Long Session Report

Session Title: Managing the Risk of Corruption in Development Cooperation

Date & Time: 24 October 2018, 15.00-17.00

Report prepared by: Drago Kos, Chair of the OECD Working Group on Bribery

Session coordinated by: Claire Naval, Policy Analyst, Development Cooperation Directorate, OECD

Moderated by: Phil Mason, Co-Chair of the OECD Anti-Corruption Task Team

Experts:

- Klas Rasmusson, Anti-Corruption Policy Specialist, SIDA
- Emma Luxton, Case Controller, Serious Fraud Office, Bribery and Corruption Division, UK
- Rohan Schaap, Director of Investigations, European Bank for Reconstruction and Development (EBRD)
- Tidhar Wald, Head of Government Relations and Public Policy, UN-hosted Better Than Cash Alliance
What were the aims of the session and corruption risks?

Recognising the common interest of international development actors in fighting the risks of corruption in development assistance, in 2016, the OECD Council adopted a new Recommendation for Development Actors on Managing the Risks of Corruption in Development Cooperation. The Recommendation calls on countries to set up or revise their systems for managing risks of corruption and formulating responses to corrupt practices in the management and delivery of aid. It promotes a broad vision of how international development actors can meet their international and regional commitments in the area of anti-corruption, including the bribery of foreign public officials.

Corruption poses serious threats to development goals and affects the way in which donors respond to Sustainable Development Goal (SDG) 16 of Agenda 2030. The objectives of this session are thus two-fold: (i) identify progress made and lessons learned in corruption risk identification, assessment and mitigation practices, and strategies for effective responses to actual instances of corrupt practices in development cooperation; and (ii) discuss the challenges faced and possibilities to make further progress in strengthening anti-corruption measures in the activities conducted or funded by development actors.

Indeed, almost two years after its adoption, how has the Recommendation been implemented? What effective and innovative practices have been developed and what are the remaining challenges in managing the risk of corruption in international development assistance? In reflecting on these questions, the session sought to discuss risk management approaches, potential learnings that could feed back into the design of projects, and the ways in which the Recommendation is shaping attitudes and behaviours of development agency staff (i.e. through a strong and active reporting culture, effective sanctioning regimes, enhanced collective donor country-specific responses, etc.).

Summary of panellists’ contributions & discussion points
(please be as detailed as possible)

Phil Mason, Co-Chair of the OECD Anti-Corruption Task Team emphasised that the Recommendation is stimulating innovative thinking in different domains – bilateral country work; law enforcement on getting proceeds of corruption back to development; in an MDB; and in thinking about the use of new technologies. It is being used practically, and in ways to improve development outcomes, not just narrowly on fiduciary protection of our funds. Users are embracing and working through the challenges, and we are learning and feeding back into our organisations, and especially into the OECD Development Assistance Committee and Working Group on Bribery processes. The Recommendation is contributing to driving continual improvement in the development agencies approaches.
Drago Kos, Chair of the OECD Working Group on Bribery, noted in his introductory remarks that, for most development activities, the risk of corruption is present at all levels of operations and in all stages of the project cycle. This therefore requires to re-think, comprehensively, how development activities are conceived, designed, implemented and monitored. The 2016 Recommendation aims to support this by assisting development agencies around the world in preventing and detecting corruption while taking into account changes in the development environment and the involvement of new partners and channels for aid disbursement. It also promotes a broad vision of how international development agencies can work to address corruption, including the bribery of foreign public officials.

Drago reminded that, in practice, the Recommendation calls on international development agencies to ensure effective systems and measures are in place to prevent corruption and to respond to corrupt practices in the management and delivery of aid. These anti-corruption systems should include codes of ethics, whistleblowing mechanisms, financial controls and sanctions for misconduct, etc.

Klas Rasmusson, anti-corruption specialist for the Swedish Development Agency (Sida), began the session with a discussion on the importance of adopting a systematic CRM approach. This requires analysing the drivers of corruption to better understand the actors, power relations and incentives involved – thereby ensuring that the intervention of development actors does not inadvertently fuel corruption further.

His intervention then turned to an explanation of Sida’s TRAC project risk management system, detailing its application in a case involving Swedish support to an education project. By engaging in a systematic sectoral analysis of the corruption risks involved in the country example, Sida was able to collect detailed context-specific information that then fed into the design of the project. This led, for example, to the implementation of a variety of control measures linked to financial intermediaries, the development of Standard Operating Procedures (SOPs), and internal and external monitoring. The importance of devoting sufficient time and resources to following-up on given projects was underlined, for example by conducting field visits to identify risks during the implementation phase. Analysing and assessing how mitigation measures play out in concrete actions is an essential part of the learning process and a central element to inform necessary changes and improve existing practices.

