

U4 Expert Answer



The Impact of Law Enforcement Interventions on Corruption

Query:

"Do you have any studies proving evidence of where law enforcement and high profile convictions have led to real change?"

Purpose:

The purpose of the information is to provide objective criteria on how to balance resources to tackle corruption in Zambia. There is debate in Zambia on whether the Task Force Model should be extended to have an ongoing mandate to investigate grand corruption independent of the ACC or whether the ACC should be strengthened to take on complex cases more competently. The information gathered from this query will help us have informed views on whether we should have more emphasis on prevention rather than law enforcement.

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Caveat :

As the purpose of this query is to inform the debate on which model of specialised anti-corruption institutions to support in Zambia, this answer focuses more specifically on the impact of anti-corruption agencies on corruption.

Summary:

Effective law enforcement is essential to ensure the credibility of anti-corruption efforts and break the cycle of impunity. In the early days of anti-corruption work, many donor interventions focused on law enforcement strategies, by establishing and strengthening investigative agencies, independent prosecutors, specialised anti-corruption courts and anti-corruption agencies (ACAs) charged with the task of investigating and prosecuting corruption cases.

While such a strategy seems promising in specific contexts, such as those affected by high levels of organised crime, there is little empirical evidence available that demonstrates the actual long term impact

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of a punitive approach on corruption levels and anti-corruption reforms. Moreover, experience with specialised law enforcement institutions worldwide indicates that a set of conditions have to be met for them to effectively fulfil their mandate, including the existence of a strong government commitment against corruption, a supportive legal and institutional framework, and sufficient state capacity and stability, all conditions that are often missing in developing countries.

However, the lack of immediate results does not seem to be a sufficient argument for not continuing support, as there is need for longer timeframes and better indicators to assess progress or failure of such type of interventions. Experience also indicates that it is artificial to introduce a dichotomy between corruption prosecution and control through legal enforcement versus prevention through strengthening systems and controls, as punitive approaches have to be accompanied by a parallel prevention drive to ensure sustainable change over time.

Part 1: Is there Evidence Linking Law Enforcement Interventions to Corruption Control?

Effective law enforcement is essential to deter grand corruption and break the cycle of impunity. High profile corruption cases have to be successfully investigated and prosecuted to ensure the credibility of anti-corruption efforts and restore the public confidence in certain levels of internal security and rule of law. As it is not possible to achieve high standards of accountability without a well functioning judicial system of courts, law, police and prosecutors, many donors' interventions have focused on strengthening the capacity and independence of law enforcement authorities and the criminal justice system to effectively combat corruption.

Evidence Suggesting a Link between Corruption Control and Law Enforcement in Specific Contexts

Law Enforcement as a Determinant of Organised Crime and Corruption

Only a few studies looking at specific contexts have established an empirical link between law enforcement and control of corruption, mostly in countries affected by high levels of organised crime. State capture and the

criminal infiltration of the public sector are major features of countries plagued by organised crime. Criminal groups seriously undermine anti-corruption and institution-building efforts by permeating political and state administration institutions and building corrupt networks with state officials in order to facilitate or reduce the risks and costs of their operations. A study conducted by Edgardo Buscaglia and Jan Van Dijk in 2003, corroborated by further work by Jan van Dijk in 2007, confirmed empirically these interrelations between organised crime, law enforcement, rule of law and corruption. (Please see: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931046 and <http://www.springerlink.com/content/57876q46x0j0035v/fulltext.pdf>).

Both studies indicate that the levels of both organised crime and corruption are lower in countries where the judicial system is more effective, as measured by conviction rates per crime committed. The most important predictor of both the extent of organised crime and corruption was found to be the quality, independence and integrity of the judiciary and other institutions safeguarding the rule of law, including police services. These findings seem to confirm that organised crime and corruption are more prevalent in countries where the rule of law is weak, with few exceptions to this rule. Based on these findings, a set of evidence based policy recommendations have been identified in the studies that could be relevant to anti-corruption efforts more generally:

- Law enforcement agencies need to have sufficient resources, research and analysis capacity to support effective investigations and prosecutions.
- Specialised task forces at the police or judicial levels promoting team based management of cases and specialised pools of investigators, prosecutors and judges have proved to be efficient tools to combat organised crime in countries such as Chile, Italy and Singapore.
- The weaknesses of the judicial system have to be addressed through measures such as increased resource and capacity, computerised case management system, procedural simplification, adequate wages as well as measures aimed at strengthening the independence and integrity of the law enforcement authorities and the criminal justice system.

