



## **Global Forum on International Investment**

### ***Encouraging Modern Governance and Transparency for Investment: Why and How?***

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#### **CIVIL SOCIETY'S ROLE IN PROMOTING GOVERNANCE AND TRANSPARENCY**

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Transparency is as essential in government as the Enron affair demonstrated it is in the private sector. Public officials and candidates for public office must be called to account. From Zimbabwe to Latvia, the national chapters of Transparency International (TI) have been working to ensure that election campaign finance and voting procedures come under close public scrutiny.

Another way civil society is working to bring governments to account is by working towards international agreement to clamp down on bribery through international conventions. In 1997, the Organisation for Economic Co-operation and Development (OECD) agreed upon the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (known as the OECD Anti-Bribery Convention), aimed at curtailing the bribing by OECD exporters of foreign public officials in order to win or retain business. This convention came into force on 15 February 1999.

Under the OECD Convention, all major competitors in the world market are legally bound to stop bribing simultaneously. For instance, French or German companies can now be charged under their home countries' laws for bribing African, Asian or Latin American officials. It is all the more important, therefore, that each country feels confident that the other signatories not only introduce the appropriate legislation to implement the Convention, but that they then effectively enforce that legislation.

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A follow-up process is under way at the OECD to translate this into law and practice, and civil society organisations, led by TI, are providing input and monitoring the follow-up. In November 2002, TI chapters campaigned to ensure that their governments made up the shortfall in the budget for monitoring the enforcement of the Convention in signatory countries via a peer review process. That has met with success so far, but TI will have to continue to apply pressure to ensure that the monitoring process is adequately resourced.

The Bribe Payers Survey, a Transparency International poll of 835 senior managers in 15 emerging market economies, was conducted by Gallup International between December 2001 and March 2002. Only one in five respondents knew something about the Convention. These are the managers at the frontline where bribery takes place, and the results are damning evidence that OECD governments have failed so far to make businesses understand the new legislation.

### **The UN Convention Against Corruption**

Over the past two years, TI has been working to pressure governments to agree on a UN Convention Against Corruption. The final drafting session was concluded on 1 October 2003,<sup>2</sup> and the Convention marks an important development in strengthening international co-operation on preventing and criminalising corruption, in particular with the breakthroughs made on mutual legal assistance in the return of assets stolen by corrupt leaders. The Convention is not perfect, and there are regrettable omissions. For instance, there is no mandatory criminalisation of corruption in party political funding, and the outlawing of private sector bribery is also only optional.

Nevertheless, a UN Convention Against Corruption is a watershed, a powerful signal that there is now a global consensus that corruption must be stopped. In addition, the UN General Assembly has agreed to declare 9<sup>th</sup> December, the day the Convention is due to be signed by Heads of Government, as an annual International Anti-Corruption Day. This should be a potent opportunity for heightening public awareness of the problems of corruption on a sustained basis year in, year out, and for calling governments and businesses to account to live up to the high standards laid out in the Convention.

In Maputo in July this year, African Union heads of state agreed the African Convention on Preventing and Combating Corruption. The clearest way African leaders can show their commitment to the New Partnership for Africa's Development is to ratify this convention and sign into law its provisions. The AU Convention guarantees access to information and the participation of civil society and the media in monitoring that access. Other articles outlaw the use of funds acquired through illicit and corrupt practices to finance political parties and require state parties to adopt legislative measures to facilitate the repatriation of the proceeds of corruption.

The African Union took the positive step of allowing the participation of civil society, including TI chapter representatives, in the drafting and deliberation of the Convention. It is important that civil society organisations now pressure their governments to implement the Convention.

### **Building coalitions**

The private sector, government and civil society are all crucial to the equilibrium of the national integrity system, and the TI approach to building coalitions was evident in the evolution of the OECD Anti-Bribery Convention. The key to securing support for the Convention was the support of large companies. TI drafted a letter, signed by 20 European companies and sent to their ministers encouraging

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2. For the text of the United Nations Convention Against Corruption, see [http://www.unodc.org/unodc/en/convention\\_corruption\\_merida.html](http://www.unodc.org/unodc/en/convention_corruption_merida.html)

them to sign the Convention, which outlaws bribery of foreign public officials. We managed to bring business on our side by offering an escape route from the prisoner's dilemma in which they found themselves. Many business people do not want to bribe, but they feel they must to keep up with their competitors.

It used to be an uphill battle to persuade businesses, particularly small and medium-sized businesses, that the benefits of operating on the basis of honesty outweighed the costs of losing business while competitors were bribing their way into winning contracts. Economists were inclined to agree that in a bribe-demanding environment the pursuit of profit would induce all competitors to behave equally.

