

Corruption “Heat Mapping” as a precursor/element of NIS Assessment: The Case of Myanmar

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Myanmar is emerging from six decades of isolation and undergoing a triple transition from military systems to democratic governance, from a centrally directed economy to market reforms and from sixty years of conflict towards a nationwide ceasefire process.

Transparency International’s (TI) Corruption Perception Index (CPI) has shown very low but recently improving scores. Some will assert there has been little real progress and that a National Integrity System (NIS) is needed, rather than a National Corruption Commission. In such a difficult context a vexing issue has been the discussion and identification of key problem areas and opening the space to allow NIS work to start.

To bridge some of the gaps and allow more discussion of the “un-discussables”, some basic perception research was done to permit “heat mapping” of problem and issue areas. This initial work followed similar categories to work done for the East African Bribery Index and identified quite a number of issues and dilemmas for consideration, particularly related to gender, systemic issues and various areas not covered. These will help with the design and initiation of next phase work towards a NIS assessment and other supplementary tools needed in an extremely complex system and context.

Further assessment of context factors and issues related to the peace transition process show that for an NIS assessment to cover the Myanmar system well additional items may need to be added. Consideration of these matters along with institutional factors suggests that in a complex transition environment quite a number of extra pillars might be needed. Redesign or modification of a NIS for use in Myanmar is recommended.

Introduction

Myanmar is emerging from six decades of isolation and undergoing a triple transition from military systems to democratic governance, from a centrally directed economy to market reforms and from sixty years of conflict towards a nationwide ceasefire process.

Transparency International's (TI) Corruption Perception Index (CPI) in Myanmar has shown very low but recently improving scores. Some assert there has been little real progress and that a National Integrity System (NIS) is needed, rather than a National Corruption Commission. This paper looks at progress in the anti-corruption area, reports on some simple perception research, analyses factors related to the context and peace transition and assesses the suitability of the current NIS for use in Myanmar.

History of Anti-Corruption Work in Myanmar

Myanmar has 23 laws dealing with corruption, dating from 1861 (sections 161 to 165 of chapter (9) of Penal Code, 1861) to the Anti-Corruption Law, 2013 signed and enacted by the President on 7 July 2013 (when the Suppression of Corruption Act, 1948 was repealed).¹

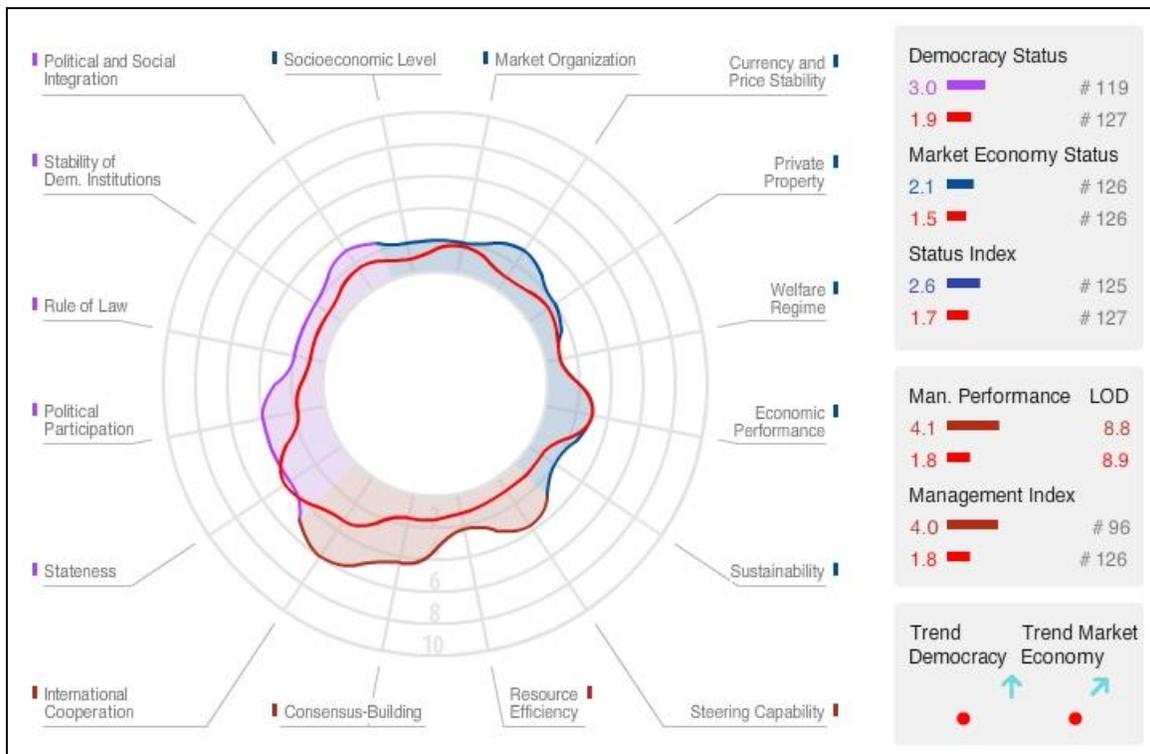
“Even though every Government in Myanmar has conducted the fight against corruption, it has not disappeared. Some of the public servants have been committing the offence by neglecting their own dignity as public servants and the State and disregarding the laws. Therefore, corruption is now expanding as a culture. Misappropriation of power and bribery are of key interest to the public. Corruption hinders administration and human rights and degenerates the economy, the political process and the dignity of countries affected by it.”

