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Controlling Corruption A Look at Policies, Instruments and Results

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- Introduction: Corruption and the construction of a social problem
- The phenomenon of corruption
- International anti-corruption policies
- Results of anti-corruption policies
- Summary

Is Corruption a (the) problem?



- Corruption is viewed as a major social problem
 - a threat to the social fabric
 - a particular threat for developing countries
 - an obstacle to good governance
 - an instrument of organized crime groups

- Global „Bads“: Transnational crime, organized crime, corruption, money laundering

- Declaring war on corruption serves as a symbolic policy and moral crusades

Consequences (threats) of Corruption



- Economic consequences
 - Increasing (transaction) costs
 - Parallel economies
 - Dislocation of public and private funds
 - „Greasing the wheels“

- Social/political consequences
 - Distrust (vertical and horizontal)
 - Uncontrolled political, administrative and economic power
 - Weakening the state and governance

Correlates of corruption



- Corruption refers to rent seeking decisions
- Vast administrative and political discretion and little control
- Subsystems of mutual trust (old boys networks)
- Extent of the state`s involvement in the private sector/economy
- Freedom of the press and other media
- Independence of public prosecution and the judiciary
- Civil service professionalism and civil service pay
- Quality of democratic structures and the dependency of political elites and political parties from the public
- A culture of generalized negotiation
- Reluctant/weak political and law enforcement response to corruption

The phenomenon of corruption



- Forms of corruption
 - administrative/bureaucratic corruption
 - „... an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties“
...
– political corruption
 - CoE Recommendation (2003) on common rules against corruption in the funding of political parties and electoral campaigns
 - commercial corruption
 - promising, offering or giving directly or through an intermediary to a person who in any capacity directs or works for a private sector entity, an undue advantage of any kind, for that person or for a third party in order that that person should perform or refrain from performing any act in breach of that person's duties
- **Forms of corruption interact with**
 - Petty or grand corruption
 - Structural (systemic/endemic) and situational corruption
 - Local and transborder/international corruption

International instruments against corruption



- **OECD**
 - Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997
- **European Union**
 - Convention on the fight against corruption involving officials of the European Communities or officials of the member states of the European Union of 1997
 - Joint Action on Corruption in the private sector 1998
 - Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector
- **Council of Europe**
 - Civil and Criminal Conventions Against Corruption (1999)
 - Resolution (97) 24 on the twenty guiding principles for the fight against corruption
- **United Nations**
 - Convention against Corruption 2003
- In principle: No shortage of conventions, guidelines, best practices etc. see UNODC: Compendium of International Legal Instruments on Corruption. 2nd ed, Vienna 2005.



- Corruption (administrative and commercial) is recognized as a high priority national and international political issue
 - Political corruption does not fall under international corruption conventions
- Substantive criminal law should cover public sector and commercial corruption as well as transborder/international corruption
- Corporate liability
- Forfeiture and mutual judicial assistance in forfeiture cases, including the return of illicitly acquired assets
- Reporting of corruption cases to be encouraged in order to compensate for the lack of victims interested in criminal complaints (witness and whistleblower protection, anonymity)
- Collection of criminal evidence to be facilitated through proactive investigation and special investigative measures

Consensus on the need for prevention



- Repressive criminal law based approaches to corruption control should be backed up by comprehensive systems of (primary) prevention
- Monitoring to be strengthened through external and internal audits
- Adopting and implementing local, regional and national anti-corruption policies
- Self control to be strengthened through codes of ethics and other internal compliance enhancing mechanisms (ombudsmen)



- Activation of peer pressure and support
 - GRECO (Groupe d' états contre la corruption)
 - OECD Working Group on Bribery in International Business Transactions
- Implementation of legal instruments must be backed up through financial and other assistance to developing countries and peer evaluation of national implementation of anti-corruption policies and laws
- Peer review of implementation of legislation against corruption and compliance with the Council of Europe's Convention against Corruption

Threats of corruption: how much?