The mood has changed dramatically. At the March 2002 UN Conference on Financing for Development in Monterrey, a succession of ministers from donor countries joined World Bank and International Monetary Fund officials in a common judgement: that wherever corruption reigns, development aspirations will remain an unattainable dream.

The message is getting through more – although still not enough – that bribery will continue unless companies operate on a level playing field. The practice will be stopped only when companies know that bribe-payers will incur fines and blacklisting, and executives will be put behind bars. For countries to enforce the OECD Anti-Bribery Convention, they also need to know that their companies will face a level playing field. So all the 35 signatory governments must provide resources to prosecutors, investigators, courts and tax inspectors to make sure the Convention is applied, and to make it clear that companies that bribe will be investigated and charged.

It has been a long battle to put the fight against corruption on the global agenda, but the progress is clear – for instance, TI is close to a breakthrough in establishing an anti-corruption pillar as the 10<sup>th</sup> principle of the UN Global Compact.

Governments and businesses that engage in corruption are not only a part of the problem, they are also victims of a vicious circle. To break that circle, civil society organisations need to engage with each other, and with governments and the private sector, so that our voice is heard and taken seriously by policymakers at all levels. That is the key to our approach at TI.

### **Bribery impoverishes developing countries**

The issue of bribing abroad hit the headlines in October 2002 when Acres International, a Canadian engineering consultancy, was convicted by the High Court of Lesotho. This case is just one of many concerning 14 companies from Britain, France, Germany, Italy, South Africa and Switzerland facing charges of bribing a government official to win contracts in the Lesotho Highlands Water Project, an \$8 billion scheme to build dams to supply water to South Africa.

The significance lies in the fact that a court in a developing country has for the first time convicted an international company for paying bribes rather than just prosecuting a local official for taking bribes. If the developed world does not start applying the OECD Anti-Bribery Convention to its own companies in its own courts, it will be hard to sustain the arguments of the donor countries at Monterrey about the need for developing countries to demonstrate “good governance” and to fight corruption.

Campaigns for greater corporate disclosure are beginning to make real headway. On 5 November 2002, the world's main diamond producing and trading countries endorsed the United Nations-backed Kimberley process certification scheme that will trace rough diamonds from their point of origin. From January 2003, without a certificate of origin, diamonds cannot be imported. These measures are designed to stop trade in diamonds from conflict zones, in particular Angola, Sierra Leone, Liberia and the

Democratic Republic of Congo, where they have been used to enrich military elites and entrench their interest in prolonging civil war. They must be enforced more strictly.

Angola's oil industry has also been the focus of a major campaign, including Global Witness, TI and more than 30 other NGOS. Close to 90 per cent of Angolan government revenues come from the oil industry, but up to 40 per cent of GDP has in some years never reached the Treasury, instead being channelled into secret funds.<sup>3</sup>

Through the Publish What You Pay campaign, TI and Global Witness are arguing for international regulators such as the Securities and Exchange Commission in the US to require oil, gas and mining companies to publish taxes, fees, royalties and other payments made to each host government as a condition for being listed on international stock exchanges and financial markets. Relying on voluntary corporate disclosure has failed because companies fear discrimination by host countries if they breach confidentiality clauses. For instance, BP's ambitions to "publish what you pay" in Angola drew threats of concession termination from the Angolan state oil company Sonangol.<sup>4</sup>

On 7 November 2003, delivering a lecture in Berlin to mark the 10<sup>th</sup> anniversary of Transparency International, Nigerian President Chief Olusegun Obasanjo fully endorsed Publish What You Pay and committed the Nigerian government to publishing what it receives from oil companies. This is an important breakthrough, and TI will be working hard to make sure that these commitments are kept.

### **Codes of conduct**

Companies must establish codes of conduct, including detailed rules designed to combat bribery at home or by their subsidiaries abroad. To this end, TI has developed, together with companies including BP, Shell, Tata and General Electric, a set of Business Principles for Countering Bribery.<sup>5</sup> The proposals include training programs with guidance for all employees to ensure that bribery – direct or indirect - is eliminated. Under the guidelines of another NGO project, the Global Reporting Initiative (GRI), participating companies are asked to describe their policies and procedures for addressing corruption, including how the organisation meets the requirements of the OECD Anti-Bribery Convention.

The economic case is overwhelming for governments and business to join with civil society organisations in tackling corruption. The OECD estimates that annual budgets for government purchases worldwide run up to \$5 trillion. The scope for large sums diverted in bribes is frightening, as are the lost opportunities when public expenditure is diverted away from basic needs such as education, health care and housing. Moreover, if an import license can be obtained only via bribes and if foreign investors have to negotiate entry regulations, development is further undermined.

