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# **Fighting Corruption and Restoring Accountability in Burundi**

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# Fighting Corruption and Restoring Accountability in Burundi

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The objective of the program is to help USAID/REDSO establish an agenda for promoting economic reform and growth as well as financial transparency in the government of Burundi. The Nathan team has investigated—and developed recommendations to address—major economic issues and opportunities that Burundi is facing, emphasizing the appropriate role of the government in the national economy and anticorruption and transparency initiatives. The assessments and recommendations will be presented to government, civil society, and business actors in Burundi, as well as donor representatives, at a conference in Bujumbura in May 2006, and through related information programs.

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Final reports for the Burundi Economic Reform and Financial Transparency Assessment Program will be made available in both English and French at [www.nathaninc.com](http://www.nathaninc.com). For further information or printed copies of these publications, please contact

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# Preface

As of early 2006, there was very little quantitative information on the scope and extent of corruption in Burundi. This paper is therefore largely based on dialogue with a number of persons knowledgeable of various aspects of the problem in the country—from instances of “grand corruption” to taxes and customs and everyday petty bribery. Thanks are due to these persons, although for obvious reasons they are not individually named.

Although an effort has been made to hear from interlocutors from government, private sector, civil society, and the occasional “man in the street,” the number of persons contacted is small and was confined entirely to Bujumbura and one rural area. Even so, the pervasiveness of official corruption in Burundi came through unmistakably. Nonetheless, unbundling the problem of corruption into its main components, on the basis of reliable facts and other evidence, is the prerequisite for serious anticorruption efforts. Accordingly, the first recommendation of this paper is to conduct a detailed survey—covering both Bujumbura and a sample of municipalities and districts—to serve as empirical foundation to begin addressing corruption problems right away, as well as baseline against which to measure progress in the years to come.

The international experience shows that corruption cannot be combated as an isolated phenomenon, but as an integral part of a concerted program to improve the integrity, efficiency, and effectiveness of public governance. The key areas of attention are public financial management, the civil service, and the organizational structure of government. It is obviously not possible in this paper to touch on these broad and complex issues. Public financial management is the subject of a separate issues paper (*Managing Public Finances: Control, Efficiency and Effectiveness*), and broad directions of reform in government organization and the civil service are indicated in the overview paper (*Reconstruction for Development in Burundi: Guiding Criteria and Selected Key Issues*).

Finally, this paper provides an initial diagnosis of the problem, and outlines the approach to be followed, together with a number of initial recommendations. It is only a start, however. A comprehensive anticorruption program, suited to the country’s administrative and institutional capacity, focused on a few key priorities, and with actions appropriately sequenced, can only emerge from a coordinated effort involving the executive branch of government, the legislature, the media and other civil society, and the donors.



# Summary

Defined as “abuse of public power for private gain,” official corruption takes a variety of forms, including “grand corruption” (mainly in large public procurement or investment projects) and “petty corruption” (i.e., small bribes to government employees to facilitate a service or issue permits). In any form, corruption always carries severe costs in terms of resource efficiency, administrative integrity, and development, and is especially damaging to the poor and vulnerable groups. In Burundi’s post-conflict situation, therefore, corruption not only harms recovery and reconstruction, but risks re-igniting the social conflict that has characterized so much of the country’s history.

Although there are no firm quantitative data on the extent and locus of corruption in Burundi, there is abundant evidence that corruption is pervasive, and acute in certain areas. In general, Burundi is perceived as among the 25 most corrupt countries in the world. Petty corruption is widespread, with informal payments required to obtain most services, permits, or licenses. This issue cannot be successfully addressed except in the context of comprehensive civil service reform, to produce more adequate salaries while at the same time strengthening individual accountability and penalizing illicit behavior. However, it is possible to take effective measures to begin to address corruption in the specific areas where it is most acute in Burundi—public procurement, taxation, and customs.

Public procurement is riddled with inflated contract prices and gross procedural violations; tax collection is clearly lower than its potential; and customs duties are routinely evaded by deliberate misclassification and abuse of exemptions. In procurement, the problem would be reduced by introducing a special scrutiny procedure by the Ministry of Finance of large expenditure proposals, before inclusion in the budget, and by issuing an annual report on questionable bulk purchases made during the previous financial year (including names of suppliers.) On taxation, after the introduction of a single taxpayer identification number, it is time to carry out a comprehensive census of all taxpayers, with severe penalties for non-response or misleading response. On customs, the most effective measure would be to drastically reduce the exemptions regime and make the tariff rate structure more uniform.

In general, effective approaches to fight corruption follow the Hong Kong example of concurrent activities in awareness, prevention, and enforcement—all of which are necessary in the long run to foster a culture of integrity. In Burundi, this model can be articulated into six major areas: (1) fact-finding; (2) dissemination and awareness; (3) prevention through regulatory streamlining; (4) strengthening of enforcement; (5) building the accountability institutions; and (6) improving public management. Concerning the last area, little progress can be made against corruption

without a lasting improvement in public accountability and concrete reforms in the various aspects of public administration. Among other things, major improvements are needed in tax administration and expenditure management, as well as civil service reform. This vast agenda cannot be addressed in this paper. (Public financial accountability is discussed in a separate issues paper, and civil service reform in the overview paper.)

An assessment of the situation in the first five areas leads to the following recommendations:

On *fact-finding*, because an effective anticorruption strategy requires information to pinpoint the specific sources of irregularities, it is urgent to carry out a detailed corruption survey.

On *dissemination* and awareness, libel laws should be reviewed to assure that they do not serve to shield official malfeasance; external aid should be provided to strengthen the capacity of the media; and a special effort is needed to improve coordination of aid to NGOs.

On *prevention*, a review of economic regulation should be conducted, with private sector participation, focusing at first on the regulatory framework for employment and on procedures for starting a business.

On *enforcement*, which is by far the weakest aspect of anti-corruption activities in Burundi, the following reforms may be considered

- Adopting an anticorruption law that penalizes both bribe-giver and bribe-receiver;
- Introducing the legal obligation of declaration of assets for all political leaders and government officials above a certain level;
- Identifying the government jobs “at risk,” and implementing a special procedure for assessing regularly the living standards of the incumbents;
- Adopting measures for protection of “whistleblowers” and their easy access to the public;
- Consider the possibility of a time-bound amnesty for corruption and bribery, general but excluding the most egregious cases of corruption.

On *building accountability institutions*, effective anticorruption enforcement requires effective anticorruption enforcers. The prerequisite in this respect is to take anticorruption responsibility out of the police force. On the other hand, separate anticorruption entities around the world have a mixed record. However, the failures are usually attributable to the absence of one or another of the five requirements for their effectiveness: (1) support from the highest political level; (2) genuine independence; (3) clear mandate and appropriate authority, including investigative powers; (4) adequate financial and other resources; and (5) competent and honest leadership.

In Burundi, given the existence of a strong Inspectorate General of Finance, instead of creating a new separate anticorruption commission it may be easier and better to expand the duties of the Inspectorate and give it the independence, mandate, authority, and resources it would need to function as the country’s lead agency for anticorruption. The new office should be made directly responsible to and report to the highest appropriate level of government—in this case, the Vice-President charged with economic and social affairs. Administrative integrity, however, cannot

come entirely from the top. From the bottom, too, there is a need for mechanisms of transparency and accountability. In this respect, although the *abashingantahe* (village councils of elders) have suffered a loss of independence and credibility in the past, in this new governance paradigm they merit a fresh look as a potentially robust mechanism to foster integrity at the lowest levels of government.

