

FOURTH BIENNIAL MEETING OF THE WORLD BANK GROUP'S

International Corruption Hunters Alliance

Coalitions Against Corruption

Building Trust, Promoting Integrity, Ending Impunity

2018 Conference Report

October 25–26, 2018
Eigtveds Pakhus,
Copenhagen, Denmark

A WORLD BANK GROUP MEETING SPONSORED BY
THE GOVERNMENTS OF DENMARK AND BELGIUM

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Cover design: Claudio Mendonca

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International Corruption Hunters Alliance 2018: Coalitions Against Corruption



The fourth meeting of the International Corruption Hunters Alliance (ICHA) was co-hosted by the World Bank Group and the Ministry of Foreign Affairs of Denmark, with the support of the Government of Belgium.

This biennial meeting brings together the people who are working on the front lines to stop corruption in their countries—anticorruption agency heads and directors of public prosecution or investigations. Members representing more than 100 countries have an opportunity to jointly analyze national and global developments, and to exchange information critical to the success of their work.

ICHA is a global platform that expands the dialogue on cutting edge issues such as illicit financial flows and beneficial ownership. Most importantly, ICHA strives to bridge the gap between dialogue and action, and to showcase knowledge from all corners of the world. Plenary sessions and high-level dialogue are augmented by working sessions which have covered topics such as risks in supply chains; integrity compliance programs; forensic audit techniques; the link between tax evasion and corruption; asset tracing and recovery; whistleblower mechanisms; and the role of the private sector in combating corruption. Experts in related fields such as investigative journalism and big data provide participants with a broadened perspective about other tools that can be successful in combating corruption.

To better promote a coordinated and holistic approach to global anticorruption efforts, for the first time ICHA immediately followed the International Anti-Corruption Conference, co-hosted by Denmark and Transparency International (TI). The strategic timing allowed ICHA members, who primarily represent enforcement and prevention agencies, to establish contacts with TI's representatives from grass-roots, academic and advocacy organizations.

Anticorruption civil society organizations have played an important role in driving innovation, for example in using data to heighten transparency.

The World Bank Group's Integrity Vice Presidency (INT) has led the coordination of ICHA since its first global meeting in Washington, D.C. in 2010.

The Integrity Vice Presidency (INT) is an independent unit within the World Bank Group that investigates and pursues sanctions related to allegations of fraud and corruption in World Bank Group-financed projects. Through investigations, prevention and working on compliance with the private sector, INT contributes to the World Bank's core mission of promoting development and reducing poverty by ensuring that funds are used for their intended purposes.

Contents

Opening Remarks

Pascale H el ene Dubois, Integrity Vice President, World Bank Group **1**

Host Remarks

Ulla T orn es, Minister for Development Cooperation, Denmark **5**

Shaolin Yang, Managing Director & World Bank Group Chief Administrative Officer **9**

Plenary Session

Coalitions Against Corruption: Building Trust,
Promoting Integrity, Ending Impunity **13**

Parallel Sessions

State Capture **19**

The Role of Forensic and Investigative Accounting in Investigations **23**

High-Profile Investigations—Acting When the Time is Right:
Lessons from Latin America **29**

International Asset Recovery: Challenges and Practical Solutions **33**

Settlements: Tips and Tricks, Lessons from the Field **39**

Corruption, Fragility and Security: Preventing Harm and Managing Risks **43**

Encouraging Reporting through Whistleblower Systems and Protections **47**

Leveraging Tax Investigations to Fight Corruption **53**

Data & Privacy: Emerging Tools, Practices, and Regulations **57**

Anticorruption Sanctions and Enforcement Across Jurisdictions **63**

Cross Border Investigations: Lessons from the Field **67**

Enhancing the Impact of Integrity Compliance and Collective Action **71**

Photo Gallery **76**

Opening Remarks



PASCALE H EL ENE DUBOIS,
INTEGRITY VICE PRESIDENT,
WORLD BANK GROUP

AS PREPARED FOR DELIVERY

I want to welcome everyone to the fourth biennial meeting of the World Bank’s International Corruption Hunters Alliance. Thank you for being here with us in lovely Copenhagen, in this beautiful setting—a warehouse built in 1748, I’m told!

First a special round of thanks to our hosts, the Danish government, and to the Belgian government for their generous financial support.

The World Bank has organized this gathering every other year since 2010, and this year we have a very exciting line-up. On the panel you’re about to hear, for example, are some of the people at the forefront of setting policy and influencing global norms in anticorruption work. And the technical sessions will address many of the practical issues you all face every day on the front lines.

To get us started, I’m going to tell you a little bit about what we have been doing at the World Bank. As many of you know, I lead the institution’s investigative arm—the Integrity Vice Presidency, or INT.

In INT, our core mandate is to investigate fraud and corruption. We also prevent fraud and corruption:

- The team led by Dave Fielder (you’ll hear from him on the plenary panel) investigates fraud and corruption in government contracts financed by the World Bank. That’s why INT was set up twenty years ago. That’s what we do now. That’s what we will continue to do. We want to make sure that the money which the donors entrust to us is used properly. Money that’s supposed to go to build schools and hospitals should not end up in the pockets of corrupt individuals.
- Enforcement alone is not enough however. Over the years, we evolved and we innovated with a view to maximize the effect of our investigations. [When you





investigate and sanction, you get people's attention. And once you have their attention, you can work with everybody to prevent things from happening again.]

- We do prevention in two ways:
 1. We make sure that we learn from our investigations, package that information and give it to the people around the World Bank who work on development projects. If you investigate a roads project, then it's a good idea to share what went wrong with the others around the Bank so that we can prevent and mitigate in the next roads projects. We also share our findings with our member countries through the work done by the governance global practice (Debbie Wetzel, the head of the Governance Global Practice, is on the opening plenary panel and will tell you about her team's work). In other words: our aim is to engage all stakeholders to identify corruption before it happens, and then do something about it.
 2. We also prevent corruption by working directly with the private sector to promote clean business. We give incentives to corporations to put in place compliance programs, including codes of conduct.

It used to be that corporations were only concerned with price and quality—these days, corporations are concerned with price, quality and reputation. Things can go wrong, we all



know they can. So at the Bank we want to create an environment where clean business is good for business.

The World Bank's twin goals are to eradicate extreme poverty and promote shared prosperity. Anticorruption is very clearly pro-poor. Anticorruption helps to make sure that the poor get the services they need.

Anticorruption is also very much pro-business. Anticorruption helps corporations to do business in difficult environments—it ensures that competition will be fair and that there will be a level playing field. It avoids enforcement and sanctions and it keeps the reputation of corporations.

INT recently started a program to mentor companies, helping them develop anticorruption policies before they get in any trouble.

Anticorruption is now a global phenomenon. Through its anticorruption work, the World Bank has helped to export the concept of doing clean business to all countries. Anticorruption is also a great way to mobilize private sector capital to go into places where private sector companies wouldn't go if the World Bank Group weren't there.

I'm very encouraged with the way the anticorruption field has evolved. We have a bright future and lots to build on. So what will we do next?

We know that anticorruption is a team effort. My colleagues and I—all the World Bank anticorruption and governance actors (the Governance Global Practice; the sanctions system [Office of Suspension and Debarment and Sanctions Board]; the StAR initiative; the MIGA and IFC due diligence systems)—[we have close to 1000 people at the Bank working on anticorruption and governance] are all working very hard on integrating the different anticorruption and governance parts of the World Bank.

I'm from Belgium so I like to quote my country's national motto: "L'union fait la force/ Eendracht maakt macht"—loosely translated as "United, we are stronger".

And we can start now, in this room. We think this event provides wonderful opportunities for all of us in this diverse world of corruption-fighting to learn from each other—not only in a formal way, in the planned seminars, but in the margins of those settings, as we talk to our peers and counterparts. It's also no accident that we invited you all here in the same week as Transparency International's 18th International Anti-Corruption Conference—another gathering of folks committed to reducing wrong-doing in the world.

The theme of this conference is "Coalitions Against Corruption," and every coalition that ever happened started with a conversation. So, I hope that you all will take advantage of the chances you have to start and continue conversations and build coalitions now, so that we can do smarter and better work at home! Together, we are making a difference.

Host Remarks



ULLA TØRNÆS
MINISTER FOR DEVELOPMENT COOPERATION,
DENMARK

AS PREPARED FOR DELIVERY

Ladies and gentlemen,

I know that some of you have been in Copenhagen all week to attend the International Anti-Corruption Conference before participating in the present meeting of the International Corruption Hunters Alliance, which I am glad to be co-hosting along with Ms. Pascale Dubois.

I believe that having the 4th meeting of ICHA in Denmark, this week, just after the IACC offers a unique opportunity to create synergies between the two events.

For you as well as for me, this week has really been an encouraging one. So many people from so many countries and organizations, and from so many walks of life, have shown so much enthusiasm and so much determination to continue and to intensify their efforts to fight corruption.

At the IACC, the diversity of stakeholders participating in the discussions and exchanges was impressive: Government representatives at all levels, civil society representatives ranging from small local NGOs to huge international and professional organizations, media of all kinds, multilateral and regional organizations, development banks, private companies big and small.

And here, the professionals at the sharp end of anticorruption. Investigators, prosecutors and law enforcement exchanging experience and knowledge. Knowledge that will lead directly to enhanced effectiveness and sophistication in the prevention, detection, investigation, and prosecution of corruption—in all corners of the world.

The level of sophistication is critically important in a world of ever-increasing levels of sophistication among the corrupt. The inventiveness and imagination of the corrupt seem to be never-ending. We—and not least you at the front-line—have to try hard and keep up.





Activism, media alertness, and whistleblowing are indispensable parts of the anticorruption work. But without deeply professional people in your positions, the results would be below the expectation of our populations. They want to see consequences and sanctions. Not impunity.

Some of you already know that the Danish government this year added a new feature to the IACC: the IACC high-level segment. This one-day event brought together ministers and other high-level leaders from countries, international organizations, and private companies to discuss how to deal better with the scourge of corruption in all its forms and shapes.

Before coming to Copenhagen, the high-level participants were asked to prepare anticorruption statements announcing how they intend to confront the corruption challenges they face in their own countries and organizations.

The majority of participating countries and organizations did deliver such statements, and these have now been published online for everybody to see. And for everybody to monitor how their implementation moves ahead. And to hold decision makers to account if commitments are not being followed up with concrete action.

The statements consist in part of new commitments, and in part of earlier commitments still to be implemented. The vision behind these statements is not only to demonstrate our intentions but also to focus on implementation. To put action behind the words.

The collection of statements includes a very broad range of initiatives to fight corruption, such as introducing e-procurement and electronic payment of taxes, improving the protection of whistleblowers, adopting access-to-information laws, enhancing the transparency of political donations, strengthening the cooperation between national authorities and civil society in anticorruption and improving international cooperation between law enforcement officials.

It is an impressive list, whose implementation will have significant impact.

Some of you will no doubt be among the implementers of those statements. I am sure you will do your part to make the commitments become reality to the benefit of us all. And not least to the benefit of those in your countries who are most vulnerable to the effects of corruption.

No country in the world is free of corruption. And as our Prime Minister said in his opening address on Monday at the IACC: Denmark also has room for improvement. Within the last couple of months, we have witnessed disgraceful examples of money laundering and what seems to be fraud with public means. I believe that these examples have only made it more clear, that the fight against corruption needs to be persistent.

In Denmark's statement we listed a wide range of anticorruption initiatives. Let me highlight three: One focuses on increasing transparency in the public administration. Another on strengthening tax administration. And a third on developing a new national strategy for combating money laundering.

As Minister for Development Cooperation, most of my attention of course goes towards the most vulnerable in the world's poor countries. They are the ones who suffer most from the effects of corruption: The low quality and high—and often illegitimate—cost of the services they need so badly, the need to pay bribes in order not to be harassed, and so on and so forth.

