



UNITED NATIONS  
*Office on Drugs and Crime*



GLOBAL ACTION AGAINST

**CORRUPTION**

A silhouette of two men in business suits shaking hands is positioned behind the letter 'R' in the word 'CORRUPTION'. Their shadows are cast onto the surface below.

The Merida Papers

United Nations  
Office on Drugs and Crime

# **Global Action against Corruption**

The Merida Papers

**Side events at the High-level Political Conference  
for the Purpose of Signing the United Nations  
Convention against Corruption, organized  
jointly by the Government of Mexico and  
the United Nations Office on Drugs  
and Crime in Merida, Mexico,  
from 9 to 11 December 2003**



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## **Message of Secretary-General Kofi Annan**

Corruption is an insidious scourge that impoverishes many countries, and affects us all. The signing of the United Nations Convention against Corruption is a major victory in our struggle against it. Each year, this day will be celebrated as the United Nations Day against Corruption.

We have come a long way. Until the early 1990s, corruption was hardly ever mentioned in official circles, although everybody knew it was there. It took great efforts and perseverance by many people to raise awareness of the corrosive effects of corruption on societies, and to put the fight against such a plague on the global agenda.

It is now widely understood that corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organized crime, terrorism and other threats to human security to flourish.

No country—rich or poor—is immune to that evil phenomenon. Both public and private sectors are involved. And it is always the public good that suffers.

But corruption hurts poor people in developing countries disproportionately. It affects their daily life in many different ways, and tends to make them even poorer, by denying them their rightful share of economic resources or life-saving aid.

Corruption puts basic public services beyond the reach of those who cannot afford to pay bribes. By diverting scarce resources intended for development, corruption also makes it harder to meet fundamental needs, such as those for food, health and education.

It creates discrimination between the different groups in society, feeds inequality and injustice, discourages foreign investment and aid, and hinders growth. It is, therefore, a major obstacle to political stability, and to successful social and economic development.

Our only hope of removing this obstacle is through the effective application of the rule of law. Let me congratulate the many Governments that have already adopted national legislation against corruption. Of course, this does not make the new Convention less important. Criminals have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it. Up to now, our efforts to combat them have been fragmentary. But now the Merida Convention, together with another landmark instrument—the United Nations Convention against Transnational Organized Crime, which entered into force a little more than two months ago—gives us the tools to address crime and corruption on a global scale.

With improved international cooperation, we can have an impact on criminal operations worldwide. That may sound self-evident. But we have

been able to agree on the new Convention only through very difficult negotiations, which have lasted two years. I congratulate the negotiators on their achievement in producing an instrument that is balanced, strong and pragmatic.

The Convention makes clear that eradicating corruption is a responsibility of States, and it offers them a comprehensive set of standards that they can apply to strengthen their regulatory regimes and institutions.

Let me stress, in particular, the provisions on asset recovery—the first of their kind—which require Member States to return assets obtained through corruption to the country from which they were stolen. This is a major breakthrough. It will help tackle a pressing problem for many developing countries, where corrupt elites have looted billions of dollars that are now desperately needed by new governments to redress the social and economic damage inflicted on their societies.

The Convention also makes clear that in order to succeed in our efforts to eradicate corruption, the support and the involvement of civil society, including the private sector, are crucial. I am particularly encouraged that it includes measures to promote the transparency and accountability of the international business community.

My Global Compact can play an active role in helping to implement the new Convention. Practical measures to fight corruption are already an integral part of many approaches developed under its umbrella. The Compact is organizing an international dialogue on transparency and anti-corruption to be held in January 2004 in Paris, and we are planning a Summit of Global Compact Leaders in June 2004 in New York. As we move forward, I hope that we will find practical ways for business and other non-State actors to become active champions in the fight against corruption.

Let me add that the United Nations itself has launched an Organizational Integrity Initiative to reinforce integrity as a core value within the Organization, and to ensure that we practise what we preach. The initiative is rooted in my determination to strengthen overall transparency and accountability in the organization, and to make the United Nations a more effective instrument in the service of the peoples of the world.

Our greatest challenge today is to ensure that people everywhere can live in dignity, free from poverty, hunger, violence, oppression and injustice. For many people in a corrupt society, those freedoms remain only a dream.

I urge all States to ratify the Convention at the earliest possible date. Let us bring it into force as a matter of urgency. If fully enforced, it can help to ensure that the weak and vulnerable are protected from the greed of corrupt officials and unscrupulous profiteers. It can help ensure that, in today's fast-moving world, the poor do not become poorer. And by removing an important obstacle to development, it can help us achieve the Millennium Development Goals, and improve the life of millions around the world. Let me assure you

that the United Nations will continue to do its part, working with Governments and civil society in that momentous global struggle.

I would like to express my appreciation to the Government of Mexico, and to the Municipality and people of Merida for hosting this momentous event. I would also like to thank all of you who are participating in this conference. By being here, you are sending a clear message that the international community is determined to fight corruption, and that betrayal of the public trust will no longer be tolerated.



## **Message of President Vicente Fox**

I would like to thank you for coming to Mexico and warmly welcome you to our country, which receives you with open arms. I would also like to thank the city authorities and the state government for their cooperation and for providing the facilities for the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption.

At this Conference you will be called upon to discuss a variety of important and strategic issues. Corruption truly is a scourge on our economies and our development and directly jeopardizes efforts to improve the quality of life and standard of living of our citizens.

Your task and your responsibility therefore go beyond tackling a specific problem such as that of corruption; they involve decisions and commitments that will affect our children, the next generation and the future of our nations.

I am greatly encouraged that, through you, a large number of nations have already signed this new and important international legal instrument today, and I hope that in the next two days you will further strengthen your resolve and commitment, as I am convinced that together we can put a definitive end to corruption.

