

Corruption as a Governance Challenge and the Role of Civil Society

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Abstract

A first step towards a sustainable anti-corruption policy is to view corrupt practices as symptoms of a deeper problem in the relationship between state and society in general and in the function of democratic institutions in particular. These considerations bring us closer to conceptualising an anti-corruption strategy as an axis of a systematic reform policy towards social accountability. To implement effective strategies we need to pursue a more focused anti-corruption policies and to get away from a conventional minimalist approach of combating the phenomenon, mainly by choosing broader perspectives with the emphasis on accountability and the role of civil society in the consolidation of good governance. In this context, anti-corruption policy is a policy of accountability towards protecting human rights and in relation to any kind of development. Accountability supports good governance as is a co-creator of the active citizens' participation in a (transparent) decision making process.

Key words: corruption, governance, NGOs, civil society, economic development

J.E.L. classification: E26, H2, H26, K34, L3, N4, O1

1. Governance as a Geopolitical Factor

The events of the past five years, and particularly those of 2011 acted undoubtedly as reminder of the destructive effect of corruption, both in political and in economic terms. In India mass protests persuaded the government to promote legislation to combat corruption and the results of the last elections marked the change of the political landscape after decades. In North Africa the uprisings, which together were called as the "Arab Spring" forced the withdrawal of leaders and government figures who were in power for decades. The results with the possible exception of Tunisia are highly disappointing. Before the Arab Spring, the exclusion of civil society has been one of the most serious reasons for the burgeoning nepotism and patronage. Such institutional problems will not disappear by themselves. In Europe, the sovereign public debt crisis that dismantled Greece still lasts. Other causes of the crisis go back to the deficits of the financial systems' regulation resulting a loss of more than 80 million jobs, which are needed in order to return to pre-crisis levels of employment. What we have seen in North Africa was extreme, but indicative of the magnitude of the consequences governments that do not put barriers to corruption face. When they are denied of their basic rights, we do not offer them security, we let corruption prevail and bribery evolve to an informal taxation, when there is widespread impunity and finally when the feeling of injustice chokes, people will eventually protest. The challenge concerns the ability of governments to meet the requirements of citizens and to recover of public confidence in governance and public administration. According to such a perception of good governance (UNESCAP 2006:1), citizens have an enforceable right to take part in governance and have access to public services of good quality.

Civil society can exert great pressure calling for changes that comply with the states' international obligations while poor governance disrupts markets and destabilizes societies. Although civil society presents itself as the vehicle for resolving issues of democratic principles and humanitarian values, human rights, ecological sustainability, economic development, racial discrimination, energy, etc. such an expectation is currently rather excessive considering its dynamics on national and global level.

2. The concept of civil society

Civil society constitutes only one dimension of triadic socio-economic structure comprising by the

broader "civil" society, the state and the market. In a stable democracy these three factors operating in a balanced interdependency, sometimes in a conflict situation and, sometimes in harmony, but always in some kind of equilibrium that is subject to the rule of law; and by that always presupposing the existence of the factor that has a "monopoly of the legitimate use of force." Such a factor does not exist of course at the international level. Never the less this equilibrium between civil society, state and market supervising the excesses of the others, attributes the importance of the overall role of civil society.

Ernst Gellner formulates a useful working definition of civil society as the sum of the various different non-governmental organizations that is strong enough to counterbalance the state without preventing it from fulfilling its role as the guardian of order and peace and as the arbitrator between big interests, but simultaneously preventing it from dominating and personalizing the rest of society (Gellner 1994). A strong but organically integrated civil society can be considered according to Paine as the best defense against the tendency towards corruption inherent even to the smallest state in his function as "guardian" (Powell, 2007). In an effort to determine of the appropriate state-civil society mixture by de Tocqueville, we read that a strong civil society based on pluralistic voluntary associations, when combined with strong local governance, separation of powers, electoral processes and in any case vigilance are the most basic barriers to despotism (Woldring 1998).

Although the concept of the civil society becomes particularly attractive, especially after clashes with absolutist regimes around the world, civil society nevertheless retains a rather controversial position within the modern liberal democracy. Some present civil society as rather unnecessary given the West's achievements to solve inefficiencies and injustice in our societies. For others there is absolutely no sense for its existence given the complex structure of modern societies. In any case, the existence and activation of civil society demonstrates that even in the Western world there is a field, which is threatened by the logic of the administrative and financial mechanisms, while providing an ideal platform for the expansion of democracy in terms of "existing liberal" regimes. Consequently the interface of the concept of civil society with every type of modern societies is undeniable and we should be deceived and connect civil society by definition in a contradictory relationship with the state and the economy. A competitive relationship with the state or the economy arises when mediation fails or when the political and economic institutions isolate the decision-making mechanisms from the influence of social organizations, initiatives and the various forms of public consultation.

