7

Strengthening Global Checks and Balances

The worldwide scale of embezzled funds and corruption proceeds is difficult to judge. One estimate puts it at a staggering $1 trillion a year (Kaufmann 2005). Nigeria's President Abacha embezzled between $2 billion and $5 billion; Zaire's President Mobutu, an estimated $5 billion. Kenya lost $600 million in one scandal alone in the early 1990s, and Angola lost an estimated $4 billion between 1997 and 2002.[1] The recent report by the Independent Expert Commission on the Oil-for-Food program found evidence of $1.8 billion in kickbacks to the Iraqi government from oil companies and suppliers. Corruption is an international problem: even when no foreign party is involved, the proceeds of developing-country corruption are typically kept in the world's major financial centers.

Everywhere the primary responsibility for establishing strong national governance systems and combating corruption rests with citizens and their national authorities. But national governance systems operate in a global context, as noted in chapter 5. Global influences can encourage or facilitate domestic corruption, and global efforts can complement domestic efforts to strengthen governance and improve transparency.

Donors and international financial institutions (IFIs) are essential parts of the global governance framework, especially for poor countries. Their efforts include bolstering their own anticorruption controls, improving transparency, encouraging adherence to internationally recognized standards and codes, and working with their clients to encourage domestic accountability.

This chapter discusses international legal initiatives for good governance, global and regional corruption treaties, and transparency initiatives (annex tables 7.1–7.3). Of recent vintage, these initiatives form an embryonic network of global checks and balances that deserves to be strengthened to reduce around the world the rewards of corrupt behavior while increasing the risks of detection.

International Legal Initiatives with Extraterritorial Reach

Certain international legal initiatives strengthen the anticorruption framework in industrial countries in ways that hold individuals and companies responsible for acts committed in other countries. This extraterritorial reach is potentially a great support to poor countries whose judiciaries often are not up to the task of prosecuting complicated corruption cases with international dimensions, especially when they involve large international companies, politically influential nationals, or both. The two most important anticorruption initiatives are the Organisation for Economic Co-operation and Development (OECD) anti-foreign-bribery

convention and the anti-money-laundering (AML) recommendations of the Financial Action Task Force (FATF). Both are supported by the OECD and have developed monitoring mechanisms based on the peer review model. Monitoring has gone beyond legislation and now concentrates on enforcement. They are linked in that the handling of bribes under the convention is subject to the sanctions pertaining to AML. Together, they greatly facilitate mutual legal assistance, exchanges of information, extradition of suspects, and seizure of assets.

Implementing the OECD Anti-Bribery Convention

Inspired by legislation in effect in the United States since 1977, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was hailed in 1997 as the first global instrument to target the supply side of corruption. Until then, most OECD countries considered bribes paid to foreign officials as legitimate business expenses that were tax deductible. All 30 OECD members quickly ratified the convention, and it came into force in 1999.

The first phase involved bringing national legislation up to the standard of the convention. This phase, examined in phase 1 of the peer review process, is substantially complete. In phase 2, which involves onsite visits, the focus is on enforcement. Seven countries are being examined each year, and by 2008 reports will have been published on all signatories.

Now that bribery is in most countries an offense under their AML legislation (see below), enforcement of the convention can take advantage of more forceful investigating techniques and additional sanctions. Although the convention is in principle open to all countries, the obligations of the peer review process force selectivity, and so far only six non-OECD members have been admitted.

Effectiveness can be judged by the examination reports' type and number of recommendations and the rate of their implementation. The OECD will soon publish a review of two dozen phase 2 reports; in the meantime, Transparency International (TI) published in 2005 a progress report on enforcement of the convention (Transparency International 2005). TI reports a positive start to enforcement, with foreign bribery cases or investigations in 15 of 24 countries surveyed (representing 95 percent of OECD exports), but it notes with concern the nine countries that have neither cases nor investigations. The convention's preventive effect is more difficult to measure. Skeptics point to the fact that the United States, despite actively prosecuting foreign bribery since 1977, scores only in the middle range on the propensity of its companies to give bribes, according to a 2002 survey of international bribe payers.[2]

Rigorous monitoring through high quality reports is clearly one of the convention's strong points. It is critical that the OECD countries continue to support this monitoring beyond 2007, when the current funding runs out. The *TI Progress Report* notes several potentially serious weaknesses, and in particular recommends strengthening government enforcement organizations to deal with foreign bribery cases. It also sees a need to improve public awareness and to raise accounting and auditing standards. To shift part of the burden from criminal enforcement to voluntary compliance, it favors promoting corporate compliance programs. IFIs can help by making the adoption of such programs a condition for bidding on their projects; the World Bank has already done so.