Anticorruption is a key priority in Denmark's development cooperation. We have zero-tolerance towards corruption and we are working to combat corruption in all its forms.

First, in terms of helping build and strengthen institutions to ensure that government funds are well managed. We support ombudsman institutions and National Audit Offices. Second, we support NGO's, media and activists in their fight against corruption. Strong institutions and a strong civil society are key in the fight against corruption.

I am aware that most of you usually deal with high-profile and high-volume corruption cases. Cases that seem so far from the life of ordinary people and even further away from the life of society's poorest.

Let us remind ourselves that even such cases do have important and serious impacts far beyond the circles in which they are committed—especially when they are part of a pattern of recurrent and systemic corruption.

With these words, I wish you very fruitful deliberations during the rest of the meeting and a safe return with renewed inspiration, courage and enthusiasm. Thank you.

Host Remarks



SHAOLIN YANG
MANAGING DIRECTOR AND WORLD BANK GROUP
CHIEF ADMINISTRATIVE OFFICER

AS PREPARED FOR DELIVERY

Good morning ladies and gentlemen. I would like to thank Honorable Minister Tørnæs and the Danish government for its leadership, and for hosting us here this week at this Fourth International Corruption Hunters Alliance Conference.

We held our first ICHA conference in 2010 and signaled to the world that we have come a long way from the days when we had to debate whether we could openly disclose corruption cases.

I am pleased to see that this Alliance has thrived and grown in stature due to the strong support from all of you and other international anticorruption stakeholders. We are eager to learn from the experiences of other corruption hunters on the front lines of the fight for a world free of corruption.

At the World Bank Group, we believe that a world free of corruption is fundamental to a world free of poverty. Indeed, for us, each development coin must reach the poor. To this end, we have implemented robust measures to track the flow of funds to ensure the funds reach the intended recipients. And whenever we realize the money never reached the poor, we treat this as theft and we work with our respective Government counterparts to recover the stolen funds.

The World Bank Group is deeply engaged in the implementation of the Forward Look, a long-term strategy for the achievement of the twin goals of eradicating extreme poverty and boosting shared prosperity in a sustainable manner.

The Forward Look strategy received a strong vote of confidence earlier this year when our member countries endorsed a transformative financial and policy package consisting of \$13 billion in response to the unprecedented demand for resources. The capital package for IBRD and IFC builds on the strong commitment of contributors to International Development Association (IDA), as demonstrated in the record \$75 billion IDA18 replenishment.





As a result, the combined financing of the arms of the World Bank Group is expected to almost double and reach an average annual capacity of nearly \$100 billion between FY 2019 and FY 2030, benefiting all Bank Group members across the income spectrum. Managing our risks, including integrity and corruption risks facing projects funded by World Bank Group institutions, played a pivotal role in earning the huge vote of shareholders' confidence.

But the gap in funding between what is needed and what is available amounts to trillions of dollars each year. The only way to spur this level of investment is to crowd-in more private sector resources, by creating new markets, and bring innovative solutions. But for this to work—for the billions of development dollars to become trillions—we need clean business.

Without a clean business environment, the private sector would impose a risk premium at a direct cost to the host country—or worse, not have the confidence

to invest at all. In the end, this impedes poverty reduction—hurting the poor the most. This is especially challenging in states torn apart by fragility, conflict, and violence.

Our shareholders are also asking us to do more, and the willingness to work in difficult situations and an appetite for measured risk should never be confused with a willingness to tolerate corruption in Bank-financed projects and activities. While we must take necessary steps to protect projects and scarce development resources from corruption, we also remain focused on smart risk taking to help each project succeed and achieve its intended results. Corruption schemes have been evolving over time and the World Bank Group is continuously striving to fine tune its approach to combat the vice. So how do we at the World Bank Group confront the scourge of corruption?

As the World Bank Group, our role is to keep corruption out of the projects we finance. We proactively identify and address corruption risks in our operations. We work with country counterparts to identify fraud and corruption risks as part of project preparation and embed measures to detect and prevent corruption risks into project design.

For example, in FY 2018, our Integrity Vice Presidency, or INT, prevention team identified integrity risks in 390 projects, helping to safeguard \$2.2 billion in project commitments,

and gave corruption prevention advice and support to teams across 28 countries. We also consistently focus on good governance and anticorruption measures as part of project supervision.

Second, we work with client countries by embedding anticorruption approaches in our policy advice, in our analytics, and our technical assistance and capacity-building activities. We are responding to the strong demand of building the governance systems and capacity among our member countries.

This includes working with governments to promote transparency and data literacy, to support access to information legislation, anticorruption commissions, income and asset disclosures, and to strengthen verification systems. Many Governments have also drawn lessons from experiences of others to design their anticorruption programs.

Going forward, we see two paths to reinforce this essential work.

First, technology will help us identify and stamp out corruption. We are already reaping the result of technology, for instance:

- In Egypt and Iraq, in collaboration with the Governments, we're using biometric data to eradicate ghost workers from public payrolls.
- In Northeast Brazil, we're using smartphones to track bribe payments on crucial services like healthcare.
- When we can't be on the ground to monitor implementation of infrastructure projects day-to-day, we draw on satellite technology.

Secondly, we are also using technology more strategically to enhance transparency and reduce opportunities for corruption in the context of Bank-financed procurement through such means as e-procurement and artificial intelligence.

Despite our prevention efforts, sometimes things go wrong and then we need to stand firm to investigate and sanction individuals and entities. We see that our work in investigating corruption and sanctioning companies helps achieve development objectives.

As a result of our investigations and sanctions, many corrupt companies and individuals are no longer eligible to bid or work on projects financed by the group.

In FY18, the adjudicative part of our Sanctions System imposed 83 sanctions against firms and individuals involved in Bank Group-funded projects. In the same period, the World Bank entered into 22 settlement agreements with companies and individuals from around the world.

These settlements can be an efficient way to handle sanctions and demonstrate the willingness of companies to work with the World Bank in admitting wrongdoing and developing compliance programs to become trusted Bank contractors again. Importantly, we actively engage the sanctioned firms and individuals in integrity compliance programs, to encourage rehabilitation and the adoption of meaningful measures that can help prevent, detect and reduce instances of fraud and corruption.

We work with development institutions and other stakeholders in the anticorruption arena to reduce risks to development together. For example, the Cross-Debarment Agreement among the World Bank and four other major multilateral development banks (MDBs) allows us all to apply the debarments imposed by participating institutions that use similar sanctions systems and definitions of misconduct.

Over the last six years alone, the World Bank has recognized at least 255 debarments from other banks—and more than 300 of our own debarments were recognized by our partners.

These far-reaching debarments are also not easy to evade, as they continue to apply to legal successors of debarred contractors. We will continue to explore further harmonization among MDBs to strengthen the impact of sanctions and send a strong message that corruption will not be tolerated.

All of us—the entire international community—still need to do more to stop corruption before it occurs, as well as the other misconduct corruption so often generates. Together with the OECD, IMF, and UN, we help governments tackle illicit financial flows, tax evasion, tax base erosion, and profit shifting.

Even with this progress, our current efforts to address what former World Bank Group President Wolfensohn described as “the cancer of corruption” have scope for further enhancement. The good news is that we do not fight this battle alone. We will only eradicate this global epidemic through true global partnership.

There are many similarities between our work and what you do every day in your countries to prevent, investigate, and sanction individuals and firms involved in corrupt behavior. We are all making sure that our resources are used properly. This is both our moral duty and one of the best possible strategies for economic development.

The entire World Bank Group is ready to work with all of you to make the vision of a corruption-free world a reality. Thank you.

Coalitions Against Corruption: Building Trust, Promoting Integrity, Ending Impunity



SESSION MODERATOR



NICOLA BONUCCI

DIRECTOR FOR LEGAL AFFAIRS, ORGANISATION FOR
ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

SPEAKERS



J. DAVID (DAVE) FIELDER

MANAGER, INVESTIGATIONS & FORENSIC AUDITS,
INTEGRITY VICE PRESIDENCY, WORLD BANK GROUP



VILLE ITÄLÄ

DIRECTOR GENERAL,
EUROPEAN ANTI-FRAUD OFFICE (OLAF)



DRAGO KOS

CHAIR, OECD WORKING
GROUP ON BRIBERY



PATRICIA MOREIRA

MANAGING DIRECTOR,
TRANSPARENCY INTERNATIONAL



DEBORAH L. WETZEL

SENIOR DIRECTOR, GOVERNANCE GLOBAL PRACTICE,
WORLD BANK GROUP

Panelists at the opening plenary of the fourth meeting of the World Bank's International Corruption Hunters Alliance discussed the impact of technology on corruption, the necessity to make cooperation go beyond commitments on paper, and the challenges of addressing corruption in fragile and violence-afflicted countries. They represented organizations that have been at the forefront of setting anticorruption policy, investigating acts of corruption and advocating for an end to corruption around the world.



The discussion explored the ways in which international cooperation between law enforcement agencies, civil society organizations and international organizations can further the fight against corruption.

Nicola Bonucci, the OECD's Director for Legal Affairs set the stage by pointing out the challenges facing law enforcement agencies in anticorruption work. "The level of investigation, of prosecution, of cooperation, is stronger than ever. The paradox is that the general perception is that the bribery and corruption industry is not in decline," **Bonucci** said. "Building trust, promoting integrity, ending impunity are indeed three main challenges that we are all facing today."



Patricia Moreira of Transparency International noted that civil society is working under difficult conditions, and organizations’ interventions depend on the social and political environment of the country in which they are working. She said there were three potential roles for civil society organizations in the law enforcement arena: helping with the detection and investigation of corruption, promoting public trust, and advocating for reforms that make government more transparent.

“Very frequently what we find is that civil society plays this role of a bridge between the citizens or the whistleblowers and the law enforcement agencies,” she said.





Villa Itälä of OLAF noted that much of the proceeds of corruption get stashed in off-shore accounts. He said national authorities alone are handicapped, but OLAF, taking a pan-European perspective, has the ability to coordinate experts, use forensic tools, and solve complex challenges in transnational corruption cases.

Drago Kos explained how the OECD’s Working Group on Bribery encourages its member countries to be vigilant about corruption. He said it monitors policies and actions by countries and brings together law enforcement agencies to discuss issues they are having.

“We can see that the level of cooperation is increasing, really, in the last years,” he said.

Deborah Wetzel, who leads the World Bank’s work on governance, discussed the “demand side” of corruption—governments and civil servants. She explained how the World Bank supports government institutions, works to improve public accountability, and tries to improve the norms and standards that discourage corruption. She pointed out that the issue of trust is fundamental to the ability of governments to work well.

“What we see is that as corruption occurs, it’s really corrosive of trust and it is corrosive for the whole relationship between the citizens and the state,” she said. “And you, all of you sitting in the audience, are the people who are the keepers of trust.”



Questions from the audience touched on the challenges of new technology such as cryptocurrency and artificial intelligence in the fight against corruption, whether ending corruption is a question of skills or political will, and how the anticorruption community can deploy itself as an effective force as opposed to developing into an “industry.”

Dave Fielder, of the World Bank’s Integrity Vice Presidency, agreed that emerging technology poses challenges to investigators. He said the World Bank has investigated two cases in which bribes were paid with cryptocurrency. He said another technological innovation he has seen increasing among criminals is the use of anonymized text messages, instead of traditional email, to communicate. Fortunately, “there’s no honor among thieves,” he said. “So one of the recipients of those text messages will keep a snapshot or something like that, that they will later share with us.”





Itälä, responding to the question about the community’s effectiveness, noted that often cooperation is celebrated in public before it is tested. He said it is important to make sure that it is effective in real cases, when legal obstacles can delay action. “It’s a mindset—can we trust?” he said. “I really want to see that this cooperation happens in practice, not only in the documents.”

