

## CHAPTER 3

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### *Active Public Involvement in the Fight against Corruption*

- A. Policy dialogue and cooperation between governmental and nongovernmental actors
- B. Raising awareness and educating the public about corruption issues
- C. Public scrutiny and access to information

# Active Public Involvement in the Fight against Corruption

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**T**he fight against corruption cannot be won without citizens' support, participation and vigilance. The media, civic and business associations, trade unions and other nongovernmental actors play a crucial role in fostering public discussion of corruption and increasing awareness about the negative impacts of corruption. They also screen and scrutinize governmental action – both in their daily life and through formal arrangements institutionalized for this purpose – thereby contributing to the detection and prevention of corruption and the collection and channeling of input from citizens toward the government's anti-corruption efforts.

Two factors determine to what extent nongovernmental actors can contribute their valuable resources to governments' efforts to combat corruption. On the one hand, the legal framework for civil society to gather and operate creates advantageous circumstances or, in some countries, obstacles and disincentives. On the other hand, a government's and an administration's general attitude toward cooperating with nongovernmental actors may be more or less cooperative, open and fruitful.

To date, not all countries covered by this report have developed the cooperative and supportive relationship with nongovernmental actors that they have committed themselves to under the Action Plan. Yet, more and more countries acknowledge the important role that nongovernmental actors can play. They are engaged in improving the relevant legal and institutional conditions and have initiated some specific projects of cooperation and dialogue with civic organizations on the issue of corruption.

## A. Policy dialogue and cooperation between governmental and nongovernmental actors

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Civil society's contribution to a country's fight against corruption can take various forms, from awareness raising and educational programs to active and officially recognized participation in the analysis of existing legislation or institutional procedures. Concerning the latter, civil society can advocate reforms that are perceived to be most crucially needed. In this respect, some governments have actively engaged in cooperation with nongovernmental actors, seeking to make use of the civil societies' expertise and resources.

In Pakistan, civil society organizations take part in the National Anti-Corruption Strategy Project, an advisory body to the government consisting of members from the public sector, civil society, business, media and academic institutions. This body is responsible for developing a comprehensive national anti-corruption policy and providing relevant recommendations to the government. In this function, it has contributed in a major way, for instance, to the recent promulgation of the Freedom of Information Ordinance, promoting transparency in government operations. In Papua New Guinea, the business sector, civil society organizations and government representatives cooperate in a formal consultative committee. Another example of collaboration between governments and nongovernmental actors in processes of institutional and procedural reform is civil society's active involvement in the Philippine government's efforts to reform the country's procurement system. In this endeavor, an NGO has been tasked by the government with conducting an analysis of existing procurement procedures. On the basis of this analysis, the NGO has advocated reforms to the government and provided training to relevant public institutions in order to strengthen their capacity in this area. The organization continues to monitor selected bidding contracts. In Samoa, a steering group on the implementation of the public service reforms includes not only government officials and politicians, but also a number of private sector representatives.

In the Philippines, government and civil society actors have formally engaged in joint steps to combat corruption in the public sector. This coalition aims to monitor lifestyles of public officials and employees, in order to detect and eradicate possible corruption and graft. The civil society actors in this coalition assume the task of gathering information on the lifestyle of government officials. Such information is then validated by the participating agencies and investigated by the Office of the Ombudsman. When evidence warrants, said office files the appropriate charges before the proper court, including the institution of forfeiture proceedings.

Civil society actors have also made major contributions to legislative reform in various other countries of the region. Freedom of information legislation in such countries as Indonesia, Japan, Korea and Pakistan has to a large extent been the result of NGOs' advocacy work. They continue to play a crucial role in educating the public to better understand and make use of these new legal provisions.

