

U4 Expert Answer



Overview of corruption and anti-corruption in Somalia

Query

Please provide an overview of corruption and anti-corruption efforts and actors in Somalia.

Purpose

This input will be used for planning future development cooperation activities in Somalia.

Content

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Caveat

There are very limited public sources of information available on the state of corruption and anti-corruption in Somalia. In the absence of in-country contact, it was also not possible to identify key anti-corruption actors.

Summary

As one of the longest instances of state collapse in recent years, Somalia faces many of the major corruption challenges that affect conflict-torn countries, with rampant corruption and a deeply entrenched patronage system undermining the legitimacy of the internationally recognised Transition Federal Government (TFG). Corruption is further exacerbated by the absence of a functional central government, a lack of resources and administrative capacity, weak

leadership structures as well as a limited ability to pay public officials.

Both petty and grand forms of corruption are prevalent in Somalia, permeating key sectors of the economy such as ports and airports, tax and custom collection, immigration, telecommunication and management of aid resources. According to a recent audit report by the Prime Minister's office, corruption manifests itself through various practices, including gross public financial mismanagement, large scale misappropriation of public and donor funds, unethical and professional negligence, and concealment of actual resource flows.

Against this background, the TFG has a poor record of confronting corruption due to its weak administrative set up, lack of resources and capacity and wavering political will. President Sharif's early pledge to address corruption, clean politics and promote good governance in public administration has failed to translate in an articulated strategy so far.

1 Overview of corruption in Somalia

Caveat: In the (relative) absence of publicly available sources of information on corruption and anti-corruption in Somalia, most of the information provided on the

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Date: 13 July 2012 **Number:** 337

U4 is a web-based resource centre for development practitioners who wish to effectively address corruption challenges in their work. Expert Answers are produced by the U4 Helpdesk – operated by Transparency International – as quick responses to operational and policy questions from U4 Partner Agency staff.

state of corruption in the country is primarily based on two reports by the International Crisis Group (International Crisis Group, 2011 and 2012).

Background

Since the fall of Mohamed Siad Barre's dictatorship in 1991, Somalia has been plagued by two decades of civil war, massive internal displacements, frequent droughts and rampant inflation, turning the country into one of the world's worst humanitarian crises. Several externally-driven efforts to establish a unified central government have failed to bring peace and security ever since, and the country has been without a functional central government for more than twenty years, making it one of the longest instances of state collapse in recent years (International Crisis Group, 2011). According to some authors, political instability within the country and along its coasts and the absence of effective governance structures political instability has contributed to the development of a pirate-friendly climate, as reflected by the the recent spike in pirate attacks off the coast of Somalia has generated a great deal of international media attention (O'Brien, W., 2011).

Somalia is fragmented into regions led by different entities, including the Transitional Federal Government (TFG) in Mogadishu, and the self-declared and relatively stable Republic of Somaliland in the Northwest and Puntland in the Northeast¹. The rise of the Al-Shabaab Islamist group which controls much of southern and central Somalia is also a growing concern, threatening to overthrow the TFG and impose radical Islamic rule to the entire country.

As a result, the internationally recognised TFG controls only parts of the capital and some territory in the centre of the country. It was formed in 2004 with a five year mandate to establish permanent governmental institutions and organise national elections. Its mandate was extended both in 2009 and 2012 by the Transitional Federal Parliament (TFP). Sheikh Sharif Sheikh Ahmed was elected as TRG President in 2009.

Some analysts question the legitimacy of the TFG and TFP as the representative of all Somalia. They argue that the government has failed to gain the trust of the

local population, with an unelected parliament that is the product of prolonged negotiations – "*self-selected by those wh "had the means and the connections to participate in the endless peace conferences (...) that led to the formation of the last three transitional governments"* - , and has few real ties to the local people they represent, and with a President who is elected by this non-representative institution (International Crisis Group, 2011). Rampant corruption and rivalries among the TFG's leaders have also paralysed government operations and undermine further TFG's domestic credibility and legitimacy (Freedom House, 2012).

