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SNAPSHOT

Fighting Corruption After the Arab Spring

Harnessing Countries' Desire to Improve their Reputations for Integrity

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From Tunisia to Yemen, the corruption of Middle Eastern regimes has played a significant role in motivating the Arab Spring. Former Tunisian President Zine el-Abidine Ben Ali and his family now face trial in absentia for, among other crimes, money laundering and drug trafficking. Meanwhile, Egyptian courts have charged former President Hosni Mubarak with corruption and sentenced in absentia his former finance minister, Youssef Boutros-Ghali, to 30 years in prison on charges of corruption and embezzlement of public money. Frustration with cronyism and corruption is a key grievance of those protesting in the streets in Libya, Syria, and Yemen as well.

These corrupt leaders have managed to stash much of their collected wealth abroad, despite international obligations designed to prevent such looting. The Arab Spring has thus highlighted the inadequacy of current international efforts against corruption.

If global leaders are serious about strengthening anticorruption efforts in response to the Arab Spring, they should build on recent improvements in an unlikely place: Switzerland. Switzerland recently changed its law about returning corrupt funds and has led much of the international community in freezing the assets of certain deposed leaders, including Ben Ali, Mubarak, and former Ivory Coast President Laurent Gbagbo. Switzerland took these actions at least in part because it feared that its reputation as a haven for illicit assets could harm its ability to attract legitimate business. The United States and its allies should capitalize on such reputational sensitivities by promoting mutually enforced anticorruption standards and exposing those countries that fail to cooperate. This is the most promising path to inducing countries to prevent corruption and to excluding the proceeds of corruption from the global financial system.

Swiss banks became known as a top choice for corrupt dictators by holding the multi-million dollar accounts of, among others, former Nigerian ruler Sani Abacha, former Filipino President Ferdinand Marcos, and former Haitian strongman Jean-Claude Duvalier. Thus, it may come as a surprise that last October, Switzerland adopted what is arguably the world's toughest law for repatriating the ill-gotten gains of corrupt politicians to the people of those countries, allowing the country to return potentially corrupt assets more easily.

Returning the fruits of corruption to their country of origin is a difficult undertaking. In the first place, the process of tracing and repatriation does not begin unless and until the corrupt regime is removed from power (obviously, a ruling regime depositing the money is highly unlikely to request such an investigation). Even when assets are located, legal obstacles often complicate repatriation. The new leadership in the country of origin may not be sufficiently independent of the old regime to pursue the matter, or may be unable to provide adequate proof that the assets in question were illicitly derived. As a result, only a relatively small amount of money has actually been returned to countries of origin. The World Bank estimates that corrupt regimes steal $20–$40 billion from developing countries each year; only $5 billion has been returned to those countries over the past 15 years.

The new Swiss law, known as the Restitution of Illicit Assets Act, took effect in February and addresses some of these problems by giving the Swiss government more freedom of action to repatriate questionable funds. For example, the new law shifts the burden of proof -- the countries of origin are not required to prove the illicit nature of the funds. In situations where the wealth of a politician in question has increased dramatically during his reign and corruption is endemic in his country, the new law requires the politician to prove that he earned his wealth legitimately. Beyond improving the likelihood of restitution in specific cases, this law might persuade corrupt politicians to place their illicit assets elsewhere.

Switzerland hopes that its strengthened restitution law will do just that. The Swiss Foreign Ministry Web site states that "it is in Switzerland's fundamental interest to ensure that the assets of politically exposed persons obtained by unlawful means shall not be invested in the Swiss financial center." This, the Ministry explains, is because "competition between financial centers is global. In long term, it is a financial center's reputation and credibility that are the most important criteria with respect to competitors."

Like other nations, Switzerland undoubtedly realizes that a reputation for shielding corrupt assets can discourage legitimate investors, who may be deterred by the lack of transparency or by the prospect of being stigmatized by placing their money in a known destination for corrupt funds. Investors may also fear that a jurisdiction's poor reputation may attract greater regulatory and law-enforcement scrutiny. A suspect reputation may also complicate the ability of a country's financial institutions to conduct business abroad, especially in the United States.

It is easy to be to be cynical about Switzerland's attempts to portray itself as a world leader in preventing corrupt politicians from hiding their money, given the country's history. But indulging that cynicism would risk missing the opportunity represented by Switzerland's desire to improve its reputation. With corrupt rulers stealing billions per year from their people, the international community must develop methods to counter corruption while they remain in power. Repatriation of funds only after a corrupt regime falls is insufficient. To ensure that effective preventive measures are taken, the international community should harness the dynamic that motivated Switzerland to reform -- its desire to demonstrate the integrity of its financial system -- to incentivize other nations to act.

A multilateral commitment to improve anticorruption regulations exists. A hundred and forty nations have signed the United Nations Convention Against Corruption (UNCAC), a 2005 agreement that mandates a comprehensive vision for fighting corruption. Its signatories committed to adopting measures to prevent corruption such as creating anticorruption bodies, maintaining an independent judiciary, and establishing transparent procurement systems; criminalizing bribery and the embezzlement of public funds, and providing for the freezing and confiscation of the proceeds of those crimes; cooperating with other countries to enforce anticorruption laws and to return looted assets to their country of origin; and implementing rules to protect the financial system from the proceeds of corruption.

Unfortunately, there is no credible mechanism to ensure that countries implement the UNCAC. The implementation process sounds like a parody of an ineffective UN process: it relies on a “non-intrusive” “desk review” of a “comprehensive self-assessment checklist” completed by each signatory. A visit by an assessor to the country being reviewed can be made only if that country agrees. Reports on a country under investigation remain confidential unless the country under review chooses to have it published. On top of that, at the current pace, the first round of assessments will take 15 years to complete.

Other well-intentioned anticorruption efforts similarly lack sufficient implementation mechanisms. Although a G-20 anticorruption “action plan” announced last November calls for countries to report back to G-20 leaders, it lacks a formal process to ensure concrete improvements. And the Organization for Economic Cooperation and Development’s existing assessment of whether its members are allowing companies to bribe foreign public officials does not extend to potential corruption issues within any member country itself.

Although the implementation of a comprehensive set of anticorruption measures undoubtedly poses daunting political challenges, there is an existing model that works: the global effort to combat money laundering and terrorist financing by the Financial Action Task Force (FATF). By publishing expert-created standards to combat illicit finance which are enforced by rigorous mutual evaluations among members, FATF has created a perpetual race to the top, or at least a race away from the bottom, as countries continuously seek to improve their FATF evaluations. The FATF consisted of only 16 members when first formed by the G-7 in 1989; today, more than 180 countries subject themselves to its or its affiliates’ assessments. Its efforts are viewed as nonpolitical and are thus respected. Most important, FATF publishes its evaluation reports and its conclusions about which countries pose a risk to the system. Financial institutions around the globe pay close attention to FATF’s assessments and use them to decide whether or how to operate in specific countries. Countries’ fears of landing on one of FATF’s warning lists, and their intense desire to remove themselves from those lists once named, are powerful motivators for self-improvement.

The international community could make real progress in combating corruption if an organization with FATF’s credibility were empowered to set standards and assess countries’ performance on the types of measures established in the UNCAC. Such a process should build on the key lesson of Switzerland’s reforms: the best way to motivate countries to prevent corruption is to harness their own desire to protect their reputations.

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