A full replay of the session is available here: <http://live.worldbank.org/International-Corruption-Hunters-Alliance-Coalitions-Against-Corruption>

SESSION SUMMARY: JULIA OLIVER

State Capture

SESSION MODERATOR



FRANCESCA RECANATINI
LEAD PUBLIC SECTOR SPECIALIST,
THE WORLD BANK

SPEAKERS



DAVID BASILE
DIRECTOR GENERAL,
UNITÉ DE LUTTE CONTRE LA CORRUPTION (ULCC), HAITI



MARK PYMAN
FOUNDER,
CURBINGCORRUPTION.COM



IVÁN VELÁSQUEZ
COMMISSIONER OF THE INTERNATIONAL COMMISSION
AGAINST IMPUNITY IN GUATEMALA (CICIG)



Moderator **Francesca Recanatini** asked panelists to draw on their own experiences to show how state capture manifests itself and to describe the biggest challenges or pushbacks. She asked them to consider whether state capture is always systemic or endemic.

David Basile referred to concrete cases following Haiti’s recent hurricane, after which reconstruction projects attracted significant donor funds. He referred to a 2013 law which reformed the financing of political parties, stipulating (Art. 44) that only financing from sources not linked to illegal activities such as drugs or arms trafficking could be used. A list of financial sources must be reported to the country’s Electoral Commission, which requires that all political parties’ accounts be audited. **Basile** particularly noted Art. 31 which referred to a “moral clause” for political candidates.

Mark Pyman of CurbingCorruption.com, somewhat in contrast to Basile, suggested that the level of state capture can differ within various state capacities—sector by sector. As an example, he cited the Anticorruption Commission in Afghanistan and sectors in that country involved in electricity, health and defense. He spoke of the existence of strong patronage



networks, including in the police force, that seemed to have completely “outwitted” the international community.

He spoke of the health sector in Greece, which had been beset by corruption and in which doctors controlled the financing from companies selling medical equipment. In contrast, he cited a very different experience in Ukraine some years ago which had made the health sector’s procurement system independent of doctors’ decisions.

Ivan Velásquez of CICIG spoke of “competition among state captures.” He noted that in the case of Guatemala, state capture was evident in how different entities were controlling, or competing to control, the state. The international community, through the United Nations, is supporting efforts by the Attorney General’s Office (AGO) to address the grand scale of corruption, given that elements of state capture can be seen in every sector.

Velásquez said that in 2014-15 all Guatemala’s state institutions had been co-opted by military or business interests at the level of each sector agency. He described how each agency head was chosen by a political party and then this ‘capture’ penetrated throughout all levels of the institutions. The Supreme Court which comprises 13 justices, had been divided up among the



country's two biggest political parties. **Velásquez** explained that by working with the Attorney General's Office it was possible to detect how each ministry or state agency was linked to external captors and was controlled by them—to the point that they were “at their service”.

Panelists addressed policies, actions or measures to break up these networks. They agreed that one of the priorities was to train as many actors as possible, both private and public, in anticorruption or risk-mitigation to address the many vulnerabilities to corruption.

Pyman and **Velásquez** agreed that monitoring and anticorruption commissions or hybrid institutions, such as international and national entities working together, could offer additional options for countries with systemic state capture.

The panelists agreed it was important to increase civil society's participation in the state's decision-making processes and find ways to transform the power of the general public to essentially change the state. In this sense, journalists and the media were seen as transforming agents, although the speakers noted the importance of ownership of the media as a looming issue. In other words, owners of media outlets may sometimes be captors of the state, while journalists themselves are seeking to change that.



The panelists also said they saw State Owned Enterprises (SOEs) as a vehicle for state capture, recognizing that from country to country ownership laws differ in their treatment of individuals and institutions.

Panelists agreed that structural reforms were needed to address state capture but that this could only be accomplished through the work of reform-minded individuals. **Velásquez** referred to his commission in Guatemala (CICIG) as having a “finite” mandate and said its success would be assessed by what changes it was able to achieve in the state. Like other panelists, he ended on an optimistic note—as long as populations still believe in the rule of law and that we can fight corruption, we must join together to address the many aspects of state capture.

SESSION ORGANIZER: FRANCESCA RECANATINI

SESSION SUMMARY: LISA BHANSALI

The Role of Forensic and Investigative Accounting in Investigations

SESSION MODERATOR



MERLY KHOUW
LEAD INVESTIGATOR,
INT, WORLD BANK GROUP

SPEAKERS



GIANPIERO ANTONAZZO
REGIONAL TEAM LEADER, EUROPE & CENTRAL ASIA,
INT, WORLD BANK GROUP



MARY K. BUTLER
CHIEF, INTERNATIONAL UNIT, MONEY LAUNDERING & ASSET RECOVERY,
UNITED STATES DEPARTMENT OF JUSTICE



PAUL LUCAS
DIRECTOR, AUDIT AND INVESTIGATIONS,
UNITED NATIONS OFFICE FOR PROJECT SERVICES (UNOPS)



DAVID WOLFE
TEAM LEADER, PROACTIVE INVESTIGATIONS,
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In fraud and corruption cases, whether administrative or criminal, financial investigations are critically important for identifying witnesses and other evidence. Witnesses can help establish who is the beneficial owner of corruptly-obtained assets. These might include agents, bankers, sales people, real estate brokers and other intermediaries who may have dealt directly with the corrupt official or their family members, or people who can be identified as a corrupt official's representatives.

David Wolfe of the Global Fund described the differences between a “forensic audit” and a regular audit. A regular audit is typically a financial statement audit, but may also include





compliance, environmental, expense report of internal audit. Essentially, the auditor is comparing one thing to another, setting it against some standard of measurement. For example, when auditing a financial statement, the auditor will compare the financial statement itself with the applicable rules and regulations. Unlike a regular audit, a “forensic audit” has no generally accepted definition, set of standards, or guidelines.

In a forensic audit, it can be difficult to find something with which to compare, **Wolfe** said. For example, we could compare the execution of a loan agreement or a contract in accordance with the actual terms of the contract, with a view to detecting wrongdoing, but the forensic auditor may go one step further and try to ascertain whether the documentation presented for review was genuine.

A forensic audit is the collection, preservation, analysis and presentation of evidence in the form of transaction and other historical records with a view to reconstructing transactions and events in order to substantiate a sanctionable practice (in an administrative procedure) or the crime (in the case of a criminal prosecution). Preservation of evidence is very important, as it is needed to justify the standard for a criminal prosecution (beyond any reasonable doubt) or an administrative procedure (more likely than not).

In many cases forensic audits are key to the investigation, **Wolfe** said. For example, if a beneficiary is given a boat as a bribe or kickback, the expenses associated with that need to be paid by the bribe-recipient. Therefore, following the financial trace associated with those expenses may lead to the bribe-recipient. For example, the forensic auditor could find that the purchase of fuel for a boat-bribe is made from a particular location every weekend, which happens to be near a lake where that boat is used and refueled and, maybe, that is near where the bribe-recipient also owns a vacation home. A good forensic auditor needs to be inquisitive and possess an investigative mindset. Corruption always has a source and a beneficiary, but also a mechanism for the funds to be transferred from one to the other. For example, typically in any project, utility bills are paid to get the project running, with normal practice being that the head office transfers money to the implementation unit for the explicit purpose of paying the bills. But, for example, if an additional 8% overhead fee is being paid to the implementation unit it raises questions, as operating expenses are already covered. The forensic auditor should ask why the extra 8% was paid and follow the money. Analytical tools at our disposal can help find ledgers or files with black bookkeeping, but then it is up to the human to pursue those leads further, perhaps to go to the bank to find out the identity of the “runner” who actually encashed the money.

Wolfe said evidence that is improperly collected may represent a challenge in proving the case. Having a forensic accountant on the team is important to ensure evidence is properly collected.

He said a forensic investigator is not the same as an accountant, although accountancy is at the basis of a forensic investigator’s background. For example, price inflation may be hard for an accountant to detect, as it may be due to bribes embedded in the price of the contract. In the case of too much gross margin, there may have been product substitution. A forensic investigator, after accessing records, might examine suppliers, markups, other services used, and people paid, to establish the basis of any irregularities.

Gianpiero Antonazzo of the World Bank Group’s Integrity Vice Presidency elaborated on differences between an annual audit and forensic audit. A typical project’s annual audit is a standard audit, the scope of which is to assess whether the project is being implemented according to the rules (for example a Loan Agreement). It may contain findings, but those findings are generally to the benefit of the same institution being audited, in order to eliminate identified flaws and improve processes overall. A forensic audit is a more in-depth exercise focusing on research of evidence that substantiates a sanctionable practice. For example, in cases of corruption a forensic audit would help to establish which payments the contractor has made that may constitute bribe payments. Through other investigative steps, such as interviews, information collected through an audit may be corroborated and turned into evidence of corrupt payments.



More and more often, when practitioners do not have compulsory powers to conduct audits (as law enforcement agencies), the subjects of an audit may choose not to cooperate and thus can impede the audit, **Antonazzo** said. Of course, this type of conduct carries its own sanctionable weight but, at the end of the day, it may be more convenient being sanctioned for “Obstruction” than for “Corruption.” In fact, potential subjects may accept an accusation of obstruction as a strategy to obtain a lower sanction, rather than facing the risk of a higher sanction for a more serious sanctionable practice.

Paul Lucas of UNOPS said that in a corruption investigation, a multi-disciplinary team is key (forensic, legal, investigator, technical expert). To generalize, auditors tend to base their work on audit programs, while investigators operate with a deeper but narrower focus. The forensic investigator is a niche profession that is not necessarily a natural extension of an auditor or an investigator. Prospective forensic investigators need to develop their sense of curiosity for complicated matters and be persistent, with a willingness to take risks in pursuing leads that may not necessarily pan out.

He noted that UNOPS operates primarily in conflict zones (including the Democratic Republic of Congo, Syria and Somalia), which requires an innovative approach when looking into corruption. Analytics are necessary when it is difficult to go into the field to investigate.

For example, data showing unusual patterns of transactions, (for example round dollar amounts or repetitions of figures) will justify the case for a deeper investigation.

In UNOPS' view, **Lucas** explained, the most effective approach is through continuous analytics, which analyzes patterns of transactions as they develop over time. In static analytics each extraction of data is looked at independently from the rest of the work. The problem with static data analytics is that by the time simple extraction and analysis of data is completed and sent to the investigator, the data has already been updated. In the case of continuous analytics, the process never stops, with all data linked, analyzed together, and constantly updated. However, it is not humanly possible to analyze all documents produced in the current business environment, thus the need for analytical tools. Transactions are traced ("Rules Tests") then matched against the procurement process.

Machine-learning, or AI (artificial intelligence), learns that process and links it with all the available information, including information from public databases. Technology is used to do mass contract reviews, hence the need for investigators to have a background or capability in computer science. **Lucas** stressed however that human input would always be needed to undertake investigative work on data obtained, as well as for additional analysis of information such as false positives or information overload. He noted that the choice between static and more expensive continuous analytics is resource-driven.

Mary Butler, from the U.S. Justice Department, discussed how to incorporate evidence from forensic accounting into a case. In the United States, under the Foreign Corrupt Practices Act (FCPA) legislation, there exists a culture of self-reporting due to the potential of liability, and federal investigators rely on the representations made by self-reporting companies. This mainly focuses on the bribe payer. On the bribe-receipt side, she said U.S. investigators sometimes benefit from cooperation provided by companies being prosecuted, as bribe payers know how payments were made. Financial investigations follow the leads provided by such information. Having a direct participant or eyewitness in a bribery scheme usually requires financial evidence to corroborate the witnesses' statements and credibility. Moreover, "following the money" can lead to the real beneficial owners. For example, in the case of expensive items (for example, a yacht or a charter plane) bank records leading to the bankers





may lead to other people who can be interviewed (by finding out who pays the crew; where did they go; when, who, what was on board, etc.).

