

F. Interaction Between Governments and Nongovernment Organizations

Chapter 13

Interaction between the Government of the Kyrgyz Republic and Local Nongovernment Organizations to Foster Good Governance

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Following independence, the Kyrgyz Republic has embarked on a number of political and economic reforms aimed at socioeconomic development, poverty reduction, and an enhanced role for civil society.

As frequently stressed by the government and donor organizations, an important component of any national policy aimed at poverty reduction is combating corruption. The growing body of research in the field of good governance reveals a correlation between poverty and corruption. Even though corruption occurs in every country, it is most destructive and most prevalent in those countries that can least afford it. Those governments most passionate about combating corruption are usually those that have assumed power following the overthrow of a previous regime.

Important factors in combating corruption are the existence of both the political will and the corresponding public will to fight it. The need for a long-term and sustainable approach to fighting corruption is essential, and requires public support if it is to be achieved. One way to engender public support for an anti-corruption program is to involve civil society.

Thus the success of any anti-corruption campaign ultimately depends on society's willingness to support it, which also involves changing public perceptions of what is culturally acceptable. Therefore modifying corrupt behavior by public servants requires modifying the perceptions and values of the society in which they live. One of the best ways to bring the people into the reform process is to include one important group of stakeholders, namely, civil society organizations.

In relation to anti-corruption, NGOs should focus on the following three key activities:

- Creating public awareness about corruption and the need to control it
- Formulating action plans to fight corruption and influencing governments to adopt them
- Monitoring governments' actions and decisions that might entail corruption or could reduce corruption.

CSOs are often much more effective than governments in monitoring and promoting the governance reform process. In addition, the involvement of CSOs gives more credibility to the fight against corruption. Citizens generally have a hard time believing that a systematically corrupt government is going to combat corruption. The government of Kazakhstan came to realize this following the June 1999 anti-corruption conference in Astana, Kazakhstan (Bowser-2001). Before the conference the government had not included CSOs in the National Anti-Corruption Committee. Following the presentations by NGOs and the speeches by representatives of the international donor community during the conference, the government invited several NGOs to join this policy group. The danger for CSOs involved in anti-corruption activities is that they may be used as “fig leaves” to mask political interests. In addition, NGOs are not above using the corruption issue as a means of government opposition.

Another important factor in increasing the public will for anti-corruption initiatives is overcoming public cynicism. The public perception in the former Soviet Union countries is that corruption is an integral part of public life and cannot be eliminated. Any anti-corruption efforts will be viewed through this prism and an excellent public information campaign must therefore accompany any anti-corruption program. One aspect of this that governments wishing to combat corruption often ignore is the need for a free and active press that can act as a watchdog in relation to corruption matters.

According to a survey carried out in the Kyrgyz Republic by the Center for Public Opinion Studies and Forecasting, 24 percent of the population and 47 percent of business people consider the press, television, and radio as the government's main ally in the fight against corruption (table 13.1). The table also shows that NGOs are still not recognized as a strong ally in combating corruption.

Potential allies	Percentage of respondents	
	Public	Business people
Law enforcement bodies	27.1	11.1
Press, television, and radio	24.1	47.1
Don't know	13.1	15.0
Political parties	12.0	4.1
Ordinary citizens	8.1	8.0
NGOs	7.1	5.1
Entrepreneurs	4.1	6.0
Religious bodies	3.0	0.3
Other	1.0	3.0
Trade unions	0.4	0.3

Source: Ilibezova and others (2000).

While civil society activism can help pressure governments to answer to the public, civil society is most effective when the government treats it as an ally rather than an enemy. In Slovakia, for example, a Slovak NGO was entrusted with preparing the first draft of the national program for the fight against corruption and has regularly been invited to monitor procurements and other state decisions—a testimony to the strength of the partnership between the current government and civil society.

