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Middle East and North Africa Programme: Egypt Dialogue Workshop Summary

Defining and Tackling Corruption

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EXECUTIVE SUMMARY

This is a summary of discussions that took place at a workshop in Cairo in February 2012. Bringing together a group of legal experts, political leaders, activists, business people and academics, it centred on the issue of corruption in Egypt. The workshop formed part of the 'Egypt Dialogue' project run by the Middle East and North Africa Programme at Chatham House. This project aims to increase political inclusion, drawing previously peripheral or suppressed voices into national and international policy debates.

Corruption is a serious problem in Egypt, contributing to high levels of poverty and unemployment. Discussions focused on the impact of corruption in all areas of Egyptian life, ranging from the economic arena to the social sphere. Although a number of interpretations were discussed, participants broadly defined corruption as 'the use of public goods for private benefit'.

Corruption is understood to have taken a heavy toll on Egyptian society, yet it is also seen to have a function within the current economic climate. In order to address this problem in a meaningful way, and at all levels of society, participants agreed that political elites must display the political will to do so.

Everyday corruption

- Egypt's high level of youth unemployment is exacerbated by the nepotism of employers. Vacancies are commonly filled by those with connections to power and privilege, often at the expense of more qualified but less well-connected individuals.
- Petty corruption will remain a problem so long as Egypt does not have a minimum wage. Existing salaries tend to be very low, leading many individuals to solicit bribes as a way of keeping financially afloat.

Elite corruption

- Corruption cannot be tackled effectively if political elites lack the will to do so. Doubts persist over the likelihood of reform when those at the heart of the political system are implicated in past corruption.
- The establishment of truth and reconciliation commissions may be one way of breaking this cycle of complicity. However,

concerns remain over the ease with which such commissions can become politicized.

- The transition to a civilian-led democracy is particularly important in the fight against elite corruption. The new constitution must stipulate a clear separation of powers and a series of checks and balances regulating each branch of government.

Lessons from experiences of other countries

- When seeking to combat corruption, governments benefit from having a strong mandate to do so. Nationwide acceptance that this should be a political priority, sometimes at the expense of other important issues, is therefore crucial.
- Although outside assistance can be useful, it is vital that domestic actors taken ownership of their fight against corruption.
- Freedom of information legislation enables the prosecution of previous cases of corruption as it sheds light on the details of the transactions involved.
- A bottom-up approach (creating a culture of shame around corrupt activities) is necessary if corruption is to be tackled in the long term.
- Independent media outlets can represent an important force in the fight against corruption, highlighting its prevalence and alerting citizens to their legal rights.

Recommendations

The following recommendations for Egyptian policy-makers and activists are short-term actions for advancing the long-term goal of banishing corruption from public life, rebuilding trust and facilitating economic growth:

- Egypt would benefit greatly from the introduction of freedom of information legislation. Draft bills have already been prepared by a number of groups, including the Egyptian Initiative for Personal Rights and a team headed by Negad Al Boray at the United Group law firm.
- Such legislation should include clauses requiring disclosure to become routine and automatic. Compliance could be monitored

by a commissioner with quasi-judicial powers, a role that would be outlined in the new constitution.

- Effective mechanisms need to be established for implementing the rule of law. Although Egypt's penal code includes good laws for tackling corruption, political elites have often avoided enforcing these.

The following recommendations are aimed at international policy-makers as they seek to reinforce the anti-corruption efforts of domestic actors:

- The recovery of Mubarak-era assets is a key area in which international assistance can be of use. This could occur through a mixture of legal assistance and diplomatic pressure. Although expensive, this process will be of symbolical importance to the Egyptian public.
- There is a clear imperative for donors to rebuild trust and clarify their intentions with respect to the aid they provide to Egypt.
- Western governments can enhance their credibility as donors by adopting a more responsible attitude towards their choice of business partners within the region.

The meeting was held under the Chatham House Rule and the views expressed are those of the participants. The following summary is intended to serve as an *aide-mémoire* to those who took part and to provide a general summary of discussions for those who did not.

The Chatham House Rule

'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.'

INTRODUCTION

This document summarizes discussions that took place at a workshop in Cairo in February 2012. Bringing together a group of legal experts, activists, business people and academics, it centred on the issue of corruption in Egypt.