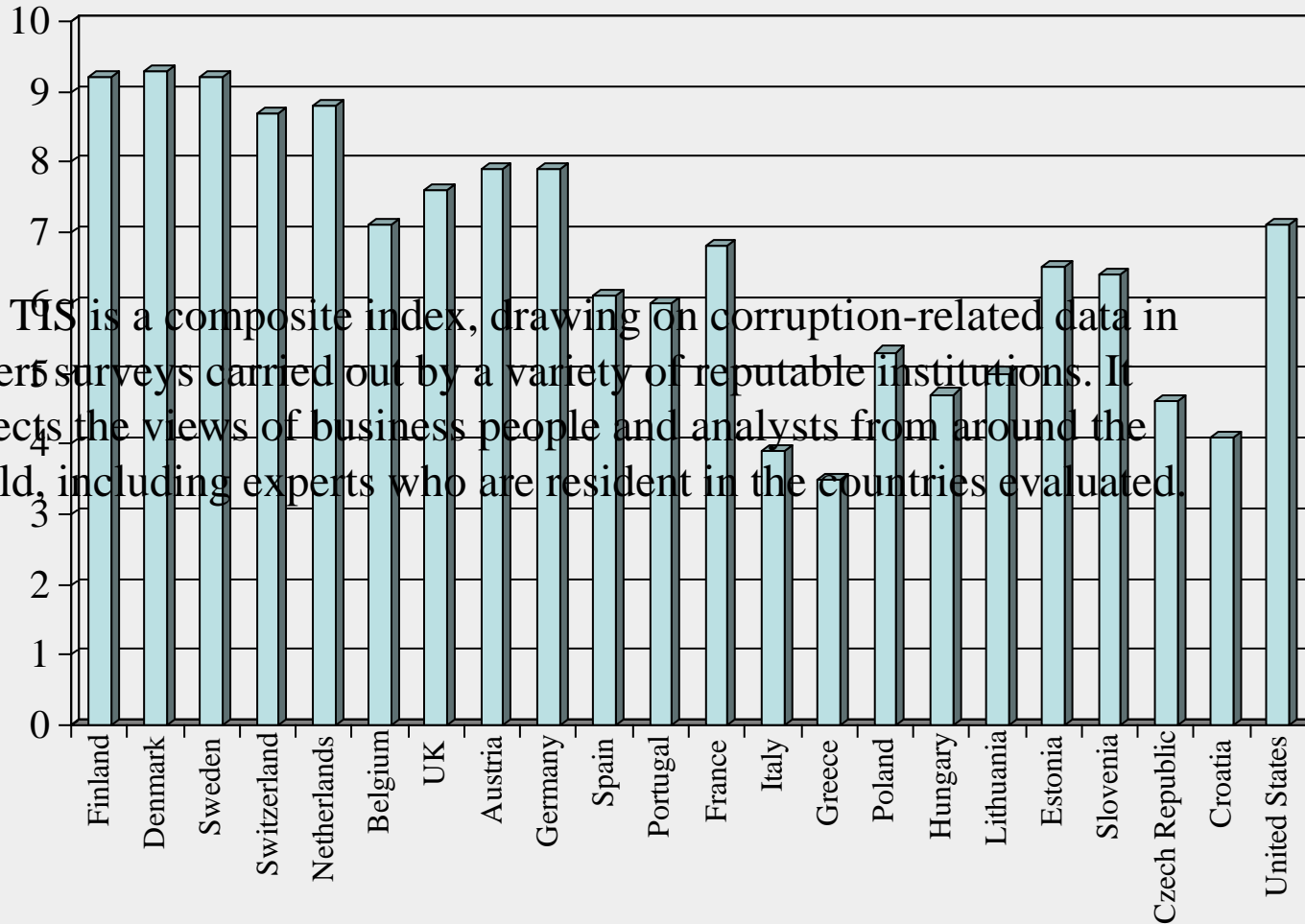


- Interviews
 - Ratings/perceptions

- Official statistics
 - Police statistics

- Qualitative assessments

Transparency International Survey 2010



The TIS is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of business people and analysts from around the world, including experts who are resident in the countries evaluated.

