

Workshop 4.2 Informal practice and corruption: How to weaken the link

Thursday 16 November

Moderator: Elena Panfilova, executive director, Transparency International, Russia

Rapporteur: Jan Borgen, executive director, Transparency International Norway

Panelists:

Leslie Holmes, director, Contemporary Europe Research Centre, U. of Melbourne, Australia

Åse Berit Grødeland, senior researcher, Norwegian Institute for Urban and Regional Research, Oslo

Donald Bowser, international consultant

Janos Bertok, principal administrator, Public Governance and Territorial Development Directorate, OECD. Not present, but his paper was read out.

Issues covered

The workshop explored the link between corruption, on the one hand, and informal practices (that prevent the rule of law from functioning) and institutions (socially shared rules, usually unwritten, created, communicated and enforced outside of officially sanctioned channels), on the other.

Networks and linkages between various types of related crime have only recently been recognized by states and international organizations. While greater recognitions is a welcome development there continue to be major disagreements among agencies and states over definitions.

Panelists presented empirical data substantiating the linkages, and discussed the growing awareness of the link between corruption, organized crime, corporate crime and terrorism.

The concept of the “shadow state” was introduced and discussed. The concept refers to *a system of ‘governance’ imposed by public officials acting in private interests and external (non-state) actors that are capable of gathering rents and delivering goods and services that should be provided by the state but are not due to its own weakness and public malfeasance.*

Holmes explained the growing awareness of the linkage, both national and international, between the phenomena corruption, organized crime, corporate crime and terrorism. Reliable data on networks and linkages are impossible to obtain, but case studies provide evidence of such linkages. Thus, a few examples of linkages were mentioned, with particular though not exclusive reference to Europe and Australia. Greater awareness of the linkages is important to ensure a more successful implementation of reform policies and programs designed to reduce the four phenomena. Conceptually these four terms (corruption, organized crime, corporate crime and terrorism) must be kept separate to prevent conceptual blurring.

Holmes criticized TI for including improper business-to business activity as a form of corruption. It is a highly unfortunate tendency to treat corporate crime as a branch of corruption.

Culturalist arguments must be treated with caution. While there are differences of opinion across cultures on what constitutes corruption and how best to tackle it, alignments with this or that viewpoint are not homogeneous within any culture. All too often elites use the cultural specificity argument as a way of diverting attention from their own misdeed by accusing others of interference and as a means for rebutting external questioning. Because the notion of cultural specificity is challenged there is a need for universally applicable definitions of the four criminal phenomena, in spite of the many grey area situations.

Grødeland, in her survey, looked at factors in the Czech Republic, Slovenia, Romania and Bulgaria assumed to affect informal relations during transition from communism to democracy, factors that are likely to explain differences in terms of extent of informality in these countries: a) history and national culture, b) the communist experience and c) the transition.

Three hypothesis were then discussed; informality a) as *the principal response* to transition, though also a left-over from communism and part of national culture, b) as being *less widespread* in post-communist EU member than EU-applicant states and also *more widespread* in the Czech Republic than in Slovenia, and in Romania than in Bulgaria and c) as *a cause* of corruption.

This was followed by a presentation of qualitative and quantitative findings on informal networks and contacts. The respondents who took part in Grødeland's elite surveys emphasized the impact of culture and communism in informal relations to a larger extent than expected. Furthermore, data confirmed the hypothesis that society in EU candidate states Bulgaria and Romania is less formal than in the EU-member states Czech Republic and Slovenia. Data also confirmed that informality is more widespread in the Czech Republic than in Slovenia, and in Romania than in Bulgaria. And lastly, data confirmed that informal networks facilitate corruption in all four countries.

In post-communist countries it is important to try to root out old habits and patterns of thinking that encourage illegitimate and/or illegal forms of informality. Such measures provide no quick-fix. Respondents in the survey highlighted in particular two measures to address the root causes of corruption: efforts to strengthen the rule of law and a change in people's mentality through education. These were seen as the two most efficient measures to counter the negative effects of informal networks. Measures aimed at strengthening public trust in the state also received a fairly high score. In contrast the need to introduce lustration, to regulate (lobbying, public procurement, political party funding etc), and to expose negative aspects in the media, was assessed as very low in all countries.

Bowser explained that the concept of the shadow state is not limited to the FSU, it emerged from studies of Africa. A shadow state exists as a system of governance parallel to the formal state structure, constructed behind the façade of laws and government institutions. This form of personal rule is typified by the use of semi-feudal system of patronage and supported by a regulatory environment and system of contract enforcement provided by the nascent organised (or in some cases disorganised) criminal structures or other non-state actors that utilize non-legitimate force. A number of groups outside of the government (including international financial institutions) exert

considerable pressure on the emerging or weakened state structures and form the core of a method of governing that parallels the formal governance structures.

The shadow state has developed 'institutions' that collect taxes, wield force/enforce justice and regulate the market and distribute resources.

The 'rulers' of the shadow state are the political and economic elites, they are difficult to separate, and it is often impossible to know when they act in the legitimate formal state structures and when they operate on behalf of the shadow state. They have an interest in maintaining the appearance of a functioning formal state and are assisted in this in part by partnering with 'foreign' actors that can grant this recognition. The formal state itself then becomes a Potemkin State with the facades of state institutions still standing and recognized by international actors and others to be genuine edifices but are in fact mere cutouts of the state apparatus.

Bertok's paper investigated lobbying as an increasingly important feature of modern democracies; a growing number of large interest groups influence policy-makers at all levels. In most OECD countries their activities are recognized through established, unwritten traditions: only five OECD countries have set rules on lobbying. Increasingly lobbying in OECD countries is perceived as influence-peddling - something unethical, a threat to the integrity of public institutions because of the lobbyists' privileged access to decision-makers. It is important to create a level playing field for all stakeholders, not only for the privileged, this implies ensuring accessibility for the public to decision-makers.

Outcomes

- ✓ Since data suggest that national culture and communist experience have a larger impact on post-communist transitional societies than often assumed, reform efforts should take this into account and be designed to address root-causes of negative aspects of informal networks.
- ✓ Reform efforts - to be successful - require political will. Whose political will? Besides the government's, also focus on the will of the opposition (all national political parties) and of the international community.
- ✓ Informal networks are prevalent in shadow states; these parallel structures thrive on existing weak formal state structures. To make the formal state a more attractive alternative to the shadow structure, existing formal institutions must be made much more efficient. This implies much more forceful institutional reforms.
- ✓ Political will is not sufficient, capacity and skills are equally important.
- ✓ Educating a new generation of leaders can in the future generate the right political will.
- ✓ More empirical research on networks and linkages between corruption, organized crime, corporate crime and terrorism is needed.
- ✓ Concrete recommendations were made regarding the standardization of definitions of the concepts corruption, organized crime, corporate crime and terrorism. It is better to have one term per phenomenon and then identify overlaps, networks and linkages between these in actual case-studies, than to blur the concepts themselves, which creates confusion that plays into the hands of criminals.
- ✓ Checklists of criteria identifying each phenomenon, was provided.

- ✓ On unethical lobbying: purely penalizing illegal influencing of public decision-making is insufficient. “Good governance” arrangements are needed, particularly those clarifying expected standards of behavior and improving transparency and accountability of decision-making.
- ✓ Hence, legislation to improve transparency and accountability in lobbying is needed in all countries.
- ✓ And so is the prevention of conflict of interest situations after leaving public office employment