The Convention provides our Governments and nations with useful and practical tools with which to achieve our objective, namely to prevent and eradicate an evil that afflicts all nations, affecting relations among citizens, as well as relations between citizens and the authorities.

The Convention brings us to a broad and effective understanding, which involves adopting a multidisciplinary agenda, with rights and obligations for nations and Governments, which Mexico embraces with enthusiasm and a sense of responsibility.

This Convention and the understanding behind it incorporate crucial elements of the fight against corruption, such as preventive measures, criminalization, protection of sovereignty, sanctions and reparations, confiscation and seizure, the liability of legal persons, protection of witnesses and victims, international cooperation in extradition and in the repatriation of property and money, the transfer of funds derived from acts of corruption, the laundering of assets and money, and the exchange of information between Governments and nations.

The elimination of corruption is not impossible. However, it is certainly a difficult task which requires something that is clearly present in this room today: firm political will and a desire shared by our nations to ensure that the resources needed for the development of peoples are not appropriated through crime and corruption, particularly within State institutions. It is a task that also calls for great determination: determination to combat both crime and its causes; perseverance to change harmful practices lodged in a long-standing and deep-rooted inertia; and perseverance to build a new culture of legality

based on trust, transparency, accountability and the certainty that the law is being enforced.

By strengthening the fight against corruption we are also strengthening our efforts to combat poverty, exclusion, inequality and injustice and emphasizing that, both in theory and in practice, the State exists to protect people and ensure that the conditions necessary for their development are in place.

Mexico is a nation that promotes and defends the rule of law both in its internal affairs and in its relations with other peoples.

As a democratic country we are determined to eradicate and prevent the re-emergence of corruption by making adequate and relevant information publicly available in accordance with our new law on transparency and access to information and adopting a new vision of what public service means, based on our new law on professional public service.

With greater and more effective controls over the actions of public servants working in government administration, we are joining in the effort to build a new culture of legality, and will need to take the measures required to implement the Convention we have just signed and to ensure that all the recommendations contained in it are put into practice.

Mexico has worked and is working to meet the Millennium Development Goals of eradicating poverty, promoting health and reducing maternal and child mortality and also to meet other standards and objectives falling within the scope of the Goals. It will continue with those efforts.

We aim to attain the majority of the Goals by 2006 and will meet the remaining ones by 2010, five years in advance of the stipulated deadlines. We will take a similar approach to tackling corruption.

Today in Merida we join this collective effort against corruption in a spirit of great determination and hope. I am certain that, thanks to this new Convention, we will fulfil our objective.

I call upon all States that are Members of the United Nations to sign and adhere to this Convention. We could today set ourselves the aim of achieving the entry into force and universal application of this important instrument by 9 December 2004, which is already drawing near.

I believe this would be the best way of marking International Anti-Corruption Day. With this beautiful place as our setting—the State of Yucatan, in our much-loved Mexico—I would like to thank you for being here.

I wish you great success and all the best in the tasks that lie before you.

Thank you once again for joining us here, and for your commitment to the fight against corruption.

## **Background**

In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I), was desirable; and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention (now the United Nations Office on Drugs and Crime).

The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of a Convention against Corruption, held between 21 January 2002 and 1 October 2003. The Convention as approved by the Ad Hoc Committee was adopted by the General Assembly in its resolution 58/4 of 31 October 2003.

In its resolution 57/169 of 18 December 2002, the General Assembly accepted the offer of the Government of Mexico to host a high-level political conference in Merida for the purpose of signing the United Nations Convention against Corruption; and invited all States to be represented at the Conference at the highest possible levels of government.

To provide an opportunity for delegations to discuss matters related to the Convention, in particular the follow-up activities to ensure its effective implementation, as envisaged by the General Assembly in its resolution 57/169, the Government of Mexico, assisted by the United Nations Office on Drugs and Crime, organized the following side events in conjunction with the Signing Conference:

Panel one: “Preventive Measures against Corruption: the Role of the Private and the Public Sectors”;

Panel two: “The Role of Civil Society and the Media in Building a Culture against Corruption”;

Panel three: “Legislative Measures to Implement the United Nations Convention against Corruption”;

Panel four: “Measures to Fight Corruption in National and International Financial Systems”.

## Summary of discussions

While each of the four panels considered the specific role of the various institutions and sectors active in the fight against corruption, there was overwhelming agreement that only a comprehensive and integrated anti-corruption strategy, targeting the political, social and economic domains, could be successful. No institutions or sector could fight corruption in isolation. Hence, a successful anti-corruption strategy would need to involve all institutions active in the fight against corruption, including supreme audit institutions, public prosecution, the police, the financial oversight institutions, the public administration and the private sector, as well as civil society. National strategies would need to be integrated further at the international level. In that context, the United Nations Convention against Corruption provided a platform on which international cooperation could flourish.

Panellists and speakers from the floor repeatedly emphasized the crucial role of civil society in the fight against corruption, both in its oversight function and as a motor of anti-corruption reforms. Findings included that Governments should strive towards becoming more actively involved with civil society organizations, non-governmental organizations and youth. The role of civil society was particularly important where Governments and the private sector lacked political will and therefore failed to address corruption in an effective manner. It is in such a context that civil society, supported by the media, should also exert pressure on Governments to ensure the speedy ratification of the United Nations Convention against Corruption. Other findings with respect to specific functions that civil society should undertake included the monitoring of political candidates in elections. In particular, speakers identified the importance of monitoring the financial assets of political candidates and public scrutiny to verify government expenditure. Participants also agreed that, in order for civil society organizations to maintain their credibility, they needed to ensure their own compliance with the principles of integrity, transparency and good governance.