As a result, and in spite of substantial financial assistance, there is a broad consensus that the TFG is not in a position to effectively deal with current humanitarian challenges, and the threats of Al-Shabaab and other violent groups operating in the country. The TFG is also not able to expand its authority and stabilise south and central Somalia. The TFG is perceived as weak, highly corrupt and dysfunctional, confined to parts of the Capital city and dependent on the African Union's troop for its survival (International Crisis Group, 2011).

In the absence of a functional central government, many communities have reverted to local and informal systems of governance to provide core functions of public security, justice and conflict resolution, including civil, Islamic or customary law.

Forms and extent of corruption

Extent of corruption

There are only limited publicly available sources of information on corruption and anti-corruption in Somalia.

However, there is a broad consensus that Somalia faces many of the corruption challenges that affect conflict-trn countries, with widespread corruption permeating all sectors of government and seriously undermining the fragile peace-building process. Corruption is rampant, based in deeply entrenched practices of patronage and exacerbated by a lack of resources and administrative capacity, weak leadership structures as well as a limited ability to pay public officials, including security forces (Bertelsmann Foundation, 2012).

¹ This answer specifically focuses on the internationally recognised part of Somalia that is controlled by the Transitional Federal Government (TFG).

In addition, most state-building efforts have relied on external sources of funding, which under some circumstances can undermine further government accountability to its citizens and tends to reinforce patronage-based systems of governance (Menkhaus, K., 2007). Many observers believe that levels of corruption within the TFG have increased significantly, with powerful establishment figures presiding over “a *corruption syndicate*” that operates with impunity to manipulate the system and extends well beyond Somalia’s borders (International Crisis Group, 2011).

Most international governance indicators seem to confirm this assessment of the situation. Somalia has consistently ranked among the world’s most corrupt countries in TI’s *Corruption Perceptions Index*, since the country was first introduced in the ranking in 2007. In 2011, the country was ranked 182 out of the 183 assessed countries with a score of 1 on a 0 (highly corrupt) to 10 (highly clean) scale. The country also performs extremely poorly on the *World Bank’s Worldwide Governance Indicators*, scoring below 2,5 (on a scale of 0 to 100) in all six areas of governance assessed. In particular, the country scored 0 in terms of political stability, government effectiveness, rule of law and control of corruption.

Forms of corruption

According to the International Crisis Group 2011, both petty and grand forms of corruption are prevalent in Somalia, with widespread misuse of state resources and disregard for ethical conduct by public office holders. A nepotistic job culture, poor book and record keeping and unclear internal procedures and regulations exacerbate corruption challenges and create many opportunities for misusing public resources for private gain. Unethical conducts and misuse of resources can range from unnecessary and extravagant foreign travels to Western capitals to massive mismanagement and misappropriation of state resources (International Crisis Group, 2011).

The TFG itself acknowledged gross financial mismanagement and corruption in its “2010 roadmap towards building durable peace and a functioning state” (International Crisis Group, 2012). A Public Finance Management Unit²’s report released in May 2011 also revealed major discrepancies between TFG financial

statements in 2009 and 2010 and the actual internal and external revenue received. The report estimated that more than \$72 million in donor assistance was stolen between 2009 and 2010, and a further \$250 million in revenues could not be accounted for (Freedom House, 2012). In particular, the audit report uncovered gross public financial mismanagement, large scale misappropriation of public and donor funds, unethical and professional negligence, and concealment of actual resource flows among others.

Sectors most affected by corruption in Somalia

Security forces

Corruption pervades many sectors of the country, including security forces, and immigration services. Lack of resources and inability to pay public officials including security forces provide incentives for extortion and bribery. Security forces tend to sell their arms and equipment as substitute for their salaries (Bertelsmann Foundation, 2012), while TFG militia and allied forces are reported to extort money from taxi, buses and truck drivers (US Department of State, 2011).

Immigration, port and customs

According to the International Crisis Group, much of the official corruption occurs at the port of Mogadishu and the International Airport. The Bertelsmann Foundation also mentions the lack of transparency in the revenues collected at the international port and airport, while a 2010 UN Monitoring Group report names some members of government and parliament allegedly engaged in a large scale visa fraud and smuggling of illegal migrants to Europe (US State Department, 2011 and Bertelsmann Foundation, 2011). In spite of numerous efforts to clean these institutions and introduce managerial, administrative and staff changes, both the port and the airport remain major source of corrupt income.

