

U4 Expert Answer



Sequencing of Law Enforcement Interventions to Combat Corruption

Query:

“Is there a recommended sequencing for relevant anti-corruption laws and reforms in a country?”

Purpose:

The query attempts to consider how better to incorporate preventative policies against corruption as part of law enforcement efforts that commonly cover punitive measures once problems are detected. This information will be used as part of second generation reforms in Indonesia as its anti-corruption commission (KPK) considers how to most effectively direct its work.

Content:

Part 1: Good Law Enforcement: Preventing and Punishing the Problem

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Caveat:

The query looks at changes proposed to Indonesia's anti-corruption commission and how to help it better address corruption, both through preventative and punitive measures that are better sequenced. As such, specific emphasis is given to preventative and punitive actions taken by anti-corruption commissions (ACCs) as well as their sequencing. In compiling the query, however, limited information on sequencing was found, suggesting that this is an area worthy of further research by the anti-corruption community.

Summary:

Donor-supported approaches to address corruption have tended to focus on measures that support effective law enforcement in a country that are strategically sequenced. In many cases, independent oversight bodies and mechanisms, including anti-corruption commissions (ACCs), have formed a key part of the changes. ACCs have been seen as important actors in ensuring laws are upheld and cases are prosecuted.

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For ACCs, the challenge is that they must work within the system that they were set up to oversee. While they may be able to investigate and sanction corruption, they may not be preventing the underlying problem. This is related to the concern that governments must create a supportive context for anti-corruption enforcement.

However, this landscape is often missing when oversight bodies such as ACCs are established. In response, governments and donors have tried to work together to properly sequence anti-corruption reforms to build a more favourable environment. Experience has shown that there is no one-size-fits-all approach for sequencing. Understanding the local context – in this case, Indonesia – is the best way to begin the process.

Part 1: Good Law Enforcement: Preventing and Punishing Corruption

Showing progress on anti-corruption reforms can have a strong demonstration effect and help to turn positive public opinion about the effectiveness and credibility of public institutions (World Bank 2000). Law enforcement institutions are seen as being well placed to make these advances. They have a high public profile (and high level of interaction with citizens) and involve the institutions that are required to implement laws and hold individuals violating them accountable: courts, judges, public prosecutors and police.

As seen from good practice, law enforcement initiatives and institutions targeting corruption should provide for mechanisms that can both prevent and punish the problem (Chene 2009; Heilbrunn 2004). There has been recognition that sanctioning corruption can only go so far. Effective measures are needed to prevent corruption and ensure that the overall context in a country is supportive for law enforcement.

Anti-corruption interventions to **prevent** corruption include actions to raise society's awareness about corruption and to put in place mechanisms that prevent it from occurring, including laws and regulations (Jennet 2006). Prevention serves to give corruption a more public face, shifting political will and general opinion.

Anti-corruption measures that are taken to **punish** or sanction related violations are related to efforts such as mandatory fines and/or jail times as well as special prosecutors or bodies tasked to fight corruption. In this

case, effective punishment involves the ability to both investigate the problem and sanction the violation.

The Empirical Evidence

Research from the World Bank has signalled the challenge of pursuing anti-corruption strategies that only look at changes in prosecution without tackling the underlying causes of the problem that would prevent it (World Bank 2000).

A **UNDP study** (2005) of comparative institutional arrangements to combat corruption reiterated this concern. It underscored the need for reforms to law enforcement institutions and the areas that they cover, including prevention. In this way, activities adopt a long-term vision and recognise that a fundamental shift in corruption takes time (UNDP 2005).

Additional findings on law enforcement bodies, namely Anti-Corruption Commissions (ACCs), note that when sanctioning efforts are prioritised at the expense of preventative measures, the failure of these institutions is heightened. Rather, integrating dimensions to prevent and punish corruption provides a more effective, sustainable approach (Chene 2009).

Lessons Learnt

Based on experience, there are some lessons learnt regarding factors for the success of ACCs as part of good law enforcement strategies that prevent and punish corruption (Chene 2009). These include:

- **Resources:** Law enforcement agencies and the judicial system need sufficient resources and capacities to support effective prevention, investigations and prosecutions.
- **Division of labour:** Specialised task forces can help to have a team-based management of the problem.
- **Independence:** Law enforcement authorities and the criminal justice system in a country must be independent and characterised by integrity.
- **Mandate:** In addition to the ACC, the different institutions involved in law enforcement (judiciary, prosecutors, police, etc.) must have the mandate to carry out their work.
- **Political will:** It is important that the government is committed to fighting corruption. Otherwise the bodies could be viewed as pawns of the state – or politicised tools of the opposition.

