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DELIVERING POLICY REFORM: MAKING IT HAPPEN, MAKING IT STICK

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GETTING INTEGRITY REFORMS ADOPTED: LESSONS FROM EXPERIENCE

A BACKGROUND PAPER ON TRANSPARENCY INTERNATIONAL (TI)

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Introduction

Throughout the period of the Cold War, the topic of corruption was virtually taboo. Development agencies could or would not discuss it, international financial institutions closed their eyes to it, western governments practised it to garner international support, and the private sector saw it simply as an unpleasant but increasingly expensive way to get things done. The silence was deafening.

There were no reliable estimates of the extent to which development aid in particular was being siphoned off into bribes and kickbacks, let alone any analysis of the impact on fundamental human rights of what economists would euphemistically described as being 'leakage'.²

There was a cosy coterie of elements profiting from the system in both developed and developing countries. Aid money had to be dispersed or parliaments would cease to provide it. Corrupt officials in the developing world were doing aid donors a favour simply by taking their money. The World Bank depended on lending to generate its own income, profiting as it did on the margin between the rates at which it lent and the slightly lower rates that it could borrow money given the benefits of according lenders a sovereign guarantee. Advancement within the Bank depended on a staff member's ability to push money out of the door, with no brownie points for stopping a loan simply because corrupt elements would feed on it. None in senior

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² Susan Rose-Ackerman in 'The Challenge of Poor Governance and Corruption' written in 2007 'Researchers at the World Bank estimate that worldwide bribery totals at least \$1 trillion per year, just over 3% of world income in 2002. The Bank staff extrapolated from firm- and household level data contained in their own country-level surveys so the number represents an order of magnitude with a large margin of error. It is an estimate of the volume of bribes, not the impact of corruption on economic growth and global income. If used to measure the costs of corruption, it assumes that the volume of payoffs is a good proxy for their economic effects. This, of course, need not be true. In economic terms bribes are transfers from one pocket to another and are not an accurate measure of corruption's impact. Rather, the economic costs are the distortions induced by these transfers. Those costs might be many orders of magnitude higher than the volume of bribes themselves, or they might, under some conditions, be lower. Bribes might be small in some countries because bribe payers have bargaining power and do not need to pay much to get large benefits. In other countries, public officials may be able to extort large payoffs that represent most of the benefits of the corrupt transaction. The estimate also ignores the role of corruption in increasing inequality and undermining support for democracy. Nevertheless, it provides a starting point from which to develop more fine-grained estimates.'
[http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_\(0.7mb_version\).pdf](http://www.copenhagenconsensus.com/files/filer/cc/papers/governance_and_corruption_300404_(0.7mb_version).pdf)

management seemed to be exhibiting any desire to upset a mutually-beneficial state of affairs, notwithstanding that their researchers were later to estimate that about \$1 trillion was involved annually, or about three percent of global income.³

In the meantime, development was to a significant degree being stymied. Developing countries were incurring needless levels of debt from suppliers who could recoup their kickbacks either by over-charging or short-changing on the delivery (and quality) of goods and services – or both. This not to mention the prospects of massive bribes completely distorting decision-making as to which projects should go ahead, and which should not – ambitious infrastructure projects were always to be preferred over those with large labour components. The distortion of much-venerated international competitive bidding, too, had reached the status of being an art form.

One could see a country like Tanzania apparently absorbing large-scale flows of aid over a period of decades, yet leaving its people no better off - and its education and health systems failing palpably. Only this year has it finally surfaced that in 2002 the UK's biggest arms supplier, BaE Systems, paid a \$12m commission into the Swiss account of a 'middle man' in a deal which led to Tanzania, one of the world's poorest countries, buying a controversial military radar system. The back-door payment represented 30% of the contract value. The East African state had to borrow to finance the deal, which was throughout strenuously opposed by its citizens.⁴

Underpinning this sorry state of affairs in the 'north' was the conceit in the developed world that it was 'more moral' than the rest: that others 'did things differently' and so it was 'not for us to impose our standards on others'. It was a comfortable way in which to defend the status quo. When in Rome, not only do as the Romans do, but actually *do* the Romans! A leading African was later to decry –

Others are wont to argue that the African culture of appreciation and hospitality encourages corrupt practices. Again, I shudder at how an integral aspect of our culture could be taken as the basis for rationalizing an otherwise despicable behaviour. In the African concept of appreciation and hospitality, the gift is usually a token. It is not demanded, the value is usually in the spirit rather than in the material world. It is usually done in the open and never in secret. Where it is excessive, it becomes an embarrassment and is returned. If anything, corruption has perverted and destroyed this aspect of our culture.⁵

As for myself, as a Kiwi at the Commonwealth Secretariat in London, I was a virtual 'innocent abroad', aware that not all was well but largely oblivious of the true extent of the negative impact all this was having on the lives and human rights of those in the third world – with development aid being plundered, government procurement processes assuring only that too much was being paid for too little and that under-paid civil servants were holding to ransom those they were supposed to be serving.⁶ When a (black) Minister in the incoming government in Zimbabwe in 1980 told me that his (white) permanent secretary had explained to him that the procurement systems were such that there was 'some for the Minister and some for his permanent secretary', I naively assumed that this was an aberration induced by the international sanctions policy against the now-defunct Ian Smith regime.

³ *ibid*

⁴ BAE's secret \$12m payout in African deal, *Guardian* newspaper, 20 January 2010:

<http://www.guardian.co.uk/world/2007/jan/15/bae.armstrade>

⁵ O. Obasanjo, 'Keynote Address', in: A. Aderinwale (ed.), *Corruption, Democracy and Human Rights in West Africa* at p. 27.

⁶ For scenarios drawn from life, see http://www3.weforum.org/docs/WEF_PACI_RESISTTTool_2010.pdf

Even after the Berlin wall had fallen and as late as the early 1990's the parlous situation in the developing world continued, and it was into this unpromising environment that Transparency International first saw the light of day. It was greeted by a cartoon in Spain depicting TI (as Transparency International came to be known) as a latter-day Don Quixote astride his donkey, with a lance skewering a pile of documents.

The emergence of Transparency International as a civil society movement

So how did Transparency International come into being – today an international non-governmental organisation with national chapters in about 100 countries and one that is quoted daily in the press around the world?

Its genesis dates from a discussion within the Global Coalition for Africa in 1992 that continued in a number of 'retreats' that involved a World Bank official, Peter Eigen. It was there that Eigen hatched the idea of 'naming and shaming' the corrupt corporations in the North by publishing an 'International Business Monitor' exposing those involved on both sides of corrupt international dealings. This was the position when he suddenly appeared in my office in Marlborough House in London in 1993. Before he had even introduced himself he asked, 'Do you think corruption is a problem in the developing world?'

He outlined his plan for a bulletin to expose the activities of corporations behaving corruptly in the third world. I was not alone in thinking that this would only be a recipe for bankruptcy and that a less combative approach was really the only practicable way forward. The approach was recast. The view prevailed that we should focus exclusively on corruption in international business transactions, and seek to bring about change by identifying and working with those within the private sector who were unhappy with the 'competitive corruption' auctions that were taking place. From being essentially confrontational in nature, it should move towards coalition-building. Instead of simply criticising from a distance, the organisation should join in a search for solutions and connect up those who might be won over to a reform movement.

So emerged the plan to start a small NGO that would focus (initially at least) exclusively on corruption in international business transactions because of a belief that if international procurement could be tidied up the worst effects of prevailing corruption could be moderated. None of those involved have claimed ever to have imagined that TI would so quickly be transformed from a small 'ginger group' addressing a part of the corruption agenda into a truly global movement addressing corruption in all its manifestations.

Initially, at least, our small non-governmental organisation would have the limited aims of:

- (a) breaking the conspiracy of silence about the issue of corruption in the private sector of the western world (a topic broached only within the cloistered confines of gentlemen's clubs, and even then in whispers);
- (b) having the World Bank change its policies towards corruption from denial to one of active engagement (Corruption was then the 'C' word within the Bank); and
- (c) persuading development agencies to address the problem head on (and not being afraid of upsetting their third world 'client' governments and their first world exporters).

