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Corruption and Post-Conflict Peace-Building

SUSAN ROSE-ACKERMAN*

I. INTRODUCTION

States emerging from conflict generally have very weak institutions and an influx of outside funds. These two conditions provide incentives for officials to make corrupt deals for personal gain. Outsiders who are brought in to monitor and manage the transition are also at risk of becoming corrupt. The prior conflict is likely to have fostered a culture of secrecy and impunity where self-dealing is easy to conceal. The end of the conflict may not encourage the development of a transparent and accountable government, especially if those who gained financially from the conflict are in power and seek both to preserve past gains and to benefit from the rebuilding effort. Thus, although incentives for corruption exist in all societies, the incidence and scale of corruption may be especially high and destructive in post-conflict situations. Political leaders buy-off powerful private actors with patronage, including criminal groups and wealthy business interests. Those powerful private actors also buy off weak politicians with money or promises of future jobs and business ventures. The post-conflict political system may be in a corruption trap where payoffs build in expectation of future payoffs, resulting in a vicious spiral.¹

Unless care is taken, a sharp break with a corrupt status quo can breed instability and violence as those who benefited from the corrupt system struggle to maintain their positions.² If conflict-prevention and peace-building are supported by outside funds from international institutions, these funds may simply be diverted into the pockets of the powerful with some trickling down

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to the general population as a way to keep them quiet. Corruption undermines
the reform agenda, and it may be the crutch on which existing leaders rely to
maintain power in a chaotic environment. In the longer term, if corruption is
not limited, it may delegitimize the state, leading to further outbreaks of
violence and extra-legal protest.3

II. CORRUPT OPPORTUNITIES IN POST-CONFLICT STATES

In countries emerging from civil war with weak governments, bribery
demands may be used opportunistically by government officials operating
under unclear rules that allow them to invent offenses or simply to extort funds
from ordinary people. Furthermore, those engaging in illegal activities, such
as smuggling or illicit trade in arms, may need the protection of public
authorities to continue to operate. It may be easier to co-opt public officials
than to hide from them. If the conflict destroyed a country’s infrastructure,
governments must contract for major construction projects, creating incentives
for self-dealing.

In allocating aid to the victims of the conflict, officials are supposed to
select needy applicants. However, their exercise of discretion cannot be
perfectly monitored; hence, corrupt motives can distort allocations. The
overall supply of aid may be scarce or open-ended. Examples of scarce aid
include temporary housing materials such as tarps or material to repair
damaged dwellings. Examples of open-ended aid are programs to buy back
weapons where officials must determine whether broken rifles should count.
To further exploit corrupt opportunities, officials may create or threaten to
create delay as a means of extracting bribes. This may be a particularly
effective strategy in the emergency conditions that prevail in the immediate
aftermath of violent conflict.

Corrupt incentives also arise from government programs that impose
costs. Officials can extract payoffs in return for overlooking the illegal
underpayment of taxes or for tolerating illegal activities such as smuggling.
Officials may demand payoffs in exchange for refraining from arresting
citizens on trumped-up charges. In post-conflict countries that are trying to
attract investment capital and avoid capital flight, all these forms of low-level
corruption can make these positive efforts difficult, further slowing down the
process of economic recovery.

3. See Richard Sannerholm, Legal, Judicial and Administrative Reforms in Post-Conflict Situations:
Beyond the Rule of Law Template, 12 J. CONFLICT & SEC. L. 65, 83 (2007). Sannerholm argues for a focus
on legal, judicial and administrative reform in post-conflict states, including the control of corruption. Id.
at 66. He claims that past law reform efforts have too often focused on high profile human rights areas while
ignoring basic issue of state organization. Id. at 87.
Corruption at the top of government—in procurement, privatization, or contracting—can be deeply destructive of state functioning. This can turn a post-conflict state that is already fragile into a breeding ground for high-level malfeasance. Corruption may contribute to state illegitimacy and justify those who threaten renewed fighting. In some cases, a branch of the public sector may be organized as a bribe-generating machine. This is a particular risk in post-conflict situations where the formal rules are not well known and cannot be enforced and where the judiciary is weak and corrupt.

Sometimes the relationship between private wealth and public power does not involve outright corruption in the form of monetary payoffs. Rather the problem is what the World Bank Institute calls “crony capitalism” or “state capture.” “State capture” implies that the state itself can be characterized as largely serving the interests of a narrow group of businessmen and politicians, sometimes involving criminal elements. Even if the influential group changes with the government, most of the citizens are left out. In post-conflict settings, the elite are frequently able to capture the political and economic benefits of reconstruction. If the elite can maintain their power base throughout the post-conflict period, they can position themselves to benefit because there are no other credible sources of power and institutional constraints remain weakened. Reconstruction funds may be diverted into the private bank accounts of both politicians and business people, making reconstruction excessively costly, if it even occurs at all.

If top political figures exploit their positions for private gain, the effectiveness of government programs and the impact of foreign aid and lending can suffer. Even if those with good political connections are also good economic managers, there is a long term risk that they will exploit their dominant positions to squeeze out potential competitors. This inequality of influence can extend beyond special treatment by the executive and legislative branches to include the courts as well.

But might post-conflict situations provide an opportunity to replace old, entrenched elites with new, energetic entrepreneurs and more effective political leaders? If the conflict has destroyed existing patterns of influence, it may paradoxically represent an opportunity to recreate the state on a fair and democratically legitimate basis. This is Mancur Olson’s view in The Rise and


Decline of Nations,⁶ which draws heavily on the post World War II experience.⁷ This seems to be an overly optimistic claim, at least in the case of Africa where, “the challenges faced by countries emerging from conflict... are completely different from those faced by Europe after the Second World War.”⁸ The conflicts erupted after years of one-party rule and required rebuilding or establishing the entire machinery of the state.

The goal of anti-corruption reform in post-conflict states is a well-functioning system where violence is seldom intertwined with politics and where allegations of corrupt self-dealing lead to a scandal that has negative political consequences. In such a system, revelations of corruption may tip the balance against incumbents who are implicated in the wrongdoing. In contrast, if democracy is entwined with endemic corruption and public order is less established, elections can be an opportunity for violence against opponents, individualized payoffs to voters, and corrupt payoffs to politicians.

Colonial heritage, legal traditions, religion, and geographical factors may explain cross-country differences in corruption and other measures of government dysfunction,⁹ but these are not policy variables that present-day reformers can influence. The key issue is whether these historical regularities directly affect government quality, or whether they help determine intermediate institutions and attitudes that present day policies can affect. If the latter, that may be good news for reformers in post-conflict settings seeking to create new institutions that facilitate economic growth and high income. Less optimistically, the destruction of mediating state institutions can rekindle ethnic, tribal, and religious rivalries.

In countries where threats of violence originate in the private sector, efforts to limit criminal influence can lead to an increase in violence. For example, if the crackdown causes a truce between competing gangs or mafias to break down, violence can result. This is especially likely if corrupt police or government officials brokered the previous truce. The government’s role as a corrupt peacekeeper may end, but the reformed government may lack the capacity to be an honest peacekeeper. Police and other law enforcement

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⁶. See Mancur Olson, The Rise and Decline of Nations (Yale Univ. Press 1982).
⁹. See generally, Edward L Glaeser et al., Do Institutions Cause Growth?, 9 J. ECON. GROWTH 271, 272 (2004) (stressing the different institutions associated with different colonial powers); Daron Acemoglu, Oligarchic vs. Democratic Societies, (Nat’l Bureau of Econ. Research, Working Paper No. 10037, 2003), available at http://www.nber.org/papers/w10037 (using the mortality rates of European settlers as an instrument for the type of colonial regime put in place by the imperial power, and finding that it does a good job of predicting expropriation risk and corruption levels at the end of the twentieth century).
officials may be unprofessional and underpaid, and the judiciary may be unable to handle an increased caseload. As private groups fight for control of illegal businesses, such as drugs or smuggling, violence may escalate. The fighting may be restricted to competing criminal groups, but ordinary citizens will be caught in the crossfire, and the provision of government services may suffer.

Similar problems can arise when the groups using violence include guerilla groups, para-military organizations, or even the nation’s regular armed forces. Credible threats of violence can be used to extort payoffs from ordinary people, businesses, and politicians. Kidnapping may develop into a business, where threats to harm the victim generate ransom payments. Groups with the capacity to use violence may combine political and economic strategies.

Inside the government, powerful military threats may be used as leverage to force the civilian government to engage in illegal businesses. These businesses might include the smuggling and resale of luxury items, the purchase of excessive levels of military equipment as a way to hide kickbacks to top brass, or the use of soldiers as workers in private business ventures.

If such systems are working well for the extortionists, there may be little actual violence. Those who are extorted or threatened simply play along and do not rock the boat. Threats of violence can be costly to the growth and legitimacy of a fragile democracy even, or perhaps especially, when little actual violence occurs.

When reform begins, new structures of government and control need to be available quickly. Otherwise, reforms meant to produce good governance and the rule of law can degenerate into a spiral of violence and corruption as citizens attempt to deal with the uncertainty generated by reforms. The rule of law is intended to introduce clarity and certainty into economic, social, and political relationships. However, if the rhetoric is not matched by a real improvement along these dimensions, the stage is set for chaos and a new set of corrupt incentives.

Peace-building strategies must avoid triggering vicious spirals. An economy jumpstarted by giving monopoly powers to a few prominent people or businesses may produce a society that is lacking in equality and competition. Early decisions can lock in the power of a small elite who then restrict efforts to enhance competition and fair play. Although it may be risky and difficult to counter corruption in post-conflict peace-building, if the problem is not addressed it can undermine other efforts to create a stable, well-functioning state with popular legitimacy.

To illustrate the way corruption operates in post-conflict countries, the next few sections use case studies to illustrate the concerns outlined above. To provide broad geographical coverage, the cases chosen are Guatemala, Angola,
and Kosovo. The list is not meant to be representative, but the cases do include a range of post-conflict situations. The article concludes with some reform proposals tailored especially to the particular problems of weak, post-conflict states.

III. CASE STUDIES: ANGOLA, GUATEMALA, AND KOSOVO

Conflicts are of many kinds, and the nature of the conflict affects the way corrupt incentives arise in the post-conflict period. The cases of Angola and Guatemala represent brokered peace deals in which weakened or exhausted rebels agreed to a truce that gave them a stake in the post-conflict state, but little direct political influence. In Kosovo, in contrast, the dominant ethnic group, including former fighters against Serbian domination, now controls the government under a United Nations protectorate. Kosovo has declared its independence and been recognized by over thirty countries, but its status remains uncertain given Serbian and Russian opposition.

