GA5: Legal

Student Officer: Yağmur Aykan

Issue: Tackling corruption-based inequality in criminal justice systems

TIMUN '19

Turkish International Model United Nations

THIMUN Affiliated Conference

Committee: Legal Committee (GA5)

Issue: Tackling corruption-based inequality in criminal justice systems

Student Officer: Yağmur Aykan – President Chair

I. Introduction

Picture 1: Bribery

Corruption, in simplest terms, can be defined as "the abuse of entrusted power for private gain" according to Transparency International. Findings show that bribery is considered to be most prevalent in countries where the rule of law is considered to be weak; and undue political influence is believed to occur in countries known to have weak governance structures, as well as in those where the rule of law is considered to be strong.

White-collar crimes like bribery and money laundering represent a challenge for law enforcement agencies all over the world. They are often difficult to discover, prove, and punish. Such crimes are usually committed in secret, by powerful people with some degree of sophistication. And the police, prosecutors, and the judiciary are often not well prepared for the investigation, prosecution, and judgment of these highly sophisticated crimes. Sometimes powerful defendants also exploit the gaps in the criminal law and of the judicial system to prevent effective accountability.

In 2006 it was found out that Siemens, one of Germany's biggest companies paid bribes amounting to approximately US$1.4 billion to government officials and civil servants around the world. In 2014 former President Viktor Yanukovych fled Ukraine and made $40 billion in state assets disappear. The Russian Laundromat, a massive money-laundering scheme siphoned off somewhere between US$20-80 billion in fraudulent funds away from public services and the citizens. In Brazi,l what began in 2014 as the Lava Jato investigation, or "Operation Car Wash", involving a network of more than 20 corporations – including Brazilian oil and construction giants, Petrobras and Odebrecht – has since grown into one of the biggest corruption scandals in history. The recent corruption scandals around the world are a sign that the issue of corruption is far from over.

II. Involved Countries and Organizations

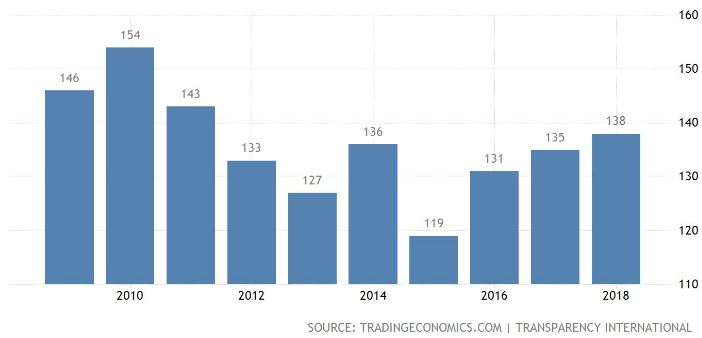
Transparency International

Transparency International is an international non-profit, non-governmental organization founded in Berlin, Germany in 1993. They work with governments, businesses and citizens to combat corruption and promote transparency. To find out more information on the impact of Transparency, delegates can check out the Impact Report linked under the "Useful Links" section.

Picture 2: Results of the last Index

NGO's 'Corruption Perceptions Index' has become the main worldwide indicator of public sector corruption. The index is explained as *"The index, which ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean."*[1] The Corruption Perceptions Index will be used in the remainder of this section for analysis and comparison.

Russia



The Russian Federation became an independent country after the dissolution of the Soviet Union in 1991. Besides being a former superpower, it is the largest country in the world with quite diverse inhabitants. In the Corruption Perceptions Index of 2018, Russia ranks 138th out of 180 and has a score of 28 out of 100. These statistics show a high level of corrupt behavior within the country.