We would do this:

- (a) through public advocacy, breaking down the myth of western moral superiority, so making it easier for developing country leaders to discuss the issue and at the same time raising the awareness of citizens in the western democracies of the harm those in their countries were inflicting on the developing world; and
- (b) by building coalitions among key constituencies of leaders and organisations who were on the side of change (making full use of the personal contacts each of us had built up over of the years)

Later, when our mandate expanded (as I shall explain later) we were to add a (c) – ‘breaking the taboo that surrounded the issue in the developing world and challenging feelings of apathy and complete helplessness.’

From the outset we thought of ourselves as creating a very small ‘ginger group’ that, with active support from key individuals in a range of countries, would position itself – in effect – as an advocate for the poor in the developing world. The support we already had from significant figures in the developing world, we felt, gave us some legitimacy to be a champion of its interests. Our own small group represented something of a coalition, as there was a variety of agendas within it, not least a private sector one.

We envisaged a small and temporary Secretariat supported by active groupings in perhaps 15 key countries. Setting this up in Berlin would make sense. As a veritable ‘tadpole’ in the international NGO ‘pond’, we would merely be one among many were it to be set up in London, New York, Washington or Paris. In Berlin we would be unique, and an object of curiosity. As such, we would have a distinctive personality. (Our preference would have been to site the headquarters in a developing country, but we recognised that the principal effort had to be in Europe, at least initially, and being close to western news sources would be essential.)

One of our group, a retired British businessman, George Moody-Stuart, had already privately circulated a small book entitled *Grand Corruption: How Business Bribes Damage Developing Countries*.⁷ A West Indian-born retired UK businessman, and key player behind the initiative, he was laying bare the methods used by exporters around the world. For the first time, a respected figure from the private sector was talking openly about the role of the private sector in undermining governance in the developing world and countries in transition.

Moody-Stuart had labelled the phenomenon ‘grand corruption’, an expression that quickly acquired use worldwide. His book struck a chord. Some emerged to support him; others moved to end some of his remaining directorships! Unbowed, Moody-Stuart soon proved a valuable asset in explaining to a bemused world across Africa and beyond, just how bereft of ‘moral superiority’ the developed world really was.

⁷ Most recently published by WorldView Publishing, Oxford, UK. 116 pp. For a time it was entitled *The Good Businessman’s Guide to Bribery* on the thesis that the good would need to know-how in order to compete successfully with the bad. Moody-Stuart is credited with coining the expression ‘grand corruption’ to distinguish the levels of corruption practised in international commercial dealings with low-level ‘petty corruption’ practised on the streets etc. More recently, John le Carré, set his 2001 novel *The Constant Gardener* around the practices and ethics of pharmaceutical companies operating in the developing world. At the end of the book, he adds a note to help the reader understand the line between fact and fiction in this most disturbing, violent and thought provoking murder story. He says ‘As my [research] journey through the pharmaceutical jungle progressed, I came to realise that by comparison with reality, my story was as tame as a holiday postcard’.

‘We, too, are part of the problem’, he said. ‘And the developed world must join with you all in finding solutions.’

A group of just ten people, drawn from five countries, signed the charter⁸ incorporating Transparency International, and a Board of Directors⁹ was formed from among the promoters. We chose ‘Transparency’ as our name on the basis that dirty deeds are done privately and dark corners.¹⁰

Getting the show on the road

The formal launch of the fledgling organisation, in May 1993, attracted a number of prominent personalities. Press attention was generated by Frank Vogl, another of the founders, and the reaction from around the world was encouraging. A number of letters arrived in Berlin giving thanks for the fact that someone, somewhere, was at last trying to do something about corruption.

To give the organisation added clout, an ‘Advisory Council’ was formed which was never to meet but whose well-placed members agreed to lend their names to TI and to be available to offer advice. This included Nobel Peace Prize winner and former president of Costa Rica, Oscar Arias; a former President of Nigeria, Olusegun Obasanjo; and Festus Mogae, who was to become President of Botswana. Its first Chair was the Vice President of Ecuador, Alberto Dahik.¹¹

Funding was, of course, a problem. A handful of staff were hired on the clear understanding that if the money did not come in they would not be paid. Fortunately, a director in the German aid agency, GTZ, had recently discovered that its own officials had bribed the Education Ministry in Indonesia to win an aid contract. Appalled, he agreed to underwrite our rent. Two British charities, the Rowntree Trust and Nuffield, provided some seed money but although there was strong support from some within the World Bank, its then President, Lewis Preston, personally blocked any financial support from that quarter. A former Bank president, Robert McNamara pleaded our cause with Preston in vain.¹² The Bank’s legal department was

⁸ Peter Eigen (Germany) ex-World Bank; Peter Conze (Germany); Frank Vogl (USA) former Washington correspondent of London *Times* and ex-World Bank; Michael Hershman (USA) ex-USAID and security consultant; Roy A. Stacey (USA) of the Global Coalition for Africa; Laurence Cockcroft (UK) developmental economist; Jeremy Pope (New Zealand) Commonwealth Secretariat and legal counsel to the Commonwealth Secretary General; Kamal Hossain (Bangladesh) former Attorney-General and Minister for Foreign Affairs; Fritz Heimann (USA) General Electric (GE) legal counsel; and Jerry Parfitt (UK) of Coopers and Lybrand (and later PricewaterhouseCoopers), accountant.

⁹ The first Board comprised Chairman Peter Eigen (Germany), Vice-Chairman Kamal Hossain (Bangladesh), Vice-Chairman Frank Vogl (USA), Laurence Cockcroft (UK), Dolores Espanol (Philippines), Theo Frank (Namibia), Joe Githongo (Kenya), Michael Hershman (USA), and Gerry Parfitt (UK). Jeremy Pope (New Zealand), , was appointed managing director.

¹⁰ Curiously ‘transparency’ was then a word that was not in vogue – leading some puzzled individuals to link us with purveyors of women’s underwear.

¹¹ The first Advisory council comprised Oscar Arias Sanchez (Costa Rica), Paul Batchelor (UK), Peter Berry (UK), Alberto Dahik (Ecuador), Boubakar Diaby-Ouattara (Ivory Coast), Ugo Draetta (Italy), Hansjörg Elshorst (Germany), Dieter Frisch (Germany), Johan Galtung (Norway), Roy Herberger (USA), Gerhard Kienbaum (Germany), Alain Marsaud (France), Ian Martin (UK), Hans Matthöfer (Germany), Ronald MacLean Abaroa (Bolivia), Peter MacPherson (USA), Ira Millstein (USA), Festus Mogae (Botswana), Miklos Nemeth (Hungary), Olusegun Obasanjo (Nigeria), Ahmedou Ould-Abdallah (Mauritania), Devendra Raj Panday (Nepal), Joe B. Wanjui (Kenya), Andrew Young (USA). Others subsequently recruited to the Council include former US president, Jimmy Carter; former German president, Richard von Weizsäcker; former Irish president, Mary Robinson, former Director-General of the World Trade Organisation, Pascal Lamy, and former Hungarian prime minister, Miklós Németh.

¹² Robert McNamara was a constant ally and was convinced that if governments could be persuaded to require those bidding for business with them to sign ‘anti-bribery’ clauses, the problem could be contained.c

implacably opposed to us, and counselled others to avoid us as being mad, bad and dangerous to know.

Nor was the World Bank the only opposition. In Berlin we had moved in to offices recently vacated by the Berlin Olympics Committee, whose bid to host the Games had failed, and with the offices came an antiquated telephone system that had been given to the Committee by Siemens. We thought it only polite to let Siemens know that we had inherited the telephones only to have Siemens immediately claim them back. 'It would be bad for TI to be reliant on support from the private sector,' they said. [For the record, in December 2008, Siemens ended up paying \$1.6 billion in the largest fine for bribery in modern corporate history¹³.]

On the media side, we started to garner some support. Frank Vogl, a former Washington correspondent of the London *Times*, by then running his own public relations company, was a member of the founding group, and he secured a degree of global publicity for our launch event in 1993 at which two of our Advisory Council members spoke, one a Nobel Laureate, the other a former African president. Encouraging letters arrived in Berlin from several parts of the world.