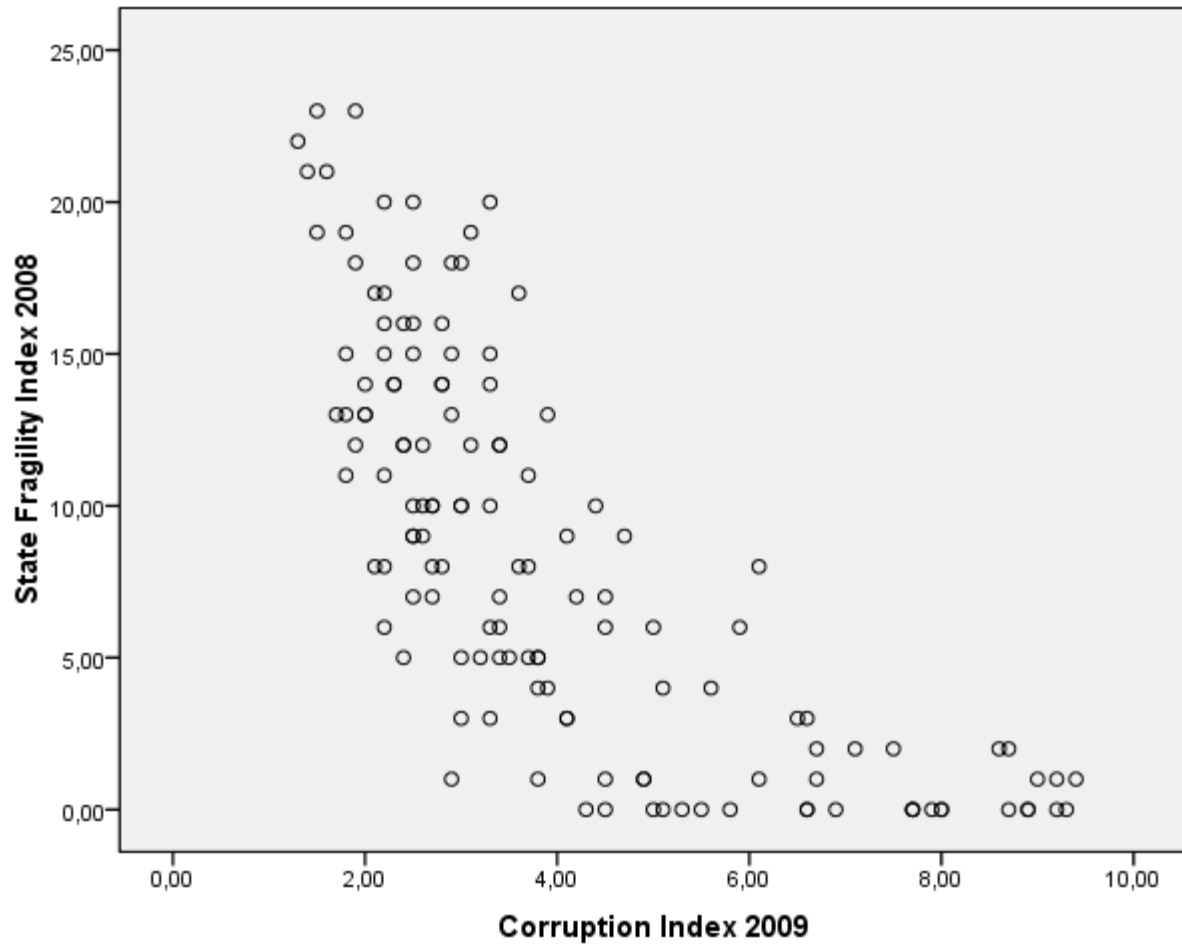


- **Perceptions/Ratings**
- Problem of ascertaining validity through independent measures
- **Police statistics**
 - reflect problems of victimless crime
- The number of cases known to police will be dependent
 - on the law enforcement resources devoted to the investigation of corruption and
 - on the success of mechanisms which serve to trigger information from (private) sources that are close to corrupt activities
- As it is not known which part of all corruption cases becomes known to law enforcement it is difficult to draw conclusions on whether and to what extent cases investigated and adjudicated represent typical cases of corruption that occur in the commercial, political or administrative system

