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Rule of Law and Anti-Corruption Journal (ROLACC) is an international peer-reviewed journal which publishes original articles on all aspects of anti-corruption perspectives including rule of law. It is devoted to important law or evolutionary questions, studies of civil society engagement, resources management, justice sector, anti-trust issues, legal systems comparisons, sports, finance, cross-border interrogations.

ROLACC Journal will be the platform for physical and digital content of rule of law, governance, and anti-corruption studies from around the world. We aim at bringing important work in these fields and making it the dedicated resource to a wide international audience and the hub for experts and researchers. Therefore, ROLACC only publishes papers with strong and distinct messages that advance collective understanding of anti-corruption principles. The research presented must demonstrate a link to the specialized field of anti-corruption. Experimental, theoretical, and descriptive studies are accepted, however, these must offer insights into issues of general interest to the journal. ROLACC Journal aims at being a leading example in Qatar, the region, and the world. This journal is open access and publishes manuscripts in English and Arabic and publishes twice a year, June and December.

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## Editorial Forward

# Editorial forward by the Managing Editor

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Dear Readers,

It is the end of December and the second issue of the Rule of Law and Anti Corruption Journal is in your hands, hence celebrating ROLACC journal First Volume, Volume No.1.

In this issue, we have been keen on shedding the light on Sustainable Development Goals (SDGs); goals set for saving the world through plans for a better and more sustainable future for all. The focus was SDG 16 on promoting just, peaceful and inclusive societies, that is closely linked to anti-corruption matters and fosters rule of law efforts.

Many submissions were received in both Arabic and English from different countries in the world. The contributions were subject to scrutiny in terms of the validity of the research and compliance to academic standards. The Journal of the Center for the Rule of Law and Anti-Corruption is driven by mastery and proficiency in ensuring accuracy of information and conformity to international standards. Several expert professors performed peer blind revision; which cultivated a high standard quality of research by emphasizing the rules of academic research.

The Rule of Law and Anti Corruption Journal offers a high-level platform for all scientific disciplines as the theme of the issue has common features with various fields.

The accepted submissions addressed a number of important issues; for instance, ways of assessing risk of corruption in order to provide both practitioners and academics with a better understanding of the concept of risk management. Further it offered; the most effective way to implement the risk assessment is to assess the organizational level.

Another submission provided an accurate account of the internal and international implications of introducing the law as a key framework under which acts of corruption are prosecuted in a practical manner embodied in the case of Barbados.

Most importantly; submissions presented a solid foundation pertaining to concepts and competent authorities' mechanisms; in order to pave the ways for future comparative research. In terms of concepts, one of the submissions explained and referenced the basic concepts that can be used to better understand corruption. As for the competent authorities and their modus operandi, an expert professor from Macedonia explained the model of the ACA and criticized some of the characteristics of the legal and institutional framework. Furthermore, there was a key question that has been proposed in a research article from Brazil: To what extent the business environment generates conditions to fight corruption from an institutional perspective? The question is formulated in accordance with SDG16; 16.5 (corruption and bribery in all their forms) and 16.6 (development of accountable and transparent institutions).

Through this publication, we seek to inform readers with best ways to support and understand Sustainable SDG from different perspectives. The SDG 16 which the United Nations has referred to as its aim: "Promote the rule of law at the national and international levels and ensure equal access to justice for all, substantially reduce corruption and bribery in all their forms. It also seeks to develop effective, accountable and transparent institutions at all levels. And ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements."

We extend our sincere thanks to all those who contributed to the second edition of rule of law and anti corruption center journal, academics and editorial board and we look forward to future intellectual contributions.

# افتتاحية العدد بقلم مدير التحرير

وكيفية عملها في دعم الأبحاث المقارنة في المستقبل. فمن حيث المفاهيم طرحت أحد الاسهامات البحثية مرجعية للمفاهيم الأساسية والمحورية القابلة للنقاش والتي تستخدم لفهم الفساد بشكل أفضل. اما من ناحية المؤسسات المعنية وطريقة عملها فقد شرح أحد الأساتذة المتخصصين من مقدونيا نموذج وكالة مكافحة الفساد ACA الذي اختارته جمهورية مقدونيا، وطرح الانتقادات بصدد بعض خصائص الإطار القانوني والمؤسسي. والجدير بالذكر انه تم طرح سؤال محوري في احد الابحاث في ظل الهدف السادس العشر من اهداف التنمية المستدامة وهو الى اي مدى تولد بيئة الأعمال التجارية ظروفًا لمكافحة الفساد من منظور مؤسسي، وذلك وفقًا لأهداف التنمية المستدامة (SDG) ١٦، ولا سيما ١٦.٥ (الفساد والرشوة بجميع أشكالها) و١٦.٦ (تطوير مؤسسات مسؤولة وشفافة).

فعبّر هذه الفسح العلميّة -المجلة- والتي تمثل قنوات تفاعل وحوارٍ منّا وإليكم اننا نسعى من خلال هذه العدد الى اطلاعكم على كيفية دعم الهدف السادس عشر من اهداف التنمية المستدامة والذي أشارت الأمم المتحدة الى مقاصده « بأنه يرمي إلى تعزيز سيادة القانون على الصعيدين الوطني والدولي وضمان تكافؤ فرص وصول الجميع إلى العدالة ويهدف الى الحد بدرجة كبيرة من الفساد والرشوة بجميع أشكالهما كما يسعى الى إنشاء مؤسسات فعالة وشفافة وخاضعة للمساءلة على جميع المستويات ويقوم على توسيع وتعزيز مشاركة البلدان النامية في مؤسسات الحوكمة العالمية و كفاءة وصول الجمهور الى المعلومات وحماية الحريات الأساسية، وفقاً للتشريعات الوطنية والاتفاقات الدولية».

ختاماً، نتقدم بالشكر والامتنان لكل من ساهم في اخراج العدد الثاني من كتاب وأكاديميين مراجعين وطواقم التحرير ونتطلع الى اسهاماتكم البحثية في الاعداد القادمة.

مدير التحرير ،  
د. ريم علي الأنصاري



عزيزي القارئ ها هو العدد الثاني من مجلة مركز حكم القانون ومكافحة الفساد بين يديك مع نهاية عام ٢٠١٨ وبذلك يكتمل المجلد الأول.

لقد حرصنا في هذا العدد ان نُعرّف القارئ بأهداف التنمية المستدامة وهي الأهداف التي وضعت لإنقاذ العالم عن طريق خطط لتحقيق مستقبل أفضل وأكثر استدامة للجميع. وتم اختيار الهدف السادس عشر في

هذا العدد وهو المعني بالازدهار والسلام والعدالة والذي يرتبط ارتباطاً وثيقاً بموضوع مكافحة الفساد ويدعم حكم القانون. حيث تم استقبال عدد كبير من الاسهامات الفكرية باللغتين العربية والانجليزية من مختلف اقطار العالم وخضعت الاسهامات الى تدقيق يَبْق من حيث اصالة البحث والمعايير المتبعة في عرض الأفكار، حيث تولي مجلة مركز حكم القانون ومكافحة الفساد عنايتها الخاصة لدقة المعلومات ومدى مطابقتها الاسهام الفكري للمعايير الاكاديمية العالمية. فقد استعانت المجلة في سبيل مراجعة وتحكيم الأبحاث التي تصلها بنخبة من الأساتذة المختصين من داخل الوطن وخارجه، الذين أبدوا تعاوناً وكرمًا علمياً، كان له الفضل في الارتقاء بنوعية الأبحاث، بتأكيد نقاط التميّز والقوة فيها، وتعديل ما يستوجب التعديل فيها. ولتكريس قواعد البحث الأكاديمي الرصين، واستقطاب الكفاءات والطاقت العلمية الواعدة، فتحت مجلة مركز حكم القانون ومكافحة الفساد المجال على مصراعيه لكافة التخصصات العلمية حيث ان موضوع العدد يتقاطع مع مجالات عديدة.

فالأبحاث التي تم قبولها تتناول طرق تقييم مخاطر الفساد المختلفة بهدف تزويد كل من الممارسين والأكاديميين بفهم أفضل حول مفهوم إدارة مخاطر الفساد. وتطرح الطريقة الأكثر فعالية لتنفيذ تقييم مخاطر الفساد وهي التقييم على المستوى التنظيمي، وتشكل الإسهامات ايضاً عرضاً دقيقاً للأثار الداخلية والدولية المترتبة على الاخذ بالقانون كإطار رئيسي يتم بموجبه مقاضاة أعمال الفساد وذلك في قالب عملي يتجسد في قضية باربادوس. ولا نخفل اهمية الابحاث التأسيسية من حيث المفاهيم والهيئات المعنية

RESEARCH ARTICLE

# Looking for consistency in corruption risk assessment: How key guidance materials stack up<sup>1</sup>

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## ABSTRACT

The risk-based approaches for fighting corruption are a trending topic in the contemporary anti-corruption field. They are often presented as useful tools to identify weaknesses and vulnerabilities within a system that may cause corruption. However, issues including lack of capacity, knowledge and expertise can affect their practical implementation. This paper discusses different corruption risk assessment methods with the aim to provide both practitioners and academics with a better understanding of the concept of corruption risk management. The study applies comparative methods to analyze five key corruption risk assessment guides, developed by different international organizations, in order to identify their strengths and weaknesses, which could facilitate experts in choosing the methodology that fits best their own needs and requirements. In addition, this paper argues that the most effective way to implement corruption risk assessment is as an organizational level assessment. This research is structured in four parts: the first part explains the concept of risk management and provides definitions of key terms. The second part describes the methodology used in the paper, while the third part presents the comparative analysis. Finally, all findings and results are discussed in the last part of the study.

**Keywords:** Corruption, anti-corruption approaches, corruption risk, corruption risk assessment, corruption risk management; international standards

## ملخص:

إن شيوع المناهج التي تتبنى آلية التركيز على المخاطر في مجال مكافحة الفساد المعاصر، وغالبا ما يتم تقديمها كأدوات مفيدة لتحديد نقاط الضعف والقصور داخل الأنظمة والتي قد تتسبب في الفساد. ومع ذلك، فإن الافتقار إلى القدرات والمعرفة والخبرة عادة ما يكون مشكلة في تنفيذها العملي. لذلك سوف تناقش هذه الورقة طرق تقييم مخاطر الفساد المختلفة بهدف تزويد كل من الممارسين والأكاديميين بفهم أفضل حول مفهوم إدارة مخاطر الفساد. تنفذ هذه الورقة هدفها بطريقة الدراسة المقارنة لتحليل خمسة أدلة رئيسية لتقييم مخاطر الفساد، تم تطويرها من قبل منظمات دولية مختلفة، وذلك من أجل تحديد نقاط القوة والضعف لديها، والتي يمكن أن تسهل للخبراء مسألة اختيار المنهجية التي تناسب احتياجاتهم ومتطلباتهم الخاصة. بالإضافة إلى ذلك، تجادل هذه الورقة بأن الطريقة الأكثر فعالية لتنفيذ تقييم مخاطر الفساد هي التقييم على المستوى التنظيمي. وأخيرا فإن هذا البحث يتكون من أربعة أجزاء رئيسية: فالجزء الأول يشرح مفهوم إدارة المخاطر ويقدم تعريفات للمصطلحات الأساسية. ويصف الجزء الثاني المنهجية المستخدمة في الورقة، بينما يقدم الجزء الثالث التحليل المقارن. وأخيرا، مناقشة جميع النتائج في الجزء الرابع والأخير من الدراسة.

**الكلمات المفتاحية:** الفساد، اساليب مكافحة الفساد، مخاطر الفساد، تقييم مخاطر الفساد، إدارة مخاطر الفساد، المعايير الدولية.

## 1. INTRODUCTION

In recent years, the possibility of applying risk management as an instrument to fight corruption has received considerable attention from the international anti-corruption movement. The idea behind this concept is that the risk of corruption exists in all kind of activities undertaken by both public and private sector organizations. Thus, to effectively prevent corruption, these organizations should address and respond to the risks that threaten their businesses.

The benefits and reasoning behind the need for organizations to adopt and apply corruption risk assessments and risk management plans have been widely discussed in literature. Many international organizations have also developed their own guides or methodologies to further encourage their members to adopt and incorporate risk management into their anti-corruption strategies. Despite these efforts, the enforcement of risk-based approaches for corruption prevention is still met with confusion in many countries. I assume that one of the main reasons behind this issue is that the available materials are often too complicated, include inconsistent methods and approaches, and are full of jargon terminology. This, in combination with a lack of capacity, knowledge, and training, may create further confusion among the staff responsible for risk management and can obstruct its practical implementation.

Additionally, very little attention has been paid to the role of corruption risk management by the academia, and thus anti-corruption practitioners have not received much theoretical support in the establishment of necessary tools for anti-corruption risk management. Previous studies on the topic have noted that the existing literature on corruption risk assessment is not sufficient to assist organizations in successfully implementing these methods (Sharma et al, 2016). Furthermore, there is a lack of reliable data on the enforcement of corruption risk management by countries and organizations which indicates that there might be certain gaps between the existing theoretical frameworks and their practical implementation.

This paper aims to fill some of these gaps in corruption risk management. It contributes to the existing literature by analyzing four key corruption risk assessment guides and manuals developed by organizations at international and regional levels, as well as NGOs – United Nations Office on Drugs and Crimes, Council of Europe, Transparency International, the United States Agency for International Development, and the Regional Anti-Corruption Initiative. For this purpose, a comparative technique known as casual analysis based on systematic qualitative comparison is employed with the aim to use limited variables to compare the aforementioned corruption risk assessment guides and the different types of corruption risk assessment which they distinguish. The goal of the analysis is to identify the strengths and weaknesses of the different approaches to corruption risk management, which will eventually facilitate experts in implementing them into their practice.

This paper argues that the most efficient way to apply corruption risk assessment is at an organizational level. This method of assessment has the potential to deliver better results compared to the other risk assessment approaches and could help organizations to successfully identify and respond to corruption risks, even in the event of limited human and financial resources.

The research addresses this argument in four parts. The first part provides an explanation of corruption risk assessment approaches and discusses the definitions of key terms such as ‘risk’ and ‘risk factor’. The second part is concerned with the methodology used in this study. In the third part, all variables are compared, before finally presenting and discussing the findings, recommendations and conclusions in the final part.

In light of the above, this study is designed to provide practitioners from both the public and private sector with a better understanding about the corruption risk assessments and help them to find the best way to implement these methods in their organizations.

## 2. WHAT IS CORRUPTION RISK ASSESSMENT?

Before conducting the comparison of key components of the selected anti-corruption guides, it is necessary to determine what is meant by the term “corruption risk assessment” in this paper. This section briefly summarizes some of the main concepts for CRA in the existing literature.

### 2.1. Defining risk management

One of the major documents in the field is the International Standards Organization’s ISO 31000 “Risk Management – Principles and Guidelines”, which provides guidance on how to conduct a risk assessment in different sectors and activities by all types of organizations. ISO 31000 defines risk management as a process of applying “coordinated activities to direct and control an organization with regard to risks, affecting the achievement of the organization’s goals”.<sup>2</sup> This broad definition includes the monitoring of all kinds of threats and vulnerabilities that have a negative effect on a single organization or a process, which allows organizations to tailor this risk management approach to specific risks such as corruption or fraud.

### 2.2. Corruption risk management

One of the first attempts in this direction was initiated by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) which, in its efforts to strengthen organizations’ internal control mechanisms, issued an Internal Control-Integrated Framework in 1992. In one of COSO’s follow-up guides, corruption risk assessment is defined as a “dynamic and iterative process for identifying and assessing fraud risks relevant to the organization”.<sup>3</sup> Since then many other organizations have acknowledged the benefits of such an approach and have further developed the concept of risk management. According to some of the most authoritative definitions, CRA is an instrument “which seeks to identify weaknesses and vulnerabilities, within a system, which may present opportunities for corruption to occur”<sup>4</sup> and “estimates the likelihood of these threats to materialize as well as the harm for the system if they materialize”.<sup>5</sup> What distinguishes this approach from other anti-corruption measures is that it focuses on the potential for corruption instead of the actual existence of corruption, i.e. CRA aims to prevent corruption from happening rather than to pursue corrupt acts after they occur. This paper emphasizes that a full and comprehensive CRA is not limited only to risk identification and evaluation, but includes also a risk mitigation part, which consists of recommendations for measures and activities that the organization has to take to minimize the corruption risks.

<sup>2</sup> ISO, ISO 31000: Risk Management – Guidelines (2018), <https://www.iso.org/iso-31000-risk-management.html>.

<sup>3</sup> D. L. Cotton et al., Committee of Sponsoring Organizations of the Treadway Commission, Fraud Risk Management Guide (2016), <https://www.coso.org/Documents/COSO-Fraud-Risk-Management-Guide-Executive-Summary.pdf>

<sup>4</sup> A. McDevitt, Corruption Risk Assessment: Topic Guide, 1 (2011), [https://knowledgehub.transparency.org/assets/uploads/kproducts/Corruption\\_Risk\\_Assessment\\_Topic\\_Guide.pdf](https://knowledgehub.transparency.org/assets/uploads/kproducts/Corruption_Risk_Assessment_Topic_Guide.pdf)

<sup>5</sup> U.N. Global Compact, A Guide for Anti-Corruption Risk Assessment (2013), <https://www.unglobalcompact.org/library/411>.

### 2.3. Corruption risks

Risks are usually defined as the possibility of something to occur and to affect, most likely in a negative way, the achievement of an organization's objectives.<sup>6</sup> ISO 31000 uses a similar explanation of risk – “the effect of uncertainty on objectives”.<sup>7</sup> Despite the existing definitions of risk, finding a universal definition of corruption risk is difficult simply because there is no such definition for the phenomena of ‘corruption’ itself and it is hard to define corruption risk without entering into the debate on what is corruption. Some scholars describe corruption risk as an event facilitating “appearance, development, realization, and spreading of corruption practice in service and professional activity”,<sup>8</sup> while others refer to the likelihood of corruption that might occur due to specific conditions or practices (vulnerabilities) prevalent in a system.<sup>9</sup>

### 2.4. Risk Factors

As we will see in the following pages, most of the CRA manuals do not clearly distinguish risk and risk factors, although they are slightly different. Risks are the direct consequences of certain risk factors, while the latter are concrete parts of a process or characteristics of an organization that can provide an opportunity for corruption. Hence, successful risk assessment requires identification of both risk and risk factors and experts should, therefore, be able to differentiate between both terms.

## 3. CORRUPTION RISK ASSESSMENT AND SDG 16

When the 2030 Agenda for Sustainable Development was adopted by the United Nations General Assembly in 2015, corruption was clearly defined as a global threat to sustainable development.<sup>10</sup> Through Goal 16, the Agenda promotes the building of effective, accountable and inclusive institutions at all levels and in all countries. In other words, one of the main purposes of SDG 16 is to ensure the quality of the public sector and its capability to deliver better service to citizens. Corruption is a great obstacle in achieving this goal. According to the latest Sustainable Development Goals Report of the U.N., one out of five firms in the world has been asked to pay bribes to government officials at least once in the past year.<sup>11</sup> Therefore, Goal 16, by calling for transparent and accountable institutions, recognizes also the need for effective tools, which could build corruption free entities.

In regard to this, the CRA could be seen as an adequate response to the needs emphasized by SDG 16. As explained above, its purpose is to identify weaknesses and vulnerabilities within organizations that may lead to corruption. The biggest advantage of CRA methods is that they do not only disclose all types of corruption risks but also provide substantive knowledge and understanding about the nature of the concrete corruption risks in each organization, thus helping the responsible authorities to eliminate those risks in an effective and sustainable manner even before they materialize and harm the organization. Therefore, the CRA methodology is directly connected with Goal 16, in particular with its target 5, which is to “substantially reduce corruption and bribery in all their forms”.<sup>12</sup> Moreover, the role of corruption risk assessment for establishing transparent and accountable

institutions has been already recognized by the U.N. anti-corruption agenda as Article 9 of the United Nations Convention against Corruption requires state parties to ensure “effective and efficient systems of risk management and internal control”.<sup>13</sup>

The inclusion of risk management methods in an important international treaty such as UNCAC further emphasizes the impact that CRA could have on reducing corruption in both public and private sectors and its relation to Goal 16 of the Sustainable Development Agenda. However, many countries are still reluctant to use these methods for a variety of different reasons discussed in the present paper.

## 4. METHODOLOGY

I do not intend with this comparative analysis to point out the best among all CRA guides. Such an exercise would require the comparison of their practical implementation and not their theoretical frameworks; in other words, assessing the different results achieved by organizations which use the selected guides. Since there is a lack of empirical evidence for this, such a task would be difficult, if not impossible. Instead, this study offers a comparison which will provide a better understanding about the contents of each guide in the study and will facilitate experts and practitioners in choosing the one that fits best their own needs and requirements.

Here, a qualitative comparison is used to get insights into the different components of the main CRA guides and to examine them. This method is particularly useful for “discovering empirical relationships among variables” when the number of cases available for analysis is small.<sup>14</sup> Hence, it offers a good framework for analyzing the limited number of guides and manuals on corruption risk assessment. Yet, many scholars indicate that the comparative method has its limitations, mainly concerning the so-called “many variables, small N” problem, describing the possibility of having more rival explanations to assess than cases to study.<sup>15</sup> However, if these limitations are considered before conducting the research, the comparative method is still a preferable tool for studying small N. According to Lijphart, there are several approaches to minimize “the many variables, small N” problem and, in this research, I apply two of them. First, the focus is on cases that are similar due to a variety of important characteristics which are used as controlled variables. Second, I compare a limited number of key variables that are most important for testing the paper's hypotheses. Thus, by selecting cases with many constant variables and reducing the number of operative variables, I expect to provide reliable and valid results with this technique.