Angola's economy is largely based on natural resource rents. During the conflict the government controlled the oil reserves. The rebels benefited from control of portions of the diamond industry. Guatemala is a largely agricultural economy, dependent on exports of coffee, sugar, and bananas. Both Guatemala and Angola have large, poor, rural populations. Kosovo has a low per capita income, but income is not as unevenly distributed as Guatemala or Angola. In all three cases, outsiders influenced the intensity and duration of the fighting, helped broker the peace, and provided financial and human resources to aid peace-building. Angola, a former Portuguese colony, became a pawn in the Cold War because of its oil wealth. Guatemala has been heavily affected by United States economic and political interests in the region. Kosovo's location inside Europe led NATO to intervene militarily and spurred European Union (EU) involvement in the peace-building efforts.

In spite of the differences outlined above, there are important similarities between these cases. The parallels include: (1) a pre-conflict regime that did not represent the interests of a large portion of the population, (2) a brokered peace deal, (3) contributions to the fighting and to peace-making from wealthy countries that are not immediate neighbors, (4) physical destruction and widespread loss of life in some portions of the conflict zone, and (5) a considerable influx of funds and other aid from outside the country after the conflict.

10. For additional cases see the Reconstruction National Integrity System Survey carried out by Tiri, a non-governmental organization concerned with the control of corruption worldwide. See Tiri, http://www.tiri.org/index.php?option=com_content&task=view&id=98 (last visited Feb. 8, 2008).

peace deal occurred. This led to similar post-conflict pathologies in each case, although the details differ. The conflict and its aftermath created corrupt incentives and gave domestic and international actors excuses to overlook corruption.

Incentives were created by the weakened domestic institutions, on the one hand, and by the influx of relief and rebuilding funds, on the other. Institutional weakness is partly a reflection of the lack of accountability of the pre-war states that has been exacerbated by the conflict's destructive impact on state functioning. The influx of funds and supplies created a pool of benefits available for theft. The aftermath of the war and the risk of renewed fighting have been used by domestic politicians as an excuse for their refusal to implement financial controls, leading to a leakage of funds. Emergency conditions that require a quick response are used by international donors as a further excuse for ignoring financial integrity.

A. Guatemala

Corruption is a serious problem in Guatemala. Poverty and underdevelopment are both a cause and a consequence of corruption, but the impact of corruption on economic and political development has been exacerbated by the post-conflict environment.

Guatemala had a GDP in purchasing power parity (PPP) terms of $61.38 billion in 2006 ($35.25 billion at official exchange rates). This implies a per capita income of $5,000 in PPP terms in 2006. However, income is very unevenly distributed. The distribution of family income, known as the Gini coefficient, was 59.9 in 2005, one of the highest in the world. The 2004 estimate of the percentage of the population living below the poverty line was 56%, and the bottom 10% of the population controlled less than 1% of the income compared with 43.4% of the income controlled by the top 10% of the population.

In 1996, the Unidad Revolucionaria Nacional Guatemalteca (URNG) signed the “Firm and Lasting Peace” with the government of Guatemala,
officially ending the thirty-six year conflict.\footnote{15} Corruption and other forms of illicit enrichment were prevalent in Guatemala before and during the armed conflict, and did not end with the accords but rather took new forms. During the conflict, members of the political and military elite enriched themselves at the state’s expense, but outright coercion may have been more important than the extortion of bribes. After the peace agreements; with coercive threats limited, bribe-taking and fraud thrived.

During the war, the army controlled all aspects of the state’s administration, and there was little distinction between state resources and the resources of those in power. “The lack of transparency and the use of secretiveness, far from an exceptional state, became the means of governing[].”\footnote{16} Furthermore, members of the military used their coercive powers both to enrich themselves and to implement favorable policies. In some cases, local military strongmen accused neighbors, whose property they coveted, of being dissidents to gain control of their property, and those expropriated had no legal redress.\footnote{17} The weakness of the justice system, which lacked independence, amplified and reinforced the violence.\footnote{18} Sometimes the potential complainants were simply eliminated. In one well-documented case, the Guatemalan government decided to eliminate rather than to re-locate the Mayan-Achi community of Ríos Negro, whose land was located at the site where the government intended to proceed with a World Bank-financed project to build the Chixoy dam.\footnote{19}

At the time of the Peace Accords, the Guatemalan state and its army negotiated from a position of strength relative to the guerilla forces, and the

\begin{itemize}
\item \footnote{15} Agreement on a Firm and Lasting Peace, May 21, 1997, 36(2) INT’L LEGAL MATERIALS 274.
\item \footnote{16} See Edelberto Torres, Acción Ciudadana: El Sistema Nacional de Integridad en Guatemala [THE NATIONAL INTEGRITY SYSTEM IN GUATEMALA] 11 (2001), available at http://www.transparency.org/content/download/1650/8371/file/guatemala.pdf (La falta de transparencia y el recurso de la secretividad, propia de un estado de excepción, se volvió la forma de gobernar, y propició que en el ejercicio del poder se hiciera uso indebido de los recursos de la nación.).
\item \footnote{17} The recent discovery of meticulously kept police archives has confirmed the fact that during the conflict the National Police were used to target dissidents, not to combat crime. See Kate Doyle, The Atrocity Files: Deciphering the Archives of Guatemala’s Dirty War, HARPER’S MAG., Dec. 2007, at 59-61. Doyle observed that “the files were not organized to support prosecutions. What was important was the hunt for subversives.” Id. at 60. It was not safe to report crimes, especially those committed by the police. Id. at 61. In 1982, at the height of the state violence against the civilian population, the Chief of the Joint Operations Center ordered that complaints made against the security forces “should not be mentioned in any document.” Id.
\item \footnote{18} The Commission for Historical Clarification (CEH) found that impunity was one of the mechanisms of state imposed terror during the conflict. See generally, COMISIÓN PARA EL ESCLARECIMIENTO HISTÓRICO [CEH], GUATEMALA: MEMORIA DEL SILENCIO, TOMO III [GUATEMALA: MEMORIES OF SILENCE TAKE III] (1999).
\end{itemize}
post-conflict order reflects the guerillas’ comparative weakness. For example, former dictator Elfrain Rios Montt served in Congress until a failed run for the presidency in 2003 and headed a major political party, the Guatemalan Republican Front (FRG).\textsuperscript{20} The provisions of the Accords of most concern to the guerillas have been neglected, particularly the articles that pertain to education and to indigenous rights.\textsuperscript{21} Recent governments have failed to make the fiscal and tax reforms called for in the Peace Accords to provide more revenue for social spending.\textsuperscript{22}

1. Impunity and Corruption

The Peace Accords set up a UN-sponsored truth commission known as the Commission for Historical Clarification (“CEH”) which concluded that the state of Guatemala bore responsibility for the great brunt of the human rights violations that took place during the conflict.\textsuperscript{23} The CEH co-exists with a National Reconciliation Law, passed on December 18, 1996, which provides amnesty for political crimes committed by both the state and the guerillas during the conflict, but denies amnesty for crimes of genocide, torture, and forced disappearance.\textsuperscript{24} Corruption is not included in the agreement.


\textsuperscript{22} See SIEDER, supra note 20, at 53-55. In one instance, the tax rates on alcoholic beverages included in a statute were halved by Rios Montt and his allies in Congress in a highly irregular process. \textit{Id.} at 6. In that case, at least, their legislative tampering was revealed, but they were later exonerated by the courts. \textit{Guatemala: Court Absolves Efrain Rios Montt of All Charges in Congressional Guategate Scandal}, \textit{ALLBUSINESS}, Apr. 26, 2001, http://www.allbusiness.com/central-america779604-1.html.

\textsuperscript{23} The Commission concluded that 93% were committed by the government but this may be biased upward because it depended on who came forward to testify. CEH, GUATEMALA: MEMORY OF SILENCE, REPORT OF THE COMMISSION FOR HISTORICAL CLARIFICATION CONCLUSIONS AND RECOMMENDATIONS: CONCLUSIONS—THE TRAGEDY OF THE ARMED CONFRONTATION ¶ 128 (1999), available at http://shr.aaas.org/guatemala/ceh/report/english/toc.html. The CEH documented 626 villages that were destroyed in scorched earth counter-insurgency campaigns, the vast majority between 1981 and 1983. \textit{Id.} ¶ 86. Two hundred thousand people were killed or disappeared during the duration of the conflict, and over one million were displaced. \textit{Id.} ¶¶ 2, 66. While the Maya represent approximately half of Guatemala’s population, more than 83% of the victims of the armed conflict were Maya. \textit{Id.} at Annexes, Victims and Violations by Year and Ethnic Group.

Political and military actors seek to avoid prosecution even if their offenses might fall under the exceptions in the amnesty law. Corruption is one way to insure impunity. The desire of those in power to escape accountability for their crimes during the armed conflict reinforces the weakness of the judicial system and other state institutions. One result of this search for impunity is the lack of official interest in effective mechanisms to counter corruption. In addition, the relative lack of interest in tackling corruption also may have a more direct explanation. One observer argues that, "[p]olitical and military power enabled the accumulation of fortunes by high-ranking officials, thus making public office an avenue for personal gain. Deficient and ineffective institutions are an essential factor that furthers corruption in Guatemala, deepening the culture of impunity." Guatemala's high rate of inequality is further compounded by the embezzlement of public funds by the officials in charge of them. Thus, fortunes accumulated during the civil war are often protected and enhanced through present-day corruption.

One example is the Salvavidas Gang that encompassed military and government officials at all levels of the Guatemalan government during the conflict period. Their network centered on the customs-and-duty sector but stretched through all levels of the Guatemalan state. In 1996, the year of the Peace Accords, the supposed ringleader of the criminal syndicate Alfredo Moreno Molina was arrested and accordingly customs revenues reportedly doubled. Another source reports that Moreno Molina and his associates had been stealing 30% of the customs revenue. The attorney general estimates that Moreno Molina and his associates siphoned off as much as $15 million U.S. dollars annually. Prosecutions of the corrupt officials involved in the Salvavidas Gang slowly wove their way through the court system. Moreno Molina was arrested and his assets were frozen, but they were released

conformity with the Political Constitution of the Republic of Guatemala, it is within the power of the Congress of the Republic, when demanded by public convenience, to exempt political and related crimes from penal responsibility." Id. at art. 1. See also William W. Burke-White, Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation, 42 HARV. INT'L L.J. 467, 506, 509 (2001).