3. Corruption, a barrier to development and justice

The fact that corruption emerged as a core policy concern in the post-Cold War era and was seen primarily as something that was endemic in former Communist states and the developing world (Pande/Olke, 2012) and that this has contributed to its being carelessly conceptualised. Corruption in the sense of unlawful, precarious or abusive governance at local, regional and national level, is developed in various countries, especially those with higher poverty indicators, and particular in those countries ruled by absolutist regimes. The accumulation of economic privileges by the ruling classes, nepotism, corruption, misappropriation of state property and the diversion of part of it to private accounts or investments were some of the abuses that prevailed for decades in the political management of dictators. But alongside systemic corruption, other corrupt practices were developed in specific sectors or private groups. Some of these abuses fall under the general criminal law, such as those like the mafia networks which being supported by corruption and violence, tend to create a parallel societal structures to the legal institutional framework.

Corruption looks very widespread throughout the world, as evidenced in the annual study of the NGO Transparency International (TI, 2015). The effectiveness of legislation against corruption itself has been in some countries hampered by the very practices of bribery and of political control. The problem of corruption extends to various fields, both public and private life, with an impact on the quality of life and resulting loss of rights, discrimination against groups of the population or the deprivation of legal access to jobs, to information or to representation and to the depletion of resources due to corruption. Meanwhile, beyond opacity of companies' accounts, media control and judicial corruption, the public sector lacks transparency especially regarding public resources

allocation and procurement by public administration and political parties. The ultimate goal of public procurement is to spend public money in an efficient and proper manner to achieve best value for money. Given the economic significance of public procurement in the EU, corruption in this field dramatically harms the economy and public finances – both national and EU money.

Finally the scarce resources for justice (or rather their misuse or misappropriation) have been identified as an aggravating factor that prevents the minimum conditions of dignity in prisons, contributing to increased criminality. Although, to date the policies to combat economic crime are primarily related to the protection of the economy and the legitimate financial system, combating modern expressions of economic crime is nowadays directly related to universal problems, such as environmental protection and global poverty.

4. Corruption as a Global Challenge

Corruption has always existed, but concerted international focus really only began in the early 1990s, (Heywood, 1997) when the presumption was that liberal democracy has prevailed. In this scenario, privatisation and deregulation were the key policy prescriptions that would drive the post-Communist world towards the “good governance” model that reigned in the West and would thereby control corruption. Beyond good governance, this development is also the result of the intensity of financial globalization and of cross-border flows of investment capital and the common assumption is that corruption is one of the greatest threats to economic development.

The Bretton Woods organizations lead by the World Bank and the International Monetary Fund raised the issue to a global priority (Kaufmann et al. 1999). The seeming self-evidence of the superiority of the post cold-war Western model was reinforced by the first systematic attempts to measure corruption, a side effect of a growing obsession with ranking the world (Cooley/Snyder, 2015). In particular, Transparency International’s Corruption Perceptions Index (TI 2015) and the World Bank’s Worldwide Governance Indicators (W.G.I.) project to measure corruption by its governance indicators (World Bank, 2016), showed a clear correlation between high levels of socio-political and economic development and low levels of corruption.

Contrary to some views, the corruption problem concerns both developed and developing countries. We perceive corruption as the abuse of public office for personal gain, with a focus on the public sector and for the treatment of which is necessary to develop effective strategies. Never the less corruption encompasses a vast array of different kinds of activity, only some of which involve bribery. Such a wide range of behaviors presents for the formulation of a definition serious problems. They range from highly sophisticated transnational networks linked to criminal gangs and drug trafficking involving billions of dollars to small-scale abuses at a local level involving just a few individuals. Thus, the very idea that these types of activity – and everything in between – can be captured in any single measure is actually not realistic. And yet that is precisely the concept of the global anti-corruption campaign since the early 1990s. But in reality such correlations mask political choices. In particular, they rely on a very basic notion of corruption understood as being really about bribe-paying in the developing and underdeveloped world. In short, corruption was primarily a problem found in other (rather exotic) countries, not well-run democracies – even if Western companies had to pay bribes to prosper. And it was this understanding of corruption being about bribes that motivated the international financial community and the policymakers they sought to influence.