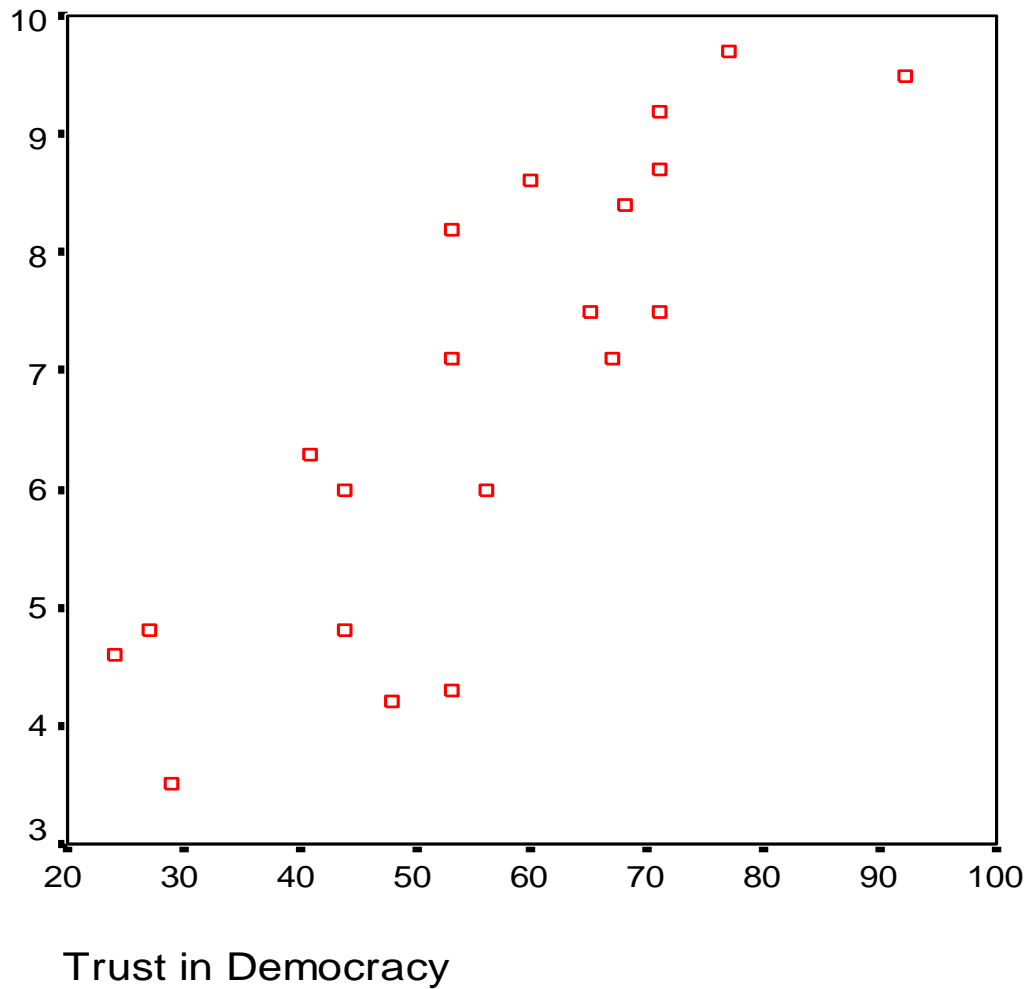
Correlates of Corruption (N=138)



	Corruption Index	Democracy Index	Human Development Index	State Fragility Index	Gini	GDP per Capita (US\$)
Corruption Index	1	.748	.706	-.752	-.395	.875
Democracy Index		1	.637	-.754	-.307	.645
Human Development Index			1	-.885	-.488	.758
State Fragility Index				1	.473	-.737
Gini					1	-.494
GDP per Capita (US\$)						1



Extent of Corruption and Trust in Democracy in Europe



Correlation Coefficient
.844



- Problems of establishing the direction of causality
 - Is corruption a result of a weak state or inadequate governance or is it the cause of the weakening of the state? Or is it a mere symptom (among others) of other problems?
- Problems of measuring corruption
 - quantitative indicators (like the ITS) are insufficient in assessing endemic/individualistic corruption, predictability of corruption, degree of organization/disorganization in corruption, the relative impact of grand vs. petty corruption



