FIGHTING CORRUPTION
IN POST-CONFLICT AND RECOVERY SITUATIONS

LEARNING FROM THE PAST

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United Nations Development Programme

CONTENTS

ACRONYMS

ACT	Accountability and transparency
ADB	Asian Development Bank
ACTT	Anti-Corruption Task Team
AusAID	Australian Government Overseas Aid Programme
BDP	Bureau for Development Policy
BCPR	Bureau for Crisis Prevention and Recovery
C4E	Communication for Empowerment
CPA	Coalition Provisional Authority
CSO	Civil society organization
DFID	United Kingdom Department for International Development
DDR	Disarmament, demobilisation and reintegration
DRC	Democratic Republic of the Congo
HOO	High Office of Oversight for the Implementation of Anti-Corruption Strategy
IGC	Iraqi Governing Council
MP	Member of Parliament
NGO	Non-governmental organization
OECD	Organization for Economic Co-operation and Development
RUF	Revolutionary United Front
UIA	United Iraqi Alliance
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNCAC	United Nations Convention against Corruption
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNIOSIL	United Nations Integrated Office for Sierra Leone
UNIPSIL	United Nations Integrated Peacebuilding Office in Sierra Leone
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
VCA	Vulnerability to corruption assessment

ACKNOWLEDGEMENTS

FOREWORD

UN Photo/Khost Office

We are pleased to share with you the first UNDP report entitled 'Fighting Corruption in Post-Conflict and Recovery Situations: Learning from the Past'. Jointly supported by the Bureau for Development Policy/Democratic Governance Group, the Bureau for Crisis Prevention and Recovery and the UNDP Country Office in Afghanistan, this publication illustrates the challenges and opportunities for anti-corruption work in these particularly complex situations.

Corruption has become an increasingly salient issue for societies that are transitioning from war to peace. When it becomes endemic, corruption can derail political and economic transitions, undermine state capacity and legitimacy, exacerbate poverty and inflame grievances linked to conflict. Because the proximate causes and patterns of corruption can vary widely across and within countries, explicit efforts to analyse corruption are critical. The correlation between corruption and lower economic growth and the perpetuation of wartime power structures and the unjust distribution of public resources have made it a key challenge to peacebuilding efforts. Corruption can take a range of different forms, each one with a different impact on

stability and development.

In recent years, there has been increasing attention to the effects of corruption in post-conflict and recovery environments. Various studies have shown that many post-conflict societies return to violence within one decade, and corruption can be considered as one of the factors that contribute to fuelling a conflict and the return to violence. Therefore, overcoming corruption in post-conflict environment is essential to restoring the confidence of citizens in the state.

Post-conflict reconstruction is normally characterized by large-scale injection of resources in an environment where the legal and institutional frameworks are weak, fragile or non-existent and the expertise scarce. Detection of corrupt practices is therefore very low and enforcement difficult. This is worsened by the fact that surviving governing structures have limited oversight over informal and sometimes criminalized sectors. These institutional structures are often transitional in nature, with limited legitimacy, and therefore prone to capture by the privileged elite with access to power and resources.

Most recovery programmes aim at restoring peace and stabilizing the economy through sustainable economic programmes. Corruption poses a threat to these efforts, hence the need to deal with corruption from the onset. The chaos of the wartime economy provides significant opportunities for rent-seeking behaviour as ordinary people resort to corruption to deal with the hardships of war. Private gain becomes undeniably attractive when facing the uncertainties and opportunities of the transitions from war to peace. Post-conflict states with natural resources face more challenges because natural resources are a major source for rent-seeking and therefore create contestations among domestic leaders. Properties and natural

resources that were previously in posses-sion of the state are often privatized during the post-conflict recovery period. In this process, post-conflict fortunes are made, including buying out of armed opposition groups or peace spoilers.

Therefore, the phenomenon of corruption in post-conflict must require a specific approach that takes into consideration the peculiar context of the aftermath of a violent conflict and sensitive to the factors that have contributed to the conflict. The rule of law, transparency and account-ability in the public sector serve not only as means to counter corruption but also as fundamental conditions of good governance.

This report explores the dynamics between corruption and post-conflict recovery processes. It provides insight, based on research in Afghanistan, the Democratic Republic of the Congo, Iraq, Sierra Leone and Timor-Leste, into how UNDP has grappled with the challenges of anti-corruption interventions. It considers when and how corruption emerges as a relevant issue on the political agenda, and how the international community has acted and reacted vis-à-vis corruption and its risks, and what challenges and trade-offs they have dealt with. Finally, it gives suggestions on how to mitigate the iden-tified challenges, and elaborates recom-mendations for entry points for UNDP anti-corruption programming in post-conflict situations.
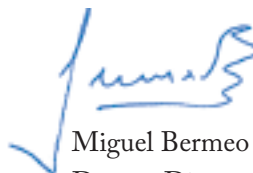
Findings of this report will be used as the basis for a UNDP programming guide to further our understanding of the poten-tials and pitfalls of anti-corruption approaches in post-conflict environments as well as coordination in this field.

It is our hope that this report will first and foremost serve as a comprehensive reference document for our UNDP Country Offices, but ultimately for all developing countries and their partners.

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EXECUTIVE SUMMARY

This report explores the dynamics between corruption and post-conflict situations following violent, widespread armed conflict. It provides insight based on empirical research in five countries (Afghanistan, the Democratic Republic of the Congo, Iraq, Sierra Leone and Timor-Leste) as well as desk research into how the United Nations Development Programme (UNDP) has grappled with the challenges of anti-corruption interventions in post-conflict countries.

Governments in countries that have experienced violent conflict are particularly vulnerable to corruption. Corruption threatens not only governance in general but also the establishment and stability of democracies. When the corrupt excesses of political leaders lead to lack of basic services and economic opportunities, this may generate public frustration which erodes state legitimacy at a time when it is most needed. In the post-conflict environment, especially where democracies are fragile, this may fuel renewed violent conflict.

Factors shaping post-conflict corruption

Four key factors lead to corruption after war ends, as seen in the five countries studied. The first factor is the way the war

ends and how the peace agreement is crafted. The second factor shaping the tendency towards corruption is the legacy of wartime corruption. This often results in the carry-over of agents, networks and practices of corruption that persist and may even challenge state control in peacetime. A third factor is the turmoil that the transitional government faces, or may, in some cases, actually bring about. In these circumstances 'normal' incentives for corruption multiply as people seek ways to get things done. The fourth factor is resource wealth, and how new and often massive influxes of material wealth related to income from natural resources or from foreign aid are managed and distributed. All of these factors are closely correlated with the overall weakness of the state.

Anti-corruption policymaking

Effectively responding to corruption can be difficult because it nearly always requires taking political, economic and social power away from who benefit from the status quo. Therefore, as seen in the five post-conflict case studies in this report, policymaking in corruption as well as other areas does not seem to follow the typical policymaking cycle seen in other developing democracies, and there are many policy gaps and contradictions. Development partners cannot count on today's policy to be in place when imple-

menting a programme tomorrow. There may be no policy, to begin with. In any case, it is clear that political decision-makers are important determinants of post-conflict anti-corruption reform. A country's political players determine what can be achieved programmatically, enabling reform or blocking it sometimes passively.

Anti-corruption programming

Evidence from the five country studies suggests that anti-corruption interventions in post-conflict situations often fail to achieve substantial success, and in many cases fail altogether. Among the important findings is that direct, early attempts to challenge the status quo on corruption may jeopardize elections and provoke a return to violence. Moreover, across the five countries examined, post-conflict transparency and accountability or anti-corruption programming has been more *ad hoc* than integrated and holistic.

In the five post-conflict countries reviewed, donors overwhelmingly chose to fund programmes outside national budgets and preferred to externally manage funds. Donors in post-conflict situations seek to reduce their fiduciary risk through a variety of means, including direct execution of projects by development partners including UNDP, civil society organizations (CSOs) and others, or through the use of pooled funds held in trust accounts. Due to the

tremendous post-conflict capacity gaps and human resource shortages, there is also a tendency to provide technical assistance instead of cash. Technical assistance, as well as service delivery, may be contracted out. If done competitively and transparently, contracting out is likely to result in a cost-efficient way to dispense aid. But this can also undercut the authority and strength of the government. Particularly in the area of infrastructure delivery, contracting out is vulnerable to corruption.

UNDP anti-corruption interventions in post-conflict situations

In the five countries reviewed, the nature of UNDP's anti-corruption interventions has often been determined by the circumstances in which UNDP first entered those post-conflict countries, as well as by the imperatives of the governments in office. As such, UNDP's anti-corruption programming has varied according to the context. What can be said, looking across these five cases, is that UNDP has clearly associated anti-corruption with its governance programming, but has yet to integrate across its other practice areas. In two of the cases, Iraq, and to a lesser extent Afghanistan, UNDP has used the United Nations Convention against Corruption (UNCAC) effectively as an entry point for its anti-corruption programming.

Challenges and implications for engagement

The five countries that are the subject of this report are among the poorest in the world, and in all of them years of conflict have destroyed infrastructure, human capacity and financial resources. They are also collectively emerging from decades of authoritarianism, repression and patronage. Corruption became entrenched during those decades, and it remains pervasive today in all five countries. Four additional challenges stand out. The first is the fragile nature of the post-conflict environment in some, and the ongoing conflict in others. The second is the apparent lack of political support for combating corruption at the highest levels of government. Third is the ambivalent attitude of the international community to the problem of corruption. Fourth is that corruption is simply not considered by the international community to be an issue that needs to be addressed early on and as an integral part of all programming interventions.

In light of these constraints, the experience of these five countries suggests taking a different approach with two broad prongs: (i) mainstreaming anti-corruption, including integrity, transparency, and accountability, into post-conflict state building interventions; and (ii) embedding micro-measures within

and along with key national reforms as early as is practically possible.

A few terms in this approach deserve special attention to clarify how they are conceptualized in this report. In this report, 'mainstreaming' means systematically identifying corruption opportunities and integrating anti-corruption across programme sectors. 'Micro-measures' refers to technocratic interventions that are small in scope but may take place at any level, national or subnational. These may be explicitly or implicitly related to corruption. Examples of micro-measures include inserting a clause in the criminal code, carrying out a national survey or training community health workers to facilitate the formation of self-help groups that organize to access existing government services. And 'embedding' the changes refers to strategically placing them in government initiatives where they will enjoy some relative sustainability and potentially create multiplier effects as they interact with other elements of reform. If successful, micro-measures will potentially result in significant change over time. If unsuccessful, the failures are relatively low profile and should allow other anti-corruption programming to continue. To the extent that both micro- and macro-reforms are feasible, they are complementary and may both be pursued.

Opportunities for UNDP programming in post-conflict and recovery situations

1. **Identify and ensure political commitment** to transparency, accountability and anti-corruption, by carrying out a political economy analysis or mapping. UNDP should be proactive and generate political demand; prioritize politically feasible initiatives; seek win-win situations; and institutionalize reforms. Leadership is key to making these reforms happen, but UNDP should work with the bureaucracy to ensure the institutionalization of reforms, so that they continue after current political leadership moves on. This is particularly challenging but extremely important in a rapidly changing post-conflict environment.

2. **Identify institutional entry points** in the governance framework and create new frameworks, embedding access to information, social accountability and transparency. Establishing the rule of law and security is a fundamental condition for political legitimacy, democratic stability and peace. To that end, UNDP should:

   ■ facilitate a shared national understanding of the rule of law and support its development;

   ■ support nation- and state-building;

- indigenize models adopted from outside; and

- match advisers' legal background with the system in-country.

3. **Start early after conflict ends.** While there is no strict chronological order to follow, some reform initiatives help lay the groundwork for others. (Re)establishing the rule of law (as opposed to rule by force and complete lawlessness) and restoring basic service delivery are fundamental to the success of state building. Among the priorities UNDP should consider are:

- building anti-corruption into electoral support;

- mainstreaming transparency and accountability into disarmament, demobilisation and reintegration (DDR);

- ensuring decent pay in the civil service;

- making tax collection transparent; and

- making small inroads that lead to bigger initiatives.

As it focuses on all of these strategies, UNDP should facilitate the setting of national priorities.

3. **Lead by example and build transparency into budget support up front.** For example, UNDP should:

- explore pooled funding and make it transparent;

- provide non-monetary aid to reduce fiduciary risk; and

- coordinate with government when contracting out.

With regard to the last point, governments need to manage or at least coordinate all budget and contracting processes so that service providers do not undermine the consolidation of the state, and/or so the state does not assume that these services are not its responsibility.

5. **Strategically support the development of a variety of non-state groups** as a way to enhance accountability and strengthen the state. The groups need not be oriented towards democratization, anti-corruption or governance per se. One suggested strategy is to link business councils and chambers of commerce with government on initiatives such as removing impediments to business and developing a monitoring system for the national budget.

6. **Build in more time for the process of consultation, collaboration and dialogue.** It is important to choose 'good' or appropriate and feasible solutions and contextualize them. But it is also useful to recognize that what

the five case studies highlight is that the process matters as much or more than the solution itself.

7. **Improve and take the lead on coordination.** Coordination of anti-corruption approaches across development and humanitarian aid is crucial. UNDP should seek opportunities to lead in this area. Its efforts might include:

    - ensuring adequate staffing through full-time anti-corruption advisers; and

    - cooperating with the United Nations Office on Drugs and Crime (UNODC) to combine the prevention approaches with well-conceived enforcement approaches.

8. **Support the identification, generation and use of evidence and disseminate it widely.** UNDP is widely regarded in this area, and plays an important role in post-conflict situations where much aid is delivered through private contractors whose business is not to develop and disseminate institutional memory.

9. **Develop a strategic road map to the UNDP Country Office's approach.** This could be accomplished through a facilitated workshop and consultations, resulting in a brief write-up. The process of developing the tool will facilitate a shared understanding and commitment to address anti-corruption across UNDP programmes. The tool itself may serve as a guide for public relations and programming.

For UNDP to have the impact it seeks in the area of post-conflict anti-corruption, identifying and generating political support at different levels of government, as well as at different levels of UNDP and the UN mission, is required. Implicit or explicit anti-corruption programming should start early after conflict ends. It should be sectorally cross-cutting, embedded in government reforms, and flexible to adapt to shifting post-conflict political realities, policies and procedures.

1

BACKGROUND

Since late 2007, donors have begun to pay specific attention to reviewing, understanding and developing anti-corruption approaches in post-conflict situations. In particular, the Anti-Corruption Task Team (ACTT) of the OECD Govnet, of which UNDP is part, has made efforts to start building bridges between the anti-corruption and post-conflict/fragile states communities of the different donor agencies. A recent paper on anti-corruption with a state-building lens, commissioned by the ACTT, has been welcomed by the anti-corruption donor community and UNDP as an important stepping stone to inform further anti-corruption work in post-conflict situations.[1] At the last ACTT meeting on 1 April 2009 in Paris, donors agreed, for example, that more research is needed to better understand how anti-corruption approaches can best be integrated into early post-conflict reconstruction and state building processes.

Some development agencies, including UNDP with the present initiative and also the United States Agency for International Development (USAID), are currently in the process of developing specific programming guidance for their staff on how to address corruption and anti-corruption in post-conflict situations. Also, as a result of the above-mentioned paper, donor agencies that are members of the U4 Anti-Corruption Resource Centre have decided to create, with the support and facilitation of U4 and TIRI, a donor-learning network on corruption in post-conflict and fragile state situations.

Corruption in post-conflict and fragile situations was identified as one of UNDP's priority issues by the UNDP third global Community of Practice meeting held in Athens (Greece) from 28–29 October 2008. The meeting, which gathered 44 UNDP anti-corruption practitioners coming from Country Offices, regional bureaux/centres and the Headquarters, discussed the growing challenges posed by corruption on post-conflict and recovery situations and decided that UNDP should address these challenges, starting with a research on UNDP's interventions in post-conflict countries, in order to better understand the dynamics between anti-corruption and post-conflict reconstruction and develop UNDP's guidance on integrating anti-corruption into post-conflict reconstruction and state building processes.

The need to refocus UNDP's anti-corruption priorities in post-conflict and recovery context also arises due to the fact that UNDP is operating in 40 countries that are currently in post-conflict and recovery stages or partially in conflict or known as fragile states. UNDP works closely on governance and anti-corruption issues, and helps rebuild legal and justice systems and reform security sectors through the 'Global Programme on Strengthening

the Rule of Law in Conflict and Post-Conflict Situations' since 2008 in 20 priority countries[2] for post-conflict and reconstruction identified by the BCPR.

With the above-mentioned background, in 2009, UNDP commissioned a study on anti-corruption interventions in post-conflict situations, particularly looking at five case studies: Afghanistan, Democratic Republic of Congo, Iraq, Sierra Leone and Timor-Leste. The aim of the study was to review UNDP's experiences from the field, look at gaps and identify concrete challenges, analyse UNDP's role in coordinating interventions, and identify substantive good practices and lessons learned by analyzing the trend on anti-corruption programming. In terms of methodology, the overall guidance for the study was provided by a Project Steering Committee, which included experienced practitioners from UNDP and other partner organizations including UNODC, U4 and TIRI. The authors went through the desk review of cases and also conducted field visits in all five countries. The report also went through a vigorous quality control process to ensure that the data and analyses reflected the actual situation on the ground. A validation workshop, which was held in Jordan (Dead Sea) from 3–6 November 2009, was attended by 23 participants including practitioners from eight UNDP Country Offices (DRC, Iraq, Jordan,

Kosovo, Sierra Leone, Timor-Leste, Yemen and Sudan), UNDP practitioners from Headquarters and regional centres, representatives of UNODC, individual international experts and representatives of partner institutions, such as TIRI, Global Integrity and U4. The workshop closely looked at the draft report 'UNDP Anti-Corruption Interventions in Post-Conflict Situations' and provided inputs including discussion on comparative experiences and lessons learned from all case studies.

The findings from the report provide useful insights on anti-corruption programming in post-conflict and recovery contexts. Across all five cases, evidence suggests that few existing anti-corruption interventions have had significant success stories and some have failed altogether. Moreover, across all cases, the findings also suggest that the status quo on corruption may jeopardize peace and stability and invoke a return to conflict and violence. Most of the anti-corruption interventions are being implemented on an *ad hoc* basis,

> The status quo on corruption may jeopardize peace and stability and invoke a return to conflict and violence.

rather than being integrated in other development processes or implemented holistically. Most anti-corruption interventions also tend to be implemented at late recovery stages. In all countries covered by this research, poor governance, poverty and weak institutional infrastructure have made the anti-corruption interventions difficult. The decades of civil war and instability have made it difficult for civic engagement in anti-corruption programming including the participation of civil society, particularly the marginalized and vulnerable populations. Across all five cases, corruption is present in an environment where the existence of weak institutional mechanisms and checks and balances, low detection capacity and presence of informal networks, elite groups and armed forces. It is clear from the report that political decision makers are important determinants of post-conflict anti-corruption reform, along with other factors. Moreover, in all five post-conflict case studies, fighting corruption does not seem to be topmost priority for policy makers and politicians. It is often feared that any direct, early attempts to challenge the status quo on corruption may jeopardize the elections and provoke a return to violence.

The authors define and conceptualize anti-corruption reform quite broadly. It includes both explicit, 'traditional' measures (such as creating laws or national anti-corruption strategies and strengthening anti-corruption institutions like auditor general's offices), as well as implicit changes that enhance integrity, transparency, accountability and the rule of law. The rule of law is founded on a social contract characterized by trust in laws and institutions, and between people. The rule of law is typically the goal; corruption is sometimes the prevailing practice. In broad terms, therefore, corruption and the rule of law are closely linked and there is good reason to believe that efforts to reduce corruption and strengthen the rule of law are mutually reinforcing.

Anti-corruption efforts and rule of law programmes both deal with a number of societal actors outside the state. However, the former typically focus on corruption across all agencies and branches of government while the latter usually focus on a more narrow set of public actors in the justice and security sectors. Regulating the transparency and accountability in these sectors is critical not only for corruption, but also for building a rule of law culture in the executive, the public face of the state most visible to citizens.

The report is structured so that the five extensive country-specific case studies are presented in the final third of the publication (section 9). They are preceded by an analytical discussion of linked themes, findings and overall recommendations.

2

POST-WAR
CORRUPTION
AND CONFLICT

UN Photo/Mark Garten

orruption poses a grave threat not only to governance in general but also to the stability of fragile democracy in post-war countries. Governments in developing countries that have experienced violent conflict are particularly vulnerable to corruption. When the corrupt excesses of government officials and politicians lead to lack of basic services and economic opportunities, this may generate public frustration which erodes state legitimacy at a time when it is most needed.[3] In the post-war environment this often fuels renewed outbreaks of violent conflict.[4] However, there are many cases where the peace process may rely on servicing the patronage networks of previously warring factions, making it difficult to address the issue of corruption without unravelling the peace process itself. For that reason, it is of utmost importance to understand how and why conflict and post-conflict situations lead to corruption, and to identify ways to deal with the situation without jeopardizing peace.[5]

This section identifies and examines four key factors that allow, or even encourage, corruption to get entrenched after conflict ends. It is based primarily on findings from the experiences in the five countries studied: Afghanistan, DRC, Iraq, Sierra Leone and Timor-Leste.[6] The cases were selected on the basis of geographical and anti-corruption programming diversity.

The first factor in determining the extent to which corruption grows is the way an armed conflict ends and how the peace agreement is crafted (discussed in section 2.1). Who won the war, whether there is a clear winner at all, and whether a war has really ended all make a huge difference. The second factor shaping the tendency toward corruption is the legacy of wartime corruption (section 2.2). A legacy of wartime corruption often results in the carry-over of agents, networks, and practices of corruption that persist and may even challenge state control in peacetime.[7] A third factor affecting levels of corruption is the chaos that the transitional government faces (section 2.3). Where services are not promptly restored and looting is allowed to persist, and when there is uncertainty over who is responsible for particular governmental services or function, the 'normal' incentives for corruption multiply as people seek ways 'to get things done'. The fourth main factor is resource wealth (section 2.4), and how new and often massive influxes of material wealth related to income from natural resources or from foreign aid are managed and distributed. Linked to all of these factors is the overall weakness of the state, discussed in section 2.5.

2.1. THE WAY ARMED CONFLICT ENDS

UNICEF/ HQ05-1257/Roger LeMoyne

The landscape of post-conflict corruption depends on the way armed conflict ends and how the peace agreement is crafted.[8] Wars typically end with a decisive military victory for one side, while power-sharing agreements that divide control of a central government are far less common — but present in at least one of the cases analysed here, DRC.[9] The cases studied here suggest four different scenarios in which post-conflict corruption may flourish, depending on how the armed conflict is officially ended. It should be noted that when we speak of armed conflict's end, we do not take this to mean that conflict has ended. As seen in Iraq, for example, the end of one (inter-state) armed conflict may well lead to another

(intra-state) armed conflict. In Afghanistan, the 'international' armed conflict was transformed into a 'domestic' conflict with international forces fighting on behalf of the transitional government that they had helped establish. It is also possible that warfare itself has not really ended, but momentarily subsided as warring factions reposition themselves. The four basic scenarios are presented below.

Scenario 1: The old regime continues in power after the armed conflict ends

In these cases, state institutions and public servants such as judges are likely to be carried over, old patterns of corruption continue, and government officials lack

legitimacy from the outset. At armed conflict's end, this situation was observed in Sierra Leone where both the incumbent government that continued in office and the principal opposition party had a history of human rights abuses, disrespect for democratic values, rampant corruption, nepotism and fiscal mismanagement. The 20 years before the outbreak of the armed conflict had seen the rise of an increasingly authoritarian government, which undermined the legitimacy of many institutions and encouraged a system of political repression. As this case exemplifies, where the old regime continues, corruption is not addressed seriously and with conviction, and therefore tends to flourish. This is mainly because the rule of law, and particularly justice, is compromised. That, in turn, discourages meaningful public participation in post-conflict governance.

Scenario 2: One or more parties are militarily defeated or exhausted, and a new regime is established

Under this scenario, where former rebels take power, they may set out to clean house and at the same time enrich themselves. This occurred in DRC after Mobotu Sese Seko was overthrown in 1996 by Laurent-Désiré Kabila, who took over with the support of Burundi, Rwanda and Uganda.

Where independence is granted or won, however, the former power departs and there is no particular mandate to clean house. In some cases, the new government will view the state coffers as the spoils of power. That said, old networks are unlikely to remain in place. This was seen in Timor-Leste, where a new regime took power through a struggle for independence. More than 20 years after Indonesia seized control of the territory from the longstanding colonial state, Portugal, the international community influenced the government to conduct a referendum in 1999 on the future of what was then ruled as an Indonesian province. Following a decisive vote in favour of independence, the Indonesian army retaliated violently, joining irregular militias in killing and displacing residents and destroying most of the region's infrastructure. UN peacekeeping forces pushed the Indonesian troops back, and the United Nations Transitional Government in East Timor acted as an interim civil administrator from 1999 until Timor-Leste's independence in 2002.

Scenario 3: A power-sharing agreement is reached

In post-war situations in which no clear military victor emerges and power-sharing agreements are the preferred solution, there may be a particular drive to balance government with members of the

different factions. In this case, the nature and structure of the agreement make accountability elusive. Often, the very ambiguity of who is in charge creates lapses or overlaps in jurisdictional authority or unclear chains of command. Consequently, those who wish to take advantage can assert themselves, while making it difficult to be held accountable. For example, in situations of bureaucratic intractability, persons who can successfully navigate between disagreeing power holders or discover ways around them can easily become not only attractive but necessary for those needing to urgently receive a permit or property title or to obtain a government service. Such situations are especially common where factionalism presents an obstacle to gaining consensus on governance reform, and the question of how to move forward and set up working institutional infrastructures remains only partially resolved.

This was precisely the situation that was encountered in DRC in 2003.[10] The distribution of power went so far as to ensure representation in the form of seats for civil society and the private sector on an anti-corruption committee, four other committees, and government structures as specified in the agreement. While this may have effectively appeased potential peace spoilers, it also generated a level of factionalism that rendered the Ethics and Anti-Corruption Commission entirely

ineffective. Moreover, the initial governance structure concentrated power in the executive and ensured by design that this power would be unchecked by any counterbalancing entities or representatives. With all factions having a share of particular ministries, the system was designed so as to sever the patronage networks of previously warring factions. In those conditions, a too militant anti-corruption campaign could have in fact weakened the peace process itself, at least in the short term.

Sierra Leone provides another example. After years of appalling brutality against the civilian population, a peace agreement between the government and the Revolutionary United Front (RUF) was signed at Lomé (Togo) in July 1999. This agreement involved a two-pronged approach to achieving peace. The first involved a military resolution whereby combatants were supposed to disarm. The second involved a political settlement whereby both sides would share power within the government. The RUF leader, Foday Sankoh, was appointed to head the Commission for the Management of Strategic Resources with the status of vice-president of the republic, with control over the country's diamond resources. Diamonds had been both an indirect cause of the war and a factor that fuelled the continuation of the conflict. Sankoh immediately used his position to

protect RUF's wartime diamond deals with Liberian leader Charles Taylor and others outside the country. This abortive attempt to secure the peace ended when RUF fighters refused to report to the established disarmament sites, and subsequently began robbing UN convoys and kidnapping several hundred UN observers. Sankoh was captured and arrested in May 2000.

Scenario 4: A brokered peace deal is signed but the root causes are unresolved and armed conflict continues or resurfaces

This is not a problem of parties failing to honour their commitments, but rather a situation in which there is a lack of broad-based agreement to begin with. Under these circumstances, not only will corruption flourish, but anti-corruption reforms will be unsustainable.

In all these scenarios, the failure to secure a durable peace leads to increased and entrenched opportunities for corruption and results in a much higher probability that traditional, explicit anti-corruption efforts will fail.

The case of Iraq, which was invaded by the United States and its allies in 2003, is an example of a situation in which a broad-based agreement has yet to be achieved and armed conflict has not ended. After the US-supported establishment of an interim government and constitution in 2004, elections for the Transitional National Assembly in January 2005 resulted in a Shiite prime minister and a Kurdish president, while Sunni voters remained unrepresented due to their boycott of the elections. The transitional government drafted a new constitution, which was approved by national referendum in October 2005. In the election for the new four-year parliamentary assembly at the end of 2005, the Shiite-led United Iraqi Alliance (UIA) received the most votes but did not achieve a majority. UIA Prime Minister Ibrahim al-Jaafari struggled to form a coalition government, amid ongoing sectarian violence. Since then a series of tenuous arrangements have been established among the Iraqi government, the US military, and local militias controlling difficult to govern areas; this has created a series of interstitial spaces between different forms of authority where corrupt power brokers and go-betweens are able to flourish. (Al-Jaafari was succeeded as prime minister in early 2006 by another Shiite, Nouri al-Maliki.)

Afghanistan offers another example of a war that has not ended, as of late 2009. The period between 1996 and 2001 could be characterized as a war between the Taliban, supported by foreign Islamist movements, and a loose alliance of former mujahidin groups (such as the Northern Alliance). Intervention by the United States in 2001 resulted in a rapid regime change. A 'high-level political settlement' negotiated in Bonn (Germany) in late 2001 established the Interim Afghan Authority and led to a new, moderate Islamic constitution that was adopted in 2003. However, the Bonn accord was not a comprehensive, inclusive agreement and did not involve all the key stakeholders. Alleged warlords and drug traffickers were included in the government, ostensibly to ensure stability in potential conflict zones. And the administration — which included some past human rights abusers and criminal elements — perpetuated persistent and deep-seated corruption. This led to a lack of public confidence in the new regime, and generated instability. Initially, in 2002, there was not much conflict in Afghanistan, but it had resumed by the end of the decade.[11]

In all these scenarios, the failure to secure a durable peace leads to increased and entrenched opportunities for corruption and results in a much higher probability that traditional, explicit anti-corruption efforts will fail. In such

situations, governments are often far too preoccupied with the continued security threat to spend their limited resources and energies on increasing accountability and transparency or improving governance. On the other hand, unstable governments may even consciously seek out ways to raise resources that enables them to wield extra-legal types of power in a bid to gain strength against the opposition. Surprisingly, even in such situations, donors often do not make transparency and accountability mechanisms a priority of the programmes they support, such as reconstruction projects and sector reforms. In such contexts, explicit anti-corruption efforts are not likely to succeed, at the very least in the short to medium term.

This is prone to be a particularly acute problem in the third scenario, when previously warring factions agree on a power-sharing system, under explicit agreements for the division of public office among them. Without reaching such extremes, this is a situation observable in all other scenarios as well, as it is often the case that in order to reach a deal or maintain peace former combatants need to be bought off.

