

ROLE OF THE EXECUTIVE
Stakeholder Group 2
Tuesday 12th October, 2004.

Rapporteur Report

Summary of Presentations

The session was chaired by Chief Maina Kiai, chairperson of the Kenya national Commission for Human Rights; standing in for Mr. John Githongo, PS, Governance and Ethics.

The first presentation was by Miloslav Bablavy, Secretary of State, Slovakia on his government's experience in anti-corruption enforcement. Miloslav started by noting that fighting corruption was a long term process in need of constant political persistence and social pressure. He also noted that when public expectations were very high, even successful anti-corruption measures appeared not to affect public perceptions, to the contrary, reinforced expectation to the point where politicians were unable to claim successes. In such cases, political attention on corruption tended to dwindle in favour of politically visible projects. As a result, government commitment by itself was never sufficient and the role of civil society to catalyze and create pressure for reform remained significant.

Miloslav observed that Slovakia had succeeded in police and banking reforms against corruption. However, the reforms did not affect TI's ranking of the country in its perceptions indices. Decrease in corruption in these sectors was followed by intense media scrutiny, thereby retaining the impression that corruption was still prevalent. He also noted that anti-corruption efforts of the government were driven from an economic viewpoint. The intention was to reduce regulation that provided incentive for bribery. Less focus was placed on prosecution and more on economic systems. This attitude had created more reflection given the role of regulation and of prosecution. The government was now convinced that a more comprehensive joint approach would prove efficacious.

The second presentation was by Violeta Mazariegos, Anti-Corruption Co-ordinator in Guatemala. Her presentation was more pessimistic. First she noted that in Guatemala, anti-corruption measures were not adequately assimilated in government policy, and even worse, there was hardly any pressure on the government from social and interest groups to combat corruption. A weak civil society, in which only 3 or 4 NGOs were active in anti-corruption, militated against strong checks and balances, coupled with a political elite that was unused to accountability.

Guatemala was formally committed to fighting corruption and had made various declarations. An anti-corruption commission had been formed. In practice, there was no strategy in place or a cohesive plan of action. Instead, the regime was preoccupied with adopting and attempting measures borrowed from other countries. Violeta concluded that the major challenge for Guatemala was to socialize anti-corruption efforts, in order to develop domestic demand and to motivate political sensitivity to local needs. Regarding the measures implemented so far, she remarked they had been too expensive, which incidentally had contributed to the social disenchantment or apathy.

Description of Discussion

The discussion centred on two major themes. The first was what type of reform measures the executive could implement. The second dealt with confronting resistance from anti-reformers.

Abdallah started off the discussion by noting that judicial reform was necessary in order to have an arm of government that was entrusted with the responsibility of protecting rights and adjudicating disputes rather than entrenching vested interests. Expert agencies constantly found themselves exposed to hostile judiciaries willing to exercise judicial review over investigations, document discovery and prosecutions. The problem was ensuring the executive implementing judicial reform was not arbitrary and that judicial independence was not undermined, added Milsoslav. The better solution was to force generational change by providing retirement incentives to serving judicial officers left over by the departing corrupt regime. Beside judicial reforms, participants discussed administrative measures to force tainted officials to resign pending investigations. They also agreed that the executive needed to legislate access to information rights and the protection of whistle blowers. Finally, and notwithstanding the costs, participants agreed that centralizing anti-corruption measures within one governmental agency or department was not conducive to fighting corruption, but instead, set up a department for more focused resistance and sabotage.

In facing off resistance, questions of democratic credentials and legitimacy surfaced. It was easier for an incoming regime with broad political support to implement reforms than one with a narrow winning facing the challenge of consolidating power. Overwhelming public support also tended to stifle the political opposition contemplating blocking reforms. Tom Wolf argued that the starting point should be a structural enquiry into the relationship between a new regime and the business interests in the country as well as their position relative to resource distribution. A regime elected on a moral anti-corruption platform, without adequate control over resources, tended to become hostage to financially well off anti-reformers and was itself susceptible to new corruption. This was extended to concern about political usages of anti-corruption efforts to please donors, a complaint that Peter Eigen remarked for some reform friendly countries. He called for governments to be more accountable to the electorate than to donors. The support and monitoring roles of civil society were essential conditions for facing off resistance to reform. In addition, resistance could be reduced by professionalizing anti-reform without making it an issue only for technocracy discussion, but in order to safeguard it from immobilizing politicization.

Finally, the discussion considered the centrality of economic reform targeting de-regulation as an anti-corruption device. Participants agreed that the level of de-regulation and privatization should be informed by social development scores and that wholesale de-regulation was not workable at the level proposed in many countries. The challenge was to optimize regulation.