26. See SIEDER, supra note 20, at 3.


28. Id.

29. Id.

30. See SIEDER, supra note 20, at 9.

31. Timeline, supra note 27.
so that he could make bail.\textsuperscript{32} His bail was subsequently lowered to $1 million. He has not yet been prosecuted and remains free in Guatemala.\textsuperscript{33}

Similarly, former president Alfonso Portillo fled to Mexico after his four-year term ended in January 2004.\textsuperscript{34} He has been charged with embezzling more than $15 million, and at least 10 former officials from his government, including his vice president, are in jail on corruption charges.\textsuperscript{35} It was first alleged in 2002 that President Portillo and his vice president, Francisco Reyes Lopez, had opened bank accounts in Panama with the intention of diverting Guatemalan state funds.\textsuperscript{36} The \textit{Panama Connection}, as the embezzlement scheme was called, involved the alleged transfer of $1.5 million every month from fake companies into the private accounts.\textsuperscript{37}

2. Judicial Corruption

A particular concern is corruption in the judiciary. Prosecutions of corruption are unlikely to succeed if the judiciary itself is venal. Even worse, false accusations can be used to undercut political opposition. In the World Bank’s 1997 preliminary diagnostic, Guatemala’s judiciary was named the most corrupt institution. The report further linked mistrust in the institution with the thirty-six year conflict.\textsuperscript{38} Guatemala’s judicial system is non-functional; impunity is the norm for crimes of both the past and the present. “Most Guatemalans have rightly tended to see the law as something that operates for the benefit of the powerful rather than as a resource to protect their fundamental rights.”\textsuperscript{39} The justice system is regarded as under-funded, inefficient, and inaccessible particularly for the country’s poor indigenous majority.\textsuperscript{40}

Guatemala’s attempts to prosecute violations of past abuses have usually been unsuccessful. Complaints launched decades ago remain in their investigatory phases, and the vast majority of current crimes are never prosecuted.\textsuperscript{41} To date, no high-level perpetrators have been punished for their

\textsuperscript{32.} Sieder, supra note 20, at 9-10.
\textsuperscript{33.} Id.
\textsuperscript{34.} Id.
\textsuperscript{35.} See id.
\textsuperscript{36.} Id.
\textsuperscript{37.} Timeline, supra note 27.
\textsuperscript{39.} Sieder, supra note 20, at 33.
\textsuperscript{40.} Id.
roles in the 626 massacres documented by the CEH.\textsuperscript{42} During the armed conflict, those reporting violations were turned away or prosecuted themselves. Today Guatemalan justice still confronts delays exceeding decades; tampering with and loss of evidence by the prosecutor's office; and intimidation of witnesses, lawyers, and judges. Not only does the justice system not prosecute the crimes of the past, it is also unsuccessful at prosecuting current crimes. Those with a vested interest in maintaining impunity prefer the judiciary to be ineffective.

In one suspected case of high-level judicial corruption, or at least a case of illicit influence, in 2003 Guatemala's Constitutional Court invalidated the provision of the Constitution that barred former coup participants from running for president.\textsuperscript{43} Former military dictator Efraín Ríos Montt appealed the constitutional provision repeatedly over the years, and each time the courts ruled against him.\textsuperscript{44} Undeterred, he continued to appeal. The three judges selected to hear the appeal had been appointed by Ríos Montt's political party, the FRG.\textsuperscript{45} The selection process, done by lottery, was completed behind closed doors with no witnesses except the court's president, a FRG former minister.\textsuperscript{46}

Nevertheless, prosecutions do sometimes occur and on occasion lead to jail sentences.\textsuperscript{47} Most Guatemalans expect that their leaders are corrupt so that "these allegations [do not] represent anything new in Guatemalan

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{42} For example, nine years of litigation was nullified by the December 2004 decision by the Guatemalan Court of Appeals in the \textit{Dos Erres} case. The Court ruled that crimes committed during the armed conflict must be first submitted for the Court of Appeals to evaluate the application of the Law of National Reconciliation. This ruling was made despite the fact that the Court of Appeals had already concluded that the \textit{Dos Erres} case did not qualify for amnesty. \textit{See, e.g.}, Simon Watts, \textit{Guatemala Halts War Crimes Trial}, \textit{BBC Int'l.}, Feb. 5, 2005, http://news.bbc.co.uk/2/hi/americas/4238417.stm.
\item \textsuperscript{43} Sieder, supra note 20, at 5.
\item \textsuperscript{44} Id.
\item \textsuperscript{45} \textit{Id.}
\item \textsuperscript{47} General Roberto Letona, Guatemala's military attaché in Washington, D.C., was accused of stealing nearly $2.7 billion U.S. dollars in tax revenue over 15 years. \textit{Timeline}, supra note 27. In 2001, Interior Minister Byron Barrientos was prosecuted for embezzling $10 million of public funds, and in 2004 former Finance Minister Eduardo Weymann received a thirteen year sentence for stealing $4 million. \textit{Id.} In 2005, the United States deported Junior Vinivio Abadio-Carrillo, the son of Marco Tulio Abadio-Molina, the former Tax and Customs Authority Director, was charged with conspiring with his father to divert $5 million of tax funds for his personal use. \textit{Id.} Interior Ministry official Angel Argueta siphoned $10 million of public funds in 2006. \textit{Id.}
\end{enumerate}
\end{footnotesize}
The only surprise is that a few officials have actually been prosecuted in the post-conflict period.

The relative lack of rule of law creates incentives for personal deal-making and bribes. The judicial branch is staffed with under-paid, poorly trained officials without full independence and subject to influence from elite groups. Furthermore, the existing system has been overwhelmed by the surge in crime since the mid-1990s; backlogs and delays further cripple the system. Twenty-five percent of judges and eighty-seven percent of public prosecutors acknowledged that they had been pressured by superiors or influential parties.

The Supreme Court controls promotions within the judiciary, and it is not uncommon for those denouncing the interference of the Supreme Court to be investigated themselves. For example, one judge was dismissed after she made complaints of judicial corruption. In addition to the judiciary, the prosecutor's office is also riddled with problems that impede efficiency and honesty, such as high turnover rates, vacancies, low salaries, and poor training. In many instances public prosecutors fail to initiate investigations and drag their feet on politically-sensitive matters.

A 2006 World Bank Study advises companies to be careful when conducting business in Guatemala. A weak and corrupt judiciary is a prime concern of companies as it impedes the settlement of private disputes, especially those concerning property rights. Companies are generally advised to conduct extensive due diligence before investing in Guatemala, and to include third-party arbitration clauses in contracts as a means to side-step the Guatemalan courts.

3. Reparations

Civil wars frequently impose huge costs on portions of the civilian population. The Guatemalan Truth Commission recommended reparations as a way to restore the dignity of the victims of the armed conflict and guarantee that the violence would not be repeated. The State of Guatemala has yet to

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49. Id. at 33.
50. Id.
51. Id. at 35.
52. Id. at 35.
53. See Sieder, supra note 20, at 35-36.
thoroughly institute a functioning reparations program. In 2003, the state inaugurated the National Reconciliation Plan ("NRP") headed by Rosalina Tuyuc, a former indigenous leader. However, in 2004, the NRP only spent two-million on reparations of the thirty-million quetzales allocated in the budget. Three years later, the group "the Movement of Victims" asserted that in four years of operation, the NRP had only managed to distribute reparations totaling four-million quetzales to 200 victims.

Eighty-percent of the money spent went towards operating costs, and there were allegations that the office hired more people than necessary, many lacking adequate qualifications. The staff was subsequently cut from 190 to 95 people. After the continued failure to distribute the money to victims of the conflict, in 2005 the Guatemalan government redirected 260 million quetzales, approximately $33 million U.S. dollars, from the NRP budget to aid the victims of Hurricane Stan. Victims' organizations complained that these funds should not have been taken from the NRP budget. Indeed, many allege that the slow and irregular execution of the plan counteracts the symbolic benefits of the reparations.

In the face of the failure to give financial reparations to the victims of the armed conflict, the state has managed to distribute payments to former members of the Civil Defense Patrols, which the CEH concluded was responsible for 18% of the armed conflict's human rights violations. The reorganization of the Civil Defense Members, or Patrullas de Autodefensa Civil ("PAC"), in order to receive the payment was traumatizing for many survivors of the armed conflict and did nothing to reassure the victims that the crimes could not reoccur. Here the problem is not corruption per se but rather the diversion of funds, designed to aid the victims of civil war. However, outright corruption is suggested by the high spending on operating costs, implying make-work jobs, and the leakage of funds into favored pockets.


59. Id.


61. CEH, supra note 23, at Annexes, VIOLATIONS BY RESPONSIBLE FORCE.


Illegal and criminal activity flourishes in the weak Guatemalan legal environment. Criminal gangs support themselves with the drug trade, smuggling, and money laundering. Organized crime networks flourished during the armed conflict. Weak institutions and the failure of the state to thoroughly consolidate power after the war provided the space for these networks to operate, often with the corrupt connivance of public authorities. The weakness of the political parties and the failure to purge the old security apparatuses "make[s] it easier for organized criminal gangs rooted in clandestine counterinsurgency structures to maintain and extend their political influence in the post conflict period." There is some evidence that after the Peace Accords were signed, death squad networks, which were active during the conflict, switched to illegal criminal activity.

The existence of illegal bodies and clandestine security apparatuses is also an impediment to effectively confronting impunity in Guatemala. These networks protect powerful individuals and intimidate judges and witnesses. Assassinations and attacks on several prominent human rights activists and their offices have been traced to the clandestine power structure. These networks have a vested interest in maintaining impunity and preventing the development of more effective law enforcement and judicial institutions, "both to protect their members (some of whom were implicated in human rights violations during the conflict) and to ensure their continuing ability to operate freely." The Salvavidas Gang or the Moreno network, discussed above, represents one of the worst examples of entrenched parallel power structures.

The drug trade has proliferated in Guatemala in recent years. Corruption in Guatemala is considered as the single biggest obstacle to the U.S. anti-narcotics program. With stricter enforcement mechanisms in Mexico, Guatemala has emerged as a popular alternate route for Colombian cocaine smugglers. The United States determined in April 2003 that Guatemala had failed demonstrably to adhere to its international counter-narcotics commitments during the previous year. Guatemala was decertified as a partner in

63. Sieder, supra note 20, at 11.
64. See id.
65. See id. at 7.
66. Id. at 11.
the war against drugs for the following year. In 2006, the U.S. Drug Enforce-
ment Agency arrested Guatemala’s top anti-narcotics officer, Adan Castillo, on smuggling charges.\(^7\) Castillo had been brought in to reform the troubled Guatemalan drug agency, but instead he accepted payoffs from drug traffickers to escort them through the territory. Drug-related violence continues to plague the country.