Part 2: Sequencing Anti-Corruption Reforms

While law enforcement measures that both prevent and punish corruption are the recommended approach, they must be packaged as part of a broader, sequenced anti-corruption reform.

Generally, sequenced anti-corruption reforms can involve some of the following actions (in no order of priority):

- Raising awareness of the problem among the people and civil servants;
- Support for national anti-corruption programmes and anti-corruption agencies;
- Support to amendments of national legislation on corruption;
- Support for tax authorities and customs agencies;
- Support for financial management and auditing;
- Training programmes for civil society and the media;
- Strengthening of the procurement processes at the central and local level;
- Support for election processes;
- Support for the court system;
- Support for the public prosecution and police agencies; and
- Support for local government reforms and decentralisation (Jennet 2006).

The question, however, is where to begin on the list.

Rationale for Sequencing

Most countries have insufficient **capacities and resources** to implement multiple measures at once. Sequencing is designed to assist with prioritising and ordering the reforms to be undertaken.

Sequencing also helps to **move forward the anti-corruption process** since some reforms simply would not be possible to undertake until others have begun. For example, there would be limited value in providing and improving legal services to strengthen the rule of law in a country if the judges are corrupt (DFID 2002). In the case of Indonesia, it would be essential to see where the remaining gaps are and how these shortfalls need to be addressed in a way that eliminates obstacles to progress on anti-corruption measures.

Finally, sequencing assists with **mitigating the risk that the reform process is derailed**. Without visible progress, a country may turn apathetic or antagonistic to the reforms. This is particularly an issue in post-conflict countries, where clear advances on corruption can be intricately tied into the success of peace-building and reconstruction – and long-term stability (Husmann and Tisé 2009). These situations can be extremely complex with a need to balance multiple agendas, involving peace settlement and security concerns, humanitarian needs, public institution building and social and economic development (Husmann and Tisé 2009).

Context Driven

There is limited literature that explains the order and nature of reforms for their prioritisation and phasing (even in the case of specific situations, such as post-conflict countries)¹. This is due to the fact that each context is seen as different in terms of setting the stage for what reforms to pursue and when.

Understanding the particular environment in which corruption occurs is fundamental to developing and sequencing an anti-corruption strategy (McCusker 2006). As has been argued, there is no single approach, even if good practice examples point to particular interventions that can produce positive change (UNDP 2005).

Moreover, tackling corruption head-on might work in one situation to show commitment while, in others, it could trigger a backlash and undermine reform (World Bank no date). This is particularly important for post-conflict contexts, where there is a suggestion that approaches must be varied (Husmann and Tisé 2009). In these situations, initiatives should be aligned with the different phases of post-war reconstruction (even up to ten years after an agreement has been signed; Husmann and Tisé 2009).

¹ See: U4, Sequencing of Anti-Corruption Measures in Post-Conflict Countries, online. www.u4.no/helpdesk/helpdesk/query.cfm?id=17.

Methods of Sequencing

While sequencing will depend on a particular context, there is a generally accepted method for determining how to sequence anti-corruption reforms. This is an approach embraced by the World Bank and UN Office on Drugs and Corruption (World Bank no date; UNODC 2001):

1. Anti-corruption measures should tackle the institutions which are part of a corrupt system. A diagnostic analysis of the country (including institutions like the customs and tax offices) can help to prioritise these areas.
2. Based on the prioritised list, objective and subjective measures of corruption should be determined. These measures can draw on evidence thought to explain corruption (such as users' perceptions of public services, the prevalence of corruption, procedural complexities, etc.). They should also be analysed in how they relate to the factors causing corruption in a particular institution.
3. There should be a concurrent raising of public awareness and engagement of civil society. This can happen by disseminating information and promoting a common understanding of the costs of corruption.
4. Political leadership in a country (or region) should adopt a highly visible anti-corruption stance. This will help to indicate the government's overall commitment, as well as signal to lower political levels that practices must change. The level of commitment and progress on anti-corruption can be assessed by establishing clear, mutually-agreed indicators (World Bank no date).
5. The implementation of a country's anti-corruption strategy should be monitored and verified by donors, governments, the legislature and civil society to ensure that it is in line with the agreed terms.

