

Corruption in Post-War Reconstruction: The Experience of Bosnia and Herzegovina

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The Dayton Peace Agreement of December 1995 ended the conflict in Bosnia and launched a major international intervention to reconstruct the country and return those who had been expelled from their homes. This paper considers the challenges the international community and local partners faced in fighting corruption and the way in which corruption impacted on wider reconstruction efforts. It describes the nature of the corruption that the international community confronted, the particular characteristics of the Bosnian case, and some of the key responses from the international community and national authorities. It concludes by noting some of the lessons learned.

The Challenges of Corruption

Post-war Bosnia¹ provided fertile ground for corruption. The US General Accounting Office has estimated that between 1996 and 1999 the international community committed more than US \$4 billion to finance civil aspects of the Peace Agreement.² Other sources cite US \$5.1 billion for the same time period. To put this amount in perspective, in 1999 GDP in Bosnia was US \$4.129 billion, while the population was 3.9 million.³

However, the Peace Agreement had not removed those who had been in power during the conflict, and in many cases had been involved in serious criminal activity. For example:

- Mom_ilo Kraji_nik was a member of the *post-war* Presidency of Bosnia and Herzegovina from 1996-1998. He has since been indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) on charges of ‘Genocide, Crimes against Humanity, Violations of the Laws or Customs of War, and Grave Breaches of the Geneva Convention’.⁴
- Mehmed Alagi_ was, from 1995-1999, mayor of Sanski Most, a community the international community had hoped to return many refugees to. He was subsequently indicted by the ICTY on charges of ‘Violations of the Laws or

¹ ‘Bosnia’ is used as shorthand for Bosnia and Herzegovina.

² See the Statement of Harold J. Johnson, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division, General Accounting Office; testimony before the House of Representatives Committee on International Relations, 19 July 2000. <http://usinfor.state.gov>.

³ See www.homeoffice.gov.uk/rds/pdfs/r88.pdf.

⁴ ICTY case no. IT-00-39-I, Amended Indictment. See www.un.org/icty/indictment/english/kra-lai000321e.htm.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

Customs of War, and Grave Breaches of the Geneva Convention'.⁵ Alagi_ was also one of the very rare cases where a Bosnian court sentenced a local politician to four years in prison on charges of corruption, fraud and embezzlement of public funds.

- Milomir Staki_ was mayor of Prijedor municipality from 1992-1997. He has since been sentenced to life in prison by the ICTY on charges of 'Crimes against Humanity and Violation of the Laws or Customs of War'.⁶

These were some of the international community's interlocutors in 1996 and 1997.⁷ They were not exceptional. In many cases, politicians had gained power illegally, abused it during the conflict and continued to exercise it with little respect for the law.

The combination of a massive inflow of international funding and a political class created by, and in some cases implicated in, the lawlessness of the conflict years created an environment in which corruption could flourish. Donors and implementing agencies were faced with dilemmas familiar to any post-conflict reconstruction scenario:

- How to provide relief and reconstruction assistance rapidly, while maintaining appropriate control over disbursement.
- How to procure goods and services in a local market whose normal structures (such as open competition) have been replaced by informal networks, while simultaneously attempting to build new, formal structures.
- How to work with local representatives to build ownership without strengthening those who were responsible for the conflict or for continuing problems.
- How to promote the rapid development of market structures and economic activity, while ensuring they developed with a sufficient legal and regulatory basis.

International agencies were well aware of these challenges and of the risks of well-intentioned acts proving nugatory or counterproductive. Even with this awareness, however, the dilemmas were real and often intractable.

⁵ ICTY case no. IT-01-47. See www.un.org/icty/indictment/english/had-ii010713e.htm. Alagi_ died in March 2003 without being sentenced.

⁶ ICTY case no. IT-97-24-PT, Fourth Amended Indictment. See www.un.org/icty/indictment/english/sta-4ai020410e.htm and Judgement in the Case *The Prosecutor v. Dr. Milomir Staki_*, www.un.org/icty/pressreal/2003/p774-e.htm.

