

Integrity and Law Enforcement: Preventing Corruption

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Abstract

Corruption is present in almost any country, but has the most devastating effects in developing economies, because it hinders any advance in economic growth and in democracy. Corruption wastes resources by distorting government policy against the interests of the majority and away from its proper goals. It turns the energies and efforts of public officials and citizens towards easy money instead of productive activities. It hampers the growth of competitiveness, frustrates efforts to alleviate poverty and generates apathy and cynicism.

Dealing with corruption is far from being simply a matter of law enforcement. The casualties of corruption include the country's integrity system itself, and therefore reform of the national integrity system has to take place.

In this effort, it is important from the outset that the political will is present to obtain legislative or administrative changes effective enough to contain corruption. It is also essential to have the three main actors of society working together: the government, the private sector and the civil society. The energies of all three are needed to assure changes in moral and ethical attitudes and to achieve meaningful reforms.

The aim of the paper is to discuss the twofold process that may be undertaken for preventing corruption.

Keywords: Corruption, National integrity model law enforcement, Governance

Introduction

Corruption

Corruption is defined by the World Bank and Transparency International (TI) as "the misuse of public office for private gain."

As such, it involves the improper and unlawful behavior of public-service officials, both politicians and civil servants, whose positions create opportunities for the diversion of money and assets from government to themselves and their accomplices.

Corruption distorts resource allocation and government performance. The causes of its development are many and vary from one country to the next. Among the contributing factors are policies, programs and activities that are poorly conceived and managed, failing institutions, poverty, income disparities, inadequate civil servants' remuneration, and a lack of accountability and transparency.

Thus, Corruption refers to the practice of misusing one's power and position to achieve various illegal ends. It implies the dishonest behavior on the part of those who are in authority. Corruption comes into existence when the officials use their office as a means to serve their immoral personal objectives.

The Statistics:

The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country's rank indicates its position relative to the other countries and territories included in the index. This year's index includes 176 countries and territories, whereby India is ranked 94 with the score of 36.

For the average person, a bribe is the most obvious evidence of corruption. In many countries, applicants for driver's licenses, building permits, birth certificates, etc. have learned to expect a surcharge from civil servants in order to obtain these documents. However, the consequences of corruption are more pervasive and profound than these bribes suggest.

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The 2011 Bribe Payers Index ranks 28 of the world's largest economies according to the perceived likelihood of companies from these countries to pay bribes abroad. It is based on the views of business executives as captured by Transparency International's 2011 Bribe Payers Survey.

The countries and territories ranked in the Index cover all regions of the world and represent almost 80 per cent of the total world outflow of goods, services and investments. The 2011 report examines different types of bribery across sectors – including, for the first time, bribery among companies ('private-to-private' bribery).

Foreign bribery has significant adverse effects on public well-being around the world. It distorts the fair awarding of contracts, reduces the quality of basic public services, limits opportunities to develop a competitive private sector and undermines trust in public institutions.

Engaging in bribery also creates instability for companies themselves and presents ever-growing reputational and financial risks. This is particularly relevant in light of recent anti-bribery reforms in a number of key countries around the world, such as in China and the United Kingdom.

Companies from Russia and China, which invested US \$120 billion overseas in 2010 and are increasingly active in global business, are seen as most likely to pay bribes abroad. Companies from the Netherlands and Switzerland are seen as least likely to bribe.

Corruption in India has permeated every level of society; from senior bureaucrats and politicians, to high ranking public servants to professionals to criminals to lowly clerks and street vendors. Interested groups have documented numerous cases of corruption throughout the country, ranging from corrupt police officers, to government officers in charge of welfare schemes to local thugs in cohort with local officials. In fact, the two biggest challenges to tackling corruption in the country are corrupt police officers and corrupt civil servants. These are the two legs upon which the realization of the rule of law and protecting citizens' rights are based; when these cannot be relied upon, what are the chances of fighting against corruption? Corruption is a crime, and crimes are to be contested by law and its enforcement. Ultimately, all societies must be based on the supremacy of the law, and this law is to be articulated and protected by various mechanisms. Without government officers to transparently and in good faith run the government machinery in accordance with people's needs and wishes, and without police officers to protect people's rights and maintain law, society cannot function effectively. Furthermore, corruption if unchecked will simply eat away at rule of law, as well as public institutions, democratic principles and mechanisms of good governance, leaving society in anarchy.

