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Corruption Risk Assessment in the Nigerian Port Sector MACN Executive Summary

An MACN Collective Actions Program Brief



March 2014

About This Brief

This brief provides a summary of a report on corruption risk assessment (CRA) in the Nigerian port sector that was published in fall 2013 and that set out to understand the main drivers of corruption in the sector, identify specific measures for addressing such drivers, and catalyze action among public and private sector stakeholders. That report presents the results of the CRA and puts forward specific recommendations for action to eliminate corruption in the Nigerian port sector. The original report prepared by the Nigerian Technical Unit on Government and Anti-Corruption Reforms (TUGAR) can be found on TUGAR's website, www.tugar.org.ng. It was cofinanced by the United Nations Development Programme and the Maritime Anti-Corruption Network (MACN).

The purpose of this brief is to share the main report findings with a wider public and private sector audience to inspire cross-sector collaboration in other parts of the global maritime supply chain, as well as to demonstrate the catalytic ability of MACN. The brief also provides an introduction to how MACN through its “collective action approach” works toward its vision of a maritime industry free of corruption that enables fair trade to the benefit of society at large. The report was undertaken in the context of the MACN collective action program.

This brief was written by members of MACN and by BSR (Business for Social Responsibility) with input and direction from MACN Steering Committee, TUGAR, and the UNDP. Please direct all comments to macn@bsr.org.

About MACN

MACN is a global business network working toward its vision of a maritime industry free of corruption that enables fair trade to the benefit of society at large.

Established in 2011 and formalized in 2012, MACN is comprised of vessel-owning companies within the main sectors of the maritime industry and other companies in the industry, including cargo owners and service providers.

MACN and its members promote good corporate practice in the maritime industry for tackling bribes, facilitation payments, and other forms of corruption by adopting the MACN Anti-Corruption Principles, communicating progress on implementation, sharing best practices, and creating awareness of industry challenges. MACN also collaborates with key stakeholders, including governments, authorities, and international organizations, to identify and mitigate the root causes of corruption in the maritime industry and to develop sustainable solutions.

Visit www.bsr.org/macn for more information about MACN and its member companies.

About BSR

BSR works with its global network of more than 250 member companies to build a just and sustainable world. From its offices in Asia, Europe, and North and South America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration.

BSR is the secretariat and lead facilitator of MACN.

Disclaimer

BSR publishes occasional papers as a contribution to the understanding of the role of business in society and the trends related to corporate social responsibility and responsible business practices. BSR maintains a policy of not acting as a representative of its membership, nor does it endorse specific policies or standards. The views expressed in this publication are those of its authors and do not reflect those of BSR members.

As the secretariat of MACN, BSR supports the vision and mission of MACN and its approach to collective action.

Introduction

Corruption is a widespread, deep-rooted issue that affects governments, their procuring entities, the private sector, and society in general. Tremendous strides have been made in recent years to raise awareness of both the pervasiveness of corruption across both public and private sectors and its associated negative influence on economic development and democracy. Countless studies conducted around the world show how corruption can interrupt investment, restrict trade, reduce economic growth, and distort the facts and figures associated with government expenditures. Moreover, corruption in certain countries contributes to poverty and income inequality.

It is widely appreciated that the private sector has a critical role to play in eliminating corruption. While companies recognize that there is a pressing need for them to take a firm stance against corruption and actively fight it, it is becoming increasingly clear that only by working together and in concert with other stakeholders will the private sector be able to bring about the systemic changes in the external operating environment that are required to eliminate corruption. This is particularly true in the global maritime industry where corruption occurs as a result of the interplay of a multitude of public and private sector stakeholders.

“Corruption adds 10 percent or more to the cost of doing business in many parts of the world.

Source: The World Bank.

The Strategy of the Maritime Anti-Corruption Network

MACN is a unique global business network in the maritime industry set up to work toward a vision of a maritime industry free of corruption that enables fair trade to the benefit of society at large. As a global business initiative, MACN believes that sustainable, transformational change requires multistakeholder collaboration, that collaboration must provide win-win solutions to motivate and incentivize all stakeholders to contribute, and that business itself must adopt strong anti-corruption management practices.

As a consequence, since its inception in early 2012, MACN has pursued a comprehensive, multifaceted strategy that is based on three components. First, MACN focuses on strengthening members' internal anti-corruption management practices and programs through building capacity; sharing best practices; creating tools, policies, and standards; and reporting on performance.

Second, MACN focuses on contributing to improvements in the external operating environment, recognizing that, in the absence of changes in the operating environment, internal improvements are unlikely to yield the desired benefits, and free riders thrive. MACN works to raise awareness, report on corruption incidents and trends, and engage in and catalyze collective action by business, government, international organizations, and civil society to drive tangible improvements in the operating environment.

The third component is concerned with the governance and management of MACN, including the formation of relevant partnerships, and the development of indicators of success.



“MACN sees its role as that of a catalyst that brings a unique business understanding of the often highly specific drivers of corruption.”

