The Role of Governments in the Effective Implementation of Regional and International Cooperation Instruments

Mahamadou Magassouba
Deputy Chief of Staff
Office of the President of the Republic of Mali

Problems of Corruption

Economic globalization, new globalized channels of corruption, the emergence of powerful multinational groups, and the tendency for companies to want to control the lives of citizens in terms of jobs, prices, and the environment have given rise to growing concern among the people, accompanied by a crisis of confidence and ethics.

In this confused situation, complicated by the economic, social, and political costs of corruption, States today are in agreement on the need for action to seek out, prevent, and/or suppress acts of corruption and the transformation of its proceeds into conventional holdings and investments. They agree above all on the need to develop, implement, and monitor effective and lasting reforms.

Seen in this light, the analysis of corruption becomes highly complex, because of this very globalization, and because of the multidisciplinary nature of criminal organizations, which require both a global approach and a specifically targeted examination to define the shape and extent of the problem.

At the same time, the many international conferences held throughout the world are providing an increasingly clear demonstration that the road ahead is long and fraught with

pitfalls, since the phenomenon is in fact developing exponentially, in terms both of form and of procedure. Hence, the internationalization of corruption.

In response to this strongly expressed resolve, regional and international agreements have been concluded in the following fora, among others: the Organization for Economic Cooperation and Development (OECD); the Council of Europe; the Organization of American States; the Organization for the Harmonization of Business Law in Africa (OHADA); the Southern Africa Development Community (SADC); the Economic Community of West African States (ECOWAS); and mutual legal assistance groupings, to name just a few.

These efforts are achieving very meager results, in view of the permanent hold of organized crime on international transactions.

At the present time, an offense such as money laundering is being committed by organized networks in virtually every State; enormous sums of money, including funds intended for development assistance, are being recycled through this mechanism. Enforcement is in fact handcuffed.

On the one hand, the sums involved are undeniably so huge that many individuals or countries have no scruples about pocketing the proceeds, or making an appeal for this money instead of turning it away.

Natural self-interest is voracious; only the solidarity of countries committed to remaining true to themselves, morally and economically, will make it possible to contain the formidable advance of this phenomenon.

International mobilization against corruption, the only real solution for overcoming organized crime, must be placed in this context.

It can never be repeated enough that a single country, whatever its resolve or its resources, cannot combat a crime that extends far beyond its borders.

The need for this kind of synergy among countries, even continents, has been a constantly recurring feature in every final declaration of an international conference on the fight against corruption.

More time will doubtless be needed for States to agree on a common frame of reference, both criminal and fiscal, to prevent and effectively combat corruption.

And yet, the assessment of this evil remains constant. It is hinged on the following factors, among others:

- The negative impact of corruption on the operation of public and private services;

- The emergence of organized crime in regional and international commercial activities;

- The growing risk posed by corruption's corrosive effect on procedures for the allocation of development funds;

- The existence of increasingly efficient mafia channels for laundering the proceeds of corruption.

Also, the globalization of markets and the inequalities of development have in recent years focussed renewed attention on corruption, to such an extent that at every international or regional meeting, corruption is mentioned as a negative element.

With this in mind, what role can governments play in the implementation of regional and international cooperation instruments?

In other words, how can international or regional standards be applied in the absence of the mechanisms necessary to affect or bind individuals?

Therein lie the real issues, and our paper will be organized around two main points, as follows:

I. Regional and International Instruments;

II. Actual Implementation of Regional and International Instruments.

I. Regional and International Instruments

The fight against corruption, which is international and multidisciplinary, cannot be fought solely within one State.

It is commonly recognized that to fight corruption effectively, trans-boundary cooperation among States, and between States and international institutions, must be strengthened in order to implement coordinated measures both regionally and internationally.

In the early 1990s, most countries were reluctant to address the problem or even acknowledge the existence of this criminal reality, contending that the phenomenon had not yet reached alarming proportions. That time is past.

During that period, only the United States had an anti-corruption law: the Foreign Corrupt Practices Act, enacted in 1977.[1]

Today, it is a sign of the times that almost everywhere, in countries of the North and South alike, we are seeing an increased general awareness of the need to consult and draw up legal instruments to fight corruption.

Accordingly, the member States of the Organization for Economic Cooperation and Development concluded the Convention on Combating Bribery of Foreign Public Officials in International Transactions.

---

[1] See *Ramsès* 2000, p. 223.

This convention entered into force on February 15, 1999. It is aimed at persons who offer, promise, or pay bribes (active corruption), and not the beneficiaries of bribery (passive corruption).