### **Deterring investment**

The Opacity Index, a study by PricewaterhouseCoopers,<sup>6</sup> revealed that Russia may be losing up to \$10 billion a year in potential foreign investments because of corruption, inadequate accounting procedures, weaknesses in its legal system and lack of reliable financial information. The message is clear: investors tend to stay away from countries with high corruption levels and with a dearth of access to reliable information.

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3. IMF reports on Angola 1996-2001. See [www.imf.org](http://www.imf.org)

4. Letter from Sonangol to BP, reproduced in *All the President's Men*, Global Witness, March 2002.

5. See [http://www.transparency.org/building\\_coalitions/private\\_sector/business\\_principles.html](http://www.transparency.org/building_coalitions/private_sector/business_principles.html)

6. <http://www.pwcglobal.com/extweb/ncsurvres.nsf/docid/22CA0D19E1D97D8A80256BA30035391B>

Some governments have begun to turn the corner. During the course of 2003, I have twice visited Kenya, where more than a decade ago as Regional Director of the World Bank I saw first hand the way corruption thwarts development. There is new hope in the new government of President Mwai Kibaki, like there is in Nigeria with the re-election of Olusegun Obasanjo, but it will be a long, hard battle in both countries to turn the tide against corruption. There is also a new approach at the World Bank under the leadership of James Wolfensohn, who is encouraging Kibaki's reforms, and who has now – after a long battle waged by TI – instructed the World Bank to rewrite its procurement rules to accommodate TI's no-bribes Integrity Pact in World Bank contracts.

But it is not only governments who must wake up to the challenge of tackling corruption. In 2001-2, the Enron scandal sent shock waves through the global corporate sector and severely damaged public trust in the integrity of business. Enron and the scandals that followed heightened the perception of collusion between auditors, tax advisers, lawyers and bankers and their corporate clients to massage accounts for the short-term benefit of managers – in defiance of the trust placed in them by shareholders, employees and the public at large.

To a certain extent, this type of unethical behaviour can be deterred by international initiatives such as the OECD Anti-Bribery Convention. While its principal focus is to criminalise bribery of foreign officials, the convention and related OECD instruments also deal with accounting, auditing and corporate controls. TI has for some years urged the OECD to press member states for improvements in these areas. The impact of the convention is not yet satisfactory. Only a few cases are being investigated under the convention, and in most OECD member countries the political will to prosecute major bribery cases is lacking.

Legislative reform is not the only means to promote transparency. Within the corporate sector, many business leaders are also taking up the challenge to curtail corruption. The Bribe Payers Index (BPI) 2002<sup>7</sup> reveals that companies from leading industrial countries are seen as slightly less likely to bribe than they were in the first BPI, carried out in 1999. Companies from Britain and the United States, however, were notable exceptions to the trend. But many businesses understand that stopping bribery makes sound economic sense.

Corruption can be defined in a general way as the abuse of entrusted power for private gain, and is as such conducive to severe political, economic, and social costs. Corruption usually has no straightforward victim. In the end, it is society as a whole that suffers, particularly its most vulnerable members.

## **New optimism**

The *Global Corruption Report 2003*<sup>8</sup> reflected a positive trend among donor agencies. Organisations have become more demanding in recent years, insisting on a commitment to anti-corruption policies and procedures. This approach dovetails with the opening up of public accounts to independent scrutiny. Donors should also insist that civil society organisations have full access to monitor spending and verify that support reaches the intended recipients and projects, such as schools and hospitals.

As civil society organisations have begun to organise themselves more effectively, especially in many countries on the African continent, they too are making important contributions to the anti-corruption cause. TI's national chapters in Africa are spearheading a campaign for the repatriation of assets plundered by former dictators and deposited in bank accounts in London, Zurich, New York and Liechtenstein. Nigerians almost saw the return of US\$1.2 billion in funds stolen from Nigeria by the late dictator

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7. See <http://www.transparency.org/surveys/index.html#bpi>

8. *Global Corruption Report 2003*, ed. Robin Hodess, Transparency International (London, Profile Books, 2003), [www.globalcorruptionreport.org](http://www.globalcorruptionreport.org)

Sani Abacha until Abacha's son stopped short of signing the agreement. In October this year the Nigerian government secured a breakthrough with the Swiss banks on Abacha's funds.

### **Civil society action**

The solution is a holistic approach – the fostering, evaluation and strengthening of “National Integrity Systems” in line with local conditions. The success of anti-corruption strategies hinges on the formation of a constructive partnership between governments, the private sector, and civil society.