Global Typology

Corruption does have some common characteristics. For instance, it occurs in all countries

regardless of the level of social and economic development. For corruption, extortion or bribery to take place, there must be a public official with discretionary power followed by a misuse of that power. In the case of bribery, there is also collusion between the dishonest official and one or more public or private officials, and a benefit, in money or in kind, to all parties involved. Corruption most likely will occur in the interaction between the public and private sectors. And it is generally practiced by public officials who have direct responsibility to deliver services to the public, apply or enforce specific regulations, or levy fees or taxes.

Despite these common characteristics, corruption takes on very different features from one place to another. Corruption flourishes in different places in different forms including: land rezoning, customs duties, income tax collection, non-merit based appointments, promotions, and many more. The actors amenable to leading or supporting reform also vary significantly from country to country. Still, it is unlikely that a detailed attempt to achieve a global or even regional typology would serve a useful purpose because of the number of variables involved. Corruption has a freer rein in some countries than in others. For example, in some countries, the failure to pay a living wage lies, at least in part, at the root of the problem. In other countries, public servants still engage in corrupt behavior despite adequate pay. Some developing countries enjoy the rule of law and benefit from an independent judiciary that conscientiously reviews the legality of official actions; elsewhere the judiciary is suborned, acquiescent, or neutralized. Some governments have incentives that encourage law enforcement officers to be willing partners in anti-corruption activities. Others have politicians who create legislation that seems designed to render corrupters free from prosecution, even if they are caught. In some countries, the private sector and other elements of civil society are well-organized and poised to assume an assertive role; in others, they are weak and unaccustomed to having a 'voice' or speak authoritatively to their government. All of these factors dictate the importance of carefully choosing the strategy and entry points for anti-corruption measures.

But corruption is a just symptom, not the root, of the problem. The perceived problem is unethical or corrupt private-sector behavior; the real problem is government action and regulations that cause such behavior.

And before we proceed with the solutions it is also necessary to understand the responsible factors for corruption:

Defining Liability : Who is Responsible?

Ultimately, all parts of society must share the responsibility for containing corruption because all are willing or unwilling participants. Each corrupt transaction requires a "buyer" and a "seller." Thus, the government is definitely responsible for dealing with civil servants who engage in extortion and bribery but it is businesses and individuals who offer bribes to

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civil servants to obtain certain advantages and thus, the root cause of this disease named “corruption” is none other than the citizenries of a nation.

As all those who are part of the problem must be part of the solution, so an active, involved and empowered citizenry is indeed essential to any anti-corruption campaign. Reformers can only achieve real gains when a society changes its expectations and understanding of its entitlement to a government that is not corrupt.

The responsibility of containing corruption must not ignore the participation of international firms, foreign governments and others engaged in corrupt practices either actively or passively. A number of instruments are available to curb cross-border corruption. The new “no bribery pledge” initiated by OECD is one. Among stronger measures are the criminalization of bribery, including the prosecution of companies and governments, and tax deductibility of bribes paid.

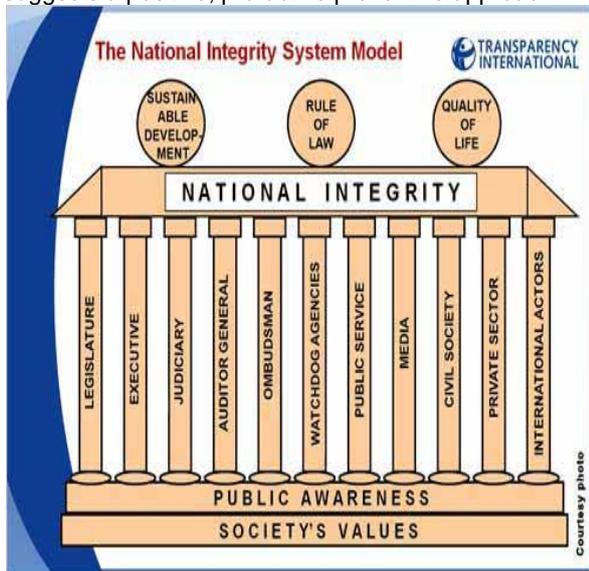
Preventing Corruption:

As discussed earlier, the aim of the paper is to discuss the preventive actions for curbing the corrupt practices which could be two- fold i.e.

- 1) Building sense of integrity and ethical behavior in various institutions of society.
- 2) Regulating the law enforcing bodies.