The BBC World Service also ran an interview in 1994 in which the former Minister for Trade and Industry and then-Executive Chairman of Cable & Wireless, Lord Young of Graffam, stated:

The moral problem to me is simply jobs... Now when you're talking about kickbacks, you're talking about something that's illegal in this country, and that - of course, you wouldn't dream of doing.... But there are parts of the world I've been to where we all know it happens. And if you want to be in business, you have to do - not some- thing that is morally wrong... In many countries in the world the only way in which money trickles down is from the head of the country who owns everything. Now that's not immoral, or corrupt. It is very different from our practice. We must be very careful not to insist that our practices are followed everywhere in the world.¹⁴

Stories of America's 1920 robber barons were invoked by others to argue that 'cowboy capitalism' is just a transitional stage that must be endured on the way to a more stable capitalist stage. The danger we saw was that corruption could become so widespread and so quickly that it could undermine and destroy the transitional stage itself. Even if corruption was consistent with economic growth under some conditions, this did not imply that it facilitated growth or that it did not have other negative political and social consequences.

By November 1994 *Newsweek* was running a cover story on 'Corruption: How Bribes, Payoffs and Crooked Officials Are Blocking Economic Growth' and stating that TI 'has given real visibility to the fight against graft'.¹⁵ In the meantime we were warding off suggestions from some in the Berlin Senate that TI should oversee the integrity of the procurement processes being used for the redevelopment of one of the city's airports. Others wanted us to vet the voting in a world-wide poll they were planning to determine the world's top ten tourist sites! We had to resist being drawn away from our principal focus.

¹³ www.pbs.org/.../at-siemens-bribery-was-just-a-line-item.html

¹⁴ Speaking on the BBC in May 1994. See TI Newsletter, June 1994

¹⁵ 14 November 1994. It includes the comment: 'A recent academic paper admits that 'economic studies of corruption are rather limited' (which, given the pervasiveness of the practice, says all you need to know about economists.'

We delighted in drawing outrageous responses, as they exposed the bare-faced yet comfortable effrontery of the bribers, such as the following letter to the UK's *Daily Telegraph*:

Having been involved in exporting to various countries in the Middle and Far East and in Africa, I have bribed government ministers and officials of all grades, in the form of cash payments, commissions, introductory fees, new cars, hospital treatment and so on for more than 40 years. If I were not now retired I would continue to do so. That is the way one does business in those places ... We expect people from overseas to conduct their business affairs in this country according to our laws and customs; it is both grossly impertinent and extremely naïve to suggest that we should not then respect their customs and conduct ourselves in their country as they would wish ...¹⁶

We were less enthused about consistently being labelled a CIA 'front' by the French journal, *Le Monde Diplomatique*, who consistently declined offers to have free reign of our accounts¹⁷. Others suggest additional links to MI5¹⁸ and regularly referred to the fact that TI's earliest corporate supporter, GE, had been heavily fined for its part in international corruption in 1992¹⁹. The expression 'La opacidad de Transparency' (the opacity of Transparency) was a favourite in several languages.²⁰ There have been continuing attacks on the organisation on various websites.²¹ Making a virtue of necessity, our take on what was being said was that corporate interests unhappy with our creation were getting their retaliation in first. If some people were not unhappy with us, then clearly we were wasting our time.

Some academics were also among the unhappy, seeing us as intruding into what had been their exclusive domain. Two of us went along to an international meeting of political scientists, held in Berlin, only to have a motion moved that we be ejected from the room! The indictment was one of being 'activists', not 'academics'. There were economists, too, who argued that corruption was not necessarily a bad thing, and that it introduced an element of certainty in what could otherwise be a very uncertain world.

Some would argue that corruption can have beneficial effects such as access to government affairs and administration, when political channels are clogged, or as a means of lessening the potentially crippling tension between the civil servant and the politician by linking them in an easily discerned network of self-interest.²² A German

¹⁶ John Hembry of Saxmundham, Suffolk, Letters to the Editor, *Daily Telegraph* (UK), 26 June 2000.

¹⁷ This is evidenced by the media success of the publication of an annual league table of bribe paying and taking countries drawn up by Transparency International, a lobbying association and CIA correspondent funded by governments and corporations [Le Monde Diplomatique] see, e.g. <http://mondediplo.com/2000/04/05debrie>]

¹⁸ www.voltairenet.org/article151804.html

¹⁹ On July 22, 1992, GE '... [pleaded] guilty to diverting some \$26.5 million from the U.S. foreign military aid program used to finance General Electric's sale of F-16 jet engines and support equipment to Israel .' (United States v General Electric, Docket #90-CV-792, US DC SD OH, Cincinnati) (See: Defense Contracting: Contractor Claims for Legal Costs Associated with Stockholder Lawsuits, GAO/NSIAD-95-66 (July 1995). GE agreed to pay a \$69 million fine under the Foreign Corrupt Practices Act to the U.S. government — one of the largest defense contracting fines ever. The company said in a statement that it took responsibility for the actions of a former marketing employee who, along with an Israeli Air Force General, diverted Pentagon funds to their own bank accounts and to fund Israeli military programs not authorized by the United States. http://www.crocodyl.org/wiki/general_electric

²⁰ see, e.g. <http://www.insumisos.com/diplo/NODE/2115.HTM>

²¹ One such, and typically not always factual accurate, is at <http://pinkindustry.wordpress.com/transparency-international/>

²² David Bayley, *The Effects of Corruption in a Developing Nation*, *The Western Political Quarterly*, p.719, pp. 727 et seq. To be fair, the author advances this thesis in an illustrative fashion, seeking to pose questions rather than answer them definitively

Catholic priest was paid handsomely by German companies to lecture managers on the morality of bribery – companies had a duty to ensure there was work for their employees to undertake, and if this meant bribing to get the contracts, there was a positive duty to do so. We, however, viewed corruption as, in the final analysis, tending to lower the general welfare of the populace. To the priest we asked whether it was moral to make martyrs of employees of companies whose management was honest.

We also considered as wholly misleading an often-quoted equation espoused by a US professor, Robert Kiltgaard, who argued that ‘corruption is a crime of calculation, not of passion. People will tend to engage in corruption when the risks are low, the penalties mild and the rewards great.’ He proposed a simple formula: $C = M + D - A$ [**C**orruption = **M**onopoly + **D**iscretion - **A**ccountability]. We knew we had a lot to learn ourselves, but the equation beloved of many academic writers ignored the human element – integrity.²³ A person can control a monopoly, not be accountable and still exercise discretions without being influenced by corruption. So we have to rewrite the equation as **C**orruption = **M**onopoly + **D**iscretion - **A**ccountability - **I**ntegrity.

Other than approaching persons of influence we were unsure just where and how to begin. We had to tackle a very steep learning curve and in this were grateful for the guidance of the academic Susan Rose-Ackerman. We knew, too, given the backgrounds and experience of several of us in other occupations, our primary initial focus had to be sub-Saharan Africa. With support from the African Leadership Forum, round tables to discuss the issue were held in several African capitals – always attended by Obasanjo and by George Moody-Stuart.

By asserting the sins of the North, Moody-Stuart effectively defused any feelings of ‘moral superiority’. Introductions to key players led to us to start by mounting ‘integrity workshops’ and journalists’ training courses in Uganda and Tanzania. The first integrity workshop in Tanzania made huge waves when, in opening the workshop the then chief justice, Francis Nyalali, stated emphatically that the approaching first-ever multi-party election of 1995 would be the most corrupt event the country had ever witnessed.

