

STRENGTHENING RULE OF LAW APPROACHES TO ADDRESS ORGANIZED CRIME

Government Complicity in Organized Crime

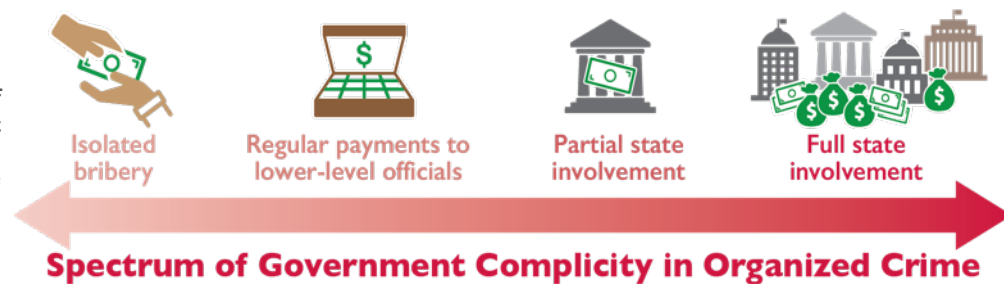
The United States Agency for International Development (USAID) and Management Systems International (MSI) are hosting a series of roundtable discussions to better understand key dynamics between the rule of law and organized crime. Building on the first roundtable in November 2018, which focused on rule-of-law capacity issues, the consequences of criminal justice responses to organized crime, and the complicity of criminal justice actors and senior leaders, the second roundtable in March 2019 examined government complicity in organized crime in greater depth. It brought together roughly 40 participants from USAID, the interagency, donors, research organizations, and implementing partners. This white paper captures key points from the discussion.

Spectrum of Government Complicity in Organized Crime

Government complicity in organized crime occurs along a spectrum (see Figure 1). Political actors within the state may be passive participants at one end, or active protagonists within organized criminal networks at the other end. Lower-level complicity may involve isolated bribes or more regular payments to customs officials, police officers, or judges, but the corruption is not systemic in those organizations, and is not directed from higher-level offices.

Partial state involvement may entail more systemic complicity of higher-level officials, which is confined to some institutions or parts of the government, such as the military or members of parliament from a certain region in the country. Full state involvement may entail the highest officials of the state running organized criminal activities, as in Guinea-Bissau, which has been labeled a narco-state (Van Riper 2014).

FIGURE 1
Spectrum of Government Complicity in Organized Crime



This white paper was produced for review by USAID. It was written by Phyllis Dininio, MSI, A Tetra Tech Company, and draws from remarks by the following panelists: Arturo Aguilar, Seattle International Foundation; Crawford Allan, TRAFFIC; Edgardo Buscaglia, Columbia University; and David Kaplan, Global Investigative Journalism Network. It was written under the direction of Brooke Stearns Lawson in USAID's Bureau for Africa

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The extent of government complicity in organized crime is largely determined by the quality of governing institutions, and especially the rule of law (Buscaglia and van Dijk 2003). A strong rule of law enforces laws impartially and upholds systems of accountability and justice, whereas a weak rule of law provides uneven or little enforcement of laws and is vulnerable to manipulation. When the rule of law is weak, criminal organizations are more likely to offer bribes, and government officials are more likely to accept them or engage in criminal activities themselves, since they perceive the risk of doing so to be low.

Countries with a weak rule of law are found in the “partly free” and “not free” categories of Freedom House as democracies in the “free” category depend on a strong rule of law to function effectively.¹ Higher levels of government complicity in organized crime are thus more likely to be found in weak democracies or authoritarian regimes.

The degree of criminal infiltration also reflects the scale and scope of the criminal activity. As criminal activities become more visible and complex, it becomes necessary to co-opt higher levels of the state apparatus, essentially moving from low-level bribery of customs or law enforcement officials to higher-level officials. For example, cocaine trafficking via containers or transport planes involves more complex and risky arrangements that require higher-level facilitation than does trafficking via individual mules.

Higher-level complicity is also more likely where illicit money is concentrated in fewer hands and represents a greater share of national income (Dininio 2014). For criminal organizations, high profits make high facilitation payments more affordable. For senior officials, high profits in illicit markets represent a notable source of wealth and

power in the country, which they may seek to tap for political or personal gain. Yet this relationship between profits in the criminal market and higher-level corruption may weaken where legitimate business opportunities are more plentiful and the economy is diversified. In those settings, organized crime groups will likely represent a smaller element in government.

As transnational organized crime has increased in scale along with licit commerce in the last 20 years, government complicity has become a greater concern. The ascendance of transnational crime groups partnering with states poses a significant threat to democracy and stability—one that the international focus on terrorism has overshadowed.