Butler said the United States has had some success with Unexplained Income Analysis, which involves investigating instances of disproportion between the official income of a person and their lifestyle. For example, in considering allegations of bribes, you could compare how subjects pay their bills before and after receipt of the alleged bribes. Prior to receiving bribes, records may show bills being paid out of a person's (relatively modest) salary, but once they start receiving cash bribes, there is no longer a bank record of bills being paid. This is usually evidence of another source of income.

Under the U.S. legal system, she said, it is not always possible to prosecute foreign public officials as there is limited ability to try people *in absentia*. Therefore, the U.S. relies on non-conviction-based forfeiture.

This powerful tool, recommended by the Financial Action Task Force (FATF), is a judicial proceeding filed in civil courts, with the defendant being the asset (a yacht, a building, etc.), not the person. The purpose of the process is to prove that the asset was purchased with illegal money, which is usually proven through a financial investigation.

Butler said data mining enables searches of all publicly available information (online press, public databases, non-governmental organizations, for example) including looking for anomalies and information on cases being investigated. There is a variety of analytical software being used, such as software capable of highlighting all the ISP locations from where electronic banking is performed which is then matched up to travel records. A different software then adapts this data for presentation in a clear and concise way so that it can be better understood in court, before a judge and jury. The software itself has limitations (other than cost) in that it can only bring the investigation to a particular point, after which it's up to the investigator to go through the information in a traditional "old school" investigative manner.

SESSION ORGANIZER: RYNA FERLATTE

SESSION SUMMARY: GIANPIERO ANTONAZZO

High-Profile Investigations— Acting When the Time is Right: Lessons from Latin America

SESSION MODERATOR



MAGDALENA ZOLD
SENIOR INVESTIGATOR,
INT, WORLD BANK GROUP

SPEAKERS



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EMILIA NAVAS
ATTORNEY GENERAL,
COSTA RICA



NELSON SHACK
COMPTROLLER GENERAL,
PERU



LUANA VARGAS MACEDO
FEDERAL PROSECUTOR,
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High-profile investigations involving corruption appear to have multiplied in recent years in Latin American countries. They are evolving in a context in which civil society is increasingly demanding an end to impunity, not only for crime but for all types of corruption. These circumstances present opportunities, but also present challenges to those conducting the investigations.

The panel highlighted lessons learned through the panelists' experiences conducting high-level investigations in their home countries. The discussion focused on the importance of using as many tools as possible within criminal, civil and administrative laws and controls





as well as the need to safeguard investigations from interference that could damage their credibility or their outcome. Each panelist was asked to select a lesson, or a series of lessons, from their experience.

The Comptroller General of Peru, **Nelson Shack**, noted the need for a multidisciplinary approach to high-level investigations as well as proper procedures to foster inter-agency cooperation. For example, the Peruvian Comptroller's Office has created a new product, named the "control folder", where officials collect source information that could be of interest to prosecutors investigating a matter and which they share as information becomes available. In this way, prosecutors receive information promptly as the Peruvian Comptroller's Office carries out a given audit.

In Peru, high-profile investigations involving large infrastructure contracts where corruption has played a role point to the need to strengthen preventive actions. Such actions not only help mitigate risks, but also promote early detection of corruption. Having identified this need, the Peruvian Comptroller General's Office expects to undertake significant reforms during the next three years. One such reform, which is already being implemented, is the use of "concurrent audits". Concurrent audits consist of reviews of ongoing processes held for the award of large infrastructure projects as well as of the contract execution phase. The concurrent audits not only focus on the actions of public officials but also assess the actions

of contractors and suppliers, flagging risks of actions that could be detrimental to the state's interest. While neither the public officials nor the contractors are obliged to abide by the advice stemming from the concurrent audit, the advice puts them on notice of risks, increasing their administrative, civil, or even criminal, liability.

Luana Vargas Macedo, Brazil's Public Prosecutor, presented lessons learned through the high-level investigation known as "LavaJato" (Operation CarWash). She presented a summary of the investigation, which has 49 phases, some of which extended across 14 Latin American Countries and in which more than 230 individuals have been convicted.

In terms of lessons learned, she highlighted the importance of a 2013 legislative reform which facilitated the use of plea agreements with individuals in exchange for information. **Vargas** also highlighted the intense use of international cooperation, most of which consisted of direct collaboration between prosecutorial offices in which the request for assistance was not mediated through the executive branch. She explained how the functional independence and autonomy of Brazilian prosecutors and judges as well as intense inter-agency collaboration were key factors in achieving results.

Luana Vargas Macedo also identified some of the challenges Operation CarWash now faces. For instance, she raised concern that Brazil's Supreme Court is reviewing its jurisprudence making it difficult to use evidence obtained through plea-bargains, which allowed for such a large scale and successful investigation. She also noted that Congress is considering pieces of legislation that could limit the investigation.

Marta Herrera, Head of the Anticorruption Unit at the Chilean Attorney General's Office, noted the lack of investigative tools such as whistleblower protection and plea bargain regulation in her country. She explained how specialized anticorruption prosecutors present their cases to judges that are not specialized in anticorruption, which is especially important for analyzing evidence in high-level corruption cases. **Herrera** said that her office has proposed a piece of legislation to promote greater specialization in anticorruption, better cooperation and integration of prosecutorial and judicial agencies.





Herrera said that while Chile has a good rating on the corruption perception index, various high-level investigations ongoing since 2015 have uncovered the link between corruption and illegal campaign financing. Some laws, such as the Corporate Criminal Liability Act, were hardly being applied until these high-level investigations took place. These prosecutions did not render the convictions that civil society expected, but demonstrated the need for legislation reform, setting the stage for the reform of campaign financing regulations. The high-level prosecutions also served the purpose of promoting additional packages of legislation, which include adoption of more severe penalties for corruption-related crimes, as well as the adoption of new crimes recognized in international conventions against corruption.

Emilia Navas, the Attorney General of Costa Rica, told how a series of scandals involving high-level officials in the country led to the retirement of the former Attorney General, undermining the civil society's trust in the Attorney General's Office. The Costa Rican civil society became involved, closely monitoring the selection of the new Attorney General. Upon being appointed to the post, **Navas** set out to restore the civil society's trust in the office and safeguard it from corruption. She converted the appointment of many acting prosecutors into permanent appointments, adopted a performance evaluation system, and strengthened selection processes for appointment of new prosecutors. **Navas** highlighted the importance of safeguarding the credibility of investigative agencies and explained that she did so by enhancing the accountability of all prosecutors in her office, adopting stricter ethical regulations and shifting prosecutorial resources to areas more prone to corruption. While some reforms are still ongoing, she explained that the Attorney General's Office is regaining its credibility. She also explained that through the process the Costa Rican civil society was educated about the function of the Attorney General's Office and now has the necessary tools to hold it accountable for its work.

SESSION ORGANIZERS: LISA BHANSALI, MAGDALENA ZOLD

SESSION SUMMARY: MAGDALENA ZOLD

International Asset Recovery: Challenges and Practical Solutions

SESSION MODERATOR



EMILE VAN DER DOES DE WILLEBOIS
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SPEAKERS



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MOHAMAD ZAMRI B. ZAINUL ABIDIN
DIRECTOR, ANTI-MONEY LAUNDERING AND FORFEITURE OF PROPERTY,
MALAYSIAAN ANTICORRUPTION COMMISSION (MACC)

Panel members from a requesting jurisdiction (Malaysia) and from requested jurisdictions (US and UK) and a private sector actor (Kroll, UK) discussed ways to overcome the challenges in international asset recovery.

Challenges

A country affected by corruption faces challenges gathering intelligence and identifying, freezing, seizing and recovering assets. Given the complex networks that corrupt people rely on to perpetrate bribery and embezzle state funds, much information has to be gathered from outside the country.





A prevalent tactic employed by the politically powerful in some places is to take full control of financial institutions and have them issue fraudulent loans to a network of connected parties and move funds across borders over many different accounts. The proceeds of the fraud are dissipated to multiple jurisdictions. The amount of money flowing through these structures appears to be increasing. The fraudsters are often sophisticated enough to outmatch the efforts of law enforcement and the judicial capacity in the affected jurisdictions. This is exacerbated by a lack of internal and international cooperation.

Many politically exposed people have access to an army of lawyers, bankers and other financial advisers and use all legal remedies to fight against enforcement actions. Whether using criminal procedure, civil asset forfeiture, or enforcing foreign confiscation orders, any trial takes a long time.

Mutual Legal Assistance (MLA) requests asking states to take investigative measures or provide evidence are often sent without sufficient preparation and lack substantiating evidence, leading to a breakdown in trust between the parties. Sometimes the lack of evidence is because of laws and regulations that prevent the sharing of relevant information. Political interference may also play a part.



International corruption tends to be a low priority for national law-enforcement authorities, which focus on solving robberies and violent crimes with a domestic impact.

In many jurisdictions, when establishing whether something is the proceeds of crime it is necessary to connect the asset with an identified crime, for example the payment of a particular bribe or the embezzlement of identified government money. Making the link is frequently difficult, for example with a long-established kleptocrat.

To disrupt corrupt networks, action must be taken against the so-called enablers—professionals who provide the services that enable the stealing and subsequent investment of stolen assets. One problem for many enforcement agencies is how to deal with information that may be subject to legal professional privilege.

Overcoming Challenges

In recent years international bodies, including financial institutions, appear to be increasing pressure on countries to implement and enforce anticorruption measures. The United States is putting on pressure, which is key given its jurisdiction over dollar denominated



transactions. The U.S. Department of Justice Kleptocracy Unit plays a vital role in investigating and returning the proceeds of foreign bribery and embezzlement.

Having a high-level domestic task force under a politically powerful chairman helps ensure good domestic cooperation. In Malaysia, a special task force was set up for the 1Malaysia Development Berhad (1MDB) case, including the anticorruption agency, the Financial Intelligence Unit (FIU), the police and the Attorney General's office. In some cases, it is possible to set up an international task force. This was done for the 1MDB investigations, involving the United States, Switzerland, Malaysia and Singapore. The resulting swift transmission of intelligence across borders allows for a more focused and expeditious MLA process. In Malaysia, the task force approach facilitated the freezing of significant amounts of funds and hundreds of accounts. There is also a need to more effectively analyse financial data from banks at a local jurisdictional level and share that analysis between jurisdictions.

In the case of Malaysia, authorities were able to rely on information contained in civil claims filed in the United States. One of the most efficient ways to confiscate assets in the United States is by executing a foreign confiscation order. It is important that countries always use police-to-police and counterpart-to-counterpart channels to gather information before seeking to file a mutual legal assistance request.



It can save a lot of time for a requesting country if the requested state initiates its own proceedings. It is also advisable to send a draft mutual legal assistance request before submitting a definitive version to avoid complications or non-observation of procedures that can delay a response.

One way the international community helps requesting countries track down the proceeds of corruption is through the International Anti-Corruption Coordination Centre (IACCC) based in London. At present Singapore, the United States, Canada, Australia, New Zealand, the UK, and Interpol are partners in the IACCC, with Germany and Switzerland having observer status. Each agency of the participating jurisdictions has direct access to their own data for the purposes of a request filed with the IACCC. Through close cooperation with the Egmont Group, the IACCC can alert the global network of FIUs to the cases it is supporting. It can also enlist the cooperation of domestic authorities. IACCC also assists countries in converting intelligence into evidence which can be used in a court of law.

The avenues for taking action and the ways in which information is obtained are growing. For example, regulatory cooperation between financial authorities has been instrumental in ensuring a cross-border exchange of information in some high-profile cases in eastern Europe. Countries are starting to make increased use of civil recovery strategies.

