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Donors and "zero tolerance for corruption"
From principle to practice

Bilateral donors often use "zero tolerance for corruption policies" to signal a tough stance against corruption, but staff often experience a lack of clarity on how to apply these policies in practice. Some multilateral development banks have had long experience in applying zero tolerance to corruption policies. Their experience indicates that the strict application of these policies—that is, the full investigation, prosecution, and sanction of all instances of corruption, no matter how minor—is usually not feasible. Zero tolerance policies should translate not to zero appetite for risk, but rather to adequate risk management processes.

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Many bilateral donors have adopted some form of "zero tolerance for corruption" policy (Box 1). While the application of these policies varies, they all stem from the acknowledgement that corruption in partner countries is a reality that must be acknowledged. With corruption widely recognised as an obstacle to development, tolerance of corruption would be inconsistent with donors' mission. Zero tolerance also sends a message to domestic audiences in donor countries that misuse of development aid will not be accepted.

Interviews with staff at bilateral donor agencies, however, found that there is often a lack of clarity on what zero tolerance means in practice, as well as a lack of guidance on how to apply these policies. In describing these challenges, interviewees made the following points:

- Staff lack flexibility to adequately address individual cases; instead, policies may be applied arbitrarily.
- Different donors may apply the policies differently, leading to inconsistencies and to concerns about losing influence vis-à-vis other donors.
- Policies may create disincentives to reporting among project beneficiaries, contractors, and agency staff.
- Policies may hamper the day-to-day management of development projects and jeopardise working relationships with local partners.
- Policies may impose a disproportionate burden of compliance on smaller contractors and nongovernmental organisations (NGOs), thus discouraging their participation, and debarments may reduce the pool of qualified local contractors, especially in small countries.
- Donors may lose credibility if they lack the will or capacity to investigate and prosecute all cases of corruption.
- Costs of investigating all instances of corruption may be too high – in some cases greater than the value of the contract involved.

This brief analyses the challenges faced by bilateral donors in implementing zero tolerance policies and suggests lessons learned from the approaches of several multilateral development banks.

The approach of multilateral development banks to zero tolerance

In applying zero tolerance policies, the multilateral development banks (MDBs) have faced challenges similar to those confronting bilateral donors. Over the past decade, however, the banks have designed strategies to mitigate and manage some of these challenges. This innovation is made possible in part by the unique legal environment in which the MDBs operate. While there are important differences between bilateral donors and MDBs (box 2), some of the strategies developed by the banks may also serve as examples for bilateral donors.[1]

In its 1998 Anticorruption Policy, the Asian Development Bank (ADB) affirms "the importance of a 'zero tolerance' policy when credible evidence of corruption exists among ADB staff or projects" (ADB 2010, 43).

The Inter-American Development Bank's (IDB) zero tolerance policy does not stem from an official policy document but has been clearly set forth in speeches by senior management and in the 2008 *Report Concerning the Anti-Corruption Framework of the Inter-American Development Bank* (Thornburg et al. 2008).

The World Bank does not explicitly state a zero tolerance approach in any of the official documents establishing the institution and its integrity system. Rather, the policy has been put forward in speeches by Bank presidents.[2] Zero tolerance should therefore be seen more as an inspiring principle for the Bank than as a practical guideline for its integrity and debarment offices. This may produce some uncertainty as to the meaning and function of the policy: a recent report by the World Bank's Independent Evaluation Group noted a need to "clarify the Bank's 'zero tolerance' stance on corruption."[3]

BOX 1: THE CONCEPT OF ZERO TOLERANCE

Skiba and Peterson (1999) define zero tolerance policies as those that "punish all offenses severely, no matter how minor." The concept has influenced law enforcement approaches to issues ranging from street crime to drug abuse. While initially associated mainly with policing strategies, zero tolerance has recently been used in other fields to indicate "strong measures and clear resolve" (Newburn and Jones 2007). Adopting a zero tolerance policy signals a commitment to investigate, prosecute, and punish all instances of a certain type of offence, regardless of severity. As noted by Newburn and Jones (2007), however, "it is difficult to specify a particular set of policy interventions that characterize Zero Tolerance … the term has been used primarily as a rhetorical device … to signal uncompromising and authoritative action." The criminology literature presents a mixed record of zero tolerance policies (van Rooij 2005; Mitchell 2011; McAndrews 2001). Critics argue that even when they coincide with a decline in crime, such policies lack proportionality, deprive law enforcement of flexibility, may have discriminatory effects, may weaken or violate due process, and may discourage reporting.