The first step of the analysis is to select the controlled variables, which will justify the choice of guides that are compared. I am helped in this task by the fact that there is a limited number of published CRA guides, hence there is no need to have a long list of controlled variables to validate this choice. First, I decided to compare guides developed by international organizations at a regional and global level, excluding those published by private companies or consulting firms because they differ on many significant aspects. Secondly, I have chosen to focus on guides that provide advice in applying corruption risk assessments in

6 S. K. Sharma et al., *Corruption Risk Assessment Methods: A Review and Future Directions for Organizations*, ELC Asia Pacific Journal of Finance and Risk Management, 1 (2016).

7 ISO, supra note 2.

8 M. Buromensiky et al., *Corruption risk in Criminal Process and Judiciary*, 11 (2009), <https://rm.coe.int/16806edf53>.

9 See S. K. Sharma et al., supra note 6 at 4.

10 See U.N. General Assembly Res. 70/1, in *Transforming our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (Oct. 21, 2015).

11 United Nations, *The Sustainable Development Goals Report* (2018).

12 See Sustainable Development Goal 16, target 16.5, <https://sustainabledevelopment.un.org/?menu=1300>

13 U.N. Convention Against Corruption, art. 9, G.A. Res. 58/4 (Oct. 31, 2003). See: UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS CONVENTION AGAINST CRIME (Oct. 31, 2003), <https://www.unodc.org/unodc/en/treaties/CAC/>

14 A. Lijphart, *Comparative Politics and the Comparative Method*, 65, *The American Political Science Review*, 682 (1971).



both public and private sector organizations, as one of the goals is to emphasize the benefits of using CRA in both sectors. Most of the existing tools, while offering great methodologies, present CRA only as a private sector instrument. The third variable that I have selected looks at the comprehensiveness of the guides. I analyze CRA methodologies that are not limited only to one type of corruption such as bribery or to one sector/process, such as public procurement. Finally, I decided to focus on CRA methodologies that step on the International Standards Organization's ISO 31000 *Risk Management – Principles and Guidelines*, as this standard is a major milestone in risk assessment and management.

The set of controlled variables assisted in identifying five guides that match the above criteria. These guides are written by: the United Nations Office on Drugs and Crime (UNODC); the Regional Anti-Corruption Initiative in South East Europe (RAI); the Council of Europe (CoE); Transparency International (TI); and the United States Agency for International Development (USAID). The specific guides are:

- UNODC (forthcoming). **A Practical Guide to Corruption: Risk Assessment and Management in Public Sector Organisations**<sup>16</sup>
- RAI (2015). **Corruption Risk Assessment in Public Institutions in South East Europe**
- CoE (2010). **Project Against Corruption in Albania Technical Paper: Corruption Risk Assessment Methodology Guide**
- TI (2015). **Corruption Risk Assessment and Management Approaches in the Public Sector**
- USAID (2009). **Anticorruption Assessment Handbook**

In the following pages, I compare these guides using the following variables:

**A. Terminology** – Understanding the language of the methodology is significant for its successful implementation. Therefore, it is important for experts to know how the different guides define key terms such as risk management, risk and risk factors. I also compare the definitions of corruption that they provide; as previously discussed, this is important for the understanding of the corruption risks.

**B. Steps of the process** – Although all selected guides follow the structure of ISO 31000, the specific steps of the assessment may differ in the different tools. I compare whether some of them include additional steps or combine two steps in one according to the purposes of the concrete risk assessment guide.

**C. Techniques for the collection of information** – There are various instruments for collecting information during the process of risk assessment and I analyze the recommendations for how to organize the data collection process in each of the guides.

**D. Methods for analyzing the information** – This is an essential phase for the entire risk assessment process and here practitioners can also choose among several options. Thus, I compare the best practices for data analysis according to the selected guides. Here I

also include the risk evaluation techniques and the presentation of the results (whether they are presented as maps emphasizing red flags or as a risk matrix that prioritizes certain risks etc.).

**E. Types of CRA** – The current literature distinguishes several types of corruption risk assessment according to their scope (organizational, sectoral, national), the experts involved (internal or external), and their generalization (public vs. private sector risk assessment). For the purposes of the analysis, this is perhaps the most important variable: it will compare the information that the four guides provide on the different types of CRA, and thus will test the hypothesis that the most efficient way to conduct CRA is to apply it at an organizational level.

**F. Resource requirements** – With the last variable, I compare the human and financial resources needed for the implementation of each of the CRA methodologies analyzed in this article. This information could help experts to choose the most appropriate approach for risk management in accordance with the resources they have.

## 5. COMPARISON OF THE CRA GUIDES

### 5.1. Terminology

I first start by comparing the terminology used in the selected guides, which mainly concerns the terms 'risk management', 'corruption', 'corruption risk' and 'risk factor'.

*Risk management* – Most of the manuals explain risk management or assessment in various but similar ways. The risk assessment guide, developed by the Regional Anti-Corruption Initiative, defines the corruption risk assessment as 'a preventive tool for identification of corruption, integrity risk factors, and risks in public sector with the purpose of developing and implementing measures for mitigation or elimination of those factors and risks'.<sup>17</sup> According to the UNODC's guide, CRA is a scientific method to think systematically about the chances corruption may occur and how this can be prevented in public sector organizations.<sup>18</sup> All Transparency International's materials on CRA refer to the definition, used by McDevitt, which was discussed in the first part of this paper.<sup>19</sup> USAID offers an approach that captures the breadth of issues that affect corruption and anticorruption prospects in their 'Anti-Corruption Assessment Handbook' from 2009. As opposed to the concepts above, the Council of Europe uses a totally different approach and suggests that the risk assessment should be used not only for risk identification but also for assessment of the actual incidence of corruption, which also differs significantly from the general concept of risk management, explained in the first part of the analysis.<sup>20</sup>

*Corruption* – The concepts of corruption are also different in the examined guides. USAID's guide follows the widely accepted abuse of office for private gain,<sup>21</sup> while the RAI, in addition to the undue advantages for public officials, includes also breaches of integrity and other unethical practices that are usually considered as corruption in the public sector.<sup>22</sup> For the purposes of corruption risk assessment, both Transparency International and the Council of Europe favor the identification of concrete practices within an

15 Id. at 686; D. Collier, *The Comparative Method, in Political Science – The State of the Discipline* II 105 – 118 (A. W Finifter ed. 1993).

16 This guide is to be published in 2018. Permission to use the draft was given by UNODC.

17 RAI, *Corruption Risk Assessment in Public Institutions*, 11, South East Europe: Comparative Research and Methodology (2015).

18 UNODC, *A Practical Guide to Corruption: Risk Assessment and Management in Public Sector Organisations*, 4 (forthcoming).

19 See *supra*note 4.

20 See CoE, *Technical Paper: Corruption Risk Assessment Methodology Guide* (2010).

institution that are considered as corruption rather than following universal definitions or legal approaches for explaining the phenomena.<sup>23</sup> On the other hand, UNODC, adhering to the UN Convention Against Corruption, does not go into the definitional debate on corruption.

*Corruption risk and risk factors* – Surprisingly, only one of the five guides selected for this research provides a definition of these two terms – the tool developed by the RAI, which uses the ISO 31000’s “the effect of uncertainty on objectives” for corruption risk and defines the risk factors as “any attribute, characteristic or exposure of an individual, institution or process that increases the likelihood of corrupt behaviour, breach of integrity, unethical behaviour or other conduct that can have negative effects on objectives and goals of a public sector institution.”<sup>24</sup> USAID, for example, does not use the term ‘risk’ in their manual as they call the process anti-corruption assessment instead of risk assessment.<sup>25</sup> The UNODC does not discuss what corruption risk or risk factor are because they prefer to focus on the practical steps of the process rather than on its theoretical framework.<sup>26</sup> The TI and the Council of Europe also do not explain what risk or risk factors are.

## 5.2. Types of corruption risk assessment

The current literature distinguishes several types of risk assessment according to a couple of factors. In general, the main distinction is between private and public sector CRA and all guides, including those reviewed here, make remarks to it by default if they provide a methodology for risk assessment in one of the two sectors.

The most comprehensive guide in terms of types of CRA is the one developed by the RAI as, further to the private and public

sector assessments, it differentiates between approaches for assessing the risks at national, sectoral, and organizational levels, as well as assessments conducted by the staff of the organization or by external advisors.<sup>27</sup>

The UNODC’s guide advocates particularly for CRA in public organizations; thus, it does not include sectoral or national level assessments, but also acknowledges the possibility of conducting the assessment either by internal or external experts.<sup>28</sup>

The Council of Europe discusses both external and internal approaches in their tool. They also mention opportunities for assessment of a whole sector or a single organization.<sup>29</sup>

Transparency International’s guidelines notice three levels of assessment – national, sectoral and organizational, and do not distinguish other types of CRA.<sup>30</sup>

The USAID similarly follows the TI’s approach and provides a methodology for assessment of corruption practices, particularly at a national and sectoral level, but does not exclude the opportunity for assessing single organizations as well.<sup>31</sup>

## 5.3. Steps of the process

As already mentioned, some of the guides examined in this paper use the ISO 31000’s model<sup>32</sup> for CRA as a basis to develop their own structure of the process (UNODC and RAI, for instance) while others such as USAID and TI introduce their own methodology for conducting CRA. The Council of Europe’s guide is the only one which does not split the process into different phases or steps as it prefers to focus on the concrete techniques and instruments for collecting and analysing information. Table 1 presents the different approaches to organizing the assessment process that were identified in the five guides.

**Table 1. Different approaches to the Corruption Risk Assessment.**

| Guide developed by:                | RAI  | UNODC                                  | TI                       | CoE      | USAID                    |
|------------------------------------|--|--|--------------------------|----------|--------------------------|
| <b>No of steps</b>                 | <b>5</b>   | <b>6</b>                               | <b>3</b>                 | <b>-</b> | <b>2</b>                 |
| <b>Structure of the assessment</b> | 1. Planning, scoping and mobilisation of resources         | 1. Consider environment                | 1. Diagnostic phase      |          | 1. Early activities      |
|                                    | 2. Identification and analysis of risks                    | 2. Identify corruption vulnerabilities | 2. Risk assessment phase |          |                          |
|                                    | 3. Measurement, evaluation and ranking of identified risks | 3. Risk evaluation                     |                          |          |                          |
|                                    | 4. Risk management plan and risk register                  | 4. Prioritize vulnerabilities          | 3. Risk management phase |          | 2. In-country activities |
|                                    | 5. Programme for monitoring and follow-up                  | 5. Review control’s effectiveness      |                          |          |                          |
|                                    | 6. Prepare plan  |  |                          |          |                          |

21 B. Spector, *Anticorruption Assessment Handbook*, 4 (2009).

22 RAI, supranote 13.

23 See McDevitt, supranote 4; and CoE, supranote 16.

24 RAI, supranote 13 at 18.

25 See B. Spector, supranote 17.

26 See UNODC, supranote 14.

27 RAI, supranote 13.

28 UNODC, supranote 14.

29 CoE, supranote 16.

30 McDevitt, supranote 4.

31 B. Spector, supranote 17.

32 For more information about all phases of the ISO’s risk management process see: ISO, supranote 2 or A. Petkov, *A Brief Introduction to Corruption Risk Assessment*, XVIII, *ACAlumnus Magazine*, 38 (2018).

### 5.4. Techniques for collecting data

There are various tools for collecting relevant information and experts can choose and combine them to gather the data they need. Most of the guides recommend using a combination of primary

sources (information obtained through interviews, brainstorming sessions etc.) and secondary sources (usually collected through desk research and document review). The techniques that they offer for collecting these two types of data are presented in Table 2 below:

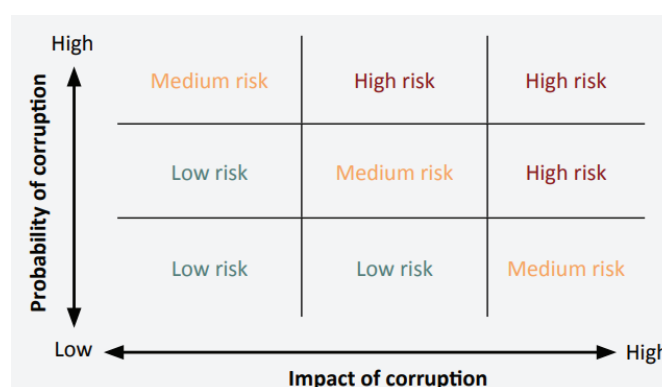
**Table 2. Techniques for collecting relevant information.**

| Guide developed by:      | RAI   | UNODC   | TI   | CoE   | USAID   |
|--------------------------|---|---|--|---|---|
| <b>Secondary Sources</b> | 1. Document review of internal information such as audit reports, existing mechanisms and procedures etc. | 1. Background research for identifying external factors such as relevant laws and regulations, cultural, social, and political aspects that affect the organization's performance | 1. Analysis of the laws and other regulations that apply to the institution  | 1. Document review of the existing reports, relevant legal norms, statutes, internal rules and guidelines as well as procedures and processes | 1. Legal-Institutional Framework Analysis                           |
|                          | 2. Legal analysis   |   | 2. Cases analysis  |   | 2. Initial analysis of political-economic dynamics and stakeholders |
|                          | 3. Analysis of experiences of similar institutions, sectors, projects or working processes                | 2. Document review of the internal factors such as governance, organizational structure, roles, job descriptions, procedures etc.   | 3. Review of the institution's organizational structure (job descriptions, work processes and procedures) as well as its codes of ethics and conflict of interest policies |   | 3. Analysis of the existing corruption indicators for the country   |
| <b>Primary Sources</b>   | 3. Personal interviews  | 3. Brainstorming sessions   | 4. Focus group discussions   | 2. Interviews   | 4. Interviews   |
|                          | 4. Surveys and questionnaires   | 4. Interviews with agency colleagues  | 5. Interviews  | 3. Institutional risk questionnaires  |   |
|                          | 5. Focus groups   |   |  | 4. Surveys  | 5. Focus groups with major stakeholders                             |
|                          | 6. Brainstorming sessions   | 5. Focus groups   | 6. Analysis of the perception or the experience of corruption  | 5. Proxies  |   |
|                          |   |   |  | 6. Direct observation   |   |

### 5.5. Methods for analysing and presenting data

The collected data allows experts to identify the risks within the system and to move to the next stage of the assessment, which requires proper techniques for evaluation and prioritization of the existing risks. Therefore, I decided to examine also what approaches the different guides recommend for analysing the data.

The guides by UNODC, Transparency International and the Regional Anti-Corruption Initiative advise applying the same evaluation approach. First, they suggest a two-step evaluation that first assesses the likelihood of occurrence of each risk and the potential harm for the organization if the risk occurs, and secondly prioritizes all risks according to their likelihood and impact.<sup>33</sup> The most common way to visualise this process is through a risk matrix, a model of which is presented below. The aim of the risk matrix is to show which are the highest risks that need urgent response.



**Figure 1. Basic risk matrix.**

Source: Johnson (2015)

33 RAI, supranote 13 at 93; UNODC, supranote 14 at 25; McDevitt, supranote 4 at 3.

The Council of Europe and the USAID guides do not provide such detailed instruments for analysing the data. They both focus more on the previous steps for collecting information and emphasize the importance of this information for the final conclusions of the assessment.<sup>34</sup> For example, the USAID explains that during the process of in-depth diagnosis the experts will obtain enough information to help them to understand and identify the key weaknesses and vulnerabilities within sectors or processes.<sup>35</sup>

### 5.6. Resources requirements

by comparing the different approaches to CRA, two factors that determine the costs of the process were identified. The first one is the level of the analysis – national, sectoral or organizational- and the second one is the experts involved – internal or external.

The institutional approaches offered by the Council of Europe and UNODC allow organizations to conduct self-assessment by using their own staff, which will reduce significantly their costs. Of course, if they have the need and the necessary resources, they can also use external advisors to support the assessment. Depending on the resources they have, organizations can also choose whether to do a full-scale analysis to assess all processes within the entity or to conduct a problem-based assessment to identify the risks only in particular parts of the system.<sup>36</sup>

The Transparency International guide favours the mixed approach where both internal and external experts are involved and, although their guide does not particularly discuss the potential costs, it is easy to assume that the national and sectoral level assessments will require more resources than the organizational ones, due to their complexity.

The Regional Anti-Corruption Initiative guide provides a discussion of the pros and cons of self- versus external assessment, but also does not discuss potential costs of risk assessments beyond stressing the need of adequate human and financial resources.<sup>37</sup>

USAID guidance does not clearly discuss the costs of the process either. Its approach has been developed to assess the corruption risks in countries, receiving funds from USAID, and hence it suggests that the assessment should be conducted by USAID experts in cooperation with the national institutions.<sup>38</sup> Therefore, the resources required for the process will depend on the size of the sector or project under assessment and the competence of the national authorities.

## 6. DISCUSSION OF THE RESULTS

The findings of this paper suggest that there are different concepts of risk management because there is no universal approach for CRA that can be directly applied to all organizations or sectors due to various factors, explained in some of the guides.<sup>39</sup> According to these observations, corruption risk management or assessment can be generally defined as a process of identification, evaluation and response to risks (vulnerabilities and weaknesses) that may cause corruption. This approach can be adapted to the specific needs and goals of organizations of all sizes and sectors.

The lack of a one-size-fits-all approach is also the reason why most of the guides are inconsistent in using the terminology and

defining the terms ‘corruption risk’ and ‘risk factors’ (or the lack of such definitions). This inconsistency can be further explained as the efforts of all organizations that have developed CRA methodologies to give flexibility to the experts to define these terms according to the specific case or context. However, inconsistent terminology can lead also to confusion, especially among less experienced and trained staff and it can be an issue for the successful implementation of the CRA methods. Therefore, organizations that aim to promote CRA should make more effort to explain what these terms mean. On the other hand, organizations which aim to apply it should carefully define corruption risk and risk factors before the beginning of the assessment to avoid mistakes and vague results at the end of the process.

The comparison showed that all guides offer similar techniques for collecting data from both primary sources (focus groups, interviews and surveys) and secondary sources (document reviews and background researches). Thus, experts can easily obtain sufficient knowledge in this area. However, not all manuals provide guidance on how to proceed with this data. Only UNODC, TI and RAI recommend concrete steps for analysing data and presenting results.

Another issue in the corruption risk management guides concerns the resources required to apply CRA within sectors or organizations. Although this approach could be less time and resource consuming than other anti-corruption measures, there is little discussion about the financial requirements in the existing CRA literature.<sup>40</sup> Only the UNODC’s guide explains in detail the possible costs of the process; the other manuals examined in this paper either do not discuss the costs at all or briefly mention them. Thus, it might be hard for practitioners to understand that the CRA methods are flexible and applicable to organizations differing in size and resource availability.

Besides the above issues, all materials agree on the benefits that CRA methods offer for reducing corruption. First, they allow stakeholders to manage corruption risks on all levels and to create realistic plans for response based on the prioritization of risks and threats. The identification of concrete vulnerabilities within the system also facilitates the development of tailored anti-corruption measures that could be more efficient than general or mainstream ones in particular cases. Furthermore, the CRA approaches could be the key to fighting widespread systematic corruption as they aim to prevent corruption from happening rather than investigating and sanctioning corruption cases already committed. Therefore, political bodies and senior level management could be less reluctant to implement these types of anti-corruption measures within their institutions.

Finally, the findings of this comparative analysis show that corruption risk assessment is most effective if it assesses the risks within a single organization, rather than a whole sector or country.

The first argument in support of this hypothesis is that the national and sectoral assessments could lead to results that are too general or vague – for example, to the conclusion that there are corruption risks in public procurement in the healthcare system. However, such a conclusion might be not very helpful because there might be different reasons for the risks in the procurement in the different organizations within the sector. In

<sup>34</sup> CoE, *supranote 16*; B. Spector, *supranote 17*;

<sup>35</sup> *Id.*

<sup>36</sup> See UNODC, *supranote 14*; CoE, *supranote 16*.

<sup>37</sup> RAI, *supranote 13* at 67.

<sup>38</sup> B. Spector, *supranote 17* at 14.

<sup>39</sup> See for example: RAI, *supranote 13* at 14.

<sup>40</sup> A. Petkov, *supranote 18*.

contrast, the organizational CRA narrows down the scope of the assessment and, therefore, can provide a better understanding of the specific processes in each entity within the whole sector. Thus, the experts would be able to understand why there is a corruption risk in the public procurement in a given hospital for instance – weak procedures, employees not doing their job, a lack of integrity or incompetence, etc. It is hard to come up with such concrete answers if you assess the whole sector without going into the details of every single organization.

Moreover, organizational level assessments could significantly reduce the costs of the fight against corruption by bringing the focus onto those types of corruption that require an urgent response. This can save time and resources for the institutions' management, which makes this type of CRA a good opportunity for organizations or companies with limited resources, especially in developing countries. On the other hand, national and sectoral assessments are more time consuming and usually require bigger financial and human resources.

## 7. CONCLUSIONS

The Corruption Risk Assessment is a relatively new instrument and yet, it is not well recognized by governments and public institutions, despite the efforts of different international organizations to promote it. The growing number of materials on CRA aim to offer various tools for conducting risk assessment but it also creates confusion among practitioners in terms of selecting the right CRA approach. Therefore, scholars can facilitate the process of implementing CRA by examining different approaches and discussing their pros and cons.

This paper emphasized that, if conducted properly, CRA could reduce corruption of different forms and sizes in both public and private organizations. Moreover, it could help them to improve their structures, regulations and to deliver better their functions to the people. In the long term, CRA could support the achievement of the Sustainable Development Goal 16 and particularly its target to significantly reduce corruption across the world.

This research has tried to emphasize why organizations should apply CRA methods by providing an overview of the key CRA methodologies and discussing the differences between them. It also emphasized that there is no 'one-size-fits-all' approach for

corruption risk assessment and therefore organizations should adapt the existing methodologies according to their own needs and requirements in order to achieve optimum results. Finally, this research suggested that corruption risk assessments are most effective if they are applied at an organizational level.

