

U4 Expert Answer



Anti-corruption and accountability in anglophone versus francophone governance traditions

Query

Please can you provide a comparative analysis of anti-corruption and more general accountability mechanisms in governance systems based on anglophone and francophone traditions? In addition to a description of the main institutions in each of these traditions, it would be useful to have an analysis of how they differ from each other, and what the implications are for how donors can best support them in developing countries.

Purpose

Our agency is deepening its engagement in certain francophone countries in Africa, such as DRC and Burundi. Anti-corruption and accountability issues will be very important for our analysis and programme. We need to be aware of how the systems inherited from Belgian/French administrative and legal traditions differ from those with which we are more familiar, so that we can enter into more knowledgeable and constructive dialogue with governments and other donors.

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1 A comparative analysis approach

Accountability as a concept can be sub-divided into vertical accountability, which reflects the classical top-

down approach whereby the principal asserts control over the agent, and horizontal accountability, which refers to actors being responsible to each other across a horizontal plane. In the current development discourse, in particular the discourse relating to corruption and anti-corruption matters, horizontal accountability has a central role to play in the prevention of maladministration and bad governance. This thinking has been systematised in the National Integrity System approach, which was developed by Transparency International in the early 1990s and has since been adopted by the international development community.

A country's National Integrity System comprises all those government and non-governmental institutions that have the ability to work together to achieve sustainable high standards of national integrity and low levels of corruption and maladministration by functioning individually but also by enabling a system of horizontal accountability whereby each actor acts as a watchdog over the actions of at least one other. The establishment of an effective, transparent and accountable National Integrity System thus fragments power and paves the way for a well-governed state.

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Reviewed by: U4 Anti-Corruption Resource Centre

Date: 20 August 2003 **Number:** 15

A **National Integrity System** typically comprises:

- The Legislature
- The Executive
- The Judiciary
- The Supreme Audit Institution
- The Ombudsman
- The Watchdog Agencies
- The Public Services
- The Media
- Civil Society
- The Private Sector
- International actors

The National Integrity System is a constructive way in which to begin an examination of the workings of institutions and concepts such as values and public awareness, and to identify possible obstructions to overall good performance and governance. It provides a sound basis for all-encompassing reform.

2 Differences between anti-corruption and accountability mechanisms

Very good reference points for this are the anglophone and the francophone versions of the TI Source Book on National Integrity Systems (see References). The francophone Source Book is an adaptation done specifically against the background of francophone Africa. This means that all the elements that the National Integrity System is comprised of (as listed in section 1 above) are discussed with relevance to the francophone Africa.

Risk of over-generalisation within the francophone system

When comparing systems of accountability in different governance and administrative traditions, it is useful to keep in mind that systems of formal rules may not necessarily translate into administrative practice. The French system of governance, imposed on a number of states in the course of their colonisation, has usually been upheld after independence. Yet while the preferred French model of colonisation comprised an imposition, in most cases, of replica French administrative structures on indigenous systems, evolution over time means that despite a comparable legal and administrative approach and a shared lingua, most countries in francophone Africa are not more

similar to each other than is the case on the European continent.

While we can assume that the different methods of colonisation and colonial experiences influenced post-colonial methods of government, yet, apart from the fact that Belgian colonization was at least as different from the French as the English, the colonial masters themselves adopted quite different colonial practices depending on the territory occupied: Morocco was not colonized in the same way as Algeria, and the list goes on.

Beyond the observation of patrimonial, systemic, generalized and large-scale corruption, which can be extended tentatively to the rest of the continent, experience shows that the level and nature of corruption vary from one African country to another. Observers believe that there is less administrative corruption, for example, in Burkina Faso than in Niger or Mali, less in Burundi and Rwanda than in Zaire, while it has the same characteristics and spread in Benin, Niger and Senegal. Significant variations have also been observed over time, with the trend being generally but not always in the negative sense. On the whole, corruption is therefore considered to be less after independence than thereafter. The useful first approach of conducting a quantitative and overall assessment of corruption should be taken further, considering corruption not in the singular but in the plural in the various African countries taken individually. Each African country contains a variable combination of corruption forms. Qualitative and systematic anthropological surveys can be used to deepen our understanding of the phenomenon.

