

Emergencies: Increasing the Opportunities to Corruption?

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Executive Summary

- ▶ Corruption is one of the greatest evils that affects societies today. By 2018, the estimated annual costs of international corruption were around \$2,6 trillion, according to the United Nations Secretary General.
- ▶ Emergency events like the Indian Ocean Tsunami in 2004, the Ebola outbreak in 2014 and the current Covid-19 pandemic, show us that they can be seen by some agents as opportunity to corrupt.
- ▶ The purposes of this study are to identify common features which functioned as an entry door for corruption in emergency situations, and to make suggestions on how to prepare societies to avoid corruption and keep combating it.

Whether it is an isolated act or a scheme, corruption may affect both public and private sectors when conducting their daily operations, either locally, nationally or internationally. Corruption affects all countries, no matter the level of development, bringing negative effects for all of them, which are more harmful for the developing and least developing countries. Corruption weakens states, destroys public trust in government and threatens fundamental human rights, in a huge vicious cycle where causes and effects constantly reverse their roles, always in the name of justifying the corrupt act.

Corruption does not have an agreed definition. Even the United Nations Convention Against Corruption (UNCAC), the most comprehensive legal instrument dealing with the topic, does not define corruption, but provides a long list of actions and omissions that are considered corruption, such as bribery, embezzlement, misappropriation and trading in influence, among others.

The UN Secretary General, during his remarks to the Social Council on Corruption in Conflict, in 2018,

stated that the World Economic Forum estimates that corruption costs at least 5% of the global GDP (around \$2,6 trillion) and that more than \$1 trillion in bribes are paid each year worldwide, according to the World Bank. Can you think how many lives could be saved and improved with all this money wasted?

Anti-corruption legal framework comprises international, regional and national levels, which are drafted, implemented, monitored and enforced by a wide range of actors, from Governments to Intergovernmental Organizations and individuals. The legal framework is as effective as it is largely observed and implemented, monitored and enforced by those actors in charge of such tasks. The effectiveness of the anti-corruption legal framework also depends on how the law and policies are drafted according to the real life and needs of the country, region and even the global community, and if they are constantly revised, to meet the constant changes, but it would be a topic itself and will not be further analysed in this paper.

The voluntary compliance with the legal framework



usually has two main causes: because people fear being caught or because they know that it is the right thing to do. The effectiveness of the law due the fear of being caught is directly related to the enforcement power of the law, in the sense that, if a state has good structure and mechanisms to properly enforce the rule of law for each corrupt act, its populace tends to avoid such practices because it knows that the likelihood of being penalized is high, and the opposite is also true. On the other hand, the effectiveness due the awareness of the right thing to do tends to be continuous, because it does not only depend on a state's strong law enforcement structure, but relies on the collective awareness, built upon society values and anti-corruption education.

Effective implementation, monitoring and enforcement demands continuous training of those in charge of such tasks, preparing them to identify situations that may lead to corruption, to perceive corrupt acts (often practiced in such a diffuse way that it is necessary to analyse the context, rather than each act) and to properly enforce the law, including upon themselves. These tasks should be performed by all actors, individuals, business and governments, through self-assessment and improvement (many companies and governments have created a compliance department for internal control); it can be also done by external agents, when the government monitors and enforces anti-corruption law upon individuals and business; it can also be an external monitoring (and investigation) of government's acts through independent agencies.

It is important to keep in mind that usually, the legal framework (including anti-corruption) is mostly drafted based on the routine life, under what we may call as "normal" conditions. To deal with emergencies, understood as highly disruptive and unexpected situations, most national laws have mechanisms in place, the so-called state of emergency, or other measures, that often removes much of the bureaucracy and transparency rules for public procurement, to permit a fast action; but usually these provisions are not accompanied by special monitoring and validating mechanisms regarding the lawfulness of acts taken under such special condition, what can be seen as an open door for corrupt agents.