- Non-criminal instruments in controlling corruption
 - External and internal auditing
 - Inhouse ombudsmen dealing with corruption
 - Blacklisting (stigma and economic losses)
 - Codes of ethics and good practice (reputation)
- In general measures to increase corporate and individual self control
 - Fits into theories of crime that more recently focus on the capacity of self control in explaining crime in general
- However, proper evaluation research is not available



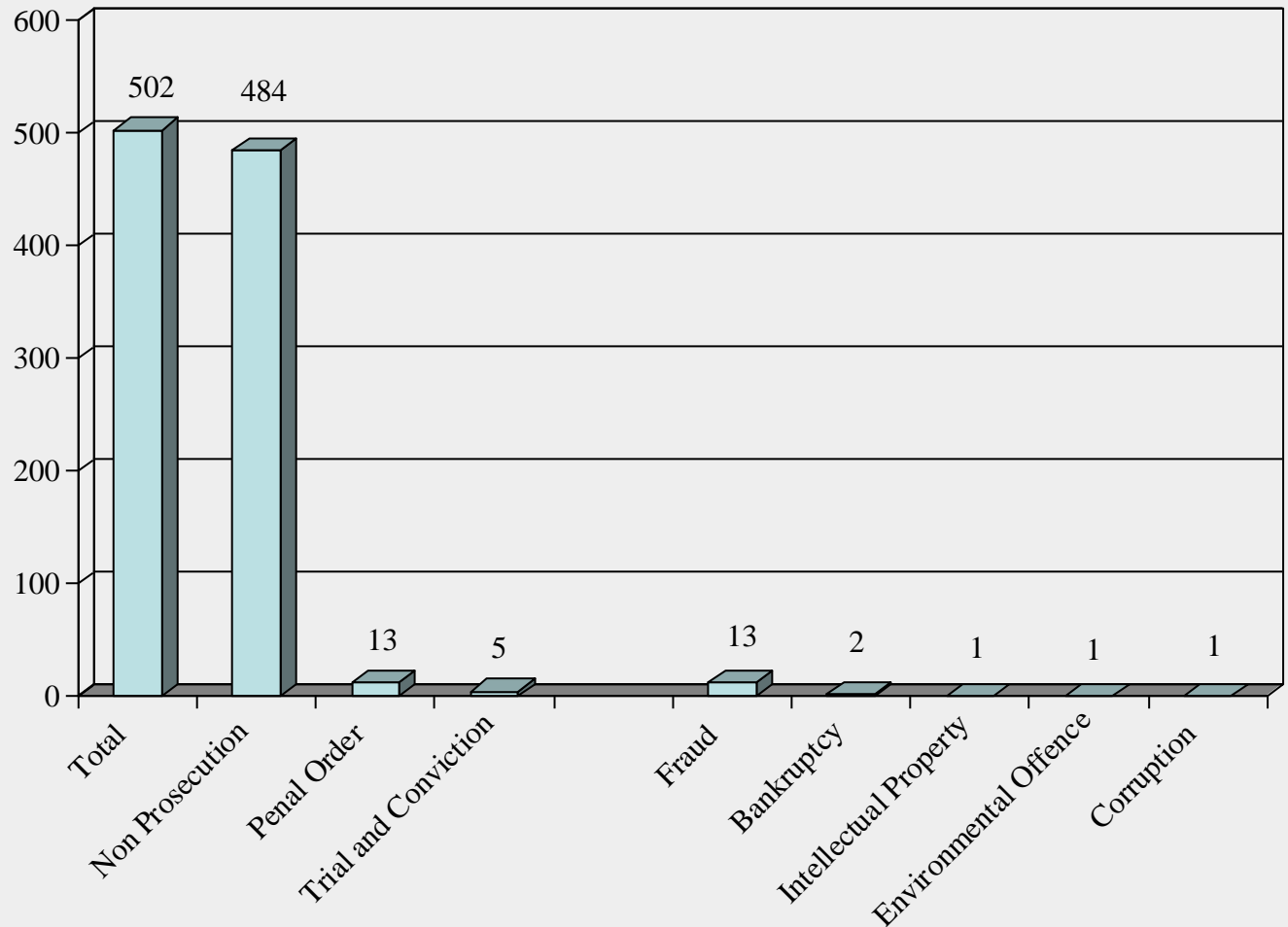
- Enforcement of corruption offence statutes is reflecting general problems of controlling transaction crime
- Empirical evidence speaks in favour of domino-effects (comparable to the investigation of drug crime)
- Conventional organized crime related instruments (proactive investigation, forfeiture, specialized investigation etc.) will possibly increase the number of criminal corruption cases but not decrease the amount of corruption