Further research into this area would look at how specific organizations are applying the methods proposed in the risk assessment guides for the 'on the ground' issues that arise from applying self-assessment. There is a need for more empirical evidence regarding the practical implementation of CRA and both researchers and experts would have an important role in collecting such data.

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Critical Analysis

# The State Commission for Prevention of Corruption as a preventive anti-corruption agency in Macedonia

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## ABSTRACT

This paper deals with the core preventive Anti-corruption Agency (ACA) of the Republic of Macedonia, namely the State Commission for Prevention of Corruption (SCPC). The idea therein is two-fold: firstly, to explain the ACA model which the Republic of Macedonia has chosen and, secondly, to criticize some of the characteristics of the respective legal and institutional framework. Of course, we do not aim to analyze every aspect of the SCPC – which would imply a much longer article than the one at hand – but rather to focus on the most important details. In that respect, we will place focus on the SCPC's competencies (functions, tasks and powers) and discuss if they are properly designed. Furthermore, we will tackle the institutional design and the capacities of the institution, so to illuminate the existing discrepancy between this ACA's *de-jure* competencies and *de-facto* possibilities. Thirdly, we will speak of its effectiveness. Doing so, we will not only draw the attention of the international research community to the SCPC but also enable comparative research in the future. What is especially valuable to note is that in terms of many of its characteristics, the SCPC is compared to other ACAs in the region of Southeastern Europe too, meaning that an initial contrast has been set. Finally, the main findings of the text are such that an answer for improvement cannot be provided instantly, but additional work in the field is required. Thus, one can only hope that this research inspires other individuals and professionals in the sphere too.

**Keywords:** Anti-corruption, effectiveness, anti-corruption agencies, State Commission for Prevention of Corruption, prevention

## ملخص:

يتناول هذا البحث الوكالة الأساسية المعنية بمكافحة الفساد (ACA) لجمهورية مقدونيا، وتسمى بمفوضية الدولة للوقاية من الفساد (SCPC). ولتوضيح فكرة البحث يتعين تناول المؤسسات المعنية كما يلي: أولاً، شرح نموذج وكالة مكافحة الفساد ACA الذي اختارته جمهورية مقدونيا، وثانياً، طرح الانتقادات بصدد بعض خصائص الإطار القانوني والمؤسسي، حيث أننا لا نهدف إلى تحليل كل جانب من جوانب مفوضية الدولة للوقاية من الفساد SCPC – مما يعني ضمناً بحث أطول بكثير – بل نرمي إلى التركيز على أهم التفاصيل. وفي هذا الصدد، سنركز على اختصاصات اللجنة من حيث مهامها وواجباتها ونطاق عملها وسوف تتم مناقشة مسألة جودة نظامها. علاوة على ذلك، يتطرق البحث إلى النظام المؤسسي وقدرات المؤسسة، وذلك لإبراز التناقض القائم بين الاختصاصات الشرعية لهذه الهيئة وإمكانيات الواقع. ثالثاً، يناقش البحث مدى فعاليتها. ومن خلال اتباع هذا المنهج، فإننا لا نلفت انتباه مجتمع الأبحاث الدولي إلى مفوضية الدولة للوقاية من الفساد في مقدونيا SCPC فحسب، بل نشاهد أيضاً في دعم الأبحاث المقارنة في المستقبل. والجدير بالذكر، أنه تتم مقارنته المفوضية في خصائصها المتعددة مع وكالات معنية بمكافحة الفساد الأخرى ACAs في منطقة جنوب شرق أوروبا أيضاً، مما يدل على وجود تباين أولي بين تلك الجهات. وأخيراً، فإن النتائج الرئيسية للبحث كافتراح آليات للتطوير لا يمكن تقديمها على الفور، ولكن يلزم عمل إضافي في هذا المجال. ولذلك أأمل أن يلهم هذا البحث الأفراد والمهنيين الآخرين في المجال أيضاً.

**الكلمات المفتاحية:** مكافحة الفساد، الفاعلية، هيئات مكافحة الفساد، الهيئة الوطنية لمكافحة الفساد، الوقاية.

## 1. INTRODUCTION

It cannot be disputed that as a result of the many years of campaigning by different national and international (governmental and non-governmental) organizations, awareness of the devastating effects of corruption has increased on a global scale. In fact, it is clear that the successful fight against corruption is one of the primary prerequisites for reaching the Sustainable Development Goals of the United Nations (SDG), especially the sixteenth, entitled “Peace, Justice and Strong Institutions” (SDG16). No country can build strong institutions – implying effectiveness, accountability and inclusiveness – if its anti-corruption policies are not sufficiently successful. Additionally, if justice is considered a category which includes social equity and prevention of poverty as well, then the importance of the anti-corruption efforts becomes clear; as explained by the UN, “[c]orruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than a \$1.25 a day above \$1.25 for at least six years”.<sup>1</sup> Nevertheless, corruption is still a remarkable challenge for the states in the Southeastern European region, among which is the Republic of Macedonia. The transition that this country has experienced, from socialism to capitalism in an economic sense, and from an authoritarian regime to democracy in a political sense, has weakened its institutions and brought about the rise of dishonest and fraudulent conduct by its public officials and private entities. This has led to new endeavors and attempts to prevent and eradicate this negative phenomenon and, as per the worldwide trend, to the formation of new particular institutions – anti-corruption agencies (ACAs). It is precisely these institutions, the ACAs, which are the focus of this article; however, not all of them. As will be elaborated below, only a preventive one will be examined: the State Commission for Prevention of Corruption (SCPS) of the Republic of Macedonia. The idea is to check if, and to what extent, this authority is effective. What is especially captivating in this sense is that the Republic of Macedonia has not really achieved any significant success in its fight against corruption in more than a decade (and even, moreover, since the SCPC’s establishment). Although it cannot be argued that the anti-corruption successes are related only to the SCPC’s performance, the respective institution does have an important role in that context. Having said that, the text will refer to the ACAs and their role in general, the legal framework relevant to the SCPC’s functioning and its *de-facto* capacities. When speaking of the legal framework, it is important to mention that it is currently undergoing changes, something that will be elaborated on below. Finally, in order to reach certain conclusions with respect to the SCPC, we are going to compare it to the preventive ACAs of other countries, especially the ones in the region of Southeastern Europe. Thus, we hope not just to contribute to the study of the SCPC but to ACAs generally. Bearing in mind that the first institution of this kind was established half-a-century ago, while others first appeared in the 1970s, we find that any research on the topic is outstandingly important.

## 2. ANTI-CORRUPTION AGENCIES AND THE ROLE OF THE PREVENTIVE ONES

As stated in the introduction, there is significant evidence that awareness of the negative consequences of corruption has risen in the past few decades. One of these indicators is the increasing number of ACAs worldwide or, as pointed out by Tomić, “[t]hree decades ago, there were hardly more than 20 of such agencies, today we more than 130 of ACAs around the world.”<sup>2</sup> So, the question that we are facing on this particular occasion is what is an ACA and how can we define it? Perhaps one of the best definitions is given by de Sousa who explains them as “public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures.”<sup>3</sup> Respectively, there are four main characteristics of ACAs. The first one is that the ACAs are public authorities or, in some cases, labelled as publicly funded ones. The second one is that they are specifically founded to combat corruption, while the third is that they are of a durable, long-lasting nature. This means that only those institutions which are not *ad hoc*, formed to handle a specific case or a pool of cases after which they cease to exist, can be considered as ACAs. The institutions which are *ad hoc* – as for instance the so-called Special Public Prosecution of Macedonia<sup>4</sup> – can be considered as anti-corruption authorities but not ACAs *stricto sensu*. They can neither be analyzed through the same methodology as the ACAs, nor do the principles for ACAs apply to them. They are not a rule but rather its exception. Finally, the fourth attribute of the ACAs is related to their competencies, i.e. the measures they can undertake or impose. It also serves as a basis for their classification into two groups: preventive and suppressive (classifications also devised by Tomić).<sup>5</sup>

Preventive ACAs focus primarily on education, keeping records, training and spreading information among citizens, while suppressive ACAs are vested with prosecutorial and investigative powers as well as, in certain cases, powers to impose fines for regulatory violations. There are cases when the preventive ACAs can carry out investigations too; however, they cannot indict a (natural or legal) person but must instead use soft mechanisms such as public warnings. In addition, if they suspect that a crime or a regulatory violation has been committed, they can, in most cases, file motions to the prosecution authorities or the competent courts. Of course, these are general characteristics of the two groups of ACAs. Regardless, if one is to decide if a certain ACA is preventive or suppressive in its nature, he/she would have to individually study its competencies and determine which mechanisms, the pre-emptive or the repressive, prevail. For instance, the ACAs which are analyzed on this occasion are considered preventive. Other preventive ACAs are, for instance, the Anti-corruption Agency of Serbia<sup>6</sup>, the Commission for Prevention of Conflicts of Interests of Croatia<sup>7</sup>, the Commission for Prevention of Corruption of Slovenia<sup>8</sup>, the Agency for Prevention of Corruption of Montenegro<sup>9</sup> and the Agency for Prevention of

1 <https://www.un.org/sustainabledevelopment/peace-justice/>.

2 Slobodan Tomić, *Explaining Enforcement Patterns of Anticorruption Agencies: Comparative Analysis of Five Serbian, Croatian and Macedonian Anticorruption Agencies* (2016) (PhD thesis submitted to the London School of Economics and Political Science), <http://etheses.lse.ac.uk/3370/>.

3 Luis de Sousa, *Anti-Corruption Agencies: Between Empowerment and Irrelevance*, 53(1), *Crime, Law and Social Change* (2009), <http://cadmus.eui.eu/handle/1814/10688>.

4 The full title of the institution is the Public Prosecution for Persecution of Crimes Related with or Arising from the Content of Legally Monitored Communications.

5 Slobodan Tomić, *Explaining Enforcement Patterns of Anticorruption Agencies: Comparative Analysis of Five Serbian, Croatian and Macedonian Anticorruption Agencies* (2016) (PhD thesis submitted to the London School of Economics and Political Science), <http://etheses.lse.ac.uk/3370/>.

6 The Anti-Corruption Agency Act (original: Zakon o Agenciji za borbu protiv korupcije) of Serbia, Official Gazette of Serbia, 97/08, 53/10, 66/11; Decisions of the Constitutional Court of Serbia, Official Gazette of Serbia, 67/13 and 8/15.

7 Act on Prevention of Conflicts of Interests (original: Zakon o sprečavanju sukoba interesa) of Croatia, Official Gazette of Croatia, 26 (2011); 12 (2012); 126 (2012); 48 (2013).

8 Act on Integrity and Prevention of Corruption (original: Zakon o integriteti in preprečevanju korupcije) of Slovenia, Official Gazette of Slovenia, 45 (04.06.2010).

9 Prevention of Corruption Act (original: Zakon o sprečavanju korupcije) of Montenegro, Official Gazette of Montenegro, 53 (2014).

Corruption and Coordination of the Fight against Corruption of Bosnia and Herzegovina<sup>10</sup>. Suppressive ACAs are, on the other hand, the Lithuanian Special Investigative Service,<sup>11</sup> the Latvian Corruption Prevention and Combating Bureau,<sup>12</sup> the Hong Kong Independent Commission Against Corruption<sup>13</sup> and the Singapore Corrupt Practices Investigation Bureau<sup>14</sup> which – as numerous authors suggest<sup>15</sup> – can be considered pioneers in the area. Yet, one should not, and most not, misunderstand what has been said so as to reach a conclusion that the suppressive ACAs only investigate and prosecute. They too can educate and train, especially when it comes to the administrative (public) servants of their state; however, unlike the preventive ACAs, this is not their core competence. To illustrate this more vividly, both the Singapore Corrupt Practices Investigation Bureau (suppressive ACA) and the Macedonian SCPC (preventive ACA) can carry out training. Nevertheless, the prior ACA has more power and responsibility (including the power to investigate) than the latter. For instance, the Singaporean ACA has its own special investigators who are armed and can even make an arrest, while the Macedonian SCPS has no investigators of its own and cannot even impose a small fine for regulatory offences. Finally, it has to be pointed out that a single country can have multiple ACAs of both a preventive and suppressive nature. This is the case with a large number of states, among which are some of the ones already enlisted. Respectively, Croatia does not only have the CCI but also the Office for the Suppression of Corruption and Organized Crime (commonly referred to as USKOK) within the Public Prosecution. If we apply the definition of ACAs above, this is one of the typical suppressive ones. Macedonia has the SCPC but also the Public Prosecution for Persecution of Organized Crime and Corruption which can also be deemed as ACA, while Montenegro has not just the referred Agency but also a Special Public Prosecution with jurisdiction over organized crime and high-level corruption – an ACA. Moreover, almost all nations have specific offices within their police services which are competent for corruption specifically. Simply put, the fact that a certain country has a preventive ACA does not mean that it does not have a repressive one as well.

This division of the two groups of ACAs explains their roles too. Due to practical purposes and the interest of this paper, we will limit ourselves to the preventive ones only. They are established to: (1) upgrade the country's ethical infrastructure; (2) facilitate communication between the victims of corruption and the perpetrators; (3) ease the access to information for citizens and investigative and prosecution authorities; (4) raise awareness and knowledge in general; (5) report corruption whenever individuals or legal persons are reluctant to do so. They do not substitute the traditional players when it comes to anti-corruption, the police and the prosecution services, but exist in parallel to them, contributing to the policy-building and decision-making. First of all, they carry

out research. Doing so, they detect the flaws of the anti-corruption legal framework so that they can point them out to the legislators and also to citizens (creating public pressure). Secondly, they provide advice. If a certain public authority or private person has questions about whether a potential action can be deemed as corruption, they may approach the preventive ACA and seek advice. Thirdly, they keep records. Namely, whenever a preventive ACA exists, it usually has the power to ask all public officials to provide it with declarations of assets and similar documents. This way, it can monitor whether a certain office-holder (e.g. a minister or director) has increased his/her assets to an extent that is not proportionate to his/her revenue. If such a case appears, the preventive ACA can undertake additional steps: namely, it can either inform the public prosecutor (file a motion), ask the authority which has appointed the respective office-holder to dismiss him/her and inform the press and the public. Fourthly, the preventive ACAs usually develop soft-law mechanisms – called codes of ethics or codes of conduct – and propose their adoption to other public authorities or private entities. Lastly, these agencies educate and train. It is often the case that preventive ACAs conduct training or other public events so that they can introduce people to the anti-corruption laws and by-laws, i.e. the consequences from being corrupt and the mechanisms for protection.<sup>16</sup>

Having said all of this, it cannot be disputed that preventive ACAs such as the SCPC are important in terms of the SDG16 – the development of effective, accountable and inclusive institutions. The best way to explain it is through what the United Nations Office on Drugs and Crimes (UNODC) has laid out in its press-release, *Combating Corruption to Achieve the Sustainable Development Goals*. Speaking of the United Nations Convention against Corruption (UNCAC) from 2003<sup>17</sup> and its relation to the SDG16, the UNODC points out the importance of preventing corruption, saying that “[a]n entire chapter of the Convention is dedicated to preventing corruption with measures directed at both public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties.”<sup>18</sup> To put it simply, the highest international authority in the respective area, the UNODC, clearly indicates that anti-corruption bodies (ACAs in our terminology) are one of the core endeavors to reach all SDGs, not just the 16<sup>th</sup>. Preventive ACAs can increase all three attributes of institutions: their effectiveness, accountability and inclusiveness. Firstly, they monitor the conduct of the heads of the institutions, the increase or decrease of their personal assets and the manner in which they spend public funds, bringing about higher accountability. This is even more applicable when bearing in mind that they initiate criminal investigations before other authorities as well. Secondly, these ACAs educate the public on how to recognize corruption and what their rights *vis-à-vis* the

10 Act on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (original: Zakon o Agenciji za prevenciju korupcije i koordinaciju borbe protiv korupcije) of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 103 (2009) and 58 (2013).

11 Act on the Prevention of Corruption (original: Lietuvos Respublikos korupcijos prevencijos istatymas) of Lithuania, Official Gazette of Lithuania, 57-2297 (2002).

12 Corruption Prevention and Combating Bureau Act (original: Korupcijas novēršanas un apkarošanas biroja likums) of Latvia, 42(2807) (18.03.2003); 96(2861) (27.06.2003); 206(3154) (24.12.2004); 25(3183) (15.02.2005); 101(3259) (30.06.2005); 180(3548) (09.11.2006); 183(3967) (25.11.2008); 200(3984) (23.12.2008); 100(4086) (30.06.2009); 193(4179) (09.12.2009); 169(4567) (26.10.2011); 57(5629) (22.03.2016); 30(5857) (08.02.2017); 253(6080) (20.12.2017).

13 Initially established in 1974 with the Independent Commission Against Corruption Ordinance no. 7 of 1974.

14 Established by the British colonial government in 1952.

15 For instance, Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, 8(1) The Journal of Economic Policy Reform, 69 (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950>.

16 More on the roles of the preventive, but also the suppressive ACAs can be found in the paper: Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, 8(1) The Journal of Economic Policy Reform, 69 (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950>.

17 United Nations Office on Drugs and Crime, United Nations Convention Against Corruption (2004), [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

18 United Nations Office on Drugs and Crime, combating corruption to achieve the sustainable development goals (2017), <https://www.unodc.org/unodc/en/press/releases/2017/November/combating-corruption-to-achieve-the-sustainable-development-goals.html>.



institutions are (especially in terms of information collection), therefore bringing about inclusiveness. In other words, only citizens which are knowledgeable can actively observe the (dis) honest behavior of officials and institutions. Thirdly, one of the preventive ACAs' tasks is to oversee political parties' financing and election campaigns. Doing so, they can not only inspect whether the institutional structures are misused but also if public servants are under pressure to become involved in the pre-election activities. Preventing such illegal activities, they increase the effectiveness of the institutions too. These are, of course, merely a few examples of the exceedingly important role of preventive ACAs. The details throughout the text below will make this picture even clearer. Nevertheless, the general remark would be that anti-corruption efforts are less likely to be successful without ACAs, while as Ugaz points out “[w]ith corruption, there’s no sustainable development.”<sup>19</sup>

The quoted press-release by the UNODC makes clear that the UNCAC supports the establishing of ACAs. These institutions are indirectly referred to in Article 6 and directly mentioned in Article 36, although the latter provision stipulates that the respective authorities should be “specialized in combating corruption through law enforcement”, indicating that they should be suppressive. The existence of ACAs is referred to in regional legal documents as well. The first one is the Criminal Law Convention on Corruption of the Council of Europe which entered into force in 2002<sup>20</sup> where Article 20 provides for “authorities specialised in the fight against corruption”. The provision is slightly broader than that of the United Nations Convention against Corruption since it does not stipulate that these authorities should fight against corruption via law enforcement. Another regional document is the Inter-American Convention against Corruption, adopted in 1996, where it is set out that each State Party should create, maintain and strengthen oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts (Article III, para. 9). This provision may be interpreted in such a manner that it obliges the State Parties to have a preventive and suppressive ACA or one that has characteristics of both kinds. Another note is that preventive ACAs can be established under the 8<sup>th</sup> paragraph of Article III of this Convention, as they can

be the institution which implements the “[s]ystems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities in accordance with their Constitutions and the basic principles of their domestic legal systems”.

### 3. THE STATE COMMISSION FOR PREVENTION OF CORRUPTION: PREVENTIVE ANTI-CORRUPTION AGENCY OF MACEDONIA

The SCPC of Macedonia is a preventive ACA. As already explained, it is not the sole ACA in the country. Besides the SCPC, the country also has a Public Prosecution for Persecution of Organized Crime and Corruption. However, the SCPC is the only preventive ACA and is, respectively, one with a number of tasks. The text below will contain an explanation of the SCPC's functions, institutional design and capacities. In certain aspects, the SCPC will be compared to similar institutions from other countries in Southeast Europe. This is going to be done in order to reach conclusions about whether certain aspects in respect to the SCPC's functioning can be improved.

#### 3.1. Foundation, functions and powers of the State Commission for Prevention of Corruption in Macedonia

The SCPC of the Republic of Macedonia is founded with the Act on Prevention of Corruption from 2002 (Official Gazette of the Republic of Macedonia, 28/2002). Even though the legal act was adopted in April that year, its provisions provided that the members of the SCPC would be appointed within six months. As parliamentary elections were held that very year – July 2002 – there was little focus on appointing members of the SCPC immediately upon the introduction of the new legal act; the first members of SCPC were appointed in November 2002. Established as it was, the SCPC was clearly envisaged as a preventive ACA. Unlike the Singaporean, Lithuanian, Latvian and other suppressive ACAs, it was not vested with powers to investigate crimes related to corruption but was constructed as an institution with a significantly milder role. The legal act with which the SCPC was established, namely the Act on Prevention of Corruption, was amended several times over the years; nevertheless, the role of the respective ACA remained intact. Presently, the SCPC functions on the basis of four legal acts in total:

**Table 1. Legal framework for the SCPC**

| Legal Act  | Official Gazette of the Republic of Macedonia, no.   |
|--|--|
| Act on Prevention of Corruption (APC)              | 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 and 148/2015  |
| Act on Prevention of Conflicts of Interests (APCI) | 70/2007, 114/2009, 6/2012 and 153/2015   |
| Lobbying Act (LA)                                  | 106/2008 and 135/2011  |
| Financing of the Political Parties Act (FPPA)      | 76/2004; 86/2008; 161/2008; 96/2009; 148/2011; 142/2012; 23/2013 and 140/2018  |
| Electoral Code (EC)                                | 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16 and 99/16 |
| Protection of Whistleblowers Act (PWA)             | 196/2015 and 35/2018.  |

The functions of the SCPC are set out for these four legal acts, although the first one is the most relevant one from all aspects. In

the overview, we divide the tasks of the SCPC into several functions. In addition, we list the powers that the SCPC has in all situations:

<sup>19</sup> José Ugaz is the Chair of Transparency International. More information on this quote can be found at: Transparency International, *No Sustainable Development Without Tackling Corruption: The Importance of Tracking SDG 16*, Transparency International (July. 17, 2017), [https://www.transparency.org/news/feature/no\\_sustainable\\_development\\_without\\_tackling\\_corruption\\_sdg\\_16](https://www.transparency.org/news/feature/no_sustainable_development_without_tackling_corruption_sdg_16).

