

Executive Summary

Prosecution of corruption is a particularly difficult endeavor and successes in this field are still too rare. The detection rate is often low because of the lack of verifiable information that is received from public servants or other citizens. Particular difficulties arise when an investigation involves prominent politicians and wealthy businessmen, or when it involves international bribery cases that require assistance from foreign jurisdictions in collecting evidence. Shortcomings that are at the root of these problems can be found at the legislative level; in addition, many law enforcement agencies are technically not up to dealing with complex crimes such as corruption in an appropriate manner.

Responding to this lack of capacities in relevant law enforcement agencies, the seminar on which this publication is based addressed the above-mentioned difficulties in its plenary presentations and discussions, as well as through practical work on hypothetical cases prepared by the invited experts. The aim was both to identify possible remedies to be taken by legislators and to develop practical measures and strategies that would allow prosecutors and investigators to deal with such difficulties in the immediate absence of adequate legal and institutional reforms.

Investigating high-profile cases

Legal and institutional shortcomings may have a strong impact on the effectiveness of prosecution when investigations target corrupt businessmen or politicians, as Mrs. Joly pointed out on the seminar's first day; these cases are often characterized by a high degree of sophistication concerning the methods of committing and camouflaging the crimes. This complexity contrasts with the broad lack of training of investigators and prosecutors in specific relevant matters such as forensic accounting, public funds, or insider trading. Unsuitable institutional provisions, especially insufficient independence of the law enforcement agencies from interfering government bureaus, add to these problems.

The influence a leading figure can exercise on his or her trial constitutes a second major obstacle. Supported by skilled lawyers, such defendants can obstruct the prosecution with lengthy appeals, and

sometimes they even manage to influence the legislative bodies to amend legal provisions in their favor. Prominent defendants also benefit from the support of the public, which often displays sympathy for "successful" businessmen or politicians. The media, publicizing details and opinions from the trial, may also cause interference, following their own logic or even commands from the perpetrator's entourage.

Most of these hindrances must be addressed at the legislative level. Yet, a number of rules, to be applied at a technical and personal level by prosecutors, may help to control and diminish the mentioned effects and render prosecution of corrupt individuals in powerful positions more successful.

Reporting of corruption cases within public administration and by citizens at large

Another difficulty arises from the secret nature of corruption and, in most instances, the lack of individual victims that would come forward with information about an act of corruption and thus trigger an investigation.

India, as Mr. Sharma pointed out, has adopted several ways to try to overcome the lack of information impeding the launching of otherwise often successful criminal proceedings. The country has adopted general reporting obligations addressed both to civil servants and to the public at large, and has institutionalized such reporting by establishing a vast net of vigilance institutions within public administration. Vigilance officers and commissions at all levels of administrative departments monitor and survey potentially corrupt actions and identify corruption-prone procedures and areas. These vigilance officers and commissions cooperate with the Central Bureau of Investigation, India's federal prosecuting agency. Experience shows that these mechanisms have, however, somewhat failed to live up to the expectations because potential reporters of corruption seemingly do not feel sufficiently protected against harassment on the job caused by their blowing the whistle on corruption. A person, in seeking to uncover instances of bribery, may also fear the vengeance of the accused, especially when his or her reporting leads to the launching of an investigation and possibly the conviction of the criminal.

Cooperation between law enforcement agencies

Cooperation between law enforcement agencies is another key to successfully collecting evidence and bringing about efficient prosecution of corruption. Legal provisions not only require following demanding procedural rules, but also assign certain steps of the procedures to different agencies. These agencies must ensure that their actions are coordinated to acquire evidence, and must seek mutual advice to ensure the admissibility of the evidence when the case is tried in court.

As Mr. Dempsey-Brench reported, the law enforcement agencies in England and Wales have learned much about the need for cooperation in the course of particularly difficult investigations targeting corrupt police officers. Measures have been taken to institutionalize the exchange of legal advice, to improve record keeping about ongoing investigations, and to ensure access to the information for all agencies involved in the investigation and prosecution of the case.

International legal assistance

In foreign bribery cases, international legal assistance, covering notably the gathering of evidence, repatriation of proceeds, and extradition is a key to the successful prosecution and deterrence of corrupt practices.

Yet, today borders still constitute significant barriers for prosecutors. Not so for criminals, who actually make use of them to flee from detection and prosecution and to conceal the evidence and profits of their crimes. In addition, and especially when the crime involves money laundering, perpetrators typically take advantage of the services provided in offshore centers. Investigating these monetary transactions is a very arduous and time-consuming task and without legal assistance from concerned foreign jurisdictions it can be a hopeless endeavor.

However, varying principles that apply to the provision of mutual legal assistance make it difficult to obtain such assistance speedily and severely impede the efficient prosecution of transnational criminal activities. Regional or international conventions—when they exist—provide only a general framework for support. Under these conditions, as Mr. Bertossa pointed out, informal networks between relevant judicial authorities in different countries may constitute an important

remedy, even in the absence of universal treaties or regional agreements.

Key findings

Corrupters and those corrupted still benefit enormously from banking secrecy laws, the speed and number of electronic fiscal transfers, tax havens and other offshore centers, and difficulties of international cooperation in prosecution. Additional problems arise from a lack of independence of the law enforcement authorities and undue influence exercised on them, in particular by prominent politicians or wealthy businessmen. Because of the lack in many states of legal provisions ensuring the protection of whistleblowers, the detection and prosecution rates remain low despite otherwise comprehensive legal and institutional anti-corruption frameworks. Most of these aspects require legislative measures. The seminar also pointed out practical guidelines and generally applicable strategies for prosecution agencies to overcome the obstacles at least partly. The strategies of "starting at a low level, and working one's way up" and "following the money" have proven particularly efficient even in corruption cases involving high-ranking, influential perpetrators and international transactions.