Government Complicity Scenarios

Strategies for tackling government complicity depend on the extent of complicity in and opposition to organized crime at different levels of government (Stearns Lawson and Dininio 2013). Table 1 lays out four scenarios for reform:

- The best scenario for reform is found in the top left quadrant (shaded green to connote “proceed,” following a stoplight metaphor), where complicity is confined to low-level officials, and high-level officials oppose organized crime. In this scenario, an array of government policies can support anti-crime efforts.
- The next best scenario is found in the bottom left quadrant (shaded light yellow to connote “proceed with a little caution”), where complicity is confined to low-level officials, but opposition to organized crime is weak. Mobilizing political pressure for anti-crime reform may provide the best lever for advancing a broad anti-crime agenda in this scenario.

¹ For the scores, see Freedom House, “Freedom in the World Countries,” *Freedom in the World 2019*, <https://freedomhouse.org/report/countries-world-freedom-2019>.

Table I
Implications of Government Complicity and Opposition to Organized Crime

		Government Complicity	
		Low-Level Officials	High-Level Officials
Government Opposition	Strong: High-level officials oppose organized crime	Best scenario for direct interventions	Direct interventions possible but potentially destabilizing
	Weak: Relatively few high-level officials oppose organized crime	Direct interventions most effective when combined with increased political pressure	Direct interventions not advisable

- The second worst scenario is found in the top right quadrant (shaded dark yellow to connote “proceed with significant caution”), where some high-level officials are complicit and some oppose organized crime. Reforms are possible but may face strong backlash, and careful analysis of stakeholder interests and resources is necessary to identify possible entry points. For example, political economy analysis can help identify possible incentives for key stakeholder buy-in and openings that may present opportunities for engagement.
- The worst scenario is found in the bottom right quadrant (shaded red to connote “stop”), where high-level officials are complicit and relatively few high-level officials oppose organized crime. Direct interventions with government are therefore not advisable, although support for civil society efforts to advocate for anti-crime measures may be warranted.

Where high-level officials are complicit in organized crime (represented by the right-hand column in Table I), a flashpoint is typically needed to mobilize the population against powerful interests. One kind of flashpoint is electoral fraud, such as the 2003 parliamentary elections in Georgia that prompted protesters to take to the streets in what became known as the Rose Revolution. Another kind of flashpoint is the assassination of anti-crime fighters, such as the 1992 murders of the anti-mafia prosecutors Giovanni Falcone and Paolo Borsellino in Italy, which prompted protests that pushed forward the Clean Hands campaign. Revelations of criminal linkages are another kind of flashpoint, such as those uncovered by the International Commission Against Impunity in Guatemala (CICIG) in 2015, which unleashed months of protests and led to the resignation and conviction of the president and vice president (see text box). As these examples suggest, flashpoints have the power to alter the status quo when large numbers of people mobilize to demand reform.

Social pressure is also an important element of reforms where high-level officials are not complicit in organized crime (represented by the left-hand column in Table I). In these cases, social pressure exerted both publicly and behind closed doors can help to maintain a government’s focus on interventions and provide a deterrent to the involvement of higher-level officials in

PHOTO

Local administrators, who belong to association Avviso Pubblico or Public Warning, attend a march against mafia violence in Polistena, Calabria, Italy June. The banner reads: “Administrators at gunpoint.”

Reuters/ Tony Gentile



organized crime. Alongside pressure from civil society, pressure from international organizations and donor governments can buttress the political will of government officials to implement effective policies.

Anti-Complicity Initiatives

As noted in the first white paper in this series, efforts to tackle government complicity in organized crime need to advance initiatives across multiple domains (judicial, economic, political, and social) to strengthen horizontal and vertical accountability.² The efforts involve a range of different actors and expertise, including development practitioners in some countries. The initiatives listed below provide an illustrative, but not exhaustive, list of such efforts..

In the judicial domain, potential efforts could:

- Protect whistleblowers, informants, and other cooperating witnesses;
- Deploy interdisciplinary teams of undercover officers in corruption-prone government operations to gather intelligence and evidence;
- Foster international mutual legal assistance to exchange information and evidence about the modus operandi of specific transnational organized crime groups in infiltrating the state that can be used in prosecutions;
- Enforce the public disclosure of public officials' backgrounds (including criminal records and links to the private sector) in accordance with conflict of interest, influence peddling,³ and open government legislation and link disclosures to case files of corruption and money laundering;
- Apply five parallel investigations to each case involving criminal networks: criminal, money laundering, tax fraud, civil asset forfeiture, and economic investigations;
- Improve coordination among civilian, military, and financial intelligence agencies, law enforcement authorities, investigators, prosecutors, and judges;
- Foster consistency in judicial rulings through judicial reviews and civil society oversight;
- Simplify and automate processes in case management and court administration; and

Fighting Government Complicity in Guatemala

The penetration of organized crime in government grew significantly in the wake of Guatemala's civil war (1960–1996), but the legacy of violence turned Guatemalans away from political activism. Citizens were both afraid to mobilize and distrustful of the government to solve social problems. Analysts considered the people who grew up during the war to be a “generation of silence.”

