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Europe's contribution to anti-corruption efforts in Sub-Saharan Africa

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BACKGROUND

Corruption scandals in Africa involving some of the major European companies have hit the headlines in recent years, but the EU and Africa have begun to cooperate to tackle this, planning to use the Economic Partnership Agreements as a tool for change.

As Moeletsi Mbeki has shown in his recent book *The Architects of Poverty*, corruption in Africa in all its forms – including non-compliance with promised off-sets in public contracts – has helped incompetent governments stay in power. It has led to the continent's decline in GDP, public services and infrastructure and helped to maintain neo-colonial economic policies, benefitting a small ruling elite and its political and economic backers – including, at times, EU governments and companies.

Ethics aside, corruption distorts fair competition, as companies gain competitive advantages and increase profitability and share value through illegal and unethical behaviour, while those companies that choose to be responsible find themselves at a disadvantage.

Africa is no more corrupt than any other region, but the weakness of its public governance makes it hard for the continent to bear corruption's costs and consequences. It costs African economies $148bn per year, according to estimates by the Commission of the African Union, and corruption is responsible for losses of up to 50% of countries' tax revenue, which in most cases is higher than the entire foreign debt. Aid is also tainted by corruption, with huge sums finding their way into foreign bank accounts. The World Bank estimates that countries which took action against corruption and promoted the rule of law could increase their national income by 40%.

Widespread corruption prevents good public governance and the establishment of a stable business environment, hindering economic progress and depriving the population of a better future. All companies now have to make a choice when operating in Africa: either abide by the rules of corporate responsibility or join the clique of questionable players who take advantage of the African context. For all these reasons, it is crucial to (re-)think the EU strategy to fight corruption in Africa.

Western responsibilities

In their public statements most European countries claim to be sincerely concerned about Africa's fate, identifying corruption as one of the root causes of its problems. This should push countries to look more closely at the financial mechanisms that encourage corruption and capital flight, which are profoundly detrimental to the African economy and the welfare of its people.

Since 1975, Sub-Saharan Africa has suffered a net accumulated outflow of capital amounting to $600bn. While Western countries benefit from the liberalisation of financial markets, they have long failed to address the ensuing 'no man's land' between banking secrecy, international capital flows, non-disclosure of ownership and lack of accounting transparency for multinational companies, and the dearth of provisions to enable national authorities to exchange information. The resulting criminal environment has supported illicit outflows hidden behind legitimate commercial transactions, and encouraged capital flight and tax evasion.

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To date anti-corruption initiatives have focused on trying to prevent the bribery of public officials and politicians and looting by despots and their cronies, rather than on repairing the workings of a global financial system that permits and even facilitates these practices. Governments and multilateral agencies have downplayed concerns about dirty money except when drugs or terrorism are involved and this is compounded by the reluctance of states, which have global financial centres on their soil, to boost global cooperation in tackling illicit financial flows.

Despite elaborate and expensive 'follow-the-money' measures put in place since the 1980s, illicit flows persist partly because anti-corruption efforts focus mainly on narcotics and terrorism. Socially irresponsible companies thus find it easy to flout the rules of corporate governance with impunity, and then if they are caught lobby their government to give them (modest) financial fines, leaving them to enjoy the commercial benefits gained through corrupt practices.

STATE OF PLAY

Fortunately the European Union has now taken a new important step in cooperating with African countries to tackle corruption, notably through clauses contained in the Economic Partnership Agreements (EPAs). The EPAs were introduced in response to criticism that the non-reciprocal and discriminating Preferential Trade Agreements the EU offered to African, Caribbean and Pacific (ACP) countries were incompatible with WTO rules and the aim of the EPAs is to create a Free Trade Area (FTA) between the European Union and the ACP Group.

The Cotonou Agreements (the precursors to EPAs) (signed in 2000 and revised in 2005) contained clauses referring to the fight against corruption. However in the EPA agreement, Article 97 lays out a consultation procedure for serious cases of corruption, with the possibility of taking appropriate measures. The Article states that the consultation shall begin within 30 days after the invitation to dialogue, and both parties can take "immediate" measures necessary to remedy the situation, with further "appropriate" measures if they do not reach an agreement within 120 days.

Fourteen African countries also adopted a Protocol on Corruption under the EPAs. In contrast to the UN's and EU's (too) brief definition of corruption: "the abuse of power for personal enrichment", this Protocol lists concrete acts that are considered as 'corrupt' and provides for judicial cooperation and preventive measures. If and when the EPAs fully enter into force, Article 97 could indeed constitute a big step forward – provided governments decide to take it seriously.