Corruption Perception Index (CPI) figures have ranked Myanmar very poorly - 2011: 176th of 178 - equal second last; 2012: 172nd of 176; 2013: 157th of 177. All available corruption measures highlight corruption as a major issue in Myanmar. When asked at a private dinner at the World Economic Forum (WEF) in Nay Pi Taw about his view of the accuracy of CPI, Vice President Sai Mauk Kham said after much deliberation “I think that's about right. We have to improve in every area.” This remarkably honest comment demonstrates the increasing openness, and in fact has further prepared the way and allowed a more open focus on corruption matters in Myanmar.

Overview of Areas of Reform and Progress

A particularly useful context review is the Transformation Index BTI2014, which shows rapid progress since the last assessment in 2012.

¹ Myo Khaing Swe, Anti-Corruption Efforts in Myanmar, 16th UNAFEI UNCAC Training Program, Participants Papers, p252-260, September 2013.



Almost all categories increased except stateness which decreased slightly and the poverty related and economic performance indicators which remained stagnant. These can be considered particularly important as context inputs, related to corruption drivers. Brief explanation on the complexity of the stateness indicator is added below:

“Many majority Burman generally accept and support the official concept of the nation-state, which revolves around the religion of Buddhism, the Myanmar language and the Burman ethnicity. However, most ethnic minorities living in the seven ethnic states (the Burmese equivalent to provinces) do not support or openly reject this concept and feel that the state does not sufficiently respect their socio-cultural identity, especially in terms of language, customs and religion. Since most of the ethnic states lag behind in socioeconomic development, they also feel that Myanmar has paid too little attention to their economic and social well-being. In areas controlled by ethnic armies, the entire minority population openly rejects the official concept of the nation-state. They strongly believe that they have been bereft of their political and cultural rights and have been discriminated against by the state for decades. They openly call for some form of genuine autonomy or the establishment of a strong federal state replacing the current more centralized form.”²

Context analyses like this one raise issues of ethnic involvement, lack of acceptance for centralized form, desire for a federalized model, economic and social well being.

² Bertelsmann Stiftung, Transformation Index BTI2014 Myanmar Country Report, <http://www.bti-project.org/reports/country-reports/aso/mmr/index.nc> (accessed 7/6/2014).

Update on 2012 Transparency International Assessment

This section provides some brief updates on an assessment “Overview of corruption in Burma (Myanmar)” dated 1 October 2012, which was an update on a 2009 assessment.³ A range of statements from the most recent published update on the Myanmar situation published are include below, with some updates included.

The assertion “little is known on the specific forms and patterns of corruption in the country” remains fairly accurate, however there are updates, including this paper.

Areas without much change:

“Burma generally lacks regulatory and legal transparency, and there is a broad consensus that corruption in the country is rampant and endemic” (Political Risk, 2011; Heritage Foundation, 2012).