Targeting corruption in a meaningful way will require a concerted effort from political elites. Concern remains over whether this will materialize, since many individuals within the upper echelons of Egyptian society have themselves been implicated in corruption.

The fight against corruption will require a number of legislative steps that would benefit from international support. These include freedom of information legislation, a new constitution that enshrines a separation of powers and a series of checks and balances on each branch of government, and a more effective mechanism for implementing the rule of law.

MAPPING CORRUPTION

In the opening session, participants sought to define corruption and examine the ways in which it is currently affecting Egyptian society. Discussions focused around two main questions: how can corruption be measured, and how should it be tackled?

Participants identified two possible approaches to defining corruption: a narrow legal definition or a wider one linked to an economic system characterized by crony capitalism. A broadly accepted definition seemed to be 'the use of public goods for private benefit'.

A 2009 survey conducted by the Al-Ahram Center for Political and Strategic Studies found that most of the 1,800 Egyptians surveyed found it easier to identify instances of corruption than to define it in the abstract. It was most commonly recognized in the context of poverty and unemployment.

The issue of nepotism was repeatedly raised in the workshop's discussion of corruption, since it is seen as a key way in which networks of privilege are replicated unfairly. For many, the practice is at its most acute in the employment market. At a time when jobs are scarce, they see vacancies being filled predominantly by individuals with privileged connections.

Functions of corruption

Despite strong criticism of corruption and its implications for society, a number of participants suggested that it had become a necessary way of operating in the current economic environment. If there was a button that could be pressed to stop corruption, one participant hypothesized, 'no one would push it'. Corruption has become a necessary way of redistributing the wealth in a country where economic growth still benefits a limited class of individuals

Wages are seen as a key factor in the fight against corruption. So long as there is no minimum wage and existing salaries remain too low to represent an individual's sole source of income, it was said that petty corruption will persist. This was illustrated with the example of police salaries. After the January revolution, police officers started to protest against their low wages (said to be approximately LE400 a month). Previously, this had not been such an acute issue because of the amount that they could take in petty bribes. However, the increased scrutiny that they faced in the wake of the revolution has made it increasingly difficult to extract money through such channels, and attention has therefore turned to the size of their wages.

Echoing arguments presented in the previous day's workshop on the new Egyptian state, the experience of many NGOs was used to demonstrate that a degree of corruption had been seen as a requirement in order to achieve objectives.¹ Those in charge often have to accept international money through informal channels – as 'gifts', for example – owing to ambiguous and confusing laws regulating the funding of civil society. This was said to reflect the 'criminalizing' nature of the state: in order to get things done, individuals have to act outside the law in a manner that is tolerated by the state. This strategy was said to be a conscious attempt by political elites to cultivate a tool of political control over Egyptian citizens.

Estimates suggest that the informal sector accounts for between 40 and 70 per cent of Egypt's economy. Instead of paying taxes, many of those employed in the informal sector pay bribes to government agencies in order to carry on their work undisturbed. In many cases, it was said that the amount individuals spend on bribes is equivalent to the level of taxation they would face if employed in the formal sector. It may be in the interests of the state to maintain this informal system of taxation through bribes. Tacitly encouraging people to operate outside the law makes it possible to reduce their sense of ownership over the public sphere. This breaks down the social bonds necessary for collective action against the government, shielding it from potential dissent.

Resisting transparency

The prevalence of corruption is seen as a disincentive for those who might consider speaking out against the transgressions of others. It is difficult to act as a whistle-blower when you yourself are implicated in similar acts. It was suggested that the establishment of truth and reconciliation commissions may be one way of persuading people to break this cycle and speak out.

The difficulties associated with whistle-blowing also have implications for the recovery of wealth amassed under the Mubarak regime. Participants suggested that it would be simpler to recover tangible assets such as real estate. However, the experience of asset-recovery efforts in South America was cited as evidence to the contrary. In this case, the cost of the process often eclipsed the sums that were being retrieved. In addition, it was

¹ For more discussion of the 'legal grey areas' as a tool of political control, see the MENA Programme's meeting summary *The New Egyptian State*: <http://www.chathamhouse.org/publications/papers/view/182780>

emphasized that asset-recovery efforts would only be successful if there was the political will to see them through to their conclusion.