The main task of the media in the fight against corruption consisted in identifying and exposing mismanagement and corruption in the public sector, thereby holding governments accountable for their actions. A further consequence of such surveillance by a free, impartial press was that it promoted a culture of intolerance of corruption. By putting into the public domain information that would otherwise have remained secret, it helped raise the expectations of a vigilant and effective civil society that insisted on government accountability.

Furthermore, as the Convention also recognized, special efforts were needed in the area of prevention, targeting the root causes of corruption rather than treating merely its symptoms. A system of effective checks and balances needed to be established, and codes of conduct adopted. The declaration of assets should be made obligatory, particularly for high-level public officials. Participants also recommended paying special attention to those areas of the

public sector that were typically corruption prone, such as the police and the tax and customs authorities. Several speakers supported the creation of an international register of companies found to engage in bribery.

As the Convention was opened for signature, participants debated the legislative measures needed to implement it. The appropriate legislative tools were essential for compliance with the Convention, so transforming its provisions into national law was the first step on the road to implementation. The participants agreed that parliaments should play a crucial, multifaceted role in that process. Not only must they pass the legislation, but they must also monitor its effective implementation. Moreover, parliaments could fulfil specific anti-corruption roles, in particular, in the scrutiny of executive and public expenditure.

The participants agreed about the importance of creating an institutional framework that could ensure implementation of the legislation. That might include independent anti-corruption agencies with a broad mandate. Independent anti-corruption agencies, with comprehensive mandates covering investigation and prosecution, prevention and awareness-raising, had proved effective in several jurisdictions. Those institutions, though independent, should not be isolated, but rather establish a means of maintaining collaboration and coordination with the public sector, the private sector and the public in general. Furthermore, such institutions could act effectively only if given legal powers of investigation.

It was noted that parliamentarians throughout the world had the serious responsibility of getting to know in detail the Convention's contents, in order to understand the implications for their respective national legal systems, and to create and develop laws rapidly and effectively that would give expression to the letter as well as to the spirit of the Convention. That was considered a great challenge, in particular with regard to areas where the provisions of the Convention needed to harmonize with existing regional anti-corruption instruments, such as those dealing with preventive measures and asset recovery.

Participants also acknowledged the key role of the financial system in combating corruption. States had to ensure under the terms of the Convention that they had in place a broad internal regime of regulation and supervision of the banks and financial institutions. That included the use of registries and suspicious transaction reporting systems to enable financial institutions to verify the identity of clients and, when necessary, to take reasonable measures to determine the identity of the final beneficiary of any financial transaction. Such measures were particularly important in the implementation of the provisions of the Convention that dealt with asset recovery—or the return of State assets in large-scale corruption cases, involving official individuals and their associates.

Furthermore, the use of such measures should not be confined to banks and financial institutions. Non-financial sectors, including the legal and

accountancy professions, must also undertake suspicious transaction reporting. In that respect, professional associations played a crucial oversight role in promoting and monitoring their members' compliance. Participants also emphasized that bankers and others should no longer be able to invoke principles associated with banking secrecy in order to block criminal investigations.

It was essential that States engage in swift and effective international cooperation to address transnational crime, including such measures as mutual legal assistance, extradition and exchange of information. Finally, it was concluded that the fight against corruption required, as a minimum, the political will of Governments, a strong and impartial judiciary and the active commitment of civil society.



## **Panel one**

# **Preventive Measures against Corruption: the Role of the Private and Public Sectors**





## **Introduction**

Eduardo Romero

Minister of Public Administration of Mexico

It is an honour for me to moderate this event today, the first of four panels in which we will discuss practices in the public, private and social sectors, and measures that can be taken to improve them; measures that each of our nations must implement to prevent one of the greatest problems of our institutions and of the international community: corruption.

This Conference and its parallel or side events certainly open new horizons for international cooperation on anti-corruption among those who try to support development for their citizens, reduce social inequalities and improve economic competition.

Notwithstanding that each individual Member State of the United Nations may have begun efforts to reduce corruption, lack of transparency, integrity and legality have become global factors.

That is why the world today should promote cooperation between countries and the harmonization of their norms and standards. We have a duty to implement wide-ranging public policies that combat corruption and offer our citizens better opportunities.

Mexico, for instance, has promised to combat corruption, making no concessions within the legal framework. We have supported transparency in public administration; and we have demanded the creation of a better informed and more participatory society that demands the accountability of its Government.

We see in the United Nations Convention against Corruption an open door to strengthen our legal framework and develop better policies.

So far, Mexico has launched a transparency law that allows public access to government information, changing the relationship between citizens and the government. That way, we go from opacity to transparency and expose government actions to public opinion.

We have also introduced the law to create a professional career service, which guarantees public servants a merit based system of entry and career development, based on equality of opportunity, which will strengthen institutions and improve our capacity to meet citizens' needs.

We recognize in the United Nations Convention against Corruption an opportunity to increase and improve the preventive measures that we have undertaken in procurement, information technologies and citizen participation.

In the past, we have looked to forums that would allow us to consolidate such progress, commitments that would strengthen our entire programme against corruption.

Within the regional context, we have participated in the Inter-American Convention against Corruption, organized by the Organization of American States, and we are a party to the Anti-Bribery Convention of the Organization of Economic Cooperation and Development (OECD). Both instruments have complemented the efforts of the Government of Mexico in fighting corruption.

The United Nations Convention will undoubtedly generate positive effects in Mexico and in every country that decides to become a party to it. It will strengthen international cooperation in extradition, mutual legal assistance and anti-money-laundering.

At the same time, the Convention will establish mechanisms to facilitate asset recovery, the return of stolen assets to their country of origin.

Some of the most innovative and attractive aspects of this Convention are precisely the obligations to adopt preventive measures, to promote civil society participation and to formulate, implement or maintain policies against corruption.