I. National Integrity System – pillars of integrity:

Building “integrity”, which means “using public powers for the public good,” is the flip side of fighting corruption. Experience gained from work with client countries demonstrates that it is preferable to focus on prevention through the building of integrity, which suggests a positive, pro-active preventive approach.



To ensure that there is an enabling environment that is supportive of private- and public sector contributions to sustainable development, a National Integrity System needs to be built with mutually supportive pillars. The “pillars of integrity” in a society include actors outside the executive and outside government

itself. The collection of stakeholder groups is referred to as “pillars of integrity” because it is incumbent on them to support and uphold practices that promote public integrity. A National Integrity System is based on eight pillars of integrity: (1) executive, (2) parliament, (3) judiciary, (4) watchdog agencies, (5) media, (6) private sector (Chambers of Commerce, etc.), (7) civil society and (8) law enforcement agencies.

The pillars are interdependent, a weakening of one pillar results in an increased load being shifted on the others. Where several pillars weaken, the system can no longer support sustainable development and effectively collapses. Figure illustrates the interaction of the different stakeholders in combating corruption. Examining a National Integrity System requires identifying gaps and opportunities for corruption within each of the pillars and then co-coordinating the work of the government, civil society, and donors into a coherent framework of institutional strengthening.

The reasons for building an integrity system may differ from country to country. In Figure, three broad, almost generic, objectives are identified: rule of law, sustainable development, and quality of life. In the fifteen countries that have embraced the reform effort, inadequate rule of law could turn out to be the critical bottleneck for progress. This is particularly the case in much of Latin America and Africa where it is estimated that many countries need ten to fifteen years of intensive work before effective rule of law can be established.

The Role of the National Integrity Unit in Integrating Reforms

The primary objective of a National Integrity Unit (NIU), as established in Bolivia, Nicaragua and Ukraine, is to strengthen the governmental office to which it is attached and other government agencies in addressing integrity and economic reform issues. The unit functions as a secretariat to the NISC and to working groups where integrity and economic reform issues are closely interrelated. These may include groups working for public administration reform, deregulation, privatization, budget, taxation, and banking, among other.

Specifically, the NIU may be asked to:

- develop a systemic approach to building integrity by ensuring the inclusion of integrity issues in the economic reform agenda;
- provide central co-ordination for expert assistance on integrity-related issues;
- provide a direct link between government and institutions of civil society for research, information, and public awareness-raising requesting, providing, and using information in partnership with the media, NGOs, and citizens;
- facilitate integrity-building activities as part of the implementation of the government’s economic and public-sector reform programs; and conduct SDSs,

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public-education and awareness-raising activities, integrity- building workshops, and other events.

The National Integrity Strategy should result in a wide range of reforms that are interrelated and integrated in order to create systemic change. The focus of the strategy is on achieving specific outcomes, such as those found in Figure, in the expectation that these will, in turn, contribute significantly to such impacts as improved public-service delivery and the creation of an enabling environment for private-sector development through the establishment of the rule of law.

Prevention and Integrity Tools:

The process of strengthening a National Integrity System begins with a national dialogue followed by national action. To promote national reform, the following prevention and integrity tools have been developed

- Surveys focusing on service delivery
- Integrity or corruption Surveys
- Municipal and Sub-national Integrity Workshops
- External oversight in tender process
- Enforce code of conduct including declaration and monitoring of assets
- National and Integrity Workshops (NIWs) (broad based action planning)
- The Integrity Pledge
- Islands of Integrity
- National Integrity Steering Committee (NISC)
- National Integrity Unit (NIU)

I. Regulating Law enforcing bodies:

The role of law enforcing bodies cannot be ignored while discussing the cure to corruption. Today there are numerous laws being passed in the law making bodies all around the globe, not just the national but international initiatives has also been launched to curb the world- wide issue of corruption. But not to forget that where the laws are many, the people are poor and corrupt and thus what is required is the proper enforcement of the already prevalent laws and not the new laws.

The onus of enforcement comes directly on the shoulders of the public officials and thus what is required is building competence and integrity in the public officials.

The integrity and competence of public officials are fundamental prerequisites for a reliable and efficient public administration. Many countries in the region and beyond have thus adopted measures that aim to ensure integrity in the hiring and promoting of staff, provide adequate remuneration and set and implement clear rules of conduct for public officials.