Private sector

Most of Somalia’s economy relies on the informal sector, based on livestock, remittances and telecommunications. According to the International Crisis Group 2011, the unregulated market system that came into being after the fall of Siyad Barre’s regime, while stimulating entrepreneurial energy in the country, is also partly responsible for fuelling corruption. For example, enterprises don’t pay taxes regularly to the state but routinely pay non-statutory fees to senior TFG

² The TFG established the Public Finance Management Unit in 2012 in the Prime Minister’s office

officials to support and approve foreign business deals or keep the government on their side.

The Telecommunication sector is one of the country's most lucrative and vibrant sector, with nine cellular networks. At the same time, the sector is seen as particularly corrupt. The growth of the sector has been fueled in the last decades by sustained emigration and remittance trade that have exponentially increased the demand for telephone and internet services. According to International Crisis Group 2011, regime leaders have interests in local telecommunication companies. As a result, these companies allegedly offer undeclared fees to public officials in relevant ministries on a routine basis.

Aid

The management of aid money in a country that largely relies on external sources of funding is a major area of concern.

According to the International Crisis Group 2012, there is no reliable database covering all development funds and the above mentioned report by the Public Financial Management Unit in the Office of the Prime Minister, while revealing that a large majority of the central government's revenue is never even recorded, uncovered large scale misappropriation of donor funds. This is confirmed by a 2012 World Bank report looking at the years 2009 and 2010, which reveals that large sums of money received by the TFG have not been accounted for, with an alleged discrepancy of about \$130m in the accounts over the two years. The report does not rule out corruption as a possible explanation for the missing government revenue funds (BBC, 2012).

There are also reports of food aid being stolen, with thousands of stolen sacks of food aid meant for famine victims being sold at local markets in a country where nearly half of the population relies on food aid for survival. In 2011, the U.N.'s World Food Program acknowledged the situation and launched an investigation into food theft in Somalia but also recognised that the scale and intensity of the famine would not allow food aid suspension. While the agency's system of independent, third-party monitors uncovered allegations of possible food diversion, this has proved to be a dangerous activity, with 14 WFP employees killed in Somalia since 2008 (The Guardian, 2011).

According to the International Crisis Group 2011, there have been adjustments made to the way in which aid

and grants are disbursed to the TFG, but mechanisms that have been established remain largely inadequate to serve a deterrent function. PwC has been contracted to act as a fiduciary agent for Western donors' funds, but has little oversight of how these funds are spent. Efforts still need to be intensified to strengthen the ability of the international community to monitor transactions and conduct audits.

2 Anti-corruption efforts in Somalia

Overview

Against this background and according to many observers, the TFG has a poor record of confronting corruption and its response has been disappointing so far. President Sharif's initial pledge to address corruption, clean politics and promote good governance in public administration has failed to translate in an articulated strategy (International Crisis Group, 2011). According to the Bertelsmann Foundation, there is no sign that the government has established an anti-corruption policy and there are no integrity mechanisms in place. As already mentioned, tax collected at ports and airports as well as aid money continue to be managed with a complete lack of transparency and accountability.

However, there are a few reports of progress made towards addressing corruption challenges in the country.

For example, the well-regarded Minister of Finance appointed in 2010, Hussein Abdi Halane, has made efforts to promote professionalism and transparency in Somalia's revenue collection and management systems as well as create a more open and accountable fiscal and monetary system, but the space for reforms appears limited in a context where radical reforms could be resisted by powerful interests (International Crisis Group, 2011).

In January 2011, in a speech to the UN Security Council, the Prime Minister also reported on a number of anti-corruption measures taken to address some of the governance and corruption challenges highlighted above. According to this speech, the Cabinet has signed a code of ethics and a full declaration of wealth; an Anti-Corruption Commission has been instituted with the power to investigate and review Government procedures and decisions; ministerial travel can now

only be undertaken with the PM's consent; and a full register of Government property and vehicles is being prepared (H.E. Mohamed Abdulahi Mohamed, 2011). The Helpdesk has found no account of how these measures have been implemented in practice or of their actual impact.