Finally, the *role of donors* can be part of the solution as part of the problem. External aid has often provided openings for corruption, and has eventually weakened the fabric of local governance and responsibility. Occasionally, collusion has been deliberate. More often, donors' sins have been sins of omission—failures to exercise due diligence or the closing of one's eyes to certain realities for the sake of a "successful" project. Whatever support donors may provide for anticorruption efforts in Burundi, the minimum requirement is not to inadvertently add to the problem through the modalities of their other assistance. One good "no" is better than many bad "yes's."



# 1. Corruption and Development: An Introduction

*Doctors say of tuberculosis that in the early stages it is easy to cure but difficult to diagnose, whereas in the late stages it is easy to diagnose but difficult to cure. It is the same of the affairs of state. (Nicolo' Macchiavelli)*

## **A CAUTIONARY TALE**

In June 1997, everything looked good in Southeast and East Asia—rapid economic growth, progress in human indicators, social peace, and apparent financial stability. There was tolerance of the closed circles of influence and privilege; obliviousness to the mounting (and largely invisible) economic costs of lack of transparency and accountability; and shrugging acceptance of corruption—indeed, even a benevolent view that official theft and private collusion were necessary “lubricants” for the system. These weaknesses were not limited to the government or to lax supervision of the banking system, but included severe problems of corporate governance in the private sector itself, stemming from lack of transparency and absence of strong competitive checks and balances. Merit and competition were wholly secondary to personalistic relations of kinship, bribery, and collusion. And yet, the system had been humming along for many years, and the nexus between development and good governance didn't seem to be operating in that part of the world.

Some observers had raised doubts about the sustainability of such a system, but were dismissed as naysayers. A few Cassandras had even predicted collapse, but, like all Cassandras, they were ignored. Then, seemingly out of the blue, the Asian financial crisis struck, first in Thailand on July 2, 1997, and then in Indonesia, Korea, Philippines and to a lesser extent other Asian countries—with the shock wave spreading through much of the rest of Asia and the world. Indeed, the worm in the apple was the corruption in the system. The “Asian exception” was no more. It became clear that corruption was indeed a key impediment to sustainable development in Asia as everywhere else in the world.

In Africa, the realities of official corruption have been far more obvious for decades. Burundi used to be an exception, comparatively speaking, with limited and predictable graft, broad rule compliance, and a reasonably well-functioning public administration. This is no longer the case. The deterioration in public integrity began in the late 1980s, and accelerated with the onset of the civil conflict. For some time, the problem was not visible to most observers, as they were looking at the still intact economic surface—while, like termites, mounting corruption had been eating

away at the foundations of public administration, and is now one of the foremost obstacles to recovery and development.

## THE MEANING AND COSTS OF CORRUPTION

The common definition of official corruption is “abuse of public power for private gain.” The term “corruption” is used as shorthand for a wide variety of illegal and illicit behaviors, ranging from the outright theft or pilfering of state assets, to collusion in procurement, exchange of favors for recruitment and promotions, bribes to obtain basic services, etc. Not all forms of corruption are equally important or costly. A variety of tools have been developed over the last decade to facilitate efforts to identify and quantify the precise nature of the problem. The best-known distinction is the one made by Transparency International between “grand corruption”—in large public procurement or investment projects, normally involving either proffer of bribes or collusion by multinational foreign firms—and “petty corruption” (i.e., the payment of “speed money” to government employees to provide or facilitate a government service, or small-scale extortion to provide permits).

During the late 1980s and 1990s, a variety of analytical findings came together to underscore the importance of effective institutions in fostering growth and the pernicious impact that weak governance and corruption can have upon economic development. A number of econometric studies found that countries with weak institutions and higher corruption tended to have lower rates of investment and ultimately lower rates of growth. In 1991, a World Bank task force produced the first policy document on “governance and development”; the taboo on mentioning and tackling corruption was lifted in 1996 by former World Bank President Wolfensohn’s speech on the “cancer of corruption”; an official anticorruption policy was enacted by the World Bank in September 1997; and in 1999 the OECD Anti-Bribery Convention came into force, by which bribery of foreign officials became a prosecutable offense.<sup>1</sup> All these efforts culminated in the UN Convention Against Corruption (UNCAC), which entered in force on December 14, 2005. (See Appendix A for a summary of the UNCAC provisions.)

Most recently, in February 2006, the leaders of the African Development Bank, Asian Development Bank, Inter-American Development Bank, European Investment Bank, European Bank for Reconstruction and Development, the International Monetary Fund and the World Bank reached an unprecedented consensus on standardizing the definition of corruption, improving the consistency of their investigative procedures, sharing information, and assuring that enforcement actions taken by one institution are supported by all others. The goal is to develop a uniform Framework for Preventing and Combating Fraud and Corruption and have it approved in September 2006. The immediate relevance in the specific case of Burundi is that the Government can now count on expanded and sustained external assistance to strengthen its capacity to combat

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<sup>1</sup> Other multilateral development agencies followed suit (e.g., the Asian Development Bank with its governance policy in 1995 and anticorruption policy in 1999, and both the Inter-American and African Development Banks in the late 1990s). The international consensus is strong, and the core substance of these policies is therefore very similar across all multilateral development institutions. Major bilateral donors, too, have official policies fostering good governance and combating corruption, including mainly the United States and the UK.

corruption, and to enhance transparency and accountability by better cooperation with civil society, the media, and the judiciary—if it is resolved to do so.

It should go without saying, but it is always worth repeating, that the cancer of corruption is not new and is far from being confined to Africa. Some examples from other regions:

- During 1980–2000, Indonesia is estimated to have lost \$48 billion in corrupt resource transfers abroad, surpassing its entire stock of foreign debt of \$41 billion;
- If Bangladesh had been as successful as Singapore in reducing its level of corruption, its annual per capita GDP growth between 1960 and 2000 would have been 1.5% higher, leading to a per capita GDP in the year 2000 about 150% higher than its actual level, and taking at least 20 million Bangladeshis out of poverty.<sup>2</sup>
- In the Italian city of Milano, anticorruption initiatives reduced the cost of infrastructure outlays by more than one third, allowing the city to increase spending on maintenance, schools, and social services.
- When customs officials in Bolivia were allowed to receive a percentage of what they collected, there was a 60% increase in customs revenue within one year.
- Studies of government procurement in several countries reveal that corruption has caused governments to pay from 20% to 100% more for goods and services.

Even more costly are the indirect effects of corruption, which cannot be measured with precision. Corruption can skew public investment in favor of uneconomical large projects at the expense of better projects and of operations and maintenance expenditure, thus contributing to lower investment productivity and reduced asset life. A corrupt environment discourages the better types of foreign investment, while speculative or predatory “investments” thrive on it. Public safety may be endangered (e.g., when building code violations contribute to structural failures during earthquakes, or counterfeit drugs are allowed to be distributed). Crime, especially organized crime, is often given a free rein by a corrupt police force. In the public sector, corruption can erode morale and productivity across the civil service. In the private sector, senior enterprise managers spend as much as one third of their time dealing with government officials in countries where corruption is endemic, as opposed to less than 5% of their time in countries where corruption is not a major problem. Finally, there is abundant evidence that corruption is especially costly for the poor and the vulnerable. Thus, in Burundi’s post-conflict situation, corruption not only harms recovery and reconstruction, but risks re-igniting the social conflict that has characterized so much of the country’s history. In this country as elsewhere, anticorruption efforts are among the most effective measures for reducing poverty and exclusion.