Drawing on her experience as a prosecutor and case controller at the UK Serious Fraud Office (SFO), Emma Luxton then presented key issues in the process of investigating and prosecuting large scale fraud and bribery cases and, in particular, on the role of asset recovery and compensation of victims.

Three routes to compensating victims were outlined. These include compensation by process of civil recovery, compensation orders upon sentencing, and deferred prosecution agreement established in 2014 that provides prosecutors with the possibility to identify victims as well as a suitable compensation plan.
In one example detailed by Emma, a company found guilty of bribery was fined, and had its proceeds confiscated. Compensation was then considered for Kenya and Mauritania, who were able to show that the amount paid in bribes had affected the pricing of contracts affecting them. The confiscation ordered in this case allowed the UK SFO to return approximately £345 000 in the form of ambulances to the Kenyan government, and funds were returned to Mauritania through the World Bank to contribute to its public financial management of an infrastructure project. This was considered a new and innovative solution, as it allowed for compensation to be made, with no risk that the funds returned could be misused again, or ‘re-corrupted’. Re-corruption of funds is a central concern to law enforcement offices working in compensation in large scale, prominent cases, and this example demonstrates that creative solutions are required in situations where the risk of re-corruption of funds is high. Compensation is not always possible but the UK (Serious Fraud Office, Crown Prosecution Service and National Crime Agency) published the “General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases” that seek to ensure that compensation is considered in every case and that all available legal mechanisms are used to secure it whenever appropriate.

Rohan Schaap of the European Bank for Reconstruction and Development (EBRD) then presented his work as Director of Investigations. He underlined the need to “take a risk-based approach to corruption” meaning that when corruption risks are identified, they need to be addressed like any other risk, i.e. via thorough assessment and mitigation measures, but also that the funding of programmes should go forward and be accompanied by safeguards and clear time-bound conditionalities.

Where loans are refused, Rohan underlined the importance of finding alternative support solutions. A recent example is the creation in Ukraine of an Ombudsman for private business to help fight corruption, hold governmental agencies accountable, and enhance the transparency and effectiveness of the country’s business environment.

He further emphasised that although the Recommendation was not explicitly formulated for multi-lateral development banks (MDBs), they constitute ‘minimum principles that every aid delivery body should follow’, underscoring the relevance and utility of the Recommendation. These principles can allow development cooperation actors to identify corruption risks, measure them, put appropriate mitigation measures in place to control them and, when needed, accept a certain level of residual risks to be monitored with conditionalities.

Finally, Tidhar Wald intervened in his capacity as Head of Government Relations and Public Policy of the UN-hosted Better than Cash Alliance to discuss some of the latest innovations around the global transition from cash to digital payments. Between USD 1.7 – 2 billion people live in cash-based economies – the scale of which bears significant corruption risks. Digital payments allow to mitigate these risks as they are easier to track, and contribute to enhanced transparency, ensuring, for example, that funds reach intended beneficiaries and are not diverted.
Digitalisation of payments has proven to be an effective means by which to reduce leakages, examples showing up to 50% decrease in misuse of funds. As evidenced by India’s experience in payment digitalisation, an estimated USD 14 billion were saved between 2013 and 2018 by moving away from cash. This is a strong concrete way to ensure effective implementation of the Recommendation.

Further, the implications of such savings are significant and could serve, for example, to fund the **fulfilment of the SDGs and the Domestic Resource Mobilisation agenda**. Following a round of questions (referred to in the next section of this report), the moderator then commenced a second round of interventions by asking panellists to identify the main challenges to enhanced CRM in development cooperation.

The role of **partnerships and collective action** was discussed (as referenced in provision 9 of the Recommendation). Panellists noted that although this is an important component of the Recommendation, few examples exist of this working effectively in practice. One example put forward by Klas Rasmusson was a successful joint analysis of corruption risks conducted by 10 European donors in Cambodia. The role of partnerships in the realm of development cooperation but, more widely, for ensuring policy coherence between development and security was underlined.