In this context, the United Nations established the International Commission against Impunity in Guatemala (CICIG) to help Guatemalan prosecutors investigate corruption and the links between criminal organizations and state institutions. In April 2015, CICIG revealed a customs fraud network called “La Línea” operating out of the vice president's office, and in July 2015, CICIG revealed the drug money and corruption at the heart of political party financing. In response to these revelations, tens of thousands of protesters converged weekly in front of Guatemala City's Municipal Palace calling for the president's resignation and speaking out against corruption. The organizers were educated, middle-class citizens using Facebook. CICIG's investigations provided the flashpoint to galvanize collective action, which led to the eventual resignation and conviction of the president and vice president. (Source: *Dininio, 2015*)

² Mungiu-Pippidi makes a similar point for anti-corruption reforms more generally (Mungiu-Pippidi 2015).

³ Influence peddling refers to the use of one's influence in government to obtain favors for another, usually in return for payment. It is also called traffic of influence or trading in influence.

- Balance judicial independence and judicial accountability standards.

In the economic domain, potential efforts could:

- Train businesses (financial institutions and nonfinancial businesses such as real estate agents, lawyers, and accountants) on the application of bank and securities regulations and civil asset forfeiture statutes;
- Strengthen joint risk evaluations and the generation of reports on suspicious activity by government financial intelligence units and businesses in compliance with the 40 Financial Action Task Force recommendations;
- Enhance transparency and competition in public procurement and strengthen financial management and customs operations; and
- Enforce antitrust policies and support economic liberalization to reduce the power of dominant elites.

In the political domain, potential efforts could::

- Increase voter choice in elections through such measures as open primaries and open electoral lists;
- Ensure transparency in campaign financing and include conflict of interest and influence peddling provisions in campaign finance laws;
- Strengthen freedom of information legislation to allow access to government documents;
- Require public disclosure of legislative votes;
- Support legislative oversight of the government through audits, investigations, and hearings; and

- Strengthen professionalism and meritocracy in the civil service.

In the social domain, potential efforts could:

- Establish laws and mechanisms enabling social audits at all levels of the public sector and especially risk-prone areas.
- Apply laws reallocating confiscated assets to civil society programs to support victims of organized crime.
- Support investigative journalism, where a little money can have a big impact. Journalists are not bound by the same laws or legal jurisdictions for evidence gathering as law enforcement, so they can sometimes make links across data and uncover wrongdoing that law enforcement cannot (see text box).

Investigative Journalism as a Tool to Fight Government Complicity



The USAID-funded Organization Crime and Corruption Reporting Project exposed the Russian Laundromat, an immense scheme that enabled Russian business and political elites to move more than \$20 billion out of Russia and across Europe through a complex system of bribes. Its reporting led to major reforms in the Latvian banking system, passage of the Unexplained Wealth Orders law in the U.K., the closure of 19 firms in the U.K., and criminal investigations in Moldova, Russia, and Montenegro See <https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/>

- Introduce programs at the primary school level and support public awareness campaigns, dialogues, and other initiatives by civil society groups and faith-based organizations supporting the daily practice of social ethics in civic life and a culture of lawfulness. As underscored by the mayor of Palermo in the fight against the mafia, “[E]ducators and civic groups, the media and the church, working side by side with law enforcement, can change societies caught in the suffocating grip of criminality and corruption” (Orlando 2001).

Experience with reforms to counter government complicity in organized crime has identified approaches that do not work well. These include:

- Efforts concentrated on awareness raising alone, which have little traction and can even reinforce public cynicism;
- Efforts concentrated on the judicial domain but with weak preventive components in the political, economic, and social domains as complicit elites can derail them; and
- Anti-corruption programs focused on lower levels of the public sector without addressing higher-level political corruption as complicit elites can direct them toward those outside their network.

Incorporating efforts across the four domains, reforms must aim to interdict and dismantle transnational organized crime networks and remove complicit officials from power; but also to make it harder for organized crime to infiltrate the state in the future. The precise balance between these goals will depend on the scale of criminal activity and government complicity and the constellation of institutional and political levers for addressing it. At times, strengthening accountability systems to prevent future abuse can advance further than efforts to fight complicit actors head-on.

Conclusion

The second roundtable generated a number of insights for addressing government complicity in organized crime, notably:

- Government complicity in organized crime is more likely where the rule of law is weak, criminal activities are large and complex, and illicit money is concentrated in fewer hands and represents a greater share of national income.
- Where high-level officials are complicit in organized crime, change typically happens after a flashpoint mobilizes the population against powerful interests. Even where high-level officials are not complicit in organized crime, social pressure and international support can buttress the political will of government officials to implement effective policies.
- Efforts to tackle government complicity in organized crime entail a wide range of actors and expertise to advance initiatives across multiple domains to strengthen horizontal and vertical accountability. Although some efforts fall outside the traditional purview of donor organizations, development assistance can provide advice, training, and material support to governments and civil society organizations across an array of activities and domains such as: fostering consistency in judicial reviews and civil society oversight (judicial domain); enhancing transparency and competition in public procurement and strengthening financial management and customs operations (economic domain); supporting legislative oversight of the government through audits, investigations, and hearings (political domain); and supporting investigative journalism (social domain).

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