<sup>20</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>.

Table 2. Functions, tasks and powers of the SCPC

| Function   | Tasks of the SCPC or tasks of other persons vis-à-vis the SCPC  | Powers of SCPC to impose sanctions or undertake actions (if applicable)  |
|--|---|--|
| <b>Development of anti-corruption policies and legislation</b>   | SCPC adopts a National Programme for Prevention of Repression of Corruption, as well as an Action plan for its implementation. The SCPC adopts a National Programme for Prevention of Conflicts of Interest and an action plan (Art. 49, APC and Art. 21, APCI) | N.A. <sup>21</sup>   |
|  | The SCPC provides opinions about how certain acts relevant to the prevention of corruption and conflicts of interest should be constructed. (Art. 49, APC and Art. 21, APCI)  |  |
| <b>Monitoring over electoral campaigns and elections</b>   | The SCPC oversees if any budget funds or other public funds are directly or indirectly used to finance the election campaign or a related political activity. (Art. 12, APC)  | SPC informs competent authorities and provides special reports to Assembly.  |
|  | SCPC oversees if the political parties have illegal sources of funds for the elections (Art. 13, APC)   | SCPC can seek an audit from competent bodies.  |
|  | SCPC oversees if the voters are bribed. (Art. 14, APC)  | SCPC notifies the PPS. <sup>22</sup> PPS has to report on actions undertaken.  |
|  | SCPC can inspect all agreements, public procurements and other deals executed after the end of elections to check whether there have been privileges or discrimination. (Art. 15, APC)  | SCPC can seek an audit from competent bodies and provides a report to the Assembly.  |
|  | SCPC oversees if a political party, or a representative of it, influences the employment of persons in the public sector, their assignment or their dismissal. (Art. 16-a, APC)   | SCPC can ask for reexamination or annulment of the decision for employment, assignment or dismissal (the request is obligatory). |
|  | The SCPC oversees if there have been breaches to the Electoral Code: (1) public sector employment during the period when it is forbidden, (2) misuse of means of the state authorities for campaigning purposes. (Art. 74 in relation to Art. 8-a and 8-b, EC)  | No sanction that the SCPC can directly impose.   |
|  | Every participant in the electoral campaign needs to submit a report on its finances, along with a specification of costs, to the SCPC (Art. 84-b and 85 EC)  | No sanction that the SCPC can directly impose.   |
| <b>Protection of whistleblowers</b>  | SCPC adopts the by-laws for protected reporting. (Art. 4, PWA)  | SCPC reports to the Assembly how many persons approached it.   |
|  | Whistleblowers can report to the SCPC. (Art. 5, PWA) SCPC oversees if whistleblowers are sufficiently protected. (Art. 8, PWA)  | No sanctions.  |
| <b>Continuous monitoring of elected and appointed persons, as well as political parties and keeping of records</b> | An elected or appointed person may not perform any other duty which is incompatible with the office he/she holds. (Art. 21, APC).   | SCPC can only report the case to the courts for regulatory violations.   |
|  | An elected or appointed person may not, during his/her service, establish business relations with certain legal entities. <sup>23</sup> (Art. 22, APC)  | SCPC can only report the case to the courts for regulatory violations.   |
|  | If a legal person founded by an elected or appointed person uses a state loan, the elected or appointed person needs to report that to the SCPC. (Art. 23, APC)   | SCPC can only report the case to the courts for regulatory violations.   |

21 Stands for "non-applicable", meaning that for this function of the SCPC no additional power or step can be undertaken.

22 PPS stands for Public Prosecution Service.

23 The legal entities which the person or his/her family members have founded and the legal entities which are managed by his/her family members.

|  |   |  |
|--|---|--|
|  | The elected or appointed person needs to report to the SCPC any transaction which involves state capital and implies entering into a legal relationship with a legal person founded by him/her or a member of his/her family or in which a member of his/her family is responsible. The elected or appointed person has to file the report to the SCPC in 15 days after it takes office. (Art. 24, APC)   | SCPC can only report the case to the courts for regulatory violations.   |
|  | Whenever a public authority (including the units of local self-government) receives foreign donation or aid, it needs to report it to the SCPC along with a plan for disposal. They also need to provide the SCPC with a final report. (Art. 26, APC)   | SCPC can only report the case to the courts for regulatory violations.   |
|  | If within three years upon the termination of the office an elected or an appointed person founds a commercial company which will do business in the same area in which he/she has been working, the SCPC has to be notified. (Art. 27, APC)  | SCPC can only report the case to the courts for regulatory violations.   |
|  | During their term and three years after the termination, the elected or appointed persons may not become shareholders in commercial companies which are under the supervision of the public authority they were the head of. The only exception is the case of inheritance. If that happens, they must notify the SCPC. (Art. 28, ACP)  | SCPC can only report the case to the courts for regulatory violations.   |
|  | The elected or appointed persons are obliged to notify the SCPC in case a member of his/her family is elected, appointed, employed or promoted in a public authority (including the local self-authorities) within 10 days. (Art. 29, ACP)  | SCPC can only report the case to the courts for regulatory violations.   |
|  | The elected or appointed persons are obliged to provide the SCPC with a declaration of assets as well as with a statement that the banks should no longer hold their accounts as a bank secret in 30 days after they take office. They also need to report any change in the state of their assets provided in the declaration. (Art. 33 and 34, ACP)<br><br>The SCPC keeps records of all of the elected and appointed persons and their assets (Art. 35-b, ACP) | SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction and it can also ask the Public Revenue Office to carry out an audit procedure. The PRO needs to report to SCPC for the procedure it has carried out. The declarations of assets will be published on the webpage of the ACA. |
|  | Most of the elected or appointed persons (the excluded ones are enlisted in the legal act) are obliged to provide the SCPC with a written statement where they clarify if they have conflicts of interests in certain areas. (Art. 20-a, APCI) These persons also need to notify the SCPC if a conflict of interests arises during their term, or if they get employed in a commercial company three years after their term (Art. 20-v, APCI)                     | SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction.   |
|  | Any person can submit a notification to the SCPC if a political party gathers finances illegally. (Art. 22, FPPA)   | SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction or to the PPS for a criminal indictment.   |
|  | SCPC can receive a number of other reports from citizens in the case of elected or appointed persons placing influence illegally, or in the case of them performing their discretionary competencies in a manner which, in their opinion, is a result of corruption. (Art. 42 and 43, APC)  | SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction or to the PPS for a criminal indictment.   |

|  |  |   |
|--|--|---|
|  | SCPC carries out a procedure in which it determines whether a certain official person is in a conflict of interests. (Art. 23, APCI)   | If SCPC determines that a conflict of interests exists, it can notify the respective person and ask him/her to undertake actions and resolve the disputed situation. If the person does not comply, SCPC can issue a public warning which is posted on its webpage and delivered to the media. If 15 days from the public warning have passed and the person has still not complied with what the SCPC has asked, it will initiate a procedure for his/her removal from office or for a disciplinary measure. |
|  | The official persons are obliged to notify the SCPC in case they are a member of the managing or supervisory bodies within NGOs or foundations (they may not receive remuneration except for travel costs for the function). (Art. 20, ACPI)   | The SCPC has no power to sanction the person if not notified. ACPI does not even provide a basis for the courts to sanction the person for a regulatory violation.  |
|  | If the SCPC needs to clarify certain issues during one of its procedures, it can summon the respective person and question him/her. (Art. 52, ACP)   | The SCPC has no power whatsoever to sanction the person if he/she does not respond to the summoning. Unlike the police or the prosecution, the SCPC cannot force the person to attend questioning.  |
|  | The SCPC initiates procedures before the competent authorities to control the political parties', labour unions', NGOs' and foundations' financial operations. (Art. 49, ACP)  | No sanctioning powers.  |
|  | The SCPC can initiate procedures for dismissal, reassignment, replacement, etc. for elected or appointed persons. It can also initiate procedures for criminal or other types of liability for these individuals (Art. 49, ACP)  | No sanctioning powers.  |
| <b>Continuous control of lobbyists</b>                               | Every registered lobbyist must provide an annual report on its activities to the Assembly of the Republic of Macedonia and the SCPC. (Art. 25, LA)   | If the lobbyist does not provide its annual report, the SCPC can issue a public warning and, in some cases, erase the lobbyist from the register of lobbyists.  |
| <b>Providing advice and education</b>                                | SCPC educates public servants and other employees of the authorities which are competent to prosecute and suppress corruption and other crimes. (Art. 49, APC)<br>Whenever an official is uncertain if it is in a situation of conflicts of interests, he/she can address the SCPC and ask for advice (Art. 7 and Art. 11 of APCI)   | N.A.  |
| <b>Awareness raising and disclosure of information to the public</b> | This function has no specific tasks. It consists of the tasks enlisted above. We could use as an example the records of assets. Each citizen can check the data that the functionaries have provided in their declarations of assets since they are, per law, public character information. The SCPC also publishes the public warnings which are going to be elaborated on below. | N.A.  |

This comprehensive overview of the competencies of the SCPC brings us to several conclusions.

First and foremost, this ACA, although preventive in general, is unorthodox in some of its tasks, such as the monitoring of elections and the electoral campaigns. The comparative analysis – the Act on Election of Councilors and MPs of Montenegro,<sup>24</sup> the Act on

Election of MPs of Serbia,<sup>25</sup> the Act on Elections of MPs of Croatia,<sup>26</sup> and the National Assembly Elections Act of Slovenia<sup>27</sup> – indicates that none of the preventive ACAs in the region of Southeastern Europe have a task similar to this one. To that, we might rightfully ask if this is a competence that should fall in the “hands” of the SCPC, especially since the state has a specific – State Elections

24 Official Gazette of Montenegro, 16 (2000), 9 (2001), 41 (2002), 46 (2004). Decisions of the Constitutional Court, Official Gazette of Montenegro, 46 (2011), 14 (2014), 47 (2014), 12 (2016), 60 (2017) and 10 (2018).

25 Official Gazette of Serbia, 3520 (2000), 57(2003). Decisions of the Constitutional Court, Official Gazette of Serbia, 72 (2003), 18 (2004), 85 (2005), 101 (2005), 104 (2009), 28 (2011), 36 (2011).

26 Official Gazette of Croatia, 116 (1999), 109 (2000), 53 (2003), 69 (2003), 167 (2003), 44 (2006), 19 (2007), 20 (2009), 145 (2010), 24 (2011), 93 (2011), 120 (2011), 19 (2015), 104 (2015).

27 Official Gazette of Slovenia, 109 (2006); Decision of the Constitutional Court, Official Gazette of Slovenia, 23 (2017).

Commission founded to organize, implement and supervise the elections. Although it is true that the elections and the election campaigns motivate the involved persons to behave corruptly, it can be a real burden for the SCPC which anyhow has limited capacities (as will be demonstrated below).

Furthermore, despite being the only centralized preventive ACA in Macedonia, as well as the only institution competent to implement the APC and APCI, the SCPC remains a mild institution. If one examines the powers to sanction or undertake action, it is clear that the SCPC has almost no harsh instruments in its artillery. Namely, the only sanction this ACA can impose – if it can be deemed as such – is a public warning. Other than that, all the pecuniary fines (sanctions for regulatory violations) from the four enlisted legal acts are imposed by the judiciary. This tendency has only one exception - the power of the SCPC to ask for annulment or reexamination of a contract for employment, assignment or

dismissal of a public-sector employee. With this in mind, it is reasonable to ask whether such an institution is adequate for a country which has a long-lasting tradition of corruption (see Table no. 3 – Corruption Perception Index in Macedonia (Transparency International)<sup>28</sup> with numerous indictments of high-level politicians and officials such as the former Prime-Minister, the former Minister of Interior Affairs and the former Director of the Administration for Security and Counterintelligence. As a comparative example, we would point out the Commission for Prevention of Conflicts of Interest of Croatia which is entitled not only to publically warn the elected or appointed persons but to directly sanction them by decreasing their salaries. Art. 44 of the Act on Prevention of Conflicts of Interests allows the Commission to partially (between 270 and 5385 EUR) stop the payment of monthly salaries for an elected or an appointed person over the period of twelve months.

**Table 3. Corruption Perception Index in Macedonia (Transparency International)<sup>29</sup>**

| Year    | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|---------|------|------|------|------|------|------|------|------|------|------|
| Score   | 36   | 38   | 41   | 39   | 43   | 44   | 45   | 42   | 37   | 35   |
| Ranking | 72   | 71   | 62   | 69   | 69   | 67   | 64   | 66   | 90   | 107  |

Lastly, aside from the fact that it lacks sanctioning powers, the Macedonian SCPC does indeed process an enormous amount of information. Limiting our research, for instance, only to the declaration of assets and the statements for changes in the assets

possession, we can see that in the past several years (from 2008 to 2016 as a selected period of time) the SCPC has processed precisely 9800 of them.

**Table 4. Number of Declaration of Assets that the SCPC has processed in the past 10 years<sup>30</sup>**

| Year      | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|-----------|------|------|------|------|------|------|------|------|------|------|
| Processed | 604  | 999  | 820  | 900  | 623  | 2170 | 1199 | 1132 | 1353 | N.A. |

It is indisputable that in order to examine such a high number of declarations of assets and statements, the SCPC needs serious human and technical resources. It is difficult alone to receive all these statements and check their accuracy, let alone to process cases to the courts for regulatory violations sanctions or request audits from the Public Revenue Office. Moreover, if human and technological resources are lacking, the SCPC can easily claim that it has not noticed the fact that certain high politicians have not provided their own declarations, or that it has requested judicial procedures for some elected or appointed persons but not for others due to objective factors. Such a case, in fact, appeared in the Republic of Macedonia. Namely, the Director of one of the most powerful services in the country, the Administration for Security and Counterintelligence, did not submit his declaration of assets to the SCPC in 2015; the case was not brought up to the courts. The council members of some of the poorest and rural units of local self-government, on the other hand, were sanctioned by the courts for that same omission.<sup>31</sup>

Of course, what was said for the quantity of tasks for the SCPC is even more applicable if other ones are borne in mind too: an

institution which is competent not only to monitor the every-day functioning of the elected or appointed persons, but also the finances of the political parties and the manner in which the electoral campaign has been conducted has to have strong capacities. For that reason, the following text will focus on the respective issue of its institutional design, human resources and budget.

### 3.2. De-facto capacities of the State Commission for Prevention of Corruption

#### 3.2.1. Independence of the State Commission for Prevention of Corruption and Integrity of its Members

When analyzing the capacities of the SCPC, there are two initial concerns: (1) its independence, and (2) the integrity of its Commissioners (members). The analysis of the SCPC from a formal point of view leads to a deduction that it is an independent institution with members of high integrity and expertise. The ACP, respectively, stipulates that the SCPC answers to no other authority within the Republic of Macedonia, except for the Assembly (main legislative body). From a personnel point of view, the SCPC is comprised of seven members (Commissioners) each of which is

<sup>28</sup> The Corruption Perception Index is formulated in such way that 100 points mean that the country has no corruption at all, while 0 points mean that the country is deeply corrupt. It can be accessed at this link: <https://www.transparency.org/research/cpi/overview>.

<sup>29</sup> The Corruption Perception Index is formulated in such way that 100 points mean that the country has no corruption at all, while 0 points mean that the country is deeply corrupt. The rankings start from 1 – least corrupt country and end with 180 – most corrupt country in the world. It can be accessed at this link: <https://www.transparency.org/research/cpi/overview>.

<sup>30</sup> The data withdrawn from the Annual Reports of the SCPC is available at: [www.dksk.mk/index.php?id=55](http://www.dksk.mk/index.php?id=55). The annual report for 2017 is not available to the public.

<sup>31</sup> This case was revealed by journalists of the Center for Investigative Journalism SCOOP. The article is available at <http://scoop.mk/%D0%B0%D0%BD%D1%82%D0%B8%D0%BA%D0%BE%D1%80%D1%83%D0%BF%D1%86%D0%B8%D0%BE%D0%BD%D0%B5%D1%80%D0%B8%D1%82%D0%B5-%D1%81%D0%BE-%D0%B4%D0%B2%D0%BE%D1%98%D0%BD%D0%B8-%D0%B0%D1%80%D1%88%D0%B8%D0%BD%D0%B8>.

appointed by the Assembly on the basis of a public call. The Commissioners' term lasts for four years and they cannot hold the office more than twice consecutively. Nonetheless, the APC is quite vague when setting out the criteria for selection of members of the SCPC. The only four standards laid down therein are:

- citizenship of the Republic of Macedonia;
- obtained diploma for high education in the areas of law, finance or anti-corruption;
- high reputation;
- eight years of working experience.

Out of the four standards, it is perhaps only the first and the last which are indisputable. As for the others, the ambiguity is more than evocative. The second criterion is problematic in respect to the "high education in the field of anti-corruption" as numerous social sciences and humanities study the issue of corruption from their own perspective (sociological, political, legal and economic). The third criterion, on the other hand, has no influence at all in the selection of the Commissioners— reputation can neither be measured nor properly assessed. This legal framework led, as can be believed, to the appointment of Commissioners who did not have the integrity needed for the office they held. The reason one can say this is that in March 2018 citizens of the Republic of Macedonia learned that members of the SCPC had been misusing the funds budgeted for the institution. Namely, the Public Revenue Office carried out an internal audit in the SCPC, the scandalous results of which were delivered to the media by a whistleblower. It was shown not just that the Commissioners have falsified travel warrants by adding additional kilometers to their trips (in order to reimburse a larger sum for travel costs), but that they had also reported business trips on days when they were present at the offices of the SCPC. As a result of this scandal, 5 of the 7 members of the SCPC resigned, leaving the institutional non-operational for the vast part of 2018.<sup>32</sup>

Bearing in mind the aforesaid, we encounter another problem with the SCPC regime related to the dismissal of its members. It is a fact that the APC contained no provisions under which the term of a Commissioner could be terminated by the Parliament for misuse of power or non-ethical conduct. The only three bases for dismissal were as follows:

- request of the Commissioner himself/herself;
- criminal adjudication under which the Commissioner is sentenced to more than six months of prison;

- permanent loss of ability to work.

This construction of the APC brought about a situation in which the members of the Commission who misused funds could not be, except on the basis of the Constitution of the country and the procedure of interpellation, dismissed from office.

For the listed reasons, the Government of the Republic of Macedonia initiated a procedure for the preparation of amendments to the APC. Currently available on the Electronic National Registry of Legal Acts<sup>33</sup> of the Republic of Macedonia, these upcoming amendments (which are expected to be adopted by the Assembly soon) are a significant improvement of the existing framework in regard to the appointment or dismissal of Commissioners. As per the rules to be (currently there are two possible alternatives of the respective articles), the Commissioners have to fulfill several new criteria – aside from citizenship – such as: (1) high education in the area of law, political sciences or communication (in the second alternative of the article); (2) experience in uncovering cases of corruption or prevention of corruption, good governance and the rule of law; (3) he/she has not been a part of the Government or the Assembly of the country in the last decade, nor a member of the managing structures of a political party (in the second alternative of the article. As for dismissal, the rules to be stipulate that any Commissioner may be dismissed from office if he/she breaches the APC, the code of ethics or the Rules of Procedure of the SCPC. Lastly, the new APC states that, as indirectly noted, the SCPC has to have its own code of ethics and that the Assembly of the Republic of Macedonia will carry out a significantly longer and more detailed procedure before appointing members of the respective ACA.

### 3.2.2. Budget and Human Resources of the State Commission for Prevention of Corruption

The second aspect when speaking of the capacities of an ACA is its budget. For the purpose of analyzing this in the case of the SCPC, i.e. in order to determine the (in)adequacy of the budget of this ACA, we will use the standards set out by TI in the publication *Strengthening Anti-Corruption Agencies in Asia Pacific*.<sup>34</sup> Evaluating the ACAs in the region mentioned, TI expresses the view that such an institution can function congruously if its budget is above 0.20% of the state budget. After cross-matching the information from SCPC's annual reports and the budgets of Macedonia in the previous years, we have found some devastating results.

**Table 5. Proportion of the SCPC budget to the total government budget of Macedonia<sup>35</sup>**

| Year                  | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|-----------------------|------|------|------|------|------|------|------|------|------|------|
| Proportion in percent | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 | 0.01 |

Table no. 5 clearly demonstrates that the SCPC is not even near the standards provided by the TI which states that the budget of an ACA is below satisfactory if it does not comprise 0.10% of the total budget. Even the increase in the budget of the SCPC (illustrated in

Graph no. 1 – Annual Budget of SPCP) is not a result of the allocation of more funds therein but is proportionate to the increase of the state budget as a whole.

<sup>32</sup> This story was published by numerous media houses, for instance: <https://sdk.mk/index.php/makedonija/vo-antikoruptionska-si-zemale-pari-za-patni-troshotsi-lazhni-nalozi-nekoi-ne-odele-ni-na-rabota/>.

<sup>33</sup> An online database of all the legal acts which are not yet in force, i.e. are in the preparation process, is available at: [www.ener.gov.mk](http://www.ener.gov.mk).

<sup>34</sup> Transparency International, *Strengthening Anti-Corruption Agencies in Asia Pacific* (Oct. 25, 2017), [https://www.transparency.org/whatwedo/publication/strengthening\\_anti\\_corruption\\_agencies\\_in\\_asia\\_pacific](https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific).

<sup>35</sup> The budgets of the Republic of Macedonia can be found in the country's Official Gazette, available at: <http://www.slvesnik.com.mk/besplatni-izdanija.nspj>.