Risk of over-differentiation between francophone and anglophone systems

Some sources point to the fact that the difference traditionally highlighted between English indirect colonial rule and French direct colonization has been blown out of proportion and really does not tie in with actual and, in any case, uniform practice. At any rate, it is argued, it would be hard to see therein any simple and immediate implications for corruption. All that can be said is that at independence, the elite in former English colonies seemed to have been better prepared to take over the destiny of their country. However as early as the 1960s, Nigeria was already noted for its level of corruption. Thus, it really seems impossible to make any kind of generalization. Whenever differences of corruption occurred, like during the comparison of universities - for example, the Universities of Yaoundé

and Nairobi - they largely disappeared owing to the economic crisis. Corruption has tended to become systemic, i.e. the rule rather than the exception, and generalized throughout the continent. It has even spread to regions where it was hitherto unknown, like southern Africa affecting such countries as Malawi and Zimbabwe. Therefore, to treat corruption in francophone Africa is not fundamentally different from treating it in Africa as a whole, subject to the ties between France and her former colonies, and thus the differences and specifics entailing from those ties.

Differences in the legal and administrative systems

The legal/administrative system of the countries following the French traditions significantly differs from the anglophone-based systems, of course. While the discussion of the differences in the legal/administrative systems as such is too broad and is best addressed out of the scope of this paper, it is important to highlight some of the elements more specifically related to the anti-corruption mechanisms. Also, an important point to keep in mind throughout the discussion is that even the countries that have inherited the French system are not unanimous in their legal system and application. In francophone Africa, when examining three countries that drew inspiration from the same penal code inherited from Metropolitan France, it is interesting to compare their choice of anti-corruption instruments established under their legal systems. The choice is in line with their specific political developments and circumstances, as outlined below.

Establishment of state control institutions

Thus, Senegal, a country characterized by exemplary political stability, relied mainly on "ordinary" internal and external audit bodies, namely the specific inspectorates of each ministry, the Inspections générales de l'Etat et des finances (IGE) - (General State Inspectorates of Public Finance) - and the regular chambers, like the Commission de vérification et de contrôle des comptes des entreprises publiques (CVCCEP) - (Public Enterprise Audit Commission). It is only during periods marked by major changes at the helm of State that newly elected presidents decided to symbolically mark the beginning of a new political era by drawing on new ad hoc institutions: in 1990, therefore, Abdou Diouf promulgated the law against unlawful enrichment, while the coming into power of Abdoulaye Wade in 2000 saw the launching of audits of a certain number of national corporations. The setting up of new institutions thus symbolises a departure from the practices of the

preceding leadership, though experience has shown that these institutions remained largely ineffective.

While Senegal has never neutralised its normal audit institutions, the strategy in Benin has been to establish either normal instruments, or emergency instruments, depending on whether the political situation is stable or unstable. The Inspectorate of Public Finances, which was abolished in 1976, was reinstated in 1993. The General State Inspectorate was abolished in 1990, only to be rehabilitated in 1998, though without the resources needed to accomplish its mission. Since the 1972 coup-d'état, commissions responsible for moralising public life in Benin have come and gone. The democratic new deal of Soglo in 1990, and the return to power of Kerekou in 1996, were occasions for the launching of new commissions of inquiry on corruption.

In Niger (1974 - 2000), as many as eight commissions were set up and later dissolved, according to the pace of changes in government. During the emergency regime, President Kountché instituted the economic police force and the Special Court, which sentenced those guilty of embezzling public funds to life imprisonment or the death penalty. After a momentary tightening of regulations, the period following the 1991 National Conference saw the decriminalisation of certain offences of unlawful enrichment, after the adoption of the human rights constitution.

Operation of the state control institutions

How did official state control institutions really operate? The experience of Benin, Niger and Senegal shows that though these inspectorates of public finances were composed of qualified and well-paid officials, they came up against serious obstacles: the efficiency of inspectors-general is limited by the sole possibility of carrying out ex-post controls; they are answerable to the supervisory minister, from whom they await mission orders to intervene; most often, the reports they produce remain secret and end up in the drawers of the President of the Republic and the Prime Minister. These inspectorates even suffered the effects of changes in government. Suspected of complicity with the preceding political order, their members were regularly replaced or ditched.

With regard to the extraordinary bodies, the example of the Unlawful Enrichment Court in Senegal will be mentioned. This court was operational only for two years. The sixty investigations that it carried out led only to two imprisonment sentences and a few fines.

Needless to say that the persons sentenced, if compared with the other "fishes" which escaped the nets of the court, look like fuses in a mechanism that was promptly used as a political tool.