In September 2011, a roadmap for ending the transition in Somalia was adopted, detailing dozens of tasks aimed at building more permanent institutions in Somalia. The Roadmap includes measures for tackling corruption and increasing transparency and accountability including: 1) enhancing mechanisms for greater coordination and information sharing between Somali and international development and humanitarian agencies; 2) enacting legislation and implementing measures to fight corruption and abuses of public offices; 3) appointing competent members of an interim independent anti-corruption committee and 4) appointing a competent task force to prepare a report of all TFG revenue by December 2011 (Please see the statement on adoption of the roadmap at : <http://starvedforleadership.org/docs/Roadmap-September-2011.pdf>). However, according to the US 2011 report on human right practices, the TFG had not taken any significant action to complete these tasks as of the end of 2011.

Legal Framework

Caveat: In the (relative) absence of publicly available sources of information on anti-corruption in Somalia, most of the information regarding the legal and institutional framework is based on Global Integrity's 2010 country report and may not fully reflect changes that may have occurred since the publication of the report.

Somali's Criminal Code criminalises active and passive bribery, attempted corruption, extortion, bribing a foreign official, and money laundering (Global Integrity, 2010) and Somali performs well on the Global Integrity's anti-corruption law indicator. In terms of preventing/prohibiting nepotism, the Transitional Charter, art. 71 states that "*The Transitional Federal Government shall take all necessary measures to combat tribalism, nepotism, looting of public properties, corruption and all fraudulent activities, which may undermine the functioning of state organs and decent traditions of the society.*" However, follow-up legislation has not been developed.

With regard to public administration, appointments to the civil service shall be made only after a public competitive examination, except in the cases provided by law. Civil servants are not protected from political interference; however, issues of tribalism seem to interfere more than politics in practice.

There is neither applicable law that requires the head of state and government, ministers, members of parliament or civil servants to file **asset disclosures** nor are there regulations governing **gifts and hospitality** offered to these various actors.

There are no restrictions on heads of state and government and ministers opening or working in private companies or entering the private sector after leaving the government, and it is common practice for members of government go to work in the private sector when they resign or leave office.

There are no financial disclosure laws or laws providing for **public access to government information**.

There is neither legal protection for **whistle-blowing**, either in the public or private sector nor a mechanism in place for reporting corruption.

There are no active political parties in Somalia and no laws regulating political finance. Against such background, Somalia also scores very poorly on all areas of **political finance transparency**, and Somali politicians typically operate under the umbrella of their clans (Global Integrity, 2010).

According to Global Integrity 2010, Somalia also performs poorly on all **procurement** related criteria. There are no regulations to prevent conflict-of-interest for public procurement officials, and no regular mandatory professional training is conducted to build their capacity. Competitive biddings are not required by law for major procurements and there are no strict formal requirements limiting the extent of sole sourcing. Unsuccessful bidders can not instigate an official review of procurement decisions or challenge procurement decisions in a court of law.

In terms of its **international commitments**, Somalia has signed but not ratified (as of 2010) the Africa Union Convention on Preventing and Combating Corruption. It has not signed the United Nation's Convention Against Corruption and the United Nations Convention against Transnational Organized Crime.

Institutional framework

The TFG has not established many of the key government institutions that belong to a comprehensive governance infrastructure. No formal distinction of labour exists between ministries and there is often almost no staff below the ministerial level (Bertelsmann Foundation, 2012). Against such background, key government oversight bodies such as the ombudsman still do not exist in Somalia. Although an audit office exists by law, its powers to investigate and sanction fraud and corruption are limited due to lack of capacity and resources of governance institutions in the country.

Anti-corruption Commission

An Anti-Corruption Commission with the power to carry out formal investigations was established at the beginning of 2012 to more closely monitor all activities by public officials. This committee composed of 10 members constitutes an attempt to revive the former Bureau of Investigation and Anti-Corruption, based on the 1968 anti-corruption law. It is still too early to make an assessment on the capacity of the institution to effectively fulfil its mandate.

The Prime Minister's office's Public Finance Management Unit

The TFG established the Public Finance Management Unit (PFMU) in 2012 in the Prime Minister's office. As above mentioned, the PFMU produced an audit report in May 2011 that revealed major discrepancies between TFG's financial statement and revenues received, with as much as 85 % of the central government's revenues never even recorded. While the TFG and President Sheikh Sharif publicly challenged these findings, more than 120 parliamentarians signed a motion calling for the establishment of an ad-hoc investigatory committee to look into the conduct of several high ranking officials.