The Guatemalan police often function like a gang working for its members own benefit rather than for that of the general population. Favoritism and influence-peddling apparently dominate the selection process into the police force.\(^7\) A survey examining data from 1997 to 1999 found that not a single civilian-initiated complaint against the police resulted in punishment.\(^7\) In fact, no punishments were imposed for abuse of the public during this time period.\(^7\) The police force has proved inadequate to confront the increase in crime, and the army is often called in to assume police functions, a clear violation of the Peace Accords. Of course the drug trade coupled with a corrupt police force exists in many societies, but the post-conflict situation in Guatemala is particularly fertile ground, in part, because of the state actors’ lack of interest in the control of corruption.

5. Conclusion

Although Guatemala’s legal code outlaws corruption, those who attempt to combat corruption do not typically fare well. Attacks on human rights advocates are common, and lawyers and members of civil society who work to end impunity and prosecute the crimes of the past are frequently targeted for attacks.\(^7\) Many of these attacks are linked to human rights violators during the war who refuse to be held accountable for their past crimes. Frequently, the same tactics are deployed against those working against criminal gangs and embezzlement. In March 2003, Karen Fischer, the anti-corruption public prosecutor was forced to resign after refusing to drop an investigation against President Portillo.\(^7\) After receiving death threats, she and her family fled to Mexico.\(^7\) Approximately six months later, another prosecutor, Tatiana

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70. Aizenman, supra note 68.
71. SIEDER, supra note 20, at 39.
72. Id. at 40.
73. Id. at 39.
75. Timeline, supra note 27.
76. Id.
Morales, investigating the same case, also fled to Mexico after receiving death threats.\textsuperscript{77}

The press does not escape the pressure from Guatemala’s clandestine networks. Jose Ruben Zamora is the owner of one of Guatemala’s leading independent newspapers, \textit{El Periodico}. He and his family suffered a brutal home invasion after \textit{El Periodico} published an article linking the Portillo government to enrichment from gang activity, including drug trafficking, kidnapping, and extortion.\textsuperscript{78} The report, a culmination of eight years of research, drew connections between leaders of organized crime and government and military leaders.\textsuperscript{79} In June 2003, the Zamora family was held hostage for three hours in their home where they were beaten, interrogated, and threatened to “stop bothering the people above.”\textsuperscript{80}

The cycle of impunity feeds into the cycle of corruption. The lack of strong institutions feeds into the criminal networks. “There is a kind of vicious cycle in which weak institutions create opportunities for the spread of corrupt networks, which in turn seek to further weaken institutional capacity to combat corruption.”\textsuperscript{81}

\hspace{1cm}B. Angola\textsuperscript{82}

Angola and Guatemala have similar population sizes—12.7 million for Guatemala and 12.3 million for Angola—and highly unequal distributions of income and wealth. Both are emerging from protracted civil wars where the rebels essentially lost militarily but were included in a bargained settlement and now operate as a political party in opposition. The Angolan fighting has persisted on and off since independence from Portugal in 1975 until April 2002. The fighting was mostly between the government, which was controlled by a single political party, \textit{Movimento Popular de Libertação de Angola} (“MPLA”), and a rebel group, \textit{União Nacional para a Independência de Angola} (“UNITA”).

Unlike Guatemala, Angola has a major source of foreign exchange in its off-shore petroleum reserves. Thus, a central issue is the management of this resource and the lack of transparency concerning the inflows and outflows of

\textsuperscript{77} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} SIEDER, supra note 20 at 11.
\textsuperscript{82} The section on Angola is based on a series of memos prepared by Rodrigo Souza, Yale Law School, LLM ’08.
Guatemala struggles to collect taxes from its poor citizens and its wealthy elite. Angola is awash in funds, but it fails to use them effectively to benefit the bulk of the population. Because of the rise in oil prices, its GDP growth rate was 14% in 2006. GDP in purchasing power parity ("PPP") terms was $54.65 billion in 2006 ($28.88 billion at official rates) for a per capita income of $4,500 in PPP terms. Yet the poverty rate is over fifty percent, and life expectancy is under thirty-eight years. In Guatemala, corruption facilitates the drug trade and provides impunity to the wealthy and powerful. In Angola, corruption diverts the stream of petroleum rents into private bank accounts. A report from the Economist Intelligence Unit in 2003, soon after the war ended, found that in Angola there were 39 individuals worth between U.S. $50 million and $100 million, and another twenty individuals were worth at least U.S. $100 million, for a total of at least U.S. $3.95 billion. All seven at the top of the list were present or past government officials.

Suppose that this wealth earns a rate of return of ten percent for a flow of U.S. $395 million. This implies an average income of U.S. $6.7 million per person in the top group even before the run up in oil prices, which presumably disproportionately benefited those individuals.

MPLA, the governing party, originated as a Marxist nationalist party during the independence struggle. During the Cold War and throughout a significant part of the Angola's almost thirty years of civil war, it received military and diplomatic support from the USSR and other Soviet bloc countries, including Cuba. At the same time, UNITA, initially aided by the Chinese, began to receive aid from the West, especially the United States and South Africa. The MPLA, which remains in power to this day, began the process of shifting to a privatized economy in the 1980s. Hence, some of the challenges faced by Angola are similar to those faced by countries transitioning from socialism, such as Russia and others in the Soviet bloc.

83. Angola also has diamond deposits, which were largely under UNITA control during the civil war.
85. Id.
86. Id. The CIA reports that, according to 2003 data, 70% of the population was below the poverty line. Life expectancy is a 2007 estimate.
1. Extra-Budgetary Accounts

During the conflict, Angolan officials used the civil war as an excuse for large military budgets and for a lack of transparency surrounding spending. After the conflict ended, government budgets remained large as the destruction of infrastructure required a widespread rebuilding program. However, although some secrecy could be justified on national security grounds, Human Rights Watch (HRW) points out that even during the war, the government could have been transparent concerning spending in the parts of the country under their control and with respect to the resources generated by the off-shore oil industry, which was never threatened by the rebels.88 The IMF documents the high level of “unexplained” expenditures from 1997 to 2002 which totaled U.S. $4.22 billion over this period or about 9.25% of GDP per year.89 According to HRW, that total is close to total spending of $4.27 billion on social and humanitarian programs.90 Furthermore, some of the recorded military expenses also probably incorporated corrupt kickbacks. According to HRW, “the most serious impediment to development was the government’s mismanagement of the economy and not the war.”91 The war gave the government a convenient excuse to use secrecy as a cover for corruptly-acquired gains. HRW presents several cases to illustrate how a lack of transparency apparently hid large payments that enriched the country’s leaders.92 As Hodges writes:

Institutional weaknesses may result in the bypassing of formally established budget execution procedures, and lack of transparency could also serve as a convenient cover for fraud and diversion of funds. Here, it is important simply to note the scale of extra-budgetary operations and the concern that this has aroused in the international financial institutions.93

88. HUMAN RIGHTS WATCH, supra note 87, at 44.
89. IMF, ANGOLA STAFF REPORT FOR THE 2002 ARTICLE IV CONSULTATION 31-33 (2002); IMF, ANGOLA: SELECTED ISSUES AND STATISTICAL APPENDIX 107-08 (2003) (cited in HUMAN RIGHTS WATCH, supra note 87, at 33, 44-45). The IMF staff report shows that twenty-two percent of government expenditure made between 1996 and 2001 was “unexplained,” that is, not recorded in the official budget execution accounts. Besides this, sixteen percent of expenditure was extra-budgetary but recorded in the fiscal accounts ex post. Taken together, the unrecorded expenditures, along with those recorded ex post, amounted to $10.2 billion between 1996 and 2001, or thirty-eight percent of total expenditure in this period. Even during the years when an IMF Staff Monitored Programs (SMP) were being implemented, more than one fifth of government expenditure was extra-budgetary (either recorded ex post or unrecorded): 27.5% in 2000 and 23.8% in 2001. Hodges, supra note 87, at 130.
90. HUMAN RIGHTS WATCH, supra note 87, at 1, 72.
91. Id. at 45.
92. Id. at 47-56.
93. HODGES, supra note 87, at 126.
The problem of extra-budgetary operations remained unresolved even after alerts from the IMF.\textsuperscript{94} The state-owned oil enterprise, Sonangol, appears to be at the center of the corruption involving extra-budgetary operations, especially through its off-the-books borrowing practices. Thus, an audit by KPMG in 2002 found a discrepancy of $2.0 to 2.6 billion between the oil revenues claimed by the Ministry of Finance and those deposited in the Central Bank. Discrepancies of $114 to $418 million existed between Sonangol's reported tax and royalty payments and those recorded on the Ministry of Finance's books. Furthermore, it significantly underpaid its taxes.\textsuperscript{95} An IMF staff report raised

concerns about the handling and disposition of oil and diamond concessions, revenue flows in the oil sector, the finances of Sonangol, and external borrowing practices, and argued that 'an effective policy response is urgently needed to make public finances transparent, strengthen institutions, establish a system of institutional checks and balances, and improve public procurement practices.'\textsuperscript{96}

After the end of the fighting, with no military threat present, the government passed several laws that criminalized and restricted information. According to HRW, the most restrictive of these is the State Security Act, passed on July 19, 2002, that criminalizes possession of documents that the government considers sensitive, even if lawfully obtained by those outside the government. Penalties can be imposed on both public officials and recipients of the information, and the law has extra-territorial reach.\textsuperscript{97} Such restrictions help maintain and enhance the wealth of the incumbent politicians who stayed in power after the end of the conflict and of other well-connected families and businesses.

2. Transferring Benefits to the Elite

During the civil war, members of the politically-connected elite were able to enrich themselves. The fighting did not much affect their ability to extract funds from the state and provided an excuse for secrecy and large public budgets. As suggested above and outlined in the HRW and IMF reports, corruption often took the form of thinly-disguised theft of state resources by

\textsuperscript{94} Id. at 128.
\textsuperscript{95} KPMG, CURRENT ASSESSMENT OF THE ANGOLAN PETROLEUM SECTOR: INSPECTION REPORT BY KPMG FOR THE MINISTRY OF FINANCE, GOVERNMENT OF ANGOLA (2002). The report performed under an IMF contract was never formally released, but Human Rights Watch obtained a copy. HUMAN RIGHTS WATCH, supra note 87, at 21, 23, 27.
\textsuperscript{96} HODGES, supra note 87, at 121.
\textsuperscript{97} HUMAN RIGHTS WATCH, supra note 87, at 47-48.
political leaders, or at least, of the use of state funds to support a lavish official lifestyle. However, other mechanisms were also used to reward supporters, often permitting some of the oil wealth to flow by indirect methods into private bank accounts. Hodges discusses four methods; none is unique to Angola, but their impact obviously depends on the available economic opportunities. The four impacts are as follows: (1) privileged access to foreign exchange at official rates, (2) privileged access to credit at low official interest rates, (3) privileges granted through restrictions on competition, and (4) privileged access to the purchase of state-owned land and businesses.