Buy-offs pose a particular opportunity for corruption if the distribution of funds, jobs or other perks is not transparent. Such was the case in Sierra Leone in 1999, where former combatants were bought off with limited pardons and government jobs. Such was also the case

in DRC in the 2003–2007 period, when different warring factions were given shares of a mushrooming number of ministries. Where lack of transparency prevails, such efforts to politically placate (as opposed to socially integrate) former combatants are highly likely to fail and lead to a strengthening of patronage networks and, through them, patterns of corruption.

2.2. LEGACY OF WARTIME CORRUPTION

Jacqueline Mia Foster/UNDP

Conflict itself may involve a culture of secrecy and impunity that is ostensibly justified by security reasons, and whose habits and legacy persist after the armed conflict has ended. Organized crime and illicit commercial networks flourish with and can fuel intra-state warfare, as more or less noticeable state failure means no control over such illegal activities. In many cases, they also effectively pose an alternative set of rules that may actually govern society in many everyday matters, and

over large parts of national territory.[12]

Under Scenario 1 above — the old regime continues in power — it may be possible to see a radicalization of corrupt practices within the old regime. This will further delegitimize the existent order, and insofar as resistance continues to exist, it may allow the losing faction to recover some of its sway. Sierra Leone before 1999 would be a good example of this situation.

Scenario 2, where a new regime is established, is much less predictable because there are many variables at work. The presence of a sufficiently strong foreign presence may prevent outrageous corrupt practices from being entrenched in the new system. This is more likely to be the case if the winning faction won the conflict completely, or if it used anti-corruption rhetoric during the conflict. The case of Timor-Leste is close to this, partly because of the strong presence of Australia.

But then, these conditions may not hold, which brings us to Scenario 3, in which a power-sharing agreement is reached. This was clearly the case after state breakdown in DRC.[13] Typically in such scenarios, high-level corrupt systems facilitate the arms trade, the smuggling of mineral resources, and money laundering. These systems are in turn supported by more mundane, lower level corruption in government customs and tax practices, which finance the costs of armed conflict for different factions. When these types of activities carry over into the period of transitional governance, they compete with the state for control over the use of violence, over territory and commerce.

Given its fluid, inconclusive character, Scenario 4, in which a brokered peace deal is signed but the initial root causes have not been resolved and conflict continues or resurfaces, escapes strict classification in terms of how the legacy of corruption will play out.[14]

Conflict itself may involve a culture of secrecy and impunity that is ostensibly justified by security reasons, and whose habits and legacy persist after the armed conflict has ended.

2.3 POST-WAR MULTIPLIER EFFECT ON 'NORMAL' INCENTIVES FOR CORRUPTION

In all possible scenarios discussed previously, the high levels of chaos, breakdown of the rule of law and lack of effective government in post-conflict situations tend to result in enhanced opportunities for the development and growth of utterly corrupt practices. As seen in DRC and Timor-Leste, conflict often leads to periods of disorganization and weak state control. In other cases, such as Afghanistan and Iraq, the sudden political vacuum resulting from the previous regime being vanquished by outside forces may at least temporarily create situations of *de facto* lawlessness, followed by the need to manage ongoing conflicts with the use of warlords or local militias who generally operate on their own terms. These contexts often result in situations in which state institutions are barely perceptible in particular areas.[15] In the cases discussed above, prolonged periods of weak or absent state control have the unmistakable effect of multiplying the array of 'normal' or commonly found incentives for corruption.[16]

Post-conflict DRC, Sierra Leone and Timor-Leste found themselves in a situation of unclear and poorly enforced state rules, compounded by a limited number of (inadequately remunerated) civil servants and an ineffective judiciary

lacking in independence. Although in none of those countries was the situation particularly good before, the conflict destroyed what little there was. In Afghanistan and Iraq, ongoing internal conflict and externally established central governments dependent on warlords and local militias to keep insurgents in check magnified existing gaps between national and local authorities, and differences between formal national laws and *de facto* local practices. These gaps and differences led to situations in which ordinary people often needed corrupt go-betweens and power brokers to navigate the contradictions and layers of rules and authority.

The aftermath of conflict also multiplies the obstacles to simple commerce and business as usual, as small and large enterprises alike are overwhelmed by demands for payoffs in order to do business and ensure protection. When the state breaks down, businesses usually cannot operate unless they share their monies generously with not just government but with multiple actors with unofficial authority and power. And while pre-conflict norms for doing business may be cumbersome, they at least exist and are often enforced: during and after conflict, old rules may be ignored or jettisoned completely or there may be no legitimate authority to enforce them, leaving anyone with power a lot of room for discretion. The extent to which obstacles to business

can spiral out of hand, post-conflict, is seen in DRC today, where the chamber of commerce has reported that no business transaction can be carried out without placing money on the table first. There, the burden is such that members of the chamber say they would be willing to pay 100 percent more in taxes to the government, in order not to have to pay bribes.

Finally, post-conflict infrastructural inadequacies create great opportunities for corruption. Armed conflict tends to destroy infrastructure, such as roads and bridges, rendering these necessities of life and commerce virtually non-existent in much of the territory. Massive post-conflict infrastructure-building efforts are rife with corruption opportunities, both because of the amounts of money involved and the highly compressed time-frame in which such projects are required to be carried out. Since the legitimacy of the new government depends in part on its ability to deliver these public goods, often the rush to get things done leaves little time for the painstaking bidding, accounting and checking procedures necessary to ensure that large amounts of money are not misspent or misdirected. This is seen in Iraq, where the new government is heavily dependent on a foreign benefactor who often sets the rules, leaving the government little choice but to accept and, at least theoretically, comply with and enforce them.

Often, it is equally difficult to find the number and quality of contractors willing and capable of undertaking these tasks in places that have not seen large-scale infrastructural projects for decades and that remain conflict ridden. The lack of competition in the provision of reconstruction services is akin to an invitation for collusion and other forms of corruption. The gross misuse of funds by private contractors in the rebuilding of Afghanistan's schools, roads and airport is a case in point.[17] The post-conflict 'spending imperative' and associated risks are created by the rapid influx of short-term foreign aid, discussed below in the context of resource wealth.

2.4. RESOURCE WEALTH

UN Photo/Yutaka Nagata

The challenges posed by resource wealth in post-conflict situations deserve special attention for two reasons. One is that resource wealth generated by foreign aid is to a certain extent within the control of the donor and international communities. A more important reason is that many natural resource-dependent countries experience conflict.[18] In part, this is because rebels can often comfortably fund their insurgencies by appropriating natural resources in the areas that they are able to control or at least extort.[19] This was evidenced in both DRC and Sierra Leone, where natural resources facilitated the conduct of the armed conflict. The opium industry in Afghanistan is another kind of natural resource wealth that funds conflict.

'Lootable' resources are "easier for private actors including rebel groups to commandeer, while point-source resources tend to supply rents to the state."[20]

Resource wealth not only provides ample opportunities for corruption, but can also hamper post-conflict anti-corruption efforts. This may be said of both natural resources and foreign aid, which may pour in at the end of a conflict. Resource wealth creates 'rentier states' in which natural resource rents — or other rents such as foreign aid — provide a significant share of the government's revenues.[21] Both forms of resource wealth are discussed below because they are analytically related, and also because they were both relevant in the five countries examined for this report.[22]

Resource wealth influences public spending and the revenue generation of political regimes. Natural resources such as crude oil, kimberlite, diamonds, copper and other mineral deposits produce rents, or super-normal profits. They are often 'farmed' out of economic 'enclaves' and tend to be appropriated by the state. Resource wealth affects spending in that it is allocated or distributed by political authorities, with little or no oversight from civil society. It also affects revenue generation because it lessens the pressure on the state to develop other revenue generating activities such as taxation of businesses and individuals.[23] This applies to foreign aid as well as natural resources,

and is problematic because where people are not taxed, they are less likely to demand representation, and to receive adequate levels of public services.[24]

In Scenario 1, when the old regime continues in power after the armed conflict ends, resource wealth is likely to exacerbate traditional corrupt practices. Corruption is enhanced not just by the legacies of wartime corruption and the immediate lawlessness of the initial post-conflict situation (as analysed previously), but by the old regime's control over natural resources or access to foreign aid, which has been cemented in place. While there is the possibility of a drastic if painful reduction in foreign assistance, natural resource wealth is not likely to subside. This in turn provides the old regime with funds that allow it to tighten its grip over society, and pushes opposition forces towards radicalization. The end result is an even more corrupt and illegitimate regime that ignores or downplays increasing social and economic tension.

In Scenario 2, when a new regime is established, it is possible to keep corruption in check despite the presence of resource wealth. Again, a sufficiently strong foreign presence may mitigate the proliferation of corruption if the new government has some interest in doing so, as Timor-Leste suggests.

In Scenario 3, in which a power-sharing agreement is reached, forces integrated into the power-sharing agreement

may expect, quite explicitly, to control mineral or foreign aid resources, in particular geographical or functional areas. Again, foreign aid may be cut off or suspended if that happens. Mineral resource wealth will continue to be available, however, providing not just resources for the parties that signed the power-sharing agreement, but to parties that decided not to sign. The situation in Eastern Congo is a paradigmatic case of this type.

In the fourth scenario, in which a brokered peace deal is signed but the initial root causes have not been resolved, and armed conflict continues or resurfaces, mineral resource and foreign aid wealth may work in opposite directions. As Afghanistan illustrates, foreign aid is likely to help sustain a struggling national government, while natural resource wealth is likely to be outside the government's control, and often farmed out by forces fighting it.

2.5. STATE WEAKNESS

Radhika Chalasani/UNDP

Not only are post-conflict countries prone to corruption, but corruption contributes to state weakness. Therefore, addressing corruption is a way to strengthen the state,

as it relates to the core state building processes supported by the international community: political settlement; state survival functions such as security, justice,

revenue; and action on public expectations such as service delivery.[25] These processes are based on the four central dimensions of state function: *political and economic management, security, and social welfare*.[26]

According to the *Index of State Weakness in the Developing World*,[27] which ranks all 141 developing countries according to their relative performance in four critical spheres (economic, political, security, and social welfare), Afghanistan, DRC and Iraq are at the top of the list of weak states, while Sierra Leone follows closely. Timor-Leste classifies as slightly less weak as the others studied here. The Brookings Institution defines weak states as countries that lack the essential capacity and/or will to fulfil four sets of critical government responsibilities: fostering an environment conducive to sustainable and equitable economic growth; establishing and maintaining legitimate, transparent, and accountable political institutions; securing their populations from violent conflict and controlling their territory; and meeting the basic human needs of their population.

In this light, tackling corruption stands to strengthen the state across these dimensions. Economically, a reduction in corruption stimulates growth and increases investment. Politically, it serves to enhance the state's legitimacy. In terms of security, a state that is better able to control corrupt activities will also be able to enforce the rule of law in general. And as for social welfare, a reduction in corruption has the potential to translate into better service delivery — if funds that would be used for corrupt purposes are instead put to good use for the public, and if more qualified public servants are in service.

The main implication for UNDP programming is that controlling corruption is integral to strengthening the state's functions through core processes. With regard to the political functions of anti-corruption efforts in particular, it should also be noted that while attention is rightly paid in post-conflict reconstruction efforts to strengthening institutional frameworks and developing linkages between bodies such as CSOs and parliaments that may provide oversight, this is only part of the state's political functions; the whole spectrum needs to be considered.

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3

ANTI-CORRUPTION
POLICYMAKING

Effectively responding to corruption can be difficult because it nearly always requires taking political, economic and social power away from those who benefit from the status quo. In this light, how do decision makers bring about anti-corruption policy and institutional changes in the post-conflict state building process? One finding from the five case studies is that policymaking — including but not limited to anti-corruption in particular — does not seem to follow the typical cycle seen in other developing democracies.[28] Also, there are more policy gaps and contradictions. On the one hand, there may be a complete vacuum of policies, and on the other hand, there may be a mishmash of policies laid over each other without regard to the others.[29] While developing a model of post-conflict policymaking is beyond the scope of this report, it is possible to present and discuss some initial observations based on the case studies.

When conflict ends, there may be successions of different authorities and little continuity of policy between transitional and first elected governments. Often what is on paper is not carried out in practice, or can shift quickly for reasons not apparent to outsiders — or even insiders. Therefore, development partners cannot count on today's policy to be in place when implementing a programme tomorrow. There may be no policy, to begin with. After all, post-conflict state building is initially about developing an agreed upon set of rules, and in the early years, development partners are navigating uncharted waters.

What the five countries reviewed do have in common with other developing countries is that political decision makers are important determinants of anti-corruption reform. A country's political players determine what can be achieved programmatically, enabling reform or blocking it sometimes passively.

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3.1. THE POST-CONFLICT POLITICAL AGENDA

Anders Gunnartz/UNDP

When and how the anti-corruption issue enters the political agenda influences the timing, content and sustainability of subsequent government reform initiatives. The post-conflict political agenda may be shaped in five somewhat overlapping periods: during the peace process itself, during a transitional government, following a fresh electoral process, following scandals or rapid rises in corruption levels or in increments over the years.[30] These five periods are discussed in greater detail below.

During the peace process, corruption, or transparency and accountability may emerge as an issue in discussions about the basic governance framework, as they

did in DRC. As the international experience shows, if such issues are raised at this stage, it is more likely than not due to a push by external actors or the military victor. The usual result is explicit anti-corruption institutions such as an ethics committee, ombudsman, or other similar agency. In DRC, the corruption and transparency issues were pushed by donors and resulted in the Ethics and Anti-Corruption Commission. However, this institution proved toothless and did not enjoy broad ownership despite having members from across the political spectrum for two main reasons: (i) its establishment was externally driven and not demanded

by the parties to the deal, and (ii) it was not aligned with the interests of all those signing the power-sharing deal. (It is possible that in a different scenario — e.g., when rebels militarily defeat the former regime and are intent on cleaning house — the same institution could possibly have been demanded, albeit with a politically biased agenda that would have its own repercussions.)

Like other aspects of peace agreements, institutions such as the Ethics and Anti-Corruption Commission in DRC are not sustainable in the long term if imposed and accepted without real agreement. Threats to sustainability in this context include not only disregard for the rules but also the possibility of a return to violence. At the very least, anti-corruption institutions will not take root in this scenario. Without champions willing to or capable of enforcing them, institutions such as these fall short of extending themselves into society to shape behaviour, and therefore remain ineffective and largely ignored.

During the transition period, the executive may have the authority and relative freedom to issue legal decrees or standing orders, and this can be used to create anti-corruption laws or institutions at the stroke of a pen. This was the case in Timor-Leste under the transitional authority, which attempted to break with past corrupt practices under Indonesian rule. This was an expedient way of enacting policy, in terms of putting something on paper. In practice, however, this example shows that making highly controversial rules by decree will not bring wide acceptance, much less compliance. Institutions created by decree will remain only as strong as the paper on which they are written.

As discussed when describing anti-corruption interventions during the peace process, explicit, large-scale anti-corruption interventions during the transitional period may often result in toothless, symbolic acts if not accompanied by implicit, small-scale, embedded interventions. Once again, it is here that donors may have more room for action, as they can avoid potentially corrupt high-level attention, and bring new political and social actors into the mix.

In first or (less likely) subsequent electoral processes, a political party or candidates may gather momentum and win seats by campaigning on an anti-corruption or integrity platform. Timor-Leste's parliamentary elections of 2007 illustrate this. Fernanda Borges, founder of a new political party, Partido Unidade Nacional (PUN), vowed to undo the old behaviour of some longstanding political party leaders. PUN also promised to establish a new political model to 'serve the people' and build trust. Likewise, in the presidential election of 2008 in Sierra

Leone, the opposition candidate, Ernest Bai Koroma, offered a platform of change that included combating corruption. Upon his election, he re-constituted the Anti-Corruption Commission, providing it with credibility, and then encouraged it to formulate a new national anti-corruption strategy. In these cases, anti-corruption interventions often go deeper than the creation of explicit anti-corruption institutions, as the political will of the new government and its energized following may actually provide some teeth to anti-corruption policies. As part of their support for the new institutions, or (preferably) as part of their day to day operations, however, donors may be able to deepen and sustain this initial push over time, by engaging in lower profile, smaller scale interventions discussed later in this report.

In the face of scandal or in moments of heightened scrutiny that may occur at any time in the post-conflict process, politicians give prominence to integrity or anti-corruption initiatives, and sometimes go to great lengths to impress the public or the international community that they do not tolerate corruption. In Timor-Leste, a series of scandals resulted in the Prime Minister, Xanana Gusmão, pushing through legislation for a new anti-corruption agency in 2009. This was done despite the fact that it duplicates the functions of existing institutions and will diminish their powers.

As the Timor-Leste example illustrates, anti-corruption reform that is prompted by scandal is problematic because in the best of cases, the solution is rushed in two ways. First, it pre-empts the consultation process, which is as important to success as the technical option itself. Second, the technical option may not be a wise choice, given that there is not much time to explore and consider options. In the worst of cases, there is no genuine political interest in controlling corruption, and setting up a dysfunctional or hollow institution is worse for state building than doing nothing at all. As seen in Afghanistan and Iraq, public perception of a rapid rise in the scale and incidence of corruption can have similar effects.

Incremental change may result in more effective reduction of corruption. For example, after the 2006 elections in DRC, the new government began to take a public stand against corruption. Following suit, UNDP implemented a small programme within the Ministry of Justice, to give judges the incentives and capacity to take up corruption cases that

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come before them. While this approach did not address the issues of prevention or justice reform, the project met a real need, was supported by the justice minister and generated goodwill among participants. This project has fed into a larger administrative reform programme, and has generated interest in a potential full-scale justice reform programme. In the face of endemic corruption and many powerful interests defending the status quo, this approach has proven to be politically viable in DRC so far.

An incremental process has the advantage of being discussed among different political factions, and if sufficiently embedded in the system, it may also include consultation with popular sectors often without voice in the policy process. Influential actors in this type of

intervention include the media, interest groups, donors, political or economic elites, elected officials and sometimes community organizations. While this multiplication of actors makes it challenging to reach agreement, the limited, smaller-scope of the interventions, in turn, offers many ways to overcome the collective action problem, particularly if donors are able to pay the bill for coordinating multiple stakes. It must be mentioned that this also affords more opportunities for non-governmental actors to contribute to the framing of the issue.

Again, donor intervention may be fundamental here in helping all the actors with an interest and stake in a particular issue, sector, ministry or project to realize the extent to which corruption causes governance to deteriorate and weakens the state's ability to deliver services. Understanding of this impact by the population is likely to result in growing pressure on politicians to act on corruption, and in deeper and longer term engagement by non-governmental organizations. As a result, while limited in scope, the outcome of such interventions is likely to be robust, reflecting a strong (if narrow) consensus across the interests of diverse participants or their perception of the benefits to them. This contributes to sustainability in the long term.

3.2. EVIDENCE-BASED POLICYMAKING

Ky Chung/UNMIK/DPI
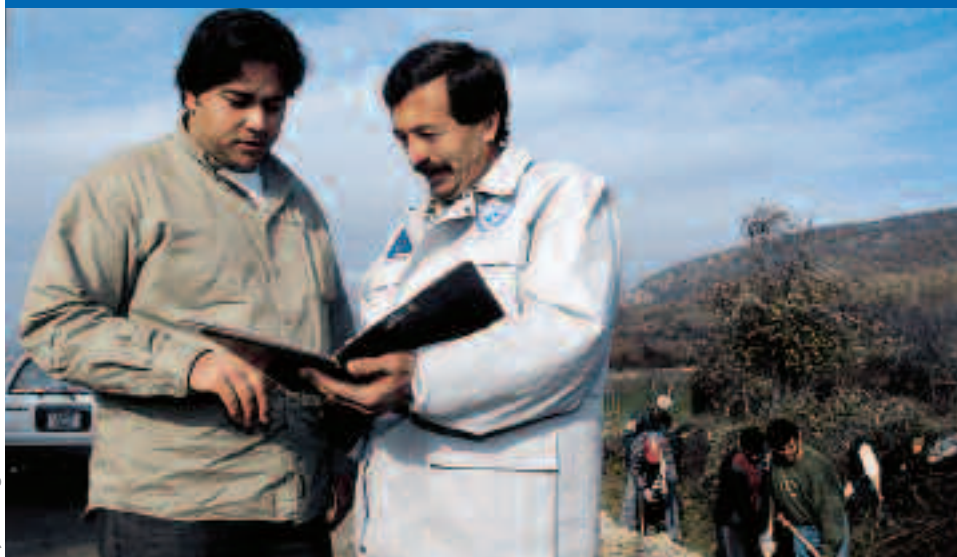
During post-conflict reconstruction, decision-making is often *ad hoc*, reactionary and involves crisis management in a rapidly changing environment. To compound matters, as discussed above, the issue of corruption may gain prominence on the national political agenda when there is a scandal, as seen in DRC and Timor-Leste after the 2006 elections, or when there is a rapid rise in perceptions of corruption, as in Iraq and Afghanistan. Consequently, corruption may become a predominant issue even if politicians do not have the ability or capacity to define and address it.

More problematic, as seen in Timor-Leste, the issue of corruption may be attached to an unviable — but politically appealing — anti-corruption 'solution' that decision makers have no means or willingness to implement, sustain or deepen over time. Shrinking the powers of an ombudsman that could investigate and refer cases of corruption, Prime Minister Gusmao decided in 2008 against well-placed technical advice to the contrary to legislate and launch a new anti-corruption agency. Although the legislation passed in 2009, implementation had not occurred at the end of 2009.

In 2009, in DRC, President Joseph Kabila launched a campaign of 'zero tolerance' of corruption. This does not appear to have been founded on any specific evidence or analysis. As those interviewed within and outside govern-

ment commented, evidence of corruption is all around; a study or survey is not needed to confirm the fact. Such recent developments in DRC are examples of politicians publicly identifying corruption as a key obstacle to peace and development and then, instead of defining the problem more thoroughly and devising a well-conceived solution, latching on to the first solution at hand.

While it is too early to tell in DRC and Timor-Leste, it seems that technical solutions that may have worked well in normal development situations are being applied in post-conflict situations. It is likely, however, that these attempts will fail — as have similar initiatives throughout Africa to create independent anti-corruption commissions modelled after those in Hong Kong, Singapore or the Australian state of New South Wales.

From the outset, it is important to collect evidence on the nature and magnitude of the corruption problem. Practically speaking, in the wake of a conflict there is usually a deficit of researchers, academic institutions or think tanks, and a major lack of data on human development, much less governance and corruption. Studies may be outsourced internationally or government reformers may attempt to collect evidence themselves. The latter was the case in DRC, for example, where the office responsible for disseminating the public servants code of ethics implemented its own questionnaire to gauge public perceptions of corruption. In Afghanistan, Integrity Watch Afghanistan did the first qualitative study and survey there, followed by vulnerability assessments by the World Bank, the UK Department for International Development (DFID) and UNDP.

The credibility of evidence and how it is communicated matters. Politicians and the public alike are made aware of corruption through allegations of corruption reported in the press, as well as their own experiences. Studies on what the local population actually considers to be acceptable and unacceptable behaviour, country diagnostics, national integrity studies, experience-based corruption surveys and public expenditure tracking surveys can be powerful tools to inform the policy-making process if they are developed through a broad, consultative process. When developed that way, the tools are not only better designed, but participants in the process become active users of the evidence generated. If not developed through wide stakeholder consultation, the results are more likely to collect dust, even if they are effectively disseminated. Such studies may also jeopardize reform, if those left out of the process attack it.

3.3. PUBLIC EXPECTATIONS

Public perceptions of corruption and accountability matter because the risk of political instability is predicated on them. After all, if perceptions of corruption are low, then the system is at low risk for public frustration and conflict sparked by this issue. But there is cause for concern in contexts where corruption is so endemic that the public assumes the situation will never change, regardless of what the government does. For example, with some variation across the five case studies, the general perception is that corruption is rising over time, and overall there seems to be little faith in the effectiveness of governmental anti-corruption initiatives.

In DRC, for instance, corruption is widely accepted as a norm. Some interviews suggest that while ordinary Congolese do not judge other ordinary Congolese negatively for paying bribes because it is seen as unavoidable, they do view politicians negatively for their excesses. Most studies and observers concur that the general public is particularly antagonistic toward the leadership that squanders resources for personal gain. There is a negative perception of the 'political class', not just ministers but anyone in power, including the police and the army. At the same time, people feel helpless and virtually everyone participates in corrup-

tion. There is a sense of injustice created by a lack of distribution of wealth that creates frustration because the state is not satisfying people's basic needs.

Partly as a result, most people do not use their vote to judge politicians on what they promise in their campaign platform. Public participation in governance is characterized by tribal rivalry and lack of awareness of the state organization. People may vote on tribal basis, or because someone gave them money or a T-shirt. Moreover, politicians can easily manipulate the population, due to their access to better information and resources on which many lives depend.

Effective action at the macro-policy level is fundamental to overcome these forces. However, the Congolese government has yet to develop mechanisms for popular participation, including dissemination of information about how to formally approach the state. Similarly, demands in the justice sector need to be well articulated so that justice can be delivered.

Such steps are important, but acting at the macro-level alone is not sufficient. It is also necessary to embed anti-corruption in day-to-day interventions by development partners, so that people are given clear signs that efficacy is attainable and that effective, non-corrupt government policies are a possibility. Churches in DRC have raised awareness about the need to address social structures, and non-governmental organizations (NGOs) talk about it in plain language. However, interviews indicate that action is lacking. Change would require the Congolese to act at the micro-policy level, including measures addressing inter-tribal differences, entrenched cultural practices, and otherwise attempting to modify deep-seated social structures.

In Sierra Leone, the Truth and Reconciliation Commission reported that the public yearns for a principled system of governance. According to the Commission's report, "They want a system that upholds the rule of law over the rule of strong patrons and protects the people from the abuse of rulers through a system of checks and balances. They wish to see horizontal and vertical accountability through the effective operation of such institutions as the judiciary, the auditor-general's office, the electoral commission,

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the media and civil society."[31]

In Timor-Leste, public sentiment is that corruption needs to stop for two main reasons: (i) because people have to pay for government services that should be available for free, or (ii) because they are paying more than they feel they should. At the same time, however, it is important to note that the Timorese people do not feel oppressed by taxes. The government currently receives substantial revenue from oil, diamonds and foreign aid, and therefore does not have to rely to a large extent on taxing its own people for revenue. So the public does not put many demands on government.

In Afghanistan, most people distinguish between the giving and taking of *baksheesh* (small gifts), which is generally considered to be acceptable, and other forms of behaviour that are perceived negatively. For example, they reject the following, on the basis of their being against the basic principles of Islam: high salaries and the destruction of poppy fields; corruption faced by people in their daily lives, like corruption in gaining access to and paying for water and power services; paying more than the mandated fees for licenses and certificates; paying

teachers for extra school time or for grade promotions; and paying doctors for extra care. But for that reason — the moral censure based on Islam — the government's ineffectiveness in addressing corruption poses significant risks to its legitimacy. A large majority (81 percent) of respondents in a recent survey considered that the application of Sharia (Islamic law) would be an effective tool to combat corruption, while only a quarter believed that administrative reform could help.[32]

One of the main factors leading to disenchantment with the current system and driving Afghans into the arms of the Taliban is that roughly 70 percent of Afghans encounter corruption in the justice sector. Corruption is discussed widely on radio and television by political figures, intellectuals and opinion leaders, contributing to the public perception of widespread corruption and adding to disenchantment with the government. Perceptions of corruption undermine the government's credibility and, more generally, the state building agenda. This has been exacerbated by the popular conviction that international assistance is being squandered by politicians, who are perceived as corrupt.

3.4. DONOR ATTITUDES TOWARDS CORRUPTION

UN Photo/Martine Perret

In most aspects, donor attitudes in the five post-crisis case studies are similar to what one would find in a normal development setting. The donors' main corruption-related concern in Afghanistan, DRC, Iraq, Sierra Leone and Timor-Leste is the fiduciary risk resulting from the misuse of their own funds and the need to account for these funds to their constituents. The big difference in terms of their engagement with these countries and those in a normal development setting is that in the former, donors come in with a huge push after conflict ends and after having been out of

the country often for a long time. There is also the added dimension of donor concern of not jeopardizing peace. All of these were particularly evident in DRC.

As much as donors, diplomats, UN agencies and the World Bank want to see corruption controlled, they are still often reluctant to talk about it with governments because they perceive it to be intractable, too sensitive, or both — especially in the early post-conflict years. While indicators are hard to come by in light of data constraints discussed elsewhere in this report, donors expect the

general trend to indicate some progress over time. Where there are no visible efforts or progress in this area, donors may disengage or pare down their support, rather than address the issue head-on. That said, this has not been the case with the United States in Afghanistan and Iraq. In other post-conflict countries as well, some donors have become more outspoken and explicitly engaged in anti-corruption a number of years after conflict ended, particularly when corruption started threatening the purpose of the international intervention.

3.5. POLITICAL DIALOGUE WITH GOVERNMENT AND DEVELOPMENT PARTNERS

Nora Kushti/UNDP

Where political dialogue on corruption is taking place between governments and development partners, it is felt by government officials interviewed for this study to be accusatory rather than constructive. This was heard repeatedly across countries, with some interviewees initially reluctant to discuss the topic. But when assured that this was not a blaming session, government officials were, on the whole, quite

In post-conflict situations, the different goals of the diplomatic, military and development actors at times conflict and send different signals to government.

willing to share their views and experiences. The interviews also showed that, specific to post-conflict situations, the different goals of the diplomatic, military and development actors at times conflict and send different signals to government.

In the five post-conflict situations examined in this report, findings indicate more success where anti-corruption interventions are embedded in day-to-day government operations rather than in grandiose macro-initiatives that fail to deliver even piecemeal change. It is important to highlight that it is at the micro-policy level that donors have the opportunity to exercise more influence, for actions here are less scrutinized by political opponents of reform and potentially bring on board sectors of the population otherwise left behind.

4

ANTI-CORRUPTION PROGRAMMING IN POST-CONFLICT SITUATIONS

Anti-corruption programming after a conflict ends is beginning to be seen by development partners as part of a larger state building process.[33] From this perspective, corruption is not only the product of a governance deficit, but also is at the centre of a fundamental discourse over which set of rules over which set of rules prevails in society. The battle over 'who has the right and ability to make the countless rules that guide people's social behaviour' is an open battle, which the state often loses.[34] Where local power is fragmented, the state has failed to grow; DRC and Sierra Leone offer examples of this. Where the central organization of indigenous elites occurs, the state has been strengthened; Timor-Leste is moving in this direction. In this process, development partners typically influence the choice of rules, rather than the state making and implementing them.