In 2011, the Egyptian government's proposals to impose a tax on property met with significant resistance. It was argued that this was because few people wished to formally register their assets, a process that would have revealed that many properties were bought with money extracted through corrupt means. Until those with a stake in the system are willing to combat the corruption they are involved in, it will be difficult for meaningful reform to take place.

Democracy as a process of correction

The transition from military to civilian rule was repeatedly cited as an important step in the fight against corruption. Understood as a process, rather than a simple system of governance, democracy was said to be the best bulwark against corruption in public life. Describing it as a 'continuous correction process', participants believed that a democracy that includes free and fair elections would ensure greater accountability in future.

Political decisions can be effectively scrutinized if a new constitution enables the creation of a political system with a clear separation of powers and a series of checks and balances regulating each branch of government. Anti-corruption legislation is only one part of the picture: even the best legislation will fail if implemented in a political environment that is not conducive to real scrutiny.

COMPARATIVE EXPERIENCES IN TACKLING CORRUPTION

Brief presentations were given on the experiences of Georgia and Kenya in tackling corruption. Although these examples were not intended to be directly comparable to Egypt's current situation, they provided a number of salient points for discussion.

The Georgian experience

Before the 2003 Rose Revolution, Georgia was said to have been one of the most corrupt countries in the world. The government that took office following the forced resignation of 30-year President Eduard Shevardnadze enjoyed impressive success in combating corruption both at elite level and in the everyday transactions of ordinary people.

One of the new administration's flagship policies involved 'cleaning up' a police force famed for its routine use of bribery and extortion. This involved firing the majority of junior and mid-level policemen. Although most of the interior ministry staff were initially retained, the majority were also replaced within the year. This involved important symbolic changes. Officers were supplied with new uniforms and police cars, a move that was publicized through a large-scale PR campaign. In addition, salaries were increased to a level at which they could afford to live without taking bribes. In order to monitor the activities of the new recruits and retained officers, listening devices were placed in cars. Recordings of corrupt dealings were then aired on television, making an example of those involved. This sent out a clear message that corruption would no longer be tolerated.

Several of the tactics used to catch and humiliate those guilty of corruption were in fact illegal, however. This was said to have implications for the independence of Georgia's judiciary and created problems that persist to this day.

In order to tackle administrative corruption, every licensing department was audited and made to defend its worth to the state. This process removed over 80 per cent of government employees, leaving space for new recruits to rise through the ranks. In addition, all records were computerized so as to improve levels of transparency, leading Georgia to become more technically efficient than many countries in Western Europe.

Today, Georgia still experiences problems relating to corruption. However, this is largely confined to crony capitalism in business, instead of the petty corruption that had previously been rife.

The success of Georgia's anti-corruption initiatives was attributed to a number of factors:

- The incoming government viewed tackling corruption as a priority. Its sizeable support gave it a strong mandate to do so, encouraging those in power to focus on the issue ahead of other political concerns.
- Rather than blaming Georgia's problems on elements outside the country, the authorities viewed corruption as an issue that the country as a whole needed to own. Despite many offers of technical assistance from abroad, the majority of initiatives were ultimately undertaken by domestic actors.
- Georgia benefited from existing laws relating to freedom of information. Since these were already in place, crucial information could be obtained very easily and rapidly from government departments and businesses.

The Kenyan experience

Kenya's high-profile anti-corruption drive officially began in 2003, following the election of President Mwai Kibaki. However, the head of a new anti-corruption unit set up by the president quickly discovered that the problem was similarly rife in the incoming government.

Whistle-blowers faced significant obstacles and dangers, including the threat of isolation, harassment and even prosecution. It was said to be particularly difficult for them to challenge or target culprits within the government's upper echelons. One particularly high-profile whistle-blower, John Githongo, was eventually forced into exile.

The problems experienced by Kenya's anti-corruption commission reflected the fact that such institutions are vulnerable to politicization and rarely manage to address challenging issues in a meaningful way. The Kenyan commission lacked sufficient resources and was hindered by a lack of genuine will on the part of political elites to scrutinize activities in which they themselves were implicated.

Challenging the close link between power and wealth was particularly difficult in the Kenyan context since many considered material goods (such as expensive cars, and clothes) to be status symbols that reflected the relative worth of an individual. In this case, the positive focus on the material benefits

of corruption prevented public critique of the illicit manner through which such lifestyles were maintained.