During the war, foreign exchange was in short supply. Until 1999, when the currency was allowed to float, the politically-connected elite were granted privileged access to foreign exchange at the official—and below the market—level. This was a way to transfer some of the state’s oil wealth to these favored few. By keeping the official rate low, the government could ration the supply. This was not done in a rational, transparent manner. Rather, “the political authorities simply informed the banks which individuals should receive the foreign exchange on offer.”

The second mechanism was the allocation of credit, and with it, privileged access to interest rates at the low official level. This rate was below the rate of inflation so that the real interest rate was negative. According to Hodges, “[s]tate-owned banks ... allocated credit on the basis of administrative directives received from the central bank or higher political authorities.”

This policy was also ended in 1999, but the overhang of bad loans will persist for many years. The third mechanism of state patronage was the imposition of restrictions on competition, which was used to protect or foster the businesses of those with political connections.

Grants of monopoly power were often combined with the fourth mechanism of privatizing state-owned farms, businesses, and other enterprises to produce economic rents for the new owners. Begun in 1988, privatization favored those politically connected to state officials:

The main focus was on privatizing small businesses, which were reserved for Angolan rather than foreign investors. It is noteworthy that the privatization of small companies took place without proper valuations or competitive bidding. As a result, army officers and other high-ranking officials were able to acquire farms and other

98. Hodges, supra note 87, at 131.
99. Id. at 133.
100. Id. at 134.
101. Id. at 138.
businesses as political favors, often for nominal sums or for no payment at all.\textsuperscript{102}

In the process, the peasants who occupied many privatized farms did not have their interests taken into consideration. Hundreds of former state farms were sold, "benefiting well-connected families of the politico-military elite at the expense of small peasants, who had been occupying and tilling much of the land of the former state farms on an ad hoc basis, without land titles, since the mid-1980s."\textsuperscript{103} Similarly, redistribution to the favored elite occurred in the cities:

After independence, almost all housing in the modern "asphalt" part of Luanda and other cities had been nationalized, because of the flight of the Portuguese settlers. . . . The state in effect presided over the transfer of properties for a fraction of their true value, at enormous cost to government revenue. This can only be explained as an act of self-enrichment on the part of the high officials who acquired some of the best properties and, more generally, as a strategy to cultivate the continuing loyalty of the MPLA's traditional urban constituency.\textsuperscript{104}

Taken together, these mechanisms permitted a massive transfer of wealth to elite supporters of the MPLA. All relied on the essential lack of transparency of state operations and on the inability of ordinary citizens to hold public officials to account. According to Hodges, some of the beneficiaries were:

[A] nexus of families that are closely linked to the centers of power through marriage, business relations, political connections and high positions in the security forces and administration. At their kernel is the presidential family itself. The family's extensive business activities . . . have been made possible by the opaque administrative mechanisms described . . . [above.] While these interests remain entrenched within the system, and patronage is used as a strategy for buying loyalty and cementing alliances, it will be difficult to move decisively towards more transparent, accountable systems of resource management and more competitive markets, even though conjunctural economic imperatives or financial necessities may dictate periodic bursts of reform.\textsuperscript{105}

\textsuperscript{102} Id. at 135.
\textsuperscript{103} Hodges, supra note 87, at 135-136.
\textsuperscript{104} Id. at 137.
\textsuperscript{105} Id. at 139-40.
3. Conclusions: Natural Resources, Conflict, and Corruption

In Angola, corruption helps facilitate the enrichment of the elite through the appropriation of state resources, especially oil revenues. Thus, Angola’s case demonstrates the way natural resource endowments can fuel corruption with the consequence that few benefits trickle down to the population at large. The basic argument for this “resource curse” is that a resource-rich state does not need to depend on its citizens to accumulate government revenues but can use resource rents to finance the state. Hence, rulers have little incentive to satisfy the demands of ordinary people so long as they can use resource rents to support a security service to keep them in power. Furthermore, with so much money flowing into state coffers and, corruptly, into the private bank accounts of the political elite, talented people enter public office where they can get rich and ignore the private sector.

Angola, however, provides an extra twist on this story related to the long-running civil war. First, the guerilla group also had access to a natural resource—diamonds—that was easy to transport and trade. These resource rents helped keep the war going along with outside help from sympathetic nation states. Second, the security threat provided a cover for the political and economic elite to enrich themselves. They could claim that large military expenditures were needed, appropriate some of the funds, and then justify secrecy about the use of funds on national security grounds. Once the fighting ended, national security continued to be used as an excuse to limit transparency and even to increase penalties for leaking information. For the most part, those in power during the fighting remained in control of government. Hence, they have no interest in a retrospective accounting. The level of malfeasance and unjust enrichment that took place during the fighting has helped fuel the government’s interest in limiting information.

At present, given the international focus on corruption and the sensitivity of both the IMF/World Bank group and the major international oil companies to the issue, Angola is taking some steps towards reform in cooperation with these outside actors. The IMF reports some progress in Angola’s system of financial management but notes the need for improvement. Of particular concern is the continued lack of transparency of the accounts of Sonangol, the national oil company, which are still excluded from the government accounts. Although not mentioned by the IMF, a further concern is the government’s extensive contracts with Chinese firms that express little concern regarding irregular payments and the lack of transparency.

106. See Le Billon, supra note 2 at 6; Hodges, supra note 87, at 2.
108. Id.
In spite of the IMF’s encouragement, the government is not part of the Extractive Industries Transparency Initiative that would require disclosure of payments made to and received by the Angolan government.\textsuperscript{109} The Angolan authorities “questioned the merits of joining” and claimed that “oil companies have positively assessed Angola’s bidding practices.”\textsuperscript{110} This hardly seems a sufficient justification because transparency is valuable not simply to generate a fair bidding process but also to permit more public oversight of the size and use of government revenues. According to a Save the Children report in 2005, “[o]f the seven companies with operations in Angola that were surveyed, only Chevron Texaco disclosed details of a payment” with the agreement of the government of Angola.\textsuperscript{111}

Finally, the country lacks the capacity to administer complex systems of procurement, data gathering, transparency, and accountability. It is in the difficult situation of needing to carry out a massive rebuilding task with weak administrative capacity. However, if corruption remains a major source of inefficiency in allocating and monitoring the rebuilding effort, then those involved have little incentive to create the kind of capacity and financial control urged by the IMF. The problem is not just capacity, but also political will. As the Kosovo case discussed next illustrates, one solution is the use of expatriate monitors or advisors with expertise and authority to act. However, that solution can face difficulties if international advisors end up becoming part of the corrupt system. Although Kosovo presents a mixed case, it does suggest that such strategies can succeed under some conditions. In Angola, of course, foreign exchange from oil and, to a lesser extent, from diamonds, give its government leverage to resist external pressures for reform at the same time as its weakly-developed political system limits the impact of popular protest.

\textbf{C. Kosovo}\textsuperscript{112}

Kosovo provides a third variant on the theme of corruption in post-conflict situations. Large-scale fighting ended in 1999, and since then Kosovo has been largely self-governing under a United Nations Protectorate backed by NATO security forces.\textsuperscript{113} After Serbia rejection of a United Nations

\begin{thebibliography}{9}
\bibitem{110} Id.
\bibitem{111} \textsc{Save the Children, Beyond the Rhetoric: Measuring Revenue Transparency; Company Performance in the Oil and Gas Industries} 23 (2005), available at http://www.savethechildren.org.uk.
\bibitem{112} This section was informed by a memo and research help from Dastid Pallaska, Yale LLM '08.
\bibitem{113} S.C. Res. 1244, ¶ 5, U.N. Doc. S/RES/1244 (June 10, 1999). The Special Representative of the UN Secretary General heads the international civil administration, called the United Nations Mission in Kosovo (UNMIK). The cooperating institutions are the UN, the Organization for Security and Cooperation in Europe and the European Union. Two UNMIK resolutions, No. 2001/9 and No. 2002/9 provide the constitutional framework and incorporate several international human rights treaties. See \textsc{ABA RULE OF}
\end{thebibliography}
proposal a a Kosovo Status Settlement, the Kosovo Assembly issued a unilateral Declaration of Independence on February 17, 2008 with international backing. However, its status remains in some doubt given the opposition of Serbia and Russia.\footnote{114}{"Balkan Politics: All at Sea," The Economist, April 12, 2008 at 58.}

Kosovo is much smaller than either Angola or Guatemala with a population of almost two million, of which ninety percent are of Albanian background. Unemployment is over fifty percent, and GDP was 2,273 million euros in 2006, implying a per capita income of about 1,200 euros or U.S. $1,700, making it very poor both by European standards and compared to the other cases.\footnote{115}{UNITED NATIONS MISSION IN KOSOVO (UNMIK), FACT SHEET (Nov. 2007), available at http://www/unmikonline.org/docs/2007/Fact_Sheet_nov_2007.pdf.} However, inequality is not as high as in Angola and Guatemala. Unlike Angola, Kosovo has no guaranteed source of foreign exchange. Although technically a part of Europe, its situation is in some ways closer to that of Guatemala. The war was very destructive,\footnote{116}{Sannerholm, supra note 3, at 70-71.} the economic situation very poor, and local institutions are weak.

The main differences compared to the other cases are that the former fighters and their supporters now control the government inside Kosovo but have limited discretion because of the presence of outsiders from Europe and international institutions who provide aid and help maintain political stability.\footnote{117}{In this it bears some similarities to Liberia where international institutions also are playing an important role in the rebuilding effort. See Boucher, supra note 1; Sannerholm, supra note 3, at 85-92.} Like Guatemala, the country’s poverty and the destructiveness of the war have given outside actors considerable leverage. For example, the police include an International Police Force of over one-thousand members compared to over 7,000 Kosovars, and the judiciary includes fourteen international judges and ten international prosecutors.\footnote{118}{Data of the police from November 2006. UNMIK, supra note 115.}

Corruption in Kosovo is related both to its immediate past history and to the influx of funds for rebuilding and humanitarian aid. Unfortunately, efforts to control malfeasance by using outsiders as guarantors and monitors have sometimes backfired as advisors from the United Nations authority or other bodies have sometimes participated in corruption themselves.