It was in Tanzania that we first tried out the concept of ‘integrity pledges’ to which all those present would be invited to subscribe. In Tanzania the pledge challenged candidates for the presidency to commit themselves publicly, and in advance, to programmes of reform and to declare their personal assets and those of their spouses publicly upon election. Benjamin Mkapa, in 1995 newly elected as President, subscribed to the pledge and lived up to it. When at our suggestion he disclosed his assets publicly, it created a tidal wave of interest not only within Tanzania, but throughout sub-Saharan Africa and beyond. However his hope that his cabinet colleagues would do likewise was thwarted. The Attorney-General, whether innocently or not and who himself was later implicated in scandal, issued a press statement to the effect that disclosure was not required by the law, seemingly to imply that the President had in some way acted illegally!²⁴

²³ Kiltgaard was asked by a TI-USA chapter member to brief then-Vice President Al Gore ahead of an international conference in Washington corruption in 1998. Gore immediately rejected the thesis as being incomplete.

²⁴ In a record breaking investigations conducted by the British Serious Fraud Office (SFO) into the corrupt purchase of a military radar sold to Tanzania Mr Andrew Chenge, a former Attorney General in President Benjamin Mkapa’s regime and Minister for Infrastructure in President Jakaya Kikwete’s regime was found with USD1.5million stashed away in his private account held in an offshore account in Jersey. This scandal led to his resignation as Minister.
http://www.corruptiontracker.or.tz/dev/index.php?option=com_content&view=article&id=95%3A-president

study, published as the TI Source Book, has been translated into some 25 languages, including Arabic, Bosnian, Chinese, French, Hungarian, Korean, Portuguese, Romanian, Russian and Spanish. The latest version was published in 2000.²⁷

Expanding the TI mandate

In the meantime, the first Annual General Meeting, in 1994, hosted by Dahik, took place in Quito, Ecuador. It attracted some 20 people, among them a young Ecuadorian activist, Valeria Merino Dirani, whose impact was immediate and profound. Backed by Kamal Hossein (Bangladesh) she asserted that TI would have no credibility in the developing world if it confined itself to countering corruption in international business transactions. Important as this was, she said, to the ordinary citizen this was a non-issue compared to the daily menace posed by corrupt police, customs officers and politicians. She insisted that the mandate of the organisation be widened to cover all types of corruption – whether international or domestic, whether ‘grand’ or ‘petty’.

Some of the founding group were badly rattled by her suggestion, but the implications were worked through. If domestic corruption were to be on the agenda, chapters in developing countries felt that they would need a code of conduct that protected them (and the organisation) from reprisals²⁸. They proposed that TI should position itself as a positive influence, not ‘naming names’ and exposing individual cases (which would be the role of journalists) but monitoring the aftermath and examining the reforms needed to prevent reoccurrences. They also proposed that TI chapters specifically declare themselves to be non-party political. Both proposals won immediate acceptance. The change was profound. Henceforth corruption of any sort was to be regarded as a threat to human rights, the environment and sustainable development that could no longer be ignored.

However, Transparency International itself was not immune from the political ‘virus’. Far from it. The Chair of its Advisory Council was active in Ecuadorian politics and the organisation was forced to re-examine itself when in 1995 Dahik fled his country and into exile to avoid having to face allegations of embezzlement, bribery and illicit enrichment.²⁹ Henceforth those active in conventional politics were to be considered ineligible for membership in the organisation – even though this meant excluding former Zimbabwean Chief Justice Enoch Dumbutshena, who had left office to campaign against Robert Mugabe on a platform of anti-corruption. Former political figures who could throw their weight and standing behind our efforts were, of course, most welcome. One supporter, a former senior official with the European Commission ran TI-Brussels, and was instrumental in encouraging the Commission to issue directive attacking trans-border corruption.

²⁷ *Confronting Corruption: The Elements of a National Integrity System: TI Source Book 2000* - see <http://transparency.org/sourcebook>.

²⁸ Amnesty International actively prohibits its chapters from becoming involved locally, in order to protect them. Obviously this could never be an option for TI!

²⁹ In December 2004, a majority in the legislature made up of parties close to the government removed 27 of Ecuador’s 31 Supreme Court magistrates and replaced them with allies, in a move considered unconstitutional by the opposition parties. Four months later the new court threw out corruption charges against former two presidents as well as former vice-president Alberto Dahik, all of whom were living in exile. The Congress then voted unanimously to fire the new Supreme Court justices, who were not to be replaced until lawmakers reach agreement on a new law that would create an independent mechanism for the selection of magistrates. The resolution did not overturn the annulment of the corruption trials against Bucaram, Noboa and Dahik.

Creating a high profile – the Corruption Perceptions Index (CPI)

Despite our best efforts we remained an insignificant organisation, but one to which a small number of journalists would refer when wanting information. Repeatedly they asked us about the relative standing of countries – who was the ‘cleanest’ country? Who the most corrupt? They wanted a baseball league table.

One of our interns in Berlin, Johann Graf Lambsdorff³⁰, beavered away with Fredrik Galtung and in 1995 eventually came to light with an approach that drew on the periodic assessments of several risk management companies whose business it was to advise exporters of the risks generally in dealing with other countries. A first experimental list was drawn up. Fortunately this was leaked to *Der Spiegel* to answer a specific question, and the ‘Corruption Perceptions Index’ was born.

The genie was out of the bottle and we waited for the consequences. Our press release seemed to have fallen on deaf ears before it appeared at length, not once but twice, on consecutive Saturdays, in the *New York Times*. News agencies in New York picked the story up from there and suddenly corruption was on the front pages of newspapers throughout the developing world. Editors that had been constrained not to publish reports of corruption in their own countries were able to highlight international rankings. This then generated remarkable internal debates, with some political leaders decrying the findings and their opponents latching on them as evidence of some kind.³¹ The issue was now out in the open in countries where hitherto it had been one that journalists and editors dare not mention.

Suddenly, too, the image of Transparency International was being projected by journalists as being a huge organisation with tentacles around the world, gathering and assessing information about corrupt activities wherever these might be taking place. The impression continues to the present day, with the Corruption Perceptions Index (or CPI) being referred to daily by press in various parts of the world.³² It showed its power when Bolivia’s rating slumped sharply on the eve of national elections, and the outgoing government threatened to sue us! Little did anyone know that the CPI was the result of only a few days’ work by an intern.

Building a coalition – the search for allies

Pursuing an agenda in which coalition-building was at the core we continued our quest for allies.

- Within **civil society** we could create our own set of national chapters. Most of those involved in starting TI had little previous experience of working with civil society and had to learn the hard way that no-one could go into someone else’s country and anoint chosen individuals as leaders. Any new organisation would have to be built from the ground up. A watershed for chapter-building came when an existing high-profile Argentinean action group, Poder Ciudadano (People’s Power), became the first existing NGO to

³⁰ Now at the University of Passau holding a chair in economic theory, Professor Lambsdorff is well known for the anti-corruption courses he conducts there. He continued to produce the CPI for TI until 2010. He now also runs the Internet Center for Corruption Research as an outlet for relevant papers: <http://www.icgg.org/corruption.contact.html>.

³¹ Some outraged Nigerians threatened to sue TI for defaming their country. In Bolivia a political party ousted in a general election in which the CPI featured prominently also threatened to sue, leading us to speculate as to just how much they might claim in lost income from bribes.

³² The profile of the CPI is so great that it has become in the eyes of some a liability, as many are under the impression that the organisation does nothing else but compile the CPI. In fact it involved a few days’ work by a single individual.

align itself with TI, and its charismatic leader, Luis Moreno Ocampo (now the Prosecutor at the International Criminal Court in The Hague) joined our Advisory Council. Over time a number of effective activist organisations added support. These included Global Witness³³ (a small group that succeeded in tackling ‘blood diamonds’ and bringing about not only the Kimberley Process to authenticate sources of diamonds but also the Extractive Industries Transparency Initiative (EITI). As well there were The Corner House (a live-wire British group mentioned elsewhere); the International Rivers Network; Article 19 (on freedom of the press); and Odious Debts (challenging the legitimacy of much Third World debt). In addition, a number of initiatives were funded by the remarkable George Soros’s Open Society Foundation³⁴, tackling such issues as budget monitoring and conflict of interest in a number of countries, and establishing the Africa Governance Monitoring and Advocacy Project (AfriMAP) to name but a few.