Constructive state policy toward civil society enhances the role that civil society can play and its contribution. An example of productive cooperation between the government and civil society in the Kyrgyz Republic was the recent approval of the Comprehensive Development Framework (CDF) and the National Strategy for Poverty Reduction (NSPR). The objective of the CDF is to develop a strategy for formulating a long-term plan for 2010. Major work initiated by the government under the World Bank-financed Plan of Participation of Civil Society in Implementation of the CDF and NSPR Project was carried out with the active participation of civil society support centers and the Counterpart Consortium during 2000-2001. As a result of this initiative, NGOs submitted more than 500 recommendations and proposals on the CDF. Over 400 leaders and activists from 300 nonprofit organizations took part in roundtable meetings organized by civil society support centers and the Counterpart Consortium. More than 1,000 people

representing local communities, the private sector, state authorities, political parties, and the mass media were involved in 2001.

Participants at the roundtable meetings representing seven *oblasts* made many constructive recommendations to the Plan of Participation. The main purpose of drafting the plan was to stipulate the participation (projects, programs, initiatives, actions, and so on) that could be implemented under the CDF and NSPR in the future.

Active support of the civil society support centers and other stakeholders ensured the development of a CDF/NSPR stakeholder map (database) with key information about stakeholders (names of organizations, main activities, available resources and facilities, target groups, addresses).

The involvement of civil society in this project expanded its geographical coverage and drew in new participants. For the first time public organizations had the opportunity to participate in the development of a strategic document and rural noncommercial organizations and communities could take part in the discussions. Many roundtables attracted 30 to 40 participants rather than the projected 20, underscoring civil society's interest in participating in the drafting of the CDF and NSPR.

NGOs' participation in the development of the overall national strategy does not preclude their involvement in attempting to assure good governance. At the legislative level representatives of NGOs, public associations, and political parties are involved in parliamentary sessions on various social issues. They also examine new legislation. In particular, for the first time in the history of Central Asia women's NGOs reviewed all Kyrgyz legislation with respect to gender and prepared drafts of several laws especially relevant to women.

The Kyrgyz Republic has also legally adopted the use of public observers for elections. During the last election civil society representatives also realized their right to participate officially in the work of district election commissions and of the Central Election Commission.

At the local level civil society representatives were given an opportunity to take part in public hearings on local budgets, which were held in a number of *raions*.

At the executive level a considerable number of NGOs and other civil groups are involved in various national programs as well as in the conventions on children's rights and on the abolition of discrimination against women

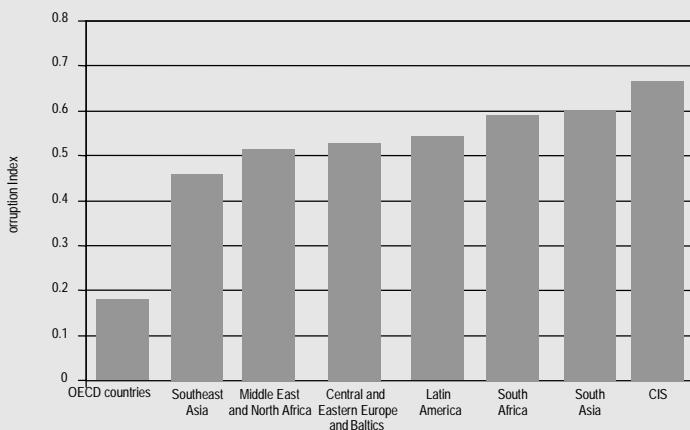
and in monitoring implementation of the Human Rights Declaration. NGOs play an active role in training civil servants in such areas as gender sensitivity and new ways to work with victims of violence. An example of a partnership between the authorities and civil society is the involvement of the Congress of Local Communities in the United Nations Development Programme’s Decentralization Program. The program’s aim is to create and develop opportunities for civil society participation in making decisions that directly influence people’s lives.

NGOs are also involved at the judicial level, for example, by conducting independent monitoring the implementation of legislation.