“According to economists and businesspeople, corruption is one of the most serious barriers to investment and commerce in the country as very little can be accomplished without resorting to illegal payments often referred to locally as ‘tea money’. The major areas where investors may face corruption are (i) when seeking permission for investment in the country; (ii) in the taxation process; (iii) when applying for import and export licenses; (iv) when negotiating land and real state leases” (Political Risk, 2011⁴; Heritage Foundation, 2012).⁵

This has recently been verified as a major concern a recent UN ESCAP survey of 3000 businesses confirming corruption as the key issue concerning business.

“Burma remains a country at risk of drug money being funneled into commercial enterprises and infrastructure due to an underdeveloped financial sector and the large volume of informal trade.”

“The CIA considers that the lack of government will to take on major narco-trafficking groups and lack of serious commitment against money laundering continues to hinder the overall antidrug effort” (Central Intelligence Agency, 2008). Note that the financial system remains entirely inadequate at present. Until that is made more functional, there exist few mechanisms for even legitimate transactions, making money laundering differentiation difficult.” ...“According to the CIA’s World Fact book, official statistics are inaccurate and published statistics on foreign trade greatly understated because of the volume of off-book, the size of the black market, illicit and unrecorded border trade - often estimated to be as large as the official economy” (Central Intelligence Agency, 2008)⁶.

³ Chene, M., Overview of corruption in Burma (Myanmar), Transparency International, 23 March 2009 updated in 1 October 2012 Number: 349.

⁴ Political Risk Services, 2011. Myanmar Country Conditions.

⁵ Heritage Foundation, 2012. *Index of Economic Freedom 2012*.

<http://www.heritage.org/index/country/burma>

⁶ Central Intelligence Agency (CIA), 2008. *The World Factbook Burma*.

<https://www.cia.gov/library/publications/the-worldfactbook/geos/bm.html>

Areas with significant change notable:

“There is no research and data available on sectors most affected by corruption in Burma, probably due to the lack of political will for such scrutiny.”

Data is now becoming available in some sectors, with the above mentioned business survey, the ICJ legal assessment and the survey work which is included in this paper.

“There is no publicly available information on who has the rights for exploiting what resources in what areas, what the terms and conditions are, and on how the revenues are being shared and spent” (TrustLaw, 2012).

While this remains generally true, Myanmar has submitted a candidacy application for EITI as of May 2014, highlighting upcoming institutional changes in this area. Additionally the oil and gas block tendering process conducted during 2013/14 can be considered the most open process yet conducted in Myanmar, with public tendering processes and results announcement. 2013/14 Budget disclosure was the most open yet.

“The budget process also lacks transparency, and sources of budget revenues remain undisclosed.”

The 2013/14 budget showed significant revenue increase in the budget as a result of revaluation of currency, full inclusion of gas revenues and increased revenues from State Owned Enterprises.

“There is no fully independent anti-corruption institution in Burma.”

An anti-corruption commission was established in 2014.

“The space for international civil society groups is also opening up. As of 2011, there were approximately 65 international NGOs (INGOs) operating in the country, often under various framework agreements with the government, such as Memoranda of Understanding (MOU) or Letters of Agreement with a relevant ministry” (The Hauser Center, 2011).⁷

This area has seen major change, with many more INGOs in Myanmar but more notable the large number of active local civil society groups able to interact with government.

While the 2010 elections were considered irregular in a number of respects, resulting in the military government being elected, the 2013 by-elections were generally considered quite good, and the NLD won 43 of 45 seats.

⁷ The Hauser Center, 2011. Working Through Ambiguity: International NGOs in Myanmar. Harvard University.

Heat Mapping of Corruption in Myanmar

In such a difficult context a vexing issue has been the discussion and identification of key problem areas and opening the space to allow more holistic work on corruption to start, such as that advocated by a NIS assessment,

To bridge some of the gaps and allow more discussion of the “un-discussables”, it was considered that basic perception research might be done to permit “heat mapping” of problem and issue areas. Doing that could break the ice and give further insight to allow consideration of next steps. Work done in East Africa was chosen as a model as it appeared highly relevant to the Myanmar context and was clear and simple.