Entry Points for Reform

Good practice suggests that there are general entry points for reform that can help to determine which measures to use and sequence as part of strengthening law enforcement in a country.

UN Convention against Corruption (UNCAC)

With the UNCAC being more commonly integrated into anti-corruption strategies, the convention provides a reference point for setting out reforms to be sequenced.

Its eight chapters cover different measures for preventing and punishing corruption, including for anti-corruption bodies such as ACCs. Moreover, the UNCAC self-assessments and current review process help to identify areas that need to be tackled and prioritised as part of complying with the convention (UNDP 2010). However, it is important to note that the UNCAC itself does not distinguish between types of states, suggesting a degree of flexibility should be considered when applying the UNCAC legal articles to different contexts (Hussman and Tisné 2009).

Rule of law and administrative systems

In looking at how to design anti-corruption strategies, Martinez-Vasquez, Arze and Boex (2006) offer some lessons from experience on how to undertake the process. Once the context is understood and assessed (as noted above), resources need to be invested in the institutional framework. For the authors, strengthening the rule of law is one entry point for reform. Related actions are paramount and rely on sequencing. This can be done by ensuring the professionalisation of the legislature, providing judges and court staff with adequate remuneration and modernising judicial procedures. As they note, it is difficult to propose new laws when existing ones are not being enforced by the judiciary (Martinez-Vasquez, Arze and Boex 2006).

Once this process is begun, they argue that new anti-corruption legislation should be developed to bolster the legal system, and create a framework for further reforms.

A previous U4 Expert Answer (Chene 2009) builds on this approach of reinforcing legal systems and laws, extending the changes to other systems and administrative procedures. Going into more detail, Knack and Kugler (2002) cite clear examples of what the system should promote, including strengthening the capacity of budgetary processes, delivery of basic services, and tax services to promote integrity.

Conditions for Success

Lessons from experience suggest that there are three areas that are key for the successful sequencing of anti-corruption reforms: sufficient resources, realistic goals and timelines, and strong political will.

Sufficient resources

Addressing the provision of resources is essential to ensure that there are sufficient and sustainable human, financial and technical inputs.

Based on a five-country study of ACCs in Africa, specific actions were seen as useful to secure the correct provision of resources for anti-corruption bodies (Doig, Watt and Williams 2005). These included a pre-funding assessment to ensure the ACC's capacity to deliver, consistency and integration of donor support, and funding integrated with the government's own expenditure (Doig, Watt and Williams 2005).

Whether for an ACC or broader anti-corruption reform, one means to address the provision of financial resources may be to plan and secure a budget over a multi-year period, rather than re-discussing, and seeking new money each year (World Bank no date).

Establish realistic goals and timelines

Anti-corruption strategies should contain realistic goals, so that actual results can be achieved, aiding motivation of government and civil society to continue the pursuit of reforms (Bietenhader and Bergmann 2009).

In this sense, setting achievable targets is part of building the credibility of the anti-corruption approach being taken. It also helps to ensure tangible, early results that can be used to secure broader buy-in to the reform process (World Bank no date).

Political will

Having the right level of political will is critical for anti-corruption reforms that are effective. Strategies that aim to make lasting, substantial change must be backed by continued pressure (Martinez-Vasquez, Arze and Boex 2006). As seen in a four country study of accession and pre-accession countries to the European Union, the absence of political will to implement approved anti-corruption reforms has created a sizable gap between what exists in law and practice for such areas as preventative and punitive measures that target the judiciary, legislature and public administration (Fagan 2011).

Even when there may be strong political will around an anti-corruption body such as an ACC, it can quickly turn. If a government is supportive of the commission, high profile cases that involve officials from the ruling

party can cause support to falter, political interference or accusations of an opposition-led attack (Chene 2009).

Part 3: The Case of Indonesia

Knowing how to sequence law enforcement reforms that address both preventative and punitive measures is possible only when there is an understanding of the anti-corruption landscape in a country. The section that follows looks at the current state of corruption in Indonesia and the role of its anti-corruption commission.

Overview: Corruption in Indonesia

At an aggregate level, the country has persistent problems with both petty and grand corruption.