**Graph 1. Annual budget of SPCP<sup>36</sup>**

With this information in mind, it comes as no surprise that the SCPC has had a truly small number of employees over the years. That number is currently 22. Out of them, one person is Secretary General, one person is State Counselor (the second highest position in the administration of the Republic of Macedonia), one person is Head of the Department for Prevention of Corruption (within the SCPC), one person is Head of the Financial Department and the others are counselors for specific issues. The unsatisfactory conditions in this respect have been not only noted by the SPCP itself, as its By-law for Systematization of Work Positions<sup>37</sup> states that there should be 51 employees (meaning that only 43% of the work positions are fulfilled), but also by the Council of Europe's Group of States against Corruption (GRECO) which has pointed out that "[i]t is obvious to the GET that the human and budgetary resources currently available to the SCPC do not enable it to carry out its tasks in a sufficiently efficient manner". In addition, when speaking of the declarations that the SCPC has to process, GRECO stresses:

"two persons are in charge of the processing and verification of declarations of interest, whereas about 1000 declarations were received in the first quarter of 2013 alone, due to the local elections. If these systems have to be streamlined and scrutiny over the declarations reinforced . . . the provision of adequate resources will be critical."<sup>38</sup>

What we would like to add to GRECO's observation is the fact that the SCPC also has only two or three employees who are tasked with following the state of assets and processing declarations of assets. Bearing in mind the numbers in Table no. 4, it is fair to ask if the SCPC can even go through all the received declarations, let alone perform any critical analysis.

As a positive comparative example in this case, we would like to point out the ACA of Montenegro which, although operating in a smaller country with fewer capabilities, has a larger number of employees, i.e. 55.<sup>39</sup>

### 3.3. Legitimacy of the State Commission for Prevention of Corruption and effectiveness

A combination of factors – the level of corruption in the country generally, the unlawful conduct of the Commissioners in recent

years, and the lack of public presence of the SCPC – has led to a situation where, according to studies of the NGO sector in the third quarter of 2017,<sup>40</sup> the citizens do not legitimize the respective ACA:

- From the survey, 63.7% of the participants in the survey<sup>41</sup> believe that the SCPC protects the interests of the politicians, while only 12.7% believe that it protects the interests of the citizens. The others have not responded;
- also, 72% of the participants in the survey believe that the media does not contain sufficient information on the work of the SCPC;
- While 77.6% of the participants in the survey believe that the information about the SCPC in the media does not provide an opportunity for them to be "up to date" with the institution's work.

These results are not surprising when taking into account the ineffectiveness of the SCPC and its inability to cope with its own tasks. The SCPC has only once fulfilled its task to provide the Assembly with a special report on the elections (Art. 12, APC). In the third quarter of 2017, the SCPC did not receive declarations of assets from all of the elected or appointed persons. In fact, for the majority of them; the SCPC registry has no data for 79.14% of respective persons. In addition, the SCPC has not been publicly present, either in the mainstream media or with its own announcements. Furthermore, if one analyzes the last annual report from 2016, it is clear that the SCPC overburdens the document with technical data while failing to compare it to the annual programme (so it can be seen if what was planned has been implemented). Finally, speaking of education, it is quite devastating to learn that in 2016 the SCPC carried out just 4 training sessions for 54 administrative servants in the country (the Republic of Macedonia has 1299 public institutions which hire administrative servants).<sup>42</sup>

These and multiple other findings speak of the incompatibility of the SCPC, the lack of resources and political will and the structural problems of the legislative and institutional framework related to this institution. Bearing in mind that not all the data could be evidenced, we find that there are several conclusions for this preventive ACA of Macedonia.

## 4. CONCLUSIONS

The SCPC is the only preventive ACA of the country and an institution which can be exceedingly beneficial for the country at hand. Its competencies are impressive, as well as the fact that it is the institution which has jurisdiction to implement, comprehensively or partially, 5 legal acts. Nevertheless, analysis of the SCPC leads to a few observations. Firstly, the SCPC seriously lacks powers or, in other words, enforcement tools. While it has great monitoring and other competencies, it can only issue public warnings in two cases and ask for the annulment of employment

<sup>36</sup> The budget is expressed in the local currency of the Republic of Macedonia (denar, MKD). One EUR is approx. 61.5 MKD.

<sup>37</sup> Under the legislation of the Republic of Macedonia, every public authority has to have such an act which is adopted on the basis of the Act on the Public Sector Employees.

<sup>38</sup> GRECO Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report on "the Former Yugoslav Republic of Macedonia" (March. 17, 2014), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9ab5>.

<sup>39</sup> The Montenegrin ACA, The Annual Report of the Montenegrin ACA for 2017 (2017), [http://www.antikorupcija.me/media/documents/Izvie%C5%A1taj\\_o\\_radu\\_Agencije\\_za\\_2017\\_godinu.pdf](http://www.antikorupcija.me/media/documents/Izvie%C5%A1taj_o_radu_Agencije_za_2017_godinu.pdf).

<sup>40</sup> The NGO Macedonian Center for International Cooperation publishes quartile reports on the work of the SCPC. This is done in quarterly reports. The quoted one is the 5th Report covering the period between October 1 and December 31, 2017, available at: <http://www.mcms.mk/images/docs/2018/sledenje-na-dsk-kvartalen-izvestaj-br-5.pdf>.

<sup>41</sup> As per the statistical methodologies, 1001 persons in total participated in the survey.

<sup>42</sup> The Ministry of Information Society and Administration, Annual Report (2017), [http://arhiva.mioa.gov.mk/files/pdf/dokumenti/IzvestajReg2017\\_v1.02.pdf](http://arhiva.mioa.gov.mk/files/pdf/dokumenti/IzvestajReg2017_v1.02.pdf).

contracts in another. All of the other capabilities of the SCPC result in reports, either to the Assembly of the country or to the official bodies competent to investigate. Secondly, there is a serious discrepancy between the competencies and the capacities of the SCPC. While, as said, the institution needs to implement 5 systematic acts, it has only 22 employees and, currently, no members (Commissioners). While the situation with the Commissioners can easily be resolved with the appointment of new ones, the capacities of the SCPC can permanently be increased only if the number of employees increases. Finally, the Republic of Macedonia needs to carry out an all-inclusive review of its legislation and decide whether the SCPC should be responsible for the implementation of all legal acts concerned or whether its competencies should be decreased. That way, although formally a less powerful one, the SCPC can build-up to become a thorough ACA in the sense of the international conventions and other documents cited.

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RESEARCH ARTICLE

# Business environment pillar: Analysis of the institutional evolution in Brazil (2001-2017)

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## ABSTRACT

This paper evaluates how a given jurisdiction reacts to corruption based on the institutional evaluation of the National Integrity System (NIS). The Brazilian institutional evolution of the NIS is examined in relation to one of the 13 pillars, to wit, the “business environment” pillar. From this perspective, the purpose is to confirm to what extent the business environment generates conditions to fight corruption from an institutional perspective, in accordance with the Sustainable Development Goals (SDG) 16, in particular, 16.5 (corruption and bribery in all their forms) and 16.6 (development of accountable and transparent institutions). The research is limited, however, to the period from 2001 to 2017; despite the long lapse of time, it involves a transition phase, during which significant law amendments took place and, as a consequence, their initial effects were felt in the private business sector.

**Keywords:** Brazil, corruption, bribery, National Integrity Systems, transparency, accountability

## ملخص:

يقيم هذا البحث كيفية رد السلطة قضائية على الفساد وفق معايير التقييم المؤسسي لنظام النزاهة الوطني (NIS). فتتم دراسة التطور المؤسسي البرازيلي لنظام النزاهة الوطني وفق واحدة من الأركان الثلاثة عشر، وهو ركن “بيئة الأعمال”. ومن هذا المنظور، يتمثل هدف البحث في تأكيد الفكرة الآتية، وهي: إلى أي مدى تولد بيئة الأعمال التجارية ظروفًا لمكافحة الفساد من منظور مؤسسي، وذلك وفقًا لأهداف التنمية المستدامة (SDG) 16، ولا سيما 16.5 (الفساد والرشوة بجميع أشكالها) و16.6 (تطوير مؤسسات مسؤولة وشفافة). ولا بد من التنويه إلى أن البحث محدد زمنيًا من سنة 2001 إلى سنة 2017؛ فعلى الرغم من مرور فترة زمنية طويلة، إلا أنه ينطوي على مرحلة انتقالية، تخللتها تعديلات قانونية جوهرية، ونتيجة لذلك، ظهرت آثارها الأولية في قطاع الأعمال الخاص.

**الكلمات المفتاحية:** البرازيل، الفساد، الرشوة، نظام النزاهة الوطني، الشفافية، المساءلة.

### 1. INTRODUCTION

This paper evaluates how a given jurisdiction reacts to corruption based on the institutional evaluation of the National Integrity System (NIS), a methodology typically used by Transparency International (TI). The NIS evaluates “key pillars in a country’s governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large.”<sup>1</sup> Therefore, “[w]hen all the pillars in a National Integrity System are functioning well, corruption remains in check. If some or all of the pillars wobble, these weaknesses can allow corruption to thrive and damage a society”<sup>2</sup>.

As per Sutherland’s conclusion, white-collar criminals act like common criminals. In fact,

Sutherland also noted that whenever the representatives of these corporations wished to meet to make their decisions, they always looked for country hotels and used a specific jargon that could not be identified by those who did not belong to that production sphere. Thus, instead of mentioning a price list, they used terms such as “Christmas list.” They called each other from public phones, registered in hotels without indication of the firms they represented etc. Sutherland considered that all these conducts were similar to those of the so-called conventional criminals, even if they didn’t present all those characteristics.<sup>3</sup>

One of the factors that contributes to the success of an anti-corruption policy is the appropriate identification of the motivation of each agent. However, the motive may change according to the environment. This paper reviews the particular situation in Brazil.

### 2. METHODOLOGY

The methodology of the NIS investigates the presence of the legal conditions to fight corruption, but it also questions if these conditions are effective in practice. The question is to know what type of institution must be investigated in Brazil, in order to identify how the business environment system behaved during the period.

In this context, the analysis of the business environment pillar is broad, as a considerable part of the fight against corruption in the private sector was implemented by means of self-regulatory incentives. It is not enough to prepare an inventory of the command and control rules; it is necessary to go beyond that to examine how the Brazilian private sector has reacted to and implemented the initiative.

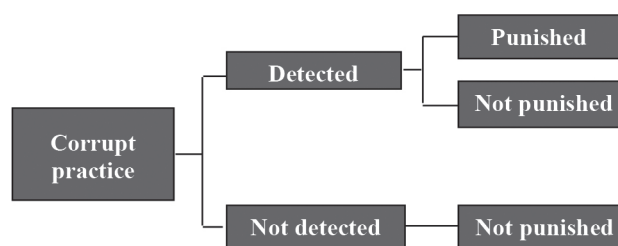
To duly localize the problem of corruption in the private sector and to understand how the scores have been awarded, it is crucial to question what motivates corrupt agents and, in the specific case of the business environment pillar, what leads the corruptors to breach the law. As occurs with a player, it is an individual’s personal motivations and perception of the risks that induces their behavior at the moment of wrongdoing. Based on that assumption, it would be possible to responsively adapt the anti-corruption action to each motive, and thus to force corrupt agents to redefine their strategies. The focus is to increase the efficiency of anti-corruption actions.

Questions about the institutional capacity typically center on the independence of the private sector and how capable it is of resisting the pressures of the public sector. Those relating to

corporate governance, in turn, ask how the private sector wishes to relate to its peers – will there be honesty when the risks of the activity involve corruption? Finally, the role of the private sector indicates the existent degree of political commitment. These three variables may be changed and in a certain way manipulated by democratic participation mechanisms.

In a scenario in which it is not possible to change the rules of the game by means of institutional reform or by means of a collaboration with the wrongdoers, the expectations of the corrupt agents may be summarized in Table, as follows:

**Table 1. Possible consequences of corrupt practices.**



Source: Prepared by the authors.

The fact that corruption is detected does not necessarily mean that it will be punished, although the situation already results in certain costs to the corrupt agents, in particular, the damage to reputation, which is serious both to politicians and to firms, and the expenses involved in defending themselves in court. In Brazil, the lack of punishment may result from various reasons (limitation period, procedural errors, incompetence in the obtainment of proof by the judicial police, by the Federal Accounting Court (TCU) and by the administrative authorities etc.). Even if corrupt players are punished, the punishment may be softer than the benefits obtained, which would produce no dissuasive effect with respect to the conduct of other potential corrupt players – after all, if the corrupt players are detected (which is not always certain), they could keep some of the benefits obtained by means of money laundering, for example. These factors are strongly considered by the players of the business environment pillar because they are profit-maximizing agents.

Risking simplification, Kagan and Scholz have identified at least three basic prototypes of motivations: the amoral calculator, the political citizen and the organizationally incompetent player.<sup>4</sup> A fourth prototype, the irrational non-complier, may be added to these.<sup>5</sup> The explanation below is based on the analyses and rationales contained in these texts, to which we add our own considerations on corrupt practices.

**Table 2. Prototypes of the behavior of economic agents.**

|               | Ill-intentioned         | Well-intentioned             |
|---------------|-------------------------|------------------------------|
| Ill-informed  | Irrational non-complier | Organizationally incompetent |
| Well-informed | Amoral calculator       | Political citizen            |

Source: BALDWIN, Robert. *Rules and regulation*. Oxford: Oxford University Press, 1995. p. 148-152.

1 Transparency International, <http://www.transparency.org/whatwedo/nis> (last accessed Sept. 27, 2015).  
 2 Transparency International, <https://www.transparency.org/whatwedo/nis> (last accessed Sept. 27, 2015).  
 3 Sérgio Salomão Shecaira, *Criminologia e direito penal: um estudo das escolas sociológicas do crime* (2002). (Criminal Law Thesis, Faculty of Law, Universidade de São Paulo, São Paulo) at 189.  
 4 R. A. Kagan & J. T. Scholz, *The Criminology of the Corporation and the Regulatory Enforcement Strategies*, in *Enforcing Regulation 67-68* (K. Hawkins & J. M. Thomas eds., 1984).  
 5 Robert BALDWIN, *Rules and Regulation* 149 (1995).

In the business pillar, it is intuitive to assume that the irrational calculator type predominates. However, it is not difficult to find organizationally incompetent firms – those who wish to comply with the laws but are preventing from doing so by internal disorganization. Similarly, it is possible to see political-citizen firms willing to comply with the law at all costs. Even if such exists, the irrational non-complier is not so believable, especially if we take into consideration that firms aim for profit and that such behavior may bring serious financial consequences.

The ideal solution would be to manipulate incentives to create a multitude of political-citizen firms. From a realistic perspective, we should focus on the amoral calculators, because they carefully compare the cost of compliance to the cost of non-compliance. The analysis of the evolution will show how this has occurred.

### 3. WHERE HAS THE BUSINESS ENVIRONMENT PILLAR COME FROM? THE SCENARIO IN 2001

In 2001, there was already a minimally structured anti-corruption legal framework. By means of command and control type rules, the Brazilian Penal Code punished individuals, whether public or private agents, with up to 12 years of imprisonment for some corruption-related crimes – even corrupt acts against foreign Governments were punished. The punishments are severe if compared to other countries, and although there were some cases of conviction, criminal repression was something distant, limited to low-ranking public officials and businesspersons.

An example that confirms this impression was the case of the overbilling in the construction of the São Paulo Labor Court. The crimes were committed during the 1990s and charges of embezzlement, swindling, payment of bribes, use of false documents and conspiracy were filed against former senator Luiz Estevão de Oliveira Filho in 2000. However, his final sentence of 31 years of imprisonment was only confirmed by the Superior Court of Justice (STJ) at the end of 2011.

Similarly, the Administrative Misconduct Act (Law No. 8.429/92), enacted in 1992 at the time of the impeachment of President Fernando Collor de Mello, also imposed financial punishments to public and private agents who were convicted of corrupt practices. Application thereof was slow and difficult and there were few cases, which did not significantly change the private sector's perception of the incentives for engagement in corrupt practices. For comparison purposes, the same case relating to the construction of São Paulo Labor Court commenced in 2000 and the lower-court judgment was only rendered in 2011. In the following year, OK Group, one of the involved parties, entered into a settlement with the Office of the General Counsel to the Federal Government to return R\$468 million. Even if impressive, the number was an isolated decision at that time. The slowness of the Judicial Branch enables the persons to dispose of the assets during the long-lasting lawsuit so that when the case goes to trial the responsible persons have insufficient assets to redress the

damage they have caused. Moreover, the Administrative Misconduct Act does not foresee the joint liability of legal entities belonging to the same economic group, which further facilitates attempts to hide assets.

On the other hand, a silent revolution occurred which diminished the incentives of tax and financial corruption. 1998 saw the introduction of a law on money laundering (Law No. 9.613/98), which resulted in the creation of the financial intelligence unit in Brazil, called the Council for Financial Activities Control (COAF), and defined the crime of money laundering as “to conceal or dissimulate the nature, origin, location, availability, transfer or ownership of assets, rights or amounts directly or indirectly originating from crime.” The list of crimes included crime “against the Government, including the demand, to oneself or to others, directly or indirectly, for any benefit, as a condition or price for the performance or non-performance of administrative acts” and the crime “committed by a private agent against a foreign government.” The punishment for white-collar crimes is severe: imprisonment from three to ten years and a fine.

Equally, the provisions of the Bank Secrecy Act (Supplementary Law No. 105), approved in 2001, enabled more flexibility in relation to the issue. For example, article 1, paragraph 3, item IV set forth that there was no breach of secrecy in the event of “communication, to the competent authorities, of the commission of crimes or administrative violations, including the provision of information on transactions involving funds originating from any criminal conduct.” Paragraph 4, item VI of article 1 allowed the breach of secrecy in the event of police investigation or lawsuit investigating crimes against the government.

However, these measures would not have been successful if considered individually. Two factors must be taken into consideration. First, the rules against money laundering have been conceived to fight drug trafficking and, subsequently, are broadly used against terrorism. Corruption crimes are a small part of its overall purpose, but they have benefited from the amendments to the law.

Second, in view of its concern with the collection of taxes, the Federal Revenue Service has perfected the system to track financial transactions by means of the Individual Taxpayer Registry (CPF) and of the Corporate Taxpayer Registry (CNPJ). It has become almost impossible to transfer funds without these registries, and at the same time these transfers have become more easily traceable and monitored; as required by the regulations of the Central Bank of Brazil, financial institutions must keep records of the transactions carried out for up to 5 years. Only the sophisticated system has permitted the monitoring of a large number of financial transactions deemed suspicious.<sup>6</sup> Table 05 illustrates the increase in the number of notifications to COAF which occurred (most evidently from 2007) and how COAF responded by increasing the number of reports of financial intelligence, in order to support further investigative measures (see Table 3).

**Table 3. Communications to the COAF versus reports of financial intelligence.**

| 2004   | 2005    | 2006    | 2007    | 2008    | 2009      | 2010      |
|--------|---------|---------|---------|---------|-----------|-----------|
| 83,873 | 157,333 | 193,984 | 335,364 | 645,785 | 1,803,865 | 1,038,505 |
| N.a.   | N.a.    | 1,169   | 1,555   | 1,431   | 1,524     | 1,125     |

<sup>6</sup> In 2013, the Brazilian Federal Revenue Service reported that at least two Federal Police operations were launched to fight corruption due to “tax intelligence” actions. Available at: [http://www.receita.fazenda.gov.br/AutomaticoSRFsinot/2014/02/24/2014\\_02\\_24\\_18\\_40\\_44\\_311746055.html](http://www.receita.fazenda.gov.br/AutomaticoSRFsinot/2014/02/24/2014_02_24_18_40_44_311746055.html). The first one was an operation coordinated by the Special Group Against Organized Crime - Gaeco of the Public Prosecutor's Office of the State of Paraná, with the participation of the Federal Revenue Service. “The action fought a supposed scheme to manufacture counterfeit products, corruption, money laundering and tax evasion.” The second operation was a “Joint operation of the Federal Revenue Service, Federal Police, Public Prosecutor's Office Federal and Office of the Federal Controller General to investigate circumstantial evidence of the commitment of several crimes, such as bid-rigging, corruption, tax evasion and money laundering.” In both cases several search warrants and preventive detention warrants were executed in different Brazilian states; the loss was estimated in million.

| 2011      | 2012      | 2013      | 2014      | 2015      | 2016      | 2017      |
|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| 1,289,087 | 1,587,450 | 1,286,233 | 1,144,389 | 1,382,197 | 1,492,684 | 1,502,373 |
| 1,471     | 2,104     | 2,104     | 3,178     | 4,304     | 5,661     | 6,608     |

The change has allowed increased vigilance of financial transactions, which has been slowly perceived by the private sector. In order to comply with the growing enforcement, the private sector has made substantial investments in the detection and prevention of suspicious transactions, notably in the IT department of financial institutions. The agents involved in the corruption game noted that controls were tightening, and there was a change in the possibility of detection.

Although the existing mechanisms do not differ greatly from those that exist in other countries, the Brazilian scenario was not very encouraging – the dominant defense strategy of the investigated agents, whether individuals or legal entities, was to deny involvement in the unlawful practices. The use of self-reporting mechanisms, such as state evidence and leniency, was not even considered, even though these mechanisms already existed in Brazilian law. Proof of the resistance strategy may be found in the legal consequences of the Satiagraha Operation in 2008, in which the involved parties are not mentioned as cooperating with the investigations, even though the mechanism of “*colaboração premiada*” for individuals<sup>7</sup> had been available for longer than a decade. Although the introduction of leniency in the antitrust law in 2000 indicates a change trend for legal entities, the first agreement was executed by the Economic Law Office (SDE) only in 2003 – coincidentally, the cartel of security guards was involved in bid-rigging.