But let us hear now the proposals that the members of our panel will present on the following subjects:

- The promotion of active public participation.
- The implementation of coordinated and efficient policies against corruption; and the creation or support of institutions charged with preventing corruption.
- The promotion of ethical values, such as integrity, honesty and transparency, in both the public and private sectors by establishing and observing codes of conduct.
- The involvement of society in government decision-making and the promotion of accountability.
- Access to public information and the simplification of government procedures.
- The establishment of systems for public procurement and administration of public property to increase institutional transparency.
- The removal of public servants' privileges and immunities that can serve as a mechanism for impunity.
- The implementation of transparent systems of recruitment, career development and tenure of public servants based on merit, equity and aptitude.

The goal of this panel is to analyse the nature and scope of such preventive measures and the participation of both public and private sectors in their development and implementation.

## **Measures against corruption: the approach of the European Union**

Roberto Castelli  
Minister of Justice of Italy

I feel honoured to be the first speaker in this important panel, and I would like to thank His Excellency the Secretary of Foreign Affairs of Mexico for his invitation. I would also like to congratulate you on the excellent arrangements and the warm welcome we have received in Merida. Your country has shown a strong commitment during the negotiations of the Convention and now in hosting its signature.

In accordance with the invitation, my presentation will focus on the measures taken and the objectives established by the Council of the European Union.

Article 29 of the Treaty on European Union lists the prevention and combating of corruption as one objective enabling the creation and safeguarding of a European area of freedom, security and justice. The progressive development of the capabilities of the European Union in the justice and home affairs area increases the range of instruments at our disposal.

The European Union is strongly committed to the fight against corruption at both the domestic and international levels, and both in the public and private sectors.

At the domestic level, the fight against corruption in the European Union is being strengthened by improving criminal law and preventive measures, and by establishing new bodies and mechanisms.

I would like to evoke the main legal instruments the European Union has adopted in that field:

- The Treaty of the European Union on the Protection of Financial Interests of the Communities of July 26, 1995 (95/C 316/03) and the two Protocols of 1996 and 1997, thereto.
- The Convention on Corruption Involving Officials of Communities or Officials of Member States of the European Union, adopted on 26 May 1997.
- Council of Europe Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money-laundering, and its amendment of 2001, extending the range of predicate offences of money-laundering to all serious crime, including explicitly corruption.

At the same time, new European Union bodies and mechanisms have been set up to increase police and judicial cooperation between member States, for example, the European Police Office (Europol), whose competence

covers corruption and other serious forms of international crime involving an organized criminal structure. In the area of judicial cooperation between its member States, the European Union has established the European Judicial Network and, more recently, Eurojust, which is competent, inter alia, for corruption crimes affecting the European Communities' financial interests.

On 13 June 2002, the Council of the European Union adopted a Framework Decision on the European Arrest Warrant, in which corruption is included in the list of offences falling within the scope of its application.

At the international level, the European Union has strongly supported the drawing up of the United Nations Convention against Corruption and has closely followed the negotiations in Vienna. The Council of the European Union has adopted three common positions on the basis of Article 34(2) of the Treaty on European Union concerning the following negotiations:

- The first Common Position contains the general principles that the European Union intended to uphold during the negotiations on both law enforcement and preventive measures.
- The second concerns the transfer and repatriation of funds of illicit origin.
- The third relates to definitions and “criminalizations”.

I am particularly grateful for having been asked to participate in this panel, as the European Union attaches particular importance to preventive measures. We welcome the fact that a relevant chapter has been included for the first time in this kind of international instrument and we regard it as an essential means of ensuring balance in the Convention.

Before the opening of the negotiations in Vienna, the Council of the European Union had already adopted a first Common Position concerning those negotiations in which the European Union supported the inclusion of both law enforcement and preventive measures against corruption in the Convention. In that Common Position, the member States of the European Union agreed that, during the negotiation of the Convention, efforts should be made to draw up preventive measures that would be both operational and binding and reflect the key principles of good governance, integrity, transparency and accountability.

Furthermore, in September 2002, the Council adopted a Decision authorizing the European Commission to negotiate, on behalf of the European Communities, certain provisions of the chapter on preventive measures, in particular on public procurement, accounting and auditing, as well as measures to prevent money-laundering. In that context, the Council gave the Commission, inter alia, the following directives:

- Provisions on accounting and auditing should be in accordance with the Community acquis, with respect to the application of International Accounting and Auditing Standards. Regulation 1606/2002 has to be mentioned in that respect.

- The measures to prevent the use of the financial system for the purpose of money-laundering should aim to provide high standards, in accordance with the Community acquis—and notably EC Directive 91/308 on money-laundering—without jeopardizing, directly or indirectly, other international standards and their interpretation, notably those of the Financial Action Task Force on Money Laundering (40 Recommendations and 8 Special Recommendations on terrorist financing), while taking account of the Basel Committee on Banking Supervision. Provisions regarding customer identification and reporting obligations in case of suspicious transactions are of the utmost importance, in that respect.

I wish to emphasize that European Union member States presented one of the first drafts for a chapter on preventive measures with the aim of ensuring that the Convention represented a step forward in relation to existing international instruments. European Union member States have shown a strong negotiating position to succeed in their goal of making the preventive measures in the Convention mandatory. As some of the delegates present here today may remember, the European Union opposed the retention in the Convention of any article that would have made the whole chapter on prevention optional.

The European Union considers that corruption has to be combated in the public and private sectors, in the belief that in both those sectors it poses a threat to a law-abiding society, as well as distorting competition in relation to the purchase of goods or commercial services and impeding sound economic development.

On 22 July 2003, the Council of the European Union adopted a Framework Decision on combating corruption in the private sector. The aim of the Framework Decision is, in particular, to ensure that both active and passive corruption in the private sector are criminal offences in all member States, that legal persons may also be held responsible for such offences, and that those offences incur effective, proportionate and dissuasive penalties.