As a result of this kind of "problematization" of corruption there has been a generalized preoccupation and regulatory hyperactivity of the universal and regional international organizations e.g. Organisation of American States (OAS) Inter-American Convention Against Corruption 1996, Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery on Foreign Public Officials in International Business Transactions 1997, Convention on the Fight Against Corruption involving Officials of the European Union (EU) Communities or Officials of the Member States of the European Union 1999, Council of Europe (COE) Criminal Law Convention on Corruption 1999, Southern African Development (SADC) Protocol against Corruption 2001, African Union (AU) Convention on Preventing and Combating Corruption 2001, United Nations (UN) Convention Against Corruption 2003, Council of Europe (CoE) Additional Protocol to the Criminal Law Convention on Corruption 2003, which led to the

conclusion of regional and global International conventions, a significant part of which has not come yet into force. Based on these legislative instruments, the international legal regime to combat corruption is characterized by the pursuance of a unified approach to corruption and to combating corruption and of legal and technical processing of corruption-related crimes. Additionally the most recent Conventions, adopting a new qualitative intensity and granularity, criminalize certain behaviors and rather limiting the punitive field. The creativity that characterizes such processes, they proved till now to have a suspensive effect to the operability of the international anti-corruption regulatory arsenal. This finding relates to both the lack of concerted enforcement mechanisms and the adoption of procedures and methodologies for the reintegration of problematic countries to the international community and for the creation of a new culture against corruption through education and open dialogue in the society.

Despite the fact that the approach towards corruption varies from country to country depending on the political culture and the political, economic and social balances, the research analysis has till today focused on measuring and combating corruption in individual states rather than internationally or globally. Hence, various initiatives – from development aid measures to membership of the European Union – have increasingly been made conditional on anti-corruption efforts at state level. These have usually come in the form of a tool-kit and a draft national strategy (UNDOC, 2015), the creation of dedicated agencies, or other internationally endorsed measures. They have often entailed an implicit belief that there is a “correct” way to tackle corruption, based on adopting a specific national governance model.

In some countries corruption constitutes a regular “shadow” income of the political parties. Funding of political parties in the US, is legal if declared and consequently deducted from the income of natural and legal persons is considered in other countries as corruption. In terms of such things as ensuring the rule of law, promoting ethical standards for public officials, having clear guidelines for investigation and prosecution and so forth, a national-level approach makes perfect sense (Tanzi 2002). But even in cases where there is no evidence that has been anything illegal according to national legislation, there are leaks of documents that comprehensively reveal corruption that involves billions of dollars being stolen and diverted from other countries – relies precisely on transnational operations that are near impossible for individual states to address on their own.

The World Bank refers mainly to public sector corruption: "Abuse of public power for private gain" ignoring the refraction of corruption in small and large companies of the private sector (Ofusu-Amaah WP et al., 1999). On the other hand, in many cases, public authority abuse is not about narrow private interest but aims to serve interests of friends, colleagues, political parties or interest groups. One more brief definition comes from the International NGO "Transparency International": «exploitation of interested (public) authority for private gain" (TI 2015). The Anti-Corruption Task Force of the International Economic Organizations (World Bank, International Monetary Fund, African Development Bank, Asian Development Bank, the European Investment Bank and European Bank for Reconstruction and Development) defines the Uniform Framework for Preventing and Combating Fraud and Corruption) 17th September 2006 corruption as “offering, allotment, acceptance, seeking directly or indirectly anything of value in order to unlawfully influence certain acts”. The United Nations Convention against Corruption (UNCAC) (Articles 15-22) contains the definition of corruption: “active and passive bribery of domestic or foreign public officials and officials of international organizations, misuse or diversion of public property by a public official, to influence or illegal enrichment by public officials and bribery and abuse in the private sector”.

5. Fighting Corruption and the role of Civil Society

Corruption is a phenomenon characteristic of communicating vessels in which in the developed countries corruption is associated with poor performance of institutions and the grand frauds, while in the developing countries by discouraging foreign investment, the disorientation of financial resources, the reduction in funding necessary infrastructure thus reducing the economic growth and enduring poverty.