Without overburdening the review process, ways should be found to engage more countries, especially emerging market economies whose importance to trade and investment in the developing world is growing rapidly. The convention has been criticized for excluding small "facilitation payments" from its definition of bribery and for not dealing with bribery in political party financing. How signatories handle the more than 2,000 foreign kickback cases exposed by the Independent Inquiry Committee, which examined the UN Oil-for-Food Program, will be critical to the convention's future credibility (box 7.1).

BOX 7.1 Kickbacks under the United Nations Oil-for-Food Program

The United Nations Oil-for-Food Program was established in 1995 to permit Iraq to sell oil to raise funds to buy food, medicine, and other humanitarian supplies. The proceeds of oil sales were to be paid into a UN escrow account, which would then pay for humanitarian supplies. The program operated from 1996 until the US-led invasion of Iraq in 2003. In response to criticisms of corruption and abuse of the program, including by UN officials, UN Secretary-General Kofi Annan appointed an investigatory commission, headed by former U.S. Federal Reserve Chairman Paul Volcker.

According to the commission's October 2005 report, the Iraqi government manipulated the program to receive funds outside the UN escrow accounts that it could use freely. Although the Oil-for-Food program was supervised by the United Nations, the Iraqi government was free to choose its oil traders and goods suppliers, and it generally picked companies willing to participate in its kickback schemes. Starting in 2000, Iraq applied surcharges on oil sales and traders transferred these as side payments to Iraqi offshore accounts. Iraq received an estimated $229 million in kickbacks from 139 oil traders. More significantly, the Iraqi government demanded that all suppliers of humanitarian goods pay fictitious transportation or service fees into special overseas bank accounts. The Volcker report provides evidence of the payments, mostly since 2000, by 2,235 suppliers of "humanitarian kickbacks" of over $1.5 billion.

The list of countries with companies implicated in the kickback scheme includes most signatories of the OECD convention, which criminalized bribery of foreign officials. Their governments must now determine whether these kickbacks amount to bribery under the convention. In addition to national laws prohibiting foreign bribery, these companies would have violated UN sanctions. A number of companies have already launched internal investigations and suspended executives. In the meantime, the United Nations is dealing with the implications of the scandal for its own oversight, transparency, and accountability practices.

Source: Independent Inquiry Commission 2005.

Implementing the FATF's Forty Recommendations on Money Laundering

International efforts to fight money laundering have also helped combat corruption because money laundering is the mechanism used to hide corrupt gains. The multinational FATF, created in 1989, issued its *Forty Recommendations on Money Laundering*, now an international standard, in 1990. In 2003 the recommendations for AML were substantially strengthened; and in 2003 and 2004, nine special recommendations for measures to aid in combating financing of terrorism (CFT) were added. At the heart of the AML recommendations is the identification of the crimes that give rise to money laundering, the predicate offenses. Both corruption and bribery—including that of foreign officials—are among those predicate offenses. The FATF recommendations are wide ranging. The 2003 update requires financial institutions to pay special attention to politically exposed persons and enhance their customer due diligence, and it extended coverage to nonfinancial businesses—such as gem dealers and lawyers.

Compliance is assessed by the FATF and FATF-style regional bodies through a peer review process, as well as by the International Monetary Fund (IMF) and the World Bank in their Financial Sector Assessment Program. All assessments follow an agreed methodology with 250 criteria. The FATF accepts assessments by the IMF and World Bank for its purposes, and the IMF and Bank accept FATF assessments. Since the new recommendations were introduced in 2004, the Fund and Bank have completed 12 assessments, and the FATF

has completed 13. When governments agree, reports are published, and to date almost all have been. The IMF and the World Bank also contribute technical assistance: nearly 1,000 officials from 111 countries were trained in various aspects of AML/CFT regimes.

To expand its regional coverage, the FATF in 2005 firmed relations with the Russian Federation and with FATF-style regional bodies in Africa, Asia, the Pacific, and South America. It also invited China to attend as an observer, pending the mutual evaluation of its AML/CFT systems. The list of Non-Cooperating Countries and Territories—the FATF's ultimate sanction against weak AML/CFT programs—was shrunk further. Begun in 2000 with 23 jurisdictions, the Cook Islands, Indonesia, and the Philippines were removed in 2005, and only Myanmar, Nauru, and Nigeria remain. The study of the increasingly sophisticated techniques in money laundering and terrorist financing—typologies—plays a key role in the FATF standard-setting process, and the results are summarized in annual reports.

An IMF/World Bank review of ALM/CFT assessments in 2004 and 2005 found compliance with the more demanding 2003 recommendations generally lower. Countries were largely compliant with about half the recommendations, but compliance of banks with customer due diligence and suspicious transactions was weak. In poor countries, AML/CFT systems are still at an early stage; core legal systems are substantially lacking. The effectiveness of the system is defined by its ability to identify and prosecute existing cases—and to prevent or deter future cases. There is no information on the numbers of successful prosecutions, and in any case these would be misleading because AML cases often end in a sentence for a related, easier-to-prosecute crime such as a tax evasion or fraud. A case involving the Dominican Republic shows how the extraterritorial reach of the AML/CFT framework can help developing countries support their governance efforts at home (see box 7.2).