Effective international asset recovery requires both a civil and criminal law approach. When going after enablers, civil law may provide a useful tool. It can save time. It can be expensive, but when taking on a powerful person with a sophisticated army of advisers, investment is needed to win the battle. For big cases where the claiming state has no funds, it can consider bringing in a litigation funder who will front the payment of lawyers in return for a percentage of any funds recovered.

Proceeding against the asset, where a boat or a bank account or any other tainted property is the defendant, can be a way of at least ensuring that the profit of crime is confiscated. The advantage is that the criminal origin of the asset needs to be established at a much lower level of proof than in a criminal conviction. The government also gets to conduct discovery of the person claiming an interest in the property.

A new instrument to go after corruption is the “unexplained wealth order” (UWO) recently introduced in the UK. This is not an order to freeze or confiscate unexplained wealth, but an investigative tool to compel a politically exposed person from outside the European economic area to disclose the origin of a certain asset. Only certain investigative agencies can apply for such an order. Giving false information in response to a UWO order can lead to imprisonment.

SESSION ORGANIZER & SUMMARY: EMILE VAN DER DOES DE WILLEBOIS

Settlements: Tips and Tricks, Lessons from the Field

SESSION MODERATOR



LAURA PROFETA

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SPEAKERS



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MICHELLE RATPAN

SENIOR LITIGATION SPECIALIST,
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MATTHEW C. STEPHENSON

ELI GOLDSTON PROFESSOR OF LAW,
HARVARD LAW SCHOOL, USA



Walter Mäder, Switzerland’s Chief Federal Prosecutor for International Corruption, described his country’s use of accelerated proceedings for corruption cases—for both companies and individuals—and the conditions under which such proceedings may be used. He noted the advantages of such proceedings, as well as criticisms that have been made concerning their use. He also said that the Swiss are looking at using deferred prosecution agreements (DPAs), as the United States does. In that regard, he noted that the Swiss want to encourage self-disclosure and seek to align processes across jurisdictions.



Charles Duchaine of the Agence Française Anticorruption (AFA) noted the impact of the landmark 2017 Loi Sapin II in France, which established a system to develop preventative tools for both public and local administrations and companies. He set out the key aspects of Sapin II and AFA’s mission. Notably, he stated that compliance can be used as a screen to hide things and there is a need to ensure that there actually is real compliance, which is part of AFA’s mandate. He explained the role of the French National Financial Prosecutor’s Office regarding corruption cases, as well as related processes. He also referred to the need for a “universal language,” meaning that there is a need for transnational efforts to achieve compatible laws so that companies would have some assurance that they will not be sanctioned multiple times for same thing. He cited the recent Societe Generale case as a good example of such transnational cooperation.



INT's **Michelle Ratpan** described the 2006 Uniform Framework among multilateral development banks (MDBs) and noted certain commonalities, as well as differences, among MDB sanctions case resolution mechanisms. She noted that, in the World Bank Group context, settlements are offered in all cases and that advantages to settling a case include (i) cost saving; (ii) resource saving; and (iii) certainty. She also stressed the deterrent effect.

Harvard professor **Matthew Stephenson** contrasted trials and settlement processes, opening by describing a trial as where we go to find out truth versus a settlement as disreputable evasion. He provocatively described trial as war (costly, risky, want to avoid, means negotiations failed), noting settlement as the preferred approach, with trial as a threat if negotiations fail. He also emphasized effective enforcement and deterrence.





There seemed to be consensus among the panelists as to the effectiveness of settlement mechanisms, but with the caveat (per **Matthew Stephenson**) that it is also critical to have a credible litigation threat if negotiations break down. There was debate/disagreement among panelists in response to an audience question as to whether commonly agreed standards would be good.

The panel closed with the moderator's look forward to a future panel updating settlement effectiveness and prevention impact.

SESSION ORGANIZERS: MERLY KHOUW, MICHELLE RATPAN

SESSION SUMMARY: LISA MILLER

Corruption, Fragility and Security: Preventing Harm and Managing Risks

SESSION MODERATOR



LISA L. BHANSALI
ADVISOR, INTEGRITY & OPERATIONS,
INT, WORLD BANK GROUP

SPEAKERS



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LEAD INTEGRITY OFFICER,
MIGA, WORLD BANK GROUP



RENAUD SELIGMAN
GLOBAL GOVERNANCE PRACTICE,
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JOHN SOPKO
SPECIAL INSPECTOR GENERAL FOR
AFGHANISTAN RECONSTRUCTION (SIGAR)



BRIGITTE STROBEL-SHAW
CHIEF, CORRUPTION & ECONOMICS CRIME BRANCH,
UNITED NATIONS OFFICE ON DRUGS & CRIME (UNODC)

Development agencies financing projects in fragile and “high-risk” environments shared their experiences and reflections on this panel which brought together a variety of agency representatives, including two from the World Bank Group (WBG) with different mandates — the International Bank for Reconstruction and Development (IBRD) and the Multilateral Investment Guarantee Agency (MIGA). Also adding to the discussion of lessons learned and risk analysis was the U.S. Special Inspector General for Afghanistan Reconstruction (SIGAR) and the United Nations Office on Drugs and Crime (UNODC).





Each donor recognized that their agency is prepared to accept the risks involved in fragile environments, one of the most significant being their vulnerability to corruption. Special Inspector General **John Sopko**, discussing the Afghanistan program, spoke frankly of the challenges of dealing with time pressures in trying to “fix it and fix it fast.” He lamented that some donors’ own branches of government think throwing money at a problem will bring about faster results, when in fact, such action heightens risks. SIGAR, which is not itself a donor but oversees donor assistance, has both criminal and audit jurisdictions, but it may lose the power to act in those jurisdictions once funds are channeled from the donor’s treasury to the recipient/fragile government’s treasury, making it impossible to work independently to follow the flow of funds. As a result, in Afghanistan, as in other fragile environments, collaboration is key. SIGAR has begun



to work more closely with local authorities and has published several Lessons Learned reports (publicly available on the SIGAR website), which are implemented as soon as mistakes are identified. A more strategic approach is now being taken to monitoring and overseeing reconstruction projects, including technical assistance and on-site advice.

Echoing SIGAR’s approach, MIGA’s representative **Judith Pearce**, spoke about “learning by doing” and mentioned the use of Integrity Framework Assessments, which are a response to initial experiences and learning. As a small DC-based organization, MIGA has progressively introduced these assessments which are more often than not carried out in the field, a somewhat unusual process for an “insurance agency” but critical, given the need to reduce and manage political risks. As a result, underwriters and environmental and social specialists are more actively engaged in field assignments to assess and mitigate corruption and security risks.

Renaud Seligmann, a Practice Manager in the Governance Global Practice of the WBG who is an auditing specialist, referred to the “negative cocktail” that often exists in fragile countries which have an abundance of natural resources. As an example of how the revenue side of corruption is affected, he spoke of Tunisia and the Ben Ali family during the time of the dictatorship. He particularly mentioned access to special licensing regimes and import

authorizations, which among other “benefits” accounted for a disproportionate GDP and profits from the economy. For the expenditure side, Seligmann referred to the Ebola crisis that struck Guinea, Liberia and Sierra Leone. To address a desperate situation with health workers not showing up for work for lack of payment (and requiring back pay), like Afghanistan with a need to “fix it quickly”, the World Bank working with UN agencies used technology, biometric data and mobile payments to get health workers back to the treatment centers. These tools helped address risks such as theft, loss, and “ghost” workers.

Like **Sopko, Seligmann** also acknowledged the challenges facing a government’s capacity to absorb the “glut” of emergency funding that pours in during a crisis, and the capacity for oversight. When an earthquake or tsunami occurs, for example, civil works contracts need to be quickly approved and implemented. Here again, as in Afghanistan, it is vital to have collaboration with other development agencies (particularly the UN) and with the local security sector. In some instances where there is a kind of “disappearance of the state” (e.g. Yemen, Central African Republic, or Somalia), independent service agencies (ISAs) and Third-Party monitoring through NGOs becomes an important substitute to deliver services or carry out reconstruction efforts.

As a way to address many of the risks discussed by colleagues from SIGAR, MIGA and the WBG, **Brigitte Strobel-Shaw** of UNODC cited the legal framework offered by the UN Convention on Transnational Organized Crime and the UN Convention against Corruption (UNCAC). In her work providing technical assistance, she found that countries often need to adopt new laws to bring their domestic regimes into compliance with their international obligations. Using the example of Malaysia, **Strobel-Shaw** discussed a “peer review” process in which two countries review how a third country implements UNCAC.

The panelists all recognized that corruption is too frequently a root cause of fragility and that it presents a higher risk once a country falls into a “fragile state”. The international community uses several tools, some of which are mentioned above, and others when working through Multi-Donor Trust Funds (MDTFs). These MDTFs include multiple donor contributions with varying oversight responsibilities, creating additional challenges for donors to ensure funds are appropriately spent and monitored.

SESSION ORGANIZER: FRANCESCA RECANATINI

SESSION SUMMARY: LISA BHANSALI

Encouraging Reporting through Whistleblower Systems and Protections

SESSION MODERATOR



FRANCE CHAIN

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SPEAKERS



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Whistleblowers and informants are crucial to the successful investigation and prosecution of bribery and corruption. They can be the first to alert the authorities to potential misconduct and provide relevant evidence and important roadmaps to an illegal scheme.

However, it is very important to regulate the reporting of criminal and illegal activity particularly through confidential whistleblower systems. These will include legislated whistleblower regulations and programs, whistleblower financial rewards, and different types of reporting platforms.





In 2017 OECD published a document on “The Detection of Foreign Bribery” and, in 2016, a guide on “Committing to Effective Whistleblower Protection”. In these studies it was found that only 2% of transnational bribery cases were detected by whistleblowers. However 66% of the cases are self-reported by companies that detect corruption themselves through, for example, enhanced due diligence because of upcoming Merging and Acquisition (M&A) or similar operations. Of these “self-reported cases” 20% are also detected through whistleblowers’ reports, indicating an increasing trend of this means of reporting. More whistleblower protection legislation has passed since 2000 than in the last quarter of the past century. Yet more than half of OECD member countries do not have legislation on whistleblower protection.

Agus Rahardjo of the Indonesian Anticorruption Agency (KPK) said about 80% of all cases investigated by the KPK originated through whistleblowers. Since 2002 KPK has investigated 800 cases. After the deaths of a number of whistleblowers in the 1990s, Indonesia has taken steps to protect their safety by introducing new regulations, and the creation in 2006 of a special agency on whistleblowers and victim’s protection (RPSKA). RPSKA can relocate whistleblowers, compensate them, and help protect their identity. Despite compensation for information given by whistleblowers having been available since 2000, such compensation has rarely been sought.

Most whistleblowers who reported to the KPK were anonymous. In some cases, crime suspects decide to collaborate with justice to get a reduced sentence at trial.

However, KPK is only able to fully investigate a small number of the cases received, and the agency has been criticized for not completely protecting whistleblowers.

Rüdiger Reiff of Germany's Central Anticorruption Division said that prosecutors are very much dependent on whistleblowers information because, typically, corruption cases are difficult to investigate without insider information. The so-called *Diesel scandal* in Germany's auto industry showed how essential such information is for unearthing big cases. However, **Reiff** said in Germany law enforcement operators are not satisfied with the quality of the reporting from whistleblowers. Normally prosecutors receive undocumented and unsupported allegations of wrongdoing against the whistleblowers themselves for small cases.

Reiff said Germany does not have legislation on whistleblower protection, probably because under the Nazis "denunciation" was used to persecute opponents and in the German culture there is now an aversion to tools like whistleblowing as it is seen as breach of trust. Citing the case of two employees of a pharmaceutical firm who reported malpractices in their company and subsequently lost their jobs, he said robust legislation against whistleblower retaliation is very much needed.