The paradox was to observe that, while companies implemented a cooperation strategy abroad, such an approach did not exist in Brazil. The procedural legislation applicable to the Foreign Corrupt Practices Act (FCPA) allowed companies to enter into agreements in the United States which didn’t exist in Brazil at that time. This explains why there was a succession of cases involving Brazil in the United States, in which cases had a different outcome in the two jurisdictions, such as Control Systems Specialist, Inc. (1998), Tyco International Ltd. (2006), Control Components, Inc. (2008), Bridgestone Corporation (2008), Nature’s Sunshine Products, Inc. (2009), Universal Leaf Tabacos Ltda. (2010), Panalpina World Transport (Holding) Ltd. (2010), and Alliance One International AG (2010).

It is difficult to measure the impact of the enactment of the Anti-Bribery Convention of the Organization for Economic Co-Operation and Development (OECD Anti-Bribery Convention) in Brazil in 2002. Full implementation thereof would represent an important change in the business environment and, therefore, the constant monitoring of compliance of the OECD Anti-Bribery Convention<sup>8</sup> may have represented an additional pressure for approval of the Brazilian Anti-Corruption Law in 2013.

#### 4. WHERE HAS THE BUSINESS PILLAR GONE? THE SCENARIO FROM 2014 ONWARDS

In 2007, OECD issued its report, “Brazil: Phase 2 (Report on the application of the Convention on Combating Bribery of Foreign

Public Officials In International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions”<sup>9</sup> (OECD Peer Report 2017), which made the following recommendations which impacted on the business environment:

- a) To increase cooperative efforts with the business sector and civil society to raise awareness of the problem of transnational corruption;
- b) To increase the awareness and monitoring efforts involving financing by the Brazilian Bank of Economic and Social Development (BNDES);
- c) To encourage and create mechanisms to protect the agents that report information in the private sector;
- d) To encourage Brazilian multinationals to adopt compliance programs;
- e) To require that accountants and independent auditors report all nonconformities, as well as to require that all large companies, whether listed on the stock exchange or not, be subject to an independent audit;
- f) To take urgent measures to hold legal entities liable for the bribe of foreign public officials with effective, proportional and dissuasive sanctions, including fines and confiscation.

OECD’s greatest concern was international corruption: the situation in which Brazilian companies bribe foreign public officials in other jurisdictions. Such concern turned out to be appropriate, especially taking into account the practice of the Brazilian multinationals operating abroad later revealed in the Petrobras scandal, dubbed “Operação Lava Jato” (or “Car Wash Investigation” in English).

Other measures were mainly focused on the public sector. However, the diagnosis seems to have encountered some resistance: even though the OECD Peer Report was issued in 2007, only in 2010 did the Brazilian government submit a bill of law to the National Congress to address the informed gaps (Bill of Law No. 6.826/10 in the House of Representatives or 39/2013 in the Senate). The bill of law addressed some defects of the legal system that adversely affected the effectiveness of the enforcement in the business sector, including the following:

- a) Strict liability of legal entities for corruption perpetrated by third parties, facilitating the punishment of the involved companies;
- b) Introduction of several fines to the companies, streamlining the system of the Administrative Misconduct Act;
- c) Introduction of a self-report mechanism for legal entities (leniency agreement);
- d) Creation of attenuating circumstances for the companies that implement an effective compliance program.

7 “Colaboração premiada” has been translated as plea agreement. However, we believe such a translation is mistaken, since the “colaboração premiada” must be embodied in an agreement (plea agreement) under Brazilian Law. Such an agreement put the defendant in a disadvantaged position from the procedural perspective. For this reason, we prefer using the “state’s evidence”, which better translates what actually happens under Brazil Law. State’s evidence can be defined as “the testimony given by an accomplice or joint participant in the commission of a crime, subject to an agreement that the person will be granted Immunity from prosecution if she voluntarily, completely, and fairly discloses her own guilt as well as that of the other participants.” Available at <https://legal-dictionary.thefreedictionary.com/State%27s+Evidence>.

8 The OECD conducted monitoring reviews in 2004, 2007 and 2014.

9 OECD. Brazil: Phase 2 (Report on the application of the Convention on Combating Bribery of Foreign Public Officials In International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/45518279.pdf>.

However, the bill of law was challenged in the National Congress and made very slow progress. While other jurisdictions progressed with the enactment of new anti-corruption laws, Brazil remained inert.

The subsequent institutional evolution sped up from 2012 when the anti-corruption issue returned to the center of attention of Brazilian society in view of the investigations into the *Mensalão* scandal, called ‘Big Monthly Payment’ in English.

Following international trends and guidelines related to money laundering, Law No. 12.683 of 2012 brought significant changes, such as the end of the crimes listed as subject to the Money Laundering Law. Following the amendment, any preceding crime could lead to a money laundering offense, which was defined as “to conceal or dissimulate the nature, origin, location, disposition, transfer or ownership of property, rights or amounts directly or indirectly originated from criminal offense.” Although crimes against the government were already included in the list of preceding crimes of the Money Laundering Law, their type may lead to discussions regarding the inclusion or not of a given corrupt act.

The change in the law impacted on the business environment. The Brazilian Federation of Banks (FEBRABAN) took the lead to discuss how to adjust to the new rule: it feared that more flexibility in the analysis of the documentation could cause disadvantage to more rigid financial institutions in comparison to less rigid ones. In view of the recent involvement of various financial institutions in the covering up of corruption, that fear was justifiable. Therefore, in 2013 FEBRABAN issued a self-regulatory rule (SARB Rule 011/2013) that standardized the requirements made and created a level playing field<sup>10</sup>. Currently, twenty out of the 256 financial institutions that are members of FEBRABAN adhere to the rule – certainly, there remains the doubt about which criteria the other financial institutions are adopting, for example, to deal with politically exposed persons.

However, the massive protests of June 2013 in Brazil affected the direction of the facts. The anti-corruption law bill, which was previously back-burned, was suddenly elected as one of the priorities: after one and a half months, it was approved in the House of Representatives and in the Senate, and it was sanctioned on August 1<sup>st</sup> 2013 (Law No. 12.846/13). The following day, another bill of law which was unlikely to be approved was sanctioned: Law No. 12.850/13 dealt with criminal organizations, granting new investigative powers to the police and to the Public Prosecutor’s Office, and streamlining the state’s evidence for individuals. More than merely aggravating the possible penalties, it was the combination of the new sanctions with the old ones that changed the incentives for the business environment behavior.

The increase in sanctions amplified the financial risk for breaches of the law: the institution of state’s evidence under Law No. 12.850/13 combined the leniency under Law No. 12.846/13 (Anti-corruption Law) and increased the possibility of detecting corruption; the adoption of strict liability for corruption perpetrated by third parties reduced the possibilities of defense limited to mere denial of the conduct; and finally, the possibility of reducing

penalties with the existence of a compliance program generated more concrete gains than prior to the Anti-Corruption Law.

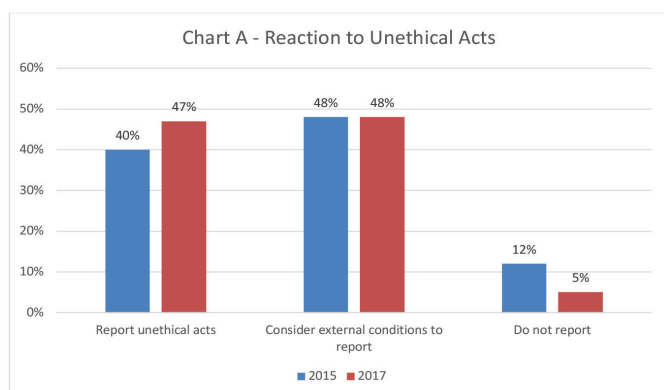
The new Anti-Corruption Law brought high expectations into the business environment. The compliance issue, which was previously limited to financial institutions and to a few “political citizen” companies, became the center of attention. There were a large number of courses of study and a large demand for professionals to implement the compliance programs, which had suddenly become an attenuating circumstance in the possible imposition of fines.

The joint use of the instruments allows a sophistication in the fight against corruption – even the OECD, in a report issued in October 2014, acknowledged that the gaps had been addressed in the 2013 legislative reform.<sup>11</sup> Incentives to promote cooperation with the enforcement authorities through leniency and state’s evidence became possible. There have been a number of corruption scandals in Brazil, most of which relate to facts arising prior to the enactment of the Anti-Corruption Law. In those cases, the focus of the authorities was the criminal liability of the individuals involved in the schemes and a few of those scandals resulted in the arrest of politicians and public servants.

The first big test took place during the Car Wash Operation when the new legal rules were put to the reality test and worked better than before. It started as a money laundering investigation targeting a black market dollar operator who laundered money from gas stations and car washes. As the investigation continued, it was discovered that the initial target, the *doleiro* (black market money dealer) Alberto Youssef, had bought a Land Rover vehicle for Paulo Roberto Costa, a director of Brazilian state-owned-company oil company, Petrobras. Further evidence revealed improper payments to Youssef from companies that won Abreu & Lima (Petrobras) refinery contracts. Costa and Youssef both struck a plea agreement with prosecutors in exchange for information on a kickback scheme in which several top Petrobras public agents colluded with a cartel of Brazilian construction companies to overcharge the oil company for construction and service work. Following these two plea deals, the operation mushroomed, revealing the largest corruption scheme under investigation in the world. The cartel would decide which construction company should win a contract bid to, for example, service an oil rig or build part of a refinery. This fake competition was overseen by Petrobras directors and agents, who were rewarded with bribes. They kept some of the money but shared much of it with politicians. Petrobras, while publicly traded, is 51% government-owned. Many Petrobras executives owe their jobs to elected public officials. After three years of investigations, Operation Car Wash became the largest anti-corruption case in the world, leading to the arrest of tycoons (two out of the 10 richest men in Brazil were jailed), senior politicians and civil servants. Such legal reinforced framework combined with strong enforcement directly influenced the behavior of the companies, mainly because of its strict liability for corrupt practices perpetrated by third parties. Chart A illustrates how ethical behavior has changed substantially in the past few years in connection with the implementation of whistle-blowing channels by companies.

<sup>10</sup> FEBRABAN. SARB Rule (2013), [http://www.autoregulacaobancaria.org.br/pdf/Normativo\\_SARB\\_011\\_2013\\_PLDCFT.pdf](http://www.autoregulacaobancaria.org.br/pdf/Normativo_SARB_011_2013_PLDCFT.pdf).

<sup>11</sup> OECD, Phase Three Report on Implementing the OECD Antibribery Convention in Brazil (2014), <http://www.oecd.org/daf/anti-bribery/Brazil-Phase-3-Report-EN.pdf>.



Source: ICTS Global – “Perfil Ético dos Profissionais Brasileiros” – 2017 Report.

Another example comes from the pharmaceutical industry, which used to outsource most of its sales to the government. The new Anti-Corruption Law triggered changes in the industry, including a decrease in the use of distributors and an increase in direct sales. Currently, the sales made by distributors in the pharmaceutical industry account for 70% and, according to Panorama ILOS “Supply Chain no Setor de Saúde”, 34% of the companies would like to increase the direct sales.<sup>12</sup>

Another remarkable example of the induced changes is the increase in the number of companies interested in the *Pró-Ética* (*Cadastro Nacional de Empresas Comprometidas com a Ética e a Integridade* – National Register of Companies Committed to Ethics and Integrity). To put it simply, the *Pró-Ética* is a kind of certification of the effectiveness of the compliance programme, jointly sponsored by Instituto Ethos (a Brazilian think-tank NGO) and by the *Controladoria Geral da União* (CGU - General Comptroller of the Federal Government). Such an initiative does not generate a direct benefit to the company; the incentive to join is public recognition of the company’s commitment to integrity. In 2014, 16 companies were awarded the *Pró-Ética* certification; in 2017, 23 companies received the award out of 375 applicants.<sup>13</sup> *Pró-Ética* reviewed all the integrity actions and the companies which were not certified received suggestions to improve their programs.

**5. ACCESS TO THE INFORMATION, TRANSPARENCY, INSTITUTIONAL FRAMEWORK AND ACCOUNTABILITY**

Basically, three groups of issues may be raised relating to the business environment pillar within the scope of the NIS (see table 04):

- i) Institutional capacity: these questions aim at confirming the degree of funds available to the private sector, as well as its level of independence from the public sector. The lower the funds and the independence, the larger the private sector’s subordination to the public sector.
- ii) Governance: these questions aim at measuring the degree of transparency in the conduction of business, the level of accountability of the private sector in relation to the company and to the investors, and the existence of integrity mechanisms within the scope of the private sector. The higher the degree of corporate governance, the higher the pressure of the stakeholders in relation to the businesspersons – in this scenario, we imagine that the stakeholders wish to comply with the law and to avoid the imposition of penalties on their investments.
- iii) Role: these questions wish to determine the degree of civic commitment of the private sector in the fight against corruption. The higher this commitment, the higher the support to the civil society in the fight against corruption.

The three issues above may help us to understand how to promote accountable and transparent institutions in Brazil, in order to achieve the Sustainable Development Goals (SDG) 16 and, in particular, 16.5 (substantially reduce corruption and bribery in all their forms) and 16.6 (Develop effective, accountable and transparent institutions at all levels).

**5.1. Access to information and transparency**

The investigation into the access to information and transparency in the business environment and its role in the fight against corruption differs from the approach of the public sector. In the latter example, the whole society has the right to monitor government actions, and a limitation to the access to information is admitted only in exceptional cases.

On the other hand, in the private sector, the access to information and transparency is inherently limited: the business secret is an element of competition. The competitor cannot know what its rival is doing, otherwise it could act to undermine the rival’s actions, or act in order to minimize the level of competitiveness. The protection to intellectual property is maybe the most evident example of business secret legitimated by the law. Therefore, the protection of business secrets is integral to the market system.

**Table 4. National Integrity System – Business Environment Pillar**

|                        |              |          |  |
|------------------------|--------------|----------|--|
| Institutional Capacity | Funds        | Law      | To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses? |
|                        |              | Practice | To what extent are individual businesses able, in practice, to form and operate effectively?                                     |
|                        | Independence | Law      | To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?  |
|                        |              | Practice | To what extent is the business sector free from unwarranted external interference in its work in practice?                       |

<sup>12</sup> <http://www.ilos.com.br/web/venda-direta-ou-atraves-de-distribuidores-o-dilema-do-setor-de-saude/>

<sup>13</sup> CONTROLADORIA GERAL DA UNIÃO, Empresa Pró-Ética (2018), <http://www.cgu.gov.br/assuntos/etica-e-integridade/empresa-pro-etica>.

|            |  |          |  |
|------------|--|----------|--|
| Governance | Transparency   | Law      | To what extent are there provisions to ensure transparency in the activities of the business sector?   |
|            |  | Practice | To what extent is there transparency in the business sector in practice?   |
|            | Accountability   | Law      | To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies? |
|            |  | Practice | To what extent is there effective corporate governance in companies in practice?   |
|            | Integrity Mechanisms   | Law      | To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?                               |
|            |  | Practice | To what extent is the integrity of those working in the business sector ensured in practice?   |
| Role       | Anti-corruption policy engagement (law and practice)         |          | To what extent is the business sector active in engaging the domestic government on anti-corruption?   |
|            | Support for/engagement with civil society (law and practice) |          | To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?                      |

However, the business secret does not involve every aspect of the business activity. There are aspects that are relativized, either for issues inherent in the common good or for issues inherent in the public interest.

The public interest may relativize the business secret, especially in tax and financial aspects. In terms of tax, the Brazilian tax bodies have great inspection capacity granted by the applicable rules, and they face hardly any resistance to their actions. A similar situation occurs in respect to finance: the Brazilian law regulates the events of breaches of bank secrecy and the Judicial Branch can breach bank secrecy at the reasonable request of the competent authorities. From another perspective, the COAF also plays its inspection role very actively.

With respect to the private interest, the relativization occurs in the relationship between the businesspersons and their partners. Dissimilarly to the public interest, in which there is a direct interest in the inspection of possible wrongful acts, the purpose of the transparency of the private sector is to enable the investors to have access to the relevant information for their decision-making process. Since the investors are agents that maximize their results, they are averse to risk, and corruption is one of the most significant risks of doing business in Brazil. Thus, a higher degree of transparency in the capital market would facilitate the choice between investing in a “corrupt” company and investing in a “non-corrupt” company and would be in accordance with the SDG 16.5 and 16.6.

In fact, the institutional framework of the Brazilian capital market has constantly been improving, accompanied by the implementation of internationally adopted accounting rules. Both the access to information and the transparency have been given special attention by the regulatory agent of that market, the Brazilian Securities Exchange Commission (*Comissão de Valores Mobiliários – CVM*).

## 5.2. Accountability

Accountability must be understood as the legal or contractual duty of an agent to be accountable for its activities, to be held liable for its performance and to transparently disclose the results. The concept is inherent in the business environment: every time an investor believes in a company and invests in it, the relationship

requires the company to account to the investor.

There is a close relationship between (i) accountability in the business environment, and (ii) access to information and transparency. For this accountability to exist, the investor must have transparency and access to the relevant information. The access to information and transparency would not be useful if the investor couldn't hold the investor or its management liable for conduct that adversely affects the business.

Accountability is important in the fight against corruption as the corrupt manager takes liability for the business environment itself. Even if the corrupt agents are not formally convicted, officers accused of corruption will hardly be re-employed, and they may be sued for the damages caused during their management. These factors certainly influence the decision to bribe or not to bribe. In this sense, indicator 16.5.2 measures the “proportion of business that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months.” In fact, a corrupt agent will scarcely be hired after a corruption issue.

In the business environment, accountability may result from the law, soft law (such as SDG 16.5 and 16.6) and from agreements.

The accountability resulting from the law and enforced by the regulatory body found the appropriate institutional conditions to develop. Brazil received an average score in the analysis.

On the other hand, whenever there are self-regulatory accountability mechanisms, the data relating to corruption situations is still limited. Due to their very nature, there is greater proximity between the regulated agents and the regulator; this tends to facilitate capture as they work more closely to the regulated interests and have a greater likelihood of being granted access to the relevant information as a result of their cooperation, without which they cannot perform their duties. For no other reason, these situations may be called “gentlemanly self-regulation.”

Even so, it is possible to identify as soft law the example of the Corporate Sustainability Index (ISE), created in 2005, as a “tool for comparative analyses of the performance of the companies listed on B3 from the corporate sustainability perspective, based on economic efficiency, environmental balance, social justice and corporate governance.”<sup>14</sup> Using the

14 ÍNDICE DE SUSTENTABILIDADE EMPRESARIAL, O Que é o ISE?, <http://www.isebvmf.com.br/index.php?r=site/contendo&id=1#>. “The ISE is a tool for comparative analysis of the performance of the companies listed on BM&FBovespa.

method of questionnaires sent to the companies, only some companies are chosen. The inclusion of a company in the ISE may render a company listed on the stock exchange more attractive to the investor. Therefore, an incentive for compliance with the anti-corruption law is created because the companies may be excluded from the ISE due to objective criteria.

In the ISE 2015 questionnaire, in addition to discussing various corporate governance aspects that are relevant to the access to information and transparency, there is express reference to the theme of corruption in its general part: criterion IV is the “Fight against Corruption”, which alone generates one of the criteria for inclusion in the ISE.

In 2006, Instituto Ethos launched the Corporate Pact for Integrity and Against Corruption, another example of soft law used in the Brazilian business environment, as per SDG 16.5 and 16.6. Aiming at a larger scope than the ISE, since it is not limited to companies listed on the stock exchange, the Pact encourages the adoption of certain ethical principles that would prevent the signatory companies from engaging in corrupt practices.<sup>15</sup> Adhesion to the pact has grown since then – it currently features more than 540 signatories. In addition, the Pact has a list of suspended companies.

### 5.3. Institutional framework.

The timeline prepared in Exhibit I shows the evolution of the institutional framework. Sometimes, a normative change especially designed for the public sector may affect the business environment and, therefore, it has been included therein.

The normative evolution between 2001 and 2017 shows that there was an improvement in the institutional framework that directly affects the business environment (see analysis of items III and IV, *above*). For example, in 2002, the issues involving secrecy and transparency in the Government were regulated only by a decree (Decree No. 4.553/02). In 2011, in turn, Law No. 12.527/11 was approved, which regulated in a broader and more detailed form the access to information, determining at the same time what should be subject to restricted access.

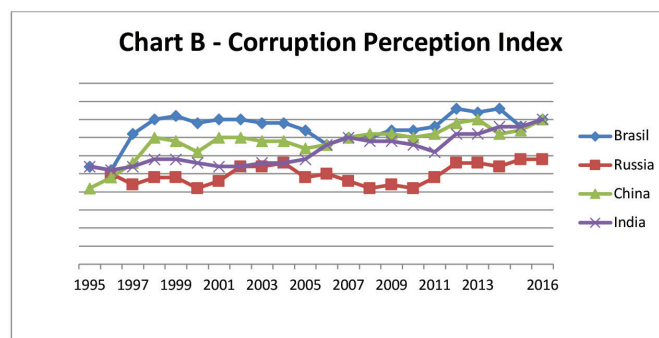
In addition, what was identified as a normative bottleneck for the OECD Report for Implementation of the 1997 Antibribery Convention, prepared in 2004, was granted a certain treatment as from 2010. The new Anti-Corruption Law (Law No. 12.846/13) and its regulation by Decree No. 8.420/15 illustrate how those deficiencies were tackled. Decree No. 8.420/15 listed 16 effectiveness criteria which should be met by private company’s compliance programmes, including the commitment of high management and board members to the program, periodic training, and accurate and complete books and records.

Gradually, other issues have been dealt with. Several materials issued by the CGU detail how to structure a compliance programme, even for medium-sized companies.<sup>16</sup> Law No. 13.303/16, dated 30 June 2016, was passed in order to increase the corporate governance levels within the state-owned companies, some of which are publicly traded at B3 – besides creating barriers for purely political appointment in state-owned companies, Law No. 13.303/16 also required the implementation of a compliance program.