As is true for the OECD convention, rigorous monitoring underpins success in implementing AML/CFT. Countries should identify gaps in their enforcement systems, develop action plans to fill them, and charge the appropriate authorities to execute them. Opportunities for international cooperation

BOX 7.2 The Dominican Republic—AML in support of anticorruption

In November 2005 a Miami jury found a prominent financier from the Dominican Republic (DR) liable to pay more than $176 million for fraudulently transferring money from the DR's Banco Intercontinental, known as Baninter. This bank collapsed in 2003, setting off a banking crisis in which the central bank of DR lost half of its foreign exchange reserves. The failure was attributed to massive fraud and corruption. The civil suit in Miami was brought by the DR's bank liquidating commission.

The case is being appealed but, regardless of the outcome, it highlights the usefulness of the AML system in the international fight against corruption. The DR authorities were able to sue in the United States for racketeering and fraudulent money transfer related to corruption on their territory. The U.S. verdict is expected to buttress ongoing criminal cases, against the financier and others involved in Baninter's collapse, in the DR, where despite several years of investigations no trial has taken place.

The DR case is part of a trend in which South Florida is becoming the venue for international fraud cases involving residents of neighboring Latin America and the Caribbean. U.S. courts, spurred on by the Patriot Act, which expanded their jurisdiction, are becoming more open to hearing foreign cases involving residents outside the country.

Sources: Washington Post (December 1, 2005) at http://www.washingtonpost.com/wp-dyn/content/article/2005/12/01/AR2005120101287.html; *St. Petersburg Times* (March 30, 2004) at http://www.sptimes.com/2004/03/30/Business/Florida_banks_part_of.shtml.

should be fully exploited. The IFIs can play a useful role by continuing their assessment and providing technical assistance, particularly to developing countries.

Global and Regional Anticorruption Conventions

Anticorruption conventions are binding agreements among states on the prevention and sanctioning of corruption. Strong international interest in corruption led in the 1990s to several regional conventions: the UN Declaration Against Corruption and Bribery in International Commercial Transactions and the UN Convention Against Transnational Organized Crime.[3] In December 2005 the UN Convention Against Corruption, the first global anticorruption convention, became effective. The conventions offer the following benefits for countries:

- a model anticorruption legal framework;
- a framework for mutual legal assistance, such as information exchange and extradition, and for addressing the international dimensions of corruption; and
- international benchmarks to help advance domestic reforms.

For IFIs, the conventions offer guidance on anticorruption interventions and standards for support, and for civil society they offer a standard and a way to engage with governments on corruption issues.

For poor countries, implementing anticorruption conventions is not easy. It requires political commitment and considerable human and financial resources. Donors and international financial institutions can offer useful assistance with the process.

Implementing the United Nations Convention Against Corruption

The convention became effective in December 2005, after 30 countries had ratified it. Ratifications continue at a rapid rate. In some cases they are delayed by the requirement that national laws be in substantive compliance *before* ratification. The convention is comprehensive in its coverage and detailed in its measures. It covers public and private sector corruption, and active and passive corruption (paying and receiving bribes). It emphasizes prevention, detection, prosecution, confiscation of proceeds, and international cooperation. To reinforce its provisions, it requires that many offenses be criminalized; in this respect it goes beyond even the FATF's AML framework. Some of its provisions are mandatory; others are recommended. Negotiations benefited from the organization of controversial subjects into four pillars (box 7.3). The framework for asset recovery is considered groundbreaking. It recognizes the return of assets as a "fundamental principle" and urges state parties to "afford one another the widest measure of cooperation and assistance" (Art. 52) (box 7.4). The convention envisages a review mechanism to be established by a Conference of State Parties, which is to meet regularly. One issue that did not make it into the convention was corruption in political party financing.

To realize the aspirations of the convention, many more countries must ratify it. In addition, an effective monitoring mechanism is indispensable; it is high on the agenda for the first meeting of the Conference of State Parties in December 2006. Industrial countries should lend their technical and financial support to this mechanism. Developing and transition countries will need technical assistance with implementation; in this regard, industrial countries and IFIs can make an important contribution.