Transparency International's new global survey has revealed that at least one in three Russians has paid a bribe for public services over the past year. This is widely attributed to the historical model of public

[1] https://www.transparency.org/cpi2018

governance in Russia. Even though most people within the country condemn the act, the population also believes that it is inevitable. So much so that Russia dropped 36 places in one year in 2004 (90^{th} place to 126^{th} in the Corruption Perceptions Index) at the beginning of Vladimir Putin's second term as president. In 2014, as a result of the "Laundromat" scandal, billions moved from Russia, into and through the 112 bank accounts that comprised the system in eastern Europe, then into banks around the world. This benefited the Russian businessmen who own groups of companies involved in construction, engineering, information technology, and banking. Law enforcement in Moldova, Latvia, the United Kingdom, and Russia continue to investigate the Laundromat, but attempts to bring those responsible to justice and to recover the money have been hampered in part by the reluctance of Russian officials to cooperate.

Ukraine

With a ranking of 120/180 and a score of 32/100, Ukraine places itself to the position of 2^{nd} most corrupt country in Europe, after Russia. Ukraine, like Russia, gained its independence after the dissolution of the Soviet Union in 1991. Even though the process has been made to combat corruption, Ukraine is still said to be one of the most corrupt countries in the world. Ukrainian Lawmaker Mr. Leshchenko has stated, "It's in the interests of Europe and the whole world and that's why I urge friends abroad not to back Ukraine's corrupt leadership but to protect anti-corruption institutions - and free and fair elections."

Philippines

Corruption seriously limits the effectiveness of organizations working in the Philippines. High rates of bribery and extortion inhibit foreign companies from extending their businesses to the country which leads to an uncertain business environment. The situation in the judicial system is not any different. Bribes and undue political influence affects judicial procedures. After decades of perceived corrupt rule, President Aquino was elected in 2010 on a strong anti-corruption platform, raising hopes of a new era for the Philippines. Even though the current government has taken important steps to address corruption in the country, given the extent of the challenges that the country is facing, it is still hard to say whether anti-corruption efforts will bring the expected results.

Money laundering and organised crime are closely intertwined and both have been described as a significant issue in the Philippines. The illegal drug trade and human trafficking are the most prominent of these issues. Organised crime syndicates have close connections with police, military and civilian officials and have developed complex systems of protection involving police as well as local and national officials to operate with impunity. This is a major barrier when trying to combat corruption.

Brazil

Brazil ranked last year as the world's eighth largest economy, according to IMF's World Economic Outlook Database (April 2018). However in spite of recent improvements, the country still faces challenges to close the notably high income inequality gap. Other significant challenges include improving the quality and outcome of the country's education system, improving infrastructure and guaranteeing access to basic public services, such as sanitation. Corruption is the top concern among Brazilians and it poses as a great threat to any of Brazil's improvements in the aforementioned sectors.

A corruption scandal, the largest corruption scandal to hit the country,with unprecedented political and judicial repercussions emerged in Brazil in March 2014. Dubbed the ' Car Wash ' (Lava Jato in Portuguese), the criminal investigation uncovered large-scale bribery, kickbacks, and money laundering involving the state-run oil company but also former top-level directors, bureaucrats, politicians, and businessmen from Petrobras. One hundred and thirty-four people were arrested, including the Petrobras service director and 19 presidents and executives of some of the country's largest construction and engineering firms. There were 93 criminal convictions, including cases of people convicted more than once, adding the total amount of sentences up to more than 990 years (Justi, Dionisio and Castro 2016).

United Nations Office on Drugs and Crime (UNODC)

UNODC is a global leader in combating illicit drugs and international crime. Founded in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention, UNODC operates in all regions of the world through an extensive network of field offices. UNODC relies on voluntary contributions, mainly from Governments, for 90 per cent of its budget.

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument. UNODC delivers technical assistance in various corruption-related thematic areas, such as prevention, education, asset recovery and integrity in the criminal justice system in order to help countries implement the orders of the Convention

III. Focused Overview of the Issue

Judicial corruption has a deleterious effect on people and can seriously jeopardize the credibility and stability of democratic organizations. Drawing an accurate picture of judicial corruption requires understanding the main drivers of corruption. There are various reasons why corruption occurs. For this report, we will be looking into the most prominent factors.