1. Loci of Corruption

Unlike Guatemala and Angola, Kosovars have been extensively surveyed since the end of fighting. These data show that perceptions of corruption are high for many state institutions, but individuals reportedly experience low
levels of corruption in their daily lives. A United Nations Development Program ("UNDP") survey from the third quarter of 2007 broke down perceptions of corruption by sector.\footnote{\textit{United Nations Development Programme, Kosovo Early Warning Report #17} (June-Sept. 2007).} According to the survey, 54\% of respondents view the Kosovo Power Corporation ("KEK"), a publicly-owned enterprise in charge of power supply, as the most corrupt institution.\footnote{Id.} KEK is followed by the Kosovo Trust Agency ("KTA"), a United Nations controlled institution overseeing the privatization process, which is perceived as corrupt by 50\% of the respondents. The Kosovo Central Administration (Government) is listed third, with 33\% of the respondents identifying it as corrupt. The judiciary is in eighth place, with 15\% of the respondents perceiving it as corrupt. However, only 24\% of Kosovo Albanian respondents, 6\% of Kosovo Serb respondents, and 22\% of respondents from other minorities consider the judiciary to be fair and unbiased. Interestingly, the Kosovo Police Service, which by the nature of its work is in most frequent contact with the citizens, is seen as the least corrupt institution in Kosovo with only 5\% of respondents perceiving corruption.\footnote{Id.}

When the respondents were asked about their personal experience with corruption, however, the numbers are low. Only 6\% of Kosovo Albanians stated that bribes were solicited from them in exchange for access to public services, and only 7\% of Kosovo Serbs and 4\% of other minorities reported that access to public services was conditioned on requests for favors or bribes. The statistics show a steady downward trend since the peak in March 2005 when the percentage of actual corruption reported by respondents reached a high of 23\%.\footnote{Id. at 30, tbl. 2.7.} The gap between perceptions and experience may be capturing the distinction between high-level corruption and low-level payoffs that directly affect ordinary citizens. Media reports affect perceptions, and if such reports are to be believed, corruption appears to be a serious problem at the top of government. Furthermore, the inability of law enforcement and justice authorities thoroughly to prosecute and adjudicate cases of corruption enhances public distrust. Most prosecutions involved low-level bureaucrats and not the ultimate beneficiaries of large-scale corrupt deals.

\footnote{Id. at 30, tbl. 2.7.}

\footnote{Id. at 30.}
The Milosevic regime's violent establishment in 1989 fueled corruption, and the political and social turmoil that led to the 1997-1999 conflict encouraged corrupt behavior. These events affected societal values and contributed to a major shift in many people's social stratus. The middle class faced severe economic pressures and downward mobility. At the same time, many of those associated with the Milosevic regime (1989-1999) and with the national liberation movement (1999-present) gained significant political and economic power and enhanced social status. The sense of impunity felt by those in power was fed by the Kosovars' general distrust of the judiciary, which in large part consists of judges and prosecutors who served under the unpopular Yugoslav justice system—the regime against which most of these "heroes" fought.\footnote{123}

During the decade under Milosevic, between 1989 and 1999, state-sponsored corruption reached its peak. Transparency International has labeled Milosevic one of the most corrupt leaders in the world with an estimated $1 billion dollars stolen from public funds.\footnote{124} Milosevic's denial of public services to the majority of the Albanian population of Kosovo encouraged corruption. In practice, the public services that were officially denied to Kosovar Albanians were on sale. A stringent regulatory system that included unnecessary and complicated administrative procedures created opportunities for the solicitation of bribes. For example, procedures for obtaining public services, such as personal and travel documents or other administrative permits, were tailored to give discretionary power to low-level bureaucrats who collected bribes on behalf of the regime. The widespread corruption that characterized this decade was visible in every aspect of life but was especially prevalent in the law enforcement and justice systems. In an environment of lawlessness, where political trials, police brutality, and arbitrary arrests were officially-sponsored policies, citizens had only one alternative—to buy themselves out of the situation. In this manner, the adjudication of almost all types of crimes was transferred from courtrooms to government offices where bribes were paid. The lack of a reliable banking system, which resulted in a cash-based economy, meant that most of these transactions left no paper trail. This situation had long-term negative impacts, which continue to undermine efforts to build a sustainable, honest society. It entrenched a culture of corruption deeply in the Kosovo society, limited its moral stigma, and thus increased public tolerance towards corruption.

Present day perceptions of corruption are, however, also a reflection of the lack of effectiveness of various public institutions since the end of the

\footnote{123. See ABA RULE OF LAW INITIATIVE, supra note 113, at 3-8.}
\footnote{124. THE MANY FACES OF CORRUPTION, TRACKING VULNERABILITIES AT THE SECTOR LEVEL BOX 12.1 390 (J. Edgardo Campos and Sanjay Pradhan eds.).}
conflict, which may or may not be due to corruption. For example, KEK, viewed as highly corrupt, is still unable to supply twenty-four hours of electricity despite the fact that it is highly subsidized by international organizations and the Kosovo government. In a recent report, the European Agency for Reconstruction states that the European Union invested 403.2 million euros in KEK between 1999 and 2006.\(^{125}\) The Kosovo government also has continuously subsidized KEK, and its assistance has almost doubled each year: 2004 with 13 million euros; 2005 with 28.4 million euros; and 2006 with 45 million euros.\(^{126}\) Corruption does appear to be part of the explanation for KEK’s ineffectiveness. For example, in 2003 one of KEK’s top managers, a UN-appointed official, was convicted in his home country of Germany of misappropriating 3.9 million euros from the KEK budget.\(^{127}\)

Turning to the institution perceived as the second most corrupt, KTA is in charge of privatization but also oversees the management of publicly-owned enterprises, including KEK and Post and Telecom of Kosovo (“PTK”). Therefore, its ranking in the survey is partly a function of its primary role in the appointment of managers for these enterprises. KTA’s personnel decisions seem to have been weak across the board. Furthermore, collaboration between international advisors and Kosovar managers extended beyond the KEK case noted above. For example, in April 2004, two top managers of the PTK were arrested along with their international advisor over allegations of embezzlement of company funds. The case was never brought to trial and continues to be in the hands of international prosecutors of the United Nations Mission in Kosovo (“UNMIK”).\(^{128}\) The involvement of UNMIK officials may be one reason for the delay.\(^{129}\)

Other cases of corruption and official misconduct detected by the Office of the Auditor General were not followed up either by UNMIK or by local law enforcement authorities. Nevertheless, audit reports, widely publicized in the media, did have political impact and presumably affected public perceptions.


\(^{127}\) Joe Tuschler, a UN appointed manager of KEK, escaped prosecution in Kosovo but was later arrested and convicted in his home country (Germany) where he was sentenced to three and a half years in prison. Kosovar Stability Initiative, Reconstruction Survey, Kosovo 2007 31 (2007).

\(^{128}\) Id. The allegations arose from investigative journalism by Kosovo’s leading daily newspaper, Koha Ditore, which carried out extensive reports alleging misconduct of these individuals and publishing copies of the fraudulent contracts.

\(^{129}\) Anecdotal evidence suggests that the investigation of this case was delayed by senior UNMIK officials due to the involvement of its leadership, namely Deputy Head of UNMIK Gerard Fischer and Rainer Lesar, a high ranking official of the UNMIK Department of Transport and Telecommunication in this scandal.
They were effectively utilized by the opposition parties, which in the second half of 2005 launched an aggressive campaign to discredit the ruling coalition government. Moreover, following the death of Kosovo’s President Ibrahim Rugova in January 2006, the coalition parties, facing strong criticism over corruption allegations, also came under immense pressure from the international community. The pressure was a result of a public outcry that followed the release of the audit reports and the opposition’s success in placing this topic at the forefront of parliamentary debate. During this period, the opposition focused on three incidents, which directly exposed corruption scandals in the three most important institutions in Kosovo: Assembly, Presidency, and Office of Prime Minister.

The so-called “President-gate” scandal arose from allegations that in April 2005 the Office of the President embezzled about 1.4 million euros while procuring six armored vehicles from an automobile dealer in Germany. The price of the vehicles was allegedly inflated to hide the kickbacks, and the transaction was done through an intermediary, in other words, a local businessman close to the President’s party who was alleged to have laundered the proceeds of this crime. In July 2006, three senior officials of the President’s office were indicted by an UNMIK international prosecutor along with the businessman. According to the indictment, the defendants are alleged to have paid 338,875 euros for each vehicle whereas the actual cost of vehicles was 107,000 euros each.

In a similar scandal, Nexhat Daci, the President of the Kosovo Assembly, was accused by opposition parties of abusing public funds for personal benefit. The accusations alleged that he ordered a luxurious armored vehicle costing over 220,000 euros. Money laundering was suspected because the vehicle was not delivered until a few months after the full payment was made. Additionally, audit reports disclosed a number of other unauthorized expenditures made by senior staff members at the behest of the President of the Assembly. In November 2006, following a criminal investigation of these allegations, police arrested the Assembly President’s top advisors.

In the summer of 2005, Kosovo Prime Minister Bajram Kosumi chartered a private jet to fly back from a vacation in Turkey to an important meeting with the UN Envoy for the Kosovo Status. The cost of the trip was 20,000 euros.

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130. An article published by daily Lajm, citing an investigation report from UNMIK Department of Justice, reveals the involvement of thirteen staff members of the Presidency in the affair. Serbeze Haxhijaj, President-gate, LAJM EKSKLUZIVE, Mar. 25, 2006.


132. These expenditures included purchase of a plasma TV and two power generators for President’s private mountain cabin, skiing lessons for his staff, smart suits, glasses, and dental treatment. INT’L CRISIS GROUP, KOSOVO STATUS: DELAY IS RISKY 15 n.112 (2006).
The media widely reported that the jet was not paid for from the Kosovo budget. In a September 2005 press conference, the Prime Minister said that the "private jet was paid by his friends."\textsuperscript{133} The media and the opposition described this statement not only as an example of misconduct but as a statement of impunity. Presumably, the public saw this payment as an effort by wealthy interests to curry favor with the President. Between March 2005 and March 2006, the government's approval rating dropped from a record high of 80% down to 42%, while the Assembly's approval rating dropped from 70% to 45%.\textsuperscript{134}

These scandals led to a political upheaval in the governing coalition. On March 1, 2006, the newly-revived leadership of the Democratic League of Kosovo ("DLK"), the main political party, sacked its two top public officials.\textsuperscript{135} DLK's minority coalition partner, Alliance for Future of Kosovo (AAK), soon thereafter requested the resignation of its vice-president from the position of Prime Minister and nominated Lieutenant General Agim Ceku, Commander of the Kosovo Protection Corps to that post.\textsuperscript{136} Ceku, a Croatian Army General, returned to Kosovo in 1999 and led the Kosovo Liberation Army through the end of the conflict. As a professional not affiliated with any political party, his nomination was an effort of the coalition partners to boost the government's credibility, which had been severely undermined by the outgoing leadership.