A case study: Lower Saxony, informants (Whistle Blowers) and the war on corruption



- BKMS is introduced on a trial basis 2003 and adopted fully in 2004
- The basis of BKMS
 - The less distance to corruptive acts the better the information on corruption
 - Proximity = reluctance to report suspicious activities (threat of informal sanctions)
- A study is carried out by an independent University of Bielefeld research group
 - » Backes, O., Lindemann, M.: Staatlich organisierte Anonymität als Ermittlungsmethode bei Korruptions- und Wirtschaftsdelikten. Heidelberg 2006.
- Results from this study on anonymous reporting on corruption and economic crime lead to conflicts
 - Allegation of problems of reliability (some of the case files could not be accessed) by police and the ministries of interior/justice vs. allegations of zero benefit, waste of money and problems of rule of law
 - Zero Tolerance of public bads vs. critical assessments of whistleblowing, the authoritarian state and anonymity
 - In several state parliaments the question is put forward whether an anonymous reporting system should be introduced
 - States are reluctant to respond in the affirmative, however, the system (BKMS) is not introduced until now in any other state (except Kenya, here with the help of the German Agency for Technical Cooperation, hinting in a recent publication that BKMS contributes heavily to the control of corruption in Kenya)

Results of Online Anonymous Reporting of Corruption Lower Saxony 10/2003 - 12/2005



Source: Niedersächsischer
Landtag – 15. Wahlperiode
Drucksache 15/4073
24.09.2007, p. 5

What comes with anonymous online reporting?



- A vast amount of information which does not lead to regular criminal proceedings
 - but results in wasting resources
- Information essentially results in investigations that attempt to establish statutorily required criminal suspicion
- Criminal cases that are generated do not concern corruption (problem of targeting meaningful groups of cases)
- Side-effects
 - Coercive measures
 - » Search and seizure
 - » Financial investigations
 - Stigma and economic losses



- An interactive process is difficult to launch
 - Significant increase in non-responses when interaction is requested
 - E-reporting is probably most suited for crimes that can be established through a one step, easy to structure interview form
 - » Bicycle theft, Nigeria connection fraud, ebay fraud, motor vehicle related offences
 - In case of complex crime (corruption, economic crime) complex interaction is necessary in order to establish criminal suspicion
- Anonymity and whistleblowing
 - The promise of anonymity of crime reports suspends partially criminal offence statutes that penalize obstruction of justice, raising false suspicion etc., executive power overrides the parliament
 - Should whistleblowing be encouraged?
 - » Risk of incitement to criminal offences (violation of secrecy laws)
 - » Side effects: Distrust and informal information sharing, the authoritarian state
- Facilitating access to justice through removing fear of retaliation
 - Wrong group of cases and addressees (violent crime, street crime)
- Open question: is the net widened or is just another avenue taken to report a crime

Summary



- Corruption is associated with a range of problems
 - parallel societies and economies
 - lack of transparency
 - erosion of accountability
 - weak democratic structures
 - Mistrust in political and judicial institutions
- It is not clear, whether corruption contributes causally to such problems or whether corruption just coincides with other social problems and with that presents an expression of deeper rooted problems of both, developing and developed societies
- More evidence speaks in favour of assigning to corruption the role of a symptom and to divert scientific and political attention to those basic changes in societies that bring with them both, corruption and the perception that corruption is the ultimate evil
- Research into evaluation of anti-corruption measures is only weakly developed