

The missed opportunity of codes of conduct in tackling corruption in infrastructure projects

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Problem

Today's world is facing global challenges (e.g. global warming, energy security, pollution), and the ability to deliver infrastructure projects is becoming increasingly important to address them. Infrastructure projects involve large sums of money, attracting opportunistic policymakers, lobby groups and sometimes criminal organisations (Dorée, 2004). In particular, their ability to be deployed successfully can be jeopardised by corruption (Locatelli et al., 2017).

In literature, corruption has been studied extensively, particularly concerning its detrimental effects on society (Rothstein and Uslaner, 2005) and the economy (Mauro, 1995) and corporations (Castro et al., 2020). Corruption has multiple adverse effects on infrastructure projects, including:

- increased cost for clients and final users (Zhang et al., 2015);
- increased maintenance costs, and lower operational performance (Iriyama et al., 2016);
- reinforced corruption behaviours, making it more endemic (Aven, 2015);
- increase the perception of corruption by the public (Castro and Ansari, 2017), which affects the trust and credibility of public institutions (Bailey and Paras, 2006).

Bribery scandals can be found in a wide range of infrastructure, including Oil & Gas (Castro, 2020), transportation (Locatelli et al., 2017) and Energy (Aven, 2015).

In addition to the measures which public institutions can take to tackle corruption, project stakeholders may also employ anti-corruption measures, all of which leverage two main mechanisms: transparency and incentives (Lehtinen et al., 2022). These measures typically rely on formal instruments, including contracts and organisational policies.

This research focuses on Codes of Conduct (CoC)'s role in tackling corruption in infrastructure projects.

CoC can take different names, including codes of ethics or practice. They present the ethical and professional standards for their implementing organisation. Sometimes, CoC introduce anti-corruption provisions beyond existing legal requirements, which can be enforceable as company bylaws. A relevant area is, for example, the whistleblowing procedure available in the company.

CoCs have been studied in the past (Somers, 2001), but no study has been specifically focused on their implications for anti-corruption in projects. This is relevant because CoC is one of the main instruments firms use to set their anti-corruption principles and procedures.

Methodology

This research employs a qualitative research approach based on thematic analysis.

The authors collected the CoC from major construction companies worldwide: ACS, AECOM, Balfour Beatty, Bechtel, Bouygues, Fluor Corporation, Hochtief Aktiengesellschaft, Jacobs, Kiewit Corporation, L&T, McDermott, Skanska, Strabag, Technip FMC.

The authors coded inductively relevant statements using the open coding approach (Corbin and Strauss, 2015). As a result of the coding approach, the authors derived the main codes inductively and regrouped them into homogenous themes, summarised in the following table.

Theme	Code	Theme	Code
Content	Definitions	Area of Application	Provision for employees
	Examples		Provision for group entities
	General Principles		Provision for Project
	Context - Corruption Enabler		Provision for Intermediary
	Context - Corruption Barrier		Provision for Supplier/Contractor
	Procedure		Provision for other stakeholders
	Interpretation		Corruption
	Extra-Jurisdictional Aspects		Conflict of Interest
	Exception to general Rule/Principle		Illicit Payments
	Legal compliance		Money Laundering
Remedies	Interesting things	Malpractice/ Issue	Environmental Un- Sustainability
	Precautions		Breach Human Rights
	Vigilance		Health. & Safety (Negligence, Hazard)
	Due Diligence		Political Contributions, Donations and gifts
	Whistleblowing & Reporting		Other Malpractice/ Issue
	Transparency		Anticompetitive behaviours
	Disciplinary Sanctions		Information spillovers
	Contract Provisions		
	Training for Employees		
	Training for Suppliers		
	Provision for suppliers		
	Other provisions		

Table 1: Themes and Codes considered

Results

The analysis enabled the authors to identify six main insights explaining the roles of CoC in facing corruption.

Insight 1: most anti-corruption principles are aspirational and not directly enforceable.

Typically, the CoC introduce general principles and delegate enforceable requirements present in the law. However, most of the construction companies considered are large groups with multiple national subsidiaries, so the applicable law depends on the country in which the group and its subsidiaries operate. It is also interesting that there is a limited explicit focus on ethical principles, although the title is sometimes “code of ethics”. Therefore, even though organisationally, there is the ambition to reduce corruption, there is also likely a decoupling phenomenon happening between aspirations and practice/legally binding rules.

Insight 2: auditing and reporting are mainly internal.

This is a crucial point that is emphasised in almost all the CoC considered. Essentially, the provisions aim to maintain the confidentiality of any report of corruption. Also, the sanctions are mainly discretionary and managed internally, with the exception of the general course of justice managed by

public institutions such as police and courts. The authors had the clear impression that auditing and reporting procedures are designed to minimise any reputational damage for the companies considered.

Insight 3: whistle-blowers have their identity protected.

This appears to be one of the few areas where most CoC do provide an effective measure to incentivise internal reporting of corrupt practices.

Insight 4: in principle, most CoCs prohibit any retaliation against whistle-blowers.

Almost all CoC considered forbid retaliation against whistle-blowers. However, this principle is normally very generic, with limited enforceable provisions to protect whistle-blowers.

Insight 5: facilitation payment is sometimes tolerated.

Facilitation payment is a broader concept that overlaps with forms of bribery, such as petty corruption. This is an area that differentiates most of the CoC considered. Some construction companies explicitly mention that facilitation payment is sometimes tolerated in critical circumstances, such as safeguarding employees' physical safety or freedom. Some construction companies enable the payment of a ransom for their employees. Five companies considered forbid any form of facilitation payment.

Insight 6: there is very limited accountability of top management for corruption.

No CoC considered defines explicit accountability for top management. Almost all CoC introduce provisions for employees at large, without differentiating roles or management levels. Managers are only mentioned as point of contact for internal reporting. Corruption is considered a matter of personal liability. However, typical cases of corruption highlight the role of intermediaries and employees as agents, paying bribes on behalf of their principals, often managers (Castro and Ansari, 2017).

In conclusion, this research presents key insights concerning the use of CoC for anti-corruption in infrastructure projects. The authors find that construction companies focus primarily on limiting the reputational damage resulting from corruption scandals. Yet this approach on the part of the companies might limit transparency and external accountability, which is one of the major mechanisms to tackle corruption (Lehtinen et al., 2022). Finally, the authors perceive a missed opportunity to make explicit commitments in respect of project leaders, who should be deemed more explicitly accountable for bribery scandals, as a major deterrent to tackling corruption.

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