Civil society organisations in Senegal criticised the fact that President Abdoulaye Wade refused to repeal Decree No. 97-632 in spite of repeated challenges from Forum Civil (Transparency International's national chapter in Senegal) and his own party's condemnation of the decree while in opposition. The 1997 decree allows public construction contracts to be awarded without going to tender; these contracts may have a maximum value of 100 million CFA francs (US\$150,000) for consultancies and equipment and 150 million CFA francs (US\$225,000) for construction work. The decree was widely seen as a means of developing a political constituency. The media also noted the tendency of higher-value public procurement contracts not to go to tender.<sup>9</sup> A new public procurement code published in July 2002 appeared to override the decree, but there was no official declaration to this effect.

Corruption causes significant economic losses, and investors steer clear of countries where corruption levels are high. Unfortunately the countries most in need of foreign investment tend to be those who suffer most from widespread corruption.<sup>10</sup>

Numerous studies have shown how corruption distorts public expenditures and investments away from sectors for which the government has traditionally been responsible, such as education and primary health services. Instead, corruption diverts public funds to promising opportunities for rent-seeking, which benefit certain well-connected individuals, while public sector organisations that are of fundamental importance to the country's economic future remain chronically underfunded.

The average urban Kenyan pays 16 bribes a month, according to the Kenya Urban Bribery Index, a survey carried out last year by Transparency International Kenya.<sup>11</sup> This amounts to a burden of bribes of KSh 8,185 (US\$104) per month – compared with an average monthly income among the survey respondents of only KSh 26,000 (US\$331). Public servants are bribed the most, accounting for 99 per cent of the total value of bribes given. The worst offenders were found to be the police: six out of 10 urban residents reported paying bribes to the police.

Corruption also impinges on the development of the private sector, especially small businesses. If a license to start a business can be obtained only by bribing a public official and continuing subsequent payoffs to a multitude of corrupt inspectors and law enforcement officials, the whole country's economic development is effectively stunted. With the abject failure of government-led development efforts in most parts of the world, the private sector is seen as the key to future economic development. As long as corruption reigns so severely, however, such economic prospects simply remain an impossible dream.

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9. *Sud Quotidien* (Senegal), 7 May 2002.

10. See, for example, various editions of Transparency International's annual Corruption Perceptions Index. Transparency International, “Corruption Perceptions Index,” <http://www.transparency.org>

11. [www.tikenya.org/documents/urban\\_bribery\\_index.doc](http://www.tikenya.org/documents/urban_bribery_index.doc)

## **Sustainable development**

Not only do widespread bribing practices discriminate against those who cannot afford to pay off corrupt officials, they also make a mockery of the most basic economic and social rights.

Corruption has emerged as a central topic on the international agenda, and most international organisations and agents have, to a greater or lesser extent, at least declared their intent to contribute to the fight against corruption. In a dramatic policy reversal, incoming World Bank President James Wolfensohn declared war on corruption in 1995, correctly arguing that corruption is first and foremost an economic issue and therefore a legitimate concern of the World Bank Group. The World Bank has since engaged in a comprehensive fight against corruption. The IMF, although opting for a less proactive approach, has taken up the fight against corruption as a central component of its lending policy.

In Chad, the World Bank continued to make efforts last year to prevent corruption in the Doba Oil Basin project, the largest US investment project in Africa. The US\$3.7 billion Chad-Cameroon pipeline project, funded by the World Bank and a consortium of oil companies led by ExxonMobil, has been sharply criticised by environmental groups. In a radical departure from disclosure policies in the developing world, the World Bank is to audit and make public Chad's annual oil accounts, and TI's national chapter in Cameroon and national contact in Chad will be monitoring the process.<sup>12</sup>

In 2002, there was a steady flow of reports of corruption in Cameroon's logging industry. The World Bank and Britain's Department for International Development (DfID) confirmed that British and other international companies felled areas as large as 80,000 hectares (200,000 acres) without permits; inspections carried out by government-appointed observers in late 2001 and early 2002 show that almost every major logging company in Cameroon had acted wholly or partly illegally. In April 2002, the World Bank urged President Paul Biya to prosecute offending logging companies and combat corruption in the industry, or risk losing official aid. Both the World Bank and DfID have been assisting Cameroon in the regulation of international logging companies.<sup>13</sup>

## **Civil society is making great strides**

In Uganda, civil society organisations were at the forefront of attempts to pressure the government into making its methods of awarding tenders more transparent. During 2001, they petitioned the World Bank to send a panel of investigators to establish, among other things, whether there was corruption in the Power Purchase Agreement (PPA) between the government and the US multinational AES to construct the US\$550 million Bujagali dam. The World Bank did subsequently send an inspection panel; its report criticised numerous aspects of the project, including the World Bank's decision to keep the PPA secret.<sup>14</sup> In June 2002, the World Bank announced it was suspending its loan for the dam because of corruption allegations.<sup>15</sup>

The fight against corruption is a challenge not only for states, but also for the international community. We must have stronger, better-equipped global institutions to counter the abuses of the new economic order and thus ensure that the benefits of globalisation do, in fact, flow to everyone – including the world's poorest.