Model Background

An annual East African Bribery Index has been produced by the collaboration of East African chapters of Transparency International (TI) and other governance Civil Society Organisations (CSOs). **Table 1** shows the reports regional findings for 2012:

Table 1 Corruption Level by East African Country and Sector, 2012

	Burundi	Kenya	Rwanda	Tanzania	Uganda
1 st	Judiciary	Police	Police	Police	Police
2 nd	Police	Land services	R&L	Judiciary	Judiciary
3 rd	Land services	Judiciary	Land services	Land services	Tax services
4 th	Tax services	R&L	Education	Medical	Land services
5 th	Education	Utilities	Tax	Education	R&L
6 th	R&L	Tax	Utilities	R&L	Medical
7 th	Utilities	Education	Medical	Utilities	Education
8 th	Medical	Medical	Judiciary	Tax	Utilities

Source: derived from East Africa Bribery Index 2012. ⁸ (R&L= Registry and licenses.)

The degree of corruption in a number of public agencies was assessed by respondents in the five countries. The report also highlighted that “Combating corruption is one of the areas in which EA member states are developing joint policies.”⁹

The simple type of problem analysis this provided was considered very useful in the largely unstudied Myanmar context and so a survey was designed along similar lines.

Survey Work in Transition Countries

Validity of data is a massive issue when doing surveys in authoritarian regimes. The socio political setting is quite critical to the basic premise of whether people will answer questions truthfully and therefore research and survey results need to be treated with great caution, as the value of a truthful answer may be less motivating than “than the fear of saying the ‘wrong’ thing and arousing the ire of the authorities”¹⁰

⁸ Transparency International Kenya, Association Burundaise des Consommateurs, FORDIA, TI-Uganda, and Transparency Rwanda 2012. ‘East Africa Bribery Index 2012.’

⁹ James Gashumba, 2012. ‘EAC countries urged to beef up funds for combating corruption’, *Guardian*, 15 February.

¹⁰ Moorsmith, R., blog input on survey work in transition countries: “The IRI Survey on Myanmar politics - and why it might be problematic”,

Commenting on other surveys Moorsmith asks the important questions “Why should readers believe that respondents answered frankly/truthfully? What precautions were taken to minimize forms of response bias, including social desirability bias?”

The understanding of this and the survey grouping is particularly important for the understanding of this preliminary survey, and also for further work that might be done as part of a NIS for Myanmar.

“In the case of opinion survey work in Myanmar, one must ask how far the society has moved in 2 years from the pervasive fear that the special branch and ten houses systems cultivated over decades. The assumption of a researcher ...has to be "not very far" and do everything possible to minimize the likelihood that people will not feel empowered to answer frankly.” ...“a reader ought to exercise a great deal of caution when faced with the implicit assertion that the answers people gave concord with what they'd tell their close friends and family in a private conversation”...

Further complications are voiced such as “experience doing research in Myanmar taught me that what people said in minutes 1-15 of an interview often differed radically with what they said in minutes 45-60 and beyond, once rapport had been established. This makes traditional survey-based research into topics that arouse any Big Brother worry (and in The Old Myanmar, what topics wouldn't?) an exceptionally tricky business.”

That advice needs pairing with the socio-cultural understanding of the concept of “ahn na dey”¹¹ in Myanmar. People are culturally averse to giving answers that may not be what the recipient wishes to hear. While this effect may be assumed to occur in distant contacts, it will perhaps occur to an increasing degree as the relationship closeness increases. As a result much skill is needed to interpret the validity of answers on any topic.¹²

With such daunting advice on the socio-political-cultural issues in survey work – how should one go about gaining shared understanding on difficult and sensitive topics?

Approach taken for Myanmar corruption survey work

With all the above difficulties, the approach taken for this preliminary work was to aim to identify and survey groups who should have a strong interest in accurate information being available in a sensitive field so that reform work can be well targeted. In some sectors enough reform and some easing of the previously highly controlled environment has occurred to allow events to take place that provide a meeting place for such people and groups, and for groups to feel safe in frank and open discussion. In short, civil society space has increased significantly, allowing such work.

<https://www.facebook.com/PaungKu/photos/a.340754249329287.77494.240532326018147/661088890629153/?type=1&theater>

¹¹ “ahn na dey” - This can perhaps be summarised as the person experiencing this anticipating having some sort of bad feeling and so not wishing to take any action which might initiate that, so not acting.