Petty corruption. According to recent public opinion surveys, 18 per cent of Indonesians have reported paying a bribe, or 'facilitation payments', when interacting with nine public services, including customs, education, the judiciary, land services, medical services, the police, registry & permit authorities, tax authorities and utilities (TI 2010).

Grand corruption. Indonesia has had a history of high profile corruption cases, notably during the 32-year regime of Suharto. While Suharto was ousted in 1998, widespread public sector corruption continues to plague the country. In 2010, [Transparency International's Corruption Perceptions Index \(CPI\)](#) ranked Indonesia at 110th place out of 178 countries, placing Indonesia among the countries in Asia Pacific with the worst levels of corruption.²

The Response: Reformasi and the KPK

Indonesia has made steps towards building up key law enforcement bodies to promote integrity and combat the problem as part of its *Reformasi*, or reform, era.

In 2002, the government established the *Komisi Pemberantasan Korupsi* (KPK), also known as the Indonesian Corruption Eradication Commission. Prior to the creation of the KPK, only the Indonesian police and

² Of the 33 countries included in the survey from the region, two-thirds received a better score than Indonesia on the 2010 CPI.

prosecutors office had the powers to conduct anti-corruption investigations.³

The previous multi-agency approach led to the creation of 'micro-centres' for corruption since the judiciary, police and other law enforcement institutions were corrupted (Assegaf 2002). The KPK was an attempt to centralise anti-corruption functions and build legitimacy. The approach is seen as paying-off, turning the KPK into the most highly regarded institution in Indonesia (Bolongaita 2010).

Part of its success is a result of how the agency is structured. The KPK's **areas of activities** are:⁴

- 1.) Coordinating and supervising all institutions authorised to fight corruption in Indonesia;
- 2.) Investigating and prosecuting corruption;
- 3.) Conducting preventative measures against corruption; and
- 4.) Monitoring the government's compliance with related laws.

The KPK is endowed with the powers to promote the *prevention* of corruption by conducting audits of public officials' wealth, implementing anti-corruption education programmes around the country, organising public anti-corruption campaigns and carrying out corruption assessments of government agencies and institutions. However, analysis of the agency has noted that these preventative powers have been under-utilised and need to be developed further if the agency hopes to continue to play the positive role it has in the past (MacMillian 2011).

Regarding its powers of *prosecution*, the commission is able to take over investigations and prosecutions from the police or court system in specific cases, including when there are abnormal and/or excessive delays, obstruction of justice in a case's handling, and suspected biases. In 2010, it has looked into over **170 cases**. From 2003 to 2009, the agency investigated,

prosecuted and successfully won all **86 of its cases**, many of which have involved members of parliament.⁵

One consequence of this work has been different attempts by the Indonesian parliament to curtail the power of the KPK. For example, the KPK got itself into a **faceoff with the Indonesian government**, following the prosecution of three members of parliament in 2008 and after another case led to the jailing of a former governor of the Bank of Indonesia for his alleged embezzling of 100 billion rupiahs (US\$11 million) from central bank funds.⁶ The backlash, which still continues, has sparked an outpouring of public support. The activities of KPK and the *Reformasi* have helped to contribute to inroads against corruption and also to change perceptions of public sector corruption in Indonesia. From 2001 and 2010, Indonesia's score improved on the CPI. During this time period, related policies to promote transparency have also been advanced. For example, the country finally passed a right to information law in 2010. Indonesia also ratified the UN Convention against Corruption in 2006. The convention, which requires a country to have an anti-corruption body or bodies specialised in combating corruption, has helped to reinvigorate the mandate of the KPK.⁷

Yet in spite of some of these positive signs of progress, a multiplicity of corruption-related issues still remain in the country. In 2010, more than 70 per cent of those **surveyed** in Indonesia noted that corruption in the last three years has stayed the same or has worsened in the country. More than one-third of respondents on the same survey also said that the government's fight against corruption has been ineffective (TI 2010).

Areas for Pending Reform

As noted in the section on sequencing, understanding where the gaps are can help to assess where best to

³ The relevant laws were Law No. 31 of 1999 on Eradicating Criminal Acts of Corruption, which was amended by Law No. 20 of 2001, and Law No. 28 of 1999, which covered "State Officials who are Clean and Free of Corruption, Collusion, and Nepotism".

⁴ Article 6 of Law 30 (2002) established the KPK and gave the body these powers to investigate, prevent and prosecute corruption.