⁷ See Conclusions of the Peace Implementation Council, Bonn, 1997, www.ohr.int/pic/default.asp?content_id=5182. Only at the end of 1997 did the High Representative receive an extended mandate that allowed him to remove those politicians and public officials who were obstructing the implementation of the Dayton Peace Accords from power.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle

<http://www.tiri.org>

Estimates of the direct losses of international funding through corruption vary. The problem was widely discussed following an August 1999 *New York Times* article that estimated the figure to be as high as US \$1 billion.⁸ The newspaper later conceded that this figure was probably exaggerated.⁹ But all individuals working on the ground recognised that there were regular problems with the diversion of international funding. There were also less visible losses to the post-conflict state through, for example, routine tax avoidance or state plunder. This combination of diverted funding and lost state resources seriously hindered reconstruction and the development of formal state structures, and impacted on attempts to embed the rule of law more widely.

Types of Corruption

The ubiquity and variety of corruption often threatened to overwhelm efforts to combat it.

Corruption in the Use of International Aid

Some instances of corruption arose from the international intervention. Reconstruction aid was vulnerable to being misdirected in several ways. Nationalist, and in many cases criminal, politicians, who had become the *key* interlocutors for the international community and their *principal* entry points into local communities, often controlled the local market, i.e. the potential suppliers of goods and services. So, for example:

- International agencies could be forced into contracting cronies of the local elite at inflated prices, as other potential bidders were threatened or blackmailed *not* to participate in the tendering process for reconstruction contracts. International agencies could be powerless to stop this.
- Sometimes a range of companies would be ‘allowed’ to bid, but it was widely suspected that the successful bidder would have to give a certain percentage of the overall contract value to local leaders. Again, international agencies could do little if they were determined to undertake the project.
- In other cases, corruption was subtler. NGOs that had received funding to rebuild houses in a municipality for returning minorities needed support and even legal permission from local leaders. These leaders might insist that in return for their support, the NGO would undertake a ‘balancing’ project, which they would select. Thus, as well as repairing returnee houses, NGOs could be coerced into, for example, improving local roads or even assisting local businesses. This had two negative effects: it *diverted* international funding from the *real* priorities, and strengthened the power of these corrupt local leaders because the majority population believed that they could deliver.

⁸ Chris Hedges, ‘Leaders in Bosnia Are Said to Steal Up to \$1 Billion’, *The New York Times*, 17 August 1999.

⁹ See Danilo Vukovic, ‘Corruption in Bosnia and Herzegovina’, April 2001, on www.seldi.net/BiH.htm.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle <http://www.tiri.org>

Direct assistance was perhaps even more vulnerable. Between 1996-1999, the World Bank, IMF, EU, US and a few others committed US \$407.4 million in budget support to the Federation and the Republika Srpska. However, for disbursing these funds, the international community depended heavily on local politicians and administrative structures. Much of the general budgetary support was 'not controlled or audited', making it difficult to assess what happened to this money.¹⁰ Even when the entities or the state provided details of how the money was spent (on teacher salaries for example), the international community found it difficult to independently verify the information.¹¹

There was also a more fundamental problem with direct budgetary support in Bosnia. The assistance provided by the international community substituted revenue lost to state and entity budgets through corrupt activities such as customs fraud and tax evasion. In some ways, the provision of direct budgetary support *hid* the problem created by corruption. The combined annual loss to the budget through tax evasion and customs fraud has been estimated at KM 1.4 billion.¹² The loss through customs fraud alone has been estimated at KM 600 million. This amounts to one and a half times the entire state budget.¹³

Corruption in the Administration and Judiciary

There were also systemic obstacles to the effective delivery of reconstruction assistance and the development of good governance.

In most cases, the international community could not look to the public administration as a trusted partner. For example, in 1999 the High Representative¹⁴ had to impose a number of administrative decisions directly aimed at removing barriers to the return of refugees to their pre-war homes. There had been numerous complaints that returnees were unable to obtain telephone, water or electricity connections at normal, reasonable prices, and that they were denied the provision of services if they were not ready to pay substantial top up fees. The High Representative's decision fixed the maximum price for a telephone connection for returnees at KM 50. However, even this decision was widely ignored, and service users were still forced to pay in excess of this amount to obtain a telephone line until the High Representative took further action. Another example was the establishment of the Property Law Implementation Plan

¹⁰ See Harold J. Johnson, testimony Statement.

