations on information disclosure, employment and industrial relations, competition, taxation and bribery, among other areas. Chapter VI on combating bribery states that enterprise "*should not directly or indirectly offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage*" (OECD, 2000). Chapter X covers the issue of taxation, stating "*enterprises should comply with the tax laws and regulations in all countries in which they operate and should exert every effort to act in accordance with both the letter and spirit of those laws and regulations*" (OECD, 2000).

While voluntary, the guidelines have proved useful in promoting corporate accountability on related issues, as they cover topics such as private-to-private bribery that are not typically addressed by international anti-corruption conventions (Transparency International, 2008).

A total of 42 nations – 34 OECD governments (including Germany) and 8 non-OECD states – have endorsed these guidelines as a basic component of corporate conduct. Signatory governments are obliged to set up a national contact point (NCP) whose function is to promote, publicise and monitor adherence to the standards as well as mediate solutions between parties in case of allegations of company misconduct. According to Transparency International, in spite of their potential for positive impact, the guidelines are not yet widely used as a tool for tackling corrupt business practices. They also face serious implementation challenges, due to the relatively limited awareness by companies of their existence, the uneven performances of many NCPs and confusion over their scope and applicability (Transparency International, 2008).

The guidelines are currently being revised to update the areas on human rights, employment and labour, due diligence, supply chains and procedural provisions. The process should conclude in 2011 (OECD, 2011).

To date, Germany has been criticised for its weak implementation of the guidelines. The national contact point, located at the Ministry of Economics, is considered to be very restrictive in applying the guidelines. Of the 15 cases submitted over the last ten years to the NCP, 60% were rejected (OECD Watch, 2010).

UN Global Compact

The UN Global Compact is a voluntary initiative that aims at encouraging responsible corporate behaviours in the areas of human right, labour and anti-corruption. The Global Compact approach is based on the understanding that businesses, as the primary drivers of globalisation, can help ensure that markets, commerce and finance advance in ways that benefit economies and societies everywhere. Business participants make a commitment to integrate the UN Global Compact's ten principles into their business strategies and their day-to-day operations.

Of the more than 6,000 businesses involved, there are currently 154 participating German companies (UN

Global Compact, 2011). In contrast, France has 620 companies that have signed up and the US and the United Kingdom each have more than 170 companies.

Governments in developed countries can encourage businesses to take a more active role in the UN Global Compact and other voluntary initiatives as well as support companies to implement their commitments.

Multi-stakeholder transparency initiatives

An emerging trend is to address global corruption challenges in sectors that are traditionally known to be vulnerable to corruption and mismanagement through the formation of global coalitions. These initiatives typically involve governments, the private sector and civil society organisations. The **Extractive Industries Transparency Initiative (EITI)** provides a good example of this approach. Established in 2002, it is a global initiative to promote and support improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas, and mining. Since its launch, several countries have committed to the initiative and many have published their EITI reports. Currently, 27 countries are "candidate" countries and five have become "compliant" countries.

Germany supports EITI by providing political, technical and financial backing for the initiative. The initiative suggests different ways in which supporting countries can advance EITI: encouraging domestic companies to sign on; encouraging resource-rich countries, through diplomatic and commercial channels, to implement it; committing to high transparency standards for the extractive sector domestically; and providing technical support in resource management to implementing countries which have low technical capacity, among other areas. Last but not least, Northern-based corporations should report their financials on a country-by-country basis, including their payments to local governments.

Based on a similar model, other multi-stakeholder initiatives have designed programmes to increase transparency and accountability in other sectors such as the **Medicine Transparency Alliance (MeTA)** or the **Construction Sector Transparency Initiative (CoST)**.

Other potential measures

There are other channels for addressing corruption and promoting a change in practices in the North apart from regulations and voluntary initiatives.

This can occur by promoting anti-corruption and transparency principles in a country's trade and investment dealings.

Governments often facilitate exports and investments by domestic businesses abroad in providing them with financial support in the form of credit or insurance. There is a risk, however, that these companies may be involved in bribery and corruption when conducting business abroad. As a result, these trade support mechanisms have the potential to export corruption (or, alternatively, promote anti-corruption efforts).