In the context of preventive measures, a major role is also to be played by civil society, non-governmental organizations, media and financial institutions.

I would like to stress that the European Union has already implemented some of the preventive measures that are foreseen in chapter II of the Convention that we are signing today. Without attempting to be exhaustive, allow me to mention some of the measures the European Union has taken in that field.

As regards the prevention of corruption in the private sector, measures have been taken to enhance transparency in private companies. The European Union has adopted a regulation requiring listed companies, including banks and insurance companies, to prepare their consolidated accounts in accordance with International Accounting Standards from 2005 onwards.

As regards the prevention of corruption in the public sector, I would mention that, in 2000, European Union Ministers in charge of Civil Service and Public Administration adopted the Strasbourg resolution on quality and benchmarking of public services in the European Union. The cornerstone of that resolution is the setting up of a self-assessment framework of total quality management in public services.

Public procurement is one of the areas where preventing corruption is most important. The Communities' legislation is being modified to insert an obligation to exclude any tenderer who has been convicted by definitive judgement for corruption.

Finally, I will focus on the issue of the follow-up to the Convention.

The European Union upholds that the Conference of States Parties should establish a monitoring mechanism for full and rapid implementation of the Convention. That mechanism should ensure an equivalent level of commitment by all parties to the Convention to be effective and offer a degree of flexibility.

The European Union has supported the negotiations in Vienna and will actively support the ratification of the Convention by calling upon current and future European Union member States to sign, ratify and implement it. The European Union will also encourage partner countries to sign the Convention and, in its external relations or when providing assistance to developing countries, when appropriate, will bring up the issue of the implementation of the Convention.

The democratic principles and the rule of law have become key objectives of European Union foreign and development policy. The Partnership Agreement (signed in Cotonou, Benin, in June 2000 between the European Union and 77 African, Caribbean and Pacific countries) explicitly addresses the issues of good governance and corruption. The parties have agreed that, when the community is a significant partner in terms of financial support, serious cases of corruption can give rise to a consultation procedure. If measures to remedy the situation are not taken, the suspension of cooperation can be decided as a measure of last resort.

The Commission's Manual of Instructions on Contracts for works, supplies and services concluded for the purposes of community cooperation, provides for the possibility to suspend or cancel project financing if corrupt practices are discovered.

Euro-Mediterranean agreements have been concluded with Algeria and Lebanon containing new chapters devoted to cooperation in the Justice and Home Affairs area. They include a specific article on the fight against corruption.

The European Commission, in its communication of May 2003 on a comprehensive European Union policy against corruption, has listed "Ten principles for improving the fight against corruption in acceding, candidate and other third countries". One such principle is that those countries should

sign, ratify and implement relevant international anti-corruption instruments (in particular, United Nations instruments).

Now, let me briefly mention some recent legislative developments that took place in my country. In fact, Italy wanted to increasingly enhance the already existing laws on the fight against corruption establishing, by a law of January 2003, the “High Commissioner for the prevention of and the fight against corruption and other forms of unlawful acts within the Civil Service and Public Administration”. That body, with strong powers of supervision and control within the Civil Service and Public Administration, was precisely conceived with *specific prevention purposes*, thus anticipating the point of intervention.

It is a body which is harmoniously placed within the already existing system, which adds new instruments and does not cause any contrasts or duplications in that the High Commissioner has the obligation to inform the Judicial Authority and the State Auditors’ Department (Corte dei Conti) about possible unlawful acts—of a criminal or accounting nature—he may learn about, and he must send, every six months, a report to the Prime Minister who will report to the Speakers (Presidenti delle Camere) of the two Houses.

Allow me to finish this presentation by underlining that the fighting and prevention of corruption is closely linked to establishing the rule of law, consolidating security and building prosperity in our societies. We cannot allow ourselves to be complacent. Corruption will remain one of the gateways of organized crime to subvert the public and private sectors if all of us do not assume our share of responsibility.



## **How Governments can implement the United Nations Convention against Corruption: the experience of Kenya**

Kiraitu Murungi  
Minister of Justice and Constitutional Affairs of Kenya

It is a great honour and privilege for me and my country to be invited to speak on this historic occasion, on a subject that is very close to my heart and which is of great interest to the people and Government of Kenya.

Today is truly a historic day for mankind. Just like that great day in December 1948, when the Members of the United Nations signed the Universal Declaration of Human Rights to address the scourge of war. Fifty years later, we are meeting here today in Merida, Mexico, to provide for a global legal framework to rid the world of the scourge of corruption.

I have been asked, through this panel, to discuss what Governments can and will do to implement the United Nations Convention against Corruption and, specifically, the preventive measures against corruption: the role of the private and the public sectors.

Permit me to share with you and my fellow delegates what we are doing in Kenya to prevent corruption both in the public and private sectors.

Kenya has been one of the most corrupt countries in the world. Year in, year out, the Transparency International Corruption Perception Index has ranked Kenya among those at the bottom of the list. We are now perceived to be the eleventh most corrupt country in the world, up from the third most corrupt a year ago.

We have come here not to deny obvious historical facts. It is true that corruption is endemic in our society. It has taken away medicine from our hospitals; it has taken away books from our schools; it has taken away food from famine stricken families; it has eaten up our roads; it has destroyed our agriculture; it has killed our industries; it has rigged our elections, destroyed our police and acquitted the guilty; and it has robbed, looted and plundered our resources. Corruption has killed and dehumanized our people.

All that is changing. In December 2002, we held a democratic election in which the people of Kenya voted overwhelmingly for a new Government headed by President Mwai Kibaki. Ordinary voters of Kenya believed that a vote for the new Government was a vote against corruption.