In Germany there are several platforms to receive reports from whistleblowers. In Berlin in 2011 the so-called Trusted Counselor was established, involving a licensed lawyer who is obliged to preserve the anonymity of the whistleblower and can ensure confidentiality to the whole reporting process. The Trusted Counselor can seek further information from the whistleblower and triage the information received.

In 2015 an encrypted web-based system was established that allows law enforcement operators and whistleblowers to communicate confidentially. It works 24/7 and in multiple languages. So far only small corruption cases have been reported through this system.

Edie Josué Cux García said Transparency International (TI) of Guatemala gets many reports from whistleblowers and conveys them to the local authorities. Although there is legislation to protect them, he said it was critical to strengthen the protection of whistleblowers, who may not trust the system.

Even in countries where a system has been established, implementation remains a challenge. Research by TI in Guatemala, Brazil and Colombia found that whistleblower protection is very weak compared to other countries. In Guatemala TI's proposed legislation to enhance protection



was not taken seriously. Historically whistleblowers have been considered traitors. They cannot be sure their complaint will be fully investigated because there is no trustworthy law enforcement system. The risk of retaliation is very high. In several cases whistleblowers have been prosecuted and sentenced because they blew the whistle against a public official.

The International Bar Association's **Kieran Pender** noted positive developments for whistleblowers. He cited the April 2017 EU decision under which member states must implement whistleblower protection laws within 2-3 years, approval of reform in Australia and the reinstatement in the United States of the Ombudsman program within the Federal Government. However, of 193 UN member states only 34 jurisdictions have something that resembles a whistleblower protection system.



Pender noted the EU directive made it clear that a whistleblower should keep the right balance between internal and external disclosure. To ensure protection, the whistleblower must follow three steps, 1. first disclose internally; 2. then disclose to the Regulators; 3. then disclose to the media. He said the Regulation has a potentially chilling effect on the reporting mechanism because it not only limits the potential for disclosure, but also gives companies a three month head start before a public scandal. It was not necessary—already 95% of whistleblowers report internally, so there was no point in cutting off protection to the remaining 5% that go directly externally.

Pender discussed ways to offset the current advantage of the employer, who has access to more money and lawyers, over the employee, who faces huge financial costs. In some cases, reversal of the burden of proof may work, in other cases the whistleblower's financial burden can be addressed, perhaps by covering their legal costs should a trial go against them. How do we translate whistleblower rights into practice?

There is a tendency for whistleblowers to seek protection abroad. U.S. legislation allows for foreign whistleblowers to log in their complaints. An Australian whistleblower received \$7 million as reward for his reporting. However, it would be preferable if whistleblowers could trust the authorities of their own country and **Pender** sees this as a distortion created by the

uneven development of legislation. He mentioned the EU decision, which obliges companies with more than 50 employees to implement a reporting mechanism. This would benefit not only the EU, but possibly also companies that trade with the EU, a kind of ripple effect already seen with the U.S. FCPA law.

Pender said 95% of whistleblowers have a negative experience with reporting, believing they have been let down by the authorities, resulting in a loss of trust in the system.

In many cases whistleblowers are partially responsible for the conduct they are reporting. Some people believe “guilty” whistleblowers should not be protected. Others are more flexible and think that the whistleblowers, even though they are jointly responsible, are not at the core of the scheme, and it is more important to punish the “bad guys.”

SESSION ORGANIZER & SUMMARY: GIANPIERO ANTONAZZO

Leveraging Tax Investigations to Fight Corruption

SESSION MODERATOR



ANDERS AGERSKOV

LEAD PUBLIC SECTOR SPECIALIST,
GLOBAL GOVERNANCE PRACTICE, WORLD BANK GROUP

SPEAKERS



MORTEN BØHM

HEAD OF PROJECTS, ANTI-FRAUD,
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NICOLA BONUCCI

DIRECTOR FOR LEGAL AFFAIRS,
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BERT LANGERAK

DEPUTY DIRECTOR, FISCAL INFORMATION AND INVESTIGATION SERVICE (FIOD),
NETHERLANDS



JOVILE KORUGYENDO MUNGYEREZA

MANAGER, FINANCIAL CRIMES DIVISION,
UGANDA REVENUE AUTHORITY

Nicola Bonucci of the OECD noted that the link between corruption and tax evasion was explicitly recognized in the OECD Anti-Bribery Convention signed in 1997. The convention bans bribery of foreign officials and prohibits its tax deductibility. A World Bank study of 25,000 firms in 57 countries found that firms that pay more bribes also evade more taxes. On the enforcement side, powers that have been developed to combat money laundering and tax evasion can also be leveraged in the pursuit of other crimes, including corruption. The investigations into FIFA and Petrobras represent two such examples.

Cooperation between anticorruption agencies and tax authorities requires a solid framework. In some countries, an adequate framework may not be in place, for example due to the recent creation of an anticorruption agency. A review of the legal framework, including how data





can be shared while ensuring confidentiality, can identify gaps. **Bonucci** identified four key preconditions for effective cooperation:

- A legal framework that provides for the sharing of information between bodies with a mandate to investigate tax crimes and corruption;
- Mechanisms in place to facilitate cooperation, e.g., Memoranda of Understanding and Multi-Agency Task Force;
- Political leadership that understands the objectives of cooperation as well as the constraints;
- Tax investigators trained to identify red flags of corruption.

In the Netherlands, the Financial Information and Investigation Service (FIOD) is responsible for investigating tax crimes, money laundering, and corruption. FIOD is located in the tax administration and counts some 1,400 staff, half of which are dedicated to non-tax related crimes. **Bert Langerak**, Deputy Director (FIOD), explained that in countries where corruption is part of the system, compliance is low, which calls for social solutions and coalitions. A central part of FIOD's strategy is to shift from handling incidents to creating an impact on society. This requires cooperation with other partners within and outside government, including international partners.

Three factors help explain the Netherlands' success in fighting tax evasion and corruption. First, **Langerak** explained that FIOD in 2013 had obtained additional funding of €30 million and an extended mandate to combat corruption and money laundering in exchange for a commitment to recoup €100 million in criminal assets. This allowed FIOD to hire an additional 400 investigators. Second, FIOD's legal framework allows for the effective sharing of information within the tax administration and with the police domestically and abroad. This has made FIOD an attractive partner. Third, strong collaboration with the prosecutor's office has been furthered by its specialization, which means that counterparts have the needed financial literacy and knowledge of the crimes.

Morten Bøhm of the Danish Tax Agency explained that the administration is responsible for civil investigation into tax evasion and money laundering (except narcotics and terrorism) as well as the Paradise and Panama Papers. The enforcement arm counts some 200 investigators, prosecutors, and data scientists, and has an annual budget of about \$15 million. This compares to about \$250 million recovered yearly. The government has built a substantial data analytics capability aided by growing legal powers to collect international transactions data and the hiring of data scientists.

The collection of data on all transactions in and out of Denmark has been a game changer. The data spans the last nine years and includes some 65 million records. The data has helped the Tax Administration identify suspicious financial flows, such as the fact that certain population groups are moving more money out of Denmark than they are earning. The size of some money flows has prompted the administration to raise security concerns with the national intelligence agency.



The Danish administration is eschewing efforts to audit taxpayers three years back in favor of real-time auditing. The aim is to prevent and disrupt financial crimes. A critical tool in the early detection is also entity resolution software. The administration has developed a fuzzy matching algorithm that can match entities in unstructured data sets with the taxpayer database. The program gives the taxpayer a score to help prioritize audits. The administration uses web crawlers to examine social media for discussions about tax evasion, names are then matched with the taxpayer database, and the relevant taxpayers receive a mark. It is important that these tools also be used for detecting corruption and other financial crimes.

Jovile Mungyereza of the Uganda Revenue Authority (URA) identified the following steps to promote effective cooperation among national enforcement authorities, other government bodies, and international partners:

- Obtain access to data sets in other government agencies.
- Coordinate closely with the company registry and register firms as legal entities and for tax purposes at the same time, thus avoiding different government entities being provided different information.
- Share forensic facilities. The police and enforcement authorities bring computers and cell phones to the forensic lab in the URA for analysis. URA officials can become witnesses in the court cases.
- Use secondments to expand powers. The URA has a full-time police officer on detachment who brings the power to arrest and prepare charge sheets. The URA has also seconded three staff to the newly established Financial Intelligence Authority to help analyze suspicious transactions.
- A framework has been established for the Tax Investigation Department to address the many cases involving perpetrators that operate across the East African Community.
- Pursue civil action when there is insufficient evidence of a criminal act. A recent case involving embezzlement of \$44 million from the public pension fund initially suffered a setback in local courts due to insufficient evidence of criminal conduct. However, the URA was able to prove—on a balance of probabilities—that a tax offense had occurred, and commence collection.

The J5, EAC, and World Bank are looking into establishing an International Fusion Center to help developing countries build tax investigation capacity. The World Bank has partnered with the J5, Joint Chiefs of Global Tax Enforcement (representing Australia, Canada, the Netherlands, the United Kingdom, and the United States) and the government of Denmark to pilot the center in partnership with and in support of the East African Community.

SESSION ORGANIZER & SUMMARY: ANDERS AGERSKOV

Data & Privacy: Emerging Tools, Practices, and Regulations

SESSION MODERATOR



CERI LAWLEY
IFC CHIEF COMPLIANCE OFFICER,
WORLD BANK GROUP

SPEAKERS



JUDY KRIEG
PARTNER AND SOLICITOR,
FIELDFISHER, UK



SABRINA MANCINI
POLICY COORDINATOR, FRAUD INVESTIGATIONS DIVISION,
EUROPEAN INVESTMENT BANK (EIB)



JOEL SALAS SUÁREZ
COMMISSIONER, NATIONAL INSTITUTE FOR TRANSPARENCY,
ACCESS TO INFORMATION AND PERSONAL DATA PROTECTION (INAI), MEXICO



BOGDAN STAN
PRESIDENT,
NATIONAL INTEGRITY AGENCY (NIA), ROMANIA

Advances in digital technology and the growing integration and use of data in day-to-day personal and professional activities underscore the importance of data protection and privacy in jurisdictions around the world. Regulators in the European Union, Latin America, Asia and elsewhere are addressing a variety of regulatory and social challenges that have emerged with the advent of social media, big data, and the digital economy. At the same time, global initiatives to combat corruption, money laundering and terrorist financing are demanding ever-increasing transparency in relation to customers, customers' customers and ultimate beneficial owners. There are few areas where the tension between privacy and transparency is more apparent than in the international fight against corruption.





There are some 90 data protection and privacy regimes around the world, some very recent and some having significant cross-border impact. The most notable is the European General Data Protection Regulation (GDPR) which took effect in May 2018. In many respects it has become the gold standard for data protection. But there is remarkable consistency across the major initiatives: They cover a broad spectrum of personal data. They include *principles* such as lawfulness, fairness and transparency of collection, minimizing data collected, purpose limitation, storage limitation, and when and how personal data can be transferred. And they include *individual rights* such as the right to information notices, the right to access data, the right to correct errors in the data, the right to be forgotten, and the right to object.

At the same time there is growing public interest in transparency in the global marketplace. This

is reflected in: scandals associated with hidden assets; a push against obscure corporate structures; the Panama Papers and Paradise Papers news stories; proposals to introduce public beneficial ownership registries; a burgeoning of international tax initiatives to remove treaty abuse and harmful tax practices; the ‘blacklisting’ of jurisdictions; exchanges of tax information between authorities; and increased cooperation between investigation and enforcement authorities fighting to stem corruption and illicit financial flows.

The panel discussion was divided into two parts—in the first part, **Sabrina Mancini** discussed challenges faced by the European Investment Bank (EIB) in its investigation and enforcement activities, and **Judy Krieg** provided the corporate perspective on GDPR and on self-disclosure. In the second part, **Bogdan Stan** and **Joel Salas Suárez** provided insights on the public servant disclosure initiatives in Romania and Mexico respectively.