The lack of evidence and consolidated information around incidents of corruption, i.e. what happened and why were given measures taken, points to the need for **enhanced systematic learning** from partners and from donors’ internal control units. Further integrating the Recommendation’s principles into donors’ programmes was also recommended as a way forward. Sida’s representative explained that Sida has developed a lessons learned portfolio from previous corruption cases (what happened, what can be done differently etc.) to reduce the likelihood that similar cases happen again. In terms of priority granted to anti-corruption, he indicated that it is now included as a goal/sub-goal in 26% of the Swedish development cooperation strategies, which shows a marked increased focus on corruption risks in Swedish development cooperation compared to a few years ago.

In terms of asset recovery and compensation, Emma Luxton referred to the **need to integrate these activities into the prosecution process from an early stage**. Avoiding the risk of repatriated funds being ‘re-corrupted’ –i.e. ensuring that funds are redistributed in a way that is fair and of maximum value to the population in the victim state - that will require innovative and creative thinking on the part of law enforcement agencies. To this end, early consideration of a compensation plan is crucial. In particular, it was noted that development agencies can act as a bridge and safe corridor through which corruption proceeds can be repatriated, enabling courts to more readily make compensation orders in corruption cases where possible.

The discussion then turned to the potential **limits of new technologies in combating corruption**. Tidhar noted that although these technologies may mitigate corruption risks linked to intermediaries, they also bring with them potential new risks, i.e. in particular around the use of big data. The difficulty faced by regulators to keep up with the pace of technological development was also discussed. To this end,
it was noted the crucial need for innovative and competitive entities from the private sector to be included as an integral part of the fight against corruption and for solutions to be designed responsibly and responsively to the needs and capabilities of beneficiaries. The importance of assessing the applicability of a particular technology to a given operating context was also highlighted.

Main outcomes of session (include the highlights and interesting questions from the floor)

The session illustrated how the 2016 Recommendation has inspired new ways of thinking in the realm of corruption risk management (CRM). It also highlighted the importance of understanding the drivers of corruption in order to promote a risk-based approach to CRM and underlined key issues in the management of corruption risks in development cooperation. Interventions focused on the following:

i) Systematic broad corruption risk management approaches

Corruption risk management is not only about fighting corruption in its own right, it is also about enhancing aid effectiveness. Effectively addressing corruption requires understanding the drivers of corruption, and broad systemic approaches that look beyond fiduciary concerns to understand the developmental impact of corruption were underlined.

The need to work together and adopt more uniform approaches was also emphasised, along with sufficient time and resources to ensure efficient follow-up of corruption risks and address corruption cases when they occur.

ii) Repatriation of proceeds of corruption and compensation of victims

The SFO, in line with other UK government agencies, is committed to systematically considering compensation to overseas victims in accordance with principles of fairness, transparency and integrity using secure routes and working collaboratively. This often requires creative approaches to ensure that repatriated funds are not subject to the risk of re-corruption once they are returned to affected countries.

Participants underlined that law enforcement officials involved in the prosecution of serious fraud and bribery can benefit from the input of development agencies in this regard. Strong cooperation between these actors has proven crucial in protecting funds returned in a number of cases.

iii) Relevance of the Recommendation for multilateral development banks (MDBs)

MDBs can draw on the universal principles that underpin the Recommendation. In particular, the identification of corruption risks should not result in the immediate dismissal of a project. Rather, MDBs should assess the level of risk, and apply
appropriate conditionalities and safeguards wherever the level of risk allows this to be possible and within reason.

iv) Digitisation of payments and new technologies as CRM strategies

Digitalisation of payments has proven to be an effective means by which to reduce leakages but technology is developing very fast, and with the move from digitalisation of payments to biometrics to block chain, we are facing new risks at the same time as new opportunities. Further, participants underlined the current focus on flows – illicit financial flows and misuse of funds- when the main risk and danger might now actually lie elsewhere, i.e. in the modification of data itself.

Each round of panellist interventions was followed by questions from the audience. An interesting discussion arose around the question of who checks the checkers and on the processes and controls that can contribute to mitigate corruption risks? It was noted that the creation of special units to prevent corruption were not impervious to risk – and that it is necessary for these units themselves to be scrutinised and audited. The efficacy of conditionality and the measurement of its success was also raised, with one member from a development bank highlighting that the effective implementation of rules and regulations was significantly more challenging than their establishment or adoption. This led to an intervention on the role of peer reviews as conducted by the OECD Development Assistance Committee (DAC) and the Working Group on Bribery (WGB). Phil Mason, moderator of the session, highlighted that these reviews are among the most effective checks available to DFID on their own processes. Similarly, the role of civil society in ensuring scrutiny and sustainability of anti-corruption mechanisms was underlined.