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12. *Africa Confidential* (Britain) 42, no. 14 July 2001; *World Policy Institute* (US), July-August 2001.

13. *The Guardian* (UK), 19 April 2002.

14. International Rivers Network, *A Review of the World Bank's Inspection Panel Report on the Bujagali Hydropower Project* (Berkeley: International Rivers Network, June 2002).

15. *East African* (Kenya), 8 July 2002.

The irony is that globalisation may be international, but it sits on top of national systems. To strengthen our global system we must therefore address national (and local) governance structures. Initiatives to improve standards of governance worldwide have until recently overlooked what promises to be the most significant approach of all: the systematic and conscious fashioning of a country's "National Integrity System".

The pillars upon which a National Integrity System (NIS) rest are all those institutions and practices that work together to protect society against corruption. If the system is wholly dependent on a single "pillar" such as, perhaps, a "benign dictator," or only a very few functioning pillars, it will be vulnerable to collapse. The system may give the outward appearance of functioning in the short term, as in the case of clean-ups conducted by military governments after the overthrow of corrupt civilian regimes.

The NIS approach unlocks a new form of diagnosis and potential cure for corruption. Instead of looking at separate institutions (e.g., the Judiciary) or separate rules and practices (e.g., the criminal law) and then focusing on stand-alone reform programs, it looks at inter-relationships, inter-dependence, and the combined effectiveness in a holistic approach. It requires the systematic identification of gaps and weaknesses, as well as opportunities for strengthening or augmenting each of these pillars into a coherent framework.

The ultimate goal of establishing a National Integrity System is to make corruption a "high risk" and "low return" undertaking. As such, the system is designed to prevent corruption from occurring in the first place, rather than relying on penalties after the event.

At first sight, the task seems hopeless. Governments are in retreat; the private sector is unbridled; civil society is in uproar. But when we look closer we can see that there are signs of hope. The anti-corruption movement has shown that a dent can be made in corruption, the key obstacle to effective governance, and has set an example of the contributions NGOs can make.

One element of the National Integrity System that deserves particular attention is public procurement. The tool developed by TI in this field, the Integrity Pact, offers an escape route from the prisoner's dilemma. Under an Integrity Pact, bidders competing for the supply of goods and services provide a binding assurance that they have not paid any bribes in order to obtain this contract. Bidders also make an undertaking that they will not pay or accept bribes in future, and pre-agreed sanctions come into force if this undertaking is breached.

### **Working in partnership**

We can now see for the first time the start of a serious dialogue between major NGOs and key players in the private sector. The latter's newfound respect for civil society is largely due to the recognition that consumers, especially when galvanised by NGOs, have the power to influence corporate behaviour through their consumption preferences. The private sector can no longer do all its business with governments; it has become too exposed and governments have become too weak. The willingness of the private sector to engage civil society is evidenced by the rapid growth of the Social Accountability Movement and the adoption of social reporting. This will be costly and painful, but it is as necessary as it is unavoidable.

Now those same NGOs have to show their willingness to sit down with the private sector and chart the way forward - a task much more difficult than throwing stones in Seattle and burning cars in Washington. In this task, the leaders of the NGO community need to provide a cue to their own supporters by fostering a climate of creative dialogue. A new system of accountable governance based on a coalition of governments, private sector, and civil society could arise to ensure that the benefits of globalisation are



shared equitably by all. Progress comes through engagement, by working together to build coalitions to fight corruption.

Civil society and international institutions fight corruption on many fronts. Corruption – which continues to destroy trust in public and private institutions – is a systemic problem; the means to fight it must also be comprehensive and systemic. Laws and regulations against the misuse of power must be used in this struggle. Restoring trust in public and private institutions must involve access to information to promote transparency, perhaps the most important weapon against corruption. Only by insisting on both access to information and greater transparency in every sphere of society, from the local to the intergovernmental, can civil society, business and government hope to forestall and expose corruption, and ensure that the corrupt will run out of places to hide.