The new Government identified corruption to be the principal structural bottleneck to all our development efforts. Corruption is the greatest development challenge of our time. It is the greatest obstacle in our fight against poverty. We have, therefore, declared a ruthless total war against corruption in all its forms and manifestations. That is the only way we can realize our vision of a genuinely free, democratic and prosperous Kenya.

The war is led by the President himself. He has declared that there are no “sacred cows”, and no one will be spared in this out and out war.

To meet such a challenge, the Government has taken the following policy, legal and administrative measures:

1. Immediately upon being sworn in as the third President of the Republic of Kenya on 30 December 2002, President Kibaki declared total war against corruption, thus ushering in a policy of zero tolerance to corruption. For the first time in Kenya’s history, he created a Ministry of Justice and Constitutional Affairs and a Department of Ethics and Governance in the Office of the President to spearhead the fight against corruption.
2. The Cabinet, at its very first meeting, established a Cabinet Committee on anti-corruption, chaired by the Minister for Justice and Constitutional Affairs. The Committee meets every Wednesday to coordinate and review the progress in the fight against corruption.
3. The Government, in dealing with the past, has appointed high-level commissions to investigate mega corruption scandals under the previous regime. They include the Goldenberg Scandal, in which hundreds of billions of Kenya shillings were stolen from the Central Bank of Kenya to finance a fictitious gold export scheme; a Land Commission to deal with grabbed lands and forests and a Pending Bills Committee to deal with fictitious and fraudulent claims made by contractors and suppliers against the Government. The Government is tracing, with a view to recovery, all stolen public funds hidden in secret accounts abroad.
4. The Government is investigating, arresting and prosecuting top public officials, especially in State corporations, who colluded with some private sector leaders to loot and plunder public resources.
5. The Government has effected high-level changes in the departments of criminal investigations and criminal prosecutions to enhance their capacity for effective processing of complaints against corruption.
6. The Government has carried out a historic, far-reaching “radical surgery” of the judiciary, in which 6 out of 11 judges of the Court of Appeal, 17 out of 36 High Court judges and 82 out of 252 magistrates have been suspended on allegations of corruption.
7. The Government has also introduced high-level changes in the civil service and replaced all procurement officers and all the forest officers to destroy the networks of corruption in the public service. A more comprehensive reform of the entire civil service, including pay reform incentives, is currently under way.
8. In April 2003, Parliament passed a new law: the Anti-Corruption and Economic Crimes Act, 2003. That comprehensive piece of legislation expands the definition of corruption and economic crime to cover various forms of abuse of office, conflict of interest, misappropriation, theft and plunder of public resources. It also establishes a powerful

anti-corruption commission with investigative, prevention, public education and asset recovery functions.

9. Parliament has also enacted the Public Officer Ethics Act, 2003, which legislates separate codes of conduct for all public officers, including members of Parliament, the judiciary, civil service, cooperative societies, local government and the public corporation sector. The codes of conduct, which are legally enforceable, prohibit dishonesty, conflict of interest, tribalism and nepotism in the public service. The Act also makes it mandatory for all public officers, from the messenger to the President, to declare their wealth at the end of every financial year. That exercise has just been concluded. Officers who have not complied will be removed from the payroll, in addition to other penalties. That law is intended to inculcate a culture of honesty, hard work and rejection of corruption in the public service.
10. My Ministry is collaborating with the Office of the President, the judiciary, the Ministry of Home Affairs, civil society and development partners, to implement a sector-wide reform of the governance, justice, law and order sector in Kenya, which will improve efficiency and service delivery in our entire criminal justice system, including investigatory, prosecutorial, judicial and corrective services.
11. We have published a Bill for enactment by Parliament to prevent money-laundering. We are setting up a specialized Financial Intelligence Unit and Serious Fraud and Anti-Terrorism Units.
12. The Government is working closely with private sector organizations and professional bodies, such as the Law Society of Kenya and the Chartered Institute of Accountants, to enforce their codes of conduct and to develop new strategies for fighting corruption in the private sector. All contractors, businessmen and professionals who have been involved in corruption will be excluded from supplying goods or services to the Government or State corporations, and they will not be eligible for any public appointments or office.
13. The Government is aware that corruption is a complex moral, social, political and economic problem that transcends the limits of law, crime and punishment. It is fundamentally a question of personal belief, ethics, cultural attitudes and behaviour. To attack the social and cultural roots of corruption, the Government, with the support of the World Bank, Transparency International, religious organizations, the private sector and civil society organizations, launched a massive five-year national campaign against corruption in July 2003. The campaign, which is still at its design stage, is intended to be a massive campaign similar to our national campaign against HIV/AIDS. The massive prevention campaign is intended to bring about a radical transformation of our society and reinforce a culture of stigmatization and rejection of corruption in all its forms. The fight against corruption will involve fundamental changes not only in our system of governance, but also in our own personalities, lifestyles and patterns of behaviour.

14. We are working in partnership with the African Parliamentary Network against Corruption (APNAC) and the Global Organization of Parliamentarians against Corruption (GOPAC). We intend to play a key role in promoting the ratification of the African Union Convention against Corruption.
15. The war against corruption must be seen in its long-term perspective. It will be a permanent struggle. Our efforts in the fight against corruption must be seen as merely a work in progress. The ruthless world of corruption will fight back and make the war difficult to win. In Kenya, ill-gotten proceeds are being used to wage a hostile media campaign against us: dismissing the fight against corruption as a tribal purge, a political vendetta and a witch-hunt. But we are not discouraged. We are condemned to win.
16. President Mwai Kibaki and the Government of the Republic of Kenya unreservedly support the United Nations Convention against Corruption, as it provides us with a new global framework for cooperation and collaboration in the war against corruption.

We look forward to enlarging our circle of friends with you together, side by side, until we eradicate that vice from the face of the earth.