¹¹ One recent example of such an independent verification is the Audit of the Federation Ministry for Social Policy, Displaced Persons and Refugees, which disclosed serious irregularities in the management and use of funds of that Ministry. See www.ohr.int/other-doc/spec-audit-rep/pdf/FMSP-special-audit-report.pdf.

¹² www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=29155. KM stands for Convertible Mark, the Bosnian currency.

¹³ See Speech by the High Representative Paddy Ashdown to the United Nations Security Council, 23 October 2002.

¹⁴ Since Dayton, the High Representative of the International Community has overseen the implementation of the civilian aspects of the Peace Agreement, and since 1997 has had sweeping powers to impose legislation and decisions should the Bosnian and entity governments be unable to adopt relevant legislation themselves.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

(PLIP), implemented by four international agencies.¹⁵ The PLIP was a response by the international community to the realisation that the Bosnian authorities could not be trusted to implement the return of property to its pre-war owners, a right laid down in the Dayton Peace Agreement. This was not merely an issue of lack of capacity. In many cases, the Bosnian authorities systematically and deliberately provided wrong statistics of pre-war property ownership, thereby retaining control of the housing stock, and simultaneously siphoned off the proceeds and delayed the implementation of the return process.

Public utilities were also dealt out to political contacts as potential cash-cows. In March 2003, the Office of the High Representative (OHR) published the results of an international audit into public electricity companies in Bosnia. The audit found that the Republika Srpska electricity provider Elektroprivreda 'was losing KM 166 million annually in potential earnings because of mismanagement, conflicts of interest, theft and neglect. This amounted to nearly half a million KM a day'.¹⁶ The audit report for the Mostar-based Elektroprivreda stated that KM 50 million in potential earnings had been lost in 2001.¹⁷ The audit report for the Sarajevo-based Elektroprivreda found:

income would rise by at least 50 million KM per year if it resolved endemic inefficiencies. The usefulness of the company's new headquarters building in Sarajevo, which has already cost 15 million KM, and will cost another 12 to 15 million KM to complete, is questionable... A...former general manager, Meho Obradovi_, is alleged to have funded FC Sarajevo through loans - worth around 1 million KM in 2000, and benefited from an irregular housing loan from Elektroprivreda Sarajevo.¹⁸

Some argued that privatisation was the best response to corruption in public companies. However, as in other transition economies, the privatisation process offered opportunities for those in power to strip state assets and to strengthen their positions. One of the major problems of the process in Bosnia was that managers of companies to be privatised could provide the documentation needed for privatisation. These managers were often themselves entitled to participate in the bidding process, a clear conflict of interest, and in a number of cases this led to companies being sold under value to former managers and shareholders. This appears to have happened to both the Banja Luka and Sarajevo breweries, arguably two of the small number of companies in post-war Bosnia that actually have a prospect of success on the local market. There are indications that the same was the case for the sale of the famous Sarajevo Holiday Inn hotel. Its market price was estimated at KM 48 million, but it was sold for about KM 5 million.

Nor did Bosnians or international actors have recourse to the judicial system. The 'dysfunctional nature' of the legal and judicial system of Bosnia has often been

¹⁵ The Office of the High Representative, the Organisation for Security and Co-operation in Europe, UNHCR, and the Commission for Real Property Claims of Refugees and Displaced Persons.

¹⁶ OHR Press Release, 26 February 2003.

¹⁷ OHR Press Release, 6 March 2003.

¹⁸ OHR Press Release, 13 March 2003.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle <http://www.tiri.org>

discussed.¹⁹ The division of Bosnia into multiple jurisdictions mirrors the country's complex administrative and territorial set up; Bosnia has three separate sets of laws, two of which are often contradictory. The International Crisis Group has described the situation as a 'multitude of outdated, overlapping and inconsistent laws from pre-war, wartime and post-war periods... applied by too many courts which are too expensive, too inefficient, and too vulnerable to political influence'.²⁰ Judges were often political appointees. Public confidence in the judiciary was low, and public opinion rated judges even more likely to take bribes than policemen.²¹

Corruption and Organised Crime

Organised crime flourished in these circumstances. The link between corruption and organised crime in Bosnia has often been noted. Prostitution and human trafficking controlled by organised criminals is a very visible example. For example, in 1997–1998, a brothel employing victims of human trafficking, mostly from the countries of Eastern Europe, was operating openly on the main road outside Banja Luka. Yet nothing was done because either the local police were paid to ignore it or else they were intimidated into not investigating it. Human trafficking is now beginning to receive the attention it merits.