The following sections explore the practical implications of establishing zero tolerance for corruption policies by reviewing key aspects of the MDBs' experience with their implementation.

A practical and realistic approach

Rigid application of a zero tolerance policy against corruption, defined as full investigation, prosecution, and severe punishment of all instances of corruption, no matter how minor, is neither feasible nor desirable. Donors do not have jurisdiction or enforcement powers in the countries where they operate, and therefore their ability to detect, investigate, prosecute, and punish corruption in developing countries is very limited. Moreover, there are significant risks associated with strictly implementing such a policy, including discriminatory effects, lack of flexibility, and inability to effectively address specific or minor cases.

Some MDBs have explicitly recognised that a literal application of the zero tolerance policy is impractical and possibly counterproductive. The ADB's 1998 Anticorruption Policy, while reaffirming the importance of zero tolerance, states that

> *different types of corruption will require different responses. There is a need for careful judgment based on accurate information and the specifics of the situation. ADB's anticorruption effort will place particular emphasis upon the implementation of practical and cost-effective prevention control measures. (ADB 2010, 43)*

Similarly, the report on the IDB's anti-corruption framework says:

> *The concept of "zero tolerance" […] is noteworthy for its ambition and its compelling view of evenhanded justice. It is also unrealistic, inefficient, and frequently counterproductive. (Thornburg et al. 2008)*

Although zero tolerance policies cannot be applied strictly, this does not mean that they should be abandoned. On the contrary, the interviews indicate that there are benefits to maintaining such a policy, including establishing a deterrent effect, setting the tone from the top, and clearly communicating the institution's tough stance against corruption. In short, what is needed is a practical approach to zero tolerance. Proportionality of sanctions should be the guiding principle and should apply to donors' administrative sanctioning processes as well. A range of penalties should be defined to suit different offences and circumstances.

Triage policies

The decision to implement triage can be a step toward developing a realistic approach to zero tolerance. The MDBs recognise that zero tolerance cannot mean the full investigation and prosecution of all cases of corruption: thus there needs to be a transparent and well-designed triage process for deciding which cases will be pursued.

Triage policies are based on one or more of the following criteria: jurisdiction, materiality, credibility, verifiability, context, and cost-effectiveness.[4] The cost-effectiveness criterion does not imply that allegations should be ignored if the value of the contract involved is lower than the cost of the investigation. Rather, a contract's value should be weighed alongside other factors such as the importance of the project and sector, the gravity and impact of the case, and the likelihood that an investigation can lead to evidence sufficient to substantiate the allegation (verifiability).

Triage policies are usually implemented by centralised investigative offices to ensure transparency and consistency of criteria, as well as adequate checks and balances. Field staff must report all cases to the investigative office and are discouraged from applying triage policies themselves. While there are no comprehensive assessments of how triage policies are performing in practice, interviews conducted for this paper suggest that these policies have helped investigative offices allocate limited resources and focus their efforts.

Communication and training

The ADB and IDB have implemented online and in-person training on anti-corruption issues for their staff, and both institutions report that this has helped operational personnel handle allegations more effectively. Although zero tolerance is not usually treated as a separate topic, training can help resolve some of the dilemmas that field staff face, particularly the question of how zero tolerance policies should be interpreted and applied. Trainings can also provide staff with clear guidelines on their roles and responsibilities in detecting and reporting corruption, as well as suggestions on how to handle specific cases.