When corruption has historically taken a highly centralized form, a federal system of governance can serve as a solution. It was argued that the over-centralization of authority in Kenya had encouraged corruption, creating a limited circle of actors holding economic and political power. In order to ensure that wealth and resources are spread more evenly in the future, Kenya has created a 'Constituency Development Fund'.² This has contributed to a culture of greater accountability: if people know where their money is supposed to be spent, then they will be able to monitor whether or not this is actually the case.

The Kenyan experience reveals a number of further lessons:

- A bottom-up approach (creating a culture of shame around corrupt activities) is necessary if corruption is to be tackled in the long term.
- Independent media outlets can represent an important force in the fight against corruption, as an important source of scrutiny and calling people to account. In Kenya, high-profile citizen radio DJs helped to create a taboo around corruption by consistently covering the issue on their shows and alerting citizens to their legal rights.

² Established in 2003, the Constituency Development Fund allocates resources to all of the 210 constituencies, taking into account constituency poverty levels. The CDF is designed to consider local needs and preferences, by stipulating that the MP of each constituency should decide along with members of the local community how to use the funds to tackle poverty.

CORRUPTION AND THE LAW

The rule of law

Application of the rule of law was frequently cited as the most important step towards combating corruption. Concerns were raised over the likelihood of this occurring when the individuals charged with enforcement are themselves deeply implicated in past corruption. Under the previous government, there was little appetite to tighten regulatory legislation since the cabinet was made up of businessmen with an interest in maintaining legal loopholes from which they benefited financially.

In order to minimize corruption there were calls for an overhaul of the legal framework within which perpetrators could be prosecuted. However, some argued that legislation itself was not the problem. Compared with other countries in the region, it was said that there was no lack of relevant legislation in Egypt. The problems come at the implementation stage since political elites have become adept at avoiding the enforcement of laws that might affect their own corrupt practices.

Furthermore, existing laws that enable prosecution require the sort of transparency that has rarely been present in business transactions. Allegations of corruption must be backed up with specific evidence; in order to mount a prosecution, legal teams will need concrete information relating to the personal details of those implicated and the amounts of money that changed hands.

Concerns were also raised over the independence of the judiciary, which would be charged with overseeing the implementation. Arguing that many judges benefit from the very networks that court cases would be trying to dismantle, one participant stressed the difficulties associated with 'asking fish to fry themselves'.

Freedom of information

Egypt would benefit greatly from the introduction of freedom of information legislation. Participants argued that the issues involved needed to be subject to a national debate exploring why it would help to combat corruption, improve the business environment and achieve greater social justice. It is hoped that such a discourse would convince a broad section of society to support it on the basis that it is beneficial to the country as a whole.

Participants suggested a number of requirements that should be present in such legislation. First, the public release of data regarding government activities should be prioritized. This process should be one of automatic disclosure: all government bodies should be required to release information relating to their hierarchy and structure, procedures, the services they offer and how these can be secured. In general, government data should be assumed to be public unless there is a specific reason to restrict its disclosure that is legitimate under international law, and the decision to withhold is based on the public interest.

The transparency requirements should be supported by three further measures: a new law enshrining the public's right to information; performance indicators for politicians, the rationale for which is to be publicly available, and a simple complaints procedure that can be initiated against those who break the law. It was stressed that no politician or public servant should be allowed to create new criteria that allow for limited disclosure.

There were also calls for a mechanism to identify conflicts of interest. This could be upheld by a commissioner with quasi-judicial powers and able to demand the disclosure of specific information. It was suggested that the role of this commissioner could be outlined within the new constitution.

Participants agreed that a balance needed to be struck between the need for disclosure and the privacy of the individual. Concerns over breaches of privacy were seen as legitimate reasons to restrict the reach of freedom of information legislation. It was therefore said that exemptions to the rule should be clearly defined within the new legislation. Participants were keen to emphasize that this conversation was not purely abstract. A number of initiatives are currently under way to draft this legislation. These include one by the United Group law firm of Negad Al Boray and another by the Egyptian Initiative for Personal Rights. There are also draft articles for the new constitution that present freedom of information as a right. This groundwork is now ready to be used by Egypt's political elites and participants believed that adopting these would represent a simple step towards preventing future corruption.