Mancini focused on EIB’s comprehensive investigations and sanctions program to manage allegations of fraud and corruption in EIB-financed investments. She discussed the new guidance from the European Data Protection Supervisor which is intended to provide some resolution to the inherent conflict between conducting legitimate fraud and corruption investigations while respecting data subjects’ right to privacy. She raised the challenges to data sharing between multilateral development banks and development institutions when co-financing investments, the need for carefully crafted MOUs with enforcement agencies explicitly navigating this tension, and the challenges posed by a data subject’s right to access their file.

She said that EIB, as a European institution and body, is subject to a privacy regulation that mirrors GDPR and has been in place for some two decades. To deal with it, EIB has strong and comprehensive data protection procedures directly applicable to the activities of its investigative office. Based on EIB’s experience, she outlined three particular challenges when putting in place data protection procedures for an investigative office: first, the significant resources needed to be responsive to individual access rights; second, the need to collaborate with other investigative bodies and national enforcement agencies and to be able to easily transfer and share information on cases of common interest; and third, the principle of “data minimization”, making sure that the data collected is proportional and adequate for the purposes of the investigation.

Of particular note were her insights into data subjects being able to come forward and access their files. In some instances, this can jeopardize the safety of witnesses or the confidentiality of whistleblowers, and can even compromise the success of an investigation, so there is a need to restrict access in many cases. For each access request, her Division conducts a case by case analysis. These analyses are burdensome in terms of time and resources; they have to be in writing, they need to specify a legal basis for declining access; any individual denied access

has a right of recourse; and the EIB complaints authority has an obligation to review and if appropriate overturn the decision of the investigative division.

Krieg of Fieldfisher discussed the issue from the other side of the fence. Among other things, she advises corporates on how to be responsive to investigations as well as enforcement and settlement agreements while complying with national privacy restrictions. She discussed the tensions between corporates wishing to self-report with a view to receiving more lenient treatment from enforcement agencies, while at the same time being required by law to protect data subjects' personal information; the emerging challenges in the sphere of the audit; and the difficulties of developing meaningful redress mechanisms when data subjects ask to see the information that the corporate holds about them, particularly in an information era when the corporate quite typically holds huge volumes of electronic data often on different systems.

Krieg noted that GDPR has built on the previous European data privacy laws: It has extraterritorial application, imposing far-reaching requirements not just on companies located within the EU but also on (i) companies located outside the EU that sell goods or services into the EU, and (ii) multinationals doing business within the EU. She said GDPR is sometimes known in the corporate world as “the European Revenge for the U.S. Foreign Corrupt Practices Act”.

She focused her comments not on situations in which an EU-based company is *required* to provide information to law enforcement agencies, but where it has decided to investigate on its own, wants to self-disclose, or wants to be responsive to the investigative arms of international organizations. She observed that GDPR's focus on individual rights, transparency and accountability, which one thinks of as good things in the fight against corruption, can present challenges for even the most well-intended company. She also discussed the way in which GDPR builds out the role of the company's data protection officer. She observed that while laudable for other reasons, GDPR is making life more difficult for companies, even those companies that want to help out in the fight against corruption.

Krieg offered particularly interesting insights into data processing. In order to be able to properly process data, the company has to fit within one of the sections of Article 6 of GDPR, which lists the 'legitimate bases' for processing data. None fits very neatly into a situation where a company is conducting its own internal investigation or wants to self-disclose to an enforcement authority. For example, 'consent' is a legitimate basis for data processing. However, GDPR and the EDPB, its predecessor, doesn't like using consent in the context of an employer/employee relationship because of the imbalance of power; it is difficult for consent to be freely given by the employee; and if consent is used as the legitimate basis for processing, the person has to be able to withdraw consent at any time and for any reason, and once somebody withdraws consent, the company has to stop processing their data. This



is not always straightforward or easy to do. ‘Public interest’ is another legitimate basis for processing under Article 6, but the scope of the public interest basis is not clearly spelled out. The ‘legitimate interest’ analysis is a balancing test—the company’s interest against the individual’s interest. If there is a data protection officer to protect that balance, there is no clear or predictable outcome for the company.

Moving to public disclosure regimes, **Bogdan Stan** of Romania’s National Integrity Agency discussed his country’s experience following the introduction of its asset disclosure regulation for public officials. This covers all public officials from judges, locally elected civil servants, through to the prime minister. **Stan** addressed the resource challenges of processing a huge volume of filings.

He said the NIA was established 2007 when Romania joined the EU. The first integrity laws were enacted in 1996, with legislation on the submission of declaration of assets coming into effect in 1996 and on conflict of interest in 2003. Until 2007 there was no independent oversight body to verify disclosures, to make them available to the public, and to investigate integrity incidents, conflicts of interest and indicia of unjustified wealth. Currently the Agency holds over 7 million declarations of assets which are published on its website, though the regulation has been scaled back recently to reduce the pool of public officials required to

file. At any one time there can be up to 4,000 open investigations, and in electoral years, the number of declarations and investigations escalates dramatically.

Also worth noting is that there is specific legislation obliging the Agency to inform the person that he or she is being investigated. If this is not done, the investigation findings need to be withdrawn. Since the GDPR came into effect, individuals have been seeking assurance that their personal data will not be misused, and that personal data will be erased after specified periods of time. In fact, the Agency has received thousands of requests from individuals who want their rights to be respected, and this has resulted in a lot of personal information being taken down from the Agency's website. This is against a backdrop of criminal penalties for false declarations, as well as for not declaring an asset, and there is a substantial number of related prosecutions.

Discussing similar recent reforms in Mexico, **Joel Salas Suarez** said individuals have two fundamental rights in this area: the right to access information, and the right to the protection of personal data. However, following a number of notable political and corporate scandals in the Latin American region (Lava Jato etc.), there has been a significant push to legislate against structural and endemic corruption. So at the present time the push toward public interest outweighs the individual rights.

Salas Suarez noted that legislation will take effect in May 2019 following the election of the new president. Addressing the scourge of corruption was a key part of the new president's political platform. As in Romania, public officials will need to disclose their wealth (including tax returns) to determine whether wealth is proportionate to their publicly-disclosed salaries; and conflicts of interest will also need to be disclosed (including public procurement contracts between government and private sector). He also noted that the general prosecutor dealing with corruption has not yet been appointed, and judges need to be appointed urgently to implement the new reforms. Also of note is that legislation is being enacted to introduce an open-bidding process of public procurement contracts—with the help of the World Bank.

The main conclusion of the session was that addressing the tension between the public interest and rights to privacy is new and evolving. There are emerging norms on both the public and private side and it is a fast-evolving landscape. The tension between the push to transparency and the growing importance of data protection are cross-cutting themes cannot be ignored as 'coalitions against corruption' are formed and maintained in the coming years.

SESSION ORGANIZERS: CERI LAWLEY, ARJUN PONNAMBALAM, LAURA POP, GUADALUPE TOSCANO

SESSION SUMMARY: CERI LAWLEY

Anticorruption Sanctions and Enforcement Across Jurisdictions

SESSION MODERATOR



JAMIESON SMITH
CHIEF SUSPENSION AND DEBARMENT OFFICER,
THE WORLD BANK

SPEAKERS



GIULIANA DUNHAM IRVING
EXECUTIVE SECRETARY TO THE
WORLD BANK GROUP SANCTIONS BOARD



PAUL KEARNEY
CHIEF COUNSEL AND ENFORCEMENT OFFICER,
EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)



MARK WOLF
CHAIR,
INTEGRITY INITIATIVES INTERNATIONAL

The panel discussed the adjudicators' experience with the increasingly transnational nature of fraud of corruption and focused on two recent approaches to addressing this phenomenon—the development of international administrative sanctions systems by multilateral development banks (MDBs) and the recent proposal for the creation of an International Anticorruption Court.

The panel first discussed the evolution of the sanctions systems of five major MDBs, highlighting a series of similarities and a few differences. The World Bank Group (WBG), European Bank for Reconstruction and Development (EBRD), African Development Bank (AfDB), Asian Development Bank (ADB) and Inter-American Development Bank (IDB) all have the goal of protecting institutional funds and all have evolved over time into a similar two-tier adjudicative structure. For example, at the WBG sanctions cases are submitted to





the Office of Suspension and Debarment as the first tier of the adjudicative system and any appeals are submitted to the Sanctions Board as the second tier.

The MDBs' sanctions systems investigate and sanction companies and individuals that have engaged in specific misconduct while benefitting from MDB funds. The five common areas of sanctionable misconduct are fraud, corruption, collusion, coercion and obstruction. The MDBs' sanctions systems are each made up of administrative proceedings that have a "more likely than not" evidentiary standard and that lead to purely administrative remedies. The MDBs have a similar panoply of applicable sanctions consisting of debarment, debarment with conditional release, non-conditional debarment, letters of reprimand and restitution (the AfDB may also apply fines, as opposed to the other MDBs). The most commonly applied sanction is debarment with conditional release, which means that the sanctioned entity becomes ineligible to benefit from MDB funding for a period of time and it becomes re-eligible only after it has complied with a defined set of conditions which usually involve the adoption of an effective integrity compliance program. Such sanctions are thus intended both to prevent future misconduct and to rehabilitate the sanctioned entities. Restitution, however, has been rarely applied by the MDBs; for example, the WBG has applied restitution in only 12 out of a total of almost 500 sanctions cases, partly because of difficulties with calculating an appropriate amount. The AfDB has also imposed fines in a number of cases.



The 2010 Agreement on Mutual Enforcement of Debarment Decisions allows these five MDBs to mutually enforce debarment actions with respect to corruption, fraud, coercion and collusion (the definitions of these four areas of misconduct were formally harmonized in 2006). If a MDB applies a debarment for a period of over one year, the other MDBs can cross-debar the sanctioned entity. This has led to hundreds of cross-debarments over the past seven years. Cross-debarment has provided an important tool in the fight against corruption, strengthening each institution's decisions, while also sending a strong regional and global message that misconduct will not be tolerated.

The panel further discussed the increasing use of settlements to resolve sanctions matters within the MDBs' sanctions systems and noted that the WBG has pursued the highest number of settlements (in FY18, the WBG entered into 22 settlements out of 50 sanctions cases). The panelists highlighted that the MDBs have different approaches and experiences with settlements, partly due to cultural attitudes across jurisdictions. In terms of transparency, for each settlement, the WBG issues a press release describing the misconduct and the imposed sanction. The WBG also refers many of its investigative outcomes to national authorities, which sometimes results in further investigation and proceedings at the national level. This is particularly important in the context of the WBG's and other MDBs' limited ability to sanction public officials who might demand bribes.

The panel discussed Judge **Mark Wolf's** proposal for the establishment of an International Anti-Corruption Court (IACC), comparable yet separate from the existing International Criminal Court. The proposed IACC would operate based on a system of complementarity and would prosecute bribe takers in corruption schemes around the world. **Wolf** emphasized that the current impunity of corrupt officials is due to the lack of enforcement of existing anticorruption laws (due to the unwillingness or inability of national authorities), which highlights the need for an international mechanism capable of enforcing anticorruption laws against kleptocrats. So far, advocacy for the IACC has enhanced international understanding of the importance of enforcement of the laws required by the United Nations Convention Against Corruption. **Wolf** discussed other innovations, such as the creation of the International Anti-Corruption Coordination Centre in the UK, where countries cooperatively trace the international flow of the proceeds of corruption and have a unique potential to conduct coordinated investigations throughout the world.