Law Enforcement as a key element of the Fight Against Impunity in Drug Trafficking Countries

Evidence from drug trafficking countries also tends to confirm the deterrent effect of a well functioning judicial system and effective law enforcement on both organised crime and corruption. Experience of countries such as Columbia, Mexico and Nigeria demonstrates the critical importance of strengthening law enforcement authorities and the criminal justice system to effectively combat both organised crime and corruption. (Please see: [U4 expert Answer on Fighting corruption in countries with serious narcotics problems](#)). Drug trafficking countries that are considered to have made progress in tackling corruption have made a priority of ending a culture of impunity by:

- Displaying a strong political will to combat corruption, as demonstrated by high profile case being effectively prosecuted;
- Strengthening the independence and integrity of the judiciary;
- Cleaning up the police and other law enforcement authorities;
- Restoring in the process a certain degree of confidence in law enforcement, public institutions and political processes.

Some Evidence of Impact of "Rule of Law" Interventions

Successful law enforcement requires that the various bodies – judiciary, prosecution services, police and lawyers - are given an adequate mandate on paper as well as have the resources and capacity to implement this mandate in practice. Against this background, donor anti-corruption interventions aimed at strengthening the rule of law have primarily focused on introducing laws and programmes to support enforcement institutions, including prosecutorial organs, police, courts and more recently, the creation of special anti-corruption entities in a number of countries.

A [2008 literature review of donors' anti-corruption approaches](#) reports that some progress has been achieved through "rule of law" interventions:

- Anti-corruption has become an integral part of donor policy frameworks and awareness has grown in the international community of corruption

as a development challenge. Many countries have signed and ratified the UNCAC and/or adopted anti-corruption policies, strategies and laws.

- Countries like Hong Kong and Singapore have established effective anti-corruption commissions which are widely credited to successfully combat corruption.
- Botswana, Chile and Costa Rica are also commonly cited as having made important progress in the fight against corruption, although the literature review points that as of 2006, there were no case studies documenting more systematically these "success stories".

Early Evidence of Impact: The Hong Kong "Success Story"

One of the best known and documented anti corruption law enforcement "success stories" is the Hong Kong Independent Commission Against Corruption (ICAC). The ICAC was established in 1974 with well trained and well paid staff. In contrast to more "traditional" law enforcement approaches, the mandate of the ICAC was expanded to integrate a preventive capacity and the institution was given a strong mandate promoting a three pronged approach of effective law enforcement, education and prevention. According to the above mentioned literature review, the commission soon established a strong reputation for thorough investigations, successful prosecutions and a tough crack down on large scale corruption, and is reported to have an impact on actual levels of corruption. Between 1974 and 2008, the ICAC has received more than 100,000 corruption complaints, of which 65,000 cases were investigated, resulting in more than 13,000 prosecutions. (Please see: <http://www.gov.hk/en/about/abouthk/factsheets/docs/icac.pdf>).

There is a wide consensus in the literature that the Hong Kong experience is not replicable as it benefited from a unique convergence of favourable conditions that few developing countries enjoy, including:

- Sufficient resources, both in term of funding and human resources;
- A strong mandate that goes beyond law enforcement and integrate a preventive and educative function;
- Strong political support;

- Enforcement approach supported by pre-existing body of laws;
- An independent and effective court system.

Part 2: Limits of Law Enforcement Interventions

Unspecialised Law Enforcement Institutions

There are many law enforcement institutions that can have an important contribution to the fight against corruption at the country level such as national investigative agencies, independent prosecutors, the office of the Auditor General, police services, commissions of enquiries, etc. In countries with systemic corruption and weak institutions, some argue that emphasis should be put on strengthening the capacity of these existing law enforcement authorities to effectively combat grand corruption rather than establishing yet another specialised malfunctioning institution, disperse scarce resources and dilute anti-corruption work.