¹² <http://www.myanmar2day.com/myanmar-culture-custom/2010/04/cultural-shock-when-myanmar-do-not-say-no/>

To be useful the methodology needs a reasonable sample size. Events that attracted a self selected group likely to have a strong interest in the topic and in making positive progress on it were chosen. The three events identified were: -

- Asean Business and Corruption seminar, using the Myanmar resident subgroup
- Civil Society Forum for Peace event specifically focused on resource revenue transparency and budget transparency topics
- Myanmar Coalition for Transparency- regional representatives meeting.

Categories for both the sector and bribery/corruption type were randomized to prevent respondents being influenced in the nominating of priorities by the order of listing.

Some possible shortcomings in the survey are identified:

- The survey was written in English, with on the spot Myanmar translation by facilitators at the tables of survey respondents
- The clarity and differentiation between categories is not as clear as it might be
- “What affects me directly” means front of mind focus can dominate, rather than the potentially larger effects / institutionalized aspects that are “part of life”
- It is perception study work only – this may not have any implications about the extent of participant knowledge or facts that permit decision based on factuality
- It reflects the topics from the East Africa survey for simplicity, rather than the full range of 13 topics in the NIS, or other topics arguably of relevance as well
- Respondents may not have sufficient knowledge in all areas to make an informed judgement. Their perception may also be factually incorrect.

Data was compiled after editing for errors. These three groups resulted in around 120 responses. Gender disaggregated data was collected to allow determination of differences by gender. Overall reporting is made by ranking in order of respondent perception of the sector or issues. That is based on perception by respondents through casting votes for the ones most reflecting their experience of corruption and the types of activity they consider most frequently influenced by corruption.

Results

The ranked breakdown perceived between the nominated sectors is as follows:

Table 2. Corruption Sector

No.	Sector	% of Sample
1	Police	16.0%
2	Judiciary	15.9%
3	Land Department	14.6%
4	Tax Department	12.4%
5	Military	9.1%
6	Education	6.6%
7	Large Business	6.5%
8	Medical	4.8%
9	International Business	4.7%
10	Chamber of Commerce	3.3%
11	President's Office	2.1%
12	Media	1.3%
13	Parliament	1.1%
14	Faith Based Groups	0.9%
15	Small & Medium Business	0.8%
	Total	100.0%

The ranked breakdown perceived between the nominated corruption types is as follows:

Table 3. Corruption / Bribery Type

No.	Sector	% of Sample
1	Grand Corruption (large bribes)	14.6%
2	Gifts	14.0%
3	Benefits to Relatives	10.3%
4	Employing of Relatives	8.7%
5	Political Donations	8.5%
6	Enhanced Commissions	7.7%
7	Improper Agents Fees	7.7%
8	Facilitation Payments	6.7%
9	Education and Training Projects	6.1%
10	Hospitality	5.7%
11	In Kind Help and Support	5.5%
12	Charitable Contributions	4.5%
	Total	100.0%

Discussion

The data highlights the major issue that two of the main directly relevant “rule of law” agencies – judiciary and police - are perceived as largest contributors to the issues.

Interestingly low corruption perception areas are for small and medium business, faith based groups, parliament, media and the President’s office. The small and medium

business result is particularly interesting in light of business survey results which place this area as the largest obstacle to successful business operation.

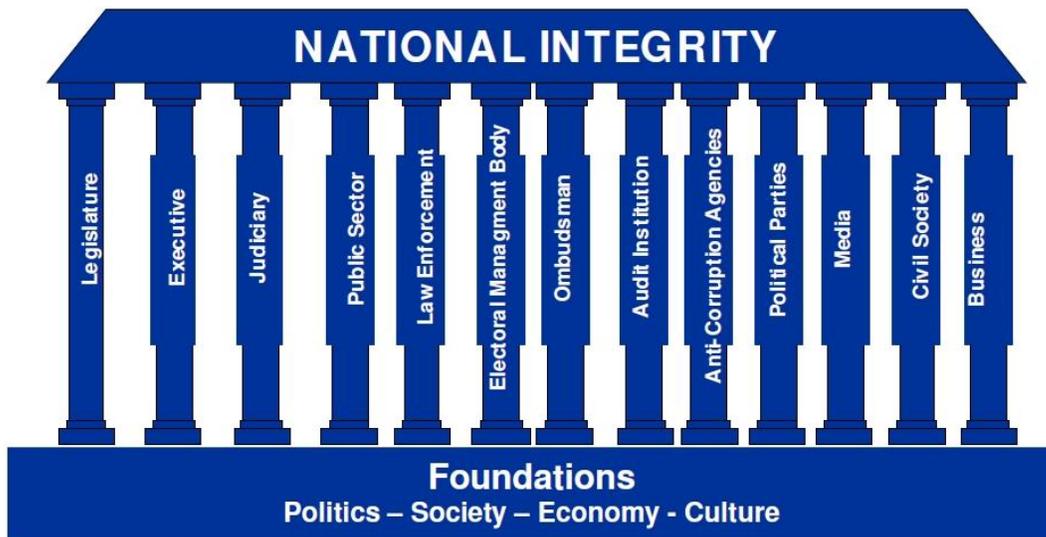
A few items may warrant further explanation: -