Regarding the political feasibility of the IACC, **Wolf** provided examples of the willingness of countries to receive international assistance in the administration of justice, which *could be considered a* step toward the establishment of the IACC. Other recent international anticorruption efforts have resulted in the establishment of the Special Anti-Corruption Court in Ukraine. While political forces resisted the creation of the Ukrainian court, international actors (among others, the International Monetary Fund, World Bank, European Union and Integrity Initiatives International) have advanced the court's establishment by creating a panel of international experts to vet the candidates for judgeship on the court.

Finally, the panel highlighted the importance of the independence of decision-makers—which is essential to the effectiveness of the MDBs' sanctions systems and would be a crucial advantage of an IACC, compared with the often politically partial law enforcement authorities around the world.

SESSION ORGANIZER: JAMIESON SMITH

SESSION SUMMARY: ALEXANDRA MANEA

Cross Border Investigations: Lessons from the Field

SESSION MODERATOR



DANIËLLE GOUDRIAAN
NATIONAL COORDINATING PROSECUTOR,
NETHERLANDS

SPEAKERS



MERLY KHOUW
LEAD INVESTIGATOR, INT,
WORLD BANK GROUP



NOORDIN HAJI
DIRECTOR OF PUBLIC PROSECUTIONS,
KENYA



WALTER MÄDER
CHIEF FEDERAL PROSECUTOR FOR INTERNATIONAL CORRUPTION,
OFFICE OF THE ATTORNEY GENERAL, SWITZERLAND



DAVID WILLIAMS
PRINCIPAL INVESTIGATOR,
INDEPENDENT COMMISSION AGAINST CORRUPTION (ICAC), HONG KONG

This session explored best practices in cross-border investigations, lessons learned on how investigative agencies share information internationally and examples of how good coordination has contributed to improved case settlements. Moderated by **Daniëlle Goudriaan** (Public Prosecution Office, the Netherlands), the session brought together experts on cross-border investigations from diverse contexts, namely Kenya, Hong Kong, Switzerland, and the World Bank Group's Integrity Vice Presidency (INT).





INT's **Merly Khouw** underscored the cross-border nature of World Bank investigations and highlighted key challenges such as finding the right partners in countries, understanding legal frameworks and sharing evidence. She suggested that referral systems could overcome problems where parties cannot exchange information directly and noted that the World Bank encourages companies to self-disclose to authorities.

Noordin Haji, Kenya's Director of Public Prosecutions, stressed that success depends on uniform evidential thresholds and the capacity of individual country teams to meet requests. He also saw the ratification and domestication of international conventions and adoption of bilateral agreement as facilitating cross-border investigations. The capacity of domestic agencies to act on investigations also varies according to legislative history. At times, bearing the cost of the investigation domestically can be prohibitive.



Walter Mäder of the Swiss Attorney General’s Office agreed that different legal systems presented a key challenge, and that different mindsets could be a problem. He reminded the audience that evidence must be gathered in a form that can be used in court—and that admissibility can vary between countries. He noted that personal trust was crucial and should be formed through early face-to-face meetings.

David Williams of ICAC agreed with other panelists that trust between counterparties is all-important, and that face-to-face meetings were preferable to alternative communication forms. He stressed that his work was highly dependent on public reports of corruption and that local understanding could make a key difference. His main principles of cross-border investigation centered on preparation, patience and persistence.





The audience asked questions around minimum thresholds for sharing information across boundaries, incentives for cooperation, shell companies, and mutual legal assistance treaties. Panelists stressed the different motivations between domestic actors (where authorities must demonstrate the efficacy of investigations) and international audiences.

The main conclusion of the session was that cross-border investigations require a high degree of trust between agencies, and that this must be built early on and in person. Meetings like ICHA are seen as crucial avenues for facilitating introductions, with other relevant networks mentioned as EUROJUST, OECD, ICNC, INTERPOL, ISMALAD, UNCAC, and ECAN.

SESSION ORGANIZER: PAUL HAYNES

SESSION SUMMARY: MICHELLE RATPAN

Enhancing the Impact of Integrity Compliance and Collective Action

SESSION MODERATOR



ALEXANDRA WRAGE
PRESIDENT AND FOUNDER,
TRACE

SPEAKERS



MIKAEL KARLSSON
CHIEF ETHICS & COMPLIANCE OFFICER,
TELIA COMPANY AB, SWEDEN



NABIL MELLAH
GENERAL MANAGER,
MERINAL, ALGERIA



LISA MILLER
INTEGRITY COMPLIANCE OFFICER,
INT, WORLD BANK GROUP

Lisa Miller, INT's Compliance Officer (ICO), discussed the challenges for small and medium enterprises (SME) in implementing integrity compliance programs. Each company must implement a program which is consistent with the Integrity Compliance Guidelines. She said considerations for SMEs include understanding the compliance program, establishing how to implement it and the available resources, including the number of employees who can take on the task full time.

The ICO must look at the Integrity Compliance Guidelines and see how the company can apply them. For large multinationals, a 24/7 hotline in various languages and an email link is possible. For small companies with fewer than 20 people, it is more difficult to have an anonymous system. In this circumstance a box is often put in the office for complaints as a way to keep the process confidential.





In the World Bank system, **Miller** said, the company has already been sanctioned, so there is motivation within the company to accept and implement the compliance system. With state owned entities, the structure is the primary consideration. There may already be reporting mechanisms in place. It is important to recognize existing systems and structures and utilize them. It is critical to make sure that whoever is in charge of compliance has the authority to act.

Michael Karlsson, who oversees ethics and compliance at the Swedish telecommunications company Telia, said morale had been low since a major bribery scandal involving its work in Uzbekistan between 2007 and 2010, but it was improving following a decision to divest from regions where there were integrity problems. The scandal, after which Telia agreed to pay \$966 million to settle U.S. and European bribery charges, prompted the company to take a series of actions internally (a Swedish law firm conducted an internal investigation, the CEO stepped down and there was a change in the managing board) and externally (prosecutors of different countries).

Karlsson said that, looking back, the problem was that the company had not done due diligence on its business counterparts, and there needed to be greater cultural awareness and training.



Asked about the remedial action needed in response to such a crisis, he said the message regarding ethics and compliance must come from the very top. The Board members understand the types of things that are important to report. He said Telia now employed many due diligence experts. The program has expanded toward their vendors, who now dismiss partners who do not have good compliance programs. The next challenge is developing a program that reaches the customers. Telia has launched e-learning training that must be completed by employees at all levels of the company.

Karlsson said there may be a sectoral issue as far as ethical compliance is concerned, since in the financial sector, where he previously worked, there were more compliance mechanisms. When it comes to telecom, it is an area less explored, he said.

The WB's **Miller** said it was important to look at what remedial action a company took in response to misconduct. Have they minimized the risk of reoccurrence? Were administrative and disciplinary actions taken? For small companies this is a challenge, she said. There may be existing family relationships involved. It may be difficult to remove a family member from the company who was involved in misconduct. An alternative is to remove the person from a decision-making role and/or undergo training on business ethics.



Nabil Mellah, General Manager for the pharma company Merinal in Algeria with an annual turnover of approximately \$150 million, outlined some of the challenges for a smaller company to adhere to its public commitment to clean business practices. While large multinationals have access to the support of embassies, smaller pharma companies do not. The greatest challenge is related to the fact that regulatory support in Algeria is very weak and all decisions and regulatory reforms take time.

Merinal works exclusively with public banks. None of its investments depend 100% on public tenders. **Mellah** noted that in Algeria there are multinational companies signing partnerships with non-compliant companies. His company is trying to keep itself out of situations that will leave it open to non-compliance despite the high-pressure environment of multinational corporations. It is possible to work in

Algeria being compliant, but companies must not think about short-term gains. The problem is that in Algeria, politics has the power, while in other countries economics is the driving force, he said.

There are many Algerian companies that care about integrity and want to break the cycle of corruption. Unfortunately, Algeria has a low ranking on the World Bank's *Doing Business* scale. His company is not the only compliant company in Algeria, particularly in the pharma sector. Pharma has very little informal business, 100% of products are invoiced. The downside is that the company cannot bid for all of the tenders on the market whereas other non-compliant companies can. In a small company it is possible that a compliance program may exist but there isn't anyone implementing it, he said.

Miller said the ICO spends a lot of time asking if the program is meaningful in terms of implementation. This is measured by:

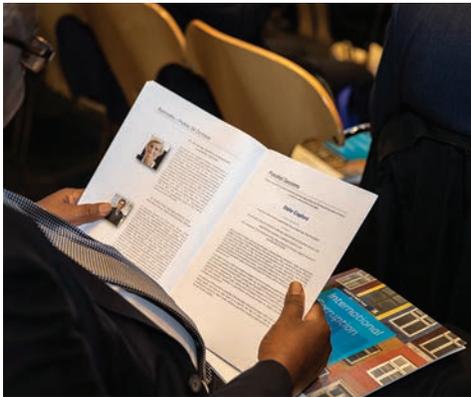
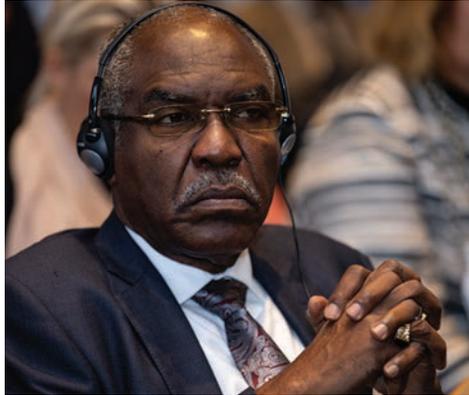
- Statistics: ICO will ask how many employees and business partners have been run through the due diligence process and has the company rejected business partners as a result of the due diligence review.
- Management: ICO looks at the message from the management. Is there messaging coming from the top that demonstrates the company's commitment?
- Reporting: Does the reporting mechanism have any actual reports of misconduct? The ICO wants to hear about reports of misconduct and what the company has done about the reports.
- Lessons Learned: how is the company reviewing its program and what is it doing to learn from the mistakes? Is there training? Revisions of existing programs to meet the needs?

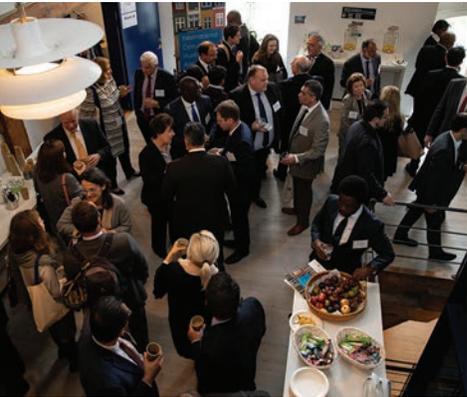
Miller said the most important thing to make compliance a priority was collective action. ICO is increasingly hosting workshops and participating in them with other NGOs and MDBs and business associations. There are also various mentorship programs that the WB is involved in.

She said that there were unexpected victories. By the time the companies come to the ICO they have already gone through the sanctions process and, in some instances, are in a cooperative frame of mind, **Miller** added.

SESSION ORGANIZER AND SUMMARY: LISA MILLER







Thank you to:

Anders Agerskov, Gianpiero Antonazzo, Charlotte Balling, Lisa Bhansali, Cordelia Chesnutt, Ryna Ferlatte, Paul Haynes, Alexandra Habershon, Jonas Nyrop Henriques, Eloise Keary, Merly Khouw, Lorna Jacobson, Stefan Koeberle, Ceri Lawley, Alexandra Manea, Uma Mia Lund, Lisa Miller, Julia Oliver, Leah Pettersson, Wendy Plumley, Arjun Ponnambalam, Laura Pop, Michelle Porvaznik, Tonny Rasmussen, Michelle Ratpan, Francesca Recanatini, Bjarke Skødt, Jamieson Smith, Louise Kronborg Sørensen, David Storey, Maria Guadalupe Toscano Nicolas, Emile van der Does de Willebois, Deborah Wright-Mosby, Magdalena Zold