Trainings are generally followed up with efforts to effectively communicate the donor's anti-corruption activities, for example through annual reports, press releases, and other materials accessible to all stakeholders, both within and outside the institution.[5] Annual reports in particular are an effective way to clarify the organisation's stance on and handling of corruption issues.[6]

Prevention and risk management

One of the frequent arguments against zero tolerance is that, if applied literally, it could result in a donor's withdrawal from high-risk countries. This has been acknowledged both by the MDBs and by some bilateral donors. Rather than avoid risk entirely, donors should pursue strategies to manage and mitigate it. During the past few years, some MDBs have adopted strategies aimed at managing risk related to implementation of their projects, including environmental, social, and institutional risks. Although management strategies for corruption risk are not as well established as those for environmental risk, they are becoming more frequent.

Among bilateral donors, the UK Department for International Development (DFID) has established extensive procedures for identification and management of corruption risk at different levels (country, sector, programme) and in different phases of the programme cycle. Key tools such as programme portfolio analyses, fiduciary risk assessments, and business cases all require an analysis of corruption risks. Similarly, both the IDB and the World Bank have established integrity due diligence procedures to prevent and mitigate integrity risks in the operations they carry out with the private sector.

Although these procedures are not applied uniformly by all MDBs, or across all types of lending, they can help donors manage risks within reasonable boundaries and still pursue lending in contexts that are vulnerable to corruption. From this perspective, when applied *ex ante*, zero tolerance policies should translate not to zero appetite for risk but rather to adequate risk management processes.

BOX 2: DIFFERENCES BETWEEN MDBS AND BILATERAL DONORS

Lack of jurisdiction: Bilateral donors' projects are often executed by companies incorporated in the donor country, allowing the companies to be held criminally liable before that country's courts. MDB contracts and projects may be executed by companies based in any member country. MDBs have no jurisdiction in these countries, which makes investigation, prosecution, and sanctioning of corruption more difficult.

Implementation risk: Bilateral donors often play a large role in project execution, while the MDBs delegate most of the responsibility for implementation to governments in recipient countries. To some extent, these different systems produce different levels of integrity risk.

Investigative offices: In the absence of a specific national legal system to fall back on, MDBs have had to establish complex administrative frameworks that include ad hoc investigative offices and detailed debarment procedures. Bilateral donors, on the other hand, often rely on their audit offices to conduct investigations into corruption allegations.

Accountability: While taxpayers may feel that bilateral aid funds are "their money," they might not make the same connection for monies spent by MDBs, even though these funds also originate from taxpayers. Bilateral donors are thus more likely to be held to account for funds that have been lost due to fraud and corruption. They may need to communicate a tough stance on corruption to satisfy the demands of their domestic audience.

Harmonisation

Since 2006, the MDBs have cooperated under the International Financial Institutions Anti-Corruption Task Force and the Uniform Framework for Preventing and Combating Fraud and Corruption to pursue a consistent application of anti-corruption policies. Although the institutions are far from fully harmonised in this regard, the cooperation framework has led to important results. These include the approval of common definitions of prohibited practices and, recently, the Agreement for the Mutual Enforcement of Debarment Decisions (cross-debarment agreement).[7]

Voluntary disclosure and negotiated resolution agreements

As noted above, one of the risks inherent in zero tolerance policies is that they reduce the margin for flexibility and the ability to address individual cases effectively. Ultimately, the perverse effect of a strict policy may be a disincentive for small contractors and NGOs to participate in projects or to report irregularities. One way to deal with this problem is to implement a voluntary disclosure (VD) and/or a negotiated resolution (NR) scheme.

Under a VD scheme, a contractor that has discovered an irregularity in one of its projects comes forward to disclose the misconduct and receives a more lenient penalty. Penalties may include the mandatory implementation of a compliance programme and in some cases a fine and a debarment period. Under an NR scheme, the initial investigation is triggered by an allegation received directly by the investigative unit. The defendant has to cooperate fully with the investigation. Penalties are negotiated and are usually higher than in VD programmes, but still lower than under a regular debarment process.