Emergency situations bring many challenges and requires different, dedicated and fast actions on the relief work, involving a wide range of actors, such as the government of the affected area, local civil society, international organizations and media. Due large media coverage, huge amounts of money, goods and services are quickly made available. By

adding to this unusual scenario elements such as poor governance, lack of integrity and lack of transparency, a possible result is that the emergency becomes an opportunity to corruption.

It does not matter the cause of the emergency (a natural disaster or a disease), nor its extension (local, regional or worldwide), they may be the entry door for corruption, as it is possible to notice through the three emergency situations analysed below: the Indian Ocean Tsunami, 2004; the Ebola outbreak, 2014 and; the current Covid-19 pandemic, 2020.

Indian Ocean Tsunami, 2004

In this huge emergency scenario, that killed hundreds of thousands of people, left many others homeless and destroyed most of the infrastructure and medical facilities of the affected countries, largely covered by media, while many people around the world were providing donations and working hard to help victims, corrupt agents found a paved way for action.

Taking as example Sri Lanka, one of the most affected countries, hundreds of aid agencies participated in the relief work, having at their disposal a huge amount of donations. It was the perfect scenario, both for good (relief and reconstruction works), and for bad (malpractices and corruption).

Immediately after the tsunami, local government played a little role in the reconstruction work, once most of its proper structure was severely damaged. But most of this reconstruction work was not considered as essential due the preference of many (unexperienced) aid agencies to engage, even competing each other, in works that would be covered by media (Jock Stirrat, *Anthropology Today*, Vol. 22; 5:2006). A scam in housing distribution was reported, in which politicians influenced the delivery of the new built houses to their friends and supporters, instead to those people that became homeless due the tsunami (TI Sri Lanka, 2010). In the aftermath, the country issued special permission for import vehicles under certain conditions, what was misused through a fraudulent scheme involving employees of the Department of Motor Vehicle Registration (TI Sri Lanka, 2013).

The situations above let clear that the lack of coordination of the relief work, either by the local government or the community (caused by the emergency situation), together with the reported lack of transparency and accountability on relief accounts, allowed that the lack of experience both local and in aid work of many non-governmental organizations (NGOs), led to the waste and misuse of many relief



resources. The lack of coordination and transparency even opened the door to the lack of integrity of some politicians, diverting resources and efforts for their private interests, and public employees taking undue advantages on special law. As it is possible to notice, elements as lack of transparency, accountability and integrity, that lead to corruption, were boosted by the opportunity created by the emergency situation, the chaotic condition in place.

At the time of the tragedy, Sri Lanka had already ratified the UNCAC, but the Convention only entered into force one year after the event, on 14 December 2005. The tragedy), the country was not part of any regional initiative on the topic and the local legislation just covered bribe related to public officials. The only mechanism properly in place at that time, that conducted some investigations, was the Commission to Investigate Allegations of Bribery and Corruption (CIABOC), which, unfortunately, was not enough to prevent such corrupt practices.

Ebola, 2014

The largest Ebola outbreak in history, affected more severely Guinea, Sierra Leone and Liberia, with more than ten thousand of deaths, and required a lot of donations and assistance to the local health system.

Considering that these countries were already ranked as highly corrupt, in positions 150, 119 and 83 (the higher the number, the higher the level of corruption), respectively, of the Corruption Perceptions Index 2013, from Transparency International, the health emergency was a big opportunity for corrupt agents continue or even increase their practices.

In Sierra Leone, evidence of mismanagement of funds to deal with the disease through duplicated and undocumented payments for supplies, healthcare workers' salaries not paid out as claimed, hazard pay improperly provided and disregard of procurement procedures were reported by the government audit in 2015; in Liberia, several examples of petty corruption (involving small amount of money and referring to daily activities), as people bribing soldiers to break quarantine rules and body retrieval teams to issue death certificates with causes other than Ebola (U4, Ebola and corruption, 2015). Regarding operations in Guinea and Sierra Leone, the International Federation of Red Cross and Red Crescent Societies (IFRC) published a statement of evidence of fraud in its operations, through collusion between its former staff and bank employees, over- and fake billing by a customs clearance service provider and inflated prices of relief items, that led, together, to a potential loss of 6 million Swiss francs (IFRC statement on

fraud in Ebola operations, 2017).