The fight against corruption is urgent. It cannot wait for tomorrow; the time is now. We believe we are doing the right thing at the right time. That is why Kenya has decided to sign and ratify this important Convention today.

# Preventive measures against corruption: the role of the private and public sectors

Clodosbaldo Russián  
Controller General of Venezuela

## Introduction

In recent years, corruption has taken on new forms; and with globalization it has become a serious problem for the international community. Its consequences are well known to all of us: it affects society as a whole; undermines the rule of law; causes people to lose confidence in their own governments and institutions; reduces investment and slows economic growth; and repels foreign investment and diverts public funds against citizens' interests. All of us have suffered its effects.

Corruption is a global phenomenon that has historically had strong roots in every culture in the world. It is the worst threat to the just development of our people because it alters the patterns of social coexistence.

That is why it has been a central theme in several conferences, events and Conventions, which were promoted by supreme audit institutions, with the purpose of designing instruments to combat corruption and to save the resources and properties of the State. Therefore, we thank the representatives of the Government of Mexico and the United Nations, the organizers of this event, for the opportunity to share experiences, identify new problems and challenges, raise awareness, develop new cooperation strategies and discuss the consequences for our actions aimed at preventing and eradicating corruption.

In that sense, if supreme audit institutions are to be effective, it is essential that the system of government authority is balanced and promotes *sound financial management that helps in economic, social and ethical progress*. Governments should also *strengthen the role of supreme audit institutions* in establishing rules and create a legal framework that guarantees independent action and identifies new control practices. Those practices should promote domestic and international collaboration and cooperation to effectively integrate the various actions required in the global fight against corruption.

In conclusion, administrative corruption has become a serious concern to those charged with the responsibility to fight and eradicate it. There have been many proposals to combat corruption, that is, practices which go against the interests of healthy and transparent public management. An action plan that attempts to set control milestones in the fight against corruption and to fortify democracy would need to rest on the following fundamental pillars.

## **Independence of auditing functions**

To fight corruption, we need an auditing mechanism whose pillars should be impartiality and overall autonomy and independence: Such principles, that have also been named the Magna Charta of Supreme Auditing, were enshrined by the Supreme Audit Institutions (Intosai) in the Declaration of Lima on Basic Guidelines for Auditing, adopted by the IX International Congress of Supreme Audit Institutions in Lima in 1977.

In that Declaration, it is established that supreme audit institutions can fulfil their functions effectively only if they are independent of the monitoring institutions and if they are protected against external influences. In the same way, the Declaration provides that supreme audit institutions should enjoy functional and organizational independence, a necessary condition to fulfil their mandate, and that the level of independence must be protected by the Constitution.

It is no surprise that the topic of the independence of supreme audit institutions is a consistent theme in Intosai. However, the Declaration has not been adopted just because we need to attain and retain independence, but also because we need such independence to be provided by law.

In that regard, I would like to recall that in December 1999, the people of Venezuela, for the first time in its history as a republic, passed by direct vote a new Constitution of the Bolivarian Republic of Venezuela. That Constitution was a conceptual and historic break with the country's former complex administrative system, which was an obstacle to rapid and effective policy implementation.

The new Constitution reorganized the powers and the fundamental institutions of the democratic framework. In other words, we have broken with the classic pattern of the modern State and, in addition to the legislature, the judiciary and the executive, we have added the State authority and the electoral power as self-standing branches of government.

The State authority, which is constituted by the Parliamentary Commissioner for Administration, the Crown Prosecution Service and the Auditor-General of the Republic, is monitored by the Republican Moral Council formed by the Ombudsman, the Solicitor-General and the Auditor General.

The new Constitution established the Auditor General of Venezuela as a body of the State authority, which is based on the historic idea of the Moral Power, formulated by the Liberator, Simón Bolívar.

In that reorganization and re-institutionalization of the Republic, the controlling entity of Venezuela changes from being the auxiliary body of the former Congress of the Republic into an instrument for the citizens to exercise their right to control the use of public property. The controlling body has total independence: functional, administrative and organizational autonomy and the power to adopt regulations defining its structure and functions. The universality of the control is established and the extensive participation of the citizens in the election of the Comptroller General of the Republic is asserted.

## **Citizen participation and the promotion of transparency**

Citizen participation is a basis for the fight against corruption. Thanks to that mechanism, society is able to monitor the activities of public entities with regard to the mandates they have been given, including the use of public resources for the purpose of social development.

Among the greatest challenges facing supreme audit institutions is the people's need, indeed their lawful right, to greater scrutiny of the public entities that generate goods and services, which are meant to improve the quality of life, their interest in effective accountability, and efficient actions that reduce and prevent corruption and fraud.

Citizen participation is a process by which citizens are involved in decision-making, supervision, control and execution of government actions affecting public and private businesses, with the purpose of attaining their full potential for the benefit of the environment in which they operate. Citizen participation is the exercise of the citizens' right to participate in and interact with the State. It is understood as a right of people, whether individual or organized, to have an impact on the decision-making processes in every sphere of social life.

Therefore, supreme audit institutions have promoted the disclosure of their management practices on their web sites and the establishment of citizen participation schemes, supported by norms and standards that govern the channels and forms by which society communicates and cooperates with supreme audit institutions, as well as with other relevant organizations active in anti-corruption.

Similarly, they have promoted the development of a philosophy of anti-corruption control, through civil education and by introducing mechanisms to guarantee transparency of public administration. In that way, supreme audit institutions have designed ways to keep citizens informed about their activities and the importance of their decisions.

## **Co-responsibility**

For the fight against corruption, we need a plan of action that creates the *legal platform* providing for transparency in public administration, coordination among bodies of internal and external control, as well as for the participation of the various stakeholders in both the public and private spheres.