Similarly, a "Group of States against Corruption" (GRECO) was established within the Council of Europe. Its Statute was adopted on May 5, 1998. GRECO is a "flexible and effective monitoring mechanism, which will contribute to the development of a dynamic process to prevent and combat corruption."[2]

In 1996 the Organization of American States adopted the Inter-American Convention against Corruption, which seeks to encourage and enhance mechanisms within States Parties to prevent, detect, and eradicate corruption and to promote cooperation among member States.

In addition to these organizations, efforts have been made by many other entities throughout the world. In Africa, the following, among others, bear mention:

- The Organization for the Harmonization of Business Law in Africa (OHADA). This Organization's treaty was signed in October 1993 and brings together 16 States, 14 of which are French-speaking, one Spanish-speaking (Equatorial Guinea), and one Portuguese-speaking (Guinea-Bissau).

This treaty institutes uniform legal acts in the field of business law. All member countries have ratified the treaty, agreeing to subject the decisions of national courts to the review of the Common Court of Justice and Arbitration based in Abidjan, endowed with the power of "*evocation*" [the right of a higher court to summon for review a case pending before a lower court]. This constitutes a genuine step forward. The purpose is to inject morality into national control procedures, the weak points of which need no further demonstration.

[2] Ref. Explanatory Report on the Criminal Convention against Corruption (Council of Europe), Items 16 and 17.

- The West African Economic and Monetary Union (WAEMU), whose treaty was signed in 1994, unquestionably remains an example of successful regional integration. It deserves credit for remedying the financial and accounting disparities in national legislation.

Thanks to the West African Accounting System (SYSCOA), we are today seeing accounting practices move toward uniformity. SYSCOA, with a National Monitoring Committee in each country, has made modern, transparent accounting plans feasible.

- In Southern Africa, SADC member States, through the Council of Ministers, have adopted a protocol for fighting corruption, which has reportedly been filed with the Executive Secretariat.

In Africa there is no specific convention against corruption on the OECD or Council of Europe model.

For this reason, we had suggested in a previous paper that the 25 principles adopted in 1999 by 11 African countries under the auspices of the World Coalition for Africa, be drawn up, with the assistance of this body, in the form of an African Convention.

II. Actual Implementation of Regional and International Instruments

We referred earlier to the problems related to implementation, which may be summed up as follows: “How can international or regional standards be applied in the absence of the mechanisms necessary to affect and bind individuals?”

This is one of the major problems encountered in our countries. It is one thing to adopt a regional or international instrument, and another to ratify it, with the resultant harmonization of national legislation. At this stage, in fact, words become deeds, even though application and monitoring remain to be achieved subsequently.

As Nicola Ehlermann Cache has asserted, “How can democracies, often taken over by dictatorships and without essential legal, administrative, and judicial resources, apply regional or international standards?”

In this particular case, we come up against the key question of political will, the alpha and omega of all implementation. Governments acknowledge the need to draw up and implement legal instruments, but rare are those that follow the ground rules through to the end.

This situation is not the monopoly of any one country--far from it. The Council of Europe, for example, took 17 years to ratify the Convention after it had been adopted.

Similarly, nearly 21 years passed between the Foreign Corrupt Practices Act in 1977 and the OECD Convention.

These reminders indicate the extent to which implementation remains the principal difficulty.

In Africa, SADC has a text that is still awaiting ratification. As for ECOWAS, it does not even have such an instrument today.

Political will must be sustained. Governments must strengthen their own national legislation in advance by incorporating the new concepts of organized crime.

Implementation of regional and international instruments is truly like “squaring the circle,” since it requires that a sovereign State accept:

1. The establishment of a multilateral legal mechanism, which is at once the primary requirement and the least difficult to achieve;

2. The construction of an international legal order, which is the second requirement, i.e., giving up a portion of its own sovereignty to become the legal subject of an international body;

3. An individual right of appeal, the most significant step forward. The State must accept that its citizens have the possibility of challenging it before a supranational court.

These few principles are indicative of what must govern the political will of a State wishing to implement the aforementioned legal instruments.

As an illustration, there are provisions granting any member State the right to go before the regional court whenever the rules of management or competition are violated in the course of a transaction.

Another illustrative leap forward is found in Article 62 of the OHADA treaty, which provides that a State party cannot terminate the ratified treaty for a period of 10 years.

Political decision-makers, as well as economic actors and civil society, must pay particular attention and devote sustained effort to implementation of regional and international instruments.

Whatever the political goodwill of States, monitoring and effective implementation of regional and international cooperation instruments will depend on how the (judicial) control and monitoring bodies are managed.

Combating corruption requires a broad spectrum of measures, with the final objective of instituting and developing an “anti-corruption culture.”

This paper does not claim to be an exhaustive treatment of such a vast and varied subject. It is rather the fruit of our reflections that we are submitting to the audience, whose contributions will be welcome.