Implementing Regional Anticorruption Conventions

Regional anticorruption conventions cover Africa, Europe, and Latin America. Asia has no convention, but 25 Asian countries have signed the nonbinding ADB-OECD Action Plan for Asia-Pacific. The regional conventions complement the global UN convention and will continue to be useful. Each has its

BOX 7.3 Four pillars of the United Nations Convention Against Corruption

- *Preventive measures:* anticorruption policies and bodies; for the public sector, merit-based recruitment, codes of conduct, financial transparency and accountability, and participation of civil society; for the private sector, conflict of interest, regulatory abuse, and corporate governance
- *Criminalization and law enforcement:* a comprehensive list of predicate offenses, with criminalization mandatory for some (bribery, embezzlement, and other forms of misappropriation of property by a public official, obstruction of justice) and recommended for others; waivers of bank secrecy; whistle-blower protection; and civil remedial actions
- *Asset recovery:* standards for return of property, direct recovery of property through civil action, and recovery of assets through international confiscation procedures
- *International cooperation and monitoring:* mutual legal assistance; cooperation in investigations, prosecutions, and judicial proceedings and in the collection of evidence and the tracing, seizure, confiscation, and recovery of proceeds of crime; a monitoring mechanism to be decided by the Conference of State Parties

Source: Webb 2005.

BOX 7.4 International asset recovery—a complicated exercise

In the 1990s several cases of massive looting of public funds by political officials in developing countries came to light, and the victimized countries pressed for recovery of the assets, which they believed were stored in financial centers around the world. But asset recovery, it turns out, is a complex legal undertaking. Before they can be repatriated, hidden assets must first be traced and identified; next, they must be frozen or seized; and then, they must be legally confiscated or forfeited. Looting is hard to prove, and the looter has ample funds to erect legal obstacles. The provisions dealing with asset recovery in the UN Convention Against Corruption are therefore timely. Even so, industrial countries will have to mobilize the necessary specialized resources. For instance, G-8 justice ministers offered in 2004 to mount accelerated response teams to ensure forfeiture in appropriate large-scale corruption cases.

One of the more successful cases is that of Vladimiro Montesinos, former head of the Peruvian National Intelligence Service. Montesinos fled Peru in September 2000. He was arrested in República Bolivariana de Venezuela and extradited to Peru. After receiving suspicious transaction reports, the Swiss judiciary started AML proceedings and ordered various accounts frozen. The Peruvian authorities followed with a formal mutual assistance request, explaining the local charges against Montesinos and showing how they were linked to the frozen money. In the end some $170 million was recovered. What proved critical was the high level of cooperation among Swiss, U.S., and Peruvian judicial authorities.

Other cases have not been so successful. Only $4 million of the $5 billion looted by Mobutu Sese Seko has been identified, and less than $700 million of the $5 billion to $10 billion embezzled by Ferdinand Marcos was recovered. Of the estimated $2 billion to $5 billion looted by Sani Abacha, only about $825 million was recovered; some $1.3 billion remains frozen.

Sources: Transparency International [http://www.transparency.org/]; U4-Utstein Anti-Corruption Resource Centre [http://www.u4.no/]; G-8 declaration [http://www.g7.utoronto.ca/justice/G8justice2004_corruption.pdf].

own strengths and, thanks to its regional orientation, ownership and support.

The Inter-American Convention against Corruption, adopted in 1996, was the first anticorruption convention. All 34 members of the Organization of American States have ratified the convention, although only 15 have provided the required legal information. At the urging of civil society groups, state parties established a follow-up mechanism for implementation in 2001. Since then, a committee of government-appointed experts has started to produce country review reports, 23 of which have been published. In 2005 it was decided to post annual country progress reports on the Internet, and 20 are currently available.

In 1999 the Council of Europe adopted the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption. The Criminal Law Convention aims to harmonize national laws on the definition of corruption offenses, set up complementary penal measures, and improve international cooperation in bringing offenders to justice. The Civil Law Convention, a first attempt to define common rules for civil litigation in corruption cases, requires states to provide legal remedies for persons who have suffered from acts of corruption (box 7.5). Parties to a contract whose consent has been "undermined by an act of corruption" should be able to ask a court to declare it void.

The Council of Europe conventions are monitored by the Group of States Against Corruption (GRECO). This is a voluntary country group—most Council of Europe countries belong, as does the United States—that has agreed to review good governance instruments. The only requirement for membership is a willingness to participate fully in the mutual evaluation process—including providing experts—and to agree to be evaluated. Members must also contribute financially to GRECO. Both its voluntary nature and its independent funding set the GRECO apart from other monitoring mechanisms. Most countries have been covered in two rounds of review, and more than 70 reports have been published.

Adopted by the heads of state and governments of the African Union in 2003, the African Union Convention on Preventing and Combating Corruption is the latest regional convention. It is relatively comprehensive—for example, it covers the controversial issue of corruption in the funding of political parties—and most of its provisions are mandatory. Its description of acts of corruption and related offences is particularly broad. Its regional orientation is evident in its emphasis that foreign companies should be set up in a way that respects national legislation, that the private sector should be encouraged to participate in the fight against unfair competition, that governments should involve civil society in monitoring and implementation, that everyone is entitled to a fair trial, and that signatories should cooperate with the

BOX 7.5 Civil versus criminal law pursuits of corruption

A civil lawsuit against corruption has several advantages over a criminal lawsuit. It empowers victims to litigate on their own initiative, potentially relieving public prosecutors of a complicated burden. Civil courts are also less onerous, have a longer reach, and their burden of proof is less demanding than in criminal courts, making recovery of assets more likely. Drawbacks are that civil courts lack the strong evidence-gathering methods available to criminal courts and that they require adequate resources on the part of the litigators. Not only citizens but also states can seek remedies in civil court.