Collective Action in Practice

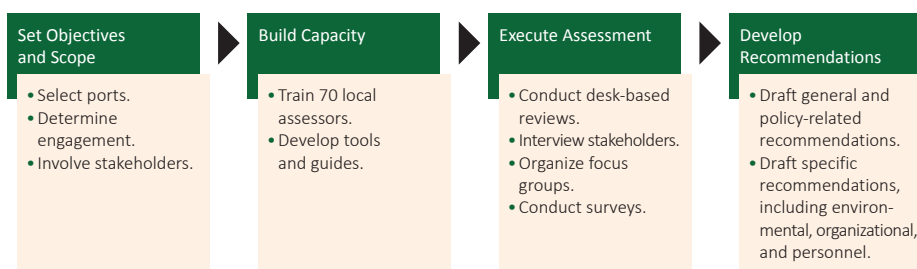
This brief demonstrates how MACN seeks to influence the external operating environment by catalyzing collective action from a number of stakeholders, in this case, in the Nigerian port sector. As such, the report showcases only one aspect of MACN’s strategy for influencing the external operating environment; to learn about the full MACN approach, please visit the MACN website: www.bsr.org/en/our-work/working-groups/maritime-anti-corruption-network.

The essence of the MACN collective action approach is that successful, lasting changes in the operating environment will take effect only if they are enabled and supported by and beneficial to key stakeholders. As such, key stakeholders must be involved in both assessing the challenges and devising the solutions. Further, the collective action approach assumes that interventions have to be targeted as barriers and that the stakeholders relevant to eliminating corruption are often situation-specific. The approach also stresses the importance of transparency throughout the process of engaging in collaborative efforts. Stakeholder inclusiveness, local ownership, and transparency are thus fundamental to this approach.

MACN sees its role as that of a catalyst that brings a unique business understanding of the often highly specific drivers of corruption, e.g., cumbersome approval processes, overly broad discretionary powers, weak controls, and poor port governance. The MACN membership will often be able to quickly identify the most damaging and prevalent forms and drivers of corruption in the maritime industry—and they may also use their global networks to identify best practices in the industry. Importantly, as a collective of significant businesses in the maritime industry, the network wields significant commercial influence and is committed to an industry free of corruption and bribery.

Fighting Corruption in the Nigerian Port Sector

In 2012–2013, UNDP and MACN joined forces to undertake a risk assessment study in the Nigerian port sector. Through a series of consultations and deliberations, the sector had been identified as a relevant partner for a first collective action activity, in this case a comprehensive risk assessment across six Nigerian ports¹.



Guided by a UNDP risk assessment methodology, the UNDP in general, and MACN, the project unfolded in four phases with the purpose of identifying specific forms of, and issues, with corruption, the underlying drivers, and possible solutions. The risk assessment covered six main Nigerian ports, including Apapa and Tin Can in Lagos, Port Harcourt, Onne, Calabar, and Warri.

The project recognized from the outset the importance of engaging with all relevant local stakeholders to facilitate ownership and engagement, commitment to implementation, more widespread acceptance of findings, and possible future corrective measures. Specifically, the project was set up under the leadership of the main Nigerian anti-corruption agencies: The Independent Corrupt Practices Commission (ICPC), the Technical Unit on Governance and Anti-Corruption

1. The Nigerian ports sector includes the following organizations: Nigerian Ports Authority, Nigerian Customs Service, National Environmental Standards and Regulation Agency (Establishment Act or NESREA Act), Nigerian Drug Law Enforcement Agency (NDLEA), Nigeria Immigration Services, State Security Service, Port Health Services, the Nigerian Maritime Administration and Safety Agency (NIMASA), Standards Organization of Nigeria (SON), and National Agency for Food, Drug, Administration, and Control (NAFDAC), as well as private sector stakeholders, including (but not limited to) terminal operators (concessioners) and other port users.

Why the Nigerian Port Sector?

The Nigerian port sector was initially selected as a partner following a series of consultations and deliberations, including a survey of the MACN membership to identify particular challenging ports, an assessment of the government's and local authorities' willingness to engage in and support a risk assessment, and the availability of local resources and capacity to participate. Further, a conducive policy environment following a port sector reform in 2004 and a newly adopted national development strategy focused on improving the competitiveness of the Nigerian port sector suggested that local stakeholders would see value not only in undertaking the study but also contribute to owning and supporting recommendations for implementation. In addition to contributing to these assessments, the capacity of the local UNDP office also played an important role in selecting the Nigerian port sector as a partner.

tion Reforms (TUGAR), and the Bureau for Public Procurement (BPP) with the assistance of the Economic and Financial Crimes Commission in Nigeria.

The project also stressed the importance of participatory execution by training and certifying 70 local corruption risk assessors drawn from the public sector (federal and state levels and from relevant anti-corruption agencies) and civil society to conduct the on-site assessments in private, government, and other public sector organizations.

In a similar vein, the recommended risk mitigation and prevention measures were developed through a collaborative process that involved the national anti-corruption agencies and the relevant governmental and public sector agencies. The process—and local assessors—benefited from guidance and supervision provided by both local and international consultants.