Drivers of Corruption

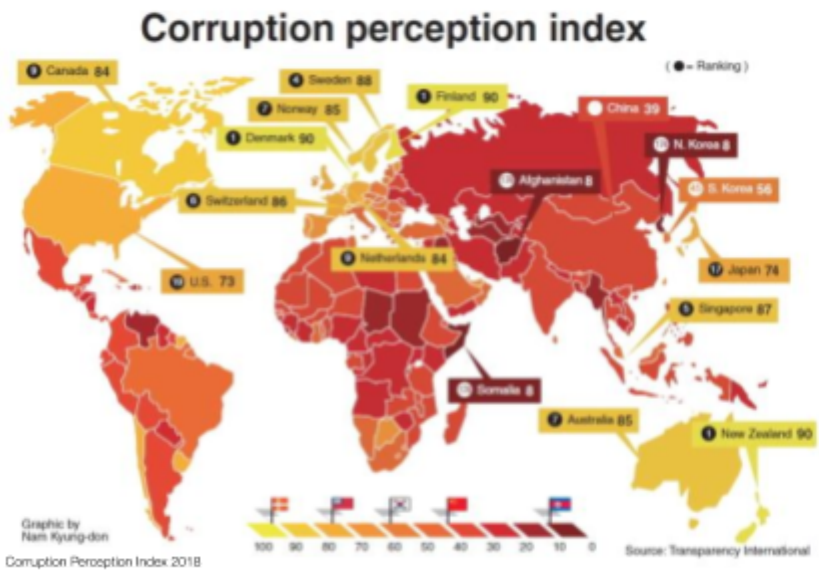
Lack of information is one of the most important drivers of corruption. Often citizens are not aware of their rights and have no access to information that can fix this problem. This makes the population vulnerable to people who demand a bribe in return for securing or speeding up a solution to a case.

Another prominent factor is the *lack of judicial democracy.* In some countries, unwritten rules due to the lack of understanding of professional ethics, such as not questioning the boss and concealing corruption are being implemented. Governments also tend to overlook the useful conclusions and recommendations of non-governmental organizations that identify specific organizational flaws.

Any employee who is aware of illegal or unethical deeds committed by his or her colleagues, superiors or subordinates is under a legal and moral obligation to report them to relevant institutions. However, due to *fear of retaliation,* many of these incidents are not reported because people are scared of being exposed and losing their jobs. This is why educating potential 'whistleblowers' (see **'Key Vocabulary'**) on their rights is an issue to be tackled with.

Small salaries of personnel such as archive clerks and procedural agents are also a benefactor of corruption. Personnel who earn little amounts are more likely to take part in corrupt acts.

Of course, all of the reasons mentioned above are all usually parallel to *the tolerance in the society* which corruption occurs. In many countries, paying additional money for a number of services is considered acceptable and normal.



Forms of Corruption

Corruption in the judicial process comes in many forms. In this section, we will be looking into the most common and damaging forms of the act.

Bribery

It is the act of accepting or demanding money in exchange for faster, better and superior service. External actors might bribe: a judge in order to influence his decision, a lawyer to advise his or her clients in a specific way or a court staff to tamper with evidence in his or her favor. Bribery is perceived to be a serious concern in

Asian countries such as the Philippines and India n post-Soviet countries like Russia and Ukraine. A 2016 study suggests that the primary motivating force driving legal experts to participate in corrupt conduct is accepted to be material advantages rather than potential career opportunities.[2]

Important actors of bribery include judges, lawyers, prosecutors , and court personnel. Individual judges may accept or demand bribes from politicians, lawyers or other external actors, to alter a case or award access to lawful administrations generally not granted. According to the aforementioned study, in the countries of Philippines, Russia and Ukraine judges where reportedly involved in bribery cases relatively frequently. Obtaining material benefits was reported to be the highest incentive in their cases.

Lawyers also can play an active role in corruption in the form of bribery. Lawyers may demand bribes either to pass on to a judge for better chances of winning the case, or for themselves to mishandle or delay cases.