Source: Transparency International 2000.

countries of origin of multinationals to pursue corrupt acts. Unfortunately, only 10 countries have ratified so far, 5 short of the minimum needed for the convention to come into effect. In the meantime, Africa is gathering experience with the peer review monitoring of the quality of governance in the New Partnership for Africa's Development (NEPAD) (box 7.6).

International Transparency Initiatives

Transparency enjoys broad international support as a powerful and practical tool for improving governance. More than 60 countries have passed legislation that recognizes and protects citizens' right to information held by public bodies. Several international good governance initiatives focus on the need to improve the quality and availability of information. Promoting transparency is also high on the agenda of the IFIs. The IMF set a standard for the quality of official statistics and developed codes for transparency in fiscal policy and monetary and financial policies, and it reports on their observance. The World Bank compiles and disseminates indicators on the state of government corruption. Both the Fund and the Bank have transparency policies that provide for Internet publication of most of their documents.

Two transparency initiatives focus on the natural resource sector. More than 50 countries qualify as rich in hydrocarbons or minerals, many of them low- or middle-income countries that depend on natural resources for more than half their government revenue (IMF 2005). This concentration of rent creates unusual scope for corruption, which by undermining domestic institutions reduces long-term growth (Sala-i-Martin and Subramanian 2003). Resource-rich developing countries as a group lag in human indicators and experience more violent conflicts than less-endowed countries (Collier and Hoeffler 2003). In 2003, the Extractive Industries Transparency Initiative was launched to ensure public accounting for all resource revenue, and the Kimberley Process was launched to certify that diamonds are conflict free (box 7.7). These initiatives dovetail with private sector governance initiatives (international arbitration, credit ratings, regulatory transparency, corporate governance principles, investment guidelines, codes of con-

BOX 7.6 The African Peer Review Mechanism

When the African heads of state launched NEPAD in 2002, they created at the same time the African Peer Review Mechanism (APRM) to foster better governance. The format emphasizes sharing of experience, reinforcement of successful practices, and capacity building. At the time, the APRM was viewed as one of NEPAD's most innovative projects, and it is still considered ambitious, yet realistic and pragmatic (Déme 2005). The review process has five stages: country self-assessment, onsite review, preparation of country report and discussion with authorities, submission of report to heads of state for consideration and decision, and formal tabling of the report and the recommendations by heads of state for discussion in various regional structures. A recent evaluation found the APRM too government-oriented and advocated more effective participation by the private sector, civil society, and all development stakeholders (ECA 2005). Ghana was the first country to traverse the first four stages during the Summit of the APRM Forum in January 2006. The final report listed capacity constraints, gender disparity, corruption, lack of decentralization, and land issues as the main governance concerns in Ghana. For the June 2005 discussion of the draft by heads of state, the Ghanaian government produced an extensive response. The report and response will be published. So far 25 countries have formally acceded to the APRM. Rwanda is far advanced in the process; Algeria and South Africa are completing their self-assessment.

Source: NEPAD [http://www.nepad.org/2005/files/aprm.php/].

BOX 7.7 Improving governance in resource-rich countries

In 2003 the United Kingdom launched the Extractive Industries Transparency Initiative (EITI), which built on the NGO campaign Publish What You Pay (PWYP). Both aim to enhance the transparency of natural resource revenue. PWYP strives for mandatory disclosure of payments by extractive industry companies; the EITI aims for voluntary disclosure, but by governments as well as companies. In the EITI, companies and governments use similar templates for reporting all revenue flows, whether accruing directly to government or through a national oil company. Any discrepancies will become evident from comparing the templates. More than 20 oil-producing countries have endorsed the EITI, and most have started to implement it. The United Kingdom currently provides a secretariat, and an International Advisory Group is preparing proposals for a future management structure and a monitoring and validation system.

The Kimberley Process Certification Scheme was launched in 2003 to prevent raw diamond production from fueling conflicts, as has happened in Angola, Sierra Leone, and elsewhere. A joint initiative of governments, the international diamond industry, and civil society, the scheme requires participant countries to ship their rough diamonds in sealed containers accompanied by certificates listing the country of origin. Participants are prohibited from trading with nonparticipants. This permits the United Nations to impose sanctions on the trade in diamonds from conflict areas. Presently, diamonds from Liberia continue under sanction (imposed in 2001), and sanctions on diamonds from Côte d'Ivoire were imposed in December 2005. Industry self-regulation supplements the scheme to help ensure that only jewelry containing certified diamonds enters the retail chain. Implementation is monitored through peer review: 19 country reports had been produced by the end of 2005; the summaries have been made public. Enforcement relies heavily on a diamond trade database currently not accessible to the public.