However, as the overall effectiveness of law enforcement approaches against corruption has been mainly assessed in the literature in connection with specialised anti-corruption institutions such as ACAs, little is known about the comparative impact of this approach on corruption, beyond anecdotal evidence of success or failure in prosecuting specific high level corruption cases. However, there is an emerging consensus in the literature that, generally speaking, conditions of effectiveness of law enforcement authorities against corruption include, among others:

- Existence of and compliance with a tailor-made national strategy
- Strong political backing
- Adequate legal framework with inclusive offence definitions and enforcement provisions
- Impartiality and independence from political influences
- Transparency and effective accountability mechanisms
- Credibility and public trust
- Appropriate expertise and specialisation
- High level of ethics and codes of conduct
- Adequate resources and funding.

Mixed Impact of Anti-Corruption Agencies (ACAs)

Although few countries enjoy Hong Kong's ideal financial, administrative, political and legal framework, the ICAC model inspired other countries and many donors have supported the establishment of specialised anti-corruption commissions. The models and functions of ACAs greatly vary across countries. Some focus more specifically on prevention, education and communication, others have a narrow investigative function such as the Singapore's Corrupt Practices Investigating Bureau, while others such as the Zambian Anti-Corruption Commission combine investigative, preventive and communicative functions and have the mandate to prosecute corruption cases.

Irrespective of the model used, the literature almost unanimously points to the poor performances and lack of tangible results of interventions focusing on the introduction of more specialised anti-corruption laws and institutions. As stated in a [2005 UNDP comparative study](#) of institutional arrangements to combat corruption, the record of such interventions has been a disappointment, with very few exceptions. Many of the lessons drawn from ACAs can be applied more broadly to other law enforcement interventions.

A U4 research report [measuring success of Anti-Corruption Commissions](#) in Ghana, Malawi, Tanzania, Uganda and Zambia confirms this mixed record, as none of the assessed ACAs had achieved some success in terms of a discernible impact on levels of corruption despite some modest evidence of some "output" success. The report identifies a set of economic, political, and institutional factors driving and/or inhibiting the success of Anti-Corruption Commissions. These are mainly associated with the overall governance environment in which ACAs function, the role of donor and recipient governments as well as failures in the design, planning and management of such interventions:

In many countries, the **political will** to effectively tackle corruption is partial and temporary at best, often lacking, and most likely to pervert donors interventions supporting effective law enforcement such as the building of courts, or the professionalisation of police forces. In some cases, ACAs can be suspected to be a tool of opposition and a threat to the security of the regime, with common instances of political interference.

High profile corruption investigations can also be politically motivated and manipulated to eliminate political opposition. Political interference can be exerted in different ways, either directly with the threat of terminating the agency's work or dismissing senior officials, with the reduction of mandates, powers and funding or by intimidating other state bodies not to cooperate.

As other law enforcement institutions, anti-corruption agencies do not exist in a vacuum and their success greatly relies on **the governance environment** in which they operate. Most developing countries have weak accountability, oversight and monitoring arrangements which hinder effective law enforcement. In some cases, anti-corruption laws are inadequate, ineffective and unenforceable. The general failures of governance institutions, weak and corrupt judiciaries, and uncooperative police forces further undermine the effectiveness of law enforcement approaches.

In many countries, the **anti-corruption architecture** is inadequate and ACAs face major coordination challenges with other existing governance and law enforcement institutions, as they are assigned functions that are supposedly performed by other institutions such as general auditors, police bureaus, investigative agencies, etc, finally operating between governmental isolation and bureaucratic duplication. This is especially true in some countries where ACAs were originally set up to bypass existing corrupt police or prosecutorial services, creating conflicts over roles, mandates and competencies.

