Institution: University of Surrey

Unit of Assessment: UOA 20 Law

Title of case study: Anti-Corruption strategies and their impact

1. Summary of the impact (indicative maximum 100 words)

Corruption research in the University of Surrey, has focused on analysing the gaps in anti-corruption strategies and suggestions for improvements have impacted in two ways:

(1) a contribution to discussions at the policy-making level of international organisations (the OECD and the UN) resulting in recommendations for changes, and

(2) the transfer of the experience and expertise gained in survey methodology adopted in the Surrey 'Corruption in International Business' project to the questionnaire design and content of three projects – Bribery in the UK, National Integrity Survey and Integrity in the Defence Sector – conducted by the UK chapter of Transparency International (TI), the globally influential anti-corruption policy-influencing Civil Society Organisation.

Since surveys play a central role in informing and driving policy making to combat corruption, they need to be founded on a robust methodology.

2. Underpinning research (indicative maximum 500 words)

The Problem
Corruption, in its various guises, is a global problem that affects economic growth and therefore contributes to poverty and lack of development. According to the World Economic Forum and the World Bank the cost of corruption equals more than 5% of global GDP (US $ 2.6 trillion) with US $1 trillion paid as bribes every year. A critical understanding of the current international anti-corruption strategies is therefore essential to combating corruption effectively, thus enabling poverty reduction, one of the Millennium Development Goals.

The Research
No detailed study examining the panoply of anti-corruption strategies and their impact on the different stakeholders (companies, civil society organisations, public administration) had been undertaken till this case study. This research therefore analysed closely (1) the many regional and international anti-corruption conventions and soft law instruments, identifying the gaps in order to recommend improvements, and (2) the impact of these strategies on company attitudes, (3) the improvements to public administration systems, and (4) the emerging practices and relationships between companies and CSOs (Civil Society Organisations). Empirical surveys of companies, CSOs/NGOs (Non Governmental Organisations) were an integral part of this research. The two anti-corruption instruments that have made a huge impact globally are the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions 1997 (OECD Convention) and the United Nations Convention against Corruption 2003 (UNCAC) and these formed the backbone of the analysis. Analysis of the above instruments and others formulated, for instance, by the African Union exposed many weaknesses (e.g. lack of whistleblower protection, integrity mechanisms within public administration), vagueness of terminology (e.g. bribe *vs* facilitation payments) and failure by states to implement or enforce using ambiguous provisions (e.g. Art 5 OECD Convention). During the course of the research, the findings were fed to the international institutions that drafted these instruments.

The Surrey researchers were of the view that if a change could be instituted in the OECD's

approach to the distinction between facilitation payments and bribes it would ensure that businesses did not pass off bribes as facilitation payments and so avoid penalties. This change towards facilitation payments would reduce the incidence of corruption, the reasons being (1) the ratification of the OECD Convention by developed economies (34 member states) and emerging economies such as Brazil, South Africa and Russia; and (2) active enforcement in many countries due to the peer review mechanism it operates. By way of illustration of the effectiveness of the OECD Convention and peer review, the UK with a 3.6% share of world GDP has had 23 cases (e.g. Macmillan Publishing, Mabey Johnson) and 49 investigations since its implementation.

Change in the attitudes towards public administration by adopting mechanisms that raise the integrity of public officials is another feature that is promoted in the UNCAC and reflected in the policies adopted by donor organisations. As part of aid, states are required to improve public administration. The Surrey research found that these processes have been largely unsuccessful despite close engagement by donor agencies and substantial funding given for improvements and training. Using post-colonial literature as a backdrop, the study identified the lack of ownership of the instituted changes on the part of the donee as an explanation in the failure to combat corruption. These findings were communicated to UN organisations including UNDESA (United Nations Department for Economic and Social Affairs) (see section 4).

As stated earlier, the empirical survey which was an integral part of the research conducted, formed an important contribution to the study and provided invaluable insight and expertise to the researchers. The survey exposed a surprising lack of awareness on the part of UK companies (who were seen by the international community as major suppliers of bribes) of the anti-corruption developments at both national and international level, and a commonly held belief that corruption was not an issue in their companies. This at a time when the BAE allegations of bribery in the Saudi arms deal (al-Yamamah contract) and the subsequent investigation by the Serious Fraud Office were making headlines in the broad sheets on a daily basis. The research also exposed that the level of engagement between CSOs and the private sector was negligible which indicated that CSOs also had to make a concentrated effort in engaging with the different business sectors. (Part of the research for this case study was funded by the AHRC and was conducted by Carr (PI) and Outhwaite (PDRA) between during 2007 – 2010.)

3. References to the research (indicative maximum of six references)

1. Carr & Outhwaite 'The OECD Anti-Bribery Convention: Ten Years On' Manchester Journal of International Economic Law (2008) 5(1): 3-35.
2. Carr & Outhwaite 'Surveying Corruption in International Business' Manchester Journal of International Economic Law (2008) 5(2): 3 -70.
3. Carr 'Corruption, Legal Solutions and the Limits of Law' *International Journal of Law in Context* (2007) 3(3): 227 – 255.
4. Carr & Outhwaite 'Controlling Corruption through Corporate Social Responsibility and Corporate Governance: Theory and Practice' *The Journal of Corporate Law Studies* (2011) 11 (2): 299-341

The above were published in peer reviewed journals and were also outputs from projects funded by AHRC and the British Academy.