Most corruption, of course, is more discreet. Money laundering is a particular problem. BETA news agency reported that over the course of 1999-2000, companies based in Republika Srpska are estimated to have laundered between KM 150-350 million through local commercial banks. In the Federation, 130 fictive companies are said to have done business through one bank's office, accounting for KM 211 million in transactions in the first six months of 2000 alone, while not paying taxes for an amount of approximately KM 35 million.²²

Corruption within the International Community

It is worth noting that organisations such as the Bosnian chapter of Transparency International (TI) have also criticised the lack of public scrutiny and accountability of the international community and the way in which it operates. Examples include:

- In the first years after the war in particular, there were very few open recruitment procedures for international organisations and NGOs. Members of staff were mostly chosen on the basis of recommendations from friends and family already employed by these organisations.

¹⁹ International Crisis Group (ICG), 'Courting Disaster: The Misrule of Law in Bosnia and Herzegovina', 25 March 2002.

²⁰ ICG, 'Courting Disaster'.

²¹ ICG, 'Courting Disaster'.

²² <http://www.beta.co.yu/korupcija/eng/regi2.asp?re=534>.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle

<http://www.tiri.org>

- Internationals, in their diplomatically accredited vehicles, were regularly seen to speed or ignore other traffic regulations, and generally behaved as if they were above the law.
- There were few mechanisms in place to control the payment of items such as per diems inside international organisations.

These examples may seem petty, but the *messages* they send to a local community are very important. The international community can only expect its guidance to be followed by the local community if it leads by example with the highest standards of behaviour.

There were also more sinister examples. In April 2002 the UN admitted in a letter that ‘eighteen officers of the International Police Task Force...faced repatriation for incidents of sexual misconduct’. No details were offered in this case, but it was common knowledge amongst the international community in Bosnia that some of its members were clients of prostitutes suspected of being victims of human trafficking.²³ Such behaviour by international organisations and individuals contributed to the deepening of public cynicism and undermined efforts to establish the rule of law.

Characteristics of the Bosnian Case

Running across these particular instances of corruption were some common characteristics. I would identify five in particular.

Post-Conflict Structures

During the war, informal networks had replaced formal governments. These networks had been established as the authority of the Yugoslav government collapsed. They retained power in both entities, in many cases unilaterally assuming formal positions. They were unaccountable, had a habit of illegal actions, and had little interest in establishing the rule of law. The administration, to the extent that it could be differentiated from the politicians, had been created on an ad hoc basis and lacked independence and capacity. It failed to provide sufficient, if any, checks on the actions of those who had assumed power.

Legal Framework

The legal framework in place did not provide appropriate tools to address the problem and in some specific cases contributed to it. For example, laws in the Republika Srpska legalised the theft of minority houses. To this day, measures and laws on public administration and anti-corruption have to be imposed by the High Representative.

Absence of Pressure for Change from Civil Society

²³ See Human Rights Watch, *World Report 2003: Europe and Central Asia: Bosnia and Herzegovina*, www.hrw.org/wr2k3/europe5.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle <http://www.tiri.org>

As a result of the war and the collapse of law and order, public expectations were very low. There was widespread knowledge of and resignation to the fact that local, municipal and entity leaders were implicated in corruption. However, elections saw most of them retain power. People were deeply cynical about any progress to be made in fighting corruption and building the rule of law. (The behaviour of even a small minority of international representatives served to reinforce that cynicism.)

International Presence

The presence of an international overseeing body with wide-ranging powers made Bosnia and Herzegovina a special case. The High Representative's authority should have acted as a counterbalance to corrupt local elites. But local politicians were able to subvert this authority. International representatives, unfamiliar with the range of corrupt practices and unable to find reliable interlocutors at political or administrative levels, were often unable to pin down the particular problems they faced.