Sources: EITI [http://www.eitransparency.org/news.htm]; PWYP [http://www.publishwhatyoupay.org/english/]; Kimberley Process [http://www.kimberleyprocess.com:8080/].

duct). The Joint Oil Data Initiative aims to improve the timeliness, availability, and quality of monthly oil data.[4]

Implementing the Extractive Industries Transparency Initiative (EITI)

More than 20 countries are already participating in the EITI, more than half of them in Sub-Saharan Africa. At the London EITI Conference in 2005, participants endorsed six criteria for assessing implementation, while encouraging countries to go beyond them. One of the criteria covers the active engagement of civil society in the design, monitoring, and evaluation of the process. This can be time consuming, as is organizing the reporting on the government side, and auditing the figures of companies and governments. The EITI permits countries to publish an aggregate template for their companies to avoid revealing commercially sensitive information, but some countries insist on individual company declarations.

The EITI stakeholders include the more than 280 NGOs in the PWYP coalition, which is developing complementary initiatives. Because the EITI implicitly measures transparency of host countries to companies, PWYP published two reports in 2005 that attempt to measure the transparency that the home countries require of companies, and that the companies themselves exhibit.[5] The home country report evaluates performance against four criteria and finds that 9 of 10 countries score less than 50 percent. Securities regulation and accounting standards are found to be most important. Canada leads the ranking and is the only country to require financial disclosure on a country-by-country

basis, a critical transparency practice. The company report concludes that transparency practices remain weak: 23 of 25 companies reviewed scored below 30 percent. Companies tend to publish data by region and not by country, which does not help with host country transparency.

The World Bank and IMF support the EITI directly—both assist its Secretariat and the Bank manages a multidonor trust fund—and indirectly. In June 2005 the IMF issued its *Guide on Resource Revenue Transparency*, which applies the IMF's fiscal transparency principles to the challenges facing resource-rich countries (IMF 2005). This guide feeds into IMF advice on resource revenue transparency. The World Bank, in implementing its 2004 management response to the *Extractive Industries Review*, concluded in a December 2005 review that the Bank is now applying a more considered approach to its assessment of governance risks in extractive industries.[6]

The EITI is successful as a narrowly targeted initiative with great popular appeal. As country interest grows, so does the risk of "free riders," and it has become a matter of urgency for the EITI to establish a monitoring and validation procedure. So far only Azerbaijan, Gabon, the Kyrgyz Republic, and Nigeria have published EITI reports, and they all reveal serious deficiencies in coverage and/or government accounting procedures. These deficiencies will have to be addressed through broader public finance reform to achieve genuine political accountability for the spending of mineral revenues.

Implementing the Kimberley Process Certification Scheme (KPCS)

Diamonds have fueled several of Africa's most devastating wars. In Angola in the 1990s, the civil war was financed primarily by natural resources—oil (on the government side) and diamonds (the rebel group, National Union for Total Independence of Angola [UNITA]). Over the past decade and a half, diamonds have also helped finance, train, and equip the Revolutionary United Front in Sierra Leone, the dictatorial regime in Liberia, the conflicts in the Democratic Republic of Congo, and political instability and repression in Zimbabwe. The Kimberley Process followed meetings of diamond-producing states and a resolution of the United Nations General Assembly supporting the creation of an international certification scheme for rough diamonds. In November 2002 two years of negotiation culminated in the Kimberley Process Certification Scheme. The scheme outlines how trade in rough diamonds is to be regulated by countries, regional economic organizations, and rough-diamond trading entities.

The scheme has been remarkably successful in enhancing transparency in the traditionally secretive diamond trade. Almost all producer countries are participants, as are all the major rough-diamond importing countries. Some $32 billion in rough diamonds were traded in 2003, according to data compiled by the scheme, and some 57,000 certificates were issued. Important overlapping interests among governments, NGOs, and industry—the third concerned about the image of its product—contributed to this success. The rotating chair—South Africa in 2003, Canada in 2004, Russia in 2005, Botswana in 2006—with a secretariat supported by working groups and committees chaired and organized by participants and industry, is proving an effective governance model, permitting flexibility and country ownership. Civil society organizations favor building on this success and using the Kimberley Process to ensure that diamonds contribute in a meaningful way to the development of African producer countries and the individuals who mine them.[7]

The Kimberley Process is also linked to several other initiatives. As a result of the FATF's extension of its AML/CFT provisions to precious-gem traders, all cash transactions in rough diamonds exceeding $15,000 or €15,000 must be reported. And since the EITI is open to mining and thus could be extended to diamond mining, there are potential synergies with the Kimberley Process. A pressing concern are stronger controls in countries with alluvial diamond mining typically carried

out by a great many small operators, such as Angola, the Democratic Republic of Congo, and Sierra Leone. Despite its broad country participation, the scheme cannot hope to prevent all trade in noncertified raw diamonds. But it can drive a significant price wedge between certified and noncertified diamonds, making the trade in sanctioned diamonds much less remunerative.