## B. Raising awareness and educating the public about corruption issues

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The second key function of nongovernmental actors in the fight against corruption is education and awareness raising about corruption issues among the general public. This role is being recognized in a growing number of countries, such as Cambodia, Fiji Islands, Indonesia, Korea, Malaysia, Pakistan, Papua New Guinea, the Philippines, Singapore and Vanuatu. The governments of these countries have started supporting civil society in this function. In Korea, support from government to civil society organizations' anti-corruption activities may even include financial support. Cambodia has reported that cooperation is taking the form of anti-corruption education in public schools: after a survey had found a low level of awareness about the impact of corruption among the younger generation, a nongovernmental research institute was tasked to develop an educational program on ethical and governance issues. This program is taught to children and young adults in the national public schools, enlisting the cooperation of the Ministry of Education. Similar cooperation has taken place in schools in Malaysia and Vanuatu. Other countries, such as the Fiji Islands, Kazakhstan, Korea, Pakistan and the Philippines have reported about efforts to introduce similar approaches, including encouraging teachers to educate their students about ethics issues at schools and in higher education. In the framework of Malaysia's National Integrity Plan, which is based on the results from a national survey on public perceptions of corruption completed in January 2003, the Government has established the Malaysian Institute of Integrity, through which it aims to enhance awareness about corruption and the need for transparency in the public service. Korea, Papua New Guinea and the Philippines have partly delegated this function to their anti-corruption agencies and/or the ombudsperson's office. In Pakistan, the involvement of teachers in spreading education about ethics issues has been one of many components of the overall awareness campaign, which encompasses the use of mass media (investigative documentaries, case studies of successful prosecution cases, serials, etc.), interaction with public office holders, and the introduction of changes in the curriculum being taught at schools through a consultative process involving teachers and the Ministry of Education.

In addition to these projects in the educational system, which aim to instill ethical behavior and attitudes within the population from an early age, other countries have also engaged in more general anti-corruption campaigns addressing the entire population. Hong Kong, China's and Korea's anti-corruption agencies, for instance, conduct regular media campaigns on corruption issues. Kazakhstan publishes corruption level indices enabling the public to compare regions, branches and departments as to their ethical behavior. At the same time, this project sets an incentive for these targeted institutions and branches of the state to change their behavior. Indonesia undertakes such campaigns together with a coalition of nongovernmental actors, including representatives from the private sector and international civil society representatives, to facilitate within the Indonesian population an understanding of, and support for, the government's governance reform. Several projects have been launched in this area, including the dissemination of information brochures and books and the broadcasting of anti-corruption campaigns on radio and television.

## C. Public scrutiny and access to information

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The third key role the public plays in the fight against corruption is to monitor and scrutinize actors and hold them accountable. This scrutiny is a powerful means of preventing corruption and a key supplement to legal provisions and institutions. Its two preconditions – free discussion and access to relevant information – are not sufficiently prevalent in some countries, however.

### I. Public scrutiny, monitoring and discussion of corruption

Civil society actors may indeed contribute a large share to monitoring and investigating government and business activities and thereby deter corruption. Appreciation of this indispensable instrument for combating corruption has not yet gained much ground among political leaders in some of the countries. However, the above-mentioned example from the Philippines, where an NGO has been tasked by the government to monitor bidding procedures, shows the additional benefits that can be obtained by public scrutiny of a country's efforts to combat corruption.

The media are particularly important nongovernmental actors in scrutinizing governments' and public administrations' work. By screening government, political figures and the business sector, they may perform an important watchdog function. They may trigger investigations and thereby allow for the detection of corrupt acts. Media reports about corruption further contribute greatly to educating the public. Frank reporting requires freedom and independence of the press and access to information. In some countries, improvement of these preconditions would render the fight against corruption more successful.

### II. Access to information

A particularly important precondition for enabling citizens to scrutinize public administration, government, political parties and elected politicians is a meaningful right to access information. However, it is only recently that a number of countries have implemented such reforms, oftentimes triggered and supported by civil society actors. Reluctance to grant freedom of information is still widespread, justified by state security, privacy or tradition.

It is generally considered that access to information goes beyond routine publication of documents; effective control also requires that governmental or administrative institutions disclose files for scrutiny upon request. Governments and legislators have been reticent in the past – and some still are – to grant this right, which is often guaranteed by the country’s constitution. In the recent past, however, more and more countries’ governments have come to realize that providing information is part of their function and now permit access to certain files that were considered confidential in the past.