Nevertheless, civil society involvement in good governance still faces a number of problems. For instance, NGOs themselves may be perpetrators of corruption as demonstrated by the experience of the former Soviet Union. In a number of countries NGOs have sprung up simply to tap into the assistance dollars that external donors have been prepared to provide to organizations to help strengthen civil society. Moves are starting to explore ways to ensure that NGOs are more transparent and accountable. Just like official institutions, NGOs cannot be taken at face value and need to be monitored for transparency.

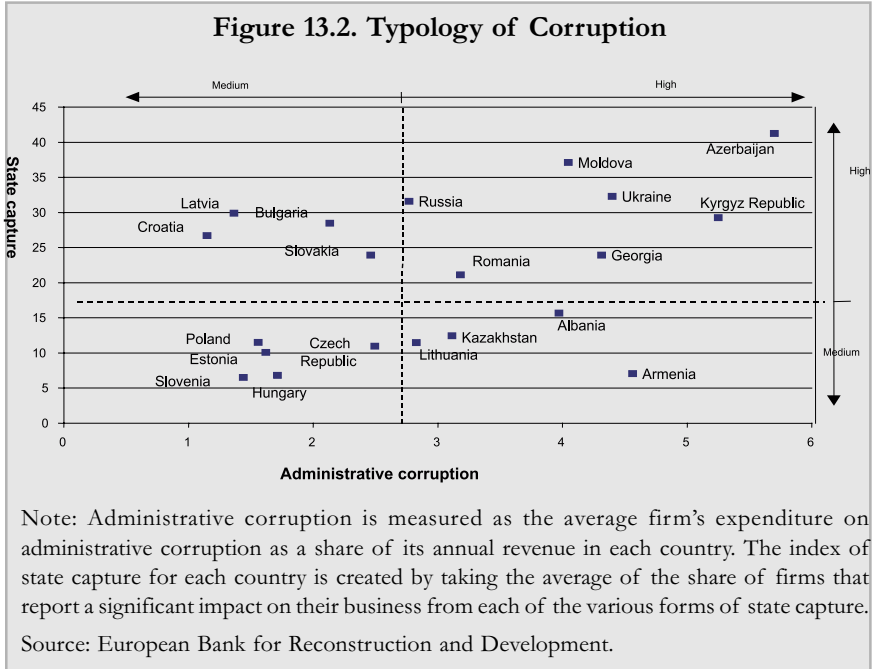
According a report by the European Bank for Reconstruction and Development (ECA External Advisory Board 2000) the level of corruption, both administrative corruption and state capture, in the Kyrgyz Republic is one of the highest among the countries in transition and in the world (figures

Figure 13.1. Levels of Corruption Worldwide by Region



Source: ECA External Advisory Board (2000).

13.1 and 13.2). According to a summary index developed from a weighted average of 12 of the most widely known cross-country corruption indexes with data from 1996-1999, the level of corruption in the countries of the Commonwealth of Independent States (CIS) exceeds that in South Asia and southern Africa.



As the figures show, the fight against corruption still has far to go. The Central Asian Corporate Technologies Center came up with some initiatives in this area. In cooperation with the Talas *oblast* farmers union it conducted a small, local anti-corruption campaign to create public awareness. Currently the Corporate Technologies Center is implementing a national pilot of an anti-corruption project known as “Corporate Conversation.” This is a television program on which some of the country’s well-known business people are interviewed about national goals, ideology, education, and corruption. The interviewees have indicated that for the Kyrgyz Republic’s development corruption is a much more significant problem than high taxation rates, complicated licensing procedures, inadequate numbers of inspections, and so on. To promote further dialogue an Internet site—<http://www.tv.ctc.kg>—has been set up where all those interested can participate in a web-based forum.

Civil society believes that with active involvement of civil society it will gradually alleviate the problem of corruption and further enforce good governance.