Conclusions and Policy Recommendations

The legal initiatives, anticorruption conventions, and transparency initiatives described above, form—together with many supporting initiatives in the public and private sector—an embryonic network of global checks and balances. It appears an appropriate response to the international manifestations of corruption and poor governance, exacerbated in recent years by the forces of globalization. It also offers the international community many opportunities for supporting developing countries as they tackle poor governance at home. The network is largely accidental, the result of separately motivated initiatives, not a grand design. For the network to realize its potential, synergies among individual components must be exploited and duplication avoided. All components need continuous reinforcement. This is a global undertaking, with a large role for civil society and the private sector, and with responsibilities for policy makers at all levels.

For developing countries, including middle-income countries, the first order of business is to ratify relevant conventions, especially the UN and African Union anticorruption conventions, if they have not yet done so. Ratification should be followed by efforts to amend legislation to bring it up to the standards of the conventions and to ready the law enforcement apparatus. Developing countries should take advantage of existing opportunities, calling on OECD countries to pursue bribery by multinationals on their territories, on financial centers to assist with asset repatriation, and on donors and IFIs for help with the AML/CFT framework. Maximum transparency in the management of public sector resources is a pragmatic way of promoting accountability, which also invites civil society participation. Resource-rich countries can demonstrate their commitment to transparency by joining the EITI.

Developed countries should also ratify the UN convention speedily. In addition, they should make it a priority to raise awareness of these initiatives and conventions among their business communities. Their financial, political, and analytical support will strengthen the emerging network in the face of changing practices in international corruption. The key to making any anticorruption initiative work is effective monitoring. Peer review with ample opportunities for civil society participation has proven to be an effective model. A monitoring mechanism for the UN anticorruption convention should be established at the earliest opportunity. This and existing monitoring mechanisms deserve to be properly supported and adequately funded, and their findings utilized. The provisions on asset repatriation in the UN anticorruption convention should urge financial-center countries to make good on their promises. Developing countries need help with this legally complicated task, which promises a triple payoff—symbolically, as a deterrent, and in terms of funds recovered. Developed countries can also provide technical assistance to developing countries in implementing the AML/CFT framework and the anticorruption conventions.

The IMF and multilateral development banks (MDBs) have a special role to play. As a priority they must ensure that their in-house operations meet high integrity standards and that their interventions in member countries promote good governance. Their technical assistance with the implementation of the AML framework, the anticorruption conventions, and the EITI and the Kimberley Process will be most helpful to developing countries. Both institutions are already actively supporting the EITI secretariat. They can leverage the anticorruption conventions by using them as blueprints for guiding their own good

governance programs in member countries. The MDBs can use their procurement experience to help combat bribery of officials in developing countries through the disbarment and cross-disbarment of firms that engaged in corruption or other illegal practices. By promoting transparency across all government operations, they empower civil society and permit accountability. The IMF can counter the "resource curse" by pursuing the widespread adoption of the good practices described in its Guide on Resource Revenue Transparency, and the World Bank by pursuing the good governance agenda set out in its Management Response to the Extractive Industries Review.

Notes

1. See U4 Utstein Anti-Corruption Resource Centre at http://www.u4.no/; *The Guardian,* March 16, 2006. Available at www.guardian.co.uk/kenya/story/0,,1731884,00.html; Human Rights Watch, "Some Transparency, No Accountability" at http://www.hrw.org/.

2. See Transparency International's Bribe Payers Index at http://www.transparency.org/.

3. For a useful overview of anticorruption conventions, see chapter 5 of Transparency International's *Global Corruption Report 2003*.

4. See http://www.jodidata.org/.

5. Measurement of transparency was conceived by Save the Children UK. The reports are posted on the PWYP Web site at http://www.publishwhatyoupay.org/measuring_transparency/index.shtml.

6. See the World Bank's Oil, Gas, Mining, and Chemicals Department Web site at http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20605112~menuPK:336936~pagePK:148956~piPK:216618~theSitePK:336930,00.html.

7. See relevant papers on the Web sites of Partnership Africa Canada [http://www.pacweb.org/e/] and Global Witness [http://www.globalwitness.org/].