Although large-scale corruption either starts or is tolerated from the top political levels, petty corruption itself can in time destroy the integrity of public administration—in addition to imposing significant transaction costs on businessmen and citizens. Moreover, corruption rarely

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<sup>2</sup> Extrapolated from a 1960–1985 comparison made by Sheng-Jin Wei, “Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?” Harvard University and the National Council of Economic Research, p. 10.

stands still, and shows a tendency to increase over time. It is in this sense that the analogy with cancer is apt—since the disease only gets worse through time, by a competitive dynamic that leads otherwise honest employees and officials to conform to a culture of bribery. When corruption becomes accepted as normal (“everybody does it”); when the noncorrupt minority of civil servants are viewed as foolish rather than honest; and when bribery even comes to be considered necessary “grease for the machine”—efficiency and effectiveness in government become impossible, the poor and powerless suffer the most, and development is gravely hampered. Regrettably, this appears to be the current situation in Burundi.

## 2. Corruption in Burundi: General Perception and Some Evidence

### THE OVERALL PERCEPTION OF CORRUPTION IN BURUNDI

As a Burundian government official has recently remarked: “Burundi used to be clean. Now, it is not Congo, but is well on the way.” Until the early 1990s, Burundi—for all its serious internal problems—performed economically somewhat better than most sub-Saharan African countries, partly owing to its better functioning public administration and limited and predictable levels of corruption. Hence, the problem of corruption in Burundi cannot be divorced from the turmoil and uncertainty generated by the prolonged civil conflict that began in 1993. As Transparency International put it, civil war has “disastrous consequences for the spread of corruption into every aspect of the public and private sectors.”<sup>3</sup> Peace and reconciliation are therefore a necessary condition for arresting the downward spiral—but are not sufficient.

In the Transparency International corruption perceptions rankings for 2005, Burundi scores a very low 2.3 on a scale of 1 (most corrupt) to 10 (least corrupt).<sup>4</sup> (The greatest government integrity is perceived to be in Iceland, with a score of 9.7, and the distinction of the most corrupt countries in the world, with a score of 1.9, goes to Bangladesh and Chad.) Because 2005 was the first year in which Burundi was included in the TI survey, there is no clear basis of comparison with earlier years. As noted, however, most knowledgeable observers agree that at the start of the 1990s official corruption did exist, but was limited, predictable, and generally considered disreputable. Some private businessmen in Bujumbura have estimated that “informal commissions” in those days ran between 3% and 5% of the contract price or value of works, on average. Today, the same businessmen agree that corruption in Burundi has become pervasive, acute, and less than predictable—with the “bribe tax” varying between 25% and 60%. Such anecdotal information from a small number of persons is not statistically reliable, of course, and a systematic survey is needed, but the size of the difference from 15 years ago cannot be discounted. Moreover, petty

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<sup>3</sup> *2005 Corruption Perceptions Survey*, italics added.

<sup>4</sup> See the TI website, [www.transparency.com](http://www.transparency.com). The TI index measures the degree to which corruption is perceived to exist among a country’s public officials and politicians. It draws on several surveys of opinions of business people and analysts, and covers 159 countries (no reliable data are available for the other countries).

corruption is reportedly everywhere, making it very rare for citizens to obtain government services to which they are entitled, or licenses and permits, without paying bribes. As a result, corruption has become accepted and is thus no longer truly disreputable. A culture of impunity has emerged.<sup>5</sup>

The good news from the TI survey, such as it is, is that despite the 12 years of intense conflict Burundi is still viewed as slightly less corrupt than 12 other African countries, including two of its neighbors (Kenya and Congo DR, both with an index of 2.1) and the continental powerhouse of Nigeria, ranked as the sixth most corrupt country in the world at 1.9. (Rwanda and Tanzania, Burundi's other two neighbors, score respectively 3.1 and 2.9. In particular, complaints about corruption in customs are much less frequent in Rwanda than in Burundi). The bad news is that only 23 countries in the world are perceived as more corrupt than Burundi. (In any event, once the corruption perception index is lower than 2.5, minor differences disappear into insignificance.) The general perception, then, is that Burundi has become one of the most corrupt countries in the world. This perception is unfortunately supported by the evidence that exists, as limited as it may be.

## **SOME CONCRETE EVIDENCE**

The dialogue leading to this paper has shown that corruption in Burundi is not uniform across the government, and produced clear indications of the areas in which corruption problems are especially widespread, as well some information on the quantitative dimension of the issue. These areas, as in most other countries, are public procurement, customs, and direct taxation. (The judicial system, too, is in a state of thorough disrepair, and drastic improvements are important and urgent—although this paper cannot delve into the complexities of this problem.)

### **Procurement**

In public procurement, Burundi's problems are mainly in bulk purchases of goods, as corruption in large public works is limited (although not eliminated) by the direct oversight of the external donors who fund most projects in the country, owing to the extremely limited domestic resources of the government. In purchase of goods, the extent of the problem is illustrated by the remarkable fact that, in 2004, four out of five contracts were on a sole-source basis— notwithstanding legal provisions specifying in detail the specific circumstances in which sole-source procurement can be permitted.

The usual pretext adduced for sole-source contracting is the urgency of the purchase. However, a majority of sole-source contracts show significant time delays, in some cases longer than three months—which would be plenty of time to use normal competitive procurement procedures. The

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<sup>5</sup> The most extreme case is the disappearance of large sums from the state treasury on the occasion of the transition from the interim government to the newly elected government of President Nkurunziza in August 2005. Rarely does one find in developing countries litmus tests of a government's efforts in the fight against corruption. Resolute disposition of the August 2005 case is such a litmus test of the seriousness with which the new government views the theft of public moneys, and its capability to deal with it and with those responsible.

law also prescribes that sole-source procurement must be limited to a maximum contract value of Fbu5 million. However, sole-source contracts of a value of hundreds of millions of francs are the norm, not the exception. Gross overbilling of the government is the immediate result—with documented cases of goods and services for government use purchased for between 10 to 20 times the international price—and repeated purchase contracts given to the same individuals.<sup>6</sup> The indirect result is the draining away of financial resources for operational and maintenance expenditure needed to perform the ordinary functions of government.

Even when, formally, procurement is on a competitive basis, the rules can be easily sidestepped. Typically, the mechanism works as follows. An “understanding” is reached between the public and the private “partners” to supply a certain amount of a commodity at the (excess) price to be officially charged; the corresponding expenditure is then introduced by the public “partner” into the government budget; the request for proposals is subsequently tailored in such a way as to make the private partner appear most qualified; and is launched with a timetable too short to give potential competitors enough time to submit their bid—except of course for the private partner, who had months of advance warning.

Because the procurement law and the formal procurement procedures are generally adequate, the main recommendation on how to fight corruption in procurement is self-evident: *Enforce the law*. Equally evident is the locus of responsibility for doing so: the Ministry of Finance, which has the legal authority to approve all state expenditure. The Ministry of Finance is also the sole organ which can short-circuit, through improved scrutiny of expenditure proposals, the procurement corruption scenario described above. Finally, the budget documentation should systematically include a report on questionable major bulk purchases made during the previous fiscal year.

## Taxation

In domestic taxation, the problem of corruption is masked by the apparently reasonably good “fiscal marksmanship” on the revenue side (i.e., the close correspondence between revenue actually collected and revenue forecast at the beginning of the fiscal year).<sup>7</sup> The forecasts of tax revenue appear reliable both in relation to previous years’ revenue, and in relation to tax revenue actually collected. However, the right question when looking at corruption is whether or not actual revenues are reasonably close to the *potential* revenue that should be collected based on the tax rates and the profile and number of taxpayers. At the moment, the Tax Department does not even know the exact number of taxpayers. Such ignorance, whether or not deliberate, is very convenient, as it prevents the estimation of potential tax revenue and hence permits avoiding the question of whether actual revenues are anywhere close to the potential—and, if not, why.