- Within the **private sector**, connections could be exploited to win allies, such as Shell International – and it just so happening that George Moody-Stuart’s brother, Mark, was then its Chairman. The International Chamber of Commerce in Paris was quite another story, appearing to be concerned that it might alienate its membership (and imperil its funding base) if it were to support too whole-heartedly what we were trying to achieve.
- Major **private bankers** – key players in managing ‘private wealth’ (much of it explicable only by its being the proceeds of corruption) – could be slowly won over by working through the ‘prisoner’s dilemma’ and agreeing to what eventually became the Wolfsberg Principles.³⁵
- Institutionally, a major early breakthrough came when USAID, the United States **development aid agency**, decided to make an institution-building grant to TI for some \$US2 million.³⁶ Later, four European Ministers for Development (all of them women and all personally supportive of our initiative) met in Utstein, in Norway, and decided to pool resources in the fight against corruption. They called themselves the U4. Since then the U4 Anti-Corruption Resource Centre has assisted the Ministers’ staff in more effectively addressing corruption challenges through development support. Today the four has grown, and the U4 now serves eight development agencies: Norad (Norway), DFID (UK), CIDA (Canada), GTZ (Germany), MinBuZa (the Netherlands), Sida (Sweden), BTC (Belgium) and AusAID (Australia).³⁷ A ‘help desk’ was set up in the London office of TI (later transferred to Berlin) that continues to provide answers to queries from development agency staff in the field.
- From the outset we struggled to bring the **World Bank** into the fold. For the Bank, corruption was the ‘C’ word – one that did not belong in its lexicon. Its Legal Department insisted that corruption was ‘political’, and that this meant it was off limits in terms of the Bank’s charter. Specifically, according to Article

³³ <http://www.globalwitness.org/>

³⁴ <http://www.soros.org/about>

³⁵ http://www.wolfsberg-principles.com/statement_against_corruption.html

³⁶ This was by chance. President Clinton had recently been elected, and staff from the National Democratic Institute (a parking place for politically active Democrats when out of office³⁶) recommended that our application be declined. Fortuitously the decision for ratification came to a senior official who, when with NDI, had worked in the field with Pope and decided to back the infant organisation.

³⁷ <http://www.u4.no/about/main.cfm>

IV, Section 10, 'neither the institution nor its officers may interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member . . . [O]nly economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially'.

In vain did we argue that corruption was, in fact and in law, an 'economic consideration' – contributing, as it did, to distorted decision-making, waste and inefficiencies, and impacting negatively on the Bank's objectives. In vain, that is, until for the first time a non-American, the Australian James Wolfensohn, was appointed President.

Through Robert McNamara (a former Bank president who had converted to the cause), we had been able to brief the new appointee, and Wolfensohn immediately set out to reverse the Bank's approach. Wolfensohn promptly called a day-long meeting of his most senior staff, inviting three of us (including Ocampo) to brief them about corruption from the TI perspective. At its conclusion Wolfensohn stated that his lawyers said that the Bank could not fund TI but they could not stop him supporting the organisation generously through his own private office budget. Our consultations with senior Bank staff, somewhat ironically, continued with a breakfast meeting at the Watergate Hotel.³⁸

At the annual meetings of the World Bank and the International Monetary Fund (IMF) in 1996, Wolfensohn characterised corruption as a 'cancer' on the global economy and emphasised that it was time to 'put teeth' into the World Bank's efforts to address it. Two years later, shredding the legal advice he had been given, at the World Bank's 1998 annual meeting in Hong Kong, Wolfensohn denounced corruption and declared that the Bank would do what it could to combat it. To the surprise of many close to the organisation not a voice was raised to question him.³⁹ The Managing Director of the IMF, Michel Camdessus, was equally blunt, noting that IMF officials would henceforth regard it as their duty to press for anticorruption reforms in countries seeking to borrow money. In the wake of the annual meetings, a working group was established under the Development Economics Vice Presidency of the World Bank to develop an integrated anticorruption strategy.⁴⁰

Our consultations with senior bank staff concluded with the establishment of blacklisting procedures which we were later able to invoke successfully – albeit not without opposition - when a cluster of Canadian, British and German companies were caught bribing a procurement official in the poverty-stricken, land-locked African state of Lesotho in connection with a project part-funded by the Bank.⁴¹

³⁸ The World Bank could now espouse the cause of anti-corruption but remains mired in an institutional framework in which there are no rewards for those who block loans on the grounds of corruption. The kudos continues to go to those who push the most loans through the system.

³⁹ *Voice for the world's poor: selected speeches and writings of World Bank president James D. Wolfensohn, 1995-2005*, World Bank Publications, 2005.

⁴⁰ <http://www.adb.org/documents/policies/anticorruption/anticorrupt100.asp>

⁴¹ Leaked correspondence between the World Bank and the Lesotho government shows that the Lesotho government wanted to suspend Masupha Sole and another Lesotho Highlands Development Authority official for about four months while a management audit was completed (Letter from Praful C Patel, Country Operations manager, Southern Africa Department, World Bank, to Mr B Pekeche, Government of Lesotho, 2 December, 1994, marked "LESOTHO: Highlands Water Project (Ln. 3393-LSO).). Irregularities in the Authority's accounts had prompted the internal investigation. The World

We could tick off one of our objectives – changing the policies of the World Bank – as having been largely achieved. We had thought it might take a decade – in fact it had taken less than five years.

- Alone among the **global professional bodies** evidencing concern over the corruption issue was the International Federation of Consulting Engineers (FIDIC). Their members were, after all, knowingly signing off and certifying defective work as being fit for payment. And they knew, too, that buildings devoid of the necessary steel or fashioned from concrete that lacked the required quantities of cement, were catastrophes waiting to happen. The professional bodies whose members were facilitating the nefarious processes that made grand corruption so profitable – the lawyers and accountants – were, in the initial stages, conspicuously silent.

Four related reforms

Space only permits mention of a relatively small number of reform exercises that TI has been involved in, and I restrict myself to describing four.

1 *Success with International Conventions*

It is fair to say that TI remains inherently suspicious as to the efficacy of conventions. After all, law libraries are littered with UN conventions that have never come into force. Notwithstanding, in 1994 the first major success for TI was scored when, at the request of TI's growing band of Latin American chapters, corruption was placed on the agenda of the Summit of the Americas.

This was the product of an 'alliance' between nascent chapters in Latin America and Dahik, still Vice-President of Ecuador, fostered in the north by the chapter in the United States, TI-USA. The Summit of the Americas initiative quickly led to the signing of a major regional convention in 1996 providing for greatly enhanced co-operation in the fight against corruption, and including a strengthening of extradition arrangements.⁴²

The convention enabled TI to intervene publicly when Peru sought to extradite Fujimori's partner in crime, Vladimiro Montesinos Torres from Venezuela.⁴³ It was

Bank vigorously opposed the suspension of Sole and the other official, even threatening legal action should the Lesotho government go ahead with this course of action. Notwithstanding, Sole was eventually prosecuted, convicted and jailed for accepting bribes from more than a dozen international engineering and consulting firms and their Lesotho representatives. see www.im.org/programs/lesotho/index.shtml, and The Corner House, "Dams Incorporated: The Record of Twelve European Dam Building Companies", February 2000, www.thecornerhouse.org.uk/documents/damsinc.html. The story is a long one, but it includes the World Bank initially investigating allegations of bribing by Canadian and European multinationals and dismissing as being without foundation. After the firms themselves had been convicted they were eventually blacklisted from World Bank contracts for a short period, and this after the Canadian government had lobbied strenuously for its firm to be excluded from any sanction.

http://www.ipocafrika.org/index.php?option=com_content&view=article&id=71&Itemid=66
⁴² Inter-American Convention Against Corruption 1996: <http://www.oas.org/juridico/english/treaties/b-58.html>

⁴³ Montesinos was the long-standing head of Peru's intelligence service, under President Albertom Fujimori. In 2000, secret videos were televised revealing him bribing an elected congressman to leave the opposition and join the Fujimorist side of Congress; the ensuing scandal caused Montesinos to flee the country, hastening the resignation of Fujimori. Subsequent investigations revealed Montesinos to be at the centre of a vast web of illegal activities. http://en.wikipedia.org/wiki/Vladimiro_Montesinos

also the first effort within the TI family to foster close co-operation and relationships on a regional basis, now a feature of the movement.⁴⁴

Moves at the United Nations

The following year the United States began moves to achieve a United Nations convention against corruption by floating a 'Declaration Against Bribery And Corruption In International Commercial Transactions'.⁴⁵ We were alarmed by the thought that the international effort might founder on the rock of a universal and toothless convention that would enable states to adopt the position that the matter had been dealt with, albeit by a Convention devoid of reporting and monitoring requirements.⁴⁶

Moves at the OECD

We were more impressed by a suggestion from US officials that we support an effort within the OECD to achieve a convention on international commercial transactions, and agreed to do this on the basis that any convention (a) be concluded within a limited time-frame (negotiations could linger for years); (b) that it include a fixed date by which a requisite number of countries had adopted it; and (c) that it provide for meaningful and effective monitoring.