For the fisheries sector, they include provisions on management and control to ensure that exhaustible resources (such as fish) are exploited in a sustainable manner. In the EPAs market access is linked to provisions on sustainable fisheries' management and control, with agreements on best practices to develop the fishing industry. Such an approach could also have a positive effect in reducing corruption, which is rampant when it comes to giving out licences.

The same approach is used for the forestry sector, where the Commission's methodology is based on its Forest Law Enforcement on Governance and Trade (FLEGT). EPAs must include proposals that are in line with FLEGT priorities and the FLEGT Action Plan sets out a programme of actions that forms the Union's response to illegal logging and trade in associated timber products. FLEGT aims to tackle illegal logging, to boost good governance of forestry resources in developing countries and encourage responsible practices in the trade of forest-based products, in particular with the EU.

As any mechanism to control the value chain and ensure transparency makes corruption more difficult, these provisions should be extended wherever possible to all economic sectors, thus serving both better governance and sustainability. Over time, an impact assessment should be carried out to assess whether the EPAs are helping to cut down corruption and enabling indigenous African companies (many still micro-, small- and medium-sized) to grow, as well as benefitting the continent's natural resources.

Other efforts

The economic and societal ravages prompted by corruption and contractual non-compliance in Africa have spurred policy-makers to introduce a variety of other initiatives to encourage better corporate governance and transparency and for corporate entities operating there to uphold strict accountability.

The Extractive Industries Transparency Initiative (EITI)

The EITI is a process by which government revenues generated by extractive industries – such as tax, profit, oil and royalties – are published in independently-verified reports, based on information about company payments and government revenues. This is a government-led initiative, but the private sector and civil society organisations both play a significant role in its implementation.

Before joining the EITI, countries must launch a consultation process with all stakeholders (extractive companies and civil society organisations) in order to draw up, adopt and publish a 'work plan' containing measurable targets, a timetable for implementation and an assessment of capacity constraints. At this stage a country earns 'candidate status'.

To achieve 'compliant status', a country must complete an EITI Validation within two years of becoming a candidate. Validation is an important element as it provides an independent assessment of the progress achieved by countries implementing the EITI and the measures they should take to make better and faster progress. Of all the candidate countries, Azerbaijan is currently the only one to be fully compliant.

As the number of companies and countries signing up to these initiatives grows, a key measure to strengthen their positive impact would be to set up a mechanism through which companies and States collaborate, and the former contributes to capacity-building of the latter. The EITI, however, focuses more on transparency than on anti-corruption in order to encourage greater buy-in by resource-endowed countries.

Nevertheless, introducing transparency principles and mechanisms in the mould of EITI should be encouraged, or even made compulsory, for companies and countries wishing to export to the EU. At present these industries are highly unregulated, and the management of money flows is very opaque so it is important to push for transparency, and to involve civil society organisations during the negotiation and revenue-declaration phases.

The UN Convention Against Corruption (UNCAC)

Launched in 2003, the UNCAC includes a range of preventive mechanisms as well as procedures to deal with actual corruption. More than 140 countries around the world have signed up to it, and around 126 have ratified it. It remains the premier instrument against international corruption, largely due to its effective monitoring mechanism, which has played a significant role in getting the member states to recognise their obligations under the Convention.

However, this Convention has not created a level playing field, as it has failed to take a comprehensive approach, missing an important aspect of corruption tackled by UNCAC: bribe solicitation and extortion. In addition, although many countries have become signatories since 1997, the Convention's effectiveness is not yet proven.

The UN Global Compact

The Global Compact asks companies to embrace a set of core values in the area of human rights, labour standards, environment and anti-corruption.

It has implications for companies operating in Africa. There is considerable potential for small- and micro-enterprises to respond collectively to the Global Compact, especially in the micro-finance and micro-credit schemes' sector. At the same time, increasing interest in industrial and commercial activities in Africa has prompted multinational enterprises and their African counterparts to adopt voluntary social and environmental initiatives such as the Global Compact. However, some African businesses ask themselves whether embracing the Compact principles too fast serves their interest, because they often fail to get backing from their own government or local authorities, whose officials have no such concerns or simply because private interests at stake.