4. Details of the impact (indicative maximum 750 words)

The various strands of the underpinning research had an impact on a wide range of actors: the UN, the OECD and TI - UK. It not only contributed to and influenced policy and law making on the part of international organisations, but also the methodology and content of questionnaires and surveys

conducted by CSOs. The research has also been cited in various documents published by UNDESA and the United Nations Development Programme (UNDP) informing discussion in international organisations that led to policy making and recommendations (see section 5). Following is a list of the impacts achieved.

Impact on Policy

Findings of the analysis of the OECD Convention were conveyed to the OECD in the consultation document (see (a) section 5). The researchers were invited to the OECD Working Group on Bribery held in June 2008, and discussion of the consultation documents and verbal inputs in this meeting resulted in the adoption of a Recommendation (now attached to the OECD Convention) which addresses some of the gaps including the need for due diligence mechanisms to be adopted by companies. The email from the OECD states "On Thursday, 26 November,[2009] the new *Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions* was adopted by the OECD Council. …This is a major milestone in our effort to end foreign bribery and to create a stronger, fairer and cleaner world economy. This success would not have been possible without your valued input as we prepared the Recommendation …Thank you again for your invaluable assistance. This is an achievement we can all be proud of" (see (b) in section 5). All 40 countries have agreed to put in place new measures adopted in the 2009 Anti-Bribery Recommendation which will reinforce their efforts to prevent, detect and investigate foreign bribery.

The research outputs of Carr and Carr & Outhwaite, informed the background paper 'Regulatory Quality Improvements for Preventing Bribery in Public Administration: A Capacity Building Perspective' written by UNDESA's Inter-regional Advisor (see (c) in section 5) to inform and stimulate discussion at UNDESA's Ad Hoc Expert Group Meeting on Preventing Corruption in Public Administration: Citizens Engagement for Improved Accountability and Transparency'. Carr took part in this Meeting in June 2012 (see (d) in section 5). The recommendations from the expert group discussions were subsequently fed into meetings on strengthening capacities for professionalism, ethics and integrity to prevent corruption in the public service. According to the Inter-regional Advisor "[Dr Carr] helped us in the United Nations to make progress in the international agenda for fighting corruption …. [Her] participation … helped us project before the international community the importance of rigorous research to feed policy" (see (e) in section 5).

Impact on Surveys driving policy

Surveys play an important role in driving policy nationally and internationally. The questionnaire content and design of the surveys conducted impacted on questionnaire design and analysis for three projects conducted by TI-UK during 2010 – 2011. Carr took part from the design to the analysis stages in the three projects. The first project was a survey of Bribery in the UK, the second was National Integrity Survey. These surveys are published as Corruption in UK Part One National Opinion Survey (see (f) in section 5) and Corruption in the UK Part Two – Assessment of Key Sectors (see (g) in section 5) and Corruption in the UK Part Three – National Integrity Survey. The National Integrity Report was referenced in the new national strategy on organised crime and was discussed both in the House of Lords and the Welsh Assembly (see (h) section 5).

TI's third project on Defence Companies Anti-Corruption Strategy resulted in the first ever Government Defence Anti-Corruption Index (see (i) in section 5). According to TI's Programme Director "[Professor Indira Carr's] feedback was of high importance in helping set the parameters for the research for both indices, and in ensuring the resulting outputs were clear and avoided value-laden analysis. Her advice also stressed the need for conceptual clarity between the indices, and pointed out that potential outputs might be able to bridge the two pieces of work: an angle TI-

DSP is currently considering in greater depth. Thus Professor Carr's advice continues to influence the work we are undertaking following the launch of the indices, just as it influenced their methodological development." (see (j) in section 5).

5. Sources to corroborate the impact (indicative maximum of 10 references)

    a)   http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/40497521.pdf .

    b)   Copy of mail available, sent on behalf of Head of Anti-Corruption Division, OECD (Provided statement)

    c)   (http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan049594.pdf)

    d)   (http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan049437.pdf)

    e)   Letter from Inter-regional Advisor, Public Administration Capacity Branch, Division for Public Administration and Development Management, UNDESA (Provided statement)

    f)   (http://www.transparency.org.uk/our-work/publications/91-corruption-in-the-uk--part-one---national-opinion-survey)

    g)   (http://www.transparency.org.uk/our-work/publications/92-corruption-in-the-uk--part-two---assessment-of-key-sectors)

    h)   (http://www.transparency.org.uk/our-work/publications/93-corruption-in-the-uk--part-three---nis-study); [http://www.homeoffice.gov.uk/publications/crime/organised-crime-strategy?view=Binary; [http://www.theyworkforyou.com/lords/?id=2011-09-06a.115.5&s=bribery#g117.1]

    i)   (http://government.defenceindex.org/sites/default/files/documents/GI-methodology-long.pdf); (http://government.defenceindex.org/sites/default/files/documents/GI-main-report.pdf)

    j)   Letter from Programme Director, Defence and Security Counter-Corruption Programme, TI – UK (Provided statement)