### 1. Routine publication of information

A number of jurisdictions – such as Hong Kong, China; Korea; Malaysia; the Philippines and Singapore – use information technology, especially the internet, to grant easy, quick, cheap and direct public access to a growing number of documents. Such information includes reports on audits, budget documents and legal material. The scope of such public information differs significantly among and within the countries and depends on the policy of every single department or institution. Although state-owned enterprises (SOEs) are a part of the public administration in a broader sense, they usually do not publish information. One of the few exceptions, Kazakhstan, plans to publish annual reports of SOEs in the future.

### 2. Access to files upon request

Until recently, the public service culture in many countries favored secrecy. This attitude persists in certain countries today; state security is generally cited as a justification. These countries stand firm about giving their citizens access to information, even though their constitutions usually postulate a fundamental right to information. Nonetheless, often as a result of civil society pressure, more and more countries have adopted freedom of information legislation (Australia, India, Japan, Korea, Pakistan). Fiji Islands, Indonesia, and Nepal are preparing respective bills, and in the Philippines, several related bills have also been filed with the Congress. In some countries, such legislation has been implemented at community level first, or, as in India, at the provincial level, and has later been extended to the federal level.

#### a. Legal instruments granting citizens’ access to information

Even though the relevant constitutional provisions are similar in most countries of the region, their legal instruments governing access to information

vary considerably. In some countries, the lack of relevant legislation prevents this right from being exercised and legally enforced. Faced with this difficulty, the Philippines' Supreme Court, for instance, ruled that the constitutional guarantee is self-executing, thereby providing a relatively broad right of access to information until the recently filed bill has been passed.

#### b. Scope and limits of freedom of information

Countries that have passed freedom of information legislation have done so to different extents. Whether such legislation provides for effective ways to access information is determined by three main factors: the scope of exceptions, exclusions and secrecy laws; the existence of independent appeal procedures and penalties; and requirements imposed on the requesting citizen, such as fees.

Laws regulating freedom of information usually set access to files as a global rule, which is then limited by a number of exclusions and exceptions. Exclusions mostly refer to entire state bodies that do not fall under the legal guarantee and do not specify the nature of the information excluded from public access or the topic to which it must relate. Exemptions of this kind are found in, for example, the legal provisions of Bangladesh, India and Pakistan, where all information relating to the military and police forces, including budget and finance, are excluded from the rules of access to information. By contrast, the laws and regulations of Japan exempt from disclosure only specified information that may harm security and related matters. In Japan, if a particular document contains classified information, the part that is not classified must be disclosed.

Along with national security concerns, legislation often excludes state-owned enterprises, on the ground that their "legitimate interest" or secrets have to be protected. Secrecy laws further restrict the scope of access to information. In fact, the creation of secrecy laws is just as strong a trend in the region as the adoption of disclosure laws. Indonesia, Malaysia and Singapore, for example, have enacted such provisions recently or are in the process of doing so.

In addition to the statutory limitations on access to information, ambiguous wording gives governments and administrations wide leeway when deciding whether to release requested information. This sometimes means that access to information related to corruption is blocked on the basis of national secrecy or protection of individual privacy. In India, marking a paper as confidential exempts it from public scrutiny, no matter whether the content justifies withholding it. A number of other obstacles may impede access to information: in Japan, fees; in

the Philippines, poor records keeping and sometimes obligations to state the reason for the request.

Discretion and sometimes unclear regulations mandate that appeal procedures, penalties and remedies be in place. Such appeal systems are either judicial- or tribunal-based; sometimes both remedies are permitted. Unlike court procedures, tribunals, information commissions or the ombudsperson usually provide an inexpensive and quick appeal procedure. Their effectiveness, however, largely depends on the degree of independence and the powers invested in these institutions. In Japan, a decision of the Information Disclosure Committee does not overrule the decision of the administration, but is made public. In Pakistan, the Ombudsperson's decision overrules the decision of the affected department. However, not all countries permit review by independent bodies; some countries have regulated only an administrative appeal procedure.