### 5.4. Future challenges

As per the Corruption Perception Index (CPI) - TI, Brazil has not improved during the reviewed period in the corruption perception rankings, even though, on average, it is higher ranked than the

other BRICs. Of course, much criticism has been made about the CPI-TI, since it captures only perceptions on corruption, which may be misleading, especially in a country where there is free press and strong anti-corruption enforcement –not exactly the case in Russia, India or China.



Solely considered, the changes in the business environment pillar are not enough to transform the whole country’s situation in relation to the fight against corruption: in accordance with the methodology of the National Integrity System, the business environment pillar is only one of the 13 criteria to be evaluated. As seen, it impacts especially on the behavior of the rational agents that act in the market, who tend to make a cost-benefit analysis to determine whether to engage in corrupt practices; they are the amoral calculators, who will only comply with the law if the appropriate incentives are in place.

The analysis shows that for business environment purposes, the legal framework is appropriate for the fight against corruption – there is certainly space to improve the law, but this doesn’t seem to be such a serious problem. On the other hand, if the effectiveness of this framework is reviewed in practice, the results are not so encouraging. There is still a mismatch between the provisions of the law and what happens in practice.

In this respect, the greatest challenge in the future is to bring the practice of the business environment nearer the score obtained for the right that regulates it. Specific actions may be performed to improve the rules, but stakeholders’ commitment is more important for a successful outcome.

It is surprising that, irrespective of efforts to get businesspersons involved in the anti-corruption policy, such involvement still seems to be limited to speech and not always action. The business environment pillar within the NIS needs to focus all its attention on deepening the role of the private sector in the government anti-corruption policy, as well as supporting civil society in the fight against corruption, as per the goals of SDG 16.5 and 16.6. The existing initiatives have only slightly touched upon the awareness issue.

Therefore, to increase the scores related to the practical aspects of the business environment pillar, the private sector must deepen its involvement in anti-corruption issues. The quality of the rules may also be improved, but the effects of this change may be marginal if there is not a deeper involvement of the private sector, especially in regards to its leadership.

### EXHIBIT I – TIMELINE

The table below is a timeline that summarizes the main events that have affected the business environment pillar. Brief comments are made on the direct effect caused by the relevant event.

<sup>15</sup> INSTITUTO ETHOS, O Pacto, <http://www.empresalimpa.org.br/index.php/empresa-limpa/pacto-contra-a-corrupcao/o-pacto>.

<sup>16</sup> For all the official guidelines on compliance programmes, see: <http://www.cgu.gov.br/Publicacoes/etica-e-integridade/colecao-programa-de-integridade>.



| Year | Event   | Comment   |
|------|---|---|
| 2000 | Leniency introduced in the antitrust law (Law No. 10.149/2000).   | The first example of a change in incentives in the relationship between the companies and the Government, since it presents benefits to cooperation.  |
| 2001 | New Bank Secrecy Act (Supplementary Law No. 105/2001)   | Although it is seen as a protection of bank secrecy, it actually expands the power of agents to take action to access bank data.  |
| 2002 | Decree on secrecy in the Government.<br>Entry into force of the OECD Antibribery Convention.  | Guidance about when the Government can keep its actions secret, indirectly permitting transparency to reach the private sector.   |
| 2003 | First competition defense leniency agreement signed by the Economic Law Office (Security Guard Cartel)  | The first leniency is signed after almost 4 years of the legislation coming into effect.  |
| 2005 | Corporate Sustainability Index is launched by B3  | Pioneering initiative of B3 which created a portfolio of shares of companies that meet certain ethical criteria, including the fight against corruption.  |
| 2006 | Launch of the Business Pact for Integrity and Against Corruption by Instituto Ethos.  | Initiative to increase the ethical commitment of businesspersons and to spread the importance of the fight against corruption.  |
| 2008 | Satiagraha Operation fiasco   | Procedural flaws lead to the nullity of proceedings that could have unveiled a major corruption scheme.   |
| 2011 | Law on access to information.   | Institutional improvement of the 2002 Decree, redefining behaviors of the public agents in all levels of the federation and indirectly of the private sector.   |
| 2012 | New money laundering law expands the possibilities of lawsuits involving corruption. Trial of the <i>Mensalão</i> scandal with severe decisions against businesspersons.  | Improvement of the Money Laundering Law facilitated the punishment of those involved in the legalization of funds originating from various crimes. At the same time, the trial of the <i>Mensalão</i> scandal imposed punishments on the businesspersons involved and began to revert expectations of impunity.   |
| 2013 | Anti-Corruption Law approved by the Brazilian Congress. States and municipalities regulate the law. Approval of the Law on Organized Crime. FEBRABAN's self-regulation on money laundering (Rule 11).<br>Law on the Conflict of Interests in the Federal Government.  | As a result of strong popular pressure, the new Anti-Corruption Law is approved, perfecting the system of the Administrative Misconduct Act, increasing the punishments and creating the leniency agreement for companies involved in corrupt acts. The Law on Organized Crime potentializes the tools to investigate Money Laundering and Anti-corruption. |
| 2014 | Car Wash Operation began to unfold with the imprisonment of senior businesspersons. Multinational companies present self-information abroad with effects on Car Wash Operation in Brazil. The first leniency is proposed under the new Anti-corruption Law, although it had not been regulated by the Presidency of the Republic. | New legal investigation tools are used in the Car Wash Operation, catalyzing the effects of the police work: the self-reporting tools increase the performance of the investigations, leading to the arrest of senior businesspersons.  |
| 2015 | Clearer requirements for entering into leniency agreements, guidelines about the calculation of fines under the Anti-Corruption Law and criteria for an effective compliance programme (Decree No. 8.420/15). Political contributions by private companies are ruled out by the Supreme Court.                                    | Amid a harsh recession and political instability, companies began to implement or to consider implementing compliance programmes. Old practices began to be challenged as senior businesspersons remained arrested.   |
| 2016 | Enhanced corporate governance requirements for state-owned companies and mandatoriness of the implementation of compliance programme for state-owned companies.<br>Odebrecht group entered into a multi-jurisdictional settlement with Brazilian, Swiss and American prosecutors.   | Local elections took place without contributions from companies. State-owned companies began to implement compliance programmes.  |
| 2017 | First leniency agreement signed by the CGU, AGU and the MPF at the same time.   | After complex negotiations, the first leniency agreement is entered. Rules and incentives are still unclear in relation to the pros and cons of cooperation for legal entities.   |

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REVIEW ARTICLE

# Researching corruption: understanding its key concepts

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## ABSTRACT

Given the controversial nature of the notion of corruption that has transcended time and place, this paper serves as a review article for the essential and pivotal debatable concepts that are used to better understand corruption. It will look at different definitions and types of corruption, and the measurement techniques used in corruption studies. The paper presents the debate on whether corruption can or cannot be used as a developmental tool, and manages to show that its significant long-term negative consequences easily overcome its positive aspects. Finally, there is a discussion on causality, where I argue that given the multidisciplinary nature of corruption, it is difficult to infer causation. Simply, this paper helps in understanding the current debates in corruption literature, as this is the first step to properly fight corruption, which is one of the targets of SDG 16.

**Keywords:** Corruption, bribery, transparency, Rule of Law, governance, SDG 16.

## ملخص:

نظرا لطبيعة مفهوم الفساد المثيرة للجدل والتي تتجاوز الوقت والمكان تقوم هذه الورقة البحثية بتوفير مرجعية للمفاهيم الأساسية والمحورية القابلة للنقاش والتي تستخدم لفهم الفساد بشكل أفضل. حيث تتناول عددا من التعريفات المختلفة والأنماط المتعددة للفساد، وتناقش تقنيات القياس المستخدمة في دراسات الفساد. كما تعرض الورقة نقاشا هاما حول ما إذا كان من الممكن استخدام الفساد كأداة تنموية أم لا، بل وتسلط الضوء على العواقب السلبية الطويلة الأجل الهامة والتي تغلب بسهولة على الجوانب الإيجابية. وأخيرا، تستعرض الورقة نقاشاً حول العلاقة السببية، فاستنادا الى طبيعة مفهوم الفساد المتغيرة، فإنه من الصعب استنتاج العلاقة السببية بين الفعل والنتيجة. ببساطة، تساعد هذه الورقة البحثية في التمكن من فهم الأفكار المتاحة في أدبيات الفساد، حيث تعتبر هذه الخطوة الأولى لمحاربة الفساد بشكل صحيح، كما هو مبين في أحد أهداف الهدف 16 من أهداف التنمية المستدامة.

**الكلمات المفتاحية:** الفساد، الرشوة، الشفافية، حكم القانون، الحوكمة، الهدف السادس عشر من أهداف التنمية المستدامة.

## 1. INTRODUCTION

In 2013, the estimated universal cost of corruption was USD2.6 trillion;<sup>1</sup> with more than USD1 trillion paid in bribes, and the figures continue to rise,<sup>2</sup> constituting a global predicament that hinders national development and growth, especially economic development.<sup>3</sup> Corruption has been claimed to be more severe in centralized developing countries than in decentralized developed ones.<sup>4</sup>

Corruption is a phenomenon that has transcended time and place, as well as political regimes, cultural differences and societal norms. Political scientist John A. Gardiner, reflecting the similar views of other scholars, argues that “corruption is persistent and practically ubiquitous”.<sup>5</sup> Scholars like MacMullen argue that, in fact, corruption was one of the main reasons for the fall of the Roman Empire.<sup>6</sup> Wilson argues that corruption was also rampant in Athens due to the creation of the council of ‘Areopagus’, whose function was to report and address committed corrupt actions; this argument is also based on Aristotle’s discussions of the Council of ‘Areopagus’ in ‘The Constitution of Athens’.<sup>7</sup>

As such, Robert Klitgaard, a prominent scholar of corruption, argues that corruption is as old as the establishment of government, and may even be as old as the establishment of structured social interactions.<sup>8</sup> He thus associates the emergence of corruption to a degree of sophistication reached by societies. This does not mean that the more developed a society is, the more corrupt it is. Developed societies nowadays are well-established communities that can effectively fight corruption when compared to developing nations. Building on this point, one group argues that many corruption cases in the developed world are ‘hidden’, developing the assumption that developed countries have the ability to go around the existing laws, like the clear example of lobbying which has been proved to be a corrupt practice.<sup>9</sup> In addition, another group argues that the western-developed concept of corruption has developed into a two-pronged disciplinary tool that is often used by developed countries to castigate developing ones,<sup>10</sup> and at the same time to distract attention from the corruption cases in their own backyards, such as the European Union and the United Nations.<sup>11</sup>

Given the magnitude, large scale and devastating consequences of corruption, the United Nations General Assembly decided to fight corruption as one of the targets of the Sustainable Development Goal number 16 (SDG 16). The fight will not be an easy one. SDG 16 tries to reduce corruption through developing effective, accountable and transparent institutions. Accordingly, it is critical to properly understand the current debates in corruption literature in order to coherently comprehend its actual levels and magnitude, the first step in fighting corruption.

Consequently, this paper will serve as a review article for the

essential and pivotal concepts that are used in the study of corruption. It will look at different definitions of corruption, types of corruption, measurement techniques used in corruption studies, as well as debating whether corruption can be used as a developmental tool. As such, this paper will serve as a background article for the journal’s second issue as it discusses the important notions pertaining to corruption, which is a critical aspect for SDG 16.

## 2. CORRUPTION DEFINED

Corruption is a phenomenon that has numerous definitions that differ based on the culture and norms of a certain society. Although it is difficult to have a general, yet specific, definition of corruption, corrupt activities can be identified when observed or experienced by an individual.<sup>12</sup> This identification depends on the individual’s prior conception of what constitutes corruption. Although academics, scholars and researchers have debated the many different definitions for decades, I will focus on the contemporary definitions of corruption.

To begin with, Joseph Nye, a renowned American political scientist, defined corruption as a “behaviour which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence”.<sup>13</sup> Although this definition was criticized for its exclusion of other forms of corruption, such as corporate corruption, which allowed other different definitions to arise, Nye’s definition is the basis for all contemporary definitions as it succeeds in being general and specific at the same time. Nye mentioned that both elected and appointed officials could commit corrupt actions, and states that these corrupt acts can be committed not only for personal gain but for family or private benefit. In addition, the fact that he successfully managed to distinguish the types of benefit as either wealth or higher status helped in making this a generally accepted definition by corruption scholars for a period.

Other scholars attempted to define corruption differently but often lacked elements of applicable generalization. Robin Theobald, for example, described corruption as “the illegal use of public office or the process of selection to public office for private gain”.<sup>14</sup> The main problem with this definition is that it did not include different forms of corruption, such as nepotism, making it a particular but not inclusive definition. Vito Tanzi, who developed another definition, stated that: “Corruption is the intentional noncompliance with arm’s length relationship aimed at deriving some advantage from this behaviour for oneself or for related individuals.”<sup>15</sup> The problem here is that it depends on the ‘arm’s length principle’, which states that both parties involved in a

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9 R. Klitgaard, *Controlling Corruption* 7 (1988).

10 N. F. Campos & F. Giovannoni, *Lobbying, Corruption and Political Influence*, 131(1), *Public Choice*, 1 (2007).

11 For an example, see: *Egypt-9.1-Corruption* (2017), <https://www.export.gov/article?id=Egypt-Corruption>.

12 B. Weiser, *Executive in UN Corruption Case Pleads Guilty*, *The New York Times* (2016), <https://www.nytimes.com/2016/01/21/nyregion/executive-in-un-corruption-case-pleads-guilty.html>.

13 V. Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures*, Staff Papers-International Monetary Fund, 559 (1998).

14 J. S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, *The American Political Science Review*, 417 (1967).

15 R. Theobald, *Corruption, Development and Underdevelopment* 16 (1990).

16 G. Fiorentini & S. Peltzman, *The Economics of Organized Crime* 161–180 (1995).

transaction are engaged in an equitable agreement. This is not the case in corrupt actions between citizens and bureaucrats in developing countries, where both are not on a levelled playing field. Nonetheless, Vito Tanzi, an economist, Susan Rose-Ackerman, a political scientist who studied corruption extensively for around four decades, and Daniel Kaufmann, an economist and the creator of the World Bank (WB)-World Governance Indicators (WGI), reached a consensus by agreeing that corruption can be defined as “the abuse of public office for private gain”.<sup>16</sup> This definition was used extensively in the late 1990s, as it is straightforward and inclusive, until it was slightly modified and updated by the WB.

Subsequently, the WB now defines corruption as “the abuse of power for private gain”;<sup>17</sup> going beyond previous definitions that insisted that corruption exists only in the public sector, overlooking the private sector. This definition helps to extend corruption to cover all sectors and societies, but its frequency and intensity will of course change from one society and sector to another. Also adding a minor change to the previous definition, Transparency International (TI) defines corruption as the “abuse of entrusted power for private gain”.<sup>18</sup> This is the most frequently used definition in current scholarship but a more precise alternative still needs to emerge.

### 3. CORRUPTION TYPES

Corruption has always been identified by categorizing its different forms over the course of time, based on the degree of sophistication and development of human civilization; the more sophisticated the civilization, the different manifestations of corruption that tend to increase – a trend that will be clear in this section.

Thomas Hobbes, the 16<sup>th</sup>-century political philosopher, is not only an early scholar to use the word explicitly but he also tried to explain the concept of corruption. Essentially the Hobbesian explanation of corruption was something shifting from good to bad,<sup>19</sup> a simple and abstract reflection of society’s view at the time. He identified six types of corruption: ‘physical corruption’ encompasses decaying bodies, stagnant water and rotten food;<sup>20</sup> ‘semantic corruption’ is when a word changes its meaning or spelling;<sup>21</sup> ‘moral corruption’ involves shameful and immoral behaviour;<sup>22</sup> ‘constitutional corruption’ is the “deviations from good forms of government, like monarchy corrupting to tyranny”;<sup>23</sup> and ‘political corruption’ occurs when political actions and the environment are harmful and destructive, for example, a state official receiving a bribe.<sup>24</sup> Finally, for Hobbes, ‘cognitive corruption’ embraces the whole mental process that includes wrongful interpretation and judgement that obstructs reason and leads to incorrect conclusions.<sup>25</sup> As such, it is the basis for all other forms of

corruption as actions emanate from a thought process.

These types reflect the nature of the Hobbesian society, whereas current scholarly work has formed new categories that reflect societal changes, such as the role of the state, the enlargement of the private sphere and legal systemization. These include both concrete and abstract categories such as systemic versus sporadic, grand versus petty, downward redistribution versus upward extraction, active versus passive, and legal versus illegal.<sup>26</sup>

Arguably, grand and petty corruption have been the most discussed categories of the phenomenon. Primarily, grand corruption is a corrupt incident that does not happen on a daily basis. It can be referred to as political corruption as it usually involves senior, high-ranking officials and politicians using their influence and a significant monetary amount.<sup>27</sup> On the other hand, petty corruption mostly happens on a daily basis and can be referred to as bureaucratic corruption. This is because it involves junior or low-ranking officials who use their knowledge of the bureaucratic system to receive illegal payments. When these petty incidents are aggregated, their potential impact outweighs grand corruption incidents. In contrast to previous anti-corruption strategies that focused on either one of the two categories, SDG 16’s strategy to curb corruption addresses both petty and grand corruption incidents, with a focus on bureaucratic corruption as it negatively affects unprivileged individuals.

This brings up two new types of corruption that have been termed ‘downward redistribution’ and ‘upward extraction’. These can only exist if corruption is systemic within an institution as both are based on the redistribution of the revenues of the corrupt action to other co-workers.<sup>28</sup> The two types enforce the concept of systemic corruption in an establishment as even those who do not want and do not participate in the unethical action are implicated. This technique ensures the loyalty of many individuals within the organization.<sup>29</sup> Downward redistribution happens in the case of grand corruption, for example, when a high-ranking official receives a bribe, s/he distributes part of that bribe to low-ranking co-workers to make them forcefully participate or to ensure that they do not report the corrupt action. On the other hand, upward extraction happens in cases of petty corruption, where a low-ranking official receives a bribe and gives a major part of it to his co-workers and higher-ranking officials within the organization. The main reasons for this action are again payment for their participation or for their silence or maybe to carry a favour for future usage.

Unfortunately, the wide presence of this type of corruption can serve as an obstacle to the implementation of the SDG 16 anti-corruption strategy. Once corrupt bureaucrats feel that the status

16 V. Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures*, Staff Papers-International Monetary Fund, 559 (1998); S. Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (1999); D. Kaufmann, *Foreign policy* 114-131 (1997).

17 R. Oberoi, *Mapping the Matrix of Corruption: Tracking the Empirical Evidences and Tailoring Responses*, 49(2), *Journal of Asian and African Studies*, 187 (2013).

18 E. Brown & J. Cloke, *Critical Perspectives on Corruption: An Overview*, 7(2), *Critical perspectives on international business*, 116 (2011).

19 A. Blau, *Hobbes on Corruption*, 30(4), *History of Political Thought*, 596 (2009).

20 Id. at 599.

21 Id. at 600.

22 A. Blau, *Hobbes on Corruption*, 30(4), *History of Political Thought*, 596, 600 (2009).

23 Id. at 600.

24 Id. at 601.

25 Id. at 602.

26 A. Fayed, *Understanding Corruption: Tackling its Multidisciplinary Nature*, 2(3), *Middle East Review of Public Administration* (2016); N. A., Den Nieuwenboer & M. Kaptein, *Spiralling Down Into Corruption: A Dynamic Analysis of the Social Identity Processes That Cause Corruption in Organizations to Grow*, 83(2), *Journal of Business Ethics*, 133 (2008); A. Argandoña, *The United Nations Convention Against Corruption and its Impact on International Companies*, 74(4), *Journal of Business Ethics*, 481 (2007); See: Articles 2 and 3 of the European Criminal Law Convention on Corruption, ETS #173, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=173>.

27 C. Dahlstrom, *Bureaucracy and the Different Cures for Grand and Petty Corruption*, 20, *QoG Working Paper Series* (2012).

28 N. A., Den Nieuwenboer & M. Kaptein, *Spiralling Down Into Corruption: A Dynamic Analysis of the Social Identity Processes That Cause Corruption in Organizations to Grow*, 83(2), *Journal of Business Ethics*, 133 (2008);

29 J. C. Andvig, et al., *Corruption. A Review of Contemporary Research* (2001).

quo, where the cost of being corrupt is minimal, is being challenged, they will mobilise their long-established, well-connected networks to hinder the implementation of the anti-corruption strategy. The only way for SDG 16 to be implemented successfully in such institutions is to allow low, middle and high ranking bureaucrats to play an important role in the planning, implementation and evaluation of the anti-corruption policy so that they may realise that the long-term cost of any committed act of corruption outweighs its short-term gains.

There is a clear difference between active and passive forms of corruption that is clear in the case of bribery. According to the literature, active bribery refers to the action(s) of giving by the citizen (client) to the bureaucratic official, while passive bribery refers to the bureaucratic officials receiving and acceptance of the bribe(s).<sup>30</sup> However, I believe that the term 'active corruption' should refer to an incident in which the bureaucratic official initiates and asks for a bribe, whether directly or indirectly, and eventually receives it, and passive corruption should be when the bureaucratic official does not ask for the bribe and the citizen merely initiates the action without being influenced by his/her perception of systemic corruption, yet the bureaucratic official receives the bribe. SDG 16 addresses only the active form of corruption as it focuses on the bureaucrats and the institutions. For SDG 16 to curb passive corruption, it needs to focus on raising awareness among regular citizens; once citizens start collectively to realise that the long-term costs of corruption outweigh its short-term benefits, they will choose not to participate in corrupt transactions.

The above paragraphs show how the understanding and identification of the notion of corruption develops and evolves over time. Today, the main forms of corruption that are manifested in everyday life can be easily identified, but it is very difficult to properly measure them. These forms can be categorized into five main spheres: bribery, embezzlement, theft, fraud, favouritism, and last, extortion and blackmail.<sup>31</sup> These will be described briefly as follows.