A benefit of both programmes is that they provide more certainty for all parties regarding the outcome of the investigation and sanction process and can significantly reduce investigative costs. They may also enable the institution to obtain reliable information regarding other irregularities.

While VD and NR schemes can help mitigate certain negative effects of zero tolerance policies by making the system more flexible, they can also have undesired consequences. They can, for example, favour larger contractors, as the entity under investigation is usually required to have legal representation, the costs of which can exclude smaller companies. The negotiated resolution of cases often results in a fine or a compliance programme, which also implies costs and discourages small organisations from participating. Overall, such schemes may give the impression that larger companies can buy their way out, particularly if the terms of the negotiation are not fully transparent and made publicly available.[8] These complex interactions should be carefully weighed before a decision is taken to implement a VD or NR scheme. The World Bank is currently the only MDB that has implemented such schemes, and it has done so relatively recently.[9]

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Recommendations for donors

Zero tolerance policies signal a tough stance against corruption to stakeholders both inside and outside the institution. However, strict application of these policies—the full investigation, prosecution, and sanction of all instances of corruption, no matter how minor—is neither feasible nor desirable. This apparent contradiction between policy and practice generates challenges for the staff, grantees, contractors, and host governments involved in implementing aid activities.

Although imperfect, the approaches adopted by the MDBs offer some insight into possible ways to mitigate some of these challenges. Bilateral donors can consider the following steps:

- Establish triage policies for the handling of corruption cases, and assign responsibility for implementation of such policies to a centralised office. Ensure awareness of policies among agency staff and outside audiences.
- Establish the principle of proportionality of sanctions and align penalties to the gravity of the offence.
- Establish mandatory training for all staff on anti-corruption issues and ensure that training modules address the implementation of zero tolerance policies.
- Clearly communicate their anti-corruption policies and efforts both internally and to the general public through annual reports and other forms of communication.
- Establish integrity due diligence procedures across all their operations. Due diligence should target corruption risks, be tailored to the level of the implementing ministry or agency, and include action plans for mitigating the risks detected.
- Harmonise the framework for their anti-corruption policies, including on the definition of and approach to zero tolerance.
- Explore whether voluntary disclosure or negotiated resolution programmes would bring any benefits.

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Notes

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2. See President Zoellick's 2011 speech (http://go.worldbank.org/RMSDCT0ZR0) and President Kim's 2013 speech (http://www.worldbank.org/en/news/speech/2013/01/30/world-bank-group-president-jim-yong-kim-speech-anti-corruption-center-for-strategic-and-international-studies). Both indirectly stem from President Wolfensohn's 1996 seminal speech on the "cancer of corruption."
3. See http://ieg.assyst-uc.com/mar/world-bank-country-level-engagement-governance-and-anticorruption-1.
4. On the ADB's triage systems, see OAI (2012, 4); on the IDB, see OII (2011). The World Bank's triage policy is not currently available to the public; according to interviews conducted for this paper, a public version of the policy was under preparation at the time of writing.
5. For examples, see the websites of the ADB's Office of Anticorruption and Integrity, http://www.adb.org/site/integrity/overview; the IDB's Office of Institutional Integrity, http://www.iadb.org/en/topics/transparency/integrity-at-the-idb-group/integrity,1291.html; and the World Bank's Integrity Vice Presidency, http://go.worldbank.org/036LY1EJJ0.
6. Of course, the level of transparency on anti-corruption issues at the MDBs is not always ideal. For instance, the ADB does not publish its full debarment list, while the World Bank releases very limited information on its negotiated resolution agreements.
7. See http://lnadbg4.adb.org/oai001p.nsf/.
8. Similar concerns have arisen in reference to massive settlements that large corporations have negotiated with the US government in relation to violations of the Foreign Corrupt Practices Act and other investigations stemming from the 2008 financial crisis.
9. See http://go.worldbank.org/T3PD4EE550 on the Bank's VD programme, and Leroy and Fariello (2012) on its sanctions process.