2. The Judiciary and the Prosecutors

So far, we have seen that a culture of impunity seems to be on the wane, at least for active politicians. The governing coalition reacted strongly to its loss in popularity by sidelining those accused of improprieties and bringing in new leadership. However, enforcing the law against corrupt officials will be difficult if the prosecutors and the judiciary are themselves either corrupt or biased. As noted above, the population perceives the judiciary to be unfair and rather corrupt. The ABA study recorded widespread complaints about advocates who routinely gave gifts to judges and initiated ex parte contacts with them, and those who bribed judges or prosecutors or who, at least,

\textsuperscript{133} Avionin ma kanë paguar miqët, KOHA DITORE, Sept. 8, 2005.
\textsuperscript{134} UNITED NATIONS DEVELOPMENT PROGRAMME, KOSOVO EARLY WARNING REPORT #11 13 (July-Sept. 2005); UNITED NATIONS DEVELOPMENT PROGRAMME, KOSOVO EARLY WARNING REPORT #13 17, fig. 1.3 (Jan.-June 2006).
\textsuperscript{135} Those sacked were Nexhat Daci, President of Kosovo Assembly, and Adem Salihaj, Deputy Prime Minister. Kosovo Information Center ("KIC"), Kryesia e LDK-së shkarkon kryekuvendarin Nexhat Daci, KOSOVO DAILY REPORT, Mar. 1, 2006.
\textsuperscript{136} KIC, Kryeministri Kosumi ka dhënë dje dorëheqjen, e zëvendëson Agim Çeku, KOSOVO DAILY REPORT, Mar. 2, 2006.
accepted payments from clients for that purpose.\textsuperscript{137} As Sannerholm states: "In post-conflict situations, where the judiciary sometimes benefits from a lack of supervision and a legal 'chaos,' they are not always part of the solution but part of the problem."\textsuperscript{138}

Under the Milosovic regime, Albanian judges and prosecutors were dismissed, and Albanians were banned from attending the official law school and from taking the bar exam. Although Kosovar Albanians did establish a parallel law faculty in Pristina, they could not take the bar exam or practice law; accordingly many lawyers fled. At the end of the fighting, most registered advocates were older lawyers trained during the socialist era.\textsuperscript{139} As a result of this history, when UNMIK sought to reestablish courts and prosecutorial bodies quickly in 2000, it was severely hampered by the limited applicant pool. Applicants for judgeships and positions as prosecutors did not undergo any substantive vetting. Instead, an \textit{ad hoc} committee was formed, and it did little more than identify pre-Milosevic regime jurists who had expressed an interest in returning to work. Despite some minor improvements in the appointment process with the establishment of the Kosovo Judicial and Prosecutorial Council ("KJPC") in 2001, the limited number of new appointments meant that the majority (85\%) of presently-serving judges and prosecutors are those who were appointed under this flawed appointment system.

The consequences of this system remain evident. For example, over 95\% of current prosecutors received their academic and professional training in the Communist system where prosecutors had low public standing and functioned as little more than government bureaucrats. Similarly, over 95\% of the currently-sitting judges were educated and appointed during an era when they mainly rendered politically-motivated rulings. These statistics help explain both the judiciary’s low approval ratings and the difficulty of bringing successful organized crime or public corruption cases.

In 2001, UNMIK established the Judicial Inspection Unit ("JIU") charged with monitoring judicial performance and investigating judicial and prosecutorial misconduct. It can refer cases of misconduct for disciplinary hearings before the Kosovo Judicial Council. According to the U.S. State Department’s Human Rights report, the JIU has processed a total of 1,488 complaints since its establishment, including 448 during 2006. Of those 448, JIU rejected 221 cases and completed 100 of the 227 investigations it opened. In the majority of investigations (89), JIU found no misconduct. The unit referred six cases to the Judicial Council, which heard three by year’s end.

\textsuperscript{137} ABA RULE OF LAW INITIATIVE, \textit{supra} note 113, at 41.
\textsuperscript{138} Sannerholm, \textit{supra} note 3, at 83.
\textsuperscript{139} ABA RULE OF LAW INITIATIVE, \textit{supra} note 113, at 3.
dismissing one judge and recommending three for disciplinary action. Thus, although the JIU may yet have an impact, it has gotten off to a slow start.

In 2005, UNMIK and the leaders of the Kosovo judiciary supported an important law that strengthened the independence of the judiciary. Thus, in the future it will become even more important to have competent, impartial judges. Independence is not valuable if it simply leads to impunity and self-dealing. To improve judicial quality, in December 2006 UNMIK introduced a comprehensive vetting process for judges and prosecutors. The vetting process will include a full background check, a professional exam, personal fitness evaluation, and a meaningful review of the applicant’s prior legal work, if applicable. However, the reappointment process has not yet begun.

The benefits of a well-working vetting process would be manifold. It will facilitate a smooth transition of generations within the judiciary, given that over 75% of the current judges and prosecutors are over 60-years-old. A new generation of judges and prosecutors could energize the public sector and improve its effectiveness. The vetting process will also lend credibility to the system, which in turn will result in greater public trust in the judiciary and in prosecutors. The credibility of the vetting process will bring a degree of prestige to the positions of judges and prosecutors, which will not only make these positions more attractive to potential applicants but also give these professionals a sense of duty. Moreover, the vetting procedures will strengthen the claims of the judiciary for a substantial increase of salaries in order to bring them closer to the salaries of the executive and the legislature and to attract competent lawyers to careers on the bench.

In a second major law enforcement reform, on September 30 2006, UNMIK, in cooperation with the Ministry of Justice, established the Kosovo Special Prosecutors Office (“KSPO”). This office has nationwide jurisdiction and was created to investigate the most serious cases of organized crime, public corruption, and terrorism. Five Special Prosecutors are now in place. They have integrated well into UNMIK’s Criminal Division and are actively working on cases and participating in training activities.


142. At present, salaries are low. According to the ABA report, entry level municipal court judges and prosecutors earn 380 euros per month, and district court judges and prosecutors earn 480 euros per month. The Chief Prosecutor and the President of the Supreme Court earn 560 euros per month. These are after-tax figures. In 2006 the average private sector worker earned 211 euros per month. ABA RULE OF LAW INITIATIVE, supra note 113, at 36.

goal is to recruit a total of ten Special Prosecutors, but recruitment remains a constant challenge, as the nature of the cases handled by Special Prosecutors may impose greater risks than normally faced by local public prosecutors. Special Prosecutors are handling more than 30 cases involving criminal offenses of a type previously investigated and prosecuted exclusively by UNMIK International Prosecutors. The KSPO is just beginning to obtain indictments and judicial verdicts in important cases involving drugs, attempted murder of public officials, and weapons offenses. The office has not yet created any special task forces in conjunction with the police aimed at tackling more sophisticated forms of organized crime. The limited success of the KSPO so far is primarily due to the limited applicant pool that includes only existing prosecutors that were appointed under the flawed process described above.

3. The Auditor General

When the new leaders took office in 2006, they had available a relatively new tool of accountability in the Office of the Auditor General ("OAG"), which was established in November 2003 under UNMIK Regulation 2002/18. The Auditor General has a full mandate to make audit reports open to the public and to report on follow-up procedures. The independence of the Auditor General’s office in planning and conducting audits is guaranteed, and he or she currently reports to the head of UNMIK; in time, he or she will report directly to the Kosovo Assembly.

After assuming office, Prime Minister Ceku requested external audits in all ministries and municipalities. According to the U.S. State Department Human Rights report, at the end of 2006 the Auditor General of Kosovo performed audits in five municipalities and in six ministries. In most cases, the Auditor General found major violations pertaining to government administration, as well as in fiscal management and procurement practices. Audit reports of the Ministry of Communities and Returns served as the basis for formal criminal investigations against the Minister on allegations of misuse.
of public office. In response to these events, in November 2006 Prime
Minister Ceku dismissed that Minister from his cabinet.145

Similar actions were taken by the new President of the Assembly, Kole
Berisha, who ordered an external audit of the Assembly. Audit reports
revealed further wrongdoings by the Assembly's administration under his
predecessor's leadership. Based on the audit findings, Berisha suspended four
senior Assembly officials, including the Permanent Secretary. Furthermore,
in order to determine the involvement of the political leadership of the
Assembly in the documented irregularities, in November 2006, Berisha
established a parliamentary investigation committee. By the end of 2006,
based on the findings of the audit reports, police arrested three of the
suspended officials of the Assembly.146

The hard work of the Auditor General of Kosovo during 2006 did not go
unnoticed by the groups whose interests were affected. On February 28, 2006,
unknown persons assaulted the Auditor General, leaving her with cuts and
bruises. She was assaulted only two days after the release of a critical audit on
the Prishtina municipality. According to the U.S. State Department Human
Rights report, police investigations into this incident were ongoing at the end
of 2006.

However, in spite of the success of the Office of the Auditor General, one
problem is the unwillingness of the office to move from the simple identifica-
tion of violations to pointing out the responsible officials. Thus, in most cases,
prosecutors were unable to attribute the findings of the audit reports to specific
officials and then transform the reports into prosecutable evidence.

4. Anti-Corruption Agency

In December 2003, the Kosovo government established an Inter-
Ministerial Working Group to develop an Anti-Corruption Strategy. Within
a year the Working Group drafted a strategy that was approved by the
government in March 2004. One of its key objectives was the promulgation
of an Anti-Corruption Plan, which was adopted by the Kosovo Assembly in
March 2005. Following the enactment of the law, in early 2006 the govern-
ment developed a new Anti-Corruption Plan and shortly thereafter established
the Anti-Corruption Council, which in July 2006 appointed the Director of the
Anti-Trafficking Agency ("ATA").