ANNEX TABLE 7.1 Global checks and balances: international legal initiatives

Name (year of effectiveness)	Objective	Eligible countries	Current membership	Monitoring mechanism	Web site
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999)	For each member country to adopt or amend its legal frameworks as necessary to criminalize the bribery of foreign officials, and to treat it with the same severity as bribery of domestic officials.	OECD countries; non-OECD countries subject to approval	All 30 OECD and 6 non-OECD countries	Self assessment and peer review with lead examiners and plenary discussion, supported by OECD Working Group on Bribery in International Business Transactions (WBI)	http://www.oecd.org/
Financial Action Task Force (FATF) Forty Recommendations on Money Laundering (1990)	Develop and promote national and international policies to combat money laundering and terrorist financing. Created in 1989, the FATF works to generate the necessary political will to bring about legislative and regulatory reforms in these areas.	Originally 16 mostly industrial countries	31 countries and territories and 2 regional organizations	Self-assessments, peer review with expert teams by FATF or FATF-Style Regional Bodies (FSRBs) or assessments by IMF and World Bank staff, with plenary discussion	http://www.fatf-gafi.org/

ANNEX TABLE 7.2 Global checks and balances: anticorruption treaties

Name (year of effectiveness)	Objective	Eligible countries	Current membership	Monitoring mechanism	Web site
The United Nations Convention Against Corruption—UNCAC (2005)	Promote and strengthen measures to prevent and combat corruption more efficiently and effectively; promote international cooperation and technical assistance in the prevention of and fight against corruption; promote integrity, accountability and proper management of public affairs and public property.	UN member countries and regional integration organizations	44 countries have ratified; 140 have signed.	Convention provides for Conference of the State Parties of the Convention, which is charged with reviewing implementation. The Conference meets for the first time in December 2006.	http://www.unodc.org/pdf/
The African Convention on Preventing and Combating Corruption (not yet effective)	Promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offenses in the public and private sectors.	All 53 African Union member countries	11 countries have ratified; 15 ratifications are necessary for the Convention to become effective.	A Follow-Up Mechanism is provided for in the Convention, involving an Advisory Board on Corruption within the African Union, but it is not effective yet.	http://www.africa-union.org/
The Inter-American Convention Against Corruption (1997)	Promote and strengthen the development by each of the States of the mechanisms needed to prevent, detect, punish, and eradicate corruption in the performance of public functions; and promote/facilitate cooperation among the States to ensure the effectiveness of such mechanisms, measures, and actions.	34 members of the Organization of American States (OAS)	33 countries have ratified; 15 have submitted information required by the Treaty.	Convention did not provide for monitoring. Follow-Up Mechanism (MESICIC) was established in 2001 consisting of self-assessment and peer review with review teams and committee discussions. Mechanism is supported by the Organization of American States and Transparency International.	http://www.oas.org/juridico/english/

(continued)

ANNEX TABLE 7.2 Global checks and balances: anticorruption treaties *(continued)*

Name (year of effectiveness)	Objective	Eligible countries	Current membership	Monitoring mechanism	Web site
The Council of Europe Civil Law Convention on Corruption (2003)	For each member to provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.	The member States of the Council of Europe, the European Community, and others	30 have signed and 25 have ratified.	The independent Group of States Against Corruption (GRECO) monitors implementation through peer review with evaluation teams and plenary discussion, using questionnaires and other input.	http://conventions.coe.int/treaty/en/Treaties/
The Council of Europe Criminal Law Convention on Corruption (2002)	For each member country to adopt such legislative and other measures to establish as criminal offenses under its domestic law with respect to bribery of domestic or foreign arbitrators and jurors.	The member States of the Council of Europe, the European Community, and others	46 have signed and 32 have ratified.	Group of States Against Corruption (GRECO) monitors implementation as above.	http://conventions.coe.int/treaty/en/Treaties/

ANNEX TABLE 7.3 Global checks and balances: international transparency initiatives

Name (year of effectiveness)	Objective	Eligible countries	Current membership	Monitoring mechanism	Web site
Extractive Industries Transparency Initiative—EITI (2003)	Transparency in revenues from extractive industries by comparing company and government reporting.	All governments, international organizations, companies, NGOs, investors, and business and industrial organizations. Target group: some 50 countries rich in hydrocarbons and minerals	20 resource rich developing countries are committed to implementing EITI principles; other stakeholders include 32 organizations and associations and 9 donor industrial countries	No formal monitoring at this point. Six minimum criteria for EITI assessment are available. A more formal monitoring and validation procedure is being designed.	http://www.eitransparency.org/
Kimberley Process Certification Scheme—KPCS (2002)	International certification of country and region of origin of all raw diamonds produced, to be able to stem trade in conflict diamonds, that is, diamonds that fuel wars against legitimate governments.	Countries and regional economic integration organizations (participants) who are eligible to trade in rough diamonds under the provisions of the KPCS.	45 participants, including the European Community; producer countries cover nearly the total world diamond production	Peer review monitoring organized by Working Group composed of country participants, industry and civil society representatives.	http://www.kimberleyprocess.com:8080/