

CORRUPTION AS MALADMINISTRATION

The role of the Ombudsman

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Corruption is

- A *pattern of resource allocation* that is not tolerated in modern societies
- A type of *criminal behaviour*
- A unique and highly complex thing; an [informal] *institution* rather than a condition of society or a temper or tendency of any class of individuals” (Mc Govern 1907)

It has to do with

- (a) the distinction between public and private (resources, power etc.),
- (b) democracy and the rule of law, as the operating principles of modern states, as well as
- (c) the acknowledgment and respect of citizen's rights.

- The problem of corruption relates to the quality of political institutions.
- Affects all of the modern political values.
- As a practice, it involves *concentrated benefits* (on parties involved in corruption) while *costs* are *diffuse* (whole society).

- “The use of public office for private gain”.
(World Bank)
- Faces of corruption
 - Nepotism, patronage, clientelism,
 - Theft of public goods,
 - Acceptance, solicitation or extortion of bribes,
 - Political corruption
 - ...

Criteria of distinction

- Who benefits from the abuse of public resources: Political officials, civil servants?
- Does it involve obtaining a legal or an illegal act?
- Is it at the level of every day services or does it concern strong financial interests?
 - ...
 - > Plus “context parameters”

- Answers guide possible remedies
- Consequences on the efficiency of the fight against them

- When corruption involves civil servants,
- not elected
- no political responsibility
- no democratic accountability
- BUT: Ethics of professionalism

Corruption in public service delivery in everyday life

- Usual areas: construction services, transports (driving licenses), tax services, public procurement and public works

Important problems:

- Internal disciplinary procedures
- Administrative deficiencies

Organizational aspects of corruption

- High discretion
- Low monitoring and control
- High stakes for citizens

Prevention of corrupt practices

- Quality of legislation
 - Clarity and transparency of procedures and
 - Internal monitoring and accountability mechanisms
- Internal strategies against corruption

Policy implementation conditions

- Sufficient arsenal of laws and regulations
- Limits of repressive laws during the implementation phase,
 - when political commitment and public attention are low,
 - tolerance of illegal practices, peer solidarity and lack of transparency may take over.
- Capacity building not only in fighting disclosed cases but for prevention – determent

Encourage institutional operation

- “Need” to corrupt because it is not possible to otherwise obtain a legal act / decision
- Corruption in view of obtaining illegal decisions, favors, privileges or other kind of irregular treatment

interaction between the two

At this point, corruption and mal-administration meet.

- Corruption as *a form of* maladministration
and
- Corruption as a *result of* maladministration
- Corruption results in a lack of predictability,
then the latter also encourages the former.

This is where the Ombudsman has a key role to play.

Why?

- The institution of the Ombudsman is not strictly a control and sanction mechanism.
 - It is proactive with a focus on prevention
 - Represents and implements accountability.
- **Because:** To counter corruption practices, it is important to keep public bureaucracies predictable in their operation.

The Ombudsman

- As an early warning system against corruptive practices.
- Detects windows of opportunity for corruption, such as complicated procedures, unclear legal framework, misuse of discretionary power.
- Systematic effort to eliminate niches where corruption may find a favorable ground.

Though its mission is much wider,

- A mechanism for the defence of citizen's rights. Instead of standing alone, individual citizens find an ally to turn to.
- An alternative to blackmailing by corrupt public employees and an institutional way for citizens to react to corruption.

Exercising pressure

- On the services and
- On the political leadership
 - to face the problem
- Holding them accountable and restricting their room for maneuver.
- A watchdog to monitor problems and action taken