Unfavourable **economic conditions** are also likely to affect the level of resources available and challenge the long term sustainability of such interventions. ACAs are likely to be overwhelmed in environments that are conducive to endemic corruption, as it is the case in many developing countries. **Inadequate resources and capacity** as well as incoherent and inconsistent funding are often invoked as contributing to the failure of law enforcement interventions as well as chronic sustainability issues.

The success of such interventions is also influenced by how well integrated new anti-corruption norms and laws are in local societies. Many anti-corruption institutions are based on new institutions, often established by donors, which **lack legitimacy and ownership** or are ill fitted to the local context.

Failure of ACAs can also attributed to **inappropriate mandate, structures and strategies**, as well as flaws in the institutional design, lack of planning/management, and general organisational immaturity.

In terms of institutional structures, a [study investigating the "right" design of judicial institutions](#) for corruption control found empirical evidence across 18 Latin America countries that prosecutorial organs located outside the executive tend to reduce corruption, as the prosecutors enjoys the same independence from the government as judges. Autonomous prosecutorial organs may reduce the possibility of collusion between judges and prosecutors but also create unnecessary bureaucratic burdens.

In terms of mandate, the literature usually recognises that giving priority to the investigative/prosecutorial function to the detriment of preventive activities contributes to the failure of ACAs. Successful strategies involve integrating a preventive dimension to law enforcement approaches to promote long term systemic changes. There is an emerging consensus that it would be artificial to introduce a dichotomy between corruption control through legal enforcement versus corruption prevention through strengthening systems and controls and that both approaches are integral dimensions of any comprehensive anti-corruption strategy.

Unrealistic Time Frame, Targets and Indicators

Measurement or Performance Failure?

The apparent lack of impact of such interventions may not only be linked to poor performances but could also be explained by general corruption measurement problems. There are major methodological challenges involved in measuring corruption, assessing trends and tracking changes overtime in the first place, which make it difficult to assess the actual impact of specific policy interventions on corruption. (Please see the U4 Expert Answer: [Assessing impact of anti-corruption measures in Burkina Faso](#)). Even when changes do occur in actual levels of corruption, it is very difficult to link them back directly to the policy intervention that may have triggered this outcome. As a result, although there is anecdotal evidence of corruption scandals triggering policy reforms, such as the adoption of whistleblowing legislation in the wake of

the ENRON scandal, there are few studies linking law enforcement interventions directly to actual changes in corruption levels and/or anti-corruption reforms.

In addition, using performance targets such as high level corruption investigations and conviction rate as an indicator of success or failure can be misleading. The U4 report on the impact of ACAs in five African countries argues that too often, governments and donors expect ACAs with inadequate resources, investigative capacity, weak institutional environment and minimum operating structures to pursue high profile corruption cases, while such high level investigations are notoriously difficult and complex, even in developed countries.¹ While frying the big fish ensures the credibility of anti-corruption efforts, repeated failure in this regard may greatly undermine the public confidence and trust in the new anti-corruption institutions.

The U4 research report further highlights the failure to select appropriate and accurate performance measurement criteria and indicators. Ill designed performance indicators may be misleading when it comes to assessing success or failure. The authors consider that defining "failure" as failing to reduce levels of corruption results in imposing unrealistic performance targets and distorting strategic priorities. For example, under pressure to demonstrate short term success and meet performance targets, ACAs may be tempted to concentrate resources and capabilities on systematically pursuing complaints of administrative corruption, rather than promoting systemic changes in administrative procedures.

The report further emphasises that generally speaking, there is little evidence of a direct link between the activities of ACAs and wider governance reforms in the five countries examined, leading to the marginalisation of ACAs and failure to incorporate corruption detection or prevention in the countries' broader governance reforms. This results in the dislocation between ACAs

¹ The OECD Anti-bribery Convention's progress report indicates that in spite of progress made in enforcing the convention, enforcement is still lagging in the majority of countries, primarily due to lack of political will. (http://www.transparency.org/news_room/in_focus/2009/oecd_pr_2009)

and key governance reforms such as the development of mechanisms for public transparency and accountability, limiting their ability to support real change.