Key recommendations and concrete follow-up actions

More systematic learning from corruption cases should be promoted, i.e. what happened, on what basis were decisions taken, what worked/did not work and what could have been done differently? The development of a “lessons learned” portfolio from previous incidents of corruption, along with the development and conduct of internal training sessions, are potential ways to reduce the likelihood of similar cases happening again.

The need to work together and adopt more uniformed approaches was identified. The use of joint analysis and monitoring through field visits were cited as examples.

Analysis of the sector and environment of operation should be integrated into the design phase of programmes, to ensure corruption risks are well addressed and in no case fuelled out of ignorance. The inclusion of corruption risk management approaches that go beyond fiduciary risks should continue to be advanced.

On the innovative compensation tools discussed, remaining challenges include addressing these from the outset of a case. In doing so, prosecutors and
development agencies should consider compensation plans and delivery modalities for repatriating recovered stolen proceeds and compensation where there is clear evidence of loss.

Lastly, **OECD peer reviews** should continue to be used as vehicles to *monitor the implementation of the Recommendation* and serve, in particular as an *ongoing dynamic way to improve risk management systems and an efficient way to ensure that corruption occurrences are detected and sanctioned.*

*We value your assessment following the outputs of the session, if you need to, please get feedback from the session coordinator or the moderator for this component.*

**What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?**

In creating opportunities for scaling up the solutions discussed in the session, we would like to start by thanking IACC organisers for the space provided at the 18th IACC to exchange ideas around the Recommendation with a wide variety of participants. Further, we call on Transparency International, as a core international actor in fighting corruption, to support efforts by development actors to enhance their corruption risk management systems and to communicate –when and as relevant- around the OECD Recommendation on Managing the Risk of Corruption and, in particular, around the key recommendations and concrete follow-up actions identified above.

This call to further communicate around, and promote awareness of, the Recommendation and the principles it contains applies more widely. Both Adherents and other development actors (including MDBs) are invited to promote a broad approach to corruption risk management, going beyond the realm of fiduciary concerns and embracing the importance of joint analysis and responses as well as due consideration of the risks endemic in many of the environments in which they operate.

Additionally, while the Recommendation relates primarily to bilateral donor operations, more can be done to promote its guiding principles in multi-lateral development banks and other actors involved in development aid and anti-corruption efforts.

Partnerships between law enforcement agencies and development agencies should be encouraged in cases where serious misuse of funds has been found in a development project, in particular when it comes to identifying the best way to provide redress to victims in the developing country concerned.

As mentioned above, the development of tools and instruments (such as a lessons learned portfolio from previous cases or internal training) could usefully contribute to strengthened corruption risk management approaches. The role played by OECD
WGB and DAC peer reviews in monitoring performance, and thereby as ongoing means to improve risk management systems and to ensure internal systems are subject to scrutiny, should be built upon.

Digitisation of payments has been recognised as a clear corruption mitigation strategy. However, the role of new technologies in combatting corruption is not immune from potential new risks. To this end, further policy analysis is needed on the strengths and dangers of new technologies like blockchain in order to harness their anti-corruption function. This work should be conducted together with the private sector from which much of this technology flows, in order to keep up with the rapid pace of change.

Finally, discussions underlined that the next challenge in development cooperation will involve moving from a project approach to one that focuses on building more resilient societies and more functional institutions.

Key Insights for the future of the anti-corruption agenda (including Game Changing ideas/ suggestions/ actions from the session)

The Recommendation is stimulating innovative thinking from different actors tackling corruption from different angles in development cooperation. It is being used practically, going beyond fiduciary protection of funds to improve development outcomes. Users are embracing and working through the challenges, learning and feeding back into their organisations’ strategies and practices.

Concrete examples have shown how the Recommendation is contributing to driving continual improvement in development actors’ approaches, including through the provision of guidelines that promote joint donor responses and effective capacity building.

Development actors should promote peer learning and joint action in corruption risk management between development agencies but also in partnerships between these agencies and other national offices. Development agencies, for example, can play a crucial role in designing effective and innovative compensation plans to be implemented by law enforcement offices.

Rapporteur’s name and date submitted

Drago Kos
This Long Report was submitted on 12th November 2018.