4.1. NATION- AND STATE-BUILDING

UN Photo/Martine Perret

Anti-corruption programming in post-conflict countries tends to assume citizens as a given; i.e., it presupposes that the people have a national identity and think of themselves as citizens. This is also seen in the nascent literature on corruption in the wake of domestic conflict, and is true of post-conflict development program-

ming in general. Nation building, particularly post-conflict, is highly relevant to anti-corruption programming, as it allows shaping of common values (e.g., usually in constitution making processes) that aim to go beyond identity politics or narrow vested interests by specific castes/classes/gender. Rather, the process of nation building promotes values universally agreed upon by the society itself, where accountability, transparency and integrity can form the bedrock of the notion of a 'nation' (non-threatening).

However, this assumption is often not valid after a civil war, as evident across the five countries studied for this report. For example, Sierra Leone emerged from conflict as a deeply fragmented country, marked by an almost total lack of national identity. Notions of citizenship and patriotism had become meaningless concepts. Another example is DRC, where survey data suggest that while the identification of the Congolese with the DRC nation and state over the last 40 years has become stronger in general, it has become more exclusionary with regard to ethnic Rwandaphone peoples.[35]

It is difficult for any development programme or project to achieve its stated goals if it is based on mistaken assumptions. More to the point, it is worthwhile considering what happens if a civil society strengthening programme aims to give grants to organizations where only a handful exist; a civic education project aims to raise awareness among voters who do not consider themselves citizens; a rule of law programme trains police where there is flagrant dismissal of national law because they are at odds with local norms; and a parliamentary support project brings in advisers who speak an official language that is nonetheless not understood by most legislators, and who in turn do not share any language in common. None of these interventions would bring any real value, and instead could reverse or hold back any progress made.

Leaders in the five countries reviewed are constructing nation states. In the nation state, the population constitutes a nation that could be united by common descent, language and culture. State policies may promote unity through a national language, primary education and uniform secondary school curricula, including national history. While nation building is an indigenous process, development partners must recognize its occurrence, and not count on citizens and a nation that may not yet exist. Emphasis on common values, such as accountability, transparency, national ownership, participation, gender equality and non-discrimination also help to cement a sense of national identity.

4.2. IMPLICIT AND EXPLICIT PROGRAMMING TO REDUCE CORRUPTION

UNDP

Governance programming by development partners has, to some extent, contributed to transparency and accountability in the five countries examined in this publication, although it has not usually addressed corruption explicitly in the initial post-conflict years. That said, support for elections and the rule of law are fundamentally linked to the prevention and control of corruption. Along with the provision of security, these are building blocks for sustained peace and state building.[36] Interviews showed that while programmes in these areas were not explicitly designed

with anti-corruption interventions in them per se, programme staff acknowledged in retrospect their relevance to integrity, accountability and transparency.

In DRC, for example, as well as in Timor-Leste, both UNDP electoral support programme staff and electoral commission officials said their area of intervention inherently includes attention to minimizing electoral fraud. Components include voter registration using biometrics, and attempts to improve the security of identification cards. At the same time, however — in DRC at least —

general budget support is unchecked and uncontrolled, and reportedly could be used to bolster fraud in upcoming elections. This highlights the need for coordinated action across sectors and partners as well as greater transparency of direct budget support, as discussed later in this section.

Often it is not until after the first elections that development partners have targeted transparency and accountability in general, or corruption more explicitly. This has been done directly through the development of formal anti-corruption legal frameworks and institutions, as well as by strengthening the media and civil society's capacity for anti-corruption activity. Such efforts have often taken the form of stand-alone approaches resulting in an anti-corruption agency, anti-corruption units in the attorney general's office, or national anti-corruption strategies. Corruption has also been addressed indirectly through public financial management and oversight, civil service reform, justice sector reform, and support to national legislatures and executive branches.

Across the five cases, development partners have tended to support the development of legal frameworks and enforcement (as opposed to prevention) to a greater extent than they might in normal development situations. Generally speaking, prevention has become a standard prescription in anti-corruption practice, and makes good sense.[37] While the public may want to see the 'big fish' fried, the incentives for corruption remain even if you put them all in jail — and new corrupt actors will emerge. However, there is a pressing need to restore law and order in the post-conflict state building process, and therefore the enforcement side of the anti-corruption equation needs support; this is necessary not just to curb corruption but crime overall. For corruption to be prevented, at least basic laws and minimal capacity for enforcement must exist.

More than police effectiveness, it is effective state control over the police force that concerns state builders. Examination of state-society relations in the case studies clearly indicates that the state has yet to achieve predominance; the authority to make rules is still much contested between the state and other societal organizations

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such as clans, tribes, factions, and patron-client networks. At the most basic level, this is seen in different leaders having their own militias, a situation that is common today in both Afghanistan and DRC, for example.

Three key factors should be noted regarding programming to reduce corruption. First, to generalize, evidence from the five country studies suggests that anti-corruption interventions in post-conflict situations often fail to achieve major success, and in many cases fail altogether. While such interventions have been largely ineffective, the problem may not stem from the types of approaches, but rather in the way they are chosen and implemented (top-down, for political expediency). In other instances, they fail because they are predicated on assumptions of conditions that do not exist, such as sufficient human and financial resources, among others.

Post-conflict transparency and accountability or anti-corruption programming could be characterized as more *ad hoc* than integrated and holistic.

Second, as discussed previously, direct, early attempts to challenge the status quo on corruption may jeopardize the elections and provoke a return to violence. DRC is a case in point. As the international community perceived it, there was a palpable tension between maintaining peace and controlling corruption. It is a matter for speculation as to whether pushing an anti-corruption or transparency and accountability agenda would have had a destabilizing effect in DRC, but evidence indicates that any reforms in this area would have been significantly constrained by the transitional governance framework of the time, as was the case in UNDP's failed attempt to strengthen the Ethics and Anti-Corruption Commission before the 2006 elections.

Third, across the five cases, post-conflict transparency and accountability or anti-corruption programming could be characterized as more *ad hoc* than integrated and holistic. Moreover, transparency and accountability or anti-corruption was not found to be specifically integrated into programming by development partners in the areas of security (armed forces, police, DDR).[38] It was also not specifically integrated into revenue, taxation and customs, economic development or service delivery.[39]

4.3. INTEGRITY AND TRANSPARENCY OF DEVELOPMENT PARTNERS

Lois Jensen/UNDP

The integrity and transparency of development partners are critical in anti-corruption programming. In practice, development partners do not always lead by example. With the end of armed conflict, there is often a large influx of aid funds and personnel vulnerable to corruption. In some circumstances, there are cases of personnel of development agencies who collect kickbacks or collude with national counterparts to embezzle funds or participate in other corrupt schemes. Besides these cases, three main issues were identified in the five cases studied.

First, national policy makers question the moral imperative of donors whose countries also have problems of corruption back home. Second, and more particular to post-conflict countries, there is a widely held perception that if expatriate advisers enjoy a high standard of living, it is hypocritical or unjust to hold indigenous public servants to what is perceived as a different standard.

Third, it was frequently mentioned that donors and development partners were not transparent and did not readily provide policy makers, administrators or the public enough information regarding commitments and actual expenditures, as well as programme results and evaluations. The donors and development partners' integrity was not at issue here; rather, it was a belief that the development partners should be cautious to lead by example.

4.4. AID COORDINATION

Much has been said elsewhere about the need for coordination of development aid among donors, and also between development aid and humanitarian aid, at the strategic and implementation levels.[40] Not to belabour the point here, but coordination of anti-corruption approaches is essential, first and foremost, because of the potential for multiplier effects. That is to say, in a coordinated approach, each area of anti-corruption intervention stands to interact with the others, and results in more than the sum of the parts would suggest.

Second, coordination allows development partners to more easily reach the minimum threshold at which intervention can make a visible difference. The success of isolated projects notwithstanding, the implementation of a national anti-corruption strategy requires many coordinated inputs.

Third, coordination allows donors to take joint positions against corruption that they might not be bold enough to make alone. This was evident, for example, in Afghanistan when UNDP, together

with the World Bank, the Asian Development Bank (ADB), UNODC and development agencies from Norway, Sweden and the European Union sent a joint letter to the president to express their unease with his appointment of a person with a criminal history to head the Anti-Corruption Commission, and thereafter declined to deal with that person.

In practice, coordination of anti-corruption interventions leaves much room for improvement. Coordination is problematic regardless of the number of donors. In some countries, such as DRC, there are close to 20 donors, whereas in others (Timor-Leste), there is one main donor (Australian Government Overseas Aid Program, or AusAID, in this case). In both situations, coordination needs to improve. In comparison, humanitarian aid in the two countries is relatively well coordinated, although not with development aid.

Given that corruption is a cross-cutting issue, it would be beneficial to coordinate on anti-corruption governance programming with related interventions to prevent corruption in humanitarian aid flows. In addition to separating humanitarian and development aid, aid architecture is such that coordination groups are segmented sectorally, e.g., health, education and governance. This poses challenges in effectively coordinating on cross-sectoral issues like corruption.

A number of other coordination issues observed are not particular to anti-corruption. All five countries studied, for example, lacked institutional capacities to lead coordination efforts. This is not an insurmountable problem if the government perceives a benefit from the role — whatever that benefit may be. Finally, there is the challenge of coordination between the technical and political levels of donors and development partners. Messages are far too uncommonly fed both ways so that concrete agreements on aims and progress review can be reached.

> Coordination of anti-corruption interventions leaves much room for improvement.

4.5. AID MODALITIES, VULNERABILITIES, AND IMPACT ON CORRUPTION

UN Photo/M Kobayashi

In the five post-conflict countries reviewed, donors overwhelmingly chose to fund programmes outside national budgets. Although the trend in developing countries is moving towards channelling aid through national governments, using their own budgeting, procurement and monitoring systems, this trend was not observed in the five countries reviewed.

More typically, donors in the post-conflict setting seek to reduce their fiduciary risk through a variety of means, including direct execution of projects by development partners, CSOs and others, or through the use of pooled funds held in trust accounts. For example, the Afghan Reconstruction Trust Fund is managed by the World Bank and channels funds to the government from 24 countries.[41]

While the use of trust accounts may be a good short-term alternative where national budget systems are weak, it also raises concerns which deserve serious consideration. What is most alarming is that when funds are managed on behalf of governments — as in the Afghanistan example cited above — the management function is operating outside the budget. Thus, when the money dries up, the management capacity is gone. External management creates a parallel instrument that cannot be easily integrated in the budget process; as such, it amounts to misplaced or wasted capacity. Further-

more, the use of trust accounts may increase accountability to the donor and the donor's constituents, but it will not necessarily be transparent or easily monitored by the public or even by the government of the recipient country. This is a missed opportunity for donors to show transparency and accountability by example. In situations in which donors do not trust the partner government to have control, it may be preferable to draw the line at humanitarian aid and not give money for development — because taking over core state functions stands to do more harm than good.

Another aid trend specific to conflict and post-conflict situations — due to the tremendous capacity gaps and human resource shortages — is the tendency to provide technical assistance instead of cash. In the case of Timor-Leste, for example, no Timorese person was licensed to practice law or appointed as a judge in the entire period of Indonesian rule. While some Timorese received an Indonesian legal education or worked as court clerks, at the time of independence there was not a sufficient reserve of well educated and experienced Timorese legal professionals to effectively run a justice system. Thus, a number of Portuguese judges and legal experts were brought in.

Two observations are of use here about the provision of technical assistance. One is that, increasingly, donors are turning to contractors or implementing service providers to deliver their aid programmes, including advisory facilities. When it comes to procuring technical advisers, this modality is in many regards efficient, and offers a low risk of corruption of aid funds. However, most contractors do not have the institutional memory that foreign aid agencies or UN agencies may bring to the post-conflict setting.[42] Therefore, their ability to implement anti-corruption programmes depends on knowledge inputs from other agencies such as UNDP.

The second observation about technical assistance is that, more often than not, in a post-conflict setting, advisers end up serving in line functions and at the end of their placement, local capacity remains weak, if there has not been effective capacity-building. This may then inadvertently perpetuate the conditions under which corruption flourishes.

Beyond the provision of technical assistance, donors in the five post-conflict situations contracted out other aspects of their aid programmes, including massive infrastructure projects that are intended to pave the way for commerce and economic development by linking producers to markets through road networks — a development that is particularly important in DRC, whose massive territory is virtually impassable by land. Health and other basic services are also contracted out to NGOs and other service providers,

rather than being provided with general budget support.

If done competitively and transparently, contracting out is likely to result in a cost-efficient way of dispensing aid. But as was the case with the first few years of USAID funding in Afghanistan, this can undercut the authority and strength of the national government if it does not at least coordinate the provision of basic service delivery.[43] Given the humanitarian nature of the aid, and the fact that all those

services cannot be provided immediately by the state, outsourcing needs to avoid creating a parallel state and should instead gradually integrate service delivery into government agencies.

It is also important to acknowledge the many scandals that have been reported around the use of aid funds to hire contractors for security and infrastructure in Iraq and Afghanistan. They offer proof that the use of contractors to deliver aid programmes in these areas is vulnerable to corruption.

4.6. TRADE-OFFS AND THEIR IMPACT ON CORRUPTION

UN Photo

As discussed above, there is the possibility that anti-corruption reform efforts may precipitate conflict. Challenges to a corrupt status quo may breed instability

and violence as those who benefited from the corrupt system struggle to maintain their positions.[44] The prospect of democratic elections may be so unsettling to

those who fear losing power that they could well resort to corruption and violence. This is a real concern, and cannot be discounted.

However, as corruption grows and becomes more entrenched, it may be more difficult to begin uprooting it. Ultimately, if corruption is unchecked in the post-conflict environment, it may delegitimize the fledgling state and lead to further outbreaks of violence and extra-legal protest. For these reasons, it is worth exploring the possibility of embedding prevention measures in the governance and overall reform framework, and acting sooner rather than later to support initiatives that will promote ethics, accountability and transparency in a way that is compatible with political stability.

The experience of DRC's Sun City Agreements drives home the lesson that creating anti-corruption institutions in the peace agreement can backfire if there is no real commitment to them. Moreover, the very structure of the framework may limit accountability. While the complexities of negotiating a deal may preclude other designs, brokers should at least consider the deal's accountability effects.

Another trade-off that merits discussion here is the need for short-term versus long-term results. There is lively debate surrounding the common practice of development partners ignoring corruption in order to pursue quick impact projects or tolerating corruption in government appointments. In such cases, the long-term effects are not considered, and long-term governance reform is pushed to a secondary place.

The short versus the long term is also weighed by governments on the enforcement side of the anti-corruption equation. If a government decides to prosecute a few prominent officials to gain public support and show commitment to anti-corruption, this requires the capacity to collect and study complex evidence. Such investigative capacity and political neutrality of police is likely to be lacking in the early post-conflict years. It requires a reliable system in place. Thus, before setting up a fraud squad or financial intelligence unit, a realistic assessment must be made of police capacity needs and constraints.

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5

UNDP ANTI-CORRUPTION INTERVENTIONS

UN Photo/Redenius
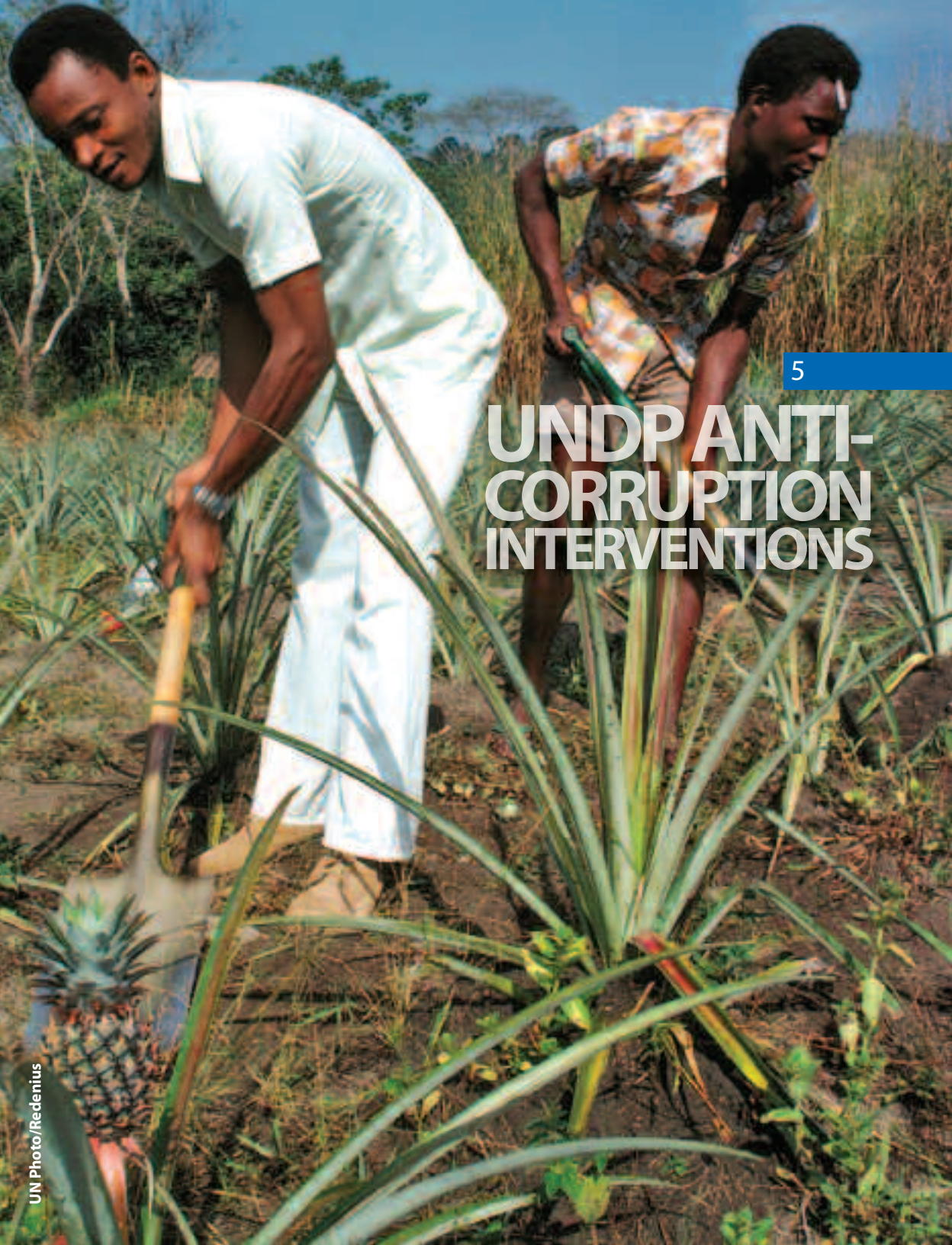
I n the five countries reviewed, the nature of UNDP's anti-corruption interventions has often been determined by the circumstances in which UNDP first entered those countries post-conflict, as well as by the imperatives of the governments in office. As such, UNDP's anti-corruption programming has varied depending on the particular context.

The agency's experience in Sierra Leone is an example of early engagement. In 1999, when the Security Council authorized the establishment of a United Nations Mission in Sierra Leone (UNAMSIL) to assist in the implementation of the flawed Lomé Agreement, UNDP was embedded in the mission from the very beginning. The main focus of its activities for the next three years was the DDR process. When UNAMSIL was replaced by the United Nations Integrated Office for Sierra Leone (UNIOSIL) in 2005, the mandate was specifically broadened to include, among others focus areas, good governance, transparency and accountability. In 2008, the Security Council replaced UNIOSIL with the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) with a largely advisory role aimed at promoting human rights and strengthening democratic institutions and the rule of law.

On the other hand, UNDP's anti-corruption interventions in Iraq did not commence until three years after the regime change in 2003. By then, the anti-corruption institutions established by the Coalition Provisional Authority (CPA) had failed, and UNDP responded to the government's request to develop a comprehensive anti-corruption programme by partnering with UNODC to provide the expertise necessary for the relevant Iraqi authorities at national, regional and governorate levels to develop that programme themselves. It did so by adopting UNCAC as the benchmark. In Afghanistan, UNDP commenced its Accountability and Transparency (ACT) project in January 2007, at a time when there was no clear government counterpart in the area of anti-corruption and few concrete steps had been taken to address the widespread problem.[45] The project is now based in the High Office of Oversight for the Implementation of the Anti-Corruption Strategy (HOO), and seeks, through capacity development and skills transfer, to empower that office to undertake a comprehensive programme to combat corruption. Furthermore, it contains components to embed anti-corruption into other institutions — notably the Ministry of Education, Interior and Finance. It also supports civil society for concrete action to address and deal with corruption.

In DRC, an anti-corruption programme had just started its activities in 2009, when this report was being researched. It was designed to cut across UNDP's

governance programme, which was developed in 2007, following the first post-conflict elections in 2006. During the 2003–2006 transition period, UNDP made a failed attempt to support the ethics commission established in the transitional governance framework.

In Timor-Leste, there is no anti-corruption or transparency and accountability programme or project per se. However, as described below, UNDP's governance unit supports a parliamentary strengthening project, among other relevant initiatives.

From looking across these five cases, it is clear that UNDP has associated anti-corruption with its governance programming, but has yet to integrate across its other practice areas. Another finding is that in two of the cases, Iraq and (to a lesser extent) Afghanistan, UNDP has used UNCAC as an entry point for its anti-corruption programming.

5.1. ANTI-CORRUPTION AND GOVERNANCE

UN Photo/Albert Gonzalez Farran

Overall, UNDP's governance programming in the five countries studied supports the political processes that legitimate the state. These include constitutional reform, justice-sector reform, security sector reform, mechanisms for peace and conflict prevention and mechanisms that promote social dialogue, especially involving civil society, the private sector and marginalized groups such as youth and women.

> UNDP has implemented a variety of initiatives that enhance transparency and accountability and address corruption.

Among other priorities, UNDP also aims to restore the capability and accountability of state institutions at the central and local levels to maintain law and order, effectively manage the economy, protect human rights, and promote the rule of law.

Within the governance sector, UNDP has implemented a variety of initiatives that enhance transparency and accountability and address corruption in the five countries under review. It is apparent from the following summary that the efforts have been selective or necessarily limited, due to political and funding constraints as well as the presence on the ground of other development partners engaged in similar work.

It is also worth noting the fact that UNDP, in many cases, has implicitly addressed corruption through governance and other programmes without intentionally aiming to do so. The subsections that follow do not attempt to be all-inclusive, and do not capture all UNDP programmes that have some bearing on reducing opportunities for corruption. Rather, they provide examples to illustrate the range of initiatives that UNDP has identified as anti-corruption or dealing with accountability and transparency.

a) Elections

In Sierra Leone, UNDP supported the National Electoral Commission in conducting the local elections in 2004 by managing the funds to finance them. Unfortunately, the elections were riddled with irregularities, some of which involved the commission itself, and the turnout was much lower than it had been two years earlier. The commission was subsequently closed down and a new body established to conduct the 2007 presidential and parliamentary elections, with funds managed jointly by UNDP and the European Union. In DRC, UNDP has planned to support the National Electoral Commission to conduct a credible election process free from corruption at both local and national levels in the next five years. In Timor-Leste, UNDP has a project designed to strengthen electoral laws.

b) Public sector reform

In Sierra Leone, UNDP provided support for the decentralization of line ministries, notably the Ministry of Local Government, and conducted a management and functional review of 15 government ministries. In Timor-Leste, UNDP has helped to create a national civil service database containing accurate primary data

on civil servants that aims to facilitate better human resource planning and management of resources across the civil service. It has other projects designed to strengthen the capacity of local level governments, the parliament, the presidency and the ombudsman.

In Afghanistan, UNDP supported the Ministry of Finance to establish a Complaints Office, which is now fully operational. UNDP, together with ADB, DFID and the World Bank, also conducted vulnerability to corruption assessments (VCAs) in several ministries and sectors and, based on the findings of these assessments, action plans have been developed to strengthen processes and procedures. Support was also provided to develop a corruption monitoring system and to establish a fraud investigation unit in the Internal Audit Department of the Ministry of Finance. In DRC, UNDP is seeking to build the capacity of the auditor general's office to independently audit and report on government accounts.

c) Justice sector reform

In Sierra Leone, UNDP endeavoured to expand access to justice by providing training to justices of the peace, magistrates, clerks and bailiffs, and supplementing their salaries. This was perhaps an urgent need, but it has to be noted that this was a country in which judges at all levels of the judicial hierarchy are chronically short

in number. In DRC, the governance programme for 2009 includes providing targeted support to the judicial system to better enforce anti-corruption legislation and prosecution of corruption cases.

In all the five countries reviewed, there was a surprising failure to engage with the judiciary with a view to strengthening its independence and integrity, without which its capacity to deal with corruption cases makes little sense. In Afghanistan, UNDP had a large access to the justice programme which initially did not consider corruption at all, although it was clear that corruption was one of the greatest problems in this sector.

Moreover, the informal justice systems, which appear to be far more popular than the regular courts in both Afghanistan and Sierra Leone, and which have to be reviewed and refashioned in accord with contemporary human rights standards, need to be addressed more in the UNDP programmes in the five countries reviewed here.

d) Drafting legislation

In Sierra Leone, UNDP supported the drafting of some critical laws, such as the Local Government Act, Public Procurement Act, Education Act, Parliamentary Service Act and three gender-based laws — the Customary Marriages Act, Intestate Succession Act, and the Matrimonial Causes and Domestic Violence Act. In Afghanistan, UNDP provided support to

> Civil society and the media play a pivotal role in mobilizing and empowering the poor to enable them to engage with local authorities, to make legitimate demands of those authorities, and to hold these public bodies to account for their policies.

HOO to develop a new anti-corruption law that would define its mandate accurately and comprehensively, and in Sierra Leone assistance was also provided in the drafting of a new anti-corruption law.

In Timor-Leste, UNDP provided technical assistance in the drafting of three media-related laws that will be presented to the legislature as private member bills: the General Media Law, the Media Council Law and the Community Radio Law. In Iraq, a key element of a five-year programme designed to build, consolidate and expand a political and technical leadership group is to increase the capacity of Iraqi legislative-drafting officials in modern drafting skills. Assistance will also be provided to the Iraqi government to develop anti-money laundering and counter terrorism-funding legislation. In DRC, UNDP will support the drafting of a public finance reform law.

e) Strengthening civil society and media

In Afghanistan, a 'grants facility' was established to build the watchdog capacity of civil society actors and the media, strengthen CSOs to take action when confronted with corruption, and empower them through monitoring of government services. Support was also provided to enable senior government officials involved in anti-corruption work to develop strategic regional and international partnerships in order to expose them to international experience and provide them an opportunity for networking.

In DRC, UNDP proposes to strengthen the capacity of civil society to monitor budgets and make demands for transparency and accountability. In Timor-Leste, where radio is the primary source of information for the Timorese public, UNDP has helped to strengthen media-related legal and regulatory processes, increase the technical and managerial capacity for the sustainability of community radio, and improve the professional capacity of community radio journalists and producers.

A new project in Timor-Leste is Communication for Empowerment, or C4E. Its initial focus, on the establishment of government information houses, is based on an acknowledgement of the pivotal role of both civil society and the media in mobilizing and empowering the

poor to enable them to engage with local authorities, to make legitimate demands of those authorities, and to hold these public bodies to account for their policies. Based in districts across the country and emphasizing outreach to subdistricts and the community level, these are places where people can go to find out information. In the media sector, the project seeks to inform vulnerable groups of issues that affect them, provide opportunities for them to voice their concerns in the public arena, and provide a space for them to discuss and debate these concerns among themselves and with others. The focus is principally on community radio, as this is by far the most accessible medium for citizens at the community level.

5.2. USING UNCAC AS AN ENTRY POINT

UN Photo/Paulo Filgueiras

In Iraq and to a lesser extent in Afghanistan, UNCAC was used as an entry point for intervention. UNCAC can be used strategically as a tool for dialogue between government and potentially non-state actors. This is because, for a country that has ratified the convention, a treaty obligation arises immediately to begin taking measures to implement it. As such, it helps to depoliticize dialogue around

the problems of corruption.

Another advantage is that UNCAC prescribes a broad range of measures to enhance integrity, transparency and accountability; therefore, its provisions are bound to appeal to any audience, engaging participants in the process of discussing those most relevant to their interests and context. For example, its preventive measures require civil service reform; integrity in the electoral process, especially in regard to the funding of political parties and candidates; a commitment by public officials — both elected and non-elected — to ethical standards; access to information; the strengthening of judicial integrity; the proper management of public finances; accounting and auditing standards in the private sector; and public procurement procedures.

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In Afghanistan, UNDP used UNCAC as a tool for dialogue. It commenced its Accountability and Transparency (ACT) project with a series of initiatives, one of which was a gap analysis of national legislation against the requirements of UNCAC. UNDP also undertook a study of the existing institutional arrangements for combating corruption; in this study, it outlined different options for a clearer division of labour between different institutions that had mandates to address corruption.

In 2008, the government announced the establishment of a new anti-corruption body to replace the existing discredited one. When the new institution, HOO, was launched, UNDP provided support to its senior management to develop its organizational structure, facilitating an exchange with the Government of Indonesia to provide an expert to support the oversight body in developing its strategic plan.

UNDP recognized that broad-based holistic approaches do not bring about required change and that instead the holistic elements (prevention, enforcement, awareness and multi-stakeholder participation) should be focused on a few sectors. In this light, the ACT project was redesigned in 2009 and extended for a further three years, taking into account (i) the need to engage international advisors on a long-term basis in order to secure

capacity development, skills transfer, follow-up and sustainability of project activities; (ii) the importance of focusing on a more narrow set of outputs to allow for developing the necessary partnerships to achieve the desired results; (iii) the need to implement activities at the subnational level; and (iv) the importance of having sufficient human resources in the project to ensure timely implementation of project activities.

Accordingly, in the second phase, the project has been based in HOO. Project staff provides advice and support to its senior management on a day-to-day basis, including in the area of administration and finance, human resources and information technology (IT). The emphasis is on capacity development and skills transfer to enable the development of the necessary national capacities to ensure the sustainability of outputs. The project focuses on the mainstreaming of corruption in sectors, and aims to bring different stakeholders in these sectors together.

UNDP has sought to create in Afghanistan a group of stakeholders, including civil society and the media, committed to implementing UNCAC. UNDP also has played a role in clarifying the mandate of HOO. Its mandate (if the proposed new law is enacted) will be broad and comprehensive and will include prevention, public awareness, proper management of public affairs and the

simplification of processes and procedures in public bodies that deal with the public on a regular basis. As of early 2010, however, it remained to seen if HOO would have the support of President Karzai and therefore the power to carry this out.