To begin with, bribery is defined in a law dictionary as "offering, giving, receiving or soliciting of any item of value to influence the actions of an official".<sup>32</sup> Bribery is arguably the most common known form of corruption and is often referred to as 'kickbacks'. Embezzlement and theft in the public sector are the same as both involve an official who has access to assets or funds and takes control of them illegally. Fraud involves the intentional use of deception to obtain improper and illegal gains.<sup>33</sup> Favouritism, also referred to as nepotism, is where an official makes biased decisions

in favour of someone s/he is linked to over others. This relationship can be family, friendship or even someone belonging to the same social group. This is especially noticeable when an official hires or appoints someone unqualified over others with the right qualifications just because there is a relationship between them.<sup>34</sup> Finally, extortion and blackmail are two similar forms in that they depend on the use of threats to make unjustified and illegal gains.

#### 4. IS IT A TOOL FOR DEVELOPMENT?

An important debate within the discipline must be addressed. This focuses on the type of relationship between development and corruption. The first group believes that corruption has a positive impact on economic development and that it 'greases the wheels',<sup>35</sup> as in the case of the East-Asian model,<sup>36</sup> while the second group believes that corruption has a negative effect on economic development.<sup>37</sup>

The major positive effects of corruption can be summarized by the concept of 'greasing the wheels' which indicates its 'facilitating' abilities. Bardhan argues that corrupt activities aid in overcoming red tape and make the bureaucracy more lenient and less rigorous. This serves as an incentive at least to expedite a transaction, which leads to economic growth.<sup>38</sup> As long as there is competition between the different bribers, allocation efficiency will be sustained.<sup>39</sup> Another positive effect of corruption is that, as was the case in Sub-Saharan Africa, it can encourage bureaucrats to "create new rights" which allow new businesses to penetrate closed markets, thus increasing competition.<sup>40</sup> Additionally, the literature has argued that corruption is a stimulus for Foreign Direct Investment.<sup>41</sup>

Contradicting these claims, Kaufmann argued that these arguments are conceptually and empirically faulty.<sup>42</sup> Contending that the notion of 'greasing the wheels' is conceptually faulty, he said, it "ignores the enormous degree of discretion that many politicians and bureaucrats can have, particularly in corrupt societies. They have discretion over the creation, proliferation, and interpretation of counterproductive regulations. Thus, instead of corruption being the grease for the squeaky wheels of a rigid administration, it becomes the fuel for excessive and discretionary regulations."<sup>43</sup> For an empirically faulty example, he referred to many studies that prove that corruption serves as 'sand in the machine.' He uses a study conducted by Mauro that shows that countries that are more corrupt tend to receive fewer aggregate investments than their less corrupt counterparts and thus in return foreign direct investment is negatively affected and hindered. Ades and Di Tella concluded that corruption serves as "sand in the

30 A. Argandoña, *The United Nations Convention Against Corruption and its Impact on International Companies*, 74(4), *Journal of Business Ethics*, 481 (2007); See: Articles 2 and 3 of the European Criminal Law Convention on Corruption, ETS #173, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=173>.

31 I. Amundsen, *Political Corruption: An Introduction to the Issues* (Chr. Michelsen Institute. Working Paper, 2011).

32 Legal Dictionary, <http://legal-dictionary.thefreedictionary.com/bribery>.

33 Id at 12.

34 Id. at 14.

35 P.J. Beck, & M. W. Maher *A Comparison of Bribery and Bidding in Thin Markets*, 20(1), *Economics Letters*, 1 (1986); P. Egger & H. Winner, *Evidence on Corruption as an Incentive for Foreign Direct Investment*, 21(4), *European Journal of Political Economy*, 932 (2005); N. H. Leff, *Economic Development Through Bureaucratic Corruption*, 8(3), *American Behavioral Scientist*, 8 (1964); D. Levy, *Price Adjustment Under the Table: Evidence on Efficiency-Enhancing Corruption*, 23(2), *European Journal of Political Economy*, 423 (2007); F. T. Lui, *An Equilibrium Queuing Model of Bribery*, *The Journal of Political Economy*, 760 (1985).

36 M. H. Khan, *A Typology of Corrupt Transactions in Developing Countries*, 27(2), *Ids Bulletin*, 12 (1996).

37 A. Brunetti & B. Weder, *Investment and Institutional Uncertainty: A Comparative Study of Different Uncertainty Measures*, 134(3), *Weltwirtschaftliches Archiv*, 513 (1998); P. Mauro, (1995). *Corruption and Growth*, *The Quarterly Journal of Economics*, 1995, 681; P. H. Mo, *Corruption and Economic Growth*, 29(1), *Journal of Comparative Economics*, 66 (2001); J. C. Andvig & K. O. Moene, *How Corruption May Corrupt*, 13(1), *Journal of Economic Behavior & Organization*, 63 (1990); K. Murphy et al., *Why is Rent-Seeking so Costly to Growth?*, *The American Economic Review*, 1993, 409.

38 N. H. Leff, *Economic Development Through Bureaucratic Corruption*, 8(3), *American Behavioral Scientist*, 8 (1964).

39 P. Bardhan, *Corruption and Development: A Review of Issues*, *Journal of Economic Literature*, 1997, 1320.

40 N. Leff, *Economic Development through Bureaucratic Corruption*, in *Bureaucratic Corruption in Sub-Saharan Africa: Toward a Search for Causes and Consequences* (M. U. Ekpo ed, 1979).

41 P. Egger & H. Winner, *Evidence on Corruption as an Incentive for Foreign Direct Investment*, 21(4), *European Journal of Political Economy*, 932 (2005).

42 D. Kaufmann, *Foreign policy 114–131* (1997).

43 Id. at 116.

44 A. Ades & R. Di Tella, *The New Economics of Corruption: A Survey and Some New Results*, 45(3), *Political Studies*, 496 (1997).

machine”,<sup>44</sup> the opposite of “greasing the wheels”. Alternatively, Gupta, Davoodi and Tiongson found that countries that have high levels of corruption tend to have poorer quality education and health services.<sup>45</sup> The argument that small payments lead to greater payments was proved within the Italian bureaucracy, where petty corruption led to grand corruption.<sup>46</sup>

Corruption experts believe that corruption’s negative impact can affect the whole of society at both macro and micro levels. Many researchers have shown a direct negative correlation between economic development and corruption, where the latter poses a particular threat to emerging and developing economies.<sup>47</sup> Therefore, even if corruption has limited positive effects, these effects are outweighed when compared to the negative consequences. The overall and general position of the literature is that even if corruption can cause a small positive effect in the short term, it will create unavoidable disasters in the long run. As such, it is a smart and strategic move by SDG 16 to address corruption while corruption levels can still be handled.

## 5. MEASURING CORRUPTION

To assess the success and failures of SDG 16 in curbing corruption, the levels of corruption need to be measured before and after the implementation of the anti-corruption strategy. As such, it is important to accurately measure corruption to understand its pervasiveness, scope, nature and cost. Researchers have divided the measuring techniques of corruption into two main categories – indirect versus direct measures of corruption, and perception versus actual experiences measures of corruption.<sup>48</sup> Most of the indirect techniques of measuring corruption depend on measuring perceptions, while the direct methods depend on measuring the actual experiences of corruption. An important aspect that distinguishes both techniques is that the sources of data for the perceptions of corruption are subjective, whereas the sources of data for the actual experiences of corruption are more accurate, as they are based on the real experiences of the studied subjects.<sup>49</sup>

To begin with, perception-based techniques rely mainly on either indices or surveys. Nowadays, there are many perception-based indices, the most recognized being TI’s Corruption Perception Index (CPI) and Bribe Payers Index (BPI), the WB-WGI, Mo Ibrahim’s Index of African Governance (IIAG) and the International Country Risk Guide (ICRG) developed by the Political Risk Services Group. Each uses different approaches to gain insights into diverse communities’ perceptions. For instance, CPI depends on surveying experts and citizens on their perceptions of corruption in over 170 countries,<sup>50</sup> while BPI depends on surveying businessmen and investors on their likelihood of paying a bribe in

over 60 countries,<sup>51</sup> where likelihood can be interpreted as perception. On the other hand, the WGI, IIAG and ICRG focus on governance issues that include transparency, accountability, the rule of law, quality of public institutions and perceptions of corruption.<sup>52</sup>

One of the advantages of perception-based indices is that it is easier to collect information on corruption when compared to gathering information on actual experiences of corruption. Yet, they have inherent dilemmas, such as depending too much on the opinion of the businessmen or experts,<sup>53</sup> their questionable assumption that there is a relationship between perception and actual experiences of corruption,<sup>54</sup> their sampling techniques and reporting bias and subjectivity,<sup>55</sup> along with the inaccessibility of their sources. As such, due to their dependence on unclear methodologies and inaccessible sources,<sup>56</sup> they create conceptual uncertainty which makes readers sceptical about their objectivity<sup>57</sup> and accuracy.

Since researchers were not satisfied that countrywide perception-based indices could provide sufficient insights to explain corruption, some have started to create local household surveys that can help in collecting micro-level data. These surveys are composed of standardized sets of questions asking for the respondent’s perception of corruption, along with questions on certain corrupt instances, especially bribery.<sup>58</sup> Although surveys can be used to depict both the perception and experiences of corruption, they are mostly used to illustrate perceptions of corruption in these cases.

The major challenges that this technique faces are the accuracy and reliability of the collected data. These challenges can also be present when researching experiences, but their magnitude and influence on the quality of the data is lesser. As corruption can be interpreted differently, respondents coming from diverse backgrounds can thus understand the same question in different ways. Another problem with this method is that surveys are short and do not allow the researcher to create trust bonds with the respondents. Thus, the answers may not accurately represent what happened in a particular incident and events may not be remembered correctly.<sup>59</sup> In addition, respondents may consciously falsify corruption incidents, due to fear of being publicly stigmatized or for a personal benefit in over-reporting corrupt incidents.<sup>60</sup> Thus, perception surveys have proven to be less accurate, which in return decreases the quality and precision of the subsequent research conclusions.

On the other hand, experience-based techniques have provided a different avenue to measure corruption by depending mainly on documented experiences of corruption and observations

45 S. Gupta et al., International Monetary Fund, *Corruption and the Provision of Health Care and Education Services* (2000).

46 D. Della Porta & A. Vannucci, *The ‘Perverse Effects’ of Political Corruption*, 45(3), *Political Studies*, 516 (1997).

47 A. Adly, *Economic Legends: Egypt’s problem is Corruption* (Jan. 1, 2015), <http://carnegie-mec.org/2015/01/16/الفساد-هي-مصر-مشكلة-اقتصادية-مشكلة-مصر-هي-الفساد/hzfi> (in Arabic).

48 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

49 D. Malito, European University Institute - Global Governance Program, *Measuring Corruption Indicators and Indices* (2014).

50 W. De Maria, *Measurements and Markets: Deconstructing the Corruption Perception Index*, 21(7), *International Journal of Public Sector Management*, 777 (2008).

51 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

52 D. Kaufmann et al., World Bank, *Governance Matters IV: Governance Indicators for 1996–2004* (2005).

53 J. C. Andvig, et al., *Corruption. A Review of Contemporary Research* (Chr. Michelsen Institute, working paper, 2001).

54 B. A. Olken, *Corruption Perceptions vs Corruption Reality*, 93(7), *Journal of Public Economics*, 950 (2009); T. Søreide, *Business Corruption: Incidence, Mechanisms, and Consequences* (2006) (Norwegian School of Economics and Business Administration).

55 A. Rohwer, *Measuring Corruption: A Comparison Between the Transparency International’s Corruption Perceptions Index and the World Bank’s Worldwide Governance Indicators*, 7(3), *CESifo DICE Report*, 42 (2009).

56 S. Knack & P. Keefer, *Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures*, 7(3), *Economics & Politics*, 203 (1995).

57 J. Van Dijk & F. K. Van Mierlo, *Indicators of Corruption: Further Explorations of the Link Between Corruption and Implementation Failure in Anti-Trafficking Policies*. (International Victimology Institute, Working Paper, 1-30, 2011).

58 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

59 S. Rose-Ackerman, *International Handbook on the Economics of Corruption* (2007).

60 Francesca M. N. Gino & D. Ariely, *The Counterfeit Self: The Deceptive Costs of Faking It*, 21, *Psychological Science*, 712 (2010); L. Harrison & A. Hughes, *The Validity of Self-Reported Drug Use: Improving the Accuracy of Survey Estimates*, NIDA Research Monograph (1997).

of corrupt actions. Although it is much harder to document and keep track of corrupt activities, especially bribes, large firms do this as part of keeping track of expenses.<sup>61</sup> This technique provides a better picture of the degree, timing and causes of corruption based on the accuracy of the studied subjects. The problem with this technique, however, is that many of the bribes are documented under 'travel and entertainment' costs by using fake receipts, or hidden within the fees for an intermediary paid to do a certain task. Both scenarios create an issue for the researcher who has to successfully distinguish between the actual expenses and the bribes,<sup>62</sup> and it is increasingly difficult to entice companies to divulge information voluntarily.

A third technique that has been attempted by researchers to circumvent these challenges is through fieldwork observations. These observations of corrupt actions can occur when a researcher conducts the work himself or when a researcher shadows a citizen while committing a corrupt action, such as paying a bribe.<sup>63</sup> Although this technique gives genuine unlimited access to holistic microdynamics of the corruption process, there are unavoidable problems associated with this tool. This includes a major difficulty in convincing someone paying a bribe to allow the researcher – someone s/he does not know and does not yet trust – to observe corruption in action. Although it is self-evident, the briber and/or the bribee as well may be embarrassed or afraid of legal prosecution, and the process will incur a lot of time.<sup>64</sup> Putting these problems aside, there is the question of sampling and representation – given the time investment needed, the sample will be small and, in many cases, not representative.

Furthermore, filling in missing data takes place when the researcher identifies gaps in primary or secondary data that imply the presence of a corrupt action. The Public Expenditure Tracking Survey (PETS), along with unexpected, unusual and unbiased audits, are examples of this technique. The PETS allows the researcher to determine how much of the allocated money is transferred through the different levels of the bureaucracy. Many researchers depend on this technique<sup>65</sup> as it shows actual experiences of corruption. However, this tool also has some drawbacks, such as bureaucratic incompetence manifested in bad patterns of bookkeeping or sudden budgetary reallocation; these could be mistakenly understood as corruption, while they are actually administrative inefficiency based on human error.<sup>66</sup> Additionally, this technique does not help the researcher to understand the underlying story behind the interactions that lead to the actions.

Thus, the main drawbacks to using the experience-based techniques are that, just like perception surveys, the surveys tend to be short, not allowing the researcher to create personal relationships of trust with the respondents. Answers and events may be misremembered<sup>67</sup> or falsified out of fear or for personal gain.<sup>68</sup> More importantly, it will be difficult to convince stakeholders of the significance of the research and receive their full participation.

As a result, and based on the aforementioned discussion, I believe that the best way for SDG 16 to accurately measure corruption is through studying and triangulating the actual experiences of diverse respondents by surveying and interviewing them. To overcome most of the abovementioned drawbacks of the commonly used techniques, any researcher should build trust with the respondents by spending long periods of time with them, being honest and promising them anonymity and confidentiality. The researcher should try as much as possible to ensure that the stories that the respondents share are not falsified by encouraging them just to share the real stories and not to make anything up. When respondents see that the researcher is professional, they will start to feel the importance and magnitude of participating in the study. Thus, their attitude towards the conducted research can differ: they might start taking their participation more seriously, by either sharing accurate stories or refraining from participating in the first place.

## 6. CAUSALITY IN THE CORRUPTION LITERATURE

The main debates in the corruption literature have pointed to scholars either inferring causal linkages, basing conclusions on correlations, or showing the presence of a relationship in descriptive studies between the studied dependent and independent variables. This section will look at these aspects in more detail.

Primarily, causality means that a certain specific action caused a certain event to happen, while correlation is when two or more specific events or things occur at the same time, and there might be a certain level of association between them. This association does not have to be a causal relationship; or, in other words, a correlation is the presence of a non-limited dependence relationship between two or more variables. Ultimately, no matter how strong a correlation link is, "correlation does not imply causation"<sup>69</sup> and it cannot be used to create a causal relationship between the different variables. In fact, to be able to establish causality between dependent and independent variables, there should be a clear and distinct causal dynamic between the variables, along with the cause preceding the effect, and the researcher should be able to clearly identify the mechanism by which this causal link is established.<sup>70</sup>

Corruption studies tend to differ in their approach to how they perceive the type of association between corruption as a dependent variable and the other independent factors that are being tested throughout any study. These factors can either have a causal effect on corruption or can have a correlation with corruption or a relationship in descriptive studies. In these studies, it is very difficult to infer either causation or correlation. This relationship can be strong or weak. Each side has its supporters and critics, but what all teams agree on is that proving the presence of a causal link is harder than showing the presence of a correlation, which, in turn, is harder than showing a relationship. To establish causation

61 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

62 A. Tran, *Which Regulations Reduce Corruption? Evidence from the Internal Records of a Bribe-Paying Firm* (2010).

63 B. A. Olken & P. Barron, *The Simple Economics of Extortion: Evidence from Trucking in Aceh*, 117, *Journal of Political Economy*, 417 (2009).

64 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

65 R. Reinikka & J. Svensson, *Local Capture: Evidence from a Central Government Transfer Program in Uganda*, 119, *Quarterly Journal of Economics*, 678 (2004); R. Fisman & S. J. Wei, *Tax Rates and Tax Evasion: Evidence from Missing Imports in China*, 112, *Journal of Political Economy*, 471 (2004); G. Narciso & B. Javorcik, *Differentiated Products and Evasion of Import Tariffs*, 76, *Journal of International Economics*, 208 (2008).

66 S. Sequeira, *Advances in Measuring Corruption in the Field* 145–175 (2012).

67 S. Rose-Ackerman, *International Handbook on the Economics of Corruption* (2007).

68 Francesca M. N. Gino & D. Ariely, *The Counterfeit Self: The Deceptive Costs of Faking It*, 21, *Psychological Science*, 712 (2010); L. Harrison & A. Hughes, *The Validity of Self-Reported Drug Use: Improving the Accuracy of Survey Estimates*, NIDA Research Monograph (1997).

69 J. Aldrich, *Correlations Genuine and Spurious in Pearson and Yule*, 1995, *Statistical Science*, 364.

70 S. Handy et al., *Correlation or Causality Between the Built Environment and Travel Behavior? Evidence from Northern California*, 10(6), *Transportation Research Part D: Transport and Environment*, 427 (2005).



there are four criteria that have to be met: association, time order, non-spuriousness and causal mechanism.<sup>71</sup> Given the multi-disciplinary nature of corruption, corruption studies that try to show a causal relationship between corruption and any other tested variable face a challenging aspect when it comes to the multi-causal nature of many of the variables. In most cases, corruption experts tend to insist on the exclusivity between the two studied variables, which is simpler than trying to comprehend and show the full picture along with showing most of the multi-causal aspects that affect any variable.

In studies that have established causality, the sample size is very large; it is mostly cross-country sampling and includes large data sets over an extended period.<sup>72</sup> Moreover, there is a dearth of accurate local data sets, as most statistical research has taken place at the national level. There are also limited sets that have been collected on an elongated time scale, making it difficult to trace a phenomenon like corruption. As such, it makes sense to start with establishing relationships that will provide insights into making preliminary conclusions on the presence of potential causal links. These may be taken up at a later stage and further explored in future studies using statistical inferences.

Different causal chains also lead to various discourses on the analysis of corruption and the associated policy recommendations. Thus, if a causal link emerges between the financial status of the bureaucrat and corruption, this will lead to a certain type of analysis, while another researcher using the same data may manage to prove that there is a causal link between peer influence and organizational culture with corruption, leading to an entirely different track. Yet, they will both be right as any amalgamation of these factors can figure into the local paradigm, thus limiting the reasoning to find one causal link.

Corruption is a multi-dimensional problem that is difficult to limit to one simple cause. Of course, there may be different levels of impact on individuals' decision-making processes, but it is rare for only one reason to drive a person to commit a corrupt action. In most cases it is the aggregate influence of more than one cause, each weighing differently based on other variables. As such, this creates a situation where SDG 16 should not only tackle corruption as a problem in itself but rather tackle the wide array of reasons that lead individuals to participate in corrupt actions. These reasons range from institutional to personal. The SDG 16 anti-corruption strategy focuses on tackling the institutional aspect; however, it should also consider the individual aspects that encourage individuals to participate in corrupt activities.

SDG 16 can use the causality vs correlation debate in justifying why their future anti-corruption strategies will start addressing variables and points that were not addressed beforehand. Given the multi-dimensionality of the corruption problem, anti-corruption strategies should not just address the casual variables to curb corruption, but rather work on tackling weakly correlated variables to corruption, as they still play an active role in the corruption equation. Then we can achieve better results; the results we always aim for.

## 7. CONCLUSION

This paper tackled the controversial nature of the notion of corruption by discussing its different and diverse definitions, types and measuring techniques. It also examined whether corruption

can be seen as a developmental tool that helps the economy to flourish, or as an obstacle and barrier which hinders developmental efforts; I managed to show that even if corruption might have a short-term positive impact, its significant long-term negative consequences easily overcome its positive aspects. In addition, in regard to causality in the corruption literature, I argued that given the current limitations of the studied sample and study in general, it is difficult to infer causation. Simply, there cannot be a 'one size fits all' understanding of the notion of corruption given its multidisciplinary nature. As such, the term 'corruption' needs to be comprehensively understood as a concept with its own historicity, as it has multiple meanings in different contexts.

For SDG 16 to be successful and reach its target of reducing corruption and having transparent and accountable institutions, the anti-corruption aspect should be customised to each and every sector in each and every country. Yes, the policy can follow a general framework, yet each case has its unique characteristics that should be addressed. In addition, local citizens, as well as bureaucrats, should play an integral part in the formulation and implementation of the anti-corruption strategy. Only then can SDG 16 achieve better results than the ones hoped for.

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