Securing agreement on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was far from easy. Fortunately, a Swiss law professor, Mark Pieth, chaired the Working Party and emerged as one of the most significant global figures in the struggle to contain corruption, subsequently establishing the influential Basel Institute on Governance.⁴⁷

The proposal at the OECD was, quite rightly, seen by the Europeans as an attempt by the United States to internationalise the US Foreign Corrupt Practices Act (FCPA). This had been enacted at the instance of President Jimmy Carter in 1977 after investigations in the mid-1970s during which over 400 U.S. companies admitted

⁴⁴ The practice of regional co-operation later spread to other TI Chapters, flourishing as much in Central and Eastern Europe as it has in South Asia and Southern Africa.

⁴⁵ This condemned all corrupt practices, including bribery, in international commercial transactions and reaffirmed the right of any State to adopt legislation and to investigate and take appropriate legal action, in accordance with its national laws and regulations, against such corrupt practices, and called upon all Governments to cooperate to prevent corrupt practices, including bribery.

<http://www.un.org/documents/ga/res/51/ares51-191.htm>

⁴⁶ What TI feared has now occurred. The wide-ranging United Nations Convention Against Corruption was concluded in 2003 and signed by 140 countries. Throughout the drafting of the Convention TI attended the negotiations and worked in vain for a monitoring mechanism. This was left for the period 'Conferences of the Parties' to tackle. In November 2009 a Conference in Doha established the first ever UN peer review mechanism but it is an anti-corruption mechanism that is allowed to operate in secrecy on a government-to-government basis. The review process has no requirements of non-governmental inputs, no required country visits, no expert review body, no required publication of reports (only of summaries). And the whole process is optional. Gillian Dell of TI commented that 'The outline of this mechanism flies in the face of the essentials of anti-corruption — transparency, public participation and accountability. And it departs from best practice in other anti-corruption mechanisms. It's clear that some of the governments represented in Doha are not committed to advancing the fight against corruption and they won this round, the Doha round.'

⁴⁷ The Basel Institute on Governance is an independent and non-profit think tank conducting research and offering policy advice and capacity building support in public, global and corporate governance/compliance. Through the International Centre for Asset Recovery, it further provides training and advisory services in the field of asset recovery. The Institute combines scientific methodology with practical experience and seeks to engage partners from all concerned stakeholder groups. Based in Switzerland and associated with the University of Basel, it brings together internationally recognised academics as well as practitioners with long-standing experience in the matters at stake. <http://www.baselgovernance.org>.

making questionable or illegal payments in excess of \$US300 million to foreign government officials, politicians, and political parties.⁴⁸ The anti-bribery provisions of the FCPA made it an offence under US law for US citizens and corporations to make payments to foreign officials for the purpose of obtaining or retaining business. The measure was so obvious one of 'motherhood', that Carter expected other responsible western governments to follow suit. They did not, preferring to regard the US as having shot its exporters in at least one foot and given a comparative advantage to European exporters.

To say that the legislation was – and is – unpopular with corporate America is an understatement. After Carter, successive administrations were lobbied in a strenuous effort to have the FCPA repealed, but each President in turn recognised the negative signal that repeal of such a 'motherhood' provision would send out to the rest of the world. It was President Clinton who determined that if the Act could not be repealed, then major competitors around the world should have to sign up to similar measures. On taking office in 1993 he charged his officials to start to work on the issue through the OECD in Paris.⁴⁹

In time US officials approached TI looking for our support for their initiative. We agreed - not on the basis of providing corporate America with a 'level playing-field' for export competition, but in the interests of the victims of corrupt practices, most notably the poor in the developing world. We insisted that the exercise be time-bound and with robust monitoring of compliance.

From the outset it was clear that progress was never going to be easy. European governments were enamoured with the US FCPA as it created impediments for US business in the international market place, by increasing risks for US exporters caught bribing, that none of the European corporations faced. For our part, we campaigned strenuously across Western Europe, highlighting the fact that bribes paid abroad were treated as legitimate business expenses, and so tax deductible. European tax payers were thereby indirectly subsidising the corrupt conduct of their nationals in foreign countries and undermining the efforts of their own aid agencies in trying to foster good governance there. As corrupt transactions seldom resulted in the provision of receipts, tax inspectors simply turned a blind eye – the French even having a schedule of allowable bribe payments calculated on a country-by-country basis.

Initially it was the British government that led the resistance to the proposed OECD Convention, represented in Paris by its Department of Trade and Industry (DTI), the department that usually represented the British government at the OECD. By way of response, TI's United Kingdom chapter lobbied the DTI to no avail and finally turned to the minister responsible for overseas development aid, Baroness Linda Chalker. She was shocked to learn that another of her UK government's ministries was actively undermining her efforts to improve governance in the developing world and was quick to have the British government's position reversed - from opposition to active support.

Attention then switched to the German representative. He suggested that his government would be only too happy to support a convention on the topic but alas, it was politically impossible for it to do so. The German private sector was, he suggested, implacably opposed to any such measures. Again a TI national chapter,

⁴⁸ A major example was the so-called Lockheed scandal which even included Prince Bernhard of The Netherlands, who said ruefully that he accepted that the word Lockheed would be engraved on his tombstone. (http://en.wikipedia.org/wiki/Lockheed_bribery_scandals)

⁴⁹ <http://www.highbeam.com/doc/1G1-73538346.html>

this time the German, switched up a gear. A small group of leading industrialists were urged to write a joint letter to the relevant ministry stating that corruption in foreign business transactions was not only bad per se, but was bad for German business. For these reasons they supported the preparation of a convention. The letter was circulated to delegates by TI on the eve of the next session working on the draft convention, and German resistance evaporated.

That left the French, who fought a rearguard battle, trying to insert an outrageous 'grandfather clause' that would allow established illicit arrangements to continue and prohibit only new ones from being entered into. TI's small French chapter lobbied hard and the attempt to frustrate the whole exercise fell away.

In the event a convention was signed on 17 December 1997, the first and still the only international convention that addresses the supply side of corruption. However, to come into effect it had to be ratified no later than 31 December 1998 by at least five of the ten countries that had the largest export shares of global trade, and that represented by themselves at least 60% of the combined total exports of those ten countries.⁵⁰

By the beginning of December 1998 we were still short of the required numbers. Canada alone could save the exercise from foundering. With the Christmas break approaching, TI Canada stepped in and lobbied both its government and the opposition to enable the necessary legislation to go through all its stages in a single day on the very eve of the parliamentary recess. One vote against the measure in either House would have frustrated the enterprise. It was our belief that only a politically neutral party, such as the national chapter, could have ever achieved such an outcome.

The OECD Convention entered into force in 1999 in what the *New York Times* and *Washington Post* editorial writers described as a 'triumph' for Transparency International.

To date, all 31 OECD member countries and seven non-member countries - Argentina, Brazil, Bulgaria, Estonia, Israel, Slovenia and South Africa - have all adopted the Convention.

The deadlines had served their purpose. The ratification process had taken less than fourteen months, something of a record for a multi-lateral convention with such serious domestic implications.