Corrupt practices reported in these countries may be considered as result of the weakness of such states already in place due the high levels of corruption. The practice of duplicated and undue payments evidences the weak governance, lack of transparency and accountability, lack of integrity from people involved in the corrupt scheme, either those who provided the undue payment and those who received it, taking advantage of the emergency situation.

Disregard of procurement procedures is a huge challenge for anti-corruption agenda in normal times, something that is boosted during emergency situations. It is not clear if Sierra Leone had adopted any kind of measure easing procurement procedures but is evident that the emergency was the opportunity for corruption.

The cases of petty corruption in Liberia evidence the populace lack of trust in the government, which weakens states and may become a dangerous vicious circle, with populace adopting corrupt practices because it believes that the government does the same and considers that it is the best way to protect its interest from the corrupt government. For example, by bribing body retrieval teams to issue death certificates with causes other than Ebola, individuals made hard to the State to properly manage the control of the disease. By preventing the State to know the actual cause of death, proper burial procedures were not adopted, with a higher risk of spread the disease; preventing the State of such information also hampered it to know actually how the disease was spreading in the country and, as consequence, to take adequate measures.

Regarding IFRC operations, there are not many details available, but it is clear that the whole procurement process is a focal point for corruption, since the pricing of the products to the customs clearance for imported ones. One only can successfully offer and sell overpriced products due lack of transparency in the respective market (and some level of monopoly) or weak governance on the purchaser's side, which can be boosted by lack of transparency and accountability and lack of integrity of some procurement agents, not to mention the lack of integrity of the offeror itself. Collusion between former staff and bank employees, besides the lack of integrity, shows some level of monopoly and discretion of such people (which were misused), and may lead to question IFRC governance on big relief operations, something that was acknowledge by the organization, which, in the same statement, claimed to have started to review its processes to avoid such harmful practice in its relief operations.



At the time of this Ebola outbreak, UNCAC was already in force (and ratified/acceded by Guinea, Sierra Leone and Liberia), and all three countries had already ratified the African Union Convention on Preventing and Combating Corruption, which entered into force in August 2006; Liberia and Sierra Leone had already in place specific pieces of law dedicated to curb corruption; all three countries had already established anti-corruption agencies or commissions.

But law is just effective as it is applied, observed and enforced (in case of non-voluntary observance); the extend of powers and independence of anti-corruption agencies shows the interest and commitment of the country to the topic. Even though the elements for anti-corruption governance were already in place, corruption was still strongly present in the countries. The anti-corruption legal framework was not enough to avoid corruption during the emergency situation caused by the Ebola outbreak, due to weak governance and lack of will, from the government and the society, to voluntarily observe the law, avoid engaging in corrupt practices, as well as denouncing them.

Covid-19, 2020

This disease, firstly reported in the end of 2019, has quickly spread worldwide and, on March 2020, was declared by the World Health Organization (WHO) as a pandemic. As of 28 February 2021, there were more than 113 million cases in 192 countries or regions, and more than 2,5 million people have died by cause of this disease, according to COVID-19 Dashboard of the Johns Hopkins University.

As a way of trying to reduce the spread of the virus and a breakdown in their respective health systems, several countries adopt restrictive measures, which ranged from social distance to closing borders, going through ban exports of medical supplies, mandatory wear of face masks and closing commerce and services considered non-essential as well as cultural and leisure activities; such measures have been adopted, relaxed and resumed many times in 2020 and continue in 2021. These measures, considered controversial and challenged by many people, have shown positive effects as they are complied with but, on the other hand, have evidenced and even increased social instabilities worldwide.