INTERNATIONAL ASSISTANCE

International attitudes towards corruption

Questions were raised over the will of international actors to see corruption in Egypt entirely wiped out. Although the international community rails against such practices, it was pointed out that a number of governments had benefited greatly from deals that were far from transparent. Viewing the issue through this lens, the question was asked: 'Is corruption a positive or negative issue for the international community?'

The United Kingdom's 2010 Bribery Act was held up as an example of good legislative practice that could be copied in Egypt.³ This requires British businesses to take specific measures to minimize the likelihood of corruption in international transactions. The onus now lies on British investors to ensure that their business partners are operating within the law. British businesses now have to accept that such legislation will have a big impact on whom they can do business with.

Asset tracking and recovery

The recovery of assets acquired through corruption during the Mubarak era is seen as an area in which international assistance can be of use. This could occur as a mixture of legal assistance and diplomatic pressure. Very little is known about the true value of the former regime's assets, and where these have ended up today. Pointing to the success that Western governments have achieved in tracking assets relating to terrorism, one participant argued that it was inconceivable that they were truly unable to gain a reasonably accurate picture of the sums of money involved. The problem, it was suggested, must be one of political will, rather than capacity.

Participants pointed to the variety of capital flows that had streamed into Egypt over a long period of time. These have come in many different forms, including company purchases, real-estate investment and cash transactions. Until 2000, these flows were largely unregulated. It is only recently that banks have started to formally track the journey taken by their capital flows. Tracing money from the years pre-dating regulation would be difficult, but there may

³ The UK Bribery Act creates the following offences: active bribery, passive bribery, bribery of foreign public officials, and the failure of commercial organizations to prevent bribery by an associated person. The penalty for non-compliance is up to ten years' imprisonment with an unlimited fine.

be the will on the part of international actors to do so, if only to win the favour of the Egyptian government.

However, concerns were raised over whether the reality of asset-recovery efforts will match expectations. For a start, the process is hugely expensive. One participant pointed to the apparent success of recovery efforts in the United States where trackers had repossessed the penthouses of ministers from one Latin American country. In this case, recovery effort actually cost more than the value of the properties. Similar problems were predicted within the Egyptian context, not least because the government does not appear to view this process as a priority. Nevertheless, despite the associated costs, several participants insisted that the process remains important at a symbolic level.

Credibility of donors

International funding remains a political issue, and one year on from the January revolution donors continue to suffer from a credibility deficit. Considerable incoherence is seen to persist in the strategies of the largest donors, especially the United States. It was said that the Egyptian public is understandably concerned about international assistance, given previous support for the Mubarak regime. For this reason, it is vital that donors make a clear effort to rebuild trust and clarify their intentions with respect to the aid that they are providing. Vague statements about supporting democracy are no longer sufficient. Donors must be clear about what they expect from the Egyptian government in return for aid. A more responsible attitude towards investment is said to be one way in which Western governments can improve their image. One participant suggested that the moment might have come for smaller countries to take the lead on investment, since they had not suffered such reputational damage.

Suspicion over international motivations extends to perceptions of the loan package that the Egyptian government is currently negotiating with the International Monetary Fund. Many still believe that the package represents a tool of political control that will negatively affect Egypt in the same manner as previous structural adjustment packages. However, representatives of international financial institutions deny that this is the case, arguing that the IMF money is necessary to boost the struggling economy.

ABOUT THE EGYPT DIALOGUE PROJECT

Egypt is at a critical stage of its post-revolutionary evolution, when it is important that debate continues on a range of issues of concern to a variety of Egyptian constituencies. A series of workshops convened in Cairo by the Middle East and North Africa Programme at Chatham House is addressing elections, moving from military to civilian rule, political alliances, UK and Western policy, the economy and the role of the media. A core aim of this project is to increase political inclusion: to draw previously peripheral or suppressed voices into national and international policy dialogues.

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ABOUT THE MIDDLE EAST AND NORTH AFRICA PROGRAMME

The Middle East and North Africa Programme at Chatham House, headed by Dr Claire Spencer, undertakes high-profile research and projects on political, economic and security issues affecting the Middle East and North Africa. To complement our research, the MENA Programme runs a variety of discussion groups, roundtable meetings, workshops and public events that seek to inform and broaden current debates about the region and about UK and international policy. We also publish a range of reports, books and papers.

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