The exercise illustrates a number of ways in which civil society activists can contribute to reform. They can lobby; they can carry information from one part of government to another where channels of communication are failing; they can inform politicians and civil servants where they have made unjustified assumptions about the views of stakeholders; and, above all, they can work across the divides of political parties in a non-partisan manner.

Monitoring compliance of the OECD Convention

What, then, of the follow-up monitoring?

The Convention itself establishes what the OECD describes as being 'an open-ended, peer-driven monitoring mechanism to ensure the thorough implementation of

⁵⁰ <http://www.oecd.org/dataoecd/4/18/38028044.pdf>

the international obligations that countries have taken on under the Convention'. The monitoring is carried out by the OECD Working Group on Bribery, composed of members of all State Parties and chaired by Prof. Mark Pieth. Its life has not been easy.

Under the process countries prepare self-assessments of their performance. These are then followed by mutual evaluations in which experts from other State Parties visit and report on a country's performance, a process that includes inputs from local civil society. The Working Group on Bribery then meets with representatives of the country concerned and discusses what has emerged.

Trouble with Britain

Generally international dialogue is masked by a veneer of diplomacy, but the hostility of the British government towards findings that it had failed to implement the convention by relying on existing, but inadequate, laws became so fractious that that government went so far as to try to have Pieth removed from chairing the Working Party.

To make matters even more embarrassing for the British, a small UK non-governmental organisation, The Corner House, took the government to court on judicial review when the Serious Fraud Office (SFO) discontinued a corruption investigation into a major arms deal after Saudi Arabia threatened to withdraw cooperation on security matters should the SFO not do so.⁵¹ This despite a clear prohibition in the OECD Convention, to which the UK was party, that '[State Parties] shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State...'⁵²

The Corner House won in the lower courts but lost on a final appeal by the SFO to the House of Lords. There the Law Lords ruled that it was not for the UK courts to determine whether the decision was compatible or not with Article 5 (enforcement) of the OECD Anti-Bribery Convention, or to interpret and construe the meaning of Article 5, but for the OECD's Working Group on Bribery to do so as the dispute mechanism provided for in the Convention.

The House of Lords judgment made it quite clear that the UK had failed to incorporate Article 5 of the Anti-bribery Convention into its domestic legislation, and that the Article's provisions (and even those of the whole Convention) were unenforceable in the UK. In the absence of legislation to that effect the Courts were not able to enforce them.⁵³

All along, the British chapter of Transparency International (TI-UK) had been arguing publicly and privately for more explicit legislation.

Their efforts were supported by other non-governmental organisations, among them the BOND Governance Group (a network of 35 organisations that focus on governance within international development, both at a policy and practice level).

These endeavours came to fruition with the passage of a new and far-reaching UK

⁵¹ http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/JudicialReviewAppln_0.pdf

⁵² Article 5 - Enforcement - Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved. <http://www.oecd.org/dataoecd/4/18/38028044.pdf>

⁵³ <http://www.controlbae.org/jr/sfoappeal.php#lordsjudgment>

Bribery Act in April 2010, just four days before parliament was dissolved for the holding of the general election. Significantly this was during the so-called 'Wash-up' period⁵⁴ after the date for the election had been announced, when all party whips individually held vetoes over each outstanding Bill.

Just as well, perhaps, for one of the first acts of the new Conservative-led government was to delay implementation of the new Act by at least six months. The *Financial Times*⁵⁵ reported that 'the imminent change has induced panic among many leading companies, which are worried that a failure to comply could damage reputations and cut profits, particularly in emerging markets. As a result, Mr Clarke has agreed to run another consultation about how companies should make sure they do not fall foul of the new law'. The bill's implementation has been pushed back six months to April [2011].

Chandrashekhar Krishnan, executive director of TI-UK, was quoted as saying that the delay was 'extremely disappointing... The danger is that under the guise of consultation, attempts may be made by those who want to pursue business as usual to water down the Act.' The coalition government was 'in danger of undermining' its own corruption policy.

So it is not enough to work and win an international convention. This only marks the beginning of a continuing process in which the performance of the State Parties has to be assessed, and reports fed into the OECD Working Group on Bribery. TI chapters in OECD countries are now engaged in monitoring the extent to which their governments are complying with their obligations and in ensuring that their own private sector is fully cognisant of the risks now posed should they be caught bribing abroad. The work for civil society is likely to be unending.

2 The Wolfsberg Anti-Money-Laundering Principles

Money-laundering and hidden deposits are major components in the 'grand corruption' equation, processes facilitated by law firms, accountancy firms and, most importantly, by bankers. A success came when eleven of the world's largest private banks were brought together and each participant was persuaded that it would be in its own best interests to disclose its 'Know Your Customer' rules provided the others did the same.⁵⁶ Efforts began in 2000, and it was three years before agreement was finally reached at Wolfsberg Castle, in north-east Switzerland.

One of the elements in the international financial system that actively facilitates the laundering of the proceeds of corruption is the high level of competition for deposits between major banks offering private wealth management. Thus they kept their 'Know Your Customer' rules close to their individual chests, concerned not to reveal any chink that might enable a competitor to exploit. We were anxious to do what we could to close the door, at least partially, on competition for illicit wealth between the major players, and to find a solution to what on the face of it was a classic example of the 'prisoner's dilemma'.

⁵⁴ <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-05398.pdf>

⁵⁵ 20 July 2010

⁵⁶ Members of the Wolfsberg Group are ABN AMRO, Banco Santander Central Hispano, Bank of Tokyo – Mitsubishi UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan Chase, Société Générale, and UBS.

For a time this seemed incapable of resolution. The sums of money involved are huge and there was considerable reluctance, fostered by suspicion, on the part of each bank for it to make the first move. Finally agreement was reached whereby each of them would provide a copy of their rules on 'Know Your Customer' to a New York firm of attorneys. The lawyers would hold the disclosures in confidence and not share them until every participant had complied with the group undertaking. In this way none of the banks had to trust any of the others. It is widely agreed that the consensus would never have been achieved in the absence of a trusted civil society group that could act as a catalyst and facilitate the brokering of an agreement.

This proved to be only a beginning. The Group has gone on to develop fresh approaches to deal with monitoring money movements and the security of electronic transfers.⁵⁷

3 Business Principles for Countering Bribery

TI needed to address the supply side of international 'grand corruption' in preventive as well as prosecutorial ways. More modest in its beginnings, but perhaps even more ambitious than Wolfsberg, was the concept of bringing together a small group of major corporations and some trade union representatives to examine whether there might be scope for developing generally-applicable business principles for the containment of corruption. We believed that if we could facilitate a committed group of leading businesses, it might be possible to produce a set of agreed actions that melded into a single set of principles.⁵⁸

This has been so successful that it has been taken up by the World Economic Forum (aka 'Davos'). In 2004 the Forum launched PACI (Partnering Against Corruption Initiative)⁵⁹ whose objective is to commit companies to a set of procedures based on Transparency International's Business Principles. PACI is described as a business-driven global initiative with commitment from the top. Just as with Wolfsberg, this demonstrates how change can be brought about when a civil society group builds a coalition for change around a particular issue and interests major actors in adopting the resulting new concepts.

4 Strengthening Judicial Integrity

A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it should provide a bulwark to the public against any encroachments on their rights and freedoms under the law. Alas, in many countries this is not the case, but in the view of TI it is an essential starting point for the creation of a fully-functioning modern state.

So it was that a 'Judicial Group on Strengthening Judicial Integrity' was brought together, with Justice Michael Kirby as its rapporteur. At a meeting in Bangalore, India, in 2001 an informal group of Chief Justices and Superior Court Judges from around the world combined their experience and skill with a sense of dedication to the task they were invited to address. Since then, the Group's work and

⁵⁷ <http://www.wolfsberg-principles.com/index.html>

⁵⁸ http://www.transparency.org/global_priorities/private_sector/business_principles

⁵⁹ <http://www.weforum.org/en/initiatives/paci/index.htm>

achievements have grown to a point where they have made a significant impact on the global judicial scene.