In the case of export credit agencies (ECAs),[2] it is important that they do not support companies that are paying bribes. ECAs are the largest source of public funds for private sector projects in the world. The

Guarantees agreed on an Action Statement in December 2000 and adopted detailed measures in 2006 to address these concerns. The statement urges ECAs to inform exporters of the legal consequences of bribery, requires exporters to guarantee that the contract has not been obtained through bribery and applies effective sanctions in cases of violations. However, while most ECAs now have formal anti-bribery policies, there are significant differences in implementation and approaches, as reflected in the TI report titled *Export Credit Agencies Anti-Bribery Practices 2010* (Transparency International, 2010).

To address these and related issues, the Africa All Party Parliamentary Group issued a report which calls for requiring companies receiving trade support or seeking government funded contracts to sign a no bribe warrantee. It also recommends barring those convicted of corruption offences from receiving government trade assistance, including barring their participation in trade missions (Africa All Party Parliamentary Group, 2006).

[2] Export Credit Agencies" (ECAs) are publicly financed corporations that subsidise the exports and foreign investments of their countries' corporations.

Conclusion

Beyond ratifying conventions or adopting voluntary initiatives, these commitments must be implemented and enforced at the national level. For this to happen, it is necessary to have an institutionalised system of follow up to evaluate whether the measures (binding and non-binding) are working. Donor support for monitoring mechanisms, including international or regional peer review mechanisms and civil society oversight, is very important[3].

2 Facilitating financial transparency and asset recovery

Corrupt regimes use the international financial system both to divert national wealth for their private gains and to conceal the proceeds of corruption. Others, both companies and individuals, use the system to evade taxes or launder illicit gains. Illicit flows from the developing to the developed world are estimated at between US$ 850 billion and US$ 1 trillion a year by Global Financial Integrity, a US-based think tank. This is nearly ten times the amount of official development assistance (ODA) that developing countries receive.

The funds which are moved across borders originate from three sources: i) bribery and corruption; ii) criminal activity; and iii) commercial tax evasion.

These illicit flows are facilitated by loopholes in the international financial system, the system's opacity and the lack of enforcement of due diligence requirements both in secrecy jurisdictions and in major financial centres. Global Witness has exposed how some of the world's largest banks have facilitated corruption and the looting of state assets in resource rich countries (Global Witness, 2009). The findings, published in a report, show that without access to the international financial system, corrupt leaders would not have the means and incentives to steal and launder the proceeds abroad.

The following section will look at ways how to tackle illicit flows by addressing anti-money laundering measures. Additional actions on the front of tax evasion should be pursued, which are also linked to increased transparency of the international financial system.

Financial transparency

Anti-money laundering measures

Anti-money laundering systems can play an important role in denying corrupt officials to launder ill-gotten gains. To address this concern, the G20 anti–corruption plan contains a commitment to strengthen efforts to prevent and combat money laundering and encourage the Financial Action Task Force (FATF) to emphasise an anti-corruption agenda. The G20 plan also promises to develop a cooperative framework to deny the entry and a safe haven for corrupt officials.

At the international level, anti-money laundering (AML) regimes can also provide an external system of checks and balances to hold accountable corrupt leaders and politically exposed persons – who often enjoy impunity in their home jurisdiction due to weak law enforcement. While international AML regimes can potentially be used to prosecute corrupt politicians in foreign countries as well as freeze and return illicit assets to the victim country, their full potential as an anti-corruption tool has not yet been fully realised. For developed countries, this involves strengthening their AML systems by encouraging collaboration between financial intelligence units and anti-corruption agencies, harmonising laws on predicate offences[4] to include corruption (in the case of money laundering) and improving access to information on beneficiary ownership (Chaikin, 2010).

Anti-money laundering (AML) initiatives

The FATF was established by the G7 in 1989 as one of the major initiatives launched to address mounting concerns over money laundering. It is an inter-governmental body whose mandate is to develop and promote national and international policies to combat money laundering and terrorist financing. Its 40 recommendations, adopted in 2003, provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation (FATF, 2003). They include provisions for the criminalisation of ML, the freezing and confiscation of the proceeds of crime,

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[3] A 2008 U4 expert answer has more specifically dealt with anti-corruption conventions' review mechanisms (Chêne., 2008).

[4] A predicate offence is the criminal activity from which the proceeds of the crime are derived.

know-your-customer rules and procedures, monitoring procedures to detect suspicious transactions, and reporting guidelines to alert authorities of suspicious transactions. Although the FATF standards are not legally binding, they can be instrumental in influencing the enactment of domestic laws and practices of states.