Despite the temporal and cross-border presence, corruption as a form of economic crime is

particularly acute and widespread in countries where either the State controls a large proportion of the economy controlling the allocation of financial resources, or there are weak or non functional administration mechanisms and financial crime fighting mechanisms or corruption is widespread in the transactions providing public goods such as health, education and security, enjoying accordingly social acceptance or at least tolerance. These factors contribute to the expansion and consolidation of corruption in all economies but are rather frequently encountered in those countries, which have the characteristics of developing or underdeveloped economies (Tanzi 2002). However, the finding that the increase and harmonization of the level of development between different countries does not entail a proportional reduction of corruption a development indicative of the complexity of the phenomenon and its particular sociological dimension (Tanzi, 2005, p. 49).

Indeed, beyond its economic dimension, corruption is directly connected with the ability of civil society in imposing good governance in the sense of at least six of the World Bank's evaluation criteria: (a) the right to speak and accountability, (b) political stability, (c) government effectiveness, (d) quality regulatory framework and regulations, (e) State law and (f) control of corruption. Nevertheless, the fight against corruption is impossible when limited to the public sector; the anti-corruption measures in the private sector include the identification of those who distort fair competition and annul the efforts for embedding a tax compliance culture.

The United Nations Convention against Corruption (UNCAC) recognizes the role of civil society in combating corruption under its Article 13, by calling on governments to increase transparency, improve public access to information, as well as to promote public contribution to government decision-making processes. United Nations Office on Drugs and Crime (UNODC) also supports civil society organisations' engagement in intergovernmental meetings and provides the necessary tools for them to work constructively with their governments and the private sector on UNCAC implementation. An examination of the key development characteristics of the civil society gives some explanation for the failure of its development in a number of countries: a) a generally established respect for the rule of law and the belief of the protection of the legitimate rights of citizens whenever the need arises, b) an expressed respect of citizens to the concept of the common good and the value of public goods and c) preparedness among citizens to form voluntary organizations, particularly in the public interest. Consequently and in light of these elements is effective governance, respect for the rule of law and the public opinion is a prerequisite and a consequence. What are the prospects for improvement? Rather small but existent.

6. Conclusion

Academic researchers and the advocacy community have been unwittingly complicit in perpetuating this mismatch between the reality of how corruption functions and the efforts to combat it. Much of the huge outpouring of academic literature on corruption in the past two decades, particularly that by economists (Mauro, 1995), has used a poorly specified concept of corruption to supposedly explain a host of specific failings – and most especially why there is more or less corruption comparably in different countries (Svensson 2005).

In turn, the advocacy community has similarly tended to rely on aggregate measures of corruption, both to make a political point about the threat and to secure resources in order to face it. By talking in such generic terms, though, neither academics nor advocates are likely to make much headway. We could argue to stop focusing on corruption as a “Gozila phenomenon”. Instead, whenever the word is mentioned, we should ask what kind of corruption it is, where is it taking place, who is involved, what are their motivations, who or what is needed to allow it to take place, what level does it operate at, what sectors are implicated and how does it relate to the broader social context? Without clear answers to these kinds of questions, it will remain difficult to develop practical means of intervention that have an impact on actual corrupt practices – as opposed to generic observations about which nation is more corrupt than other.

How does civil society affect corruption and in general to what extent it affects a country's political system under crisis? The role of civil society fighting corruption as a crime and instability concerns overall the debate on whether and how the involvement in NGOs or similar organizations offer or not support to the political system. Such a prospect is real, even if they will expect less:

that in countries in the midst of deep crisis, social conflicts and weak government mechanisms. This goes a long way even in groups with strong anti-government mood. Although the participation of NGOs can be one abstained disposal criticism and an attitude of protest against government policies participation reflects a high level of general systemic support, particularly in liberal democracies. Although the public debt crisis that a lot of countries face – and particularly Greece – is deconstructing significant number of institutions, it may be seen as a unique opportunity to fundamentally rebuild them.

The economic reconstruction and development of the country can't be achieved without the consolidation of core institutions and in that sense civil society can and must play a decisive role. This has to do primarily to the establishment and implementation of national and inter-governmental anti-corruption tools a) assuming the role of the server information from the people in the government for the development of a strategy, b) allowing the engagement of citizens and businesses in actions against corruption and c) maintaining the pressure for a systematic and coherent policy to combat corruption through the implementation of transparency and accountability mechanisms, d) controlling and indicating failures suggesting measures.

Participation and effectiveness of civil society in fighting corruption can prove to be the testing ground for its future involvement in all the relevant public national and international issues. Arguably the current potential and the urgency of the contribution of civil society in the anti-corruption campaign constitute simultaneously its limits. Governments continue to bear the burden of responsibility of power-management entrusted to them by the citizens.

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