⁵ For information on the figures, see: <http://us.en.vivanews.com/news/read/253188-bribery-puts-indonesia-president-on-the-spot>; www.nytimes.com/2009/07/26/world/asia/26indo.html.

⁶ For more on the cases, see: www.economist.com/node/14587280

⁷ See Article 36 of the UNCAC. www.unodc.org/unodc/en/treaties/CAC/.

target reforms on law enforcement. As such, this section does not look at the areas where changes to the KPK are needed, which have been detailed by other authors (MacMillan 2011; Bolongaita 2010), but rather where broader law enforcement reforms should be undertaken.

Anti-corruption assessments have signalled some of the main areas that remain problematic for fighting corruption in Indonesia. [Global Integrity's 2009 report](#) of corruption in the country found that **political financing, right to information, budget processes, law enforcement, executive accountability and civil service regulations** are weak and/or very weak. Each of these areas is explained in more detail below.

Political party financing

According to a [2010 public opinion survey](#) by Transparency International, political parties are considered the most corrupt institution in the country (TI 2010). This problem is partly a product of the financing of political parties. According to legal modifications made in 2009, individual donors can contribute up to R1 billion (over US\$107,000) to election campaigns. The legal change has also increased the amount that corporations can give, with no law preventing companies from the same group donating money. Moreover, there is no limit for donations made by party members, which has led to concerns over possible seat-buying (TI 2009).

Right to information

Although the Right to Information (RTI) law has been passed, several drawbacks exist, including that state-owned companies, particularly national oil and mining companies, are under no obligation to make their dealings transparent and publicly available. On top of this, the RTI does not clearly define what constitutes 'misuse' of public information, eliciting fears that such an ambiguity could be used to restrain freedom of the media (Global Integrity 2009).

Budget processes

Indonesia is considered as having limited budget information available. The [Open Budget Index](#) places it among the group of countries with some budgetary information disclosed, giving it a score of 51 out of a possible 100 points. While Indonesia does relatively better than other countries in the region on the index, the lack of broader disclosure makes it difficult for citizens to hold the government to account. A strong parliament with budget oversight functions could help to balance out the powers, but Indonesia's legislature

does not hold public hearings on the budget or have full powers to amend the budget presented to it (IBP 2010, Global Integrity 2009). Another change could happen through Indonesia's admission to the Extractive Industries Transparency Initiative (EITI). As a candidate country, complying with reporting policies could help to further increase the openness of its government.

Law enforcement

Indonesia's weak law enforcement is exemplified by the numerous reports of illegal logging or irregularities in the issuing of forest licences and concessions in the country. This was underscored by the arrest of public officials Bintan, Azirwan and House of Representatives law maker, Al Amin Nasution, by the KPK on 9 April 2008, for being embroiled in the corrupt issuing of licenses and concessions for logging activities (Global Integrity 2009). Even when cases have reached the courts, it has not been uncommon for them to be controversially acquitted, raising concerns over the integrity of the judiciary.

Executive accountability

While the judiciary has the power to review the executive's actions, the country's court system does not actively take up this right (Global Integrity 2009). Also Indonesia's executive is seen as excessively using the right of executive orders to establish new laws and regulations (Global Integrity 2009). While leaders can be prosecuted (as has been done), there are other challenges regarding ethics and conduct given that there are no revolving door regulations for ministers leaving government and taking positions in the private sector.

Civil service regulations

There are laws to prevent nepotism, cronyism and patronage⁸ but in practice there is a high level of political interference in the civil service. It is also viewed that political affiliations influence staff appointments and promotion. Finally it is felt that an 'informal criteria' is used by public institutions and state-owned companies to make hiring decisions based on one's ethnicity, religion, education and/or political views (Global Integrity 2009).

⁸ Law No. 43 (1999) covers personnel principles (chapter 2, article 3) and Law No. 28 (1999) regards the implementation by the government of regulations related to public servants that are clean and free from corruption.

Conclusion

The different areas for reform need to be balanced against changes that must happen within the KPK and other law enforcement bodies to be more effective in their fight against corruption. This is a question of sequencing as well as prioritisation. For example, a recent assessment of the KPK noted that reforms to the body must include reinforcing laws, better cross-agency cooperation (such as with the Attorney General's Office and National Police) and overall stronger political will (MacMillan 2011).

Part 4: Further Reading

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