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<sup>6</sup> Specific and documented examples have been provided to the author, but it would not be appropriate to relate them in this paper.

<sup>7</sup> As shown by Ministry of Finance data on budget estimates and outturns, and confirmed by IMF and World Bank analyses.

The key measure of a single identifying number for taxpayers has already been introduced, and offers the potential of linking tax with customs information (provided that the software is “friendly” and reliable, and that strong oversight is exercised). The next step would be to conduct a comprehensive census of all taxpayers and, on that basis, re-estimate potential tax revenue—with assistance from the IMF. The results should be made public, with disaggregation of the potential/actual revenue gaps between the different forms of taxation and between different groups of taxpayers—focusing at first on the large taxpayers.<sup>8</sup>

## Customs

In customs, the main tried and true corruption techniques are reportedly falsification of certificates of origin; deliberate misclassification of the imported item into a lower-tariff category; abuse of exemptions and exonerations; and outright manufacture of false documents.<sup>9</sup> Even a cursory look at the volume of imports and their composition shows the large undershooting of customs revenue officially collected. It is sobering to note how this particular set of problems was already present before the civil war. As the Ministry of Finance stated in 1988: “The [tariff] reform has the merit of simplicity and coherence. However satisfactory it may be intellectually speaking, this theoretical structure is accompanied by practices that tend to rob it of substance: it is a question of exemptions policy, which could seriously compromise the fiscal role of tariffs.” (*Politique sectorielle du Ministère des finances*, Bujumbura, May 1988.)

Avenues of improvement may include reducing individual “discretion” by greater use of electronic technology and better training of customs officials. However, the introduction of information technology without complementary changes in the incentives framework has proven to be ineffective, not only in customs,<sup>10</sup> but in public sector management in general. The same is true of better training, when the issue is not insufficient skills but dishonesty combined with inadequate oversight. In turn, changes in the incentive framework may include giving more authority to lower-level customs officers to make routine decisions in order to limit the excessive involvement of higher-level officials. A bonus system linked to actual customs duties collected might perhaps be considered. However, these measures, too, have a spotty record of success, and carry risks as well as potential benefits. In particular, bonuses (like all tax farming) generate abuses of power and destructive competition for the jobs to which they are attached, thus eroding government legitimacy. Cleaning up customs has proven a tough challenge in every country. Careful consideration is needed before any action is taken, and a package of modest mutually reinforcing measures is probably more effective than searching for a “magic bullet.” Also

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<sup>8</sup> The possibility of conducting a taxpayer census as a subset of the general census included by the government in its Emergency Program should be considered – unless doing so would delay a taxpayer census, which can easily be conducted in itself if there is political will to do so.

<sup>9</sup> Underinvoicing of imports, a standard technique for evading import duties, does not appear to be a major problem, probably because the exchange rate of the Burundian franc is not significantly out of line with market conditions.

<sup>10</sup> Even the UNDP ASYCUDA customs system, widely praised as good practice and now used in 80 countries, has been highly effective in one third of the countries that use it and wholly or partly ineffective in the remainder.

recommended is to organize a regional meeting, with participation by senior officials from the neighboring countries, dedicated entirely to the subject of corruption, in each country as well as in regional trade transactions. However, the most effective anticorruption measure would be to drastically reduce the exemptions regime and make the tariff rate structure more uniform.

## Local Government

One should not look for irregularities only in central government. In Burundi, as in most other countries, local governments and municipalities are also a source of the problem. The magnitude of corruption may be less, but its impact on the everyday life of citizens may be greater. For example, it has been estimated <sup>11</sup> that in the municipality of Bujumbura the budgeted allocations for “travel,” “information gathering,” and “entertainment” have been raised by 126%, 66%, and 252%, respectively, between the 2004 and 2005 budgets. It is legitimate to question not only whether such increases were justified, but also whether they were in fact expended for those purposes. As another example, it is an open secret that in Bujumbura District drivers’ licenses are sold for cash, with the illegal proceeds destined for unknown purposes. (If such practice is widespread, possession of a driver’s license no longer says anything about the person’s ability to drive. Under these circumstances, one might even consider abolishing the official driver’s license requirement and allowing anyone older than a certain age to drive.)<sup>12</sup> In Burundi, the issue of corruption in local government is given added emphasis by the current efforts of donors working in community projects.

Because only sparse anecdotal information exists, the only recommendation here is that the corruption survey recommended in Section 3 below include some questions on local government, and also be distributed in a random sample of municipalities.

## Petty Corruption

As noted earlier, bribes to obtain most services, permits, certifications, or licenses are now widespread in Burundi. The issue of petty corruption cannot be tackled successfully by prosecuting a few small malefactors, but must be addressed in the context of a comprehensive reform of the civil service—which would provide a living wage to lower-level employees and adequate market-related compensation to higher-level officials. However, doing so in isolation would simply produce better-paid crooks. Thus, a salary review and increase must be preceded or at least accompanied by credible strengthening of the performance monitoring and accountability mechanisms, with swift and certain penalties for malfeasance.

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<sup>11</sup> See the article by Nestor Ndikumana in *Le Renouveau du Burundi*,” 23 August 2005.

<sup>12</sup> Lest such an action be considered radical or fanciful, note that Belgium had such a system well into the 1960s, with a road accident rate no higher than in other European countries.



# 3. Dealing with the Problem— Adapting Tested Approaches

There is no magic remedy for “curing” corruption in Burundi, and no guarantee that progress in any one area will be irreversible. However, as the experience of other countries has demonstrated, the essence of the vicious circle of corruption—low investment—low growth, lies not in its “viciousness” but in its circularity. Research has also found a “virtuous cycle,” in which improved institutions lead to lower corruption, which leads to economic growth, which fosters further advances in institutional integrity.

The generally effective approaches to anticorruption follow the example of the Hong Kong independent commission against corruption,<sup>13</sup> which emphasized three concurrent efforts—awareness-raising, prevention, and enforcement. Like the three legs of a stool, each of the three efforts is necessary, none is sufficient in the long run. Prevention and enforcement cannot succeed if corruption is viewed as normal or inevitable; awareness and strict enforcement cannot be effective if the opportunities for corruption are too many and too easy; and limiting opportunities for corruption combined with awareness may be equally ineffective if enforcement is lax or nonexistent.<sup>14</sup>

In Burundi, the above model of “awareness/prevention/enforcement” needs to be adapted and expanded into six major avenues of reform and intervention: (1) find the facts; (2) disseminate the knowledge; (3) prevention through streamlining of the regulatory framework; (4) strengthen

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<sup>13</sup> The commission was highly successful, and in a few years in the 1990s turned Hong Kong from one of the most corrupt administrations to one of the most honest—in Asia second only to Singapore.

<sup>14</sup> There are major exceptions. “Stroke-of-the-pen” reforms abolishing key controls (e.g., on prices and exchange rates) can instantly eliminate a major opportunity for corruption. For example, unifying dual exchange rates removes all possibilities to obtain foreign exchange at the official rate only to sell it on the black market at a higher rate—the single quickest and most effective form of corruption. Or, as argued later in this paper, there are times when enforcement is clearly the urgent priority. Beyond the immediate impact, however, concerted action on all three fronts is necessary if official corruption is to be reduced across the board in a sustainable manner.

enforcement; (5) build the accountability institutions; and (6) improve public sector management. The first five avenues are discussed below.<sup>15</sup>

## FINDING THE FACTS

Having placed such reliance on the TI ranking, it is time to recall that the TI index does not have an objective and quantitative basis, but is exclusively a perceptions index—heavily dependent on the “image” of the country, and thus difficult to interpret in the context of a region that has suffered such tragedy and problems for more than a generation.