Regional Problem

The problem of corruption and organised crime was obviously a regional one. Criminals do not respect borders, and know how to exploit the lack of coordination by law enforcement authorities in neighbouring countries. They know how to corrupt border guards in countries where the victims of human trafficking and contraband originate and are transported to. For example, it is estimated that as many as 200,000 women and children are trafficked through the Balkans every year, many of them through Bosnia.²⁴ Interpol estimates that about seventy per cent of the heroin seized in Western Europe transited through the Balkans route. Self-contained international presences in the different countries of South-East Europe took some time to enhance their cooperation to match that of the criminals.

Responses to Corruption

As the first year of peace implementation passed with limited progress, the international community realised that endemic corruption was seriously undermining its efforts. Reconstruction aid was being misdirected; discrimination against minorities continued as a matter of routine; opponents of progress were being strengthened, and ordinary people were seeing little change on the ground. This realisation coincided, fortuitously, with increased efforts by some local political figures and civil society actors to raise the issue.

Thus, by early 1997, the scourge of corruption was a key element in public statements by the OHR and other international actors. The European Commission, for example, decided in July 1997 to suspend all non-humanitarian aid to the Republika

²⁴ See International Organization for Migration, 'Victims of Trafficking in the Balkans: A study of trafficking in women and children for sexual exploitation to, through and from the Balkan region', (2001); and intervention by Javier Solana, EU High Representative for Common Foreign and Security Policy, at the London Conference on organised crime in South Eastern Europe, 25 November 2002.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

Srpska, 'mainly to avoid that aid should end in the pockets of the Pale faction'.²⁵ The Commission also discouraged any international aid 'where there is a risk of corruption'.²⁶

The Customs and Fiscal Assistance Office (CAFAO), established in 1996 with EU funding to assist the Bosnian authorities in the implementation of customs-related aspects of the Dayton Peace Agreement, expanded its program in 1997 to include taxation. CAFAO is widely considered to be the most successful attempt to crack down on organised crime and corruption and to highlight the damage it does to the reconstruction process.²⁷

When ministers of the key implementing nations and heads of key international organisations met in December 1997 at the Bonn Peace Implementation Council (PIC), their communiqué noted that the Council was:

deeply concerned by the potential for corruption and diversion of funds for unauthorised purposes as outlined in the two reports submitted by the European Commission's Customs and Fiscal Assistance Office (CAFAO) in the area of customs. Corrective measures should be taken against corruption. Foreign aid must not be a substitute for diverted state resources. Donors have to protect their assistance funds from possible misuse, as well as from having to compensate for misappropriation. The Council recognises that the lack of transparency and accountability of public finances, as attested in the Public Expenditure Review of the World Bank, undermines democratic values and the prospects for foreign investment in both Entities.²⁸

The 1997 PIC meeting resulted in the establishment of an Anti-Fraud Unit within the Economics Department of the OHR in 1998. The Unit developed a two-level *anti-corruption strategy*.

Yet it was not until mid-2002 that the fight against corruption and organised crime became the top priority of the High Representative and the international community in Bosnia. A new unit to tackle crime and corruption was established to work with local investigators. A new Legal Reform Unit, staffed by Bosnians, was established to work with the authorities on new laws needed to bring criminals to justice. A process has begun to restructure Bosnia's court system at all levels. It will try to ensure that only honest judges and prosecutors are allowed to administer justice in the future. Special chambers in the State Court and a Special Department in the Bosnian Prosecutor's Office devoted to tackling organised crime have also been established.

Bosnian Responses

There have also been indigenous responses. TI-Bosnia and Herzegovina was formed in 1999, an important step in mobilising civil society in the fight against corruption. Bosnia

²⁵ 'Pale faction' refers to the local elite of the Republika Srpska, at that time based in the town of Pale. www.ohr.int/ohr-dept/presso/pressr/default.asp?content_id=4565.

²⁶ Ibid.

²⁷ europa.eu.int/comm/external_relations/see/actions/customs.pdf.