Although in its infancy, the ATA has introduced an important initiative.
In 2007, ATA required that all high-ranking government officials submit

145. KIC, Petkoviç i dorëzon dorëheqjen Kryeministrit Cëku, KOSOVO DAILY REPORT, Nov. 27, 2006.
146. U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: SERBIA 20
(Includes Kosovo) (revised by the Bureau of Democracy, Human Rights, and Labor, 2007), available at
financial disclosure forms. The main problems with this initiative were enforcement and the fact that the ATA did not release the submitted forms to the public. When a number of high-ranking officials did not submit their forms, ATA, after a number of public protests, disclosed the names of these officials in the media. No follow-up action was reported.

5. Conclusions

In spite of the weaknesses of both democratic and oversight institutions, Kosovo seems to be on the road to controlling corruption through enhanced democratic accountability. Although the first round of “heroes” may have operated with impunity, the press reports on corruption scandals freely. The impact of these reports is documented in quarterly surveys of public opinion, and this has led to the resignation of the implicated politicians. A major weakness, however, remains the operation of prosecutors and the judiciary.

The presence of outsiders with both legal and financial clout has been a mixed blessing especially when individuals appointed by UNMIK ultimately succumb to corrupt opportunities themselves. However, UNMIK does appear to have had a positive impact in supporting democratic reform and in aiding the creation of institutions of accountability and oversight that are now in the process of being turned over to Kosovars. The legacy of the past affects the quality of those available for appointment to positions such as judges and prosecutors, but that problem will be cured with time and can perhaps be moved along quickly with the aid of UNMIK pressure. Moreover, now that Kosovo has declared its independence, UNMIK is expected to be replaced with an EU mission that will have a narrower mandate.

Finally, Kosovo politicians have recognized that the fight against corruption is not only a noble cause but is also a cause that can get them elected. An anti-corruption agenda in one dimension along which the electorate evaluates candidates. This shift in public sentiment will, one hopes, help extract Kosovo from a vicious cycle of political corruption. And strengthen its political system.

III. CONCLUSIONS AND REFORM PROPOSALS

Much has been made of the importance of “political will” and moral leadership from top officials in establishing effective governments in a post-conflict setting; but strong leadership and good morals are not sufficient.

147. The scandals may not all be in the past. On December 18, 2007 the Associated Press reported that a top UN official, Retired U.S. Army General Steven Schook, had left the country and would not have his contract renewed. The case is pending, but he is reportedly being investigated for his ties to Kosovo leaders including the Energy Minister and a former Prime Minister.
Political will by itself can breed autocracy. Moralizing risks degenerating into empty rhetoric—or worse, witch hunts against political opponents. Policy must address the underlying conditions that create corrupt incentives, or it will have little lasting effect.

Some argue that the main cure for corruption is economic growth and that economic growth is furthered by good policies, especially the promotion of education. However, that claim reflects an overly simplistic view of the roots of both economic growth and corruption. Particularly in post-conflict situations, policy recommendations that concentrate only on macro-economic aggregates are pointless. No growth can occur unless institutions are restored to at least a minimal level of competency. Corruption is a symptom indicating that the relationship between the state and the rest of society is dysfunctional, undermining the legitimacy of the state and leading to wasteful public policies. Good policies are unlikely to be chosen or to be carried out effectively without honest institutions.

The conventional options for institutional reform fall into several broad categories: program redesign, increased transparency and accountability, and, in severe cases, constitutional change. These are all valuable in post-conflict state-building, but sometimes they will not be sufficient or even possible because of the remaining threats of violence and the weakness of the institutions. I conclude with some proposals that are more directly targeted at post-conflict situations.

The first line of policy response is the redesign of programs in order to limit the underlying incentives for payoffs. This might mean eliminating highly-corrupt programs, but, of course, the state cannot abandon its responsibilities in many areas where corruption is pervasive. One response is to limit official discretion by, for example, streamlining and simplifying regulations, expanding the supply of benefits, making eligibility criteria clear, introducing legal payments for services, giving officials overlapping jurisdictions to give citizens choices, or redesigning systems to limit delays. Leaders should consider if reforms in one area will just shift corruption to another part of the government. Programs may need to be comprehensive to have any impact. In addition, service delivery can be improved by civil service reforms that provide better salaries, improved monitoring, and the use of incentives to increase morale.

The second collection of reform strategies focuses on the accountability and transparency of government actions. For example, a freedom-of-information law can give people access to government information. Many government decision-making processes should be open to public scrutiny and participation.

Other options to improve accountability are the creation of independent oversight agencies and the use of external and internal benchmarks. Ongoing experiments with grassroots democracy need more study and research in order to determine their impact and their transferability to other contexts.\textsuperscript{149} Open government also depends upon a vigorous and free media that can perform a watchdog function. International treaties and organizations such as Transparency International, the World Bank, and the United Nations can help create an environment in which multinationals limit their corrupt activities.

Third, some countries may need to consider more radical reforms in government structure. Democracy is valuable for many reasons, but it is hardly a cure for corruption, as the previously-mentioned cases illustrate. Some evidence suggests that presidential systems may be especially corrupt.\textsuperscript{150} Furthermore, elections are not sufficient in and of themselves. The state must protect civil liberties and establish the rule of law. Rules must be clear and fair and be administered in a non-discriminatory fashion. This implies the assistance of an honest, professional, and independent judiciary as well as the support of police and prosecutors who have similar levels of integrity and competence.

With these familiar reform options as background, what are the particular factors that must be considered in post-conflict polities? What can international bodies do beyond providing peacekeepers to create a window of opportunity for reform? Each case is different, but here are some general suggestions:

- Seek peace agreements that incorporate measures to limit corruption and that are combined with other policies such as those suggested below.
- Anti-corruption and government reform efforts can either set the stage for more reforms or destabilize an already fragile equilibrium.\textsuperscript{151} Thus international peacekeepers may be needed to create a space in which reform can occur. They can only do this, however, if they have the resources to operate effectively.\textsuperscript{152}

\begin{itemize}
\item \textsuperscript{149} Susan Rose-Ackerman, Governance and Corruption, in Global Crises, Global Solutions 301 (Bjørn Lomborg ed., 2004).
\item \textsuperscript{150} Jana Kunicová & Susan Rose-Ackerman, Electoral Rules and Constitutional Structures as Constraints on Corruption, 35 Brit. J. of Political Science 573 (2005).
\item \textsuperscript{151} Le Billon, supra note 2.
\item \textsuperscript{152} Madelene O'Donnell, Post-conflict Corruption: A Rule of Law Agenda, in Civil War and the Rule of Law, (International Peace Academy ed., 2006) makes this point by comparing the relatively well-resourced and effective body in Liberia in 2005 with the poorly funded and ineffective force in Democratic Republic of the Congo.
\end{itemize}
Pick your battles carefully to achieve some early and visible victories and to tailor reform programs to the capacities of the country; in other words, start simple. For example, be sure primary systems of financial control are in place within the government agencies before creating secondary bodies such as anti-corruption commissions.  

Do not simply pour in funds without clear checks on the money's use. One option for international actors is to use trust funds to administer aid programs with the ultimate goal of eventually turning over these programs to the government.

International bodies can help buyoff and arrange exile for corrupt top leaders. This is superior to incorporating them into the government. Of course, the cases of Angola and Guatemala illustrate situations where this strategy is unavailable because allegedly corrupt leaders were the winners in the civil war.

Review the training and integrity of law enforcement officers, military personnel, judges, and prosecutors. This may involve mass firings followed by universal training opportunities (with testing) before people are hired or rehired. International aid can help integrate former rank-and-file combatants with financial aid and training.

Involve ordinary people and local businesses in oversight and participation, and provide safe havens for whistleblowers. On the other hand, eliminate self-help vigilantes and replace them with regular police forces.

Restrict the armed force's and other security service's ability to participate in legal businesses, so that they do not feel enticed to engage in illegal businesses or accept kickbacks. This may need to go along with a one-time buyout strategy. Giving them an ongoing stake in profitable ventures will simply entrench corrupt incentives.

Create bodies both inside government agencies and independent of the executive for the administration of a freedom-of-information law.

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153. Id.

154. For example, the Afghan Reconstruction Trust Fund, operated by the World Bank, channels funds to the government from twenty-four countries. LORENZO DELEGUES & YAMA TORABI, RECONSTRUCTION NATIONAL INTEGRITY SYSTEM SURVEY AFGHANISTAN 2007 17 (2007). In Mozambique a trust fund for the funding of political parties accepts foreign donations. O'Donnell, supra note 152.

155. Le Billon, supra note 2. On the problems that arose from incorporation of warlords into the Afghan government, see DELEGUES, supra note 154; O'Donnell, supra note 152.

156. Oversight can be facilitated by involving established local organizations such as religious bodies. In Afghanistan, for example, one decentralized aid program uses local mosques as places to display results and financial accounts. DELEGUES, supra note 154, at 17.
to audit and monitor government spending. Strengthen the independence of prosecutors and courts. International technical assistance can help improve internal financial controls, establish independent agencies, develop methods to incorporate public input, and train governmental personnel or media. Stress the creation of systems to monitor public spending and policymaking, not just to control the disbursement of aid funds.157

- Encourage more systematic study of interventions by international bodies to see what works and what does not, including the gathering of baseline data so that donors can track programs as they develop and document progress or setbacks.
- At the global level, international organizations should work to encourage more transparency in international business deals and to develop stronger international controls on money laundering to make it more difficult for corrupt officials to export their gains.

Strong leadership at the top of the state is needed as a post-conflict state moves toward the goal of a more legitimate and better functioning government. At the same time, the reconstruction process needs to sideline those who have in the past used the state as a tool for private gain. International assistance can help, but it needs to be narrowly tailored to avoid exacerbating the underlying problems created by the mixture of corruption and threats of violence from those both inside and outside the government. Perhaps the most difficult cases are those where violence is unlikely to return, but where a corrupt elite system remains in power through control of both valuable resources and the levers of state power.

157. A positive case is an effort by an aid-financed NGO to limit payoffs in river transport in the Democratic Republic of the Congo. It achieved slow success over time with mixture of information provision, consultation with local actors, and the introduction of two-way radios. MICHAEL BROWN ET AL., COMBATING LOW-LEVEL CORRUPTION ON WATERWAYS IN THE DEMOCRATIC REPUBLIC OF CONGO: APPROACHES FROM BANDUNDU AND EQUATEUR PROVINCES (George Washington Univ. Law School 2004). Another example is the control of education subsidies in post-conflict Sierra Leone. Losses of 45.1% of the total were controlled by hiring an independent auditor to deliver the funds to local schools. This apparently cut losses but was itself expensive, costing the Ministry 12% of the funds dispersed. BU-BUAKEI JABBI, supra note 8, at 100.