In Iraq, the UNDP programme — which is being implemented at the national and subnational levels in collaboration with UNODC — is based on a partnership that integrates the functions of the five principal anti-corruption agencies, namely, the Commission on Integrity, the inspectors general, the Board of Supreme Audit and the Parliamentary Committee on Integrity and the Judiciary. Also participating in the project are represents from the civil society and business sectors; coordination is provided by the Joint Anti-Corruption Council.

UNDP has succeeded in involving all these actors in a self-assessment and gap analysis of UNCAC, as well as in preparing an in-depth needs assessment tool relating to several pivotal articles of the Convention. Guidance is also being provided on the conduct of a national integrity survey and on the preparation of a national anti-corruption strategy. A significant element of this programme is that it seeks to build, consolidate and expand a political and technical leadership group at all levels of the Iraqi government, including the judiciary, and in the civil

society and private sectors, as well as to create a pool of anti-corruption facilitators or trainers. Two other significant innovations are that it seeks to (i) involve local community, religious and business leaders, as well as print and electronic media representatives, and (ii) provide assistance in developing an anti-corruption curriculum for primary and secondary level schools.

Using UNCAC as a reference point, the UNDP anti-corruption programme in Iraq encompasses measures such as codes of conduct, witness and whistleblower protection laws, declarations of assets, access to information, anti-money laundering legislation and the recovery of stolen assets. Involving Iraq's highly educated and professional civil servants in all the processes is intended to ensure their ownership. Non-political officials at the highest levels of government also need to be involved because political support at the ministerial level for combating corruption appears to be minimal, despite protests to the contrary.

6

CHALLENGES
AND IMPLICATIONS
FOR ENGAGEMENT
ON CORRUPTION

Curt Carnemark/The World Bank

The five countries that are the subject of this report are among the poorest in the world, notwithstanding the enormous mineral and other natural resources they possess. While some of the countries have never had nationwide infrastructure or sufficient human capacity outside their capitals, what they did possess was largely destroyed during years of conflict. There was little experience in these countries of real democracy, transparency or accountability; all are thus emerging from decades of authoritarianism, repression and patronage. And although levels of corruption varied before the start of each war — with DRC and Sierra Leone arguably most affected — it is now rampant in all five countries.

There are four other challenges to anti-corruption interventions in these five countries that stand out. The first is the fragile nature of the post-conflict environment in some, and the ongoing conflict in others. For example, in Afghanistan the state lacks the capacity to control nearly 80 percent of its territory, and it has even been claimed that the writ of the highly centralized Afghan government does not extend beyond the limits of the capital city of Kabul. The security situation in Iraq is such that the UNDP Country Office operates from neighbouring Jordan. Some see the hordes of unemployed and alienated youth in Sierra Leone, many of whom are former combatants, as a tinder

box waiting to explode.

The second impediment is the apparent lack of political support for combating corruption from the highest levels of government. For example, President Karzai appointed an expatriate Afghan who had been convicted of drug trafficking in the United States as the head of the principal anti-corruption body, and permitted him to remain in that office despite the fact that the international community including UNDP had refused to deal with him. The prioritization given by Karzai to the process of political stability has led to the occupation of crucial state positions by alleged war criminals. Among the president's ministers are powerful provincial power holders and warlords who have little or no interest in reform, but are anxious to consolidate their positions and retain control of their fiefdoms under a veneer of democratic legitimacy. One commentator has described the symbol of the future Afghanistan as being not an energized and legitimized government dispensing justice, but the garish 'narcotecture' of drug lord homes standing amid the poverty of Kabul.[46]

In Sierra Leone, in the early post-conflict years, despite the government's seeking financial support for an anti-corruption survey and the parliament enacting an Anti-Corruption Act that established an Anti-Corruption Commission, there was little or no progress on either the survey

or the commission. In 2009, President Ernest Bai Koroma publicly pledged support for the commission, but most civil society observers were sceptical of his commitment. In Iraq, political support for combating corruption appears to be minimal. According to one high-level official interviewed, the government is not committed to fighting corruption.

The third challenge is the ambivalent attitude of the international community to tackling corruption in the immediate aftermath of the conflict. In DRC, the international community's main priority in 2003–2006 was to hold a credible election in a country that had not had one for 46 years. Little effort was made to require the transitional government to address the problem of corruption for fear that that doing so might undermine the political settlement. In Timor-Leste, the government's reluctance to focus on corruption from 1999 until 2009 (when signs of change first emerged) was mirrored by donors. In Iraq in 2003, all early governance initiatives were undertaken by the US embassy in Baghdad, and all institutions and programmes to improve accountability within the Iraqi government were established through orders issued by the CPA, leaving no room for other initiatives. In Afghanistan, the initial attitude of donors on corruption was, essentially, 'don't weaken what you try to strengthen'. The Bonn Agreement of 2001 that marked the end of the US-led invasion referred to principles of Islam, democracy, pluralism and social justice as determining the future course of the country, but made no mention of corruption. The principal focus was on stabilization and security, and corruption was not raised publicly or in political dialogue in the period that followed. Although anti-corruption programming was implemented early on in Iraq, corruption only really started to emerge as an issue in mid-to-late 2006, mostly because of pressure from donors. In Sierra Leone, in the early aftermath of the conflict, the international community's efforts were focused on the DDR process, the return and resettlement of displaced persons, and the extension of state authority throughout the country.

Fourth, and related to the point above, is that corruption is simply not considered by the international community to be an issue that needs to be addressed early on and as an integral part of all programming interventions. This laissez-faire attitude contributes to making it far more difficult to tackle corruption at later stages. In part, the lack of focus stems from the belief that given the long list of urgent needs, it is more important to build institutions first and then address corruption. Such decisions, however, focus on quick results with insufficient attention paid to means.

6.1. MAINSTREAMING AND 'EMBEDDING' ANTI-CORRUPTION

UNDP

After conflict ends, government and development partners face a rapidly changing and complex environment. Even under the best of circumstances, corruption is a highly controversial issue with a large number of participants and decisions to be made. These factors make it highly unlikely, if not impossible, to implement and successfully sustain the radical reforms necessary to minimize levels of corruption in a post-conflict setting. The experience of the five countries studied here suggests a different approach: mainstreaming anti-corruption (including integrity, transparency and accountability) into post-conflict state building interventions, and embedding micro-measures as early as is practicably feasible after war ends.

In this report, 'mainstreaming' means systematically identifying corruption opportunities and integrating anti-corruption across programme sectors. 'Micro-measures' refers to technocratic interventions that are small in scope but may take place at any level, national or subnational. These may be explicitly or implicitly related to corruption. Examples of micro-measures include inserting a clause in the criminal

code, carrying out a national survey, or training community health workers to facilitate the formation self-help groups that organize to access existing government services. And 'embedding' the changes refers to strategically placing them in government initiatives where they will enjoy some relative sustainability and potentially create multiplier effects as they interact with other elements of reform. If successful, micro-measures will potentially result in significant change over time. If unsuccessful, the failures are relatively low profile and should allow other anti-corruption programming to continue.

To the extent that both micro- and macro-reforms are feasible, they are complementary and may both be pursued. Macro-measures are sweeping in nature, make news headlines, and in the case of corruption, pose a profound threat to the status quo. Examples of macro-measures include revamping the entire civil service, creating new institutions from scratch, or passing a suite of laws. But success in macro-reforms requires ensuring they are not only politically feasible in terms of getting, say, a national anti-corruption strategy or controversial anti-corruption law passed, but also in terms of subsequent implementation and enforcement. As the cases studied here show, UNDP and the international community can effectively use their weight to get a policy or law passed or an institution founded. This step alone does not translate into effective reduction of corruption, however, in the absence of political weight behind it. Such vital backing requires aligning political interests with those of the anti-corruption agenda, a task that may not be easily accomplished on a macro scale.

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6.2. STARTING EARLY TO REBUILD THE STATE'S PILLARS: LEGALITY, LEGITIMACY AND EFFECTIVENESS

Pedro Cote/UNDP

As made evident in this report, corrupt practices on the part of a weak new government may quickly become rampant, and in many cases be perceived as integral to the maintenance of the peace process itself. For example, where no warring faction manages to gain the upper hand through warfare and a power-sharing agreement is reached, the service of patronage networks may be embedded in the peace agreement itself — a step that makes it difficult to address corruption early in a post-conflict setting. Similarly, harshly denouncing and condemning corrupt practices by new governments representing either the old or a new regime may weaken their control of the political economy of the country, and thus indirectly invite a reinitiation of warfare. The same potential negative impact applies, perhaps even more directly, in cases where warfare persists and caretaker governments struggle to survive, day to day.

With so much at stake, one might think that it makes sense to refrain from aggressively addressing corruption until the government is in a better position to process criticism and act vigorously on it, without jeopardizing peace in the process. However, the findings of this study

reinforce the opposite conclusion: Corruption can and should be addressed early after armed conflict ends. Even if no broad social and political push for anti-corruption is initiated, there should be well-placed, indirect support that prevents corruption and promotes the rule of law.

Postponing anti-corruption interventions echoes now-dated notions of 'sequencing' of peace and development, where development activities should wait until 'proper' pacification has been achieved. As the experience of peace-keeping missions in DRC, Sierra Leone and Timor-Leste have made evident, it is not only possible but necessary to embed development thinking into peacekeeping operations. This has been shown to not only enhance the effectiveness of peace-keeping operations, but, where effectively done, also gives development a head start in the most difficult terrains. The activities of UNDP in Timor-Leste during the 2003–2006 period offer a clear example of the benefits of that approach. Learning from such experiences, discussions about sequencing and trade-offs between devel-opment and peacekeeping operations have largely been abandoned. There are simply too many synergies and complementari-ties between both activities to operate them as separate, exclusive units.

At this stage it is necessary to draw a parallel regarding post-conflict and anti-corruption efforts. In post-conflict and conflict situations, on the one hand, rampant corruption has the potential to erode public trust in political institutions and undermine the legitimacy of incumbent governments, including demo-cratically elected ones. The entrenchment of corrupt practices in one sector of the economy — dominated by a faction — is likely to result in the entrenchment of corruption in other sectors that are dominated by different factions. This results in a spiralling competition for scarce resources, without the means to either adequately fund or constrain the behaviour of this out-of-control faction-alism. Such entrenchment of corruption diverts funds that could be used to deliver basic services, further eroding state legit-imacy and authority in the eyes of the population. All of this, in turn, may lead to political instability.

> Corruption can and should be addressed early after armed conflict ends. Even if no broad social and political push for anti-corruption is initiated, there should be well-placed, indirect support that prevents corruption and promotes the rule of law.

On the other hand, embedding an anti-corruption agenda in post-conflict interventions may actually strengthen the government's position. This would work in two ways. First, the enforcement of 'proper procedures' and 'due process' may strengthen the government's hand, giving it moral authority (and, with donor support, economic teeth) to effectively ban extreme corrupt practices. Second, the government's adherence to 'proper procedures' and 'due process' will incrementally increase its policy expertise, help it nurture a core bureaucratic cadre, and allow for the design and implementation of increasingly effective policies. The opposite is true if post-conflict governments are not induced to embed anti-corruption activities and planning in their activities.

Evidence that these two factors are at work is found across the board in the five case studies. On the positive side, for example in DRC until at least 2007, the scope for servicing patronage networks was being reduced. This was not a simple and constant process, especially given the ongoing conflict in North and South Kivu

> Embedding an anti-corruption agenda in post-conflict interventions may actually strengthen the government's position.

and persistent intra-army unrest, but overall movement was in the right direction. On the negative side, however, the escalation and entrenchment of corrupt practices is especially threatening in Iraq and Afghanistan. That is because it is combined with other factors, such as feuds among competing factions and strong insurgencies, and the fact that the national governments are still perceived as having been imposed from outside. Combined, these realities and perceptions contribute to alarming levels of public outrage and political instability.

It must be stressed that while it is evident that corruption may enable or fuel violence during and after a civil war, or be used as a battle cry in the case of Sierra Leone, the evidence from the five countries reviewed suggests that corruption does not cause war in and of itself. It does, however, help exacerbate and fund warfare while open conflict is in place, and in post-conflict contexts it may indirectly result, if unconstrained, in a return to conflict by eroding the legality, legitimacy and effectiveness of the state. It is for these reasons that anti-corruption efforts cannot be sequenced off to a second phase in the post-conflict process. Anti-corruption efforts should be an integral part of the post-conflict state building strategy because they help governments strengthen the state's pillars: legality, legitimacy and effectiveness.

6.3. ADDRESSING CORRUPTION: A PARALLEL TO PEACEBUILDING AND DEVELOPMENT

Andrea Booker/UNDP

The case of DRC in 2001–2003 is an example of the success of early intervention of development partners, before peace and immediately after it is achieved. While many feared the death of President Laurent Kabila would lead to further destabilization, his replacement by his son, Joseph, in January 2001 actually jump-started the peace process. The new president immediately began to court the international community, and restarted peace talks. In particular, he allowed the deployment of MONUC (United Nations Organization Mission in DR Congo) forces to oversee troop withdrawals. Opposing rebel forces decided to cooperate under

mounting diplomatic pressure. Rwanda and Uganda were also compelled to cease open hostilities. This improvement in the situation led to a rekindling of inter-Congolese dialogue, which eventually resulted in the 2003 Sun City Agreement and a transitional Congolese government on 30 June 2003.

Throughout this process, the UNDP Country Office acted as a behind-the-scenes adviser to all parties involved, eventually extending its influence from the capital city of Kinshasa to areas as remote as Ituri in the East. Especially important at the time was the advisory role the Country Office provided to the Kabila

administration to recreate a national government that had practically ceased to exist between 1998 and 2001. As a first step, the government implemented the Enhanced Interim Programme (EIP), which was fundamental to ending years of hyperinflation. Macroeconomic stabilization allowed the government to establish the legal framework for the financial system, strengthening the central bank's organization and restructuring commercial banks. These reforms allowed DRC to recover voting rights in the International Monetary Fund (IMF) and to receive IMF and World Bank assistance in June 2002.

During the transitional period of government, UNDP in DRC strategically took the security agenda and extended it to a development agenda. It did so by taking a community reintegration approach that went beyond the then-prevailing view of DDR as an individual entitlement to ex-combatants, emphasizing the 'R'. The DDR concept was used as an entry point to progressively move into other areas, including providing support to internally displaced persons, community recovery, governance, and security sector reform. At the local level, UNDP saw partnerships with diverse CSOs as an opportunity to 'thicken', as well as to strengthen, civil society.[47]

While any effects on corruption in this case would have been unintentional, it suggests an entry point for accountability and transparency initiatives in DDR. For example, setting up committees to determine and monitor the use of community development funds has the potential to identify and strengthen existing community structures that underpin civil society and accountability. Much as peacekeeping and development activities can and should be combined to take advantage of synergies and complementarities, post-conflict state building requires anti-corruption practices — broadly understood to include transparency and accountability — to be mainstreamed from day one.
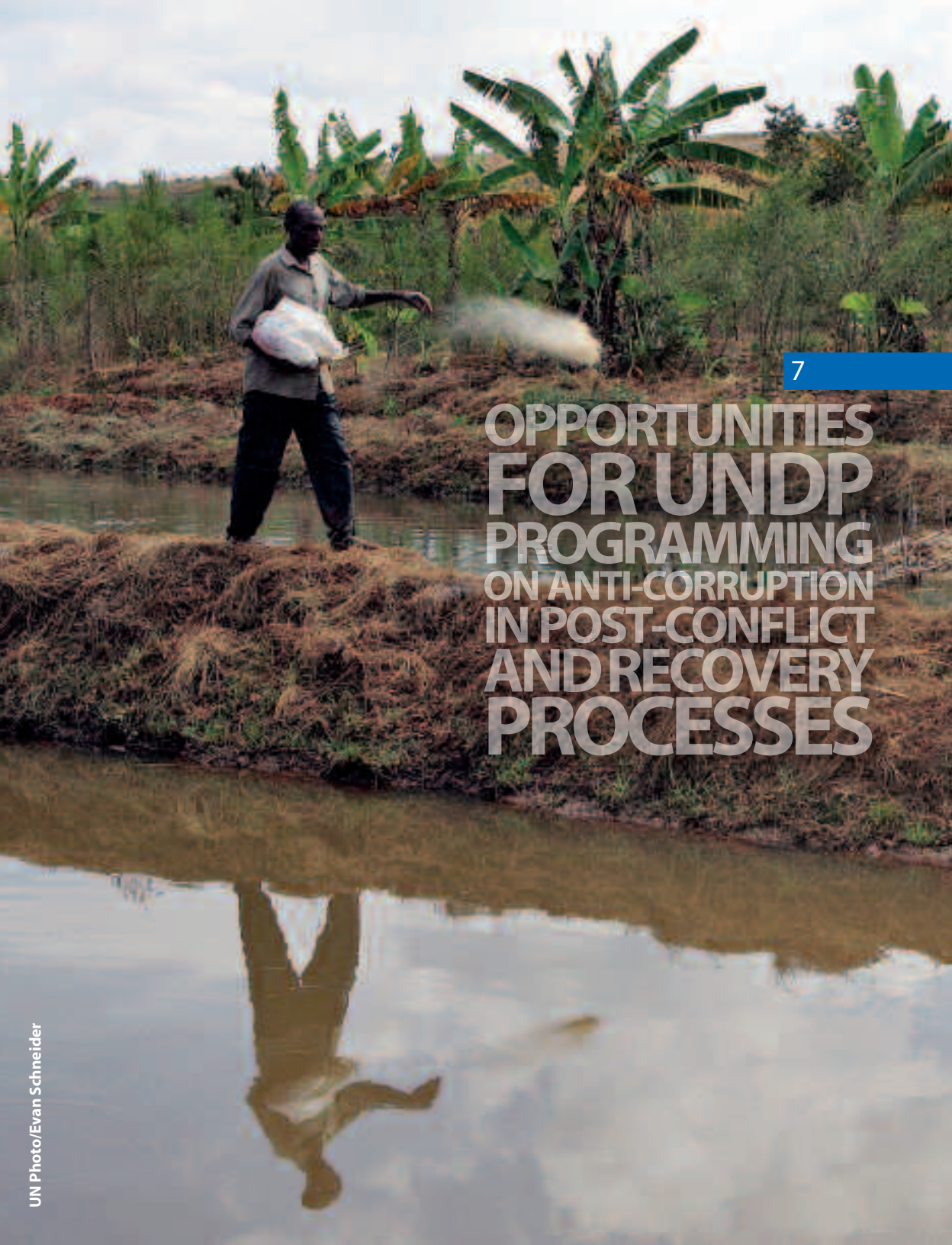
OPPORTUNITIES FOR UNDP PROGRAMMING ON ANTI-CORRUPTION IN POST-CONFLICT AND RECOVERY PROCESSES

This section identifies opportunities for UNDP programming on anti-corruption in post-conflict and recovery processes. It suggests political and institutional entry points, and makes recommendations on the timing and content of reform, ethics and transparency, and social accountability. It also emphasizes the importance of the process of consultation, coordination, and evidence and learning. Overall, it recommends that each UNDP Country Office strategically map out its anti-corruption approach.

7.1. POLITICAL ENTRY POINTS

UN Photo/Evan Schneider

Identify and ensure political commitment. The government's commitment to fight corruption or implement policy reforms is often elusive but matters because, without it, reforms may be nominally adopted but be blocked in practice. UNDP should promote the development of linkages between the highest political level in the national government and the corresponding level at which the UN and donor community operate. UNDP should also seek to strategically influence the public agenda through its interactions with Members of Parliament (MPs), ministers and high-level bureaucrats, for example, and through support of CSOs, the media and research bodies, which in turn play a role in shaping the political agenda.

Carry out a political economy analysis or mapping. Moving beyond the 'drivers of change' analysis, DFID has a new political economy analysis concept that is applicable in the post-conflict setting. Using a tool such as that developed by DFID[48] or a simple mapping of key government actors and their interests, UNDP programme staff in the Country Office should identify potential 'champions' of ACT at the national and subnational level, inside and outside government. Agency staff should work with them individually or, if appropriate, bring them together and facilitate the development of ideas and a network for change. Consideration needs to be given to what extent the ACT agenda is being used for political purposes — for example, to victimize, immobilize or liquidate opponents while not applying the same rules to the incumbents. The problem is not political motivation per se, but uneven application of the rules.

Be proactive and generate political demand. UNDP should strategically generate political demand for reform, rather than wait passively for conditions to be ripe for ACT after conflict ends. It may be helpful in this regard to leverage UNCAC as a legal international instrument that countries are party to and have commitments under. However, the setting of priorities should be a government-driven process (where a government exists), which UNDP may

facilitate. It may seem as if some politicians and senior bureaucrats are only mentioning corruption because they feel they must and have no intention of actually addressing it. Nonetheless, if they make a public commitment to integrity, transparency and accountability or corruption control, it is a potential entry point.

Prioritize politically feasible initiatives. Where only a few initiatives are practical, as is often the case in a post-conflict situation, their selection should be guided as much by consideration of political feasibility as by what a technical assessment would suggest.

Seek win-win situations. To reduce the potential resistance to anti-corruption reform, as well as the potential of instability and return to conflict that such reform may generate, an effort should be made to find where the interests of politicians and the reform agenda align. Doing so could help ensure that the effort is a win-win and not a zero-sum game.

Institutionalize reforms. Leadership is key to making anti-corruption reforms happen, but UNDP should work with the bureaucracy to ensure the institutionalization of reforms so that they continue after the current political leadership moves on. This is particularly challenging but extremely important in a rapidly changing post-conflict environment.

7.2. INSTITUTIONAL ENTRY POINTS

UN Photo/Rick Bajornas

Consider opportunities and limitations of the governance framework. Peace accords may be an opportunity for the international community to place corruption on the agenda. However, before supporting the implementation of anti-corruption institutions that may emerge from the deal or from the subsequent legal and constitutional frameworks, UNDP needs to consider (i) whether the transitional and subsequent governance framework allows for or precludes accountability, and (ii) to what extent there is real support for the institutions created on paper.

UNDP faces a dilemma when an institution seems technically poorly designed or poorly timed, but is launched nonetheless,

with or without donor backing. Supporting an institution that is doomed from the start or embroiled in factionalism may do more harm than good in terms of reaching anti-corruption objectives, if its underperformance undermines the institution's legitimacy. Equally important — although difficult to measure — is the possibility that such support could also undermine UNDP's political capital. At the same time, however, limited engagement may be the preferred option in order for UNDP to drive other initiatives forward.

Support the development of a new governance framework. In the development of the new governance framework (i.e. a constitution), UNDP may seek the

opportunity to work with reform-minded nationals to consider and propose initiatives that lay the groundwork for transparency and accountability within the core state institutions that are being built.

Facilitate a shared national understanding of the rule of law and build anti-corruption into justice reform and security reform programmes. UNDP should seek opportunities to facilitate a shared national understanding of the rule of law, including but not limited to anti-corruption legal frameworks and policies. Efforts to control corruption are critical to ensuring access to justice and equal treatment before the law. By ensuring that no one is above the law, by enforcing the law and by making public their decisions and operations, justice and security sector institutions can guide their countries to the path of better governance, and restore the social contract. Efforts to strengthen the rule of law, by challenging an environment of impunity, are also critical to controlling corruption. The rule of law, and transparency and accountability in the public sector serve not only as means to counter corruption but also as fundamental conditions of good governance.

Embed access to information and social accountability. In the constitutional and legal framework, as well as the national budget in particular, it is necessary that civil society and public access to information and social accountability mechanisms should be embedded at the outset. Laws and institutions are not directly fighting corruption should also be designed with an eye to transparency and accountability.[49] Although 'getting the rules right' on paper is no guarantee that corruption will be controlled in practice, it is a necessary pre-condition.

Indigenize models adopted from outside. Adopting, and then adapting, other Southern models (South-South cooperation) is a potentially useful strategy. Care needs to be taken, however to indigenize models adopted from abroad. In an inordinate hurry to establish every institution after a conflict, this is often neglected. Indigenizing external models needs to be done by or in close collaboration with nationals, preferably those who are in close contact with local communities. Although there is a tendency to work with nationals who are fluent in UN languages and have worked or studied abroad, indigenization is a sensitive process that requires close contact and familiarity with local cultures and customs. Language and translation issues may confound this process, since it is essential for UNDP to provide the necessary language support services.

Match advisers' legal background with the system in-country. Legal

advisers tend to support the creation of systems familiar to them, and thus such systems may be superimposed on existing systems. This is not usually advisable. Particular attention needs to be paid to matching external legal expertise with the legal system(s) in place in the country.

Recognize nation building without assuming citizenship. UNDP programming needs to recognize that nation building is proceeding, without assuming that the nation exists. Whereas some development partners get directly involved in state building, nation building is generally viewed as an indigenous process.

7.3. TIMING AND CONTENT OF REFORM

Jorgen Schytte/UNDP

Start early after conflict ends. UNDP should tackle corruption at an early stage, whether explicitly or not. Integrity, transparency and accountability safeguards should be embedded from the peace process or cessation of hostilities onwards. While there is no strict sequence or chronological order to follow, some reform initiatives may help lay the groundwork for others. For example, (re)establishing the rule of law (as opposed to rule by force and complete lawlessness) and restoring basic service delivery are fundamental to the success of state building and require immediate attention.

Build anti-corruption into electoral support. Elections will not be accepted as legitimate if there is rampant corruption in the form of vote buying, for example. Therefore, while remaining sensitive to the need to maintain political stability, UNDP should consider building in ACT electoral support programmes.

Integrate anti-corruption into DDR. UNDP should emphasize the 'R' (reintegration) and seek to develop sustainable community groups with linkages to local and national government.

Ensure decent pay in the civil service. Attention to the civil service is a logical early step because there is likely to be a massive shortage of professionals. An immediate recruitment exercise may result in cronies instead of qualified, ethical employees being appointed. If the opportunity is missed by UNDP in the first instance, there is often a second opportunity after the elections. Decent pay and merit-based hiring are fundamental building blocks for an effective public service. They are necessary for, but do not guarantee, clean government. Where leaders are underpaid, this too must be addressed; raising their salaries may facilitate effective tackling of the thornier issue of ethics and behaviour.

Make tax collection transparent. Domestic resource mobilization in the post-conflict setting should also be supported, so as to ensure it is transparent, accountable and effective, and that the process has integrity. Mobilizing resources requires collecting tax revenues from the population, which may not see itself as citizens yet. Due to lack of employment opportunities, they are also largely unlikely to have cash incomes. The possibility of intervening in this area as a part of an anti-corruption strategy is mentioned because resource mobilization is fundamental to the provision of basic services that are likely to have stopped during the conflict. If services continue not to be provided after the end of the conflict, this may feed public discontent with the government and challenge state legitimacy, possibly leading to further conflict.

Make small inroads to lead to bigger initiatives. Police or judicial micro-projects may be necessary to begin with, but in the longer term UNDP should not focus too narrowly on those institutions' anti-corruption investigation capacity without strengthening the institutions overall. While building the capacity of judges to address cases of corruption may have short-term (albeit positive) results if the judiciary itself is highly corrupt, it makes more sense to address the broader issue of judicial integrity. However, it may be that the anti-corruption unit of the judiciary or police is more receptive to UNDP

support and anti-corruption reform, and working initially in this narrow area may present opportunities at a later stage for further anti-corruption programming across entire institutions.

Strengthen national ownership. As suggested above, there are far more options than can be implemented, given the constraints on resources, capacity and so on, in a post-conflict setting. In facili-

tating the setting of priorities by a government, UNDP should resist providing examples of specific initiatives from around the world. Instead, it should begin by identifying national and context-specific priorities prior to considering what has been done elsewhere. This strategy is especially important because most of the successes have occurred in non-post-conflict situations.

7.4. ETHICS, TRANSPARENCY AND REDUCTION OF FIDUCIARY RISK

Rina Saeed Khan/UNDP

Lead by example in transparency, ethics and accountability. The main points raised in this research were to more

publicly disseminate UNDP's programme budget expenditures and results, and reduce unnecessary operational costs.

Build transparency into budget support up front. Budget support should build in transparency mechanisms from the start by including detailed line items, public access to information, and a monitoring system. The same applies to the aid system in general.

Explore pooled funding and make it transparent. Pooled-funding mechanisms should be considered instead of direct budget support because government systems are non-existent or weak at the end of the conflict. However, this should be seen as an interim measure, with the goal of building up and using government systems of budgeting, procurement and monitoring as soon as is feasible. Pooled funds should be managed transparently and be accountable to the government and public as well as to donor constituencies. Regular information should be made readily available about expenditures, not just commitments.

Provide non-monetary aid to reduce fiduciary risk. Non-monetary aid includes advisers who are frequently provided in great numbers in post-conflict situations. Such support needs to be coordinated, so that multiple advisers are not provided for the same position. While advisers may provide essential expertise and experience, their presence in large numbers may raise more questions in the public's mind about aid effectiveness than they would in a country where the UN does not have such a high profile. UNDP therefore needs to pay greater attention to ethics and transparency surrounding the placement of advisers in post-conflict situations, because it is under particular scrutiny there.

Coordinate with the government when contracting out. Contracting out service delivery may be a quick way to restore basic services immediately after the end of the conflict, and to build infrastructure and capacity. For UNDP, this may take the form of contracting advisory services (as in Timor-Leste), or contracting NGOs and a private cash transfer company, as was done in DRC. However, the government needs to manage or at least coordinate the contracting out with UNDP so that service providers do not undermine the consolidation of the state, and the state does not take for granted that these services are not its responsibility.

7.5. SOCIAL ACCOUNTABILITY

UN Photo/Eskinder Debebe

Strategically support the development of a variety of non-state groups (that share and accept the state's authority), as a way to enhance accountability and strengthen the state. The groups need not be oriented towards democratization, anti-corruption or governance per se. Support for new groups is as important as for established groups. For example, UNDP could support a wide variety of CSOs through projects that provide incentives and remove obstacles to their growth at the grassroots, provincial and national levels. To empower civil society,

this should also be designed to facilitate linkages between CSOs and government from the local level to the national level.

Support the participation of civil society and the media in advocacy, monitoring, investigation and reporting on transparency, accountability and corruption.

Link business councils and chambers of commerce with government on initiatives such as removing impediments to business and developing a monitoring system for the national budget.

7.6. PROCESS

Build in more time for the process of consultation, analysis, collaboration and dialogue. It is important to choose 'good' or appropriate and feasible solutions and contextualize them. But it is also useful to recognize that what our five case studies highlight is that the process matters as much or more than the solution itself. The failure of hoped-for solutions such as national anti-corruption strategies or constitutional provisions is not necessarily because a given solution is inherently flawed, unsuitable, maladapted or poorly sequenced. Failure may instead be wholly or partly related to the way in which it was developed, adopted or imposed — all process-related issues. A national anti-corruption strategy should not be automatically dismissed, for example, if there is the opportunity to go through a meaningful consultation process. Such a process has value in and of itself, and is also what creates an enabling environment for a range of potential solutions to work. Unfortunately, the potential benefits of process are often ignored because donors and governments are under pressure to deliver results quickly in the post-conflict setting.