- Gender disaggregated results are very similar to overall results, except in one category – land registration. That is explained by groups as being due to the fact that it is traditionally women’s role to deal with the land records department, so they are likely to perceive corruption higher as they understand it better.
- A casual observer may be surprised at the difference between police and military. What makes the situation vastly different is the budget allocations for the two groups. Military have enjoyed significant budget allocations, whereas the police have not. This has a number of implications, particularly that people’s experience of police is of seeking “tea money” at every opportunity for transactions, whereas particularly in urban areas experience of the military is lower.
- Respondants commented that they were commenting more on “what they were experiencing in their everyday lives”, rather than on systemic issues. That has the potential to distort results and undervalue the impact of large scale systemic corruption.
- Small and medium businesses are frequently expressing concern that corruption makes their ability to compete extremely difficult coupled with the requirement for additional payments in so many areas.
- Customs department was not included in the survey and that is acknowledged as a relevant omission and flaw in the survey.

Despite the shortcomings in the survey the data is extremely useful to help future work and research targeting.

National Integrity System

The “Temple of National Integrity”, which highlights institutions considered appropriate for focus on anti-corruption is shown below for Myanmar readers unfamiliar with it: -



TI Portugal representative made a particularly insightful comment which is extremely fitting to consideration of Myanmar's very complex context: "The NIS exercise does not allow us to understand what causes a sound corruption control framework. The NIS approach starts from the assumption that it is the harmony of the inter-pillar dynamics, but the fact is that there is no country where all the pillars perform with similar quality or interact in a similar way. What level of performance, what combination of elements, in what context, result in a sound corruption control framework?"¹³

In the Myanmar context all of the above pillars appear valid and appropriate. Survey work clearly highlights serious issues in Myanmar's case with Judiciary, Public Sector and Law Enforcement, although some areas weren't given as options.

Context assessment in Myanmar for an NIS raises many further aspects related to "Missing Pillars". These might be considered to be:

- Military – given their institutional role and role in independence of the legislature (both critical power to act and due to 25% of seats being mandated to the military)
- Consideration of the basic rights associated with ownership and property law
- Inadequate constitutional recognition of ethnic groups or validity of ethnic formed governments and their place in a true federalism model
- Rights of citizenship and representation by all public groups (particularly Muslim, but in reality all minority groups face some difficulties)
- Role of State Owned Enterprises (SOEs)
- High centralization rather than de-centralisation (The state /region legislatures exist, but they have little budget support – Eg. 3.4% in 2013/14, 7.6% in 2014/15) (This leads states / divisions to be quite dependent on non-formal income streams)
- Inadequate public financial management system (PFM) overall (the audit function is only a small part of this. Consider for example the WB PEFA assessment.)
- Poverty status (poverty will drive corruption and also prevent those with little power to be able to resist those seeking bribes / informal payments)
- Social Welfare system status (those without a social safety net will often be in a similar position to those in a situation of extreme poverty)
- "Access to information" legislation or institutions
- Availability of finance by institutional routes (absence of finance means other routes are sought)
- Criminal activity and drugs as a major income activity, that is not taxed
- Transitional factors related to the absence of peace and stability (armed groups of all types and allegiance pursue rent seeking / informal taxation)
- Transitional factors related to post war reconstruction where large inflows may commence without attention to corruption controls for various reasons
- Specific resource extraction transparency regimes to prevent grand corruption (Eg. EITI, mandatory reporting, contract transparency etc.)