While most people were (and still are) working hard to deal with this sanitary emergency, health systems almost at their limits and the shortage caused by the unexpected growth in demand of medical supplies have been seeing by some people as an opportunity for corruption and undue advantages. Since the

beginning of the pandemic, diverse international organizations and other initiatives, such as OECD, International Anti-Corruption Academy (IACA), Basel Institute on Governance and UN Global Compact, dedicated themselves to increase awareness on the risks of corruption due the emergency situation and the huge attention focused almost exclusively on it, and letting a wide-open unmonitored road for corruption.

In May 2020, Bolivia's Health Minister was detained (and later dismissed from his post) on suspicion of overpriced purchase of lung ventilators for Covid-19 patients. This case was reported by Bolivian press, which found that the normal price at the manufacturer was around one quarter of the price paid by the government. In September 2020, Kenya's Ethics and Anti-Corruption Commission reported preliminary findings on disregard of procurement procedures and, consequently, misuse of financial aid received by the country to buy medical supplies, with tenders being given to politically connected people and businesses. In December 2020, Indonesian's Social Affairs Minister was accused by the Corruption Eradication Commission of taking bribes from contractors providing food parcels to people in need, due the strong economic recession faced by the country, as a result of the heavy reduction in tourism caused by the restrictive measures adopted worldwide to try to control the spread of the pandemic.

The aforementioned cases are just some examples of how emergency situations can be used by corrupt agents as a big opportunity to act. There are many other cases, like trade of counterfeit products, schemes to reach personal data of people to unduly charge health insurances, prescription of medicines which should be rationed prescribed (due a shortage) to relatives and friends, and, most recently, administration of vaccines to politician's family and relatives in disregard of the vaccination plan in place. The first three examples, according to the World Bank, are not corruption, but fraud, as for the institution, corruption is a practice to influence actions of another party, while fraud is the act or omission to obtain benefit or to avoid obligation.

It does not matter the name, if it is corruption or fraud; also, it does not matter whether it involves money or not (the prescription of medicines and administration of vaccines); there is no doubt that all these actions make even harder the task of control the disease. They show a weak governance and, at same time, weakens it; they evidence lack of accountability; they demonstrate lack of integrity.

It is clear that procurement, as already mentioned, is a sensitive part on emergency situations and, often, a



source of corruption. In Kenya, procurement procedures were disregarded to award contract according to political interest; in the example of Bolivia, measures to deal with the emergency situation boosted the opportunity for corruption; in Indonesia, the Minister was allegedly demanding a certain amount of money per each food package delivered by the suppliers.

Bolivia's government published a decree authorizing the Health Ministry to directly contract equipment, supplies and other items necessary to face the disease (Decreto Supremo n° 4174), an important measure usually adopted by governments to allow a prompt response through fast acquisition of the necessary items, which, unfortunately, is seen by some corrupt agents as an open door for corrupt practices, usually through schemes involving suppliers and procurement personnel. Something often neglected is that all principles that drive the national legal framework continue in place, even though during the period of time in which some red tape is temporarily suspended to attend the needs of those affected by the emergency; and the national legal framework is usually oriented by regional and international instruments also, which remain applicable.

About the legal framework, since the beginning of the pandemic, anti-corruption treaties, measures and bodies were already largely in place. Bolivia, Kenya and Indonesia have ratified UNCAC; all three countries have already ratified regional instruments against corruption that were in force (respectively, The Inter-American Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption, and the Anti-Corruption Initiative for Asia-Pacific); all three countries have dedicated pieces of law and specialized agencies or commissions to deal with the topic. Unfortunately, they were not able to avoid the corrupt cases to happen, but, at least, we could see a faster response now, if compared with the examples on the tsunami and Ebola.

Suggestions to improve anti-corruption agenda and governance in emergencies

Corruption may take different forms, be practiced by different actors and produce different impacts on governments, business and society. From the examples analysed above, it is possible to identify some common points, to figure out how to improve the anti-corruption agenda.

Something that is evident in some of the cases mentioned above is the presence of press. In the

examples of the Tsunami and Covid-19 the importance of media, investigating and reporting malpractices was clear. Independent media plays an important role in anti-corruption governance and should act as a watchdog, as the eye of the populace over government and other actors involved in the emergency relief work.