7.7. COORDINATION

Improve and take the lead on coordination. Coordination of anti-corruption approaches across both development aid and humanitarian aid is essential, mainly because of the potential for multiplier effects. Coordination also (i) allows development partners to more easily reach the minimum threshold at which intervention can make a visible difference, and (ii) allows donors to take joint positions against corruption that they might not be bold enough to make alone. UNDP should seek opportunities to lead in this area, ideally in close partnership with the UN mission head and other relevant staff from the UN political section. For example, UNDP could encourage the establishment of a government dialogue forum or

platform allowing CSOs to participate. It may also initiate an informal donor coordination group. If UNDP is unable to facilitate coordination among all foreign governments engaged in supporting the post-conflict country, it should focus instead on one-on-one engagement and engagement with the recipient country to ensure that programming to address corruption is not undermined.

Ensure staffing for effective coordination. UNDP should, with other donors, address staffing needs to coordinate in the area of anti-corruption. The practice of placing full-time gender advisers in Country Offices offers a good example. An anti-corruption or accountability and

transparency adviser should be made available to work across programmes, sectors and government agencies.

Identify and use natural advantages. As in DRC and Sierra Leone, a Country Office may have been present before or during the conflict, whereas many other agencies operated from Headquarters and only located to the country after the war's end. In these instances, UNDP has a natural advantage in establishing and taking the lead on tackling corruption, from the peace process onwards. Where

UNDP is able to maintain impartiality among different warring factions, this is a particular advantage in addressing corruption because in the long run, effectiveness and sustainability hinge on engaging diverse societal groups.

Cooperate with UNODC. UNODC being the secretariat of UNCAC, and considering its expertise in enforcement approaches, it is crucial for UNDP to cooperate with UNODC, in particular to combine the prevention approaches with well-conceived enforcement.

7.8. EVIDENCE AND LEARNING

Bill Lyon/UNDP

Support the identification, generation and use of evidence and disseminate it widely. UNDP is widely regarded in

this area, and plays an important role in post-conflict situations where much aid is delivered through private contractors

whose business is not to develop and disseminate institutional memory. UNDP may carry out the following:

- Develop post-conflict indicators, assessment checklists, and flexible templates to guide discussions about the rules of anti-corruption institutions (since state building is about coming to an agreement on the rules). The goal should be to facilitate an indigenous process.

- Conduct surveys and research, partnering where possible with nationals. In some cases this is a matter of identifying and analysing existing knowledge; in other cases new data is collected. The lack of empirical evidence should not be permitted to delay ACT/AC programming. Collecting evidence is slow, particularly when challenged by inadequate post-conflict research capacity and poor physical infrastructure to get to the provinces. Data should be collected with a view to sharing it with other post-conflict countries as well.

- Consult widely and repeatedly to gain regular stakeholder feedback on studies, to improve quality and to ensure that the results will be put to use. UNDP should include anti-corruption supporters as well as stakeholders who benefit from the status quo and may therefore resist anti-corruption reform. Interested individuals should be sought from within resistant agencies. CSOs and the private sector should be included at all levels, in addition to the government.

- Utilize networks to disseminate best practices, case studies and survey results to other development partners, advisers and indigenous stakeholders.

7.9. STRATEGIC ROAD MAP

UNICEF/ HQ02-0440/Giacomo Pirozzi

Finally, it is recommended that each Country Office team define and strategically map out its anti-corruption approach. This could be accomplished through a facilitated workshop and consultations, resulting in a brief write-up. The process of developing the tool will facilitate a shared under-standing and commitment to address anti-corruption across UNDP programmes. The tool itself may serve as a guide for public relations and programming, among other purposes. While useful in any setting, it could be particularly helpful in post-conflict contexts where stability is lacking and adequate staffing is a constant challenge. (For example, staff turnover may be high, and those on the job may not have worked previously in a post-conflict situation — or if they have, not on post-conflict anti-corruption programming.)

For UNDP to have the impact it seeks in the area of anti-corruption in post-conflict and recovery setting, identifying and generating political support at different levels of government, and at different levels of UNDP, UN Country Team and the UN mission, is required. Implicit or explicit anti-corruption programming should start early after conflict ends. It should be sectorally cross-cutting, embedded in government reforms, and flexible enough to adapt to shifting post-conflict political realities, policies and procedures.

8

CONCLUSION

It is of utmost importance to understand how and why conflict and post-conflict situations lead to corruption, and to identify ways to deal with the situation without jeopardizing peace.

Governments in countries that have experienced violent conflict are particularly vulnerable to corruption. Corruption threatens not only governance in general but also the establishment and stability of democracies. When the corrupt excesses of political leaders lead to a lack of basic services and economic opportunities, this may generate public frustration, which erodes state legitimacy at a time when it is most needed. In the post-conflict environment, including where democracies are fragile, this may fuel renewed violent conflict. There are many cases where the peace process may rely on servicing the patronage networks of previously warring factions, making it difficult to address the issue of corruption in a direct way without unravelling the peace process itself, jeopardizing the elections and provoking a return to violence. For that reason, it is of utmost importance to understand how and why conflict and post-conflict situations lead to corruption, and to identify ways to deal with the situation without jeopardizing peace. Public perceptions matter because the risk of political instability is predicated on them. There is a sense of injustice created by a lack of distribution of wealth that can create frustration because the state is not satisfying people's basic needs. Therefore, in post-conflict conditions, the **priority of delivering basic social services is paramount to rebuilding the trust of citizens** and the rule of law.

An important finding of this research is that few existing anti-corruption interventions have had significant success stories and some have failed altogether. Technical solutions that have worked in normal development situations have been applied in post-conflict situations and have not succeeded. Most of the anti-corruption interventions have been implemented on an *ad hoc* basis rather than being **integrated in other development processes or implemented holistically.** Anti-corruption interventions during the peace process and explicit, large-scale anti-corruption interventions during the transitional period have often resulted in toothless, symbolic acts if not accompanied by implicit, small-scale, embedded interventions.

Sequencing in priorities with other competing and more urgent humanitarian needs is a crucial challenge, which makes it

more pertinent to **embed anti-corruption in rule of law and security interventions** which are fundamental in enabling political legitimacy, democratic stability and peace. Analysis of rule of law and nation building, and how these integrate in larger political reforms and value formation, including citizen participation, local service delivery and accountability mechanisms, should be considered an integral point of programming anti-corruption interventions.

Nation building, particularly in post-conflict situations, is highly relevant to anti-corruption programming, as it allows shaping of common values (usually in constitution-drafting processes) that aim to go beyond identity politics or the narrow vested interests of specific classes. Rather, **processes of nation building promote values universally agreed upon by the society itself,** where accountability, transparency and integrity can form the bedrock of the non-threatening notion of a 'nation'.

Finally, **donor intervention, if coordinated, may be fundamental in helping all the national stakeholders to realize the extent to which corruption causes governance to deteriorate** and weakens the state's ability to deliver services. By increasing social accountability the population can understand better the impact of fighting corruption, which in turn is likely to result in growing pressure on politicians to act on corruption, and in deeper and longer term engagement by non-governmental actors. As a result, while limited in scope, the outcome of such interventions is likely to be robust, reflecting strong consensus across diverse participants' interests or their perception of the benefits to them. This contributes to sustainability in the long term.

For UNDP to have the impact it seeks, implicit or explicit anti-corruption programming should start early after conflict ends. Its anti-corruption programmes should be sectorally cross-cutting, embedded in government reforms, and able to adapt to shifting post-conflict political realities, policies and procedures.

> For UNDP to have the impact it seeks, implicit or explicit anti-corruption programming should start early after conflict ends.

9

ANNEXES:
CASE STUDIES

9.1. AFGHANISTAN

UNDP

i. Background

Afghanistan is a country in conflict, and has been for more than three decades. In 1973, King Zahir Shah was deposed in a palace coup by his cousin, Mohammed Daoud Khan, who then declared a republican regime and established the rule of the Communist party. That event also marked the departure from the country of Islamist elites; they subsequently initiated armed insurrection from Pakistan. Five years later, in 1978, Soviet troops invaded to support a communist regime, an intervention that launched more than a decade of *mujahidin* resistance backed by the

United States and other anti-communist allies. The period from 1992 to 1996 saw a civil war between different *mujahidin* groups, which was followed by five years of conflict between the ruling Taliban and the Northern Alliance of other former *mujahidin* groups. The United States invaded the country in October 2001; two months later, the Taliban regime collapsed.

The Bonn Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed in December 2001, was designed to "end the tragic conflict in Afghanistan and promote

national reconciliation, lasting peace, stability and respect for human rights in the country." For reasons that are noted later in this case study, the Bonn accord did not achieve any of these objectives. While the international armed conflict was considered to have ended in June 2002 with the establishment of the transitional Afghan government, the armed conflict against the Taliban and a range of other armed anti-government elements continues throughout the country with international forces fighting in support of the government.

The Bonn accord designated an Afghan Interim Administration (AIA) and prescribed a timetable for the reestablishment of permanent Afghan institutions. A gathering of traditional representative assemblies (known as a *loya jirga*), called by authorities to deal with issues important to the Afghan nation, was used in June 2002 as a political nomination process in order to replace the AIA with the Afghan Transitional Authority (ATA) and to designate Hamid Karzai as head of state. The duties of the ATA were (i) to hold a constitutional *loya jirga* to draft a new constitution in December 2003, (ii) to elect the president through direct universal suffrage in October 2004, and (iii) to hold elections for the National Assembly in September 2005 (later postponed until March 2006). During the transitional period, the Constitution of 1963 was retained except for the provisions relating to the monarchy, as was the existing legal system.

The decision taken at the 2001 Bonn Conference to preserve the existing administrative structures, rules and procedures meant adopting the administrative heritage of the Soviet regime as well as that of *mujahidin* rule as the basis for public administration. The transitional administration was therefore characterized by multiple procedures, uncoordinated structures and outdated laws. The lack of rationalization and reform transformed the new administration into an opaque system that was easily exploited by officials. For example, in order to obtain a driving licence, an individual had to go through more than 15 steps and make facilitation payments at each step. For obtaining an identity card, a citizen had to go through the same number of administrative steps, but spread over many institutions.[50]

ii. Corruption in Afghanistan

Afghanistan was for many years reputed to be a smugglers' gateway for goods ranging from illicit drugs heading for Western markets to proscribed Western products entering the former Soviet Union. The large opium economy is widely considered to be the most important source of corruption in the country.[51] Yet, corruption was not the cause of, nor a contributory

factor to, the conflict in Afghanistan. Under the pre-2001 Taliban regime, the prevalence of corruption is reported to have been low. This has been attributed to that regime's high-profile punishment of petty corruption and the limited opportunities for corruption at that time due to small resource flows and to the *de facto* quasi-legal status of the opium economy. A ban on opium poppy cultivation was imposed by the Taliban in 2000 and was effectively implemented. However, the ban did not apply to trade in opium products.

Corruption now constitutes one of the main obstacles to state building and any programme of political normalization, reconstruction or development. The basic forms of corruption in Afghanistan appear to be broadly similar to those found in other countries. These include petty corruption, bribery, extortion, theft of government assets, patronage, and corruption in government procurement.

Corruption is reported to have multiple and deeply rooted causes in Afghanistan. Three principal causes have been suggested. The first is the booming of the opium economy, a development encouraged by the lack of security and the weakness of the state; it is now estimated to account for close to one-third of gross domestic product (GDP). Counter-narcotic efforts provide opportunities for corrupt officials within the security and justice sectors, particularly at the provincial and local levels, to extort enormous bribes from drug traffickers. A second cause is the large inflows of international assistance combined with the pressure to spend these funds quickly; these funds are provided for development and humanitarian purposes, as well as for sustaining the military in the country. The latter includes large inflows and contracts related to international military forces and their activities, as well as international and domestic security firms and aid to Afghan security forces. The third cause is related to issues and developments that have seriously compromised the detection, prosecution and punishment of corrupt practices. They include the non-functioning institutions, the limited capacity of government, and reported corruption in the justice sector.[52]

The fragmentation of society during the conflict, in particular along ethnic lines, also resulted in more reliance on traditional and especially conflict-generated patronage networks, with associated corruption. The Afghan tradition of kinships, whereby those in privileged positions (from senior officials to lower level civil servants in the districts) are under pressure to support their kin (family or ethnic group) further exacerbates the problem. In this culture of kinship, patrons exert considerable social and political control on formal power structures, using their influence on public decision-making

and services in order to reinforce their power base or to extract profits. Benefits derived from these relationships range from gaining access to preferential services, forgery of legal papers, nepotism in obtaining employment, and securing business contracts. Kinships thus reinforce the notion that personal loyalties are more important than the rule of law.[53]

A survey conducted in 2006 by Integrity Watch Afghanistan in 13 provinces found that around 60 percent of Afghans considered the Karzai government to be the most corrupt the country had experienced in 50 years. A large majority of respondents indicated that 50 to 100 percent of government services commonly sought require some sort of corrupt practice. The majority of respondents also indicated that they tolerate this kind of corruption since they attributed it to the low pay of civil servants. The most common practice of corrupt behaviour of civil servants is to delay service delivery until a bribe is paid. Half of the respondents said they had paid bribes within the preceding six months. Reasons cited for doing so included fast-tracking the delivery of services, the absence of relations who were needed to obtain services by means other than bribing, and lack of access to higher authorities. More than 90 percent of respondents believed that connections determined the recruitment of civil servants, with only 8 percent citing merit as the main factor for obtaining a govern-ment position. Control of government offices that issue official documents is reported to be one that is most coveted. These include the registration of cars and distribution of number plates, issuing of driving licences and identity cards, buying of marriage certificates from family courts, as well as passport trafficking.[54]

According to a report cited in the Afghanistan Human Development Report 2007, the Afghan judiciary lacks inde-pendence. In many ways, this is not surprising. Three decades of war and political upheaval have taken an enormous toll on the judicial system. There are few buildings to house judges, prosecutors and attorneys, police or prisoners. There are equally few skilled professionals to fill the buildings. Until recently, few Afghan judges had copies of the country's laws, and most had not been trained in those laws. The judiciary does not have any communications infrastructure, file management system or libraries. Funda-mentally, a political culture that respects the rule of law is also missing; for example, Afghan judges and prosecutors from around the country complain that govern-ment officials and militia commanders interfere with their decisions. At the same time, the level of corruption within the judicial system is reportedly quite high as well. As a result, citizens who want justice often cannot find it, and those who want to evade justice can do so easily.

Integrity Watch Afghanistan attributes the multiple forms of corruption to the social and political realities and the choices made when reconstructing the state and political system. Although the text of the Bonn Agreement insisted on the accountability of state institutions, the political process focused mainly on its representative character.

Integrity Watch also documents how the participation of regional commanders in the political process has enabled them to retain most of the customs dues collected in the periphery, which amount to over $1 billion annually, by sending less than 10 percent to the central government. Today, no goods can be released from customs offices without bribing customs employees from top to bottom. The pillage of natural resources is also caused by the lack of authority of government in the periphery and the opportunities it offers for corruption. This has taken the form of local commanders dealing directly with timber mafia and gem smugglers.

In the Corruption Perception Index of Transparency International, Afghanistan fell from a ranking of 117 out of 159 countries in 2005, to 172 out of 180 in 2007, to 176 out of 180 in 2008. In its most recent index published in 2009, Afghanistan is ranked as the second most corrupt country in the world. In international corruption perception surveys, Afghanistan is ranked among the countries whose public sectors are perceived to be the most vulnerable to corruption.

While the giving and taking of *baksheesh* (small gifts) is generally considered to be acceptable, grand corruption is morally rejected as being against the basic principles of Islam. In fact, a large majority (81 percent) of respondents in a recent survey considered that the application of the *Sharia* would be an effective tool to combat corruption, while only a quarter believed that administrative reform could reduce it. The media and provincial councils were considered important mechanisms in the fight against corruption.[55] Corruption is an issue that is discussed widely on radio and television by political figures, intellectuals and opinion leaders. However, the coverage of corruption in the five main Afghan newspapers is reported to be limited.

The public perception of widespread corruption has resulted in disenchantment with the government. This applies particularly to corruption faced by people in their daily lives, e.g., corruption in gaining access to and paying for water and power services; paying more than the mandated fees for licenses and certificates; paying teachers for extra school time or for grade promotions; and paying doctors for extra care. These perceptions undermine the government's credibility and legitimacy, and more generally the state building agenda. This has been exacerbated by the popular perception that international assistance is being squandered.

iii. The institutional and legal framework

The Constitution of Afghanistan (which came into force in 2004) states that the government is "responsible for maintaining public law and order and the elimination of administrative corruption" (Article 75). The Constitution was drafted by a joint panel of Afghan and international scholars. The term 'administrative corruption', as distinct from 'moral corruption', refers to the misuse of their public position by government employees for private gain.

Almost simultaneously, on 14 December 2003, President Karzai established by decree the General Independent Administration for Anti-Corruption (GIAAC). The Law on the Campaign against Bribery and Official Corruption designated GIAAC as the principal body to 'investigate' bribery and corruption offences and 'introduce suspects to face judicial prosecution'. These were powers vested by the Constitution in the attorney general and could therefore not have been exercised by GIAAC. GIAAC did not have the capacity to carry out its mandate. In 2006, following concerns over the leadership of GIAAC, donors ceased providing support to the organization.

Before the establishment of the GIACC, there existed a complicated network of fragmented and overlapping mechanisms and responsibilities. Several complaint mechanisms existed without any clear legal direction as to how complaints on corruption should be addressed and dealt with and by whom. This confusing situation was compounded by conflict and tension among some of the institutions mandated to fight corruption. As a result, scarce resources were not used in a cost-effective manner and corruption cases remained unsolved. The institutions that were either mandated to combat corruption or were actually engaged in combating corruption included:

- The Parliamentary Complaints Commission to receive complaints from citizens, inter alia, on corruption within the executive, legislature or the judiciary. Its function in respect of such complaints appeared to be that of a conduit, in that the complaints are usually referred to the relevant agency for investigation.

- The Anti-Bribery and Anti-Corruption Office in the Ministry of Interior (ABACO) to investigate complaints of corruption within the police and other units directly under the supervision of the Ministry of Interior (including the offices of provincial governors and district chiefs). On completion of its investigations, ABACO reported to the interior minister, who decided on further action, including whether to refer the matter to GIAAC or to the attorney general's office.

- Within the national police, its Criminal Investigation Department (CID), with a staff of approximately 4,000 across the country, is responsible for the detection of corruption. The CID coordinated its efforts with GIAAC (until its abolition) and ABACO when a direct request was made for support. The Department for Economic Crimes within the national police, with a staff of 24 at the central level and with a presence in the provinces, is also reported to be playing a role in detecting corruption-related crime, while its Detection Department is involved in surveillance to detect such crimes. The police establishment is considered to be highly corrupt and linked to narcotic and other organized crime, and other agencies reportedly have little confidence in the ability of the police to conduct unbiased and professional investigations.

- The National Directorate of Security (NDS), established by the National Security Decree of February 2004, is responsible for countering organized crime, a mandate that also extends to the area of corruption. However, with regard to corruption, the NDS confines itself to information gathering and referring the relevant information to the attorney general's office or the police. If such information relates to a high-level official, the information sis submitted to the president, who decides on further action.

- The Afghanistan Human Rights Commission (AIHRC) may not investigate a complaint that relates to corruption, but if it receives such a complaint it may compile information and forward such information to the attorney general's office.

- The attorney general's office, under its new head appointed in August 2006, began focusing primarily on narcotics and corruption. It has a special anti-corruption unit responsible for investigation and prosecution.

In 2004, the government proceeded to sign UNCAC but took no action to implement any of its provisions. In 2006, President Karzai established by decree a High Level Inter-Institutional Commission on Corruption chaired by Chief Justice Abdul Salam Azimi and composed of several high-ranking officials, to examine the problem of administrative corruption in the several sectors and recommend short-, medium- and long-term remedies. The Azimi Report was released in mid-2008 and contains many recommendations and is considered by the government to be the current national anti-corruption strategy.

iv. Donor attitudes and political dialogue

The Bonn Agreement of December 2001 referred to the principles of Islam, democracy, pluralism and social justice, but made no mention of corruption. The principal focus was on stabilization and security, and corruption was not raised publicly or in political dialogue in the period that followed. In the first three years of reconstruction, combating corruption was not a priority for the international community and donors. During the presidential election of October 2004, the donors' initial attitude on corruption was that fighting corruption might jeopardize the country's stability.

Beginning in December 2005, a series of donor meetings were held to forge a common understanding on corruption (as well as on drug production and trafficking, which were seen as integral to any strategy against corruption despite an Integrity Watch survey indicating that Afghan perceptions were that the issue of drugs was a secondary problem). The main participants were UNDP, UNODC, the World Bank, USAID, U4 and DFID. In 2006, UNAMA organized a 'tea club' on corruption, a political donor platform mainly for ambassadors of the major donors. However, there was little or no follow-up and corruption did not thereafter figure as a prominent issue in UNAMA's political coordination efforts.

In January 2006, the London Conference on Afghanistan was expected to agree on a series of anti-corruption measures. However, the only concrete step to emerge was an agreement to ratify UNCAC. Any further commitments were deemed either too politically sensitive or unrealistic. Accordingly, the Afghanistan Compact (2006–2010), agreed upon between the government and the international community, included the following benchmarks under the title Governance, Rule of Law and Human Rights:

- UNCAC will be ratified by the end of 2008;[56]

- national legislation will be adopted accordingly by the end of 2007; and

- a monitoring mechanism to oversee implementation will be in place by the end of 2008.

In April 2007, the Anti-Corruption Road Map prepared by the World Bank, UNDP, UNODC and DFID provided a comprehensive assessment and recommendations on how to more effectively fight corruption.

v. Anti-corruption approaches and programmes in Afghanistan

No serious anti-corruption intervention appears to have been made until the Afghanistan Compact of January 2006.[57]

In August 2006, President Karzai authorized Attorney General Abdul Jabbar Sabbit to take widespread and decisive action against corruption and bribery and to fight all types of corruption in government offices. He was directed to crack down, arrest and prosecute the perpetrators of corruption, even if its tentacles reached high levels of the government. Mr. Sabbit reportedly responded enthusiastically to his mandate but has since been removed from office.

In August 2007, the National Assembly ratified UNCAC. In May 2008, President Karzai issued a decree establishing the High Level Monitoring Administration on Implementation of Anti-Corruption Strategy, and instructed the justice ministry to draft 'the organizational structure law'. Another decree brought into force the Law on Monitoring the Implementation of the Anti-Administrative Corruption Strategy. This law was defective in many respects and inadequate to sustain the new institution. In June 2008, the Afghan National Development Strategy was finalized, and presented at the Paris conference. It contains an anti-corruption strategy that appears to be a modification (or simplification) of the strategy contained in the Azimi Report. It also defines the priorities of development. Its usefulness is in question, however, because it has been criticised by the international community for its complexity.

In August 2008, HOO was established with a respected former senior administrator as its head. It is mandated with overseeing the implementation of the national anti-corruption strategy, taking the lead on corruption prevention and awareness-raising, and coordinating government-wide efforts to fight corruption. A new law was needed for the HOO to fulfil its mandate. This law was passed by decree after President Karzai was re-elected in August 2009.

Some donors, especially the United Kingdom and the United States, wanted the new law to expressly state that HOO would be responsible to the National Assembly and not to the president, and that the director-general of HOO would be appointed by the president with the approval of the National Assembly.

Other areas of governance were addressed with new legislation. For example, in 2005, three new laws were enacted. A new Civil Service Law established the following: (i) the principle of open competition and merit for all civil service appointments; (ii) the Independent Administrative Reform and Civil Service Commission and independent appointment and appeal boards; and (iii) the Administrative Reform Secretariat as the focal point for public administration reform. A new Public Finance and Expenditure Management Law established (i) a sound budget preparation

framework with comprehensive and transparent documentation; (ii) requirements for accounting and regular reporting in line with international standards; and (iii) an independent review of the annual financial statements for presentation to the National Assembly. Finally, a new Law on Procurement established (i) transparent and competitive procurement procedures with contestable mechanisms based on objective and verifiable selection and award criteria; and (ii) the responsibilities of government officials involved in procurement.

The World Bank, ADB, UNDP and DFID have also conducted six vulnerability to corruption assessments (VCAs), addressing the types, causes, impact and extent of corruption. The assessments detail specific vulnerabilities to corruption in the following areas:

- public financial management and procurement (World Bank);

- the revenue department of the Ministry of Finance (DFID);

- the budget department of the Ministry of Finance (UNDP and DFID);

- merit-based appointments in the civil service (World Bank);

- the road sector (ADB);

- the energy sector (ADB).

vi. UNDP anti-corruption interventions

In 2006, on the initiative of UNDP, a first informal donor group on anti-corruption was established, bringing together the World Bank, ADB, Norway, the European Union, Sweden and UNODC. This group worked at the technical level to achieve the following: (i) coordinate to the extent possible their agencies' inputs on anti-corruption issues into the policy dialogue at the national level; (ii) produce a discussion paper on anti-corruption reform (the Anti-Corruption Road Map of early 2007); and (iii) send a joint letter — together with a broader group of donors — to the government's chairman of the Joint Coordination Monitoring Board in September 2007 to express its unease with the leadership of GIACC.

UNDP launched its ACT project in January 2007. It was designed at a time when there were no clear government counterparts in the area of anti-corruption, and few concrete steps had been taken to address corruption. The 18-month Phase One of the project was therefore designed to lay the foundations for a wider and more comprehensive approach once the right conditions were in place. Anchored in the Ministry of Finance, it aimed to assist governing institutions in Afghanistan in preparing the groundwork for a comprehensive and long-term

strategic anti-corruption programme. It took as its starting point UNCAC, which the government had undertaken to ratify.

A gap analysis of national legislation in comparison with the requirements of UNCAC was prepared and presented to a three-day stakeholder workshop that brought together some one hundred participants from the relevant government institutions and the international community. UNDP also undertook a study of the existing institutional arrangements for combating corruption, following which the government announced the establishment of a new anti-corruption body to replace the existing discredited one. When the new institution, HOO, was established, UNDP provided support to its senior management to develop its organizational structure, facilitating an exchange with the Indonesian government to provide an expert to support HOO in developing its strategic plan.

Support was also provided to develop a corruption monitoring system and to establish a fraud investigation unit in the Ministry of Finance's Internal Audit Department. A 'grants facility' was established to build the watchdog capacity of civil society actors and the media, and three organizations were supported. Of them, the Saba Media Organization provided training in investigative journalism. The other two were Integrity Watch Afghanistan and Integrated Approach to

Community Development. Support was provided to enable senior government officials involved in anti-corruption work to develop strategic regional and international partnerships in order to expose them to international experience and provide them opportunities for networking. The project also collaborated with the Civil Service Commission to integrate ethics and anti-corruption training in the leadership training being provided to high-level Afghan civil servants.

In 2009, the ACT project was redesigned on the basis of the Afghanistan National Development Strategy, the National Anti-Corruption Strategy and UNCAC, and extended for a further three years. In so doing, UNDP took account of lessons learned from the earlier phase of the project. These were: (i) the need to engage international advisers on a long-term basis in order to secure capacity development, skills transfer, follow-up and sustainability of project activities; (ii) the importance of focusing on a more narrow set of outputs to allow for developing the necessary partnerships to achieve the desired results; (iii) the need to implement activities at the subnational level; and (iv) the importance of having sufficient human resources in the project to ensure timely implementation of project activities.

Accordingly, in the second phase, the project has been based in HOO, with project staff providing advice and support

to its senior management on a day-to-day basis including in the areas of administration and finance, human resources and information technology. The emphasis is on capacity development and skills transfer to enable the development of the necessary national capacities to ensure the sustainability of outputs. The project will now focus on a holistic approach that includes prevention and awareness-raising as well as enforcement. It will also engage with and support a broad range of actors outside of government, with particular emphasis placed on increasing the involvement of civil society, media and the public in combating corruption.

In the first two quarters of 2009, UNDP provided support to HOO to develop a new Anti-Corruption Law that would define its mandate accurately and comprehensively. UNDP also supported the Ministry of Finance to establish a Complaints Office that is now fully operational. Following the VCAs conducted in several ministries and sectors together with the ADB, DFID and the World Bank, and based on the findings of these assessments, action plans have been developed to strengthen processes and procedures.

The ACT project has been working in close collaboration with the ADB, DFID, UNODC and the World Bank in supporting the government in awareness-raising and prevention of corruption.

vii. UNDP and internal integrity

A report for the World Bank in 2009 noted that the structure of aid payments was often seen as corrupt in itself.[58] Among its findings: "Many Afghans consider high pay and overheads for NGOs, contractors, consultants, and advisers to be a form of corruption, irrespective of whether or not the relevant rules were followed in their contracting." In 2008, UNDP/ACT, in consultation with bilateral and multilateral development partners, developed terms of reference for a survey on transparency and integrity in aid agencies. Five agencies took part in the study (UNDP and the bilateral development agencies from Canada, the Netherlands, Norway and the United Kingdom), and meetings were also held with the World Bank and the Danish and German government development agencies.

viii. Lessons learned in Afghanistan

The issue of corruption in the state apparatus has now become the main focus of some of the militant groups in Afghanistan. Corruption has the potential to damage the legitimacy of the Afghan state and the international community's presence in the country.

Despite the efforts of donors and international agencies, the state institutions remain weak, uncoordinated and ill-

equipped to supervise the mammoth task of rebuilding the country. The new power structure is over-centralized and unable to operate across large portions of the country due to the unstable security environment. In fact, it is claimed that the writ of the central government does not run beyond the borders of Kabul or, perhaps more accurately, over not more than 20 percent of the territory of Afghanistan. The illicit drugs trade continues. Warlords and local chieftains still control many parts of the country and the influence of the Taliban movement remains strong. Many of those running state institutions have no incentive to become more efficient or transparent in their activities, while the policy of rewarding regional warlords with influential government posts in return for a more acquiescent relationship with the central administration has merely opened up further opportunities for corrupt practices. For Afghan citizens, corruption and bribery are now an inevitable part of everyday life, from obtaining domestic electricity supply or a driving license to expediting a court hearing or winning a business contract.[59] Integrity Watch Afghanistan claims that 'a bazaar economy' has developed where every position, favour and service can be bought and sold. One corrupt practice can be a cause and/or consequence of another corrupt practice, leading to a vicious cycle of self-perpetuation.