Further to those, study of peace and conflict transition literature raises further items that might also be considered relevant in Myanmar related to "Missing Pillars". Examples are:

¹³ De Souza, L., Europe NIS Researcher / TI Portugal, Comments made as part of conference preparation papers to Corruption Integrity Systems G20 Secretariat, May 2014.

- Presence of ‘conflict entrepreneurs’ who seek to monopolise the reconstruction economy or resource capture opportunities¹⁴
- Foreign Direct Investment inflows (FDI) being for a type of project that favor large multinationals rather than affected communities inflows¹⁵
- Issues associated with the consistency of application of anti-corruption proceedings in rapid transition economies (ibid)
- Rapid influx of aid and extractive income in transition economies (ibid)
- Funds inflows for disarmament and reintegration of combatants as a necessary part of peace processes and additional issues this creates (Eg. phantom soldiers)¹⁶
- Absence of conflict sensitive, Do No Harm approaches, and delivery needs for quick impact projects and spend targets without recognizing corruption issues.¹⁷

That makes quite a long list of institutional aspects and factors relevant to corruption. An issue that seems important is that it is not just institutions listed that set the context and drivers for corruption. While not all those factors might be considered suitable to be pillars, if they were it increases the number from 13 to 34 pillars.

The survey results show that 3 existing pillars (Judiciary, Law Enforcement and Public Sector) are highly problematic. If those additional categories are considered pillars, and some existing pillars are dysfunctional, can a system of national integrity be built with 10 of 34 pillars? From that perspective the 13 current NIS categories provide a useful starting point for building an integrity system but not a sufficient list for a holistic national survey. In the Myanmar context it seems that there are enough missing factors from the NIS that embarking on a detailed NIS survey exercise without major review of the model could be considered inappropriate. A better path would be further research on what the community perceives as key issues, combined with factors anticipatable in the context for design of an improved assessment system.

While balanced improvement is important, more critical is progress in pillars that are either completely missing or fundamentally important, such that without them a national integrity system can't be considered functional in the context. To institutional factors have been added other missing but important actor groups and contextually relevant issues. That list will still be likely with further work to be considered not comprehensive enough, but more comprehensive than the initial list of 13 pillars.

¹⁴ Chessen, M., et al, Post-War Reconstruction in Liberia: The Governance and Economic Management Assistance Program (GEMAP), http://www.mattlesnake.com/Gemap%20paper_files/Peace_Corr_Mar%2022%5B1%5D.pdf

¹⁵ BTI Liberia 2013.

¹⁶ Zaum, D., et al, *Corruption and Post-Conflict Peacebuilding*, Dominik Zaum and Christine Cheng, www.statesandsecurity.org (accessed 11/6/2014).

¹⁷ OECD OECD DAC Network on Governance – Anti-Corruption Task Team, *Integrity in Statebuilding: Anti-Corruption with a Statebuilding Lens*, August 2009

Summary

Review of previous corruption studies in Myanmar shows many updates as part of the rapid reform environment. Updates since TI's 2012 survey update include:

- Ratification of UNCAC
- Formation of a corruption committee
- Passage of anti-bribery and corruption legislation
- Formation of a corruption commission
- Submission of a candidacy application for EITI

A variety of new studies conducted by the business sector and on the judicial system are relevant to informing analysis of corruption in Myanmar. The large scale business sector study (3000 businesses) concluded that corruption was the area of highest concern to business operators from over 30 categories.

Recent research and opinion in Myanmar has acknowledged that corruption is an issue, but has rarely discussed sectors or types of issues. Perception research was conducted with focus groups of individuals with a particular interest in transparency, accountability and corruption issues. "Heat Mapping" done as part of this study concluded that the police, judiciary, land records department and tax department are perceived to be the most corrupt in Myanmar. Categories of perceived corruption were manifold, with the most frequent considered to be grand corruption, gifts, benefits to relatives, employment of relatives, political donations, improper agents fees, enhanced commissions and facilitation payments and overall these accounting for 70% of perceived concern areas.

Further consideration was made of Myanmar context factors and peace transition issues to consider further gaps in the NIS framework. This highlights many areas and additional factors that need to be considered for a holistic study. It is recommended that for use in Myanmar the NIS be redesigned to take account of factors other than institutional factors.