Prosecution measures

In Senegal like elsewhere in Africa, the prosecution of corruption mainly followed opportunistic political considerations. The existence of this legislation gave the opportunity to look for a pretext to get rid of such or such a personality if need be. The real issue at stake was not the person's guilt or innocence. In a context of systematic corruption, it is easy to trap somebody, and the executive, through its police force, can obtain information enabling it to prosecute individuals. This is a good means of blackmail and of pressure; inexistent evidence can always be fabricated. The purpose is therefore not to applying the law because it is the law, but to use it in purely opportunistic circumstances. Sometimes, when a scandal broke out, which was rare because of the absence of press freedom, the government was compelled to intervene by sending the troublemaker to prison; it would have been tactless to not do so. Most often, those found guilty were not even obliged to refund what they had stolen.

Attempts of systematic reforms

In the 1990s, some French-speaking countries, like Benin, embarked on a systematic fight against corruption through institutional reforms. Most countries, under international pressure, contented themselves with launching campaigns without any prospects or taking specific measures according to the circumstances. This is the case of Cameroon, which launched a campaign by appointing a new Prime Minister whose mission was to fight corruption. The latter took his mission seriously, and the President then had to dismiss him rather quickly. From time to time, a political leader may be imprisoned, to either get rid of him, or prove to financial backers that their prescriptions are being followed, but this is a complete waste of effort. For some time, the parties concerned are careful, but these measures need to be applied for a long time for them to yield fruits. In any case, it is difficult for a political leader to go very far in the suppression of corruption, because he may shoot himself in the foot, while shooting at those who are indispensable to his survival.

The administrative system: from classical francophone traditions to francophone heritage and lack of modernisation

Traditionally, the French administrative system revolves around the notion of a unitary and indivisible state, which is reflected in the strong emphasis on hierarchy and reporting lines. The public official is, above all, loyal and accountable to the central State and neutral in the exercise of his tasks and embodies as such the continuity of the state beyond the change of regimes or governments. Obedience and duty dominate over notions of efficiency, and compliance and control over aspiration and output-orientation, as is the case in the British system. A further characteristic of the French administrative system is the recruitment of public servants through competitive examination, the "concours".

The French administration is accountable for its actions to the executive - through direct hierarchical reporting lines, which are often under the direct authority of the relevant ministry - and potentially to a number of independent watchdog organisations, such as the *Cour des comptes* (i.e. the British Auditor General) and independent anti-corruption commissions. It is also, indirectly, accountable to the people to whom it is delivering a service. Mechanisms would include the parliament, access to information provisions, and an elaborate system of administrative law, which defines the rules and responsibilities under which a civil servant operates, and which can be used to establish, before an administrative court, whether a public official has used his powers in the manner and to the extent foreseen by the law.

Similar to former British colonies, francophone African states have often inherited and maintained the administrative and legal systems put in place by their occupiers. While formally reflecting the French administrative rules and ethics, these systems have usually failed to evolve to take into account changes and have not been modernised due to lack of political will and commitment, widespread corruption and little or no public participation in the administrative and political process. The administrative practice is often not in line with the written requirements and is characterised by a lack of public service ethics and a dominance of traditional behaviours, such as patronage and clientelism, which are not foreseen in the statutes.

The Françafrique Machinery

The francophone African experience is characterised by a French-African model of corruption, which is without equivalent elsewhere.

Since accumulation systems in Africa are mainly linked to out-bound economies, international corruption plays a leading role in the establishment of ruling classes. It is only in the domain of international corruption that French-speaking Africa stands out distinct from the rest of Africa. This distinctiveness is connected more to post-colonisation than to colonisation.

In French-speaking Africa, a very original Franco-African model of corruption was superimposed on the standard purely economic international corruption as was practised everywhere else. It is related to the membership of French-speaking Africa to what has been called, in a picturesque and shrewd manner, "*Françafrique*" (Africa-France). The expression, "France à fric", (holding up France as a rich country with lots of money), coined initially by Felix Houphouët-Boigny, was revived recently by F.-X. Verschave within a polemical context.

The polemics aside, this expression is a simple image, an expression, used to refer to and name this quite specific Franco-African group. *Françafrique*, which at the beginning regrouped a majority of former French colonies in Africa, corresponds roughly to sub-Saharan French-speaking Africa. If Morocco can, in a sense, be integrated therein because of its leader's ties not only with France but also with other African leaders, that would not be easy with Tunisia or Algeria, despite the ties they maintain with some French leaders. *Françafrique* was extended to former Belgian colonies, which of course, are French-speaking.

There is no equivalent of *Françafrique* in the bonds that link the United Kingdom, Portugal or Belgium, with their former colonies. This *Françafrique* was covertly based on violence and corruption: Elf and the Franco-African networks had been the paradigmatic expression. The originality of the Franco-African model of international corruption is that the corruption perpetuated there does not only have an economic objective like is the case with standard corruption, i.e. to win and preserve contracts and economic positions.