1. Hiring and promotion of public officials

Openness, equal opportunity and transparency in hiring and promoting public officials are essential to ensure an honest, competent and independent public service. Corrupt practices in this crucial process take many forms: for example, nepotism and cronyism – the use of public power to obtain a favor for a family member or other affiliate – are common in a number of countries. Unclear eligibility criteria and insufficient publication of vacant positions make it difficult to attract talented candidates

to the public service. Defining the criteria, procedures and institutional framework by law is an essential precondition for transparent and fair selection and promotion procedures. Most if not all countries subject to this survey have enacted such laws. These usually prescribe the advertisement of vacant positions in the press or other media. In Korea, Singapore and the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Hong Kong, China), the internet is gaining importance as a means of informing the public of job opportunities. The eligibility criteria are usually based on merit , examination results , performance or demonstrated abilities (Australia; Hong Kong, China; India; Japan; Kazakhstan; Korea; Kyrgyz Republic; Mongolia; Nepal; Pakistan; Papua; New Guinea; Philippines; Singapore).

With the aim of enhancing the transparency of eligibility criteria and recruitment procedures, Samoa published a Recruitment and Selection Manual for the Public Service. Australia's Public Service Commissioner regularly updates the commission's directions on recruitment and promotion, and evaluates to what extent the agencies follow its regulations.

Korea established a monitoring mechanism to increase the transparency of appointment procedures likely to be subject to corrupt behavior; all selection processes are documented in detail on the internet and thus open to public scrutiny.

Australia; Hong Kong, China; Papua New Guinea and the Philippines have also designed specific complaint procedures enabling applicants or public officials to submit grievances concerning appointments or promotions to independent bodies: to the Merit Protection Commissioner in Australia, the Chief Executive in Hong Kong, China and the Public Service Commission or the Ombudsperson Commission in Papua New Guinea.

Some countries outright prohibit appointments susceptible to nepotism. In the Kyrgyz Republic and the Philippines, employment of an officer who would be under the direct supervision of his/her next of kin is not allowed. In situations where this type of restriction is considered impractical and is therefore excluded from these rules, Philippine law requires that the particular appointment be reported to supervisory entities.

In Nepal, India and Pakistan, independent central bodies with constitutional status appoint civil servants to senior positions. Relevant provisions in Malaysia require a centralized body's approval of appointments to such senior positions, while those in Hong Kong, China require an independent body's advice and endorsement of the appointment to such senior positions. Malaysia has entrusted its anti-corruption agency with ascertaining that candidates for appointment or promotion to important posts in the public and private sectors have not been involved in corruption. Appointment to the highest positions in some public administrations is subject to the approval of parliament: for example, Indonesia's attorney general, chief justice and chief of the police

department are appointed by the president, whose decision is subject to parliamentary approbation.

By contrast, Pakistan's prime minister is entitled to appoint any person to a post in the federal service, without the decision's being subject to approval by another state body; this entitlement is used only infrequently, however.

2. Remuneration of public officials

Inadequate remuneration renders posts in the public service unattractive to talented people and can diminish officials' resistance to corruption. Adequate remuneration of public officials is thus often seen as helping to prevent corruption. Many countries periodically review and adjust public officials' salaries. These adjustments often take into account changing costs of living, overall economic development or comparable private sector salaries. In some countries, this involves the review of salary bases and, where the state budget allows, routine pay adjustments (Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Malaysia; Papua New Guinea; the Philippines; Singapore). Some countries have given priority to particularly vulnerable sectors: Indonesia and the Kyrgyz Republic have prioritized salary adjustments in their law enforcement agencies; Pakistan has done likewise in certain units of its law enforcement agencies. The Philippines has increased remuneration of its judiciary to attract more competent staff, and current efforts in the Philippine Congress also aim to upgrade the salaries of certain positions in the Office of the Ombudsman. Bangladesh and the Cook Islands periodically review the salary structure within their public service to ensure equity and appropriate remuneration, and Samoa plans to establish a Remuneration Tribunal to review salaries and wage parity in the public sector.

3. Regulations on conflicts of interest and conduct in office

Instituting and enforcing impartiality and integrity require clear guidelines. Comprehensive and explicit codes of conduct and swift action in disciplining those who violate the rules are the cornerstones of sustaining high ethical standards in the public sector.

Today, many countries in the region have laid down have laid down guidelines for the public sector in codes of conduct or laws: Australia, India, Korea, Malaysia, Pakistan, Papua New Guinea, Samoa, and Vanuatu have passed codes of conduct, and Indonesia, Mongolia, and the Philippines specific conflict of interest or anti-corruption laws.