As part of the FATF peer review procedures, Germany's compliance was evaluated in 2009. The mutual evaluation report suggests that Germany is susceptible to money laundering because of its large economy and financial centres as well as its strategic location in Europe and strong international linkages (FATF, 2010). One of the core elements of the German AML regime, the Money Laundering Act, recently has been amended (August 2008), transposing the third European Union Money Laundering Directive into national law. The Money Laundering Act (GwG), which established Germany's financial intelligence unit (FIU), imposes customer due diligence obligations on a wide range of financial institutions and requires these financial institutions to submit suspicious transaction reports to the competent authorities.

The FATF report concludes that, although Germany has introduced a number of measures in recent years to strengthen its anti-money laundering, the German ML framework is still not fully in line with the FATF recommendations. The main weaknesses lie with the legal framework and sanctions for non-compliance with AML requirements. Despite AML laws, there is evidence that some German banks have continued to do business with corrupt regimes. Global Witness, for example, has exposed the alleged opaque relationships between the Deutsche Bank and Turkmenistan's late dictator and president-for-life, Saparmurat Niyazov. Deutsche Bank reportedly allowed the regime to keep the country's oil revenue offshore and outside the national budget (Global Witness, 2009).

Combating tax evasion

As with AML measures, it is important that Northern governments set the right tone on tax evasion – in terms of policies and sanctions for companies found evading tax payments.

The Task Force on Financial Integrity and Economic Development, which includes members of governments, research and civil society, has come out with recommendations to deal more effectively with the problem. Changes would include supporting efforts to effectively block the use of opaque jurisdictions (tax havens), to ensure automatic cross-border exchanges of tax information, and to implement country-by-country accounting of sales, profits and taxes paid by companies (Task Force on Financial Integrity & Economic Development, 2011; Tax Justice Network, 2008)

In terms of Germany's performance on combating tax evasion, it is a mixed success. Germany's efforts to tackle tax evasion and increase financial transparency have been scaled up in recent years, although they have been criticised by civil society groups for being extremely lacking and not advancing changes to national regulation. For example, while the Government did launch an "International Tax Compact" in 2008 to strengthen its international cooperation with developing countries to fight tax evasion, the focus was on supporting changes abroad rather than at home.

International asset recovery

According to the World Bank, corrupt leaders of poor countries steal as much as US $40 billion each year. This looted money often is stashed overseas in developed countries and hidden in private or offshore banking centres, forming part of the international flow of illicit funds (World Bank, 2007). Both developed and developing countries have a shared responsibility in combating the theft of assets and promoting recovery initiatives to return to countries their stolen funds. Chapter V of the UNCAC provides the first global framework to address the issue of asset recovery in both developed and developing countries. It calls on states to take appropriate measures to recover property that has been acquired through corrupt means. In line with UNCAC provisions, the G20 anti-corruption plan also calls on member countries to put in place mechanisms for the recovery of stolen assets through international cooperation in the tracing, freezing and confiscating of these assets.

There are considerable challenges involved in recovering stolen assets, including locating the funds, sovereignty issues, inconsistent political will, lack of cooperation between national and international agencies, and patchy mutual legal assistance (MLA) provisions between requesting and requested states, among others (Transparency International, 2009). In addition, limited capacities (legal, investigative and judicial) as well as inadequate financial resources to pursue cases can hamper the recovery process in developing counties.

Current efforts

Several initiatives have been launched to overcome these numerous challenges in various areas:

Enacting adequate legislation: UNCAC provides a legal framework to facilitate the process of asset recovery and developed countries should enact laws that are conforming to UNCAC provisions. At the national level, countries such as the UK have passed legislation to provide effective and comprehensive powers to restrain, confiscate and recover the proceeds of crimes and to permit the civil recovery of the proceeds of unlawful conduct in the absence of a criminal conviction [5] (Transparency International-UK, 2009).

Freezing assets: In many countries, overly burdensome procedures impose delays on the freezing of assets which allow corrupt funds to disappear before the order is issued. In addition, when orders are issued, they are not always enforced. In Germany, for example, German authorities regularly use a broad range of legal procedures to seize, confiscate, and forfeit property, but they confiscate and forfeit a lot less property than for which the courts have issued orders (FATF, 2010).