Despite the knowledge of the main loci of corruption in the public sector of Burundi, the anecdotal information related below cannot be a sufficient basis for effective anticorruption efforts. Systematic and fact-based evidence must be collected, on a disaggregated basis for the major sectors. Making an urgent effort at unbundling the phenomenon in order to pinpoint the *specific* sources of irregularities, theft, and bribery is thus important. Moreover, while ordinary laws exist to deal with simple theft and other felonies, a more comprehensive legal basis would be useful. Burundi can benefit from the provisions of the recently -ratified UN Convention Against Corruption (see Appendix A for a summary). Burundi has just deposited, on March 10, 2006, its instrument of accession to the UNCAC.<sup>16</sup> Accordingly, only a general recommendation to conduct a detailed corruption survey covering major areas of central government activity, as well as a sample of municipalities, can be advanced. An outline of a simple survey is presented in Appendix B—merely as a starting point, which would need to be carefully tailored to the specific circumstances of Burundi. The survey would serve to establish an initial database on which subsequent surveys could track progress in anticorruption or the lack of it, and its results should be made public.

## DISSEMINATION AND AWARENESS

If citizens are not aware of their rights vis -à-vis the public administration, they will not demand them and are unlikely to receive them. Awareness, as mentioned earlier, is thus one of the three fundamental pillars of anticorruption. It is neither realistic nor desirable to rely on the public administration itself to make effective efforts at raising the public’s awareness of the problems of official corruption and the variety of methods to combat it. The awareness and dissemination agenda must be largely implemented by civil society—and primarily by advocacy NGOs, owing to their independence and direct contacts with the population. Sunlight kills germs, and those affected by abuse and misuse of public funds know all too well where those abuses come from—if they are only asked for their opinion.

A few but vocal and vigorous NGOs pressuring for public integrity have arisen in the last few years in Burundi. It is nothing short of admirable that, under the extremely difficult circumstances

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<sup>15</sup> As noted in the preface, of the three main components of public sector management, public financial management reform is addressed in a separate issues paper, and the other two components—organizational structure, and the civil service—are touched on in the overview paper.

<sup>16</sup> Of Burundi’s neighbors, Rwanda has signed but not yet ratified the UNCAC. Tanzania has signed and ratified it. DRC has done neither.

and with all the “baggage” from the past, Burundi now enjoys some vital civil society organizations dedicated to the fight against corruption. The most assertive is the Observatoire de la Lutte contre la Corruption et les Malversations Economiques (OLUCOME), which has already organized seminars and workshops to raise awareness of the costs of corruption. Other civil society institutions, primarily the Christian churches and the Muslim Council, with their moral foundation, are also well-placed for dissemination and awareness raising.

The critical institution for anticorruption dissemination and awareness, however, is the all-important media. The small newspapers in Burundi are showing signs of independence and critical analysis—including on corruption issues—and, along with radio, can be invaluable in pursuing the awareness dimension of the anticorruption agenda. Efforts should be made to improve official transparency, without which genuine accountability is impossible. However, transparency is more than mere provision of documents and information, and requires openness *plus* outreach and dissemination. There is a strong complementarity, therefore, between the work of the media and internal reforms to open up government. External assistance for capacity-building in Burundi’s media would be timely and important.

For anticorruption activities of NGOs, however, it is not necessary to urge external donors to provide support. The problem is different. Because of the evident utility of such external support,<sup>17</sup> aid to Burundi’s NGOs is coming from a plethora of sources and in a variety of overlapping ways. The perennial challenge of donor coordination must be met in all areas of assistance, naturally, but is especially urgent at this time for aid to NGOs for anticorruption and good governance activities.

Against this background, three recommendations can be made:

- Provide external assistance to strengthen the technical and financial capacity of the media—without impinging on their independence.
- In some countries, libel laws have hampered the necessary publicity to be given to instances of major corruption and the names of those allegedly involved. The existing legislation on libel and defamation in Burundi should be carefully reviewed to assure that it provides the necessary protection of individual rights without also providing a cover for dishonest officials.
- Mount a special effort at coordinating aid to NGOs for anticorruption activities to ensure that NGO efforts are not suffocated by well-meaning outsiders, or entangled in a web of disparate activities, or compromised by the emergence of profiteering entities masquerading as NGOs to get aid money.

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<sup>17</sup> Along with the legal impediments, until the peace agreement, to providing official aid to the government.

Many developing countries have introduced, with good results, a system of “report cards” from periodic surveys of citizens grading the performance of different government agencies.<sup>18</sup> It could be useful to begin a reflection on introducing such a system in Burundi, starting in a very limited way by obtaining simple feedback on one or two basic services. However, report cards can only have a positive effect when the public administration already has the resources, incentives, and flexibility needed to respond to public criticism.<sup>19</sup> Hence, until a thorough rebuilding of the administrative apparatus has taken place, citizens’ feedback can serve to track the rough progress of anticorruption initiatives, but cannot be used as the main stimulus to spur the efficiency and effectiveness of different government agencies.

## PREVENTION: SIMPLIFYING THE REGULATORY FRAMEWORK

### The Costs of Excessive Regulation

Effective regulation to protect the public interest, foster competition, and look after public health, security, and safety is a central function of government, without which society cannot function and citizens cannot be protected. However, especially in countries with weak accountability mechanisms, a complex and opaque regulatory framework is the largest single source of corruption—where every single “stop” in the regulatory process is also an opportunity for the “regulator” to extort a bribe. In addition to the risk of corruption inherent in excessive and opaque regulation, the cost of excessive regulation has four other main components:

- Costs to the government of enforcing the regulation (**if** it is enforced);
- Administrative and paperwork costs for businesses and citizens—this cost is estimated at almost 2% of GDP in OECD countries, and much higher in developing countries;
- Indirect costs to the economy in the form of reduced transparency, slower innovation, and lower investment; and
- Especially heavy costs for the poor and for people without “connections.”

Broadly speaking, the quality of regulation is inversely related to the volume of regulation. This is largely because, other things being equal, enforcement becomes more and more difficult the greater the number of rules to be enforced. Also, the appropriate extent of regulation must be assessed relative to the government’s administrative capacity, which suggests fewer and simpler regulations in developing countries. In general, the effectiveness of enforcement is also a function of the appropriateness of the rules themselves. Unrealistic regulations, petty nuisance rules, and either trivial or draconian penalties, lead to weak enforcement, widespread evasion, and reliance on “informal” transactions.

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<sup>18</sup> The system, associated mainly with the name of Samuel Paul, one of its principal architects, was first introduced in Bangalore, the capital of the Indian state of Karnataka in the early 1990s, and later imitated elsewhere.

<sup>19</sup> This is even truer of “citizens’ charters,” which are, at best, a cosmetic formality without any impact until and unless the public administration has the capacity to provide efficient and effective public services in accountable ways. It will take many years of sustained economic and administrative reform before Burundi’s public administration will reach such a state.

## Where Does Burundi stand?

Health, safety, environmental and other social-purpose regulations number in the tens of thousands, and no generalization or comparison with other countries is possible, whereas economic regulation is focused on fewer measures. Table 1 compares what data are available on a number of key economic regulations and restrictions in Burundi with data on neighboring countries, on “good-practice” African countries (Botswana and South Africa), and on the OECD group of developed countries (See the note to the table for an explanation of the indices.)