The Judiciary

Somalia has no general, universal judicial system but a combination of traditional and Islamic law that constitutes the basic judicial framework, especially in rural areas (Bertelsmann Foundation, 2012). More specifically, Somalia has four justice systems: formal central/regional administrations, the informal clan system (xeer), Islamic shari'a courts, and civil society and militia initiatives. These multiple, overlapping and contradictory sources of law have created confusion over jurisdiction and can become contentious. Lack of judicial training, public distrust of formal systems and Islamic efforts to impose fundamentalist beliefs add to the general confusion and contribute to an uneven

delivery of justice (Le Sage, A., 2005). There have been recent efforts to address some of these challenges through judicial training³.

Other stakeholders

Somalia's receive one of the lowest combined ratings for political rights and civil liberties in Freedom of the World, joining the group of countries referred to by Freedom House as the World's worst repressive societies. These societies are characterised by state control over every aspect of daily life, restrictions on independent organisation and political opposition, fear of retribution and severe human rights violations.

Civil society

The Western concept of civil society is difficult to apply to the Somali context where the distinction between the private and the public spheres is often blurred and traditions of social organisation beyond the state is primarily based on kinship relationships (Bertelsmann Foundation, 2012).

However, in the absence of a functional government to deliver basic public services, numerous NGOs have emerged since the Fall of Siad Barre's regime as a direct response to the external funding, but they operate under extremely difficult circumstances. The conflict has forced many of them to either reduce or suspend their activities. According to the UN Office for the Coordination of Humanitarian Affairs, 53 aid workers have been killed since 2008. Efforts have been made to resume emergency relief operations in the wake of the famine, but in several instances, the Shabaab has impeded international aid agencies from getting supplies to the victims, and TFG-affiliated militias in Mogadishu have reportedly diverted emergency food aid (Freedom House, 2012).

In addition, while freedom of association is reportedly not restricted by TFG, freedom of assembly is not respected amid the ongoing violence (Freedom House, 2012). In 2011, for example, the TFG restricted public gatherings and fired to disperse a demonstration against President Sheikh Sharif in Mogadishu, killing three protestors (US Department of State, 2011). Given this limited space, it may be extremely difficult and

³ For example, a first batch of judges graduated from legal training in Mogadishu in May 2011 : <http://www.so.undp.org/index.php/G1Governance-Rule-of-Law-Security.html>

probably dangerous for civil society organisations to engage with political issues, be outspoken and raise awareness on the state of corruption.

Media

There are three independent TV stations and one government-owned station. Print media mainly consists of short, photocopied dailies published in larger cities, while radio remains the most popular channel of communication, including foreign radio broadcasts such as BBC's and Voice of America's Somali services (US Department of State, 2011). The TFG supports Radio Mogadishu. In early 2010, a joint UN-AU radio station, Radio Bar Kulan, began broadcasting from Nairobi, Kenya's capital.

Although the TFC constitution provides for freedom of speech and of the press, there is no freedom of expression in Somalia, as reflected by the country's "not free" rating in the country's Freedom of the press report (Freedom House, 2011). A press law passed in 2008 allowed for significant government control over the media, although, given the TFG's inability to impose its authority over much of Somalia, the practical implications of this law remain to be seen (Freedom House, 2012). There is no freedom of information law to guarantee access to public information, and defamation is a criminal offense.

Given the lawless conditions prevailing in much of the country, journalists are routinely subject to violence, arrest and intimidations and several journalists have been killed or threatened by al-Shabaab and other radical Islamist organisations. Journalists working for international broadcasters such as the British Broadcasting Corporation (BBC) and Voice of America (VOA) also face pressure from al-Shabaab and other Islamist organisations. According to reporters Without Borders, Somalia is the deadliest country in Africa for media personnel, ranked as one of the world's most dangerous countries for journalists. For example, in January 2012, a journalist has been killed, allegedly because of his role in reporting on politics and corruption cases (CNN, 2012). Journalists also engaged in rigorous self-censorship to avoid reprisals from the government and Al-Shabaab (US Department of State, 2011).

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