The **Bangalore Principles of Judicial Conduct**⁶⁰, at first worked out tentatively, have have been developed progressively and have received increasing acceptance over the past few years from the different sectors of the global judiciary and from international agencies interested in the integrity of the judicial process. In the result, the Bangalore Principles are increasingly seen as a document which all judiciaries and legal systems can unreservedly accept. In short, these principles give expression to the highest traditions relating to the judicial function as visualised in all the world's cultures and legal systems.

Values defined in the Principles, and given reality in practical examples, include independence, impartiality, integrity, propriety, equality, competence and diligence.

The task of reaching agreement on the detail of these core principles was a challenging one but the Judicial Integrity Group, through unwavering commitment to achieving a result that would command universal acceptance, surmounted every barrier that appeared to be in the way of a universal draft.

Not only have some States adopted the Bangalore Principles verbatim but others have modelled their own Principles of Judicial Conduct on them. International organisations have given Bangalore their own endorsements. The United Nations Social and Economic Council has invited member States to encourage their judiciaries to take account of the Principles when developing rules for the professional and ethical conduct of the members of the judiciary. The United Nations Office on Drugs and Crime has actively supported the work of the Group as have such bodies as the American Bar Association and the International Commission of Jurists.

More recently the Group has operated independently from TI, and with a separate facilitator.

Some other tools

To provide counter-balance to the Corruption Perceptions Index (CPI), increasingly seen by some as simply a stick with which to beat the developing world, Fredrik Galtung, then TI's senior researcher, developed a **Bribe Payers Index (BPI)**. Launched in 1999, it measured the propensity of corporations in leading exporting countries to bribe abroad, and so addressed the crucial question of the industrialised world's corrupt interventions in developing countries.

Whereas the CPI simply took assessments made by risk management consultancies (some of whom make their estimations without even visiting the countries they were judging), the BPI is a much more professional undertaking. Key bankers, accountants and lawyers in the developing world are arguably best placed to answer the relevant questions, and these were polled face-to-face by Gallup International. TI also helped Gallup International develop its own 'Voice of the People' periodic surveys.⁶¹

⁶⁰ http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

⁶¹ Gallup International's 2002 *Voice of the People* survey included face-to-face or telephone interviews with 36,000 citizens across 47 countries on six continents. With this sample, results are statistically representative of the views of 1.4 billion citizens. Respondents were asked to rate their level of trust in

The BPI was followed, in 2001, by the annual **Global Corruption Report** to provide an overview of the 'state of corruption' around the globe, assembling news and analysis from around the world.

Earlier, in 1995, TI had been persuaded to service the biennial **International Anti-Corruption Conference**. The series had evolved from discussions between a number of anti-corruption law enforcement agencies, including Hong Kong's Independent Commission Against Corruption, the Inspector General for the District of Columbia (Washington D.C.) and the New York City Department of Investigation.

Initially, the focus of the gatherings was confined to law enforcement. Strategies and tactics were developed to deter and investigate official corruption but the scope of the conference grew quickly. Since 1997 (when TI assumed responsibility as its secretariat), the conference has involved the entire spectrum of stakeholders – from law enforcement to civil society - all with an interest in combatting corruption and fraud wherever it may be occurring. Attendance reached a peak of some 1,600 delegates.

At the country level we were able to work with Petter Langseth of the World Bank's Economic Development Institute. Langseth, who had managed public service reform in Uganda and Lesotho, was keen to show that the World Bank could flirt with anti-corruption without getting its corporate fingers burned. Among other projects we worked together in Tanzania, Uganda and Nigeria - developing training courses for journalists in investigative journalism, holding workshops with parliamentarians and judges, and mounting TI's first National Integrity Workshops (another innovation that quickly found emulators).

Consultancies

TI never saw itself as undertaking consultancies, but when opportunities arose they provided invaluable learning opportunities.

On being elected President of **Nigeria** at the end of 1998, Olusegun Obasanjo immediately turned to TI for support in the transition to democratic rule. Effective anti-corruption policies were desperately needed by a country whose reputation for corruption was among the worst of those listed on TI's Corruption Perceptions Index. TI helped develop seminars on public service values for civil servants (most with no experience at all in working in a democratic environment), set values questionnaires for prospective Ministerial appointees, and coordinated the development by the new Cabinet of a Ministerial Code of Conduct for themselves.

A further opportunity emerged when multi-party politics took hold in **Kenya**. Support was given to John Githongo, a former journalist and by then running the TI chapter there. The son of one of the original founders of TI, he won commitment from the leading opposition presidential candidate, Mwai Kibaki, to implement a detailed 'First One Hundred Days' programme of steps to fight corruption.

All went more-or-less to plan – for a time. Kibaki was elected at the end of December 2002 and in January Githongo was appointed to the Office of the President as the first-ever permanent secretary in charge of governance and ethics. He was to be Kibaki's right-hand man to spearhead a cleanup campaign.

17 different institutions "to operate in the best interest of society. http://www.voice-of-the-people.net/ContentFiles/docs/VoP_Trust_Survey.pdf

What Githongo unearthed is now the stuff of legend – a plethora of phantom entities were being used by Ministers, well-placed officials and individuals, to perpetrate monumental fraud on the Kenyan taxpayer through non-delivery of goods and services, and massive overpricing. Suffice to say that after two years Githongo was forced to flee for his life.⁶²

In the early years, work with the Economic Development Institute of the World Bank provided further invaluable insights. So, too, did a period of working inside the United Nations headquarters in New York as advisers to the Assistant Secretary General responsible for the Office of Internal Oversight and Supply (a euphemism for its internal anti-corruption unit)⁶³.

Conclusion

Today, the locus of effective action has largely moved from its Berlin centre to the grassroots. The international break-throughs have been made, more numerous than space permits me to describe, though the task remains to have corruption prevention worked into the Millennium Development Goals⁶⁴. Thus the emphasis has moved more towards monitoring than it once was on being creative. On the ground, TI has national chapters in about 100 countries, great and small. Some are large and effective, others struggle to make their voices heard. Some are well funded, some grapple with little. All are addressing what they see as being key areas of their own national integrity systems that need to be addressed as a priority. Where there are commonalities, national chapters are pooling their experience. It has certainly come a long, long way from being the tiny 'ginger group' of fifteen or so years ago.

I am often asked what it was that drew me into the campaign against corruption in the first place. The Nobel Peace Laureate Oscar Arias Sanchez, who did much to help establish TI, articulated the essence of our collective motivation. About the time that he was writing an eloquent foreword to the TI Source Book he was asked by journalists what single point he would make if addressing all the young people of the world. His reply captures what it is that drives, and continues to drive, the thousands involved in the TI anti-corruption movement:

I think the most important thing for the future generations is to understand that it is necessary to have ideals, to dream, to live a life of principles. It is necessary to understand that the brotherhood is more important than the self. It is necessary to comprehend that the problems of a neighbour in some way affect us too. It is necessary to live in a transparent, crystal-like world where everyone practices what they preach, to end hypocrisy and to have the courage to fight for what you believe in. I would say don't give in to the naysayers, not to give up one's dreams of bettering the world. Understand that by fighting for the impossible, one begins to make it possible. In that way, no matter how difficult the task is, one will never give up. And it doesn't matter if they call us dreamers, idealists. I always said I would rather be Don Quixote than to be Pancho. Understand that the idealists of today will be the leaders of tomorrow. And we can't stop dreaming.

xxxx

⁶² <http://news.bbc.co.uk/2/hi/africa/4243619.stm>. The story of his fight against corruption is told in Michela Wrong's book *It's Our Turn to Eat: The Story of a Kenyan Whistle-Blower* (Harper).

⁶³ This was a remarkable experience for those concerned. The reform efforts were blocked by the then Secretary-General, whose successor in July 2010 was on the receiving end of a blistering attack by a later head of the OIOS, Under Secretary-General Inga-Britt Ahlenius, who described his actions as 'seriously reprehensible'. <http://www.washingtonpost.com/wp-srv/hp/ssi/wpc/nations2.pdf>.

⁶⁴ It appears no one involved wants to use the 'C' word. A recent assessment by the United Nations Development Programme (UNDP), which sets out its own 'MDG Action Agenda for 2010-2015' does not address corruption or accountability in its eight recommendations.