Unrealistic time frame and expectations

Furthermore, anti-corruption reforms can not realistically be expected to produce meaningful results in the short term. As a result of the lag between policy implementation and policy impact, there are no reliable indicators that can capture progress in the fight against corruption or lack of thereof in the short or middle term.

The above mentioned literature review of anti-corruption approaches discusses at length the unrealistic time frame and high expectations for change. Anti-corruption work is relatively new; ACAs are infant organisations and require time to produce results. Expectations with regard to obtaining tangible results in the short term are unrealistic and there is still no answer on how long it takes a society to put in place appropriate structures and procedures and as to what the reasonable time required to get credible systems in place is.

As a result, there is an emerging consensus in the literature that this apparent lack of immediate results does not seem to be a good argument for not continuing support and capacity building efforts, as there is a need for longer timeframes and better indicators to assess progress or failure.

Part 3: The Zambian Case Study

The Overall Institutional Framework

There are a number of institutions involved in combating corruption in Zambia, including the Auditor General, the Director of Public Prosecutions, the Commission for Investigations and two specialised bodies, the Anti Corruption Commission and the Task Force on Economic Plunder. Overall, the effectiveness of the Zambian institutional framework has been seriously undermined by a general lack of political will and independence from political interference as well as inadequate staffing, resources and capacity. (Please see: <http://www.business-anti-corruption.com/en/country-profiles/sub-saharan-africa/zambia/snapshot/>).

A U4 Expert Answer provides an overview of the anti-corruption architecture in Zambia. (Please see: [Overview of corruption in Zambia](#))

The **Auditor General (AG)** is appointed by the President subject to ratification by the National Assembly. It does not have the power to sanction public officials who have misused public funds but can refer the case to the relevant authorities. Its effectiveness has been hampered by lack of resources, capacity and independence from political interference.

The **Zambian Police Service** faces similar resource and capacity challenges, lacking trained staff in investigative techniques, law and human rights. It is perceived as one of the most corrupt institutions and has been instrumentalised in the past for political purposes to eliminate political opposition.

The **Director of Public Prosecutions (DPP)** undertakes criminal proceedings and ensures that investigations conducted by other agencies are conducted in respect of law and principles of human rights. Its anti-corruption record has been disappointing, as it lacks staff and autonomy to perform effectively.

The **Commission for Investigations (CI)** is competent for investigating complaints of abuse of power but does not have the power to investigate complaints against the President and the commissioners appointed by the President. It lacks resources and independence from the President for the enforcement of its recommendations.

The **Drug Enforcement Commission (DEC)** has an anti-money laundering unit that has good records in investigating high level corruption allegations.

The numbers of actors involved in the fight against corruption in Zambia create challenges of duplication, dilution of anti-corruption efforts and interagency overlaps that lead to serious coordination challenges. Against this background, the derogation of functions that are usually performed by institutions such as the AG, the DPP, the DEC, the police or the CI to two specialised anti-corruption bodies entails the risk of diluting their effectiveness.

The Anti Corruption Commission (ACC)

The ACC was set up in 1982 with the mandate of preventing corruption in public and private bodies, receiving complaints, investigating and prosecuting corruption cases and disseminating information on corruption. Under the Chiluba administration, its activities were severely hampered by a serious lack of political will and widespread political interference. The Mwanawasa administration has proved to be more supportive of the ACC, as demonstrated by an increase in budgetary allocations. It now operates under a relatively clear legislative mandate and has strived to strengthen its institutional capacity through a multi-year institutional development project as well as training and capacity building interventions. (Please see: [Measuring success of Anti-Corruption Commissions](#)).

Although the ACC's efforts to raise its profile are starting to bear fruits, its *raison d'être* has been questioned on many occasions for its apparent lack of impact and effectiveness. In spite of progress made, the ACC's activities continue to be hampered by the lack of financial and human resources which undermine its capacity to effectively deal with complex corruption cases. It still faces resistance to change from many public institutions and has been criticised for being rather inward-looking and working in relative isolation from other agencies. Its potential was also initially overshadowed by the establishment of the Task Force that created challenges of confusion and duplication.