These frameworks usually address conflicts of interest, commonly defined as situations in which personal considerations influence an official in the exercise of his or her function. They also commonly restrict or regulate public officials' economic or political activities and the acceptance of gifts or hospitality, both of which are major sources of conflict of interest. Many of them also provide for disciplinary measures to enforce the proscribed conduct. Rapid changes in the public services' working environment require regular review of their codes of conduct. New models of cooperation with the business sector,

public-private partnerships and increased mobility of personnel between the public and private sector illustrate such emerging risk areas. In order to react swiftly to these challenges and exploit the particular expertise in this field, Korea, Malaysia and Hong Kong, China have enjoined their anti-corruption agencies' advisory branches to partake in the current update and enforcement of codes of conduct. Systems of transparency require the involved official to disclose conflicting interests; if a side activity creates the conflict, authorization may be required. Systems of incompatibility prohibit activities that typically breed a conflict of interest. Many conflict-of-interest regulations address public officials' engagement in political or economic activities: Bangladesh, India, Japan, the Kyrgyz Republic, Nepal and the Philippines limit or prohibit public officials from engaging in political activities. Australian law allows such engagement, but an official standing for election has to resign from the official function for the duration of the campaign as well as the term of elected office.

A number of countries restrict or forbid public officials' engagement in private sector enterprises or investment (Bangladesh; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kyrgyz Republic; the Philippines; Singapore). Nepal, Indonesia and Singapore require public officials to obtain a superior's or the ministry's approval before taking up a post as a company director or holding shares in private companies. Hong Kong, China; Indonesia and the Philippines prohibit investment or involvement in business linked to the official's sphere of activity. Indian regulations oblige officials to report the employment of a near relative in an organization with which the public official is associated. Kyrgyz Republic law requires shareholders to transfer their shares into trust governance during the time of their public service employment.

Regulations concerning gifts and hospitality

Gifts or hospitality are sometimes abused to camouflage corruption and are prone to generate conflicts of interest. Thus, most countries' codes of conduct prohibit or restrict the acceptance of gifts and hospitality. Kazakhstan, Korea and the Philippines also regulate to what extent officials' family members may accept gifts and hospitality. These provisions require handing over the gift to a fund (Kazakhstan) or reporting the gift to supervisors (Japan and Nepal; India and Malaysia for gifts exceeding a certain value). In Japan, citizens can access information concerning gifts of a value exceeding approximately USD 170 upon individual request

Fixed ceilings for acceptable values of gifts differ among countries, partly reflecting their economic situation. The ceilings are set at USD 10 in Kazakhstan, USD 25 in Korea, USD 50 in Japan and USD 125 in Malaysia, to mention a few examples. Malaysia requires gifts to be reported regardless of their value, if the background of the gift is doubtful.

Conflict of interest arising from post-service employment

Conflicts of interest may threaten the public interest even after an incumbency in public office.

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Thus, some countries impose restrictions on professional activities of former public officials for a certain period or under certain conditions: Hong Kong, China requires a retired civil servant who intends to take up any employment or engage in any business activity within two years of retirement to obtain prior approval from the government. A sanitization period of six months counting from cessation of active service is normally imposed on senior officials. Australian law does not prescribe fixed restrictions on activities after public sector employment; the legally non-binding code of conduct nevertheless points out the risk of a conflict of interest and encourages individual agencies to define relevant guidelines; waiting periods are explicitly recommended.

Guidance and training on ethical conduct and risks of corruption

Enacting rules of conduct does not by itself suffice to bolster ethical behavior in the public service; leadership, clear guidance and awareness programs are a crucial complement to such regulations. Australia in this respect provides detailed practical advice on how to deal with conflicts of interest and ethics issues in brochures and on websites.

An increasing number of countries recognize the importance of training in ethics and corruption issues. Anti-corruption awareness is part of regular staff training programs in Bangladesh; India; Japan; the Philippines; Singapore and Hong Kong, China. In Singapore and Hong Kong, China, the anti-corruption agencies conduct such training. The Kyrgyz Republic currently prepares staff training programs.

Enforcement of codes of conduct

Disciplinary sanctions are the most commonly applied means to enforce codes of conduct. These measures are in addition to penal sanctions; sometimes their specific procedural regimes even allow timelier and more dissuasive responses than criminal sanctions. Disciplinary sanctions often encompass dismissal from office, as is the case in Pakistan and the Philippines.