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Chapter 14

Government — Nongovernment Organization Interaction in Drafting the Republic of Korea's Anti-Corruption Law

■ Tae-Ho Lee

Now more than ever, Koreans are concerned about the problem of corruption and ways to deal with it. Recently the government of the Republic of Korea introduced new laws and regulations against corruption and money laundering. This change was accelerated by a series of corruption scandals and the subsequent 1997 national financial crisis, and was clearly initiated as a result of a grassroots effort by civil society. Since 1996 the legislative campaign by the People's Solidarity for Participatory Democracy (PSPD) and other civil organizations has played a crucial role in bringing about a transformation, both in the government and in civil society.

The PSPD's activities in support of anti-corruption legislation started in January 1996 when it launched the Center for a Transparent Society campaign. For the past six years the PSPD has held public hearings, organized forums, lobbied through the National Assembly, conducted drives to collect signatures, and campaigned jointly with the *Hankyoreh Daily* newspaper.

The anti-corruption bill drafted by the PSPD was a comprehensive countermeasure against corruption. It includes a public code of conduct, whistle-blower protection, measures against money laundering, appropriate punishments for corrupt behavior, and the establishment of the principle of independent counsel. For the 15th regular session of the National Assembly, which ended in 2000, the PSPD collected signatures from 256 of 299 National Assembly members who supported the PSPD's draft bill.

The establishment of a new administration in 1997 and the provision of aid from the International Monetary Fund boosted discourse about the

need for an anti-corruption law. When they were out of office, the Millennium Democratic Party had submitted a bill similar to the PSPD's draft to the National Assembly. However, after the party came into power in 1997, it tried to omit the independent counsel concept and added exception regulations favorable to politicians. In 1999 the government set up the Special Commission on Anti-Corruption to prepare for the legislation. The commission consisted of representatives from various sectors, including nongovernment organizations (NGOs), and was thus in a position to gather diverse opinions about anti-corruption legislation; however, some of these opinions faced opposition from such government bodies as the Ministry of Justice and the Board of Audit and Inspection.

In June 2000, 38 civil organizations, including the PSPD, Transparency International Korea, and the Young Men's Christian Association, formed a coalition, Civil Action for the Enactment of the Anti-Corruption Law (Civil Action), to start full-scale lobbying activities.

In November 2000 the ruling party presented bills on anti-corruption and anti-money laundering to the National Assembly. The anti-corruption bill included provisions to protect and reward whistle-blowers and to establish a presidential commission on corruption prevention (now the Korea Independent Commission against Corruption). The commission would be concerned with whistle-blower protection, research, public education, and cooperation with NGOs. The opposition party, the Grand National Party, also submitted their bill, which included an independent counsel system, even though when the opposition had been in power it had opposed the independent counsel concept.

The central feature of the government's bill is its provision of systemic protection for those who report corrupt behavior. This is what civil organizations had wanted, that is, taking corruption control out of the exclusive hands of the government and encouraging the involvement of the public.

However, the bill has a number of problems. First, the proposed presidential commission on corruption prevention would not be powerful enough to oversee the policies of such central government bodies as the Ministry of Justice or the Board of Audit and Inspection.

Second, the bill does not include sufficient mechanisms for protecting whistleblowers. For example, if a whistle-blower faces retaliation, the bill specifies that it is up to the whistle-blower to prove that such retaliation took

place instead of the whistle-blower's organization proving its action was not retaliatory. In addition, the bill does not consider retaliatory acts to be criminal offenses.

Third, the bill does not include provisions for an independent counsel system or a public code of conduct. One of the main features of the current system that enable corruption to continue is that the Prosecutor's Office is not impartial when investigating high-ranking officials, and fairness and impartiality have always been issues. This points to a need for reform of the Prosecutor's Office, especially the introduction of an independent counsel system. In addition, public officials need to be provided with a clear demarcation of what constitutes a gift and what is a bribe. Legal criteria and penalties to avoid having public officials find themselves in conflict of interest situations are urgently needed. The government maintains that existing principles already cover this problem, but civil organizations have doubts about the efficacy of these principles.

The anti-money laundering bill also has some problems. The first issue is whether or not the bill should introduce a currency transaction report system. Civil Action insisted on the need for such a report system in addition to the suspicious transaction report requirement; however, this demand was not reflected in the bill on the grounds that it might have a negative effect on the national economy.