It also has political objectives. France, after official decolonisation, aimed to adapt the mode of colonial domination by transforming it into an international system of favouritism, associating unequal partners,

France, the manager State and African States, the client States. The bonds that were formalised at the Elysée¹, in civil and military cooperation agreements, and a Co-operation Ministry, heir to the Ministry for Colonies, through French military presence in Africa and through membership in the franc zone, took root in a web of personal relationships linking members of the respective ruling classes.

This living web of social exchanges was the key of the stability of the system. It is the mixture of sorts which characterizes corruption in *Françafrique*, in which are articulated passive and active corruption, coupled with the financing of French political parties and politicians, political, economic and social, public and private exchanges, not forgetting the aspect of coercion or violence. General political considerations, especially strategic and geopolitical considerations relating to France's energy needs - for uranium and especially oil - were more important.

However, France no longer has the economic resources to maintain a clientele of African States. Favouritism is costly to the manager, because the benefits of French companies doing business with Africa within the privileged context of *Françafrique*, and the benefits of the French economy as a whole, should not be confused. This *Françafrique* changed with time. It is no longer centralised at the Elysée through Jacques Foccart's networks. These networks diversified and multiplied, maintaining relations of complicity and competition between them.

France's African policy, whether official or covert, has come apart. Reforms have been carried out to normalise it. This has seen the withdrawal of France: military presence is on the decline, official aid has dropped drastically and tends to materialise within the framework of Europe. In the medium-term, *Françafrique* seems destined to disappear. Though on the decline, it is alive and should not be written off too soon. Although the formal structure of *Françafrique* witnessed far-reaching reforms, its informal and covert infrastructure still exists. Although some of its constitutive networks such as Elf have been privatised, and tend to globalise, they still maintain links with occult public networks that are more or less controlled from Elysée. In this respect, recent presidential elections, which enabled the re-election of Jacques Chirac, are likely to give fresh

¹ Refers to Palais de l'Élysée, the official residence of the President of the French Republic

impetus to *Françafrique*. This dimension cannot be left out in the fight against corruption in French-speaking Africa.

3 Implications for donors

Bearing in mind all the above specifics and acknowledging that differences do exist, it is however safe to conclude that targeted comprehensive strategies aimed at fostering integrity among a state's public institutions and other elements comprising that state's national integrity system are in their broadest form applicable to any administrative and legal tradition. The challenge lies in devising reform strategies that will lead to better governance but more importantly, in devising reform strategies that can feasibly be implemented by the respective state.

- One tool for assessing a specific country's National Integrity System (NIS) to, among other things, find the most suitable reform package, are the NIS country studies, which examine each element and institution of the NIS in the given country, their level of performance, the gaps and the opportunities. TI has facilitated a number of such country studies. For the purpose of reform efforts in francophone Africa and for an example of parallel comparison of accountability mechanisms in a francophone and an anglophone African country from the same region, you may wish to refer to, for example, to the NIS studies of Ghana and Senegal.

Moreover, such similar studies on DRC/Burundi may be helpful for donors before launching their specific efforts in those countries. TI currently does not have NIS studies available specifically for those two countries.

On a more general level, some relevant factors when preparing for international reform assistance in the area of anti-corruption are:

- A state in need of administrative reform may be too institutionally weak to implement a complex reform programme. Prior to embarking on reform, it is of utmost importance to conduct a clear analysis of not only the socio-economic and political context in which the institution of interest operates, but also to gain a clear understanding of the institutional culture prevalent among staff. Strategies that seem to correspond to the

formal requirements of the institution, and have produced positive outcomes elsewhere, may be inappropriate against the background of a mismatched institutional culture (in literature, this phenomenon is often referred to as path dependency).

Institutional culture can change, but takes time and continuous efforts. Change can be fostered by modifying recruitment and promotion techniques, the creation of a code of conduct that staff are expected to adhere to, and, most importantly, by creating a sensation of ownership among staff and management of the reform measures .

- In the reform process, the aim should be the reduction of corruption by removing corrupt incentives, i.e. by reforming the institutional framework in which civil servants operate. This includes the establishment of clear areas of responsibility for each agency and agent, of clear lines of accountability and the simplification of rules and procedures to increase efficiency and to reduce red tape. Again, the goal is not to transform systems, but to build on and reform existing institutions and practises to increase their potential for integrity.

4 References

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