Providing technical assistance and capacity building: Technical assistance and capacity building are key areas in order to support states requesting the return of assets, as well as to facilitate their return on the part of requested countries. A number of initiatives are under way in this area. The Stolen Asset Recovery Initiative (StAR) for example aims to address capacity challenges. Similarly, some bilateral donors, such as the UK, Switzerland and Liechtenstein, fund training programmes for Southern law enforcement agencies. In the EU, law enforcement bodies have organised themselves informally as the Camden Asset Recovery Inter-Agency Network to improve international cooperation in tracking and repatriating the proceeds of crime. The International Centre for Asset Recovery (ICAR) based at the Basel Institute for Governance also supports developing countries by facilitating training and information sharing on how to initiate the return of stolen funds (Transparency International, 2009).

Internal cooperation: Underlying both money laundering and asset recovery initiatives is the need for international cooperation and mutual legal assistance (MLA) in corruption cases that occur across borders. Some of the international instruments signalled above, including the UNCAC, reflect this need and provide for MLA, extradition, law-enforcement cooperation and technical assistance and training. In practice, however, factors such as procedural delays, lack of training on effective means to request cooperation and difficulties relating to differences between legal systems may affect the effectiveness of MLA. This reveals the need for alternative, more informal forms of assistance and cooperation (Chêne, 2008a).

In Germany, according to the FATF mutual evaluation report, the framework in place enables the provision of comprehensive and timely MLA and extraditions. While no material obstacles were identified in this area, the evaluation team was unable to establish fully whether MLA is being provided in an effective manner due to the absence of statistics. However, Germany has a solid system in place for extradition and grants a high percentage of requests in a timely manner. In addition, the authorities appear to be providing a wide range of international administrative cooperation with their foreign counterparts, except in relation to nonfinancial businesses and professions (FATF, 2010).

3 Using development assistance to promote anti-corruption and aid transparency efforts[6]

Safeguarding aid from corruption and supporting partner countries' anti-corruption efforts

Development assistance can contribute to support the fight against corruption in developing countries and create positive incentives for change which come from the North. The Millennium Challenge Corporation (MCC) illustrates this approach. It is funded and operated by the US Government, providing additional development funding to a carefully selected group of

[5] Many countries require requesting countries to prove that assets were not obtained lawfully before the freezing or confiscation of assets can be considered, which can considerably hamper the recovery process.

[6] At the request of the enquirer, this answer will only briefly address this area of potential intervention for developed countries, as a number of other U4 expert answers have extensively dealt with this issue.

countries. The MCC uses the control of corruption as one of the indicators to determine whether a country is eligible for funding (Millennium Challenge Corporation, 2009).

Aid can also be used as a tool to promote a policy dialogue on governance and corruption related issues as well as to strengthen recipient countries' accountability mechanisms. Donors are increasingly integrating governance and anti-corruption concerns into their development assistance programmes and policies to achieve better development outcomes. Donors' efforts to mainstream anti-corruption have typically focused on three major dimensions: 1) putting in place mechanisms to ensure transparency, accountability and integrity of their operations and staff; 2) protecting their projects and loans from corruption, and ensuring that aid programmes themselves do not foster corruption; and 3) supporting partner country-led anti-corruption strategies and efforts to effectively address corruption and its underlying causes.

Promoting aid transparency

Within this framework, aid transparency is emerging as a fundamental issue to improve governance and accountability and increase the effectiveness of aid. More and better information about aid can help better track what aid is being used for and what it is achieving. Greater transparency can support governments in developing countries to manage aid more effectively. Research also suggests that more transparent aid is correlated to lower levels of corruption in recipient countries (Christensen et al, 2011).

To address these concerns, the International Aid Transparency Initiative (IATI), was launched in September 2008 in Accra as a voluntary multi-donor initiative aimed at making information about aid flows easier to access, compare, use and understand. Although IATI does not refer specifically to reducing corruption, it contributes to the fight by setting transparency standards for sharing information which can be used by all stakeholders to increase the accountability of aid. By making information simpler, easier to understand, comparable and usable, IATI can help anti-corruption fighters monitor the allocation and budgeting of ODA and to signal when money has gone missing.

Germany is one of 18 signatories to the IATI. At present, Germany is struggling with some of the technical changes that are required in order to implement the IATI standard which sets out what information should be made available and how. According to the Publish What You Fund's 2010 Aid Transparency Assessment report, Germany belongs to a group of donors who show an explicit commitment to aid transparency but are inconsistent in their current levels of performance on the availability of information (Publish What You Fund, 2010). As such, they are one of the donor signatories to IATI that has not yet begun implementation of the standard.

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