**Table 1**

*Selected Economic Regulations by Area Regulated, Burundi and Other Countries, 2005*

	Burundi	Rwanda	Kenya	Tanzania	Congo DR	Botswana	South Africa	OECD Avg.
<b>STARTING A BUSINESS</b>								
No. of procedures	11	9	13	13	13	11	9	7
Time (days)	43	21	54	35	155	108	38	24
Cost (% of pcY)	180	220	230	190	510	35	10	11
<b>LABOR RIGIDITY</b>								
Hiring	67	56	33	67	100	11	56	50
Employment conditions	69	59	28	39	90	30	52	50
Firing	60	60	30	30	70	40	60	28
<b>ENFORCING CONTRACTS</b>								
No. of procedures	47	27	25	21	51	26	26	17
Time (days)	367	...	255	127	414	56	207	231
Cost (% of debt)	33	43	41	35	257	25	12	9
<b>CLOSING A BUSINESS</b>								
Time (years)	4.0	...	4.5	3.0	5.2	2.2	2.0	2.1
Cost (% of assets)	18	...	22	22	22	14	18	10

Note: Some indices are self-explanatory, such as the number of steps required to start a business, or the cost. (Cost is expressed in relative terms, as a percentage of per capita national income or percentage of the contentious debt.)

Other indices are on a scale of 0-100. Ratings in labor rigidity are in this category; the higher the index the greater the rigidity. The methodology has weaknesses, and frequently produces large shifts from year to year for the same country. However, it is the best that one can elaborate for a large cross-sectional survey, including that the primary information is obtained from a number of experts in each country rather than from armchair calculations. At the same time, dependence on a few experts raises the issue of reliability. By comparison, the World Bank's Business Environment and Enterprise Performance Survey (BEEPS) surveys about 14,000 enterprises every three years, conveying, among other things, a sense of the relative importance of different regulatory constraints. Unfortunately, at this time the survey is conducted only in countries of Eastern Europe and the former Soviet Union.

SOURCE: Extracted and adapted from World Bank, *Doing Business in 2005*.

Where Burundi does comparatively “better” than neighboring countries is in the area of starting a business and the cost of enforcing contracts. Despite the greater number of procedural steps required, and hence the time delay, contract enforcement costs about one third of the contested debt in Burundi. This compares favorably with both DRC and Kenya, let alone with the worst

case of Malawi, where enforcing a contract costs one third **more** than the value of the contested debt itself—hardly an inducement for creditors to try to recover a debt through the formal system—or the longest contract enforcement delay found in Guatemala, four *years*. However, the picture presented by Botswana and South Africa, where contract enforcement takes five and nine months respectively, at a cost of only 25% and 12% of the debt, shows the long way Burundi has to travel toward speed and efficiency in enforcing contracts.

Conversely, employment procedures are significantly more rigid in Burundi than in other African countries, again, except for the DRC. (With an index of 80, Angola is the country with the greatest restrictions on terminating employees). This is not a major concern in the current depressed conditions of the country. However, as and when the economic recovery picks up steam, these employment rigidities are likely to hamper job creation, as well as provide a wide opening for petty corruption. In particular, while making it easier to fire employees appears to be a perverse sort of advantage, it must be remembered that employers tend to *hire* people more easily if they know they can let them go with equal ease. (Good employment conditions are not much help for those who don't have a job.) The historical rationale for such labor and employment rigidities in Burundi is well known. However, to the extent that ethnic and regional hostilities are on the wane, the time has come for a relaxation of hiring, employment conditions, and termination rules.

Accordingly, the recommendation may be advanced to conduct a fresh review of the regulatory framework for employment, with a view to identifying obsolete rules or possibilities for simplification and greater clarity. Also to be examined would be Burundi's current regulations for starting and closing a business, areas where data are unavailable or have been uncollected for some time. The current depressed economic conditions of the country, obviously, suggest giving priority to the simplification of procedures for starting a business, with regulatory simplification in the area of bankruptcy to follow at a later time. For both reviews, private sector participation in the reviews would be necessary, assuring, however, much wider representation than only individuals currently in the small circle of established large businesses in Bujumbura. Appropriate participation by the unions and by civil society should also be assured.<sup>20</sup>

Finally, although revisions of the tariff and external trade regime have implications much broader than even the issue of corruption, it is worth noting that two important techniques for evading customs duties—misclassification of imports and unwarranted exemptions and exonerations—would be eliminated if tariffs were made uniform across import categories and exemptions were substantially reduced.<sup>21</sup>

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<sup>20</sup> Petty corruption also originates, of course, from complex and opaque regulations in health, safety, etc. Considerations of practicality and capacity, however, suggest leaving to a future time reviews of regulation other than in the economic area.

<sup>21</sup> See the paper by Grant Taplin on these issues (one of the papers in this series).

## ENFORCEMENT

Notwithstanding all of the above, the crux of the corruption problem in Burundi at this time is not found in excessive opportunities for corruption, or in insufficient awareness of the problem—but in the development of a *culture of impunity* that makes dishonesty costless and honesty unrewarded. At this particular stage of Burundi’s post-conflict recovery, enforcement is by far the weakest of the three legs of the anticorruption stool. The urgent priority therefore is neither regulatory simplification nor greater awareness—although these efforts are useful and should begin to be carried out—but better enforcement.

As shown by the international experience in law enforcement and anticorruption, the first rule of enforcement is that the swiftness and predictability of the penalties are far more effective than their severity. Implementing this principle through revision of legislation and ordinary law enforcement is a long-term challenge, in view of the weakness and inefficiency of the judiciary. However, administrative solutions already exist (e.g., termination of employment with loss of pension rights, demotion, and other disciplinary measures, as well as less contentious but equally effective actions such as redeployment or transfers to less “profitable” locations). All of these enforcement measures are currently available in Burundi’s administrative toolkit. They simply need to be used. Once again, political will and leadership is a prerequisite.

Second, it is essential to keep in mind that corruption *always* has two sides. Effective anticorruption enforcement must target the bribe-payer as well as the bribe-receiver. By analogy to the successful efforts made in other countries to limit prostitution by prosecuting the customers as well as the providers, robust enforcement of anticorruption must include appropriate sanctions for the bribe-givers. Even when the bribe is coerced by the public official, the possibility of sanctions on the bribe-giver helps honest businessmen and citizens to resist the pressure to bribe and contributes, in time, to moralizing the system. In this respect, even without criminal penalties for bribe-givers, public opprobrium (e.g., by making public the names of the offenders) has been shown to have a salutary effect.<sup>22</sup>

Third, the blatant and pervasive nature of official corruption calls for placing the right persons in the right leadership jobs and with the right incentives. (The overview paper recommends the creation of a “senior executive service” to permit offering appropriate compensation to senior public managers without major macroeconomic repercussions.)

Fourth, it does no good to the government credibility to catch and penalize a few “small fish” when large-scale corruption goes unprosecuted and those responsible are not held accountable. On the contrary, establishing the credibility of anticorruption efforts—and thus eliciting public cooperation with them—requires that the biggest malefactors be swiftly and publicly sanctioned.

Finally, anticorruption responsibilities must never be entrusted to the police. As argued in the next section, an independent and robust structure—separate from the other organs of government—is critical.

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<sup>22</sup> This is sometimes referred to as the “Hall of Shame,” as contrasted with the Hall of Fame for professional sports in the United States.

