Research Brief no.50

Corruption in Selected Countries

BUILDING A **SAFE** AND **RESILIENT CANADA**

Corruption seriously harms economies and societies; no country is immune. While it may vary in nature and extent, at the very least it impinges on good governance, sound management of public money, and distorts markets. In extreme cases, corruption hampers economic development, undermines democracy, and damages social justice and the rule of law.

The paper reviews the anti-corruption regimes established in three countries, Australia, the United Kingdom (UK), and the United States (US). Each of these countries has in place many of the necessary legal instruments and institutions to discourage and punish corruption. The enforcement of anti-corruption rules, however, varies in vigour and consistency, systemic problems may not be tackled effectively, and the relevant institutions do not always have sufficient human or budgetary capacity to enforce the rules.

This paper looks at how each of these countries has implemented anti-corruption strategies of certain international conventions to which they are State Parties. It reviews the status of their implementation of the *United Nations Convention Against Corruption* (UNCAC), the *Convention on Combating Bribery of Foreign Officials in International Business Transactions* of the Organisation of Economic Cooperation and Development (OECD) (OECD Anti-bribery Convention), and the *Inter-American Convention Against Corruption* (IACAC) of the Organization of American States (OAS). During the past fifteen years, implementation review mechanisms have been established with each of these conventions to conduct country reviews and draft country review reports to help State Parties to identify areas for improvement.

The US was the first country globally to be concerned about the connection between transnational corporations and the phenomenon of corruption. Following receipt of the 1976 Securities and Exchange Commission (SEC) report identifying more than 400 US companies admitting to making payments worth more than USD 300 million to foreign government officials, the US Congress took action. In 1977, it enacted the FCPA to stop the bribery of foreign public officials and restore public confidence in the US private sector.

These ethical and legal initiatives put US companies at a significant competitive disadvantage in global markets in areas where the practice of bribery and corruption are most prevalent. The US Government became the world leader in the promotion of international and regional instruments to combat corruption to level the playing field for its commercial interests. The US initiative led both Australia and the UK, which are also allies and members of the OECD and UN, to support and eventually ratify the OECD Anti-bribery Convention and the UNCAC.

The Australian Government has adopted and enforced key international mechanisms to fight bribery and corruption. Australia has several agencies that are mandated to prevent and detect corruption and enforce the *Commonwealth Criminal Code Act* (1995), including the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission, and the Australian Federal Police (AFP). All Commonwealth-related offences are prosecuted by the Commonwealth Director of Public Prosecutions.

However, the OECD Working Group has criticized Australia for its lack of enforcement. The OECD report indicated that over the past 13 years, the AFP had received 28 foreign bribery allegations, of which, 21 were concluded without charges, and only 1 case was prosecuted.

Each of the criminal law jurisdictions of the UK has its own local investigation and prosecution agencies

that deal with cases of bribery and corruption. These include local police forces, the Crown Prosecution Service (CPS) in England and Wales, the Public Prosecution Service in Northern Ireland, and the Crown Office and Procurator Fiscal Service in Scotland. The lead agency mandated for investigating and dealing with serious bribery and corruption cases is the Serious Fraud Office (SFO), which investigates and prosecutes cases in England, Wales and Northern Ireland. A specialized unit of the City of London Police, the Overseas Anti-Corruption Unit (OACU) investigates allegations of overseas corruption, particularly foreign bribery.

The passage of the *UK Bribery Act* (2010) (UKBA) occurred due to a need to modernize the UK's anti-corruption legislation and meet the requirements of the OECD Anti-bribery Convention. The UKBA covers all bribery, not just that involving foreign officials. It does not permit facilitation payments. The UKBA has extra-territorial reach, both for UK companies operating abroad and for overseas companies operating in the UK. The UKBA has a greater reach than Australia and the US, since it is not limited to public officials carrying out public duties. The corporate offence of failing to prevent bribery allows for unlimited fines and includes the activities of third parties acting on behalf of the company.

High profile foreign bribery cases investigated by the SFO and other agencies show a change in the approach taken in handling cases of serious corruption. Outright prosecution is being used infrequently. Instead, companies are encouraged by the SFO to 'self-report' and cooperate in the investigation. This has led to major savings in investigation and prosecution costs.

The 50 US states are primarily responsible for law enforcement activities within their own borders. However, the federal government may regulate conduct, including illegal activities, which do not take place solely within one state. These offences are prosecuted in federal, rather than state courts.

Besides the *US Foreign Corrupt Practices Act* (1977) (FCPA), acts of corruption are also addressed in the *US Criminal Code* and the *US Racketeer Influenced and Corrupt Organizations Act* (1970) (RICO). Often US indictments in both domestic and foreign corruption cases include counts of other offences, such as mail fraud, wire fraud, money laundering, attempted robbery or extortion, violations of the *US Travel Act*, as well as conspiracy to commit an FCPA offence.

The robust enforcement rate of the FCPA and related laws by the US Department of Justice (DOJ) and the SEC exceeds that of all other State Parties to the OECD Anti-bribery Convention, resulting in more than USD 1 billion in fines and penalties in 2013. The DOJ has FCPA criminal enforcement authority and the SEC is responsible for civil enforcement of the FCPA over issuers and their officers, directors, employees, agents or stockholders acting on the issuers' behalf. This includes US citizens, nationals and residents, US businesses and their officers, directors, employees, agents, or stockholders acting on the issuers' behalf, as well as certain foreign persons and businesses that act in furtherance of an FCPA violation while in US territory.

US DPA settlements always include a financial penalty, an end date and conditions that must be followed during its term. Elements, such as monitors, or self-reporting requirements, establishing or improving compliance efforts of an anti-corruption program may be included.

There are practical limitations on the extent to which legislation can effectively require ethical conduct. Having legal and policy frameworks in place does not in itself influence individual behaviour or degree and frequency of corrupt practices. It is only through consistent and vigorous implementation, enforcement and prosecution of such practices on a regular basis changes in behaviour will result. This likelihood will be reinforced if authorities have the ability to sanction offenders to prevent future access to its markets. This is the case in the US and the UK and, by extension, the European Union.

Koren, Elaine (2014). *Corruption in Selected Countries: Literature Review.* Ottawa, ON: Public Safety Canada.

For more information on research at the Community Safety and Countering Crime Branch, Public Safety Canada, please contact the Research Unit at ocr-rco@ps-sp.gc.ca.