European initiatives

There are two Council of Europe (CoE) Conventions against corruption, both adopted in 1999. The Criminal Law Convention against Corruption encourages member states to outlaw corruption in all its many manifestations, including bribery of foreign officials and laundering of proceeds from corruption. It is mandatory.

The second CoE Convention, which is legally binding and covers the public and private sectors, deals with civil law and makes it possible for any person who is a victim of corruption or corrupt practices to seek judicial compensation or damages. Offences covered are bribery, diversion of property by public officials, trading in influence, illicit enrichment, money laundering and concealment of property. All provisions are mandatory, including those on private-to-private corruption.

Monitoring these Conventions is carried out by the Group of European States against Corruption (GRESCO) through a peer review mechanism, which assesses member-states' compliance to their provisions. In addition, GRESCO has to submit regular reports to the Executive Council on the progress of each member state in complying with the provisions of the African Union Convention.

The African Peer Review Mechanism (APRM)

The APRM is a system introduced by the African Union to help countries improve their governance. Participation is voluntary, and a Panel of Eminent Persons appointed by the APRM Secretariat oversees its implementation.

Corporate governance is a key element in the APRM process, and African countries see it as a significant step in charting a course for sustainable economic growth in the region. The APRM adopts broad objectives, such as promoting a regulatory framework for economic activities to ensure corporations respect human rights, social responsibility and environmental sustainability. But this mechanism is limited, as although each country in the APRM process is meant to report back on progress, there is no serious monitoring of how effectively this is done.

PROSPECTS

Governments – from both developing and developed countries – play a key role in ensuring that sound principles of corporate governance and accountability are adhered to. Without the political will to tackle issues such as capital flight and secrecy jurisdictions, very little progress will be made in fighting corporate malpractice. The success of initiatives such as the APRM and EITI also depends on the willingness of contracting countries not only to endorse such initiatives, but also to enforce them within their national space or sphere of influence.

Money laundering

All African countries should be encouraged to make efforts to ban and outlaw money laundering and similar corrupt practices. A good incentive would be if countries whose banks hold the funds (garnered from theft and corruption) decided to return them on condition that such monies be used to set up local monitoring agencies and special anti-corruption bodies. It is also important that national identification systems are set up to help countries track down money flows. Since much of this money lands in the financial centres of Europe, it should not be too difficult for EU authorities to take action, perhaps as part of their own fiscal transparency efforts.

Company peer review

Perhaps the easiest and most effective step forward would be a peer review of all businesses that operate in Africa, by respected European and African business associations and civil society organisations. Despite certain shortcomings, the APRM has proved to be a relevant instrument, and its use should be encouraged as it is African-owned and led, and free of IMF and World Bank agenda-setting.

Ways to use the APRM in conjunction with international financial institutions' country assessment processes should also be explored: incorporating self-assessment reports into their country reports would go a long way to endorse the APRM's credibility and lessen the need for conditionality on aid and loans. Such coordination should take place, however, in full respect of the APRM's stress on "African ownership".

A peer review mechanism for companies investing in all public works and contracts on the African continent should be a minimum. It should lead to an index of good corporate behaviour in Africa, and once operational, could be extended to other business sectors, beginning with those with a proven track record of negative economic and social effects for Africa (such as Europe's fishing fleets).

Conclusions

When the EPAs are finally concluded with all countries, the EU Commission believes they will provide an important new framework for EU-Africa economic relations. However, some people in the European Parliament and in NGOs are not so sure that this framework will really benefit Africa: there is a fear that equal trade between countries with unequal economic strengths may not deliver the desired results, at least not for developing countries. Economists are divided on the issue, and the jury on the EPAs is still out: they are based on the WTO free trade ideology, with little safeguards for weak governments or economic sectors in developing countries.

However, the EU Commission could at least soften potential adverse effects, by being firm on corporate responsibility in all sectors. Its efforts in the extraction industries' sector are laudable, but do not go far enough – as the situation in Congo, Angola and other countries shows. One must recognise the difficulties the Commission faces in being firm in its dealings with governments, in particular when wider political issues blur a principle-based approach.

However, the EU and its Member States have no excuse not to control the behaviour of European companies in Africa. Without imposing unworkable regulations, a peer review mechanism, managed by business and NGOs, but with EU support and oversight, would be a very concrete step forward, capable of producing rapid results. It would also be a real help to the many law-abiding and ethical companies, which face unfair competition from the few which do not behave.

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