The following recommendations may be advanced:

- Adopt an anticorruption law embodying, among other things, the above principles as well as provisions derived from the vast experience of other countries but suitable to Burundi's specificities. (A draft of such a law has already been prepared by the anticorruption civil organization OLUCOME.)
- Introduce the legal obligation of declaration of assets for all political leaders and all government officials above a certain level. Even though major offenders can stay under the radar by keeping or investing their gains abroad, in many countries asset declarations have proven a useful brake on official corruption. To the extent that administrative capacity may be insufficient to administer the system, this function is well suited to outsourcing to an international company with expertise in this area, and such outsourcing is in turn an excellent candidate for external funding.
- Formally identify the government positions "at risk," and introduce a special procedure for periodic assessment of the living standards of the incumbents of those positions. Among other officials, customs inspectors and tax auditors should routinely be subject to these assessments, and their presumptive income—as estimated on the basis of the assessments—compared with their declared income. Workable procedures have been established in this regard in many other countries, including the United States, and can be usefully applied in Burundi—again, with external assistance. Even when the evidence is insufficient to prosecute for bribery or other forms of corruption, such procedures can reveal tax evasion.
- As a corollary to the previous recommendation, subject tax evasion to criminal penalties and not merely civil sanctions such as fines, which would only raise the implicit bribe tax.
- Put in place measures to give "whistleblowers" easy and safe access to the public—as for example through the "green phone number" OLUCOME has recommended—and to protect these persons from sanctions or reprisals.<sup>23</sup>
- Finally, consider declaring a time-bound amnesty for corruption and bribery. Such amnesty could be general, but should not include the most egregious cases of corruption which should be prosecuted vigorously.

To return to the key issue, none of these measures will have any impact if they are not supported and given priority by the highest levels of government. A test case in this respect is the handling of the disappearance of vast sums from the state treasury just prior to the inauguration of the new government following the election of President Nkurunziza in August 2005. New laws, surveys, report cards, asset declarations, workshops, etc. are not needed here. Plain theft is a criminal offense in Burundi as it is in any other country in the world. The simple and uncomfortable

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<sup>23</sup> The term "whistleblower," by analogy to the referee of sport matches, denotes civil servants who become aware of a violation of the rules, and "blow the whistle" by informing the public when they are unable to have the situation corrected by the mechanisms internal to the organization.

question which must be raised is whether this blatant instance of grand corruption will be prosecuted with the same vigor to which common petty thieves are subjected.



# 4. Strengthening the Public Accountability Institutions

## **AN ANTICORRUPTION AGENCY FOR BURUNDI?**

In the final analysis, in addition to support from the top political leadership, anticorruption efforts will succeed or fail on the strength of the institutions and individuals charged with implementing them. The valuable work of NGOs, such as the OLUCOME, the media and other civil society entities has been noted earlier. However, just as internal accountability within the public administration is insufficient by itself to address corruption problems, greater external accountability vis-à-vis the public is futile without strong administrative mechanisms to receive the information and act on it.

Improvements in public financial accountability, discussed in a separate issues paper, will be needed to restore integrity in public administration.<sup>24</sup> Also, civil service reform, discussed in the overview paper, will have to be a necessary component of a comprehensive anticorruption strategy. Aside from measures in those two areas, action to put the leadership of anticorruption efforts in the right hands appears timely and necessary in Burundi.

With the emergence of the consensus about the pernicious impact of official corruption, many developing countries established anticorruption agencies or commissions. The record of such agencies throughout the world is spotty—some have functioned well, most have functioned imperfectly or not at all.<sup>25</sup> When the experience is examined in detail, however, the ineffectiveness of some of these agencies and commissions can usually be traced to the absence of one or another of the five basic requirements for their operations: (1) support from the highest political level; (2) genuine independence; (3) clear mandate and appropriate authority, including investigative powers; (4) adequate financial and other resources; and (5) competent and honest leadership.

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<sup>24</sup> In particular, external audit is a capstone of public financial accountability. In Burundi, following the continental European model, external audit is exercised through the Cour des Comptes. It is noteworthy that the Cour des Comptes has been established and is functioning. However, it still needs substantial capacity building and continuous support for its independent effectiveness.

<sup>25</sup> In some cases, their wings were clipped just when they began to function effectively, and obviously for that very reason. For example, in the 1990s Pakistan's independent "accountability commission" was reduced to a "cell" in the Prime Minister's office, and its authority was sharply curtailed, shortly after it successfully prosecuted major corruption cases and recovered vast ill-gotten gains.

In Burundi, forming a new anticorruption “commission” may not be necessary, as there is already in place an institution potentially capable of leading the effort: the office of the Inspector General of Finance. In most countries, the function of financial inspection is exercised by the Ministry of Finance—sometimes in the ministry itself, and sometimes through financial controllers placed in the line ministries but responsible to the Ministry of Finance. In Burundi, the Inspectorate General of Finance is located in the Ministry of Good Governance. Although at first sight this looks anomalous, the historical and contextual reasons for this unusual arrangement are convincing. The recommendation is that building the capacity and independence of the Inspectorate General of Finance would be quicker and more effective than creating a new anticorruption commission from scratch.

From all accounts, the office has functioned with vigor, competence, and integrity. However, to be an effective leader of anticorruption efforts, the Inspectorate General of Finance must still meet the other four requirements mentioned above. Thus, first, the office would need to be expanded into a broader anticorruption office,<sup>26</sup> and given a clear mandate and investigative authority, as well as the flexibility to make public its findings, whenever it may judge appropriate. Second, it should be made independent of all other organs of regular government, and given full managerial autonomy. Third, the office should be made directly responsible to and report to the highest appropriate level of government—which, in the case of Burundi would appear to be the Vice-President charged with economic and social affairs. Finally, it should be provided with sufficient resources, including a steady and predictable revenue stream.<sup>27</sup>

Given the functional and managerial autonomy of the anticorruption office it is risky to give it prosecutorial and judicial powers in addition to its autonomous investigative authority. On the other hand, the current weakness and low integrity level of the formal judicial system make it very difficult in Burundi to rely on normal judicial processes to tackle official corruption. The suggestion has been made therefore to set up special courts to deal with official corruption issues. This device has potential advantages as well as disadvantages and risks of its own—but deserves to be seriously considered in the context of Burundi, in light of a review of the actual experience in several other countries. Such a review could probably obtain external support. However, as noted earlier, the government is already free to take a variety of nonjudicial actions in response to findings by the anticorruption office. Even before considering appropriate penalties for malfeasance, the first priority is to halt the hemorrhage of public funds and to temporarily disable the bribery circuit. As suggested earlier, much can be accomplished by appropriate publicity and by various administrative actions (e.g., removing the official concerned from its present post, or placing him or her on paid leave). Political will remains the key.

To be effective, the central anticorruption office must also be selective and focus on the major identifiable risk areas in central government. However, as noted earlier, corruption problems are

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<sup>26</sup> Including the duties of the General State Inspectorate, which is currently only a label and a shell.

<sup>27</sup> It is very likely that such a high-level anticorruption office would obtain external financial support to help build its capacity. It is, however, essential that it be designed in a manner suitable to Burundi’s particularities, be fully “owned” by the government of Burundi, and supported openly and publicly by its highest levels – including the President himself.

not limited to the capital city or to central government. It would be premature to suggest how public integrity can be fostered in the other municipalities and rural areas—largely because such actions should be designed, led, and facilitated by the central anticorruption office itself. At the lowest level of administration in the countryside, however, the abashingantahe (councils of village elders) merit a fresh look. These councils have been compromised in the past decades by central government interference, and their credibility has diminished along with the erosion of their independence. With a new legitimate government, and some nascent grassroots initiative in the rural areas, these traditional councils offer at least the hope of again functioning as an instrument of peer-group accountability, partial solution to the weakness of the formal judiciary, conflict-resolution mechanism, and channel for “voice” in local government. Clearly, this cannot happen unless the institution is assisted and encouraged to regain its historic credibility and vital function in rural areas. Any such effort, however, must be mindful of the uncertainties regarding the balance of authority between the abashingantahe and the newly elected local representatives, and should thus attempt to foster cooperation and complementarity rather than risk generating confusion and dilution of accountability. (The issue paper on the linkages between agriculture, conflict, and the environment elaborates on this subject.)