The fight against corruption is of a strategic nature and its results will depend on the establishment of a more democratic and productive society, which is politically stable and socially balanced, where citizens have confidence in their institutions. The fight against corruption, however, is not a task exclusively to be dealt with by control bodies. The magnitude and depth of the problem is such that the objectives should include the following:

- Auditing bodies, internal as well as external, working together in the implementation of policies and strategies to fight and prevent corruption.

- A judiciary active in the prevention and punishment of corruption. Without just, appropriate and exemplary sanctions against those involved in corruption, it will be very difficult to eradicate it. An honest and transparent judiciary that penalizes corrupt persons and has the means to provide an appropriate and effective answer is essential. Our aim has to be to eliminate impunity, not only through appropriate sanctions for the corrupt, whether public or private representatives, but also through the recovery of the proceeds of corruption. That will assist in the development of an effective and modern control system that discourages corrupt behaviours.
- Educational, religious and cultural institutions, as well as the media, should be involved in the promotion of values such as transparency and integrity and the reporting of corruption.
- Corruption is a phenomenon that equally concerns the private sector, which is not only often involved in corruption, but also promotes it through bribery. In that context, the financial aspect is of special importance. Bankers must therefore know their clients and the origin of their assets.

Every citizen has to have access to the necessary information in order to be able to evaluate the institutions. Citizen participation in topics that are of public interest constitutes an essential condition for the promotion of transparency. Therefore, citizens must have access to clear and truthful information about the use and administration of the public resources in those areas that are most relevant to them.

All of us, to a greater or lesser extent, share responsibility in the fight against this challenge that affects our societies.

An efficient and modern control system that discourages corrupt acts must be urgently developed. It must be supported by an effective legal and regulatory framework. In the globalized world in which we live, such a system has to interact through cooperation and mutual assistance among national institutions, such as the Court of Justice, the Department of Public Prosecution, supreme audit institutions and other governmental and non-governmental bodies, as well as all international institutions and actors who collect information and experiences that may enrich our policies and strategies against the problem in question, which has been called the “social AIDS”.

The corruption problems that our nations face today cannot be fought by Governments alone. Such problems call for the involvement of the private sector, civil organizations and non-governmental organizations. Until now, such cooperation and coordination have been insufficient. Therefore, all sectors need to join efforts, at the national and international levels, in order to promote:

- A better understanding of the problem, as well as of the institutions that fight it, and enhanced exchange of information.



- Awareness of the gravity of the phenomenon and a better understanding of the existing legal instruments to fight it, this Convention being one of them.
- Mutual technical assistance, better institutional coordination and a solid and internationally focused approach to the problem.
- The establishment of practical measures for the implementation of Member States' strategies in the fight against corruption.
- The development of judicial systems that are honest and transparent and that effectively punish corrupt people;
- Leaders from all spheres of life who are honest, professional and upright and who set an example through their behaviour and provide new role models, new behavioural standards and new ways of social interaction.

### **Proposals**

Measures and proposals that can be used, especially with regard to corruption prevention, include:

- Establishing an international register of enterprises that were involved in corruption.
- Creating an international “alert” register of enterprises operating out of countries qualified as tax havens, in order to facilitate inspections of the ways in which they control and regulate their financial transactions.
- Creating a fund for the promotion of ethical values in the fight against corruption. We have to promote ethical values such as honesty, integrity and truthfulness in the educational and cultural spheres.
- Endorsing multilateral agreements that provide for the repatriation of the proceeds of public and private sector corruption.
- Establishing multilateral extradition agreements applicable to public and private sector corruption.

Finally, corruption is a problem that hurts all peoples of the world, as long as it continues to steal the resources that should be used to fulfil the needs of societies and increase the quality of life. That is why the legislation of Venezuela describes it as the “crime of the offended country”. I would add “of the offended humanity”. For us, it is an act of terrorism. Yes, a social terror leading to poverty, hunger and death.

# **Facing up: how a multinational tackles corruption**

Peter Kidd  
Country Chairman, Shell México

## **Introduction**

I am very glad to be here today to add Shell's voice to the others in international businesses that condemn bribery and corruption. Shell strongly supports the work that the United Nations does to fight that pernicious problem and I am delighted to be speaking at this panel during the signing event for the United Nations Convention against Corruption. Such an event is vital not only for the joint sense of purpose that will always come out of conferences like this, but also for the practical examples and best practice we can share with each other.

My objective today is to give you some idea of the journey that Shell has undertaken over the past few decades as we have tried to stamp out corruption within the Shell Group. I will begin by looking at corruption at a general level and then at the steps Shell took to create an anti-corruption culture. Finally, I will detail some practical steps that we have taken to deal with the problem, which includes examining some real-life dilemmas that Shell employees have faced, which demonstrate just how difficult it can be to tackle that age-old problem: corruption.

## **Background**

Bribery and corruption are endemic across the globe. No matter where you do business, no matter where you live, bribery and corruption are facts of everyday life in many societies. And for Shell, the challenge is even bigger. Not only are the world's major hydrocarbon resources located in some of the most challenging environments, but our operations extend across 145 countries, ranging from developed countries to developing countries. We are employing over 100,000 people in those countries and, day-to-day, they are facing differing circumstances, attitudes and approaches towards the same problem: bribery and corruption.

And so, with such differing attitudes and different norms, is it possible for a company like Shell to have a consistent policy regarding corruption?

In Shell, we have taken the approach that bribery and corruption, no matter what the circumstances, are universally wrong. We are not alone in thinking that: Transparency International describes bribery thus: "A major hindrance to development, a corrosive influence on the fabric of society and a costly business risk for companies." Let me give you just one powerful example of the damage that corruption does: last year, McKinsey asked a selection of international companies what they considered to be the most significant barrier to investment in developing countries. Corruption came first by some distance, with 39 per cