

CONFLICT OF INTEREST IN POST COMMUNIST SOCIETIES: WHY IS IT IMPORTANT TO TACKLE IT AND HOW?

It is easy to see some striking similarities between corruption issues in Latin America and those in countries with legacies of Communist leadership. Despite the tremendous cultural, historical, and economic differences between Latin America and post-Communist states, the underlying dynamics and causes of corruption are essentially alike: Bad privatization, impunity of elected officials, lack of political opposition and weak oversight bodies, among others. One striking cause of corruption in many post-socialist societies is conflict of interest (COI).

Before I begin my presentation, I want to point out two inherent shortcomings: (1) it is shaped by my training in public administration in the United States and (2) my experiences working on anti-corruption issues in a handful of countries (e.g., Honduras, Mongolia, Albania, etc.). I am hoping that in our subsequent discussions, you can help me to fix those shortcomings, fill in the gaps that exist, and refine my framing of the issues.

Later on today, there will be a more in-depth discussion of conflict of interest in a special session led by Roberto De Michele, entitled "Preventing Conflicts of Interest in the Public Sector." My goal today is to focus on two main issues: 1) What is COI and what forms does it take and why; 2) What can be done about it by addressing the causes? My overall goal is to be a catalyst for the discussions later on in this session.

Conflict of interest occurs when there is a blurring or overlap between public and private spheres. On one hand, in a functioning democracy, the role of the public official's role as a civil servant is usually governed by a legally and constitutionally-mandated set of ethical principals and values focused on the public good and what is right for the citizenry as a whole. On the other hand, there is the individualistic tendency (perhaps based in human nature) to personally benefit from a particular government decision. When that occurs, those of us in governance circles call it a conflict of interest. I want to point out that the discussion today will focus primarily on "government conflict of interest." Law firms and private companies would view this issue from a much different perspective, as you might guess. And they would have much different definitions.

So, what does COI looks like in practice? Here are common forms and examples.

1) A public official can create a COI by becoming involved in a government matter that will result in financial benefit to him/herself or an organization to which he or she belongs (e.g., officer, director, trustee, asset holder, etc.). A great example of this type of conflict of interest recently took place in my hometown in Pennsylvania. The Mayor's office decided to use government funds to redevelop specific plots of abandoned industrial land, which did not seem to make sense. Everyone wondered why. The reason was that a company owned by the mayor owned the lands!

2) Similarly, a government official can find him/ herself in a COI when government decision (e.g., pending case, contract, grant, permit, license, loan, or privatization processes) involves a business, friend, or family member.

3) Receiving gifts can represent a COI. For example, U.S. law identifies "prohibited sources" for gifts, meaning that government officials cannot receive gifts from people or organizations that do or are trying to do business with the government or have interests that could be affected by receipt of the gift during the conduct of official duties. Likewise, giving a gift to a superior or fellow government employee can be considered COI, at times. The exceptions when receipt of gifts is not considered a COI are specified. An example of a COI of this kind is the recent case of U.S. Congressman William Jefferson. An investigation led to finding that he had stored US\$ 90,000 in his freezer at home. Make your own joke . . . Frozen assets; cold, hard cash. But, in many ways, a gift can be considered a form of more sophisticated and sometimes culturally acceptable bribe.

4) Some public officials have a COI when they are about to leave government service. In many countries, you cannot represent a private firm or other organization to the government after you have left, especially to the agency you were working for or the substantive issue you were working on. An example would be a Ministry of Health official who goes to work for a private hospital that used be regulated by his or her old office.

5) Government officials also find themselves with a COI when they accept outside payments or income for consulting or other activities related to their jobs while they are government employees. An example might be a national-level government official who serves as a consultant to a local-level government on matters related to decentralization.

Developed democracies in the United States, France, and the United Kingdom have long histories of a fundamental separation between a career civil service (below) and the elected and appointed political officials that controls that bureaucracy (above). This evolved, in part, from years of struggle, including demands of the private sector that wanted a consistent regulatory environment. They wanted to know that the today's rules would remain valid tomorrow. Even if political leadership changed, then day-to-day operations should not. In many

places in Latin America and in post-communist countries, this has not been the case.

With the election of a new administration, as much as 60 to 80% of government officials can change, often in violation of a civil service law. The possibility of a new administration controlling such number of public official positions creates an informal spoils system. The frequent turnover results in an unprofessional bureaucracy whose loyalty responds not to the needs of the institution or the citizens, but to the political and economic interests that provided the job. This often requires them to engage in COI, resulting in policy and administrative decisions that are not sound.

In one country I visited, a member of the civil service told me that nobody ever technically gets fired from government, regardless of their political or financial affiliations. I asked, "Then, why is there such turnover of even by low-level officials after an election?" He pointed downward to the heater, a radiator in his office and then to the stairs leading to the basement. "If you aren't associated with the right leadership," he said, "they put your desk and computer downstairs near the boiler room. When it gets hot enough . . . you leave."

COI are often related to lack of access to information procedures. NGOs and concerned citizens are not able to determine which government officials hold certain assets and find out how their government duties may impact those assets. For example, it is often difficult to find out who actually owns or controls a radio station. Worse yet, secrecy laws from previous regimes often make it difficult to use the court system to get access to that information.

In other countries, the forms of COI we have talked about are not against the law. If there are laws against them, they simply haven't been implemented. Processes and systems are not place and procedural manuals have not been written.

Another situation often seen in many countries is that specific bodies tasked with enforcing COI, lack the investigatory and evidence-gathering skills to make a proper case in court or through administrative procedure. When they do, often the political will is not there for prosecution or sanction.

Often journalists lack the ability to uncover and draw attention to COI when it occurs. In some instances this is an issue of lack of skills, but in many more journalists themselves are "on the take" or don't act out of fear from reprisals or violence. Many lack comprehensive understanding of corruption issues and thus, may lack objectivity.

In many countries I've visited, there is simply a lack of understanding that COI is wrong. In a number of places, members of Parliament or high-level officials in the executive branch have asked us to meet them at their "business offices" at a company or consulting firm. They quite overtly own or are in charge of the day-to-day operations of businesses regulated by the laws and policies they create and enforce. And in places with insufficient laws, it is completely legal!

I would argue that you need four basic elements in place in order to fight COI. These are highly inter-related.

- (1) Having a COI system. The first step is to determine what the rules of the game and what is right and wrong, usually through a legislative and regulatory process. The legal framework should call for basic procedures that can find potential conflicts of interest, tell officials when they should recuse themselves from certain situations, sell or divest certain assets when they take office, or create trusts or other legal arrangements that can manage assets while they hold office. This also requires enforcement mechanisms, either centralized or decentralized. People must be trained in order to create incentive. Many of the COI procedures in the United States work well because officials are aware of the proper steps to be taken and the potential implications if they are not. In the late 1970's and 1980's the U.S. Government spent significant resources on training videos and manuals about the COI issue.
- (2) A hot topic these days is the formation of asset and financial declaration system for high-level officials and those that work in corruption prone sectors like procurement and customs. Obviously, the first step will be a policy action to establish a declaration form and a set of procedures by which they will be filed. Proper design of the form itself is key to its effectiveness and must be free from loopholes. Next, countries must find the infrastructure to manage those filed forms. For example, I was in an Africa country meeting with a high level ethics official. I saw a huge room with big messy stacks of papers on the floor near his office. He told me they were filed asset declaration forms. Filing the forms doesn't do any good unless there is a system to manage them, preferably electronic and automated. Next there must be skilled investigators who can check the accuracy of the forms. Appropriate sanction (either administrative or prosecutorial) mechanisms must be established. Also, public officials must be made aware of the threat of sanctions. In the United States, for example, very few people are ever convicted based on asset declaration evidence. But the few cases that are prosecuted make big news. Obviously, the media and NGOs play an important role in making sure that forms are checked for accuracy. It is impossible to have enough investigators to look at all form, but providing them to journalists and

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- citizen leaders can create hundreds of extra eyes and draw significant attention to instances of blatant malfeasance.
- (3) As we touched on earlier, it is essential to enact overarching civil service reforms that include merit-based hiring and promotion, position classification and grading, pay for performance and “living wages,” and limited political appointments.
 - (4) A modern ethics office or function is very important. It should provide advisory opinions and clarification, policy and procedure setting/codes of conduct, and enforcement, sanction, and follow-up. The models may differ greatly from country to country, but carry out some or all of these functions. Many times, enforcement and sanction are separated from the policy-making body.

These are some of the mechanism and procedures that help reduce and avoid of conflict. Many of them are outlined in international conventions that the States have already signed. Assistance for civil society to monitor compliance is often included in the conventions and national legislation.