Main Findings and Recommendations

The findings of the risk assessment were organized into three categories: i) environmental that refers to the broader political and legal operating environment, ii) organizational that refers to the mandates, systems, procedures, and controls of various public and semi-public organizations, and iii) personnel that refers to skills, tools, and experiences of employees in these organizations. Further, the risk assessment made a distinction between general sector and port-specific issues. The main findings for short-term actions are highlighted in the table below:

Key Findings for Short-Term Action

Environmental	Organizational	Personnel
<ul style="list-style-type: none">Limited numbers of operational port facilities make port services a scarce resource, providing incentives for corrupt behavior.Corruption is a widely accepted tool to promote business interests; most foreign companies comply with local rules, traditions, and expectations in order to sustain business.Some laws are outdated with sanctions that are no longer a deterrent; effective enforcement of existing provisions and sanctions remains weak.	<ul style="list-style-type: none">There seem to be no formal channels or complaint mechanisms for whistle-blowing.There seem to be limited levels of compliance to policies and decisions to strengthen ongoing reforms within the ports.Bureaucratic red tape exists in port operations. For instance 142, signatures are reported as required to process a cargo in Lagos ports.There seem to be limited predictability and clarity of decision-making process.	<ul style="list-style-type: none">Broad discretionary powers and limited accountability.Organizational culture in port agencies does not emphasize integrity.Corruption is expected and widely rationalized as a part of the system.No established training routine exists to strengthen ethics and competence.Pressure from higher ranks to comply with established corrupt practices seems to be frequent.

Some of the main challenges identified included weak internal ethics infrastructure in port agencies (such as the lack of codes of conduct), weak enforcement practices, and underdeveloped systems for investigating complaints of demands for bribes or facilitation payments, including no effective system for handling grievances and protecting whistle-blowers. Such challenges are compounded by multiple, often overlapping procedures ill-defined standard operating procedures, and a lack of coordination among the agencies. Agencies' broad discretionary powers result in an unpredictable operating environment for companies; for example,

“By ensuring stakeholder involvement from the beginning, the project made sure that officials felt comfortable talking about their processes, especially because we made it clear that the risk assessment was not a corruption investigation. “Largely, we were able to establish trust, overcome the challenges, and elicit cooperation”. Says Lilian Ekeanyanwu, Head of TUGAR.

“ The pilot project has been able to systematically diagnose the corruption risks in the port sector and its recommendations have been useful for policy makers to strengthen measures to prevent corruption.

—Anga Timilsina,
Programme Manager of
UNDP’s Global Programme
on Anti-Corruption

a practice that may be legal at one port may unacceptable at the next. Further, port agency employees hold broad discretionary powers and sometimes delay the processing of documents, often without repercussions.

Short-Term Recommended Actions

Components	Recommended Measures
Capacity-building programs to strengthen transparency and accountability of port stakeholders.	<ul style="list-style-type: none"> • Develop capacity of designing and implementing an anti-corruption policy. • Improve intra-agency coordination. • Strengthen organizational capacity to develop standard operating procedures. • Develop programs to train agency personnel.
Development and clarification of standard operating procedures (SOPs) of port stakeholders.	<ul style="list-style-type: none"> • Review and update port agency SOPs. • Design and implement a transparent compliance system. • Strengthen internal controls.
Establishment of a port-level complaints mechanism for potential or actual acts of corruption.	<ul style="list-style-type: none"> • Develop a complaint mechanism. • Build capacity to manage the mechanism.

Looking ahead, the study pointed to the need for short- to medium- and long-term measures addressing the environmental, organizational, and personnel challenges. Proposed measures largely focused on capacity-building programs to strengthen transparency and accountability; the development and clarification of SOPs for the Nigerian ports sector in line with international best practice; establishment of a complaints mechanism for potential or actual acts of corruption; and IT components to reduce human contact and increase transparency and accountability. Some of the more specific actions include anti-corruption training, signed policy documents to signal commitment from the uppermost levels of management, and coordinating guidelines and instructions among the different port agencies to ensure there is no overlap and that the process for vessels and cargo clearance will run more efficiently.

MACN Response

MACN will remain involved in and contribute to taking forward the recommendations proposed in the study working closely with key stakeholders. MACN and its members will also maintain an active dialogue with the national authorities and support TUGAR in their coordination efforts including by sharing members’ experiences when they call at Nigerian ports.

In parallel, MACN will continue to work on improving members’ internal anti-corruption management programs and practices including by seeking to align operational procedures to support more consistent practices when calling at ports in Nigeria. This more consistent, aligned, and collaborative approach will enhance the value that MACN brings to the fight against corruption.



Call to Action and Collaboration

If you are interested to learn more about how you could support the implementation of the recommended actions in Nigeria, or if you want to get involved in MACN’s collective action program including future in-country projects in markets where corruption is prevalent and affects our membership, please contact us at macn@bsr.org.



In collaboration with