The ACC has its headquarters in Lusaka and has offices in the 8 provinces. The ACC's Strategic Plan 2004-2008 identifies the lack of comprehensive governance and management systems, inadequate support services and unclear strategic direction as major weaknesses of the ACC. Strategically, the ACC had also originally concentrated the majority of its resources on the investigation and prosecution of complaints to the detriment of its deterrence strategy, and the need to shift to developing effective anti-corruption mechanisms has been long identified. The 2004-2008 mission statement of the ACC puts a new emphasis on prevention of corruption but adequate and consistent flows of funding, firm and sustained political backing, as well as improved coordination and cooperation with other government institutions are necessary conditions to effectively fulfill its mandate.

The Task Force on Economic Plunder

The Task Force was originally set up in 2002 by President Mwanawasa's administration as an ad hoc body composed of the ACC, the Zambian Police, the Zambia Security Intelligence services and the Drug Enforcement Commission to investigate former President Chiluba and his associates, recover stolen assets and bring the perpetrators to justice. Although it faces challenges of different organisational cultures, rules and regulations as well as competition for influence, its greatest strength lies in its multidisciplinary composition that overcomes the "silo" approach of other anti-corruption institutions. It had originally a limited lifespan but its mandate has been extended beyond 2006 for an indefinite time to allow the task force to finalise its work. (Please see: [Anti-Corruption policy making in practice: what can be learnt for implementing Article V of UNCAC?](#))

Its creation was originally received with scepticism as an additional body that would consume scarce resources instead of strengthening existing structures such as the ACC. Moreover, its existence alongside the ACC created the probability of public confusion over their respective roles in the fight against corruption, as investigations and prosecutions of corrupt practices formally fall under the ACC's mandate. Support to the task force could also implicitly undermine confidence in other existing anti-corruption mechanisms such as the ACC.

The creation of the task force has also initially raised unrealistic public expectations that were difficult to meet in the short term. However, its punitive approach has started to yield results, as several prominent personalities have been arrested, investigated and prosecuted in 2006 and 2007, including the former managing director of Zambia National Commercial Bank.

In spite of these recent achievements, the government has started to realise that punitive action must be accompanied by a parallel prevention drive and that a coherent prevention approach must complement the work of the Task Force. While effective prosecution of high level corruption cases can demonstrate the credibility of anti-corruption efforts and secure support for reform in the short term, it is important to combine both prevention and prosecution to promote in-depth comprehensive reforms and achieve real and sustainable change.

Part 4: Further Reading

[Anti-Corruption Agencies: Between empowerment and irrelevance](#) (2009)

Independently of their format and powers, ACAs encounter various constraints to their mandate, which explain their mixed impact. This paper tries to understand the rise, future and implications of this new kind of "integrity warriors".

<http://anorange-net.org/content/documents/anti-corruption%20agencies%20between%20empowerment%20and%20irrelevance.pdf>

[Literature review of anti-corruption approaches](#) (2008)

This literature review surveyed about 150 studies from an overall bibliography of nearly 800 studies. It can illustrate few success stories when it comes to the impact of donor supported efforts, particularly with regard to specialised anti-corruption commissions.

<http://www.norad.no/en/Tools+and+publications/Publications/Publication+page?key=119213>

[Anti-Corruption policy making in practice: what can be learnt for implementing Article V of UNCAC?](#) (2007)

This report provides insights of countries' experience in anti-corruption policy making and implementation and presents six country case studies including Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia

<http://www.cmi.no/publications/file/?2914=anti-corruption-policy-making-in-practiceht>

[Measuring Success in Five African Anti-corruption Commissions](#) (2005)

This report analyses the political, economic and social drivers and inhibitors of the success of Anti-Corruption Commissions (ACAs) in five African countries, namely Ghana, Malawi, Tanzania, Uganda and Zambia by looking into factors such as the overall governance context, the role of donor and recipient governments and the performance of anti-corruption agencies.

[\(http://www.u4.no/themes/aacc/finalreport.pdf\)](http://www.u4.no/themes/aacc/finalreport.pdf)