Organized civil society and international organizations have important tasks during emergencies. In the examples, aid agencies provided direct assistance to those people affected by the disruptive situation, while other institutions were monitoring actions taken by other actors (and reporting malpractices), besides guidance and increase collective awareness regarding the risks of corruption and fraud, calling attention to aspects other than the problem itself, as happened during the Covid-19 pandemic.

Populace has an important task to avoid and combat corruption. In the cases analysed, payment of bribes and the request or acceptance of undue advantages, as receiving rationed medicines or vaccines, let clear a lack of commitment or understanding about the role played by it. Each person may assist in the fight against corruption by reporting each wrong practice that they witness or note. Each one may avoid corruption simply by complying with the rules and acting with integrity. Each single person should act as if was the owner of the funds dedicated to the emergency situation and responsible for its management and expenditure. In Sri Lanka, for example, if people had taken the lead at the start of relief work, wasting effort and resources on non-essential work in the aftermath of the tsunami could have been avoided. The more people become aware of the importance of their individual actions, the greater the collective benefit on avoid and combating corruption.

Engagement of businesses is extremely important in the fight against corruption. In the cases mentioned, the common practice was disregarding of public procurement procedures, such as overpriced materials and inobservance of competition processes. It is possible to apply the same roles of populace to businesses, especially when doing business with governments during emergency situations.

Government and public officials have the important role of taking immediate actions to deal with problems arising from the emergency situation. Indeed, in all cases studied, they did. The challenge was to know how to keep minimum anti-corruption standards and behaviour in place. Here, the ownership may be the most important concept, in the sense of the country, state, city etc., and, of course, the rule of law. Public officials should not forget that they are citizens;



therefore, they have, also, the same roles as stated to populace.

There are four big set of roles that actors can play in emergency times: 1) take actions directly related to the problem; 2) improve the capacity of response; 3) guidance; 4) monitoring. Each of these roles is extremely important, but to have a good governance of an emergency, the four should work both properly and together, to reach the best outcome; for this purpose, coordination is extremely important. Country/region ownership is absolutely required, but donors and civil society are also accountable and should coordinate the support, to avoid duplicated or unnecessary donations; when country cannot or do not want to exercise the ownership, populace should take it, either through existing or ad hoc community organizations.

From all the roles played by different actors in combating corruption, either during emergencies or not, something that is inherent is the individual behaviour, the decision on engaging or not in the corrupt practice. This is something that should not only be taught through laws and training of public officials and procuring staff, but start since the primary school, teaching kids the importance of comply with rules, the rule of law, the values of the

country and so on, to raise people aware of the importance of their role in the society.

Conclusion

Anti-corruption governance has significantly increased since the 2004. UNCAC has entered into force; some regional conventions and national laws were adopted; independent agencies/commissions dedicated to analysing and/or investigate corrupt practices were created; intergovernmental organizations and organized civil society started to look carefully to the topic, with different actions. All these efforts are extremely important and have great achievements in the fight against corruption; but to properly fight it, it is necessary to be aware of the importance of the individual action towards avoid and combat corruption, the sense of ownership when it goes to public resources, something that will become more effective, either in normal or emergency situations, as earlier anti-corruption education starts, which should happen at primary school and continue during all education life cycle. Education is a key investment for anti-corruption agenda.



Further reading

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Andréa Luz is currently working with the International Anti-Corruption Academy (IACA) and has long experience as practicing lawyer in diverse fields as Employment Law, Tax Law, Compliance and Arbitration.

She is author of the book “Sigilo Bancário – Acordos para troca de informações internacionais” (Bank Secrecy – Agreements for exchange of international information), published in Brazil in 2019, which analyses the global trend for cooperation amongst countries to avoid tax evasion, the tools developed to facilitate such cooperation and the limits of the protection of individual rights opposite to collective rights, once tax evasion may involve huge sums of money from corruption or other illicit activities, which harms human rights and development.

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