Other actors include prosecutors and court personnel, with the former being bribed to alter evidence or to accept inappropriate plea deals and the latter, due to the previously stated reasons to deliberately lose or alter files. But unlike extortion, bribery does not include coercion, so neither person is intimidated and both engage the act voluntarily.

Undue political influence

Different actors from within and outside judicial systems may also influence the judicial process. When the overall independence of the judicial system is undermined at the political level, a great risk for corruption occurs. One may speak of undue political influence or interference when specific interests of a political group are given superior treatment by a judge.

It is important to note that despite efforts, in some countries judicial professionals still continue to face undue pressure to rule in favor of powerful political and economic individuals. The highest perceived incidences for these professions were reported in Turkey (between 25 and 58 percent) and Russia (between 43 and 46 percent).[3]

Extortion

Transparency International defines extortion as ‘Act of utilizing, either directly or indirectly, one’s access to a position of power or knowledge to demand unmerited cooperation or compensation as a result of coercive threats.’[4] It is most dangerous when it becomes a never-ending cycle when a company accepts bribes and then sets itself up for continuing extortion.

[2] The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption
[3] The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption
[4] https://www.transparency.org/glossary/term/extortion

IV. Key Vocabulary

Judicial Corruption: The term refers to all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system, including, but not limited to, judges, lawyers, administrative court support staff, parties, and public servants.

Money laundering: Money laundering is the crime of moving money that has been obtained illegally through banks and other businesses to make it seem as if the money has been obtained legally.[5]

Corruption and money laundering are inherently connected. Corruption offenses, such as bribery or theft of public funds, are often committed for the purpose of private gain. The aim is to enjoy the illicit gains without fear of ever getting caught.

Extortion: 'Extortion' means an extension of the act of bribery, which 'becomes extortion when this demand is accompanied by threats that endanger the personal integrity or the life of the actors involved'[6]

Undue political influence: This term refers to a situation in which 'politicians who abuse their position to sustain their power, status and wealth use their power or authority in an unfair way in order to influence a legal decision.

Public contracts: Public contracts refer to an agreement for the purchase by governments and state-owned enterprises of goods, services , and works. These agreements are expected to be in the community's best interest and are financed by government funds. As public contracts account for a good portion of the taxpayers' money, governments are expected to carry it out efficiently and carefully in order to ensure high quality of service delivery and safeguard the public interest.

Infrastructure: The term "infrastructure" refers to the basic systems and services, such as transport and power supplies, that a country or organization uses in order to work effectively.

Whistleblower: A whistleblower is a person, who could be an employee of a company, or a government agency, disclosing information to the public or some higher authority about any illegal activity, in our case bribery and corruption.

[5] https://dictionary.cambridge.org/dictionary/english/money-laundering
[6] OECD Guidelines for Multinational Enterprises, quoted in www.unglobalcompact.org/what-is-gc/mission/principles/principle-10.

V. Important Events & Chronology

1979	The United Nations draft an International Agreement on Illicit Payments, it never gets adopted.
1996	Inter-American Convention against Corruption
1996	Protocol to the Convention on the Protection of the Financial Interests gets adopted.
1997	Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union
1999	Criminal Law Convention on Corruption
2003	"United Nations Convention Against Corruption" published by the UNODC in 2003

VI. Past Resolutions and Treaties

A/RES/73/190	Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption
A/RES/71/208	Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption

A/RES/69/199	Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption
A/RES/68/195	Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption
A/RES/68/122	Observer status for the International Anti-Corruption Academy in the General Assembly
A/RES/67/192	Preventing and combating corrupt practices and the transfer of proceeds of corruption, facilitating asset recovery and returning such assets to legitimate owners, in particular to countries of origin, in accordance with the United Nations Convention against Corruption

VII. Failed Solution Attempts

Solutions of anti-corruption can be proposed by the government, private sector or civil society. A government usually launches an anti-corruption law that brings initial hope and enthusiasm but then doesn't follow up on its promises. This can happen if the incentive for proposing such amendments is to only keep a scandal under control. Another possibility is to launch an anti-corruption crusade only to falsely accuse one's opponents.