²⁸ www.ohr.int/pic/default.asp?content_id=5182.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

and Herzegovina joined the Council of Europe's Group of States against Corruption and signed the Council of Europe's Civil and Criminal Law Conventions on Corruption in 2000.²⁹ The conventions were ratified in 2002. This means the participation of Bosnia in a rigorous peer review monitoring process, which scrutinises compliance of countries with the Council of Europe's twenty guiding principles for the fight against corruption.

In April 2003, the Bosnian government established a task force to professionalise and depoliticise the civil service, strengthen independent auditing functions, improve procurement standards, optimise service delivery performance and make progress in drafting and adopting a civil service law. A Civil Service Agency has been created, responsible for the transparent and professional recruitment of civil servants at state-level, including the appointment of heads of key agencies and institutions. It is tasked with making sure that civil service positions are filled on the basis of merit and not party-political connections.

On the project level, international donors have sought to fund anti-corruption activities implemented through local civil society organisations. A recent project to promote accountability through education on conflict of interest and the freedom of information law is being funded by Finland and implemented by TI-Bosnia.

Regional Responses

Bosnia also participates in the Stability Pact Anti-Corruption Initiative (SPAI), a regional framework that facilitates policy dialogue and encourages capacity building of the participating countries on corruption-related issues.³⁰ The SPAI helps countries to take effective measures to fight corruption at all levels, in line with international standards.³¹

The EU is addressing the regional dimension of the problem through the regional component of its Community Assistance for Reconstruction, Development and Stabilisation (CARDS) program. Through CARDS, the EU committed €43.5 million in 2002 alone for regional co-operation in the Balkans, including support for issues such as integrated border management.

Conclusion

So there is progress. Nearly eight years on from the Dayton Peace Agreement, Bosnia has a framework for addressing corruption. A range of actors are contributing to its implementation. Donors are ready to fund their efforts. And the Bosnians, who increasingly recognise the price they pay for corruption, are receptive to the progress. In parallel, a slimmed down and more focused international presence has placed more

²⁹ These conventions oblige signatory states to introduce legal measures in civil and criminal law that sanction the offence of corruption.

³⁰ Albania, Bosnia and Herzegovina, Croatia, Montenegro, the Former Yugoslav Republic of Macedonia, Moldova, Romania and Serbia are members of the Initiative.

³¹ www1.oecd.org/daf/SPAIcom/about/why.htm.

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

responsibility on local actors and reduced – perhaps even eradicated – much of the extravagance and often irresponsible behaviour of earlier years.

However, the experience of Bosnia might provide us with some lessons learned. From a personal perspective, I would suggest some of these include:

- The international community needs to lead by example: by transparency, by integrity, by accountability. Our standards have to be high if we expect others to follow our advice.
- We need to be clear from the beginning about who we are dealing with. If they do not share our objectives, then we need to find alternative interlocutors. In the case of Bosnia, this means we should have removed criminal politicians. In other cases, it might mean that we should withhold aid until they are removed through democratic processes.
- We also need to address the problem of corrupt politicians from below. This means establishing administrative structures that are not susceptible to political manipulation, especially a judiciary and a police force independent of political influence, but also a civil service loyal to the state, not particular politicians.
- The judiciary, police and civil service need a legal framework on which to base their actions. Creating this framework should be a priority. It is the foundation for all other work.
- We have to accept that the long-term solution is to increase public expectations. The international community can only stay engaged for a limited period. The local population is the long-term conscience of the politicians. We put faith in the will of the people in our own countries. Why should it be different in the countries in which we work?
- We have to use our aid more wisely. At a minimum, this means ensuring that international aid reaches the intended beneficiaries. Beyond that, it might mean withholding aid until there is genuine co-operation from local politicians.
- To achieve this, we need to build the expertise that will enable us to implement these lessons. We need to understand how to make a legal framework *operational*. We need to understand *how* to reform the police and the administrations. We need to understand *how* to change public expectations. Too often we have focused on the objective - an independent judiciary or the ratification of international legal standards for example – without understanding the process to achieve that objective.

In conclusion, we need to address the issue with integrity in our own operations and efforts to ensure that we contribute to the solution, not the problem. We need to

Corruption in Post-conflict Reconstruction: Breaking the Vicious Cycle
<http://www.tiri.org>

understand not just what we want to achieve, but also how we go about achieving it. Finally, we need the determination to address long-term challenges early in the effort.