The second issue was whether to allow the Financial Intelligence Unit to have access to financial transaction reports. Politicians opposed such access, because they were afraid of abuse of this regulation. A compromise in the final version of the bill permits access only after a warrant has been issued.

The third issue, a major problem, was an exception rule. The government's draft bill did not include regulations governing the laundering of illegal political funds. Faced by strong opposition to this exclusion by civil organizations Assembly members rectified this omission. However, a preferential rule was inserted in the draft that allows those whose financial transaction report is being investigation to receive prior notice. This obviously helps the suspect to destroy evidence or run away.

When the 16th regular session of the National Assembly opened in June 2000, Civil Action petitioned its version of the bill with the signatures of 208 out of 273 National Assembly members. Given the problems with the government's anti-corruption and anti-money laundering bills, Civil Action

held public hearings. Civil Action also formed a monitoring group and provided comments on every deliberative council meeting.

Despite the issues raised by civil organizations, the anti-money laundering bill passed the National Assembly in April and the anti-corruption bill passed in June 2000 with only few changes. Thus careful monitoring of the enforcement of the law and a campaign to amend it are unavoidable.

The entire process of the passage of the Anti-Corruption Law provides a number of valuable lessons. To begin with, in the struggle against corruption the government needs to demonstrate a strong will to reform its bureaucratic systems, especially the Public Prosecutor's Office and the Board of Audit and Inspection. For civil society, closer and more careful National Assembly monitoring of the legislative process is also required to prevent politicians from changing proposed legislation in their favor. Finally, despite all the obstacles, cooperation between the proponents of reform in the government, politicians, and NGOs is crucial.

In the course of cooperation with the government NGOs can not only support the government during the course of policymaking, but at the same time they must play the role of critic and watchdog. During the course of cooperation with the government, NGOs must maintain their impartiality. When criticizing the government, NGOs need to take responsibility for the issues they have insisted on. The government for its part, needs to engage in dialogue with NGOs and listen to their point of view, whether or not the NGOs are cooperative, critical, or even hostile. Civil society will not be supportive of a government that is cooperative in appearance only.

Especially in most Asian countries, including Korea, NGOs need to be sound and responsible critics. It is important to monitor, check, and comment in these countries, because responsibility and transparency in politics and administration and impartiality and justice in judicial systems are urgently required. The question is "Who guards our guardians?" The answer is NGOs. When the government does not fulfill its role, strong criticism and persistent monitoring are indeed cooperation.

The fight against corruption is now indispensable. This fight is premised on cooperation between governments and civil society. In Korea, the inclusion of whistle-blower protection in the Anti-Corruption Law has extended anti-corruption activity to civil society as a whole. In addition, the passage of the Freedom of Information Act in 1998 has meant that citizens are increasingly

monitoring the budgetary and policymaking processes of the central and local governments. In addition, actions are under way to permit intervention in the distorted corporate governance structure, for example, by means of class action lawsuits. Thus public action against corruption is on the rise, and in this sense passage of the Anti-Corruption Law was a sign of significant progress.

Nevertheless, pertinent legislation is not without its flaws. The Freedom of Information Act is cynically referred to as the Prevention of Access to Information Law, because those who seek information face a systematic lack of cooperation by public officials. The Integrity Pact also faces difficulties in relation to enforcement, because it does not include specific means for enforcing it. In the case of the Anti-Corruption Law, regulations on whistleblowers are so strict that the law fails to provide actual protection. These drawbacks are due to the dual attitude of politicians, who adopt legislation to demonstrate their willingness to fight corruption, but try to ensure that it will not inhibit their own activities. NGOs in other countries may encounter similar problems.

This is why NGOs need to maximize their roles in society. They should be active in criticizing and in ensuring that opposition views are heard. In the course of policymaking they should take the stance of an independent critic that does not hesitate to criticize a government for half-hearted policies. Then NGOs must evaluate and monitor the effects of systems that have already been put in place.