Government officials candidly acknowledge that corruption is routine among the police, prosecutors and judges. During the interviews conducted for this research, senior government officials described corruption as being incredibly widespread. In the justice sector, it is commonplace for a person approaching a courthouse to be intercepted by persons with some link to the judge who will inquire as to the problem and then solicit a bribe. With respect to the police, one senior police trainer noted that while individual police could be properly trained, the entire policing system was so corrupt that putting a new officer into the system was like "throwing people into a cesspool and expecting them to stay clean."[60]

It is in this context that UNDP has launched a UNCAC-based targeted approach to combating corruption. Doing so appears to have two distinct advantages. The first is that Afghanistan has ratified the convention, and is therefore under a treaty obligation to begin taking measures to implement its provisions. The second is that UNCAC covers a broad range of issues and priorities, including civil service reform, a commitment to ethical standards, the integrity of the electoral process, access to information, judicial integrity, management of public finances, accounting and auditing standards in the private sector, and public procurement procedures.

Through the ACT project, and using UNCAC as the benchmark, UNDP has sought to create a core group of stakeholders, including civil society and the media, which are committed to the project's implementation. UNDP also appears to have succeeded in influencing the relevant authorities, including a somewhat intractable president, that it is necessary to replace crony institutions with other more independent and credible ones. Its principal focus is the newly created HOO, within which the ACT project is now located and whose capacity it seeks to strengthen through intensive and long-term training and technical assistance. The mandate of HOO (if the proposed new law is enacted) will be broad and comprehensive and will include prevention, public awareness, proper management of public affairs, and the simplification of processes and procedures in public bodies that deal with the public on a regular basis. If HOO, which appears to enjoy a degree of public credibility because of its founding chairperson, is successful in its mission, the basic framework that is necessary to begin strengthening integrity in the country would have been established.

There is, however, another area, besides those that have engaged the attention of UNDP so far, that needs to be addressed. It is unfortunate that, for the international community, the justice sector does not appear to have been a priority. As such, relatively little attention has been paid to the establishment of the rule of law beyond police training and reform and the revision of criminal law and procedure. This neglect is worrisome. In 2007, only 11.6 percent of judges had a university degree, and only 56.7 percent had completed any judicial training prior to their appointment. The judiciary is reportedly perceived to be the most dysfunctional and corrupt institution in Afghanistan. With most judges in the provinces earning $35 to $50 per month — less than the average police officer — corruption in the court system has been described as being "endemic."[61] In the circumstances, it is necessary to engage the Supreme Court and assist it to formulate a national plan of action to strengthen integrity in the judiciary, including training in judicial ethics, and to take the initiative in instituting the necessary reform measures.

A programme of judicial reform could also extend to the traditional non-state institutions — *loya jirgas* or *shuras*, which operate as mechanism of dispute settlement across the country. Empirical data show that these institutions often resolve local disputes in a manner more trusted, considered fairer and less corrupt, and are deemed more accessible than state courts. These institutions reportedly deliver justice more effectively (and cost effectively) and are more in line

with local norms and traditions than state justice institutions.

However, at least two negative aspects of these institutions have also been noted. One is that they are highly patriarchal institutions where women are rarely allowed to participate in decision-making. The other is the exceptional remedy of offering a woman or girl into marriage as a means of dispute settlement — a practice that violates the Constitution, Islamic law and human rights principles. Any reform programme should, therefore, seek to create a more accountable and standardized traditional justice system. Reform of the justice sector requires innovative approaches grounded in local realities such as finding constructive ways in which to improve informal justice while responding to the constraints of the formal system.

Some specific lessons learned were the following:

- Political will is of critical importance in moving the anti-corruption agenda forward.

- Know the context. If a project is developed without fully taking into account the political context UNDP's efforts will never succeed.

- Projects need to be realistic; it is easy to be overambitious with anti-corruption projects. When formulating projects one should consider what is feasible to achieve given the circumstances of the country, and build in sufficient buffers to allow for delays.

- The projects need to be focused. There is so much that need to be invested in moving one activity forward that if a project has too wide a focus and too many partners it will be difficult to manage the reform process.

- Donors and agencies need to work together in a coordinated manner. In post-conflict situations with a heavy donor presence, it is also important to link the political and technical levels. Unless there is also a push at the political level for anti-corruption, those working at the technical level will not be successful.

- A single anti-corruption project is not sufficient. UNDP (and the UN family) should build in anti-corruption components and leverage other existing projects and programmes, where relevant, in the fight against corruption.

9.2. DEMOCRATIC REPUBLIC OF THE CONGO

UN Photo/A Burridge

i. Background

DRC has a long history of predation, economic exploitation by brutal authoritarian regimes, and impunity for crimes since the 19th Century. The independence movement of the 1950s led to a popular uprising in 1959 and independence from Belgium in 1960. The newly elected ruling coalition was ousted in a coup by army chief Mobutu Sese Seko, who let the president remain until a second coup in 1965. Mobutu ruled for 32 years until 1997, when the country (then known as Zaire) was invaded by Rwandan, Ugandan and Angolan troops.

Corruption today is a defining characteristic of state-society relations and has its roots in Mobutu's neo-patrimonial regime. Through the links that Congolese elite networks had with international criminal networks, the country's resources were plundered, the army was depleted, and conflict was fuelled.

Mobutu initially set up a centralized, horizontal system of patronage to allow the state to capture rents and keep wealth holders under control. Following economic decline, by 1980, Mobutu's strategy shifted to supporting regional power brokers organized in vertical networks based

mainly on ethnic ties. Public resources were treated as personal property by regime insiders, and vast amounts of money were stolen from the state. Vertical networks of power in the provinces began to operate on their own, effectively capturing the state.

To keep the armed forces from posing a threat to his power, Mobutu let them weaken. He also encouraged tribal and ethnic rivalries in an attempt to win allies and disarm his detractors. Both of these factors contributed to wars in the 1990s. In the Kivus, local violent ethnic conflict over land access became a full-scale war by 1993. And with its weak army, Congo was an easy target for the disciplined Rwandan troops when they invaded a few years later.

A peace and reunification process, called the Inter-Congolese Dialogue, culminated in the signing of the Global and Inclusive Peace Agreement of Sun City in December 2002. This power-sharing agreement established the institutional framework for DRC's political organization during the transition period leading to general elections in 2006.

ii. Corruption in DRC

Corruption is pervasive and systematic at all levels, and impunity is engrained in the system. The line between public and private resources has long been blurred, with high-ranking officials and bureaucrats alike using their position to extract rents through every form of corruption imaginable. Petty corruption, or tracasseries, is an everyday occurrence whereby most people are required to make side payments to receive virtually any public service to which they are entitled. Bribes are also commonly paid to gain illicit benefits, or demanded by police to avoid problems with law enforcement. Civil servants are extremely poorly paid, if at all.

There is no comprehensive assessment or survey of households, public officials, firms and CSOs in DRC. Following the publication of the 2005 Corruption Perception Index by Transparency International, the Observatory of the Code of Ethics for Public Officials carried out a survey on corruption in DRC which found the president and four vice-presidents to be perceived as the most corrupt officials.

According to the Chamber of Commerce, no business deals can be discussed without putting money on the table first. The chamber reported that its members say they would be willing to pay 100 percent more in taxes to the government if they did not have to pay under the table.

Corruption is widely accepted as a norm, and social structures favour it. People feel helpless and everyone participates in corruption. That said, efforts by Innovative Resources Management to reduce systemic petty corruption in waterways in two

provinces challenged this culture of tolerance. While it did not prove to be sustainable in the long run, the project's results showed it is possible to change the public's view, and to organize people to fight corruption at the local level.[62]

Some interviews carried out as a part of this study suggest that ordinary Congolese do not judge other ordinary Congolese negatively for paying bribes because it is seen as unavoidable. They do, however, view politicians negatively for their excesses. The general public is antagonistic towards the leadership that squanders resources for personal gain. There is a negative perception of the 'political class', not just ministers but anyone in power (the police, army, etc.). There is also a sense of injustice created by a lack of distribution of wealth that creates frustration because the state is not satisfying the basic needs of people.

Public participation in governance is characterized by strong ignorance of state organization and by tribal rivalry. Many people do not judge candidates on what they promise during their campaigns. Instead, they vote on a tribal basis, or because someone gave them money or a T-shirt. Other major corruption-related challenges are that politicians can easily manipulate the population and the government is hard for the public to access.

While corruption was not the root cause of the 1990s conflict in DRC, warring factions, like everyone else, engaged in it to their advantage. An example of this is the traffic in 'blood' diamonds, which were used to fund combat operations. Indeed, those interviewed in this study cited exploitation of mineral resources as a significant contributor to past and current conflict. Inequitable distribution of resources is seen as causing public discontent with the incumbent government today.

A distinction between stabilizing and destabilizing forms of corruption was not made by interviewees; the view was that all forms of corruption are politically destabilizing and threaten the government's legitimacy, as well as the legitimacy of state institutions. Despite the public discontent, there was no indication that corruption is a threat to the (democratic) regime as of the latter part of 2009.

iii. The institutional and legal framework

Corruption came to the fore when political opposition crystallized in the early 1990s. Development partners put anti-corruption on the agenda in 2002, before the transition, but without national ownership. Anti-corruption has re-emerged on the national political agenda since the 2006 elections.

In 2002, during the consultation process for the Interim Poverty Reduction Strategy Paper (which was signed later that year), corruption was cited as the main

cause of poverty in the four provinces surveyed. One immediate result was the creation of a national anti-corruption strategy (in November 2002), which was drafted by an inter-ministerial committee. It attributed corruption to clientelism, impunity and lack of political will, and recommended controls, reduction of favouritism and better management of state enterprises. However, while participatory, the development of the national anti-corruption strategy was Kinshasa-based and donor-driven.

As part of the 2002 Sun City Agreement, five 'citizen committees' were established, one being an Ethics and Anti-Corruption Commission. The penal code was not modified until March 2005 and the commission took a while to set up and was not functioning until June 2005. Despite significant World Bank and UNDP support, the Ethics and Anti-Corruption Commission was largely ineffective in its operations. The cases referred to the previous anti-corruption body were not passed on to the new commission, which did not give the public reason to expect that the latter would be any different. The Anti-Corruption Commission was filled with political appointees, was riddled with infighting and used for political purposes, and carried out *ad hoc* projects.

In 2005, the transitional parliament's Lutundula Commission submitted a report documenting the illegality of many mining and other contracts signed by the rebels and government authorities during the wars of 1996–1997 and 1998–2003. The report recommended their abrogation or their renegotiation and the indictment of a certain number of high political and businesses actors involved in these operations. However, these recommendations were ignored.

The auditor general's office lacked independence from the president (it was supposed to report to the National Assembly but was, in practice, controlled by the president), lacked information, and operated and submitted reports that were not disseminated or acted on. The inspector general's office was not given access to funds or to the bodies it was supposed to audit.

A new constitution was passed by referendum in 2005. It is based on a semi-presidential system with a prime minister selected from the parliament. It provides for an independent justice system, a process of decentralization with a significant transfer of powers to provinces, and a three-year transition period to a new territorial organization comprising 26 provinces.

Since the 2006 elections, the new government has expressed interest in fighting corruption. In a 'zero tolerance' speech on 30 June 2009, President Joseph Kabila acknowledged that he had ignored the issue during the transition, but would now make the fight against corruption a priority. In particular, Minister of Justice

Luzolo Bambi Lessa said he would seek to use the courts to fight corruption and cited the support of Kabila and Prime Minister Adolphe Muzito. Also, the Minister of Education has actively opposed the purchase of diplomas, a longstanding corrupt practice. These 'champions' are potential entry points for UNDP.

iv. Donor attitudes and political dialogue

On the whole, development partners did not take a firm stand against corruption during the 2003–2006 post-conflicttransition period; the main priority was elections, and partners did not want to jeopardize them. Development partners in 2004 did pressure the president to direct the auditor general's office to audit state enterprises. The plundering of state enterprises documented in the audit report caused a public outcry. To the public's disappointment, none of the implicated officials were prosecuted. In March 2005, Vice-President Jean-Pierre Bemba announced DRC would participate in the Extractive Industries Transparency Initiative (EITI) which aims to strengthen governance by improving transparency and accountability in the extractives sector. In September 2005, a commission was established and members were appointed in May 2006. Given the timing, however, the initiative was put on hold.

Since the 2006 elections, with new institutions in place, there has been a change in the position of development partners. The United Kingdom has reportedly made a $180 million grant conditional on fighting corruption. Through the Country Assistance Framework process, a number of donors have developed a common strategic approach for economic assistance to DRC in the post-elections period (2007 through 2010). In it, there is a consensus to take 'decisive action' in the area of corruption.

Development partners have not made joint statements about corruption in DRC. DFID said in its Anti-Corruption Strategy (2007) that it will "seek and maintain coherence of the international donor response regarding zero tolerance of corruption.[63] This is potentially difficult in DRC given the range of donors working here, including China and South Korea, South Africa and Angola and our more established partners. A donor common position should include a joint donor position on providing budget support because if some donors provide budget support to a seriously corrupt government this could undermine the incentives to reduce corruption."

As compared to the relatively effective coordination of humanitarian aid by the Office for the Coordination of Humanitarian Affairs (OCHA) in DRC, there is room for improvement of coordination of development aid in DRC today, across donors and especially donor-government.

v. Anti-corruption approaches and programmes in DRC

The international community's main priority during the transition was to ensure the legitimacy of elections in a country that had not had them for 46 years. Little effort was made to push the transitional government itself to reduce corruption, because that might have undermined the political settlement. The strategy was, as a first step, to establish credible elections as the only means to power. With the international community's support, this feat was pulled off.

It could be said that elections were supported at the expense of strengthening governance in other areas, particularly anti-corruption. However, it is important to note that the peace agreement itself (which reflected the political will of the different factions) precluded effective reduction of corruption, by design. For example, the Ethics and Anti-Corruption Commission was set up with political appointees, distributed across the four factions. Although an anti-corruption legal framework was imposed by development partners during the transition, most of its provisions were not disseminated or enforced. Also, some of the necessary implementation laws (which were needed for the various anti-corruption laws to take effect) were not passed.

Civil society was part of the power-sharing agreement, with slots reserved for its representatives on the Ethics and Anti-Corruption Commission, the other four 'citizen committees', and parts of government. The representatives retained their roles in their CSOs as well, thus arguably undermining their credibility and ability to operate effectively in either role. Many ran for office in the 2006 elections, maintaining linkages and further compromising the independence of civil society as well as creating a gap in civil society leadership.

Embezzlement of soldiers' salaries contributed to massive human rights violations against the population and was said to threaten the elections, but the European Union mission tasked to address this was not able to do so. The new tax administration did not effectively collect revenue during the transition period; this problem continues today. Public administration reform was supported by development partners during the transition, but corruption was considered too sensitive to address directly.

In June and July 2006, donors put forward a development plan drafted by World Bank consultants, entitled 'Towards Governance Compact in DRC'; it was adopted by the government in March 2007. With regard to anti-corruption it prioritized the following: (i) public decisions that have significant financial impact; (ii) key sectors such as mining, forestry, public finance management, public enterprises management, and

procurement; and (iii) capacity-building of the auditor general's office and the general inspectorate of finance.

Development partners readily acknowledge that there is a real risk that corruption in the use of government funds will continue at a high level for a long time forward. Aid is especially at risk where funds go through the government, and roads projects are particularly subject to problems with corruption. Donors are attempting to ensure that the levels of fiduciary risk are minimized to acceptably low levels by putting in place additional safeguards based on lessons learned around the world.

vi. UNDP anti-corruption interventions

Following the 2002 Sun City Agreement, UNDP faced challenges in implementing governance projects during the transition period. With regard to anti-corruption, it did not succeed in activating the Ethics and Anti-Corruption Commission. This was in large part due to lack of political will, as well as politicization of the commission. Both of these issues existed from the outset.

After the 2006 elections, UNDP, in 2007, designed a new anti-corruption initiative with funding from DFID. This was part of a broader governance programme for 2008–2012 that aims to enhance 'citizen access and participation'

in the political system, improve administrative governance, consolidate national unity and reconciliation and ensure security, ensure transparency in public accounts, and enhance access and quality of public services. This governance programme as well as the United Nations Development Assistance Framework (UNDAF) is aligned with the Country Assistance Framework. It was designed with the assistance of BDP, BCPR and the Dakar regional centre.

The anti-corruption programme has built the capacity of the auditor-general's office to independently audit and report on government accounts; supported the drafting of public finance reform law; provided targeted support to the judicial system to better enforce anti-corruption legislation and prosecution of corruption cases; and strengthened the capacity of civil society to monitor budgets and demand for transparency and accountability. UNDP's programme has also raised awareness among public servants on the code of conduct for civil servants, and supported the development of a national strategy for improving government transparency and accountability.

Other activities in the UNDP governance programme that relate to anti-corruption include supporting the national electoral commission for a credible election process free from corruption in local elections as well as general elections in 2011.

In implementing its anti-corruption initiatives in DRC, UNDP has noted a lack of political will, persistence of a culture of impunity, lack of national strategic vision on anti-corruption, fragility and dispersion of national institutions, and weaknesses in the capacity and financial resources of CSOs. In monitoring, UNDP has noted a lack of national capacity to carry out baseline assessments. It is not clear how these are being, or will be, addressed.

vii. UNDP and internal integrity

UNDP was on the ground during the conflict, unlike most other agencies. It was regarded as politically neutral, and not associated with or biased towards any particular faction. During the transition period, UNDP DRC established a service centre, which was a model for human resources, procurement and other logistics. To respond quickly and transparently to emerging needs, it created and implemented the Rapid Response Mechanism (a pooled donor funding mechanism) so that funds could be accessed within a few days. This was a highly successful endeavour, in terms of UNDP's integrity and transparency.

'Do no harm' principles are not addressed in the donors' joint Country Assistance Framework or DFID's anti-corruption strategy; however, UNDP programme staff interviewed for this report were familiar with them. There is awareness, for example, that new infra-structure projects in DRC will pose opportunities for corruption.

viii. Lessons learned in DRC

The following are lessons learned from anti-corruption efforts over the past several years in DRC:

■ In DRC, the governance and anti-corruption agenda has been pushed by development partners, with little local ownership apparent. Inclusive participation of all stakeholders, including government, is needed in the development of the governance compact. The government of DRC has copied and pasted the donor-designed framework; while this may satisfy formal requirements of development practice, it will not result in real change.

■ Political support is necessary to reduce corruption; development partners (working with/through civil society and the private sector) should identify and seek to align anti-corruption efforts with the interests of politicians where possible. With political support, anti-corruption institutions such as the auditor general's office and the inspector general's office, both of which were set up in 1987, have the potential to control corruption in the

long run if they are properly resourced and monitored. During the transition period, power-sharing arrangements precluded effective anti-corruption results. The agreement removed or ignored institutional controls and facilitated looting of the country. The lack of checks and balances inherent in the agreement guaranteed impunity during the transition period. During the transition period DRC was a failed state characterized by lack of political will, a fragile settlement among warring factions, and dominated by an agreement with no checks and balances. Insisting that the transitional government be clean would not only have been unsuccessful, it also could have undermined the effectiveness of international actors and raised the risk of their being kicked out. The DRC case suggests that UNDP and other development partners may, in other contexts, prefer not attempt to insist on (much less prop up) institutions like the Ethics and Anti-Corruption Commission which, in hindsight at least, was an impossible mission. Perhaps having a poorly working, ineffective discredited anti-corruption institution is worse (for the future of democracy) than having none at all.

■ The same could be said of the laws that development partners insisted on passing following the 2002 peace agreement, but which ultimately were not implemented. At least in the case of these laws, it seems the public and most of government was not aware of them, so the damage caused by having laws that are essentially toothless and useless may have been minimal. During the peace process, development partners should anticipate how to engage with and support the development of civil society (generating new leadership, nurturing new organizations, formalizing and networking grassroots groups), particularly if civil society must be part of a power-sharing agreement, and when many of its representatives may run for office, leaving gaps in civil society. If a new anti-corruption agency is created in the future in DNC, it should be financially autonomous to the extent possible.

■ With regard to coordination on anti-corruption, there is much room for improvement and UNDP could seek to enhance this among development partners.

■ Anti-corruption is a cross-cutting issue that needs to be integrated in all governance reform programmes. Furthermore, it could be integrated across all country programmes. DDR and poverty reduction are examples of areas that could incorporate anti-corruption.

9.3. IRAQ

i. Background

Until the commencement of its war with Iran in 1980, Iraq was by many measures an economically viable and increasingly wealthy society. The government provided free schooling up to and including the tertiary level, gave subsidies to farmers, and its hospitals (which provided care free of charge) were amongst the most modern in the Middle East. A national infrastructure campaign had resulted in great progress in building roads, promoting mining and developing other industries. Development occurred at such a rapid pace that two million people from other Arab countries worked in Iraq to meet the growing demand for labour. Women enjoyed considerable freedom and held high-level jobs in government and industry. The adoption of a Western-style legal system and the abolition of Sharia courts made Iraq the only country in the Persian Gulf region not ruled according to traditional Islamic law.

In September 1980, Iraq invaded Iran and began a bloody eight-year war with the support of the United States, the Soviet Union and European states, and heavily financed by many other Arab states. That war ended in a stalemate, with hundreds of thousands of casualties and

an estimated one million dead. Iraq's oil industry suffered severely. Not only was its previously expanding economy left in ruins, but the country was also burdened with a war debt of over $75 billion. In August 1990, Iraq invaded and occupied Kuwait, but on this occasion faced a United Nations coalition led by the United States. In February 1991, Iraqi troops were driven out of Kuwait after the coalition launched missile attacks on Iraq for several weeks. In the invasion and annexation of Kuwait and in the Gulf War that ensued, over 175,000 Iraqis were taken prisoner and casualties were estimated at over 85,000.

In the years that followed, the country was subjected to regular and intensive missile attacks by the United States and British forces. What was left of the Iraqi economy and the state infrastructure was virtually destroyed by those attacks and UN sanctions, which blocked Iraqi oil exports and most other forms of external trade after it invaded Kuwait. In December 1996, the UN allowed Iraq to begin selling limited amounts of oil for food and medicine. Finally, United States-led forces invaded Iraq on 20 March 2003.

The invasion of Iraq was not followed by a peace agreement. Instead, after the capture of Baghdad and the collapse of the Saddam Hussein regime in April 2003, the CPA was established with a United States army lieutenant general as chief executive. He was replaced within a month by a US diplomat with the title of administrator. The CPA, which was a division of the US Department of Defense, formed an Iraqi Governing Council (IGC) consisting mainly of Iraqi expatriates who had fled the country during the previous regime and former dissidents. The IGC agreed on an interim constitution and sovereignty was passed to the Iraqi Interim Government in June 2004 with a 100-member Consultative Assembly set up in August 2004. However, ongoing sectarian violence, which had surged since mid-2003, left entire parts of the country only marginally under the control of the interim government.

Elections for the Transitional National Assembly in January 2005 resulted in a Shiite prime minister and a Kurdish president, while Sunni voters remained unrepresented due to their boycott of the elections. The transitional government drafted a new constitution, which was approved by national referendum in October 2005. In the election for the new four-year parliamentary assembly at the end of 2005, the Shiite-led United Iraqi Alliance (UIA) received the most votes but did not achieve a majority. UIA Prime Minister Ibrahim al-Jaafari struggled to form a coalition government as the violence continued. Since then, a series of tenuous arrangements have been established between the Iraqi State, the US military and local militias controlling difficult-to-govern areas, presenting a series of interstitial

spaces between different forms of authority where corrupt power brokers and go-betweens have flourished.

ii. Corruption in Iraq

The conflict in Iraq was not related to, or caused by, corruption. Anecdotal evidence suggests that corruption in public administration and service delivery first appeared following the imposition of UN trade sanctions after the conclusion of the Gulf War. With no income from oil and no resources to purchase food or medicine, government-sanctioned 'self-funding' was extensively practised. Public officers began 'charging' the public for their services, and this phenomenon spread to immigration officers at border posts and doctors and other medical personnel in hospitals.

Today, corruption is reported to be widespread in Iraq, second only to the continuing insurgency as a threat to success in forging Iraqi democracy. The ministries of oil, electricity, defence and interior are said to be the most vulnerable. In May 2009, Iraq's Commission on Public Integrity, now the Commission of Integrity (CoI), reported that as a result of the committee's investigation into some 12,000 complaints of government corruption, among the worst offenders were — in no particular order — the ministries of defence, interior, finance, education and health. One of the cases involved tens of thousands of dollars made by illegally charging young recruits up to $500 each to join the army. According to the Commission on Public Integrity, of the nearly 1,000 arrest warrants issued against officials under suspicion, 53 were at director-general level or above.

The 2008 Corruption Perception Index of Transparency International rated Iraq as the third most corrupt country in the world (only Somalia and Myanmar were seen as more corrupt) out of a total of 180 countries. The principal impediment to anti-corruption activity is the lack of law enforcement, and political interference. Several ministers are perceived to be corrupt. Earlier this year, after several failed attempts, corruption charges were filed against the former Minister of Trade in connection with Iraq's food rations programme. It has been alleged that Iraqi courts frequently bow to political pressure in cases against officials accused of corruption.

iii. The institutional and legal framework

The Board of Supreme Audit (BSA), established in 1927, was one of the most firmly established bodies in Iraq and provided external auditing and oversight to all the institutions of the Iraqi executive. BSA had units within each ministry and department. Following the 2003 invasion, the CPA supplemented this body with two other institutions.

CPA Order No.55 (2004) established the Committee on Public Integrity (COPI) as the principal anti-corruption body, with the mandate to prevent and fight corruption. It was tasked to detect and investigate cases of corruption, including cases forwarded to it by the Board of Supreme Audit and the inspectors general for further criminal investigation, and to be responsible for receiving and validating financial disclosures from high-ranking public officials, as well as promoting public sector integrity through the development of codes of conduct. COPI was also mandated to enhance public awareness and understanding of corruption and to promote ethics and integrity in the public and private sectors through educational programmes and measures. The committee experienced considerable difficulty in being accepted by the Iraqi public sector, however. The staff was quite inexperienced, and managerial structures, workflow management and individual staff members' functions were not clearly defined. Repeated changes in the institutional leadership did not allow the committee to address some of these weaknesses in a consistent, coherent and timely manner. Moreover, the committee also lacked the necessary infrastructure, including a central office, and staff was distributed across a wide range of different locations.

CPA Order 57 (2004) introduced an entirely new concept of inspector general, based on the system in the United States, into all government ministries. The inspector general was intended as an internal, yet independent, oversight body responsible for promoting integrity and transparency within each ministry; monitoring the proper management of all public resources and public expenditures; and evaluating the overall performance of the ministry. The inspector general was also tasked to conduct administrative investigations of the ministry, train staff on the prevention of corruption and professional ethics, and provide the minister with reports and recommendations on proposed improvements with a view to enhancing integrity, accountability and transparency in all operations of the ministry. The inspectors general faced a multitude of challenges at the policy and technical levels. There was no agreed methodology on how they would conduct the management performance evaluation, or how they would measure the efficiency, effectiveness, integrity and governance of the ministries. There was a lack of clarity about their functions, and they were viewed and treated in a hostile manner within their ministries.

CPA Order 77 then amended the Board of Supreme Audit Law No.6 of 1990 to require it to report to the Council of Representatives. BSA is mandated to control and audit the proper management of public resources and expenditures as well as to evaluate the performance of all

ministries and other bodies and agencies of the executive branch. It is also tasked to detect, through audits and performance evaluations, incidences of malfunctioning, mismanagement and corruption; to further investigate those incidences; and to report, as appropriate, its findings and recommendations to the entity responsible for either taking remedial action (ministries) or for further investigating the matter (the Committee on Public Integrity or the relevant inspector general).

iv. Anti-corruption approaches and programmes in Iraq

All early governance initiatives in Iraq were taken by the US Embassy in Baghdad. The CPA issued several orders and established organizations and programmes to improve accountability within the Iraqi government. Following growing dissatisfaction within the US government with the efforts of the anti-corruption campaign in Iraq, the US ambassador in Iraq convened an anti-corruption summit in November 2005. Participants included high-ranking American and Iraqi officials with direct responsibilities for anti-corruption efforts in Iraq. Although the US Embassy's efforts to promote anti-corruption predate that event, the summit resulted in rejuvenating a previously inactive embassy initiative, the Anti-Corruption Working Group. Its aim was

to establish an anti-corruption strategy and ensure that project activity accorded with that strategy and took place in a collaborative manner that maximized the benefit of each dollar spent. The summit also envisaged a joint United States-Iraq working group.

The National Development Strategy launched by the transitional government in June 2005 articulated strengthening good governance and improving security as one of its four pillars. It recognized that corruption was arguably the most critical component of governance in a country rich in natural resources like Iraq, and identified broad external accountability measures, including asset declarations, transparency surveys, disclosure of parliamentary votes, investigative journalism and citizen oversight as essential innovations. In May 2006, Iraqi Prime Minister Nouri al-Maliki, who had taken office just one month before, identified specific challenges facing the government that included tackling administrative and financial corruption. The International Compact with Iraq that was launched in 2007 reaffirmed the commitment of the government to fight corruption. It recognized the government's responsibility to its citizens 'to establish transparent institutions and practices through which public servants will be held accountable for their actions'. The compact specified as a distinct goal the development of a legal

framework and the building of institutional capacity to deter corruption at all levels of government. The compact outlined specific actions, such as the formulation of a national anti-corruption strategy, strengthening anti-corruption agencies, and implementing UNCAC.

Following the launching of the International Compact with Iraq, the government convened an internal workshop in January 2008 at which it adopted an 18-point agenda of actions to be taken to combat corruption. Two months later, in March 2008, the Iraqi government ratified UNCAC. Also in March 2008, the heads of the main anti-corruption entities — COI, formerly the Commission on Public Integrity; BSA; the Inspectors General; and the Parliamentary Committee on Integrity through the Joint Anti-Corruption Council — declared their intention to develop a comprehensive national anti-corruption strategy. They vowed, among other things, to review and streamline the existing legal and institutional framework; establish effective preventive measures such as codes of conduct, an asset declaration system, and effective inspection and auditing standards; promote ethical conduct, transparency and accountability throughout society; to ensure enforcement of the law; design a public complaints and whistleblower protection system; and build domestic capacities to recover the proceeds of corruption.

v. UNDP anti-corruption interventions

UNDP's anti-corruption interventions commenced three years after the regime change. By then, the institutions established by the CPA had failed. UNDP responded to the government's request to develop a comprehensive anti-corruption programme by partnering with UNODC to provide the expertise necessary for the relevant Iraqi authorities at national, regional and governorate levels to develop that programme themselves. Adopting UNCAC as the benchmark, the UNDP/ UNODC programme, which is being implemented at the national, regional and governorate levels, is based on a partnership that integrates the functions of the five principal anti-corruption institutions, namely, COI, BSA, the inspectors general, the Parliamentary Committee on Integrity (PCI) and the Judiciary. Also participating are representatives from the civil society and business sectors.[64]

A self assessment and gap analysis of UNCAC was conducted by an Iraqi group of governmental and civil society experts under the guidance of UNDP and UNODC. The group came up with 29 recommendations — six of these areas were identified for an in-depth needs assessment and committees were established for this purpose. An in-depth needs assessment tool relating to Articles

5, 6, 7, 8, 32, 33 and 43 of UNCAC was developed under the guidance of UNDP and UNODC by an Iraqi group of governmental experts. These were discussed in detail at a workshop.