## **BEYOND REACTING: THE ROLE OF DONORS IN ANTICORRUPTION EFFORTS**

In the first place, it should be recognized that donors themselves have sometimes caused or aggravated corruption problems in the aid-recipient countries. One of the most questionable practices has been payment of salary top-ups and bonuses for civil servants working on aid-assisted projects, which makes bribery a “respectable” alternative for civil servants not engaged in those projects and eventually destroys the integrity of public administration as a whole. The practice can be understood, if not condoned, when civil service salaries are badly inadequate, and bonuses the only way to elicit committed and serious participation. This is one major reason why anticorruption efforts cannot produce sustainable results in the absence of civil service reform, as recommended in the overview paper. In the meantime, there are alternatives that do not damage public integrity.<sup>28</sup> More often, the sins of donors have been sins of omission—failures to exercise due diligence on aid-assisted contracts (build-operate-transfer schemes have frequently provided openings for major corruption, as have other public-private partnerships in the absence of robust oversight), and closing one’s eyes to the realities on the ground. The most critical role of donors is thus to make sure that, at a minimum, they do not themselves contribute to the corruption problem through the design and implementation of their aid programs practices.

Beyond that, donors can support a variety of activities that will reduce official corruption overtime. First and foremost, they can insist on, and support, stronger accountability, transparency, rule of law and participation—through concrete improvements in one or another mechanism of public management, beginning with the budgeting and personnel management processes. (As argued throughout this paper, anticorruption efforts are too important to be

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<sup>28</sup> One such alternative is a fixed-term contractual arrangement, with market-related compensation but also special requirements for performance, accountability for results, and ease of termination.

pigeonholed, and must be part of all analytical, lending and technical assistance activities.) Donors can also support targeted anticorruption activities, especially in the area of awareness and dissemination, mentioned earlier. In any case, it is essential that the donor agency itself have adequate competence in governance and anticorruption (or make sure to obtain competent advice), and enjoy full support for such delicate interventions from the highest level of its own government.

# Appendix A. United Nations Convention Against Corruption<sup>29</sup>

In December 2000, the UN General Assembly recognized that an effective international legal instrument against corruption (independent of the UN Convention against Transnational Organized Crime), was desirable, and established an ad hoc committee for the negotiation of such an instrument at the Vienna headquarters of the Centre for International Crime Prevention. The resulting UN Convention Against Corruption (UNCAC) was negotiated between January 2002 and October 2003, and was adopted by the General Assembly on 31 October 2003. To come into force, the UNCAC needed to be ratified by 30 countries. The thirtieth ratification having been obtained on December 14, 2005, the Convention entered into force on that date. Highlights follow.

## PREVENTION

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at *both* the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties.

States must endeavor to ensure that their public services are subject to safeguards that promote efficiency, transparency, and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures.

Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement.

Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, countries should promote actively the involvement of nongovernmental and

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<sup>29</sup> See [www.unodc/en/crime\\_convention\\_corruption.html](http://www.unodc/en/crime_convention_corruption.html) for the full text of the UNCAC in all official UN languages, including French.

community-based organizations, as well as other elements of civil society, to raise public awareness of corruption and what can be done about it.

## **CRIMINALIZATION**

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

## **INTERNATIONAL COOPERATION**

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure, and confiscation of the proceeds of corruption.

## **ASSET RECOVERY**

A major breakthrough was the agreement on asset-recovery as a fundamental principle. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and the ill-gotten gains are kept in foreign countries. Reaching agreement on this chapter involved intensive negotiations, as the needs of countries seeking the recovery of stolen assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought.

Several provisions specify how assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property is to be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property is to be returned subject to provision of proof of ownership or recognition of the damage caused to the requesting state; in all other cases, priority consideration is to be given to returning confiscated property to the requesting state, to returning such property to the prior legitimate owners or to compensating the victims.

Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending a message to corrupt officials that there is no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges state parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, the article provides *inter alia* that "In

matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties."



# Appendix B. Sample Format of Simplified Corruption Survey for Burundi.<sup>30</sup>

**Response (%)**

**1. How bad is corruption in Burundi?**

Very bad	
Bad	
Moderate	
Not so bad	
Nonexistent	
Don't know/no response	
Total	100.0

**2. Is corruption in Burundi worse than in other regional countries?**

Much worse	
Worse	
About the same	
Better	
Much better	
Don't know/no response	
Total	100.0

**3. Single Major Problem of Doing Business in Burundi**

Insecurity	
Political instability	
Bureaucratic red tape	
Corruption	
High taxes	

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<sup>30</sup> Adapted from various sources, mainly Robert. Beschel's "Case Study on Uttarstan," World Bank, 2000.

**Response (%)**

Poor infrastructure	
Other (indicate)	
Total	100.0

**4. Power/Electricity - Perception of corruption**

Very corrupt	
Somewhat corrupt	
Not corrupt	
Don't know / can't say	
Total	100.0

**5. Telephone department - Perception of corruption**

Very corrupt	
Somewhat corrupt	
Not corrupt	
Don't know / can't say	
Total	100.0

**6. Customs - Perception of corruption**

Very corrupt	
Somewhat corrupt	
Not corrupt	
Don't know / can't say	
Total	100.0

**7. Income tax - Perception of corruption**

Very corrupt	
Somewhat corrupt	
Not corrupt	
Don't know / can't say	
Total	100.0

**8. Municipality - Perception of corruption**

Very corrupt	
Somewhat corrupt	
Not corrupt	
Don't know / can't say	
Total	100.0

**9. Telephone – Personal experience of corruption (direct or of friends/relatives)**

Very corrupt	
Somewhat corrupt	

**Response (%)**

Not corrupt	
Don't know / Can't say	
Total	100.0

**10. Power/Electricity - Personal experience of corruption (direct or of friends/relatives)**

Yes	
No	
Total	100.0

**11. Police/Prisons - Personal experience of corruption (direct or of friends/relatives)**

Yes	
No	
Total	100.0

**12. Customs - Personal experience of corruption (direct or of friends/relatives)**

Yes	
No	
Total	100.0

**13. Income tax - Personal experience of corruption (direct or of friends/relatives)**

Yes	
No	
Total	100.0

**14. Municipality - Personal experience of corruption**

Personal experience	%
Yes	
No	
Total	100.0

**15. Time taken to get small business registration**

Less than 1 month	
1-2 months	
2-3 months	
More than 3 months	
Total	100.0

**16. Problems in obtaining necessary forms?**

Yes	
No	

**Response (%)**

Total	100.0
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**17. Nature of problem faced in obtaining necessary forms**

Bribe	
Officers not available at the right time	
Unnecessary harassment	
Can't say	
Total	100.0

**19. Total bribe tax on business (amount of "informal payments" as percentage of value of transaction or investment)**

More than 40 percent	
Between 20 and 40 percent	
Between 5 and 20 percent	
Less than 5 percent	
Can't say	
Total	100.0