4. Duties to report on assets and liabilities

Measures to curb corruption in the public administration go beyond keeping an eye on public officials at work. As wealth is often apparent, a number of countries screen public officials' assets and liabilities with the aim of detecting unjustified wealth as an indicator of corrupt behavior. Some countries require all public officials to regularly disclose information about their assets and liabilities (Bangladesh, Fiji Islands, India, Kazakhstan, Malaysia, Nepal, Pakistan, the Philippines, Singapore, Vanuatu); Cambodia has drafted a similar bill. Nepal and the Philippines extend screening to the officials' families in order to prevent and detect a formal transfer of assets.

Australia, Indonesia, Japan, Korea and Papua New Guinea oblige only higher grades of officials to file such declarations. Singapore public officials must report their holdings in investments and properties as well as personal assets and shareholdings in closed companies; they are also required to annually declare that they are debt-free.

Hong Kong, China requires senior officials or those occupying sensitive posts to declare their investments and properties on a regular basis. In Kazakhstan, not just officials but all citizens who have made a large purchase must file an income declaration. The Kyrgyz Republic is currently preparing legislation requiring high-level officials and their next of kin to report income and property holdings.

While many countries require public officials to submit such reports, in most it remains unclear whether these declarations are scrutinized and how the gathered information is used. The Philippines, for one, makes the information available to the public. The country has also established a partnership between government agencies and NGOs to scrutinize the lifestyle of public officials to detect ill-gotten wealth.

In addition to the above listed integrity programs focusing on individuals, many countries have also adopted public management system. The system usually aims at prevention of undue influence which is comprised of methods like e-governance, rotation of officials on a periodic basis etc.

A clear and unambiguous regulatory environment is the third key element for an effective, transparent and honest public administration, since clear and verifiable rules and procedures leave less room for corrupt practices. Discretion and fuzziness in statutes regulating private economic activities are particularly problematic. Consequently, most countries reviewed in this report constantly assess their regulatory environment with the aim of improving and streamlining it, especially with an eye on corruption-prone sectors. Mongolia, for instance, has recently streamlined its regulations on licensing of private business activities. Many countries have even institutionalized this review, entrusting a specific body with screening the existing procedures and issuing recommendations for reform where required. Hong Kong, China; India; Korea; Malaysia; Nepal; the Philippines and Singapore have entrusted their apex anti-corruption agencies' advisory branches with this task. In Japan, the office of the auditor-general is responsible for suggesting reforms to the Government. In India, a genuine Department of Administrative Reform constantly reviews procedures and submits recommendations. In Papua New Guinea, the Public Sector Reform Management Unit reviews the structure of public sector organizations. A number of countries recognize the important role of civil society in reforming the regulatory framework. For instance, Fiji Islands, Korea and Singapore rely on consultation with representatives from the private sector or NGOs to learn about inefficient procedures and administrative weaknesses encountered by the public.

CONCLUSION

The process of building national integrity systems is as important as the content. The following are six final thoughts about the process.

1. Successful reform requires a country to integrate and harmonize all reforms in to a National Reform Program, including: sector reforms, financial reforms,

economic reforms, constitutional reforms, civil-service reform, decentralization, army demobilization, privatization, and legal reforms.

2. Reform is a long-term process where attitudes and conduct must be examined and reevaluated for effectiveness at all levels.

3. Successful reformers will have to manage both expectations and change while introducing realistic incentive structures and sanctions.

4. Initially, reform should only tackle areas:

(a) that can show credible impact on issues important to key stakeholders;

(b) where the return on investment is greatest;

(c) that are discrete and where reformers can control implementation,

(d) that are within the budget; and

(e) that can have some short-term positive impact.

5. Reform is a process of instituting building blocks that must be put in place over a number of years.

6. The process of and commitment to reform must be visibly supported from the top.

Essential to curbing corruption is undertaking and maintaining the public's confidence in the State as an institution. It is dependent upon the people's loyalty to its philosophy and policies regarding the development of the society's social, economic, and political welfare.

Also, it can be said that a ninth "pillar" can be added to the eight organizational or institutional pillars which would be composed of those essential individuals or groups of people who provide the political leadership necessary to give vision to the reforms and the political will to see them implemented. And thus, at the heart of successful reform retains the State's welfare.

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