Work has commenced on a national integrity survey under the guidance of UNDP and UNODC. The scope and methodology of the survey and other technical issues pertaining to the survey were discussed at a workshop. The survey will be conducted in three phases. Phase One will be a mini-pilot of 300 persons to test the survey instrument to be used for the pilot survey. Phase Two will have a sample of 4,000 with a coverage of four ministries: education, trade, labour and industry. This will be a pilot phase and the results will not be publicly announced. Phase Three will be conducted in all ministries countrywide and the results will be published. It will be conducted by the Central Organization for Statistical and Information Technology.

Work has also commenced on the preparation of a national anti-corruption strategy. This is being headed by the Joint Anti-Corruption Council which reviewed national anti-corruption strategies from 25 countries. UNDP also provided guidance and direction. The proposed strategy has been redrafted several times and circulated to all the ministries, governorates and provinces; as of January 2009, feedback had been sought from 56 bodies. The head of the Council of The Joint Anti-Corruption Council will finalize the draft and circulate it again for additional feedback.

The following are among the other key elements to be provided during the five-year anti-corruption programme developed with support from UNDP/UNODC:

- a supportive role in implementing the national anti-corruption strategy, train the trainers, and monitor performance;

- assistance to the government in developing anti-money-laundering and counter-terrorism funding legislation;

- assistance in increasing the capacity of Iraqi legislators in modern drafting skills as part of the process of reform of Iraqi anti-corruption laws;

- assistance in developing legislation on witness and whistle-blower protection;

- training Iraqi governmental and key private-sector stakeholders on UNCAC and its ethics responsibilities and 'training the trainers' to eventually conduct 20 of their own follow-up training sessions on UNCAC;

- assistance in capacity-building of Iraqi governmental and private-sector stakeholders at both national and governorate levels on UNCAC ethics responsibilities and obligations and on how to practise and promote transparency and integrity;

- training of governorate-level public officials, local community, religious and business leaders, as well as print and electronic media representatives to understand the causes, costs and consequences of corruption and enable them to design and carry out local accountability and integrity campaigns;

- conducting of anti-corruption training for newly elected officials;

- training to enable mid-level and senior local administrators to understand the legal framework governing their rights and responsibilities related to accountability and integrity, as well as their public administration tools;

- assistance in developing standard operating procedures for BSA audits, inspector-general inspections and COI investigations for regional and governorate level institutions;

- assistance in developing a pilot anti-corruption curriculum for primary and secondary level schools in three governorates.

vi. Lessons learned from Iraq

The UNDP/UNODC programme seeks to build, consolidate and expand a political and technical leadership group at all levels of government in Iraq, in the judiciary, and in civil society and business, as well as to create a pool of anti-corruption facilitators or trainers who can communicate new messages, introduce new activities and plan new strategies in strengthening integrity. In a context where political support at the ministerial level for combating corruption is reportedly minimal, despite protestations to the contrary, the UNDP/UNODC initiative to involve non-political officials at the highest levels of government makes sense and appears to have been productive so far. Iraq, unlike Afghanistan where nearly 80 percent of public servants are reported not to have received a secondary education, has highly educated and professional civil servants. Consequently, their intimate involvement in all the processes is not only a learning exercise for them, but also a mechanism through which they will be able to acquire ownership.

The UNDP/UNODC programme, being based on UNCAC, involves not only the formulation of an anti-corruption strategy for implementation at the national and local levels, but also the establishment of other measures such as codes of conduct, witness and whistleblower protection laws, declarations of assets, access to information, anti-money-laundering legislation and the recovery of stolen assets. As the head of the Council of Ministers observed, the emphasis should not merely be on combating corruption, but on a rebuilding process, requiring reforms at every level.

9.4. SIERRA LEONE

UN Photo/Eric Kanalstein

i. Background

The armed conflict in Sierra Leone began in March 1991 when forces of the Revolutionary United Front (RUF) led by Corporal Foday Sankoh crossed the border from Liberia. Sankoh was supported by Liberian warlord Charles Taylor, who had seized power in that country just one year before. Sankoh declared that the objective of the incursion was to overthrow the corrupt and tyrannical government of Joseph Saidu Momoh and the All People's Congress, which had ruled the country since 1968. Thus began a decade of violence that devastated the country.

During colonial rule, Sierra Leone was divided into two separate parts: the 'crown colony' of Freetown, the capital, and the 'protectorate' — the hinterland that was governed indirectly through traditional rulers. The Temne-speaking people dominated the northern and western parts of the country, while the Mende-speaking people dominated the east and the south. The colony and the protectorate were developed separately but unequally. The colony and its predominantly Creole elite enjoyed vastly superior social, political and economic development and access to vital resources such as education. The divide

between the two entities bred deep ethnic and regional resentment and destabilized the traditional system of chieftaincy. These divisions along ethnic and regional lines also characterized the post-colonial period. They were reflected in the two principal political parties that were regionally based, with little or no national agenda. Perhaps unsurprisingly, therefore, successive governments favoured certain ethnic groups over others. Consequently, Sierra Leoneans placed greater priority and emphasis on their ethnicity than on their nationality, and political, social and economic mobility was dependent on allegiance to a traditional chief or benefactor.

Many observers, especially from abroad, assumed the conflict was initiated and perpetuated in order to seize control of diamonds, which were first discovered in 1932 and had become the country's most important natural resource. According to this version, RUF initiated an armed rebellion to gain control of the diamond resources. In the view of the Truth and Reconciliation Commission established after the conflict, that analysis is simplistic; it and other observers agreed that there were multiple causes of the conflict and reasons for the involvement of Liberian and other foreign actors. Diamonds were, however, both an indirect cause of the war and a fuelling factor. As an indirect cause, the misapplication of revenues from the sales of diamonds had created huge socio-economic disparities. Successive governments had mismanaged the diamond industry and placed its effective control in the hands of foreigners and a culture of diamond smuggling and embezzlement had been entrenched among key members of the political elite. While the elites enjoyed tremendous affluence, labour conditions in the mines were appalling and a growing number of Sierra Leoneans were angered by how the collective common wealth had been appropriated by a few in the name of the many. During the conflict, diamonds were highly coveted because they yielded enormous revenues that enabled armed forces to procure arms and ammunition. The desire to capture more territory for diamond extraction and exploitation subsequently became a major motivating factor for the armed groups and their commanders.[65]

The Truth and Reconciliation Commission found that the central cause of the war was endemic greed, corruption and nepotism that had reduced most people to a state of poverty. Many Sierra Leoneans, particularly the youth, had lost all sense of hope in the future. The commission traced the seeds of discontent to the colonial strategy of divide and rule and the subversion of traditional systems by the colonial power and successive governments. The creation, after independence, of a one-party state under President Siaka Stevens and the All People's Congress had effec-

tively neutralized all checks and balances on the exercise of executive power, and closed down avenues for open debate and democratic activity. By the early 1990s, greed, corruption and bad governance had led to institutional collapse through the weakening of the army, the police, the judiciary and the civil service. The national parliament was ineffective and beholden to the executive. Elections were rigged and preceded by campaigns of intimidation and violence. For many years, there were no significant acts of resistance to the excesses of the system because civil society too was largely co-opted into the same system. The entire economy was undermined by gross mismanagement. Sierra Leone had become a deeply fragmented country, marked by an almost total lack of national identity; notions of citizenship and patriotism had become meaningless concepts.

Following several abortive attempts since 1996, a negotiated peace agreement was signed in Lomé (Togo) in July 1999. It had two components: a military resolution through the disarmament of combatants, and a political settlement by implementing a power-sharing arrangement. The Lomé Agreement called for RUF to transform itself into a political party in preparation for elections, and established a role for 12,000 UN observers to oversee disarmament of all factions in the country. It also made RUF leader Sankoh the head of the Commission for the Management of Strategic Resources, National Reconstruction and Development, with the status of vice-president, and gave other RUF members positions in the government. Sankoh used his position to protect RUF's diamond deals with Charles Taylor and other external players. RUF fighters refused to report to disarmament sites, and then robbed UN convoys and kidnapped several hundred UN observers. Sankoh was finally captured and arrested in May 2000. In January 2002, after two further peace agreements were signed in Abuja (Nigeria) in 2000 and 2001, the war was finally declared to have ended. In May 2002, President Kabbah was re-elected to a five-year term in a landslide victory for the Sierra Leone People's Party. The RUF political wing failed to win a single seat in parliament. Later that same year, Sierra Leone's Truth and Reconciliation Commission and the Special Court for Sierra Leone began operations.

ii. Corruption in Sierra Leone

A DFID survey conducted in 2000 using focus groups and perception-based household interviews highlighted the widespread and long-standing prevalence of corruption at all levels of society in Sierra Leone. Bribery was regarded as the

most common corrupt practice. The highest rate of corruption was said to exist in the Ministry of Youth, Education and Sport, followed by the Ministries of the Judiciary and Marine Resources. In 2002, a second DFID-funded survey of 1,800 households, 600 managers in the private sector and 590 public officials found that corruption continued to be a pervasive and institutional problem that hampered the potential for the growth and development of Sierra Leone. Corruption manifested itself in many forms, from bribes to obtain basic public services to misappropriation of funds. The use of bribes to obtain a job within the public sector was common, with more than a third of the public officials reporting such practice. Bribes were also necessary to obtain public contracts and bribery was widely resorted to by foreign investors to obtain licences and permits. About two-thirds (66 percent) of households agreed that the most important obstacle to accessing the courts was corruption, with bribes being necessary to advance legal proceedings or to alter judicial decisions. Among the entities rated as most corrupt were the customs, the traffic police, the Surveys and Lands Department, the Income Tax Department; rated least dishonest were staff from commercial banks and the Sierra Leone Water Company.

A Service Delivery and Perception Survey conducted in 2006 focused on the efficiency and effectiveness of public service delivery in education and health. It found that in the education sector, illegal charges for extra lessons and obligatory gifts were widespread. Half of the respondents could not afford these and other charges they were burdened with. In the health sector, where the government stipulates free consultations, drugs and essential vaccines for disadvantaged groups, with common drugs provided at an affordable cost recovery basis to the public, 21 percent of those surveyed reported paying for basic vaccines, while over 50 percent found the cost of health care for their households to be unaffordable. In 2006, the World Bank's Doing Business Survey, which reflects private-sector perceptions, ranked Sierra Leone at the eighth position from the bottom from among 175 countries. It identified the bureaucracy surrounding employment, property registration, licensing, trading across borders and enforcing contracts as especially lengthy. These procedures created opportunities for public officials to demand bribes when dealing with companies. In the 2008 Corruption Perception Index, Transparency International ranked Sierra Leone 158 out of 180 countries.

The National Anti-Corruption Strategy (NACS 2008–2013),[66] which is the product of a Technical Working Group with a diverse membership drawn from CSOs, private- and public-sector institu-

tions and the international community, attributed corruption in Sierra Leone to political, economic, sociological and structural/institutional circumstances over the past two decades. It concluded that the current situation is the result of multiple factors. During colonial rule, traditional values of mutual cooperation were replaced by those of individualism, and during the era of one-party and military rule by decree it had become commonplace to bypass regulatory legislation to access public assets, and to mismanage and embezzle public funds and property with impunity. The implementation of the Structural Adjustment Programme in the 1990s had resulted in a drop in the value of public servants' wages and real income. As retrenchment and unemployment escalated in the public sector, the morale and commitment of public servants diminished significantly and many began to resort to illegal coping mechanisms, including bribery, selling of government information and over-invoicing, thus reinforcing a culture of corruption.

Factors in the political system that offer significant opportunities for corruption include the lack of accountability and transparency in campaign funding. The winning party becomes obliged to offer compensatory privileges to contributing individuals through appointments as ministers, ambassadors and directors of parastatals, and other benefits such as

contracts and allocations of social service projects. The recovery of the investment then takes precedence. The misuse of public resources such as vehicles, fuel, the media and the working hours of public servants to conduct political campaigns, has been widespread, regardless of which party is in power. The over-centralized political and administrative system results in the use of unchecked discretionary powers by public officials. Moreover, ministries, departments and agencies are created to accommodate party supporters, and the appointment, removal and transfer of staff are made on the basis of political affiliation rather than any objective assessment.

The economic causes of corruption include the exceedingly low wages, especially in the public service; this, coupled with the high cost of living, makes it a formidable struggle to make ends meet for most people. These problems encourage the adoption of survival strategies such as accepting bribes in exchange for favours, selling government information and profiteering. The cost of doing business is also high because business registration processes are complex and numerous and tax rates are relatively high. This has resulted in entrepreneurs going underground to avoid official taxes and to reduce the burden of bureaucracy.

Among the structural or institutional causes of corruption are the complex, cumbersome and obsolete procedures and

regulations in the public sector. This results in basic functions being performed inefficiently and ineffectively. Ordinary citizens who are constantly frustrated and delayed as they seek to access basic social services and entitlements are compelled to find other means, which results in the corrupt extorting financial and other resources from the public.

iii. The institutional and legal framework

To a limited extent, corruption was on the political agenda before the conflict. The Prevention of Corruption Decree was passed in 1992, and the Beccles-Davies Commission of Inquiry was appointed to examine the assets and other related matters of all persons who were presidents, vice-presidents and ministers during the period 1 June 1986 to 22 September 1991, and to investigate whether such assets were acquired lawfully or unlawfully. In the same year (1992), the Justice Lynton Nylander Commission of Inquiry was appointed to investigate the financial activities of parastatals, departments and corporations during the same period.

As a result of the household survey held by DFID, the parliament enacted the Anti-Corruption Act in February 2000, that established the Anti-Corruption Commission "to investigate instances of alleged or suspected corruption referred to it by any person or authority or which has come to its attention, whether by complaint or otherwise and to take such steps as may be necessary for the eradication or suppression of corrupt practices." Based on DFID-funded survey results and following the formation of the commission, a governance and corruption study was undertaken. The study aimed at providing objective and experiential information to the government for the design of a holistic and integrated reform policy to improve governance, accountability and transparency and to reduce corruption.

The study, eventually released in August 2000, was titled National Perceptions and Attitudes Towards Corruption in Sierra Leone. It made the following preliminary recommendations:

- implement a nationwide awareness campaign to inform and educate people about their rights and duties related to corruption and on the existing mechanisms to protect themselves from corrupt practices;

- strengthen the Anti-Corruption Commission and the judiciary in terms of staffing and resources, to improve their ability to handle and prosecute corruption cases;

- promote the decentralization of the Anti-Corruption Commission outside the capital and the main cities;

- continue to regularly monitor the quality of governance.

A steering committee headed by the then-finance minister began work in 2000, with the assistance of foreign consultants, to formulate a national anti-corruption strategy; that strategy was eventually launched on 5 February 2005. It adopted two main approaches: prevention through community relations and education, and enforcement through investigation and prosecution.

Fundamental flaws were discovered in the strategy when its implementation commenced, however. For example, there was no budgetary provision for many of the activities, and no effort was made to obtain objective data on corruption. So-called integrity officers — who were expected to lead the implementation in ministries, departments and agencies — found that they were unable to influence policy decisions at their respective places of engagement. The implementation also appeared to be slow, *ad hoc* and incapable of addressing real corruption issues. No impact assessment was undertaken of its limited community mobilization campaigns that usually took the form of integrity clubs in schools and radio programmes. There was little or no engagement with the private sector, which regarded corruption to be such a serious impediment that many businesses were moving out of Sierra Leone into neighbouring countries.

The Anti-Corruption Commission failed to deliver on its second approach too. The abysmal lack of prosecutions was quite problematic. The management style of the commission was also regarded as anything but dynamic, and the credibility of the institution was seriously undermined when the then-president appointed his brother-in-law as its head. The problems were further compounded by the fact that the commission operated in an environment in which other vital institutions such as the attorney general's office, the judiciary, the auditor general's office, parliament, the police, the media and civil society were either uncooperative, non-functional, dysfunctional or corrupt.

At a national forum held in November 2006, a technical working group consisting of representatives of CSOs, private- and public-sector institutions and the international community was constituted to formulate a new national anti-corruption strategy. Its report, published in 2008, *inter alia,* identified in detail the political, economic, sociological, structural/institutional and judicial/legal causes of corruption in the country. The strategy recognized the need for a diversity of players in the fight against corruption and therefore spread the burden of its implementation across all of the pillars of integrity and the Anti-Corruption Commission itself. At elections conducted in late 2007, a new president, Ernest Bai Koroma, was elected on a platform of change. He pledged to combat corruption, which he described as

an 'epidemic'. In 2008, the parliament enacted a new Anti-Corruption Law, expanding the mandate of the Anti-Corruption Commission by granting it independent powers to investigate and prosecute on its own, rather than through the attorney general. The new law also authorized the investigation and publication of declarations of assets, and contained provisions for mutual legal assistance and the freezing and forfeiture of the proceeds of crime, and for the protection of informants and witnesses. The reconstituted Anti-Corruption Commission has since identified key corruption issues in every ministry and government agency and begun to address them.

President Koroma became the first head of state to declare his assets to the Anti-Corruption Commission. However, the National Accountability Group (NAG), a Freetown-based NGO, thought he should go further and make his declaration public. NAG also noted that government ministers and parliamentarians had failed to declare their assets by 30 November 2008 as stipulated by the commission. Nevertheless, there are positive signs. The commission subpoenaed the permanent secretary to the Ministry of Education, Youth and Sports, the general manager of the Sierra Leone Airport Authority, and the commissioner general of the National Revenue Authority for

their failure to submit to the commission their institutions' performance-tracking reports. The indicting of a former ombudsman and a minister and several low- and mid-level officials from ministries was followed up with charges being served recently on the former executive director of the Sierra Leone Road Transport Authority on several corruption-related offences.

Currently, the Anti-Corruption Commission has a committed chairperson and an equally motivated deputy. The president publicly pledged support for the commission in 2009, but in the interviews conducted it appeared that most civil society observers were sceptical of the president's commitment despite other steps he had taken to contain corruption, such as a temporary ban on logging and the exploitation of timber, and addressing the lack of competitive bidding for contracts. There is also some uncertainty over the future of the commission that has so far been donor-funded. It remains unclear whether the Anti-Corruption Commission will have the necessary funds to be sustained in the long run.

iv. Donor attitudes and political dialogue

Donors, including UNDP, appear to have been serving as watchdogs, withholding aid and assistance whenever dubious situations arose.[67]

v. Anti-corruption approaches and programmes in Sierra Leone

Until January 2002, when the war was finally declared over, the main focus of the international community's efforts was the DDR process; the return and resettlement of displaced persons; and the extension of state authority throughout the country, including line ministries and traditional authorities (the paramount chiefs). Following the end of the war, DFID began providing budget support to the government; this budget support was designed to achieve a stable macroeconomic environment, improved service delivery, a more effective, responsive and accountable government, and to maintain peace and security — in other words, to allow the government fiscal space to deliver basic services to the people.

Since the end of the war, the government has initiated several reform and reconstruction programmes with the assistance of donor agencies, notably the World Bank and DFID. The government established the Governance Reform Secretariat to be the focal point for public sector reform, local government reform and decentralization. Governance programmes undertaken since then include, with regard to public service, the creation of a Senior Executive Service and the establishment of a Human Resource Management Office. Improvements were made in record management and a comprehensive training programme for public officers was prepared. A National Social Security and Insurance Trust was established, as were three important new commissions (law reform, human rights and electoral reform). The decentralization of political power and the devolution of governance responsibilities from central government agencies to local government structures commenced.

In the area of economic governance, measures taken include the establishment of budget oversight and monitoring committees at national and district levels; the adoption of a medium-term expenditure framework to promote better planning and budgeting and improved public expenditure; the introduction of a human capital accountability system to help clear the public payroll of ghost workers; a new authority to regulate public procurement; and the introduction of public expenditure tracking surveys to monitor the transfer of public resources from the centre to provinces, districts and chiefdoms. The passage of the Investment Protection Act and the rationalization of the tax regime have helped empower the private sector to embark on economic growth and job creation.

DFID, as the largest contributor to governance reform in Sierra Leone, supported the national elections in 2007 and local elections in 2008, and the establishment of democratically elected district

councils and their capacity to deliver basic services. DFID has also supported training and mentoring programmes for civil society and is currently providing support to the auditor general and the Anti-Corruption Commission, and for reform of public financial management and the civil service. Its new programme of support (2010–2013) focuses on the deepening of democracy, in particular through supporting the electoral process.

The World Bank Institutional Reform and Capacity Building Project ($25 million) aims at establishing a functioning local government system and improving the inclusiveness, transparency and accountability of public financial management at all levels of government. Its Programmatic Governance Reform and Growth Project ($10 million) aims, *inter alia*, to support measures to pursue procurement reforms and strengthen the implementation of decentralization.

vi. UNDP anti-corruption interventions

UNDP was in Sierra Leone both before and during the war, and was involved in different peace processes. In 1999, when the Security Council authorized the establishment of the United Nations Mission in Sierra Leone (UNAMSIL) to assist in the implementation of the flawed Lomé Agreement, UNDP was embedded in the mission from the very beginning and its activities were incorporated in UNDAF. In 2005, UNAMSIL was replaced by the United Nations Integrated Office for Sierra Leone (UNIOSIL) with a broad mandate that included assisting the government to build the capacity of state institutions; enhancing good governance, transparency and accountability of public institutions; and strengthening the rule of law. In October 2008, the Security Council replaced UNIOSIL with the United Nations Integrated Peacebuilding Office in Sierra Leone (UNIPSIL) with a largely advisory role aimed at promoting human rights and strengthening democratic institutions and the rule of law.

In the first two post-conflict years, UNDP took the lead in helping the government to formulate the National Recovery Strategy and to prioritize the extension of state authority, including the deployment of administrative offices in all the districts and the return of the traditional authorities. UNDP also played a key role in the final phase of DDR and supported the repatriation and resettlement of internally displaced persons and refugees. From 2002, when the war was finally declared over, UNDP began to focus on three practice areas: recovery and peacebuilding, governance and democratic development, and poverty and human development. Its activities have, perhaps of necessity, been confined to areas that

other donors or agencies have not focused on. For example, there does not appear to have been a specific, targeted intervention against corruption, probably because that field was already occupied by DFID from as far back as the signing of the Lomé Agreement. However, UNDP's gap-filling role has been described as having been rather effective "because it has been demand driven rather than donor driven."[68]

As part of UNIOSIL (2005–2008), UNDP projects included public sector reform in the form of providing support for the decentralization of line ministries, notably the Ministry of Local Government; the establishment of a Strategy and Policy Unit in the office of the president; a management and functional review of 15 government ministries; and a capacity-development facility. Notwithstanding these initiatives, the capacity of state institutions to deliver basic services remains weak. UNDP supported the electoral commission in conducting the local elections in 2004 by managing the funds to finance the vote. Unfortunately, the elections were riddled with irregularities, some of which involved the commission itself, and in which the turnout was much lower than it had been two years earlier. The commission was subsequently closed down and a new body established to conduct the 2007 presidential and parliamentary elections, with funds managed jointly by UNDP and the European Union.

In the justice sector, UNDP endeavoured to expand access to justice by providing training to justices of the peace, magistrates, clerks and bailiffs and supplementing their salaries. This was perhaps an urgent need, but it has to be noted that this was a country in which judges at all levels of the judicial hierarchy were chronically short in number. UNDP also supported the drafting of some critical laws, such as the Local Government Act, Public Procurement Act, Education Act, Parliamentary Service Act and three gender-based laws — the Customary Marriages Act, the Intestate Succession Act, and the Matrimonial Causes and Domestic Violence Act. In 2008, direct support was provided to the re-constituted Anti-Corruption Commission for the preparation of a National Anti-Corruption Strategy, including the drafting of a new anti-corruption law.

vii. Lessons learned in Sierra Leone

Despite major efforts to improve the situation, the findings of researchers for this report suggest that corruption remains endemic in Sierra Leone. The state still lacks the capacity to deliver basic services; it is still possible to 'negotiate' with judges; the 'brown envelope' is still demanded by public officials from shopkeepers at festival time, etc. Public officials

are known to yearn for official missions and workshops in order to supplement their salaries. The misuse of public resources by heads of schools and management committees is a matter of common knowledge. The problem of extremely low salaries paid to public officers was identified by many as the biggest challenge to the success of any anti-corruption strategy.

Donors and international agencies, including UNDP, appear to have failed to engage with the judiciary with a view to strengthening its independence and integrity (not merely its capacity to deal with corruption cases). Deficiencies in the judicial system persist, including extortion and bribe-taking by officials; insufficient numbers of judges, magistrates and prosecuting attorneys; absenteeism by court personnel; inadequate remuneration for judiciary personnel; and extended periods of pre-trial detention. The only legal system accessible to 70 percent of the population is one based on customary courts controlled by traditional leaders and applying customary law that is often discriminatory, particularly against women. Local court officials frequently abuse their powers by illegally detaining persons, charging high fines for minor offences and adjudicating criminal cases beyond their jurisdiction. The informal justice system needs to be reviewed and refash-

ioned in accord with contemporary human rights standards.

In 2004, the Truth and Reconciliation Commission reported that many of the causes of the conflict that prompted thousands of young people to join the war had not yet been adequately addressed. High among these factors were elitist politics, rampant corruption and nepotism and bad governance in general. These were potential causes of conflict, if they remained unaddressed. The Truth and Reconciliation Commission concluded, however, that Sierra Leoneans yearn for a principled system of governance: "They want a system that upholds the rule of law over the rule of strong patrons and protects the people from the abuse of rulers through a system of checks and balances. They wish to see horizontal and vertical accountability through the effective operation of such institutions as the judiciary, the auditor general's office, the electoral commission, the media and civil society."[69]

Despite the efforts of donors and international agencies, the legitimacy of the government remains weak. Endemic corruption, lack of justice, poor service delivery (especially in vital sectors such as water, electricity, transport and health), and a lack of transparency, continue to be the predominant characteristics of Sierra Leone today, even as they were three years ago.[70]

9.5. TIMOR-LESTE

i. Background

Timor-Leste was colonized by the Portuguese but annexed forcibly by Indonesia in 1975. After Indonesian president Suharto was deposed in May 1998, the international community backed Timorese leaders' demand for a referendum on the status of Timor-Leste. Following a decisive vote in favour of independence the following year, the Indonesian army and Indonesian-backed militias retaliated violently, and the ensuing conflict left more than 1,300 people dead. International peacekeepers were sent to Timor-Leste and the United Nations Transitional Administration in Timor-Leste assumed control on a temporary basis.

In 2000, a Constituent Assembly was established with elected members, drafted and ratified the Constitution for an independent Timor-Leste and laying out the political framework establishing the four pillars of sovereignty. Assembly members also took the lead in establishing electoral procedures and standards to guide the election of a president. Xanana Gusmão was the clear winner (with 83 percent of the vote) of the first presidential poll, in April 2002. A month later the

Constituent Assembly was rechristened the Legislative Assembly of Timor-Leste. According to the Constitution, Timor-Leste is a semi-presidential republic.

Four years later, in April 2006, tensions in the military erupted into violence with many soldiers demanding the resignation of Prime Minister Mari Alkatiri. As violence escalated, a multi-country International Stabilization Force and a contingent of UN peacekeepers were sent to Timor-Leste to restore peace. Alkatiri resigned in June and President Gusmão appointed José Ramos-Horta as prime minister. Following elections in June 2007, Mr. Ramos-Horta became president and Mr. Gusmão was appointed prime minister, leading a coalition of parties.

Since independence 10 years ago, there has been an influx of Timorese who previously lived abroad, most of whom are properly considered in the elite class. They have filled positions in the government as well as the UN system and other international agencies. The elite were educated mainly in Portugal (many of whom formed part of the first government) and Indonesia (many of whom are part of the current government) and to a lesser extent, Australia.

ii. Corruption in Timor-Leste

Generally speaking, the current level of corruption in Timor-Leste is considered to be quite moderate, or not very corrupt.

However, many people interviewed said they sense that the frequency and the scale of corruption may be increasing.[71] One reason cited for the increase is the surge in government budget revenues since oil revenues began flowing in 2007. Corruption today is a result of weak governance, especially the lack of accountability. For example, there are limited checks on the prime minister's office; parliament could be more vigorous in its financial oversight role; and the opposition could be more effective within the legislature. Civil society is relatively healthy but there are impediments to its free association and expression, and the media is not yet operating as an effective watchdog. Civil servants do not feel they are being watched. The most significant oversight deficiency is the absence of an external audit agency (as in external to the Executive) This is a major limitation on the ability of parliament, civil society and citizens to know how public funds and assets are used. The Constitution states that this audit agency will be established as a court in the judiciary but it has never been established.[72] According to many interviewees, some in the government, there is widespread acceptance of the belief that if you are in power, the resources are yours, and you can do what you want with them. Under this view, public servants do not see themselves as holding public patrimony in trust; instead,

they consider their allegiance to party, clique, family or former political resistance group to be greater and more important. Some see the benefits of office as a just reward. Examples often cited include parliamentarians (legally) buying themselves large and expensive cars and building government-sponsored housing for themselves.

Corruption is considered to have the potential for contributing to instability in the future. The main source of instability given by interviewees is youth martial arts gangs, which are linked to and may be used by political figures. The military has been quite disciplined since deserter-turned-rebel leader Alfredo Reinado was killed in early 2008; the army is now subordinate to the state. There are some signs of improvement among the police with the gradual transfer of executive policing responsibilities from UNPOL (United Nations Police) to the national police from May 2009.

With 50 percent of the population below the age of 18, combined with rapid population growth (fertility rate of 7),[73] unemployment will remain a pressing challenge in the near future if not accompanied by a significant progress in investment. It is estimated that annually around 15,000 young people enter the labour market, while only 400 formal jobs are created. While 56 percent of youth are employed in the agricultural sector,[74]

many migrate to Dili and other urban areas in search of opportunities that often do not exist. Dili has the highest rate of population growth in Timor.

This can be linked to corruption in that infrastructure projects (as employers) are failing to generate employment opportunities because funds are being misused and many companies are opting to use foreign workers instead of locals. The lack of employment options for young people heightens the likelihood for further escalation of the gang and crime problems.