Even if a genuine anti-corruption campaign is being carried out, it is important to talk with relative NGO's, manage resource and time and avoid costly administrative mistakes in order to carry out the best and most effective campaign possible.

VIII. Possible Solutions

At the political level, anti-corruption crusades must have real commitment from leaders, be shielded from being politicized, and be comprehensive and democratic for all stakeholders of society. This suggests that countries should devote adequate resources and time and appoint the correct individuals to mount a successful crusade.

Effective law enforcement is key is fighting corruption. This goes hand in hand with a strong legal framework, law enforcement branches and an independent and effective court system. Promoting transparency within the government and encouraging citizens to hold the government accountable for their crimes is crucial as well.

Our job as the United Nations General Assembly is to gather all information and make it accessible for all countries. *"The role of an intergovernmental organization such as the United Nations is not to solve problems at the country level. That task is left up to the governments and citizens of the country concerned. But the United Nations can and does promote the exchange of experiences with the view for its member states to set standards and benchmarks against which they can measure progress."*[7]

IX. Useful Links

Transparency International official website: https://www.transparency.org

Anti-Corruption Summit 2000, United Nations Presentation: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010748.pdf

"What's the cost of corruption?": https://www.youtube.com/watch?v=JUjGUpg2I0k

Transparency International Impact Report: impact-report-single-pages-WEB-v8.pdf

Determinants of Corruption in Developing Countries: The Limits of

Conventional Economic Analysis:

https://pdfs.semanticscholar.org/0130/d1555ffae129d858c684c659ff53724e6df5.pdf

International Drivers of Corruption: A Tool For Analysis by OECD:

https://www.oecd.org/dac/accountable-effective-institutions/49263997.pdf

Policy Paper and Principles on Anti-Corruption by OECD (2007):

[7] Anti-Corruption Summit 2000 - http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010748.pdf

http://www.oecd.org/dac/governance-peace/governance/docs/39618679.pdf

HOW CORRUPTION WEAKENS DEMOCRACY by Transparency International

https://www.transparency.org/news/feature/cpi_2018_global_analysis

Corruption Perceptions Index 2018:

https://www.youtube.com/watch?time_continue=4&v=OXApeTYRYNQ

Basic Anti-Corruption Concepts published by the European Council:

https://rm.coe.int/basic-anti-corruption-concepts-a-training-manual/16806eed9d

Corruption In the Criminal Justice System:

https://search.proquest.com/openview/24e87c5ac03e4b60610555371afa9916/1?pq-origsite=gscholar&cbl=2035015

X. Works Cited

The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption, https://www.ibanet.org/Document/Default.aspx?DocumentUid=F856E657-A4FC-4783-806E-6AAC6895D37F

Levinson, Alexei. "Corruption Dies Hard in Russia." The Moscow Times, The Moscow Times, 16 Aug. 2019, www.themoscowtimes.com/2019/04/01/corruption-dies-hard-in-russia-a65012.

Volokh, Karl. "Ukraine: One of the World's Most Corrupt Countries?" The National Interest, The Center for the National Interest, 30 Mar. 2019, nationalinterest.org/blog/buzz/ukraine-one-world's-most-corrupt-countries-49712.

"The Philippines Corruption Report." GAN Integrity, www.ganintegrity.com/portal/country-profiles/the-philippines/.

Danilet, Cristi. "Corruption and Anti-Corruption in the Justice System" Bucharest : Editura C.H. Beck, 2009:

https://www.kas.de/c/document_library/get_file?uuid=efeb9a87-f5c0-6e14-78ef-e5708063bacb&groupId=252038

Resolutions adopted by the Conference of the States Parties to the United Nations Convention against Corruption:

https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V1800228e.pdf