Public sentiment is that corruption needs to stop for two main reasons: (i) because people have to pay for government services that should be available for free, or (ii) because they are paying more than they feel they should. At the same time, however, it is important to note that the Timorese people do not feel oppressed by taxes. The government currently receives substantial revenue from oil and foreign aid, and therefore does not have to rely on taxing its own people for revenue. So the public does not put many demands on government.

iii. The institutional and legal framework

Corruption was not a particular issue during the 1999 conflict. The transitional government (UNTAET) set up the office of the inspector general in 2000. This was

by instruction letter from the head of UNTAET, who was concerned about the public perception of the rule of law. It has continued under succeeding governments.

Corruption is not specifically mentioned in the Timor-Leste Constitution, but 'clean and effective government' is a national priority (according to the document). In 2004, a law was passed that lays out the ombudsman's responsibilities in receiving and acting on complaints of maladministration, corruption and human rights violations.[75] This law does not clearly define corruption, however. Since 2005 the ombudsman's office has received about 100 corruption cases; of these, it has referred 28 to the prosecutor general's office. That office has been reluctant to proceed, however. The 28 cases that have been referred are yet to be investigated. A number of interviewees pointed to this office as a major obstacle to efforts to effectively respond to corruption.

Although the ombudsman's office has reportedly been slow to respond, the government in general has focused more intently on corruption since 2007. In August 2007, for example, the parliament established a subcommittee on corruption that pushed successfully for the ratification of UNCAC in November 2008. This committee conducts annual hearings on the budget. Budget execution reports can be accessed on the finance ministry's website.

In May 2008, Prime Minister Gusmão announced his vision for an independent Anti-Corruption Commission. The law took a year to be passed by the parliament, and the commission became operational in February 2010 with the appointment of Aderito de Jesus Soares as its first commissioner. The Anti-Corruption Commission law repealed the ombudsman's anti-corruption prerogatives. However the Provedor did not, nor will the Anti-Corruption Commission, have the legal entitlement to collect legally admissible evidence or prepare cases for prosecution as these roles are the exclusive prerogative of the prosecutor general.[76] The anti-corruption commissioner will therefore be dependent on the goodwill of the prosecutor general to exercise his commission's investigative responsibilities. Nevertheless, when the government thinks of anti-corruption, it is usually referring to the Anti-Corruption Commission. The perception is that through the establishment of this commission, all corruption will be addressed.

However, strengthened or new state institutions are not predominantly viewed as new opportunities for corruption in Timor-Leste. New institutions are viewed as competing and depleting resources, especially skilled people with anti-corruption skills, of whom there are very few. Multiple institutions exaggerate the problem, by causing jurisdictional

confusion and allowing institutions to compete to avoid dealing with complex or difficult cases, which means cases involving individuals from Timor-Leste's small power elite.

iv. Donor attitudes and political dialogue

There is sometimes a perceived reluctance on the part of government to take action against corruption, and donors have followed suit. Donors are trying to corral government into a structured network of institutions that in its entirety would be coherent. However, some donors have questioned the point of trying to get a coherent system to work. They note, referring to the prosecutor general's poor performance that it seems futile to build the capacity of anti-corruption institutions if all efforts to get people charged are in vain. As noted above, the prosecutor general has exclusive responsibility for the collection of legally admissible evidence, even in investigations undertaken by other institutions, including the police and the Anti-Corruption Commission, and it has the exclusive right to conduct criminal prosecutions in court.[77]

Regarding political dialogue between government and donors, sources from the government say that donors complain or lecture to them on corruption. Several interviewees expressed that they do not appreciate being told they are not fully fulfilling policies when donor countries themselves are not free from corruption.

Observers criticize donors and the UN for failing to hold the line on issues that matter. They say, for example, that donors are reluctant to have direct conversations about political issues and that they instead tend to withdraw assistance, often unilaterally. Donors reportedly avoid addressing the lack of political will and the lack of a national anti-corruption strategy, an omission that could limit the effectiveness of the new Anti-Corruption Commission.

v. Anti-corruption approaches and programmes in Timor-Leste

One of the major characteristics of anti-corruption activities in Timor-Leste is the almost complete lack of coordination between national institutions and between donors and development partners. The same is true within government. As a result, there has been no mechanism to establish jurisdictional boundaries to distinguish between minor administrative breaches and more significant corruption, or to share information and coordinate investigations and ensure that prosecutable cases are prepared with input and support from a variety of institutions. There is often a real fear of engagement with counterparts from different institutions, which is driven in part by the strong

personalities of institutional leaders. This extends beyond investigative agencies to nearly all agencies and is an enduring characteristic of Timorese society.

Before the first elections, the transitional government set up the Office of the Inspector-General (OIG), which focused on inspection and audit investigations. This office was established by a memorandum of understanding and not law; in the immediate post-conflict environment it was possible to act without a law. Cases were referred to court for prosecution. The OIG performed this function until 2005, when the ombudsman's office was established.

There does not appear to be a coherent anti-corruption programming strategy or effective coordination on anti-corruption by development partners in Timor-Leste. The World Bank has funded two consultants to develop practical anti-corruption strategies in Timor-Leste. The first produced the 'World Bank Transparency and Integrity Sourcebook' of 2002 for Timor-Leste, a comprehensive anti-corruption strategy with a set of practical measures that could be implemented to combat corruption. The document was written in English and translated into Bahasa Indonesian and Portuguese, all three versions of which were distributed to agencies that could use the strategy. No action has yet been taken in response to the document, however.

In 2005, a consultant was engaged by OIG to develop an anti-corruption framework for that office. The position was funded by the World Bank, which supported OIG in hiring a consultant. When the adviser joined OIG, no one in that office knew of the comprehensive document referred to above, although a complete edition was on the shelves of the main office.

AusAID has provided substantial support to the prosecutor general's office to try to improve its professionalism and work flow, including through the provision of advisers. AusAID has also provided a large number of advisers to the prime minister and the Council of Ministers, which has, among other functions, provided input to anti-corruption legislation.

The UN missions to Timor, such as UNOTIL and UNMIT, have provided advisers to OIG to assist in developing both its auditing and general investigative functions. This has seen only limited improvement in OIG's performance as most staff lack the basic education needed for both auditing and administrative investigations. UNMIT currently has a transparency adviser with an anti-corruption focus working with a deputy prime minister. USAID has also helped support anti-corruption efforts by providing advisers to various offices and agencies.

Such assistance may sound useful, but

by providing advisers, donors have aggravated existing institutional problems. Individual advisers often have no sense of how institutions overlap. The constitutional framework and much of the legal framework is continental/Portuguese, with many advisers from Mozambique and Portugal. Advisers from other systems try to tack on elements from their systems as well.

Moreover, it is rare to obtain assistance from an adviser who is equally competent in civil and common law. For example, a donor agency funded a judge with only common law experience to draft the law establishing the anti-corruption commission. Another common problem — the Anti-Corruption Commission notwithstanding — is that donors tend to place advisers in existing institutions with little interest in developing new ones that are mandated by the Constitution and are needed, such as the High Administrative, Tax and Audit Court.[77]

vi. UNDP anti-corruption interventions

UNDP does not have a specific anti-corruption programme in Timor-Leste, but its democratic governance programme aims to strengthen horizontal and vertical accountability through capacity-building. Its objectives are to (i) foster inclusive participation, (ii) strengthen responsive governing institutions, and (iii) support implementation of democratic practices grounded in human rights, gender equality and anti-corruption. Specifically, the governance programme aims to increase the capacity of local level governments, the parliament, the justice system, the national executive branch and the ombudsman. UNDP also has projects to strengthen the civil service, civic engagement and electoral laws. Although they do not seem to have been explicitly designed as anti-corruption interventions, such governance-strengthening efforts could in turn reduce corruption. These efforts are discussed below.

- **Elections:** To help build the democratic system of Timor-Leste and strengthen the capacity of the national electoral institutions, an integrated UNMIT-UNDP United Nations Electoral Support Team (UN EST) in Timor-Leste was established to support an electoral cycle approach, including support for local level elections in October 2009, planned municipal elections in late 2010 and general elections in 2012. UN EST was created to present a united front to the national stakeholders as well as donors and to enhance the effectiveness of the UN assistance. Although anti-corruption was not explicitly singled out as a priority or objective,

civil and voter education activities informed people of their rights and electoral processes, including counting and complaints procedures.

- **Access to justice:** UNDP's Justice System Programme was launched in January 2009 to strengthen institutional capacity to uphold the rule of law and improve access to justice through legal empowerment of the poor and disadvantaged. The programme has set up and implemented a legal training centre for magistrates, public defenders, lawyers, clerks, translators and other justice sector actors.

- **Local governance:** The joint UNDP-UNCDF Local Government Support Programme (LGSP) is supporting the Timor-Leste government in (i) the establishment of a comprehensive institutional, legal and regulatory framework; (ii) the establishment of full-fledged and effective local governments; and (iii) the implementation of local government reforms. In 2009, LGSP supported the drafting of legislation and regulation defining the framework for the functioning of future municipalities. In addition, LGSP supported enhancing capacities of local authorities in planning, budgeting, and procurement of infrastructure to prepare districts to meet

responsibilities in the context of decentralization. Among other activities, it also supported civic education activities launched in various districts to raise awareness among citizens about their roles and responsibilities in the context of local governance and decentralization reforms.

- **Parliamentary strengthening:** The UNDP Parliament project has been the umbrella project for strengthening the institutional capacity of parliamentary democracy in Timor-Leste since 2003. The project has provided technical assistance in key areas such as legislation and oversight, strengthening of the Secretariat, parliamentary representation and gender mainstreaming, both by supporting critical line functions and developing a capacity-building strategy across the different areas. With support from the project, in 2009 Parliament drafted its first Strategic Plan outlining a framework for systematic development over the next five years (2010–2014). Another important parliamentary achievement has been the revision of the Standing Orders to facilitate greater parliamentary efficiency and an improved workflow while at the same time strengthening Parliament's oversight function, notably through provision of regular Q&A sessions

with members of the government, including the prime minister (the revised Standing Orders were adopted in October 2009).

- **Media:** Throughout 2008 and 2009, UNDP supported the implementation of the following three outputs through the Independent Media Development project: (i) strengthened media-related legal and regulatory process, (ii) increased technical and managerial capacity for sustainability of community radio; and (iii) improved professional capacity of print and community radio journalists and community radio producers. At the request of the national parliament, UNDP provided technical assistance in the drafting of a set of media laws, including (i) General Media Law (with a statute protecting journalists appended), (ii) the Media Council Law, and (iii) the Community Radios Law. These laws will be sponsored as private member's bills.

- **Civil service reform:** UNDP support to civil service reform in Timor-Leste has focused on ensuring accurate primary data on civil servants so that work planning and budgeting is based on up-to-date information. This national civil service database is based within the Civil Service Commission, and once current data is validated it will be directly linked with payroll.

Once validated, the data will provide information on (i) access to training and development activities (e.g., scholarships), (ii) leave taken by staff, (iii) qualifications of staff, (iv) performance evaluations, and (v) salary and entitlements. This access to management information, when combined with appropriate training for senior managers, will enable better human resources planning and management of resources across the civil service.

- **Communication for empowerment:** This is a new project which will commence in 2010. The project strategy draws upon C4E, an emerging concept in UNDP's global and regional work on inclusive participation. Its initial focus, on the establishment of government information houses in three districts (see below), is based on an acknowledgement of the pivotal role of both civil society and the media in mobilizing and empowering the poor to enable them to engage with local authorities, to make legitimate demands of those authorities, and to hold them to account for their policies. The project therefore, seeks to harness and leverage the synergy between civil society and the media in one integrated initiative. The specific outputs and activities outlined in the project document are based on

the lessons learned from two previous projects on civil society strengthening and independent media development.

vii. UNDP and internal integrity

It is not apparent that the 'do no harm' approach was specifically considered with regard to corruption; or that UNDP weighed its aid modalities with regard to vulnerabilities to and impact on corruption; or that UNDP is visibly and effectively promoting transparency and accountability towards partner country constituencies. It was noted by at least one NGO respondent that while UNDP engages civil society on governance issues, its approach is not strategic and seems to be initiated based on when UNDP has funds it must use by a certain date.

Looking more broadly at the issue of transparency of aid in general, the Timor-Leste Institute for Development Monitoring and Analysis (La'o Hamutuk) stated that it is difficult to obtain consistent, complete or accurate data on how much international donors have spent on and in Timor-Leste. Over the past 10 years, bilateral and multilateral agencies have spent approximately $5,200 million, with only 10 percent entering the local economy. Many, including the current prime minister, question aid effectiveness in a way that calls into question the integrity and transparency of donors.

viii. Lessons learned in Timor-Leste

The following are lessons learned from anti-corruption efforts over the past several years in Timor-Leste:

■ UNDP has an opportunity to take a leadership role in coordinating anti-corruption. The lack of consistent and coherent engagement among Timorese institutions is, in part, mirrored by similar lack of coordination among donors in anti-corruption. Donors show considerable enthusiasm for assisting in the fight against corruption. This has caused considerable overlap of donor support for anti-corruption institutions and initiatives and risks even more overlap with the advent of new institutions in the near future (including the Anti-Corruption Commission).

■ UNDP might focus on adding value in the area of anti-corruption programme design and policy, rather than implementing large projects with a large number of advisers. UNDP has strength in developing and disseminating concepts, tools, case studies, best practices and lessons learned.

■ In Timor-Leste it could be useful for UNDP to bring stakeholders together and lead or carry out debate or a series of consensus-building exercises on

standards that apply to the rule of law. For example, what does it take to build a good justice system? At the strategic level, it is essential to really talk about the linkages among corruption-related institutions, and what the root causes are of the human resources deficiency.

- One of the most pervasive and intractable obstacles to the development of anti-corruption capacity in Timor-Leste, with which donor organizations are grappling, is the lack of any widely used working language. Advisers with different languages bring different legal, political and institutional cultures with them, causing some chaos in the development of any coherent institutional framework, systems, procedures or culture. This has produced odd hybrids such as the initial draft Anti-Corruption Commission legislation, which did not fit smoothly into the Timorese legal system.

- Timor-Leste is a young nation and is also fundamentally engaged in nation building. Reconciliation and unity, holding the nation together, are essential, and the past East-West conflict cannot be ignored. While it is not a donor's role to engage in nation building, state building will be more effective if it takes into account related nation building processes. For example, a project that targets citizens pre-supposes that the notion of citizen exists, and if it does not, then the project may need to be reconsidered.

- In strengthening accountability, UNDP could seek not only to build capacity of existing CSOs to deliver civic education, but also to nurture the development of new CSOs that are interested in a range of issues, not just civic education or governance.

- Government partners, including parliamentarians, would like to be better informed about the impact or results of development support.

- UNDP is reducing the number of advisers it places in Timor-Leste and this is a positive move. Government counterparts appreciate training, capacity-building and opportunities to pursue graduate education. But it is thought that there are too many advisers, that many are not effective, that some step beyond the boundaries of their role, and that their input is not always sustainable in the long run.

Endnotes

1. Karen Hussmann and Martin Tisné, 'Integrity in State Building – Anti-Corruption with a State Building Lens', OECD, 2009. This onvertreport draws in part on field research carried out by TIRI over a two-year period, and analysed in Fredrik Galtung and Martin Tisné, 'A New Approach to Postwar Reconstruction', *Journal of Democracy* 20, 4 (October 2009).

2. The Global Rule of Law Programme priority countries are: Afghanistan, Burundi, Central African Republic, Chad, Colombia, Democratic Republic of the Congo, Guinea-Bissau, Haiti, Iraq, Kosovo, Liberia, Nepal, Occupied Palestinian Territory, Sierra Leone, Somalia, Sri Lanka, Sudan, Timor-Leste and Uganda.

3. In a democratic setting, the political legitimacy of a state derives in good part from the effectiveness of the institutions and practices that allow the public to hold state office holders accountable; the extent to which state institutions and customs guarantee that the rule of law will apply consistently to all of society; the state's ability to foster democratic participation in governance; and from its commitment and efforts to ensure that the inhabitants enjoy the fundamental civil, political, economic, social and cultural rights, including the rights to freedom of expression and association, within its borders.

4. State legitimacy is also related to the legitimacy of the incumbent government and the democratic regime. A regime is sustained by its legitimacy, legality and effectiveness. It is possible for a regime to survive without democratic legitimacy, as witnessed by many cases of authoritarianism. See for example Juan J. Linz and Alfred C. Stepan, 'Toward Consolidated Democracies', *Journal of Democracy* 7, 2 (1996), 14-33, and Andreas Schedler, 'What is Democratic Consolidation?', *Journal of Democracy* 9, 2 (1998), 91-107.

5. While this section examines how conflict and post-conflict contribute to corruption, we note that the causality can go in both directions. As later sections show, this report on the whole is broadly concerned with the linkages among post-conflict corruption, the prior conflict, the peace agreement and potential return to violent conflict.

6. The cases were pre-selected by UNDP to cover a range of regions and types of anti-corruption interventions. The factors discussed here are suggested in part by Susan Rose-Ackerman, 'Corruption in the Wake of Domestic Conflict', in Robert I. Rotberg (ed.), *Corruption, Global Security, and World Order,* Brookings Institution Press, 2009.

7. Wartime corruption refers to corruption and corruption networks that operated during the conflict, for example those surrounding activities to smuggle diamonds or guns to support war, or citizens' need to bribe officials to gain access to services and goods that previously existed but were cut off or severely constrained by war. This factor may be related to but is distinct from pre-war corruption and corruption networks that were widespread in countries like Afghanistan, DRC and Sierra Leone.

8. See Susan Rose-Ackerman, 'Corruption and Government', *Journal of International Peacekeeping* 15, 3 (June 2008), 328-343.

9. Counting conflicts in which at least 1,000 people were killed per year on average, there have been over 90 civil wars since 1945. These are violent conflicts within a country fought by organized groups that aim to take power of central government or a region, or change government policies. See James Fearon, 'Iraq's Civil War', *Foreign Affairs* (March/April 2007).

10. Other examples of power-sharing agreements include Angola in 1991, El Salvador in 1992, South Africa in 1994 and Tajikistan in 1997. Sierra Leone also saw a power-sharing agreement in 1999; it failed. See also Karl Derouen Jr, Jenna Lea and Peter Wallensteen, 'The Duration of Civil War Peace Agreements', *Conflict Management and Peace Science* 26, 4 (2009), 367-387.

11. Other factors that have contributed to corruption in Afghanistan include the power and money of the drug trafficking industry, and a massive foreign aid influx with pressure to deliver on it.

12. To the extent that government officials are not part of the networks, this may be an incentive for them to engage in anti-corruption, transparency and accountability initiatives.

13. Gita Welch and Zahra Nuru (eds)., *Governance for the Future: Democracy and Development in the Least Developed Countries,* UNDP, 2006, p. 67.

14. Note that aside from the four scenarios given, there are a multitude of other scenarios that may play out and by themselves be unpredictable. It should also note that the scenarios given are the most likely scenarios that take place in a post-conflict situation.

15. In Afghanistan, and arguably DRC, the state did not have much of a presence before the war, particularly in rural areas, which account for the vast majority of the territory. But to whatever extent there was some 'state' before the war, conflict destroyed it.

16. This is not to overlook the fact that before the forceful ousting of the respective authoritarian regimes, Afghanistan and Iraq differed greatly from each other, in terms of their state structure, reach of state institutions, and human capital, among others. However, in both cases the conflict created a period of weak state control that enhanced opportunities for corruption.

17. Kevin Savage, Lorenzo Delesgues, Ellen Martin and Gul Pacha Ulfat, 'Corruption Perceptions and Risks in Humanitarian Assistance: An Afghanistan Case Study', Humanitarian Policy Group Working Paper, July 2007.

18. There is a distinction between resource-dependent and resource-rich countries. The latter are those with abundant resources that make up a relatively low percent of gross domestic product, e.g., Bolivia, Botswana, Chile and Ecuador.

19. Paul Collier and Anke Hoeffler, 'On Economic Causes of Civil War', *Oxford Economic Papers,* Oxford University Press, 50, 4 (1998), pp.563-73.

20. Richard Snyder and Ravi Bhavnani, 'Diamonds, Blood, and Taxes: A Revenue-Centered Framework for Explaining Political Order', *Journal of Conflict Resolution* 49 (August 2005), pp. 563-597.

21. Thad Dunning, *Crude Democracy,* Cambridge University Press, 2005, pp. 6, 52.

22. Among the five countries studied here, there was no case of a foreign aid–wealthy country that was not also natural resource–wealthy.

23. Kirin Chaudhry, *The Price of Wealth,* Cornell University Press, 1997.

24. Deborah Brautigam, Odd-Helge Fieldstad, and Mick Moore (eds.), *Taxation and State-Building in Developing Countries: Capacity and Consent,* Cambridge University Press, 2008.

25. See Robert Rotberg's work on this in Africa, as well as DFID, 'Building the State and Securing the Peace', Emerging Policy Paper, UK Department for International Development (DFID), London, 2009.

26. See for example Joel Migdal's work, including *Boundaries and Belonging: States and Societies in the Struggle to Shape Identities and Local Practices* (ed.), New York: Cambridge University Press, 2004; *State-in-Society: Studying How States and Societies Transform and Constitute One Another,* New York: Cambridge University Press, 2001; and the foundational *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World,* Princeton, NJ: Princeton University Press, 1988. See also Frances Fukuyama, *State-Building: Governance and World Order in the 21st Century,* Ithaca, NY: Cornell University Press, 2004, and Theda Skocpol, Peter Evans and Dietrich Rueschemeyer (eds.), *Bringing the State Back In,* New York and Cambridge: Cambridge University Press, 1985.

27. Brookings Institution and Center for Global Development, 'Index of State Weakness in the Developing World', 2008, available at www.brookings.edu/reports/2008/02_weak_states_index.aspx.

28. A number of scholars have analysed public policymaking and reform in developing countries; however, these analyses do not consider the post-conflict context. See, for example, Merilee Grindle and John Thomas, *Public Choices and Policy Change,* Johns Hopkins University Press, 1991; Gerald Meier, (ed.) *Politics and Policy Making in Developing Countries,* San Francisco: ICS Press, 1991; Anne Krueger and Robert Bates, (eds.), *Political and Economic Interactions in Economic Policy Reform,* Oxford: Basil Blackwell, 1993; Andreas Schedler, Larry Diamond, and Marc F. Plattner, (eds.), *The Self Restraining State,* Boulder, CO: Lynne Rienner, 1999; Merilee Grindle, *Audacious Reforms,* Baltimore, MD: The Johns Hopkins University Press, 2000; Steve Kayizzi-Mugerwa, (ed.), *Reforming Africa's Institutions,* Helsinki: United Nations University Press, 2003; Atul Kohli, *State-Directed Development,* Cambridge University Press, 2004; and Elias Ayuk and Mohamed Ali Marouani (eds),*The Policy Paradox in Africa,* Africa World Press, 2007.

29. This is also seen in countries that undergo coups and experience regime changes.

30. See also Fredrik Galtung and Martin Tisné, 'A New Approach to Postwar Reconstruction', *Journal of Democracy* 20, 4 (October 2009), pp. 95–100, which proposes two phases of reconstruction after the landmark agreement or cessation of hostilities.

31. 'Report of the Sierra Leone Truth and Reconciliation Commission', Vol. 2, 2004, p.7.

32. Integrity Watch Afghanistan, 'Afghan Perceptions of Corruption - A Survey Across Thirteen Provinces', January 2007, p. 25.

33. Karen Hussmann and Martin Tisné, 'Integrity in State Building – Anti-Corruption with a State Building Lens', OECD 2009. This report draws in part on field research carried out by TIRI over a two-year period, and analysed in Fredrik Galtung and Martin Tisné, 'A New Approach to Postwar Reconstruction', Journal of Democracy 20, 4 (October 2009).

34. Joel Migdal, *Strong Societies and Weak States,* Princeton University Press, 1988.

35. Herbert F. Weiss and Tatiana Carayannis, 'Reconstructing the Congo', *Journal of International Affairs* 58, 1 (2004), pp. 115–142.

36. On the post-conflict rule of law approach and anti-corruption, see Richard Sannerholm, 'Legal, Judicial and Administrative Reforms in Post-Conflict Situations: Beyond the Rule of Law Template', *Journal of Conflict & Security Law* 12 (2007), pp. 65–94.

37. UNDP, 'Mainstreaming Corruption in Development', Anti-Corruption Practice Note, 2008.

38. The concept of DDR vis-à-vis DRC is discussed in greater detail in section 6.3.

39. Karen Hussmann and Martin Tisné, 'Integrity in State Building – Anti-Corruption with a State Building Lens', OECD, 2009.

40. See for example, Aslak Jangård Orre and Harald W. Mathisen, 'Corruption in Fragile States', DIIS Policy Brief - Fragile Situations, Copenhagen: Danish Institute for International Affairs (2008), pp. 1–4.

41. Lorenzo Delesgues and Yama Torabi, Integrity Watch Afghanistan, 'Reconstruction National Integrity System. Survey Afghanistan', 2007.

42. Exceptions to this are, for example, the Institute for Democracy and Electoral Assistance (IDEA) and the American Bar Association, both of which devote considerable effort to research and learning and thus bring institutional memory.

43. On government ownership, see Nipa Banerjee, 'Role of NGOs in Post-Taliban Afghanistan: Missed Opportunities But Way Forward, Asia Policy Briefs, March 2009, available at http://exed.maxwell.syr.edu/exed/sites/policy/.

44. Philippe Le Billon, 'Buying Peace or Fueling War: The Role of Corruption in Armed Conflicts', *Journal of International Development* 15 (2003), p. 413.

45. UNDP started working on corruption in 2005, carrying out a study to define its approach and contracting a full time anti-corruption specialist to develop a programme and coordinate donor-government dialogue. The programme did not start until 2007 due to difficulty in finding appropriate staff and lack of a clear government counterpart.

46. Ben Heineman, 'Corruption – The Afghan Wild Card', *The Atlantic Monthly,* 2 October 2009.

47. Civil society 'thickening' refers to increasing the sector's size, breadth and depth (i.e., new CSOs emerging at different levels), as well as strength (i.e., the capacity of existing CSOs).

48. DFID practice paper, 'Political Analysis How To Note', July 2009, available at http://www.dfid.gov.uk/Documents/publications/howto-pol-econ-analysis.pdf.

49. The UN is not necessarily part of this, but could contribute by developing checklists of options. Different options may be applicable to different constitutional and legal systems (i.e., federal/unitary and civil/common law), as the case of Timor-Leste shows.

50. Integrity Watch Afghanistan, 'Afghan Perceptions of Corruption - A Survey Across Thirteen Provinces', January 2007, p. 24.

51. 'Anti-Corruption Roadmap for the Islamic Republic of Afghanistan', Draft, April 2007, Islamic Republic of Afghanistan, available at www.ands.gov.af under documents for JCMB 5th meeting.

52. Ibid. See also, 'Tackling Judicial Corruption in Afghanistan', Expert Answer, U4 Anti-Corruption Resource Centre, 12 September 2007.

53. See Accountability and Transparency Project, Substantive Revision Number 1, March 2009.

54. Integrity Watch Afghanistan, 'Afghan Perceptions of Corruption – A Survey Across Thirteen Provinces', January 2007.

55. Integrity Watch Afghanistan, 'Afghan Perceptions of Corruption - A Survey Across Thirteen Provinces', January 2007.

56. UNCAC was ratified by Afghanistan on 25 August 2008.

57. The Afghanistan Compact was the outcome of the London Conference on Afghanistan in 2006. It was the result of consultations of the government of Afghanistan with the United Nations and the international community and established the framework for international cooperation with Afghanistan.

58. The World Bank, 'Fighting Corruption in Afghanistan, Summaries of Vulnerabilities to Corruption Assessments', 2009, p.4.

59. Integrity Watch Afghanistan, 'Integrity in Reconstruction', January 2007.

60. 'Mission to Afghanistan', report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 May 2009, A/HRC/11/2/Add.4, paragraph 58.

61. Laura Barnett, 'Afghanistan: The Rule of Law', Parliament of Canada, Law and Government Division, 24 October 2007.

62. Michael Brown, 'Combating Low-level Corruption on Waterways in the Democratic Republic of Congo: Approaches from Bandundu and Equateur Provinces', GWU Law School Public Law Research Paper No. 116, October 2004.

63. DFID Anti-Corruption Strategy for DRC, Kinshasa, October 2007.

64. Civil society was mostly non-existent under the previous regime, except for those who agitated for gender equality. A new civil society network, the Coalition for Integrity, was established in August 2009. It includes 26 NGOs.

65. 'Report of the Truth and Reconciliation Commission' (2004). This commission was established by the Truth and Reconciliation Act 2000 enacted in pursuance of the Lomé Peace Agreement, Article XXVI.

66. 'Together in Fighting Corruption For The Future Of The People And The Nation', the National Anti-Corruption Strategy 2008-2013. This document contains 44 pages of narrative and 67 pages of a detailed strategic action plan matrix.

67. For example, an investigation into the activities of the electoral commission and the International Fund for Electoral Systems following the local elections in May 2004 found evidence of widespread manipulation of results by electoral staff. This led to the withholding of funds allocated for 2004–2005 and was intended as a clear signal to the government that such practices would not be tolerated.

68. Mary Kaldor with James Vincent, 'Case Study: Sierra Leone', UNDP Evaluation Office, 2006, p.5.

69. 'Report of the Truth and Reconciliation Commission, Vol.2, 2004, p.7.

70. See Mary Kaldor with James Vincent, 'Case Study: Sierra Leone', UNDP Evaluation Office, 2006, p.11.

71. Interviewees were not aware of any comprehensive diagnosis or assessment of corruption. Relevant reports include one by Shane Cave in 2005 for the World Bank, and one by Patrick Megher in 2003. Also of relevance are a International Republican Institute (IRI) perception survey, the Transparency International (TI) index and work by TIRI.

72. The Constitution refers to the establishment of a High Administrative, Tax and Audit Court.

73. 2009 Millennium Development Goals, Timor-Leste report.

74. 'Review of Development Co-operation', Embassy of Norway (Scanteam), August 2007, p. 62.

75. Provedoria for Human Rights and Justice.

76. Article 3.1.f. of Law no. 14/2005 'The Statue of the Public Prosecution Service', September 2005.

77. The Constitution refers to the establishment of a High Administrative, Tax and Audit Court.

This report explores the dynamics between corruption and post-conflict situations following violent, widespread armed conflict. It provides insight based on empirical research in five countries and research into how the United Nations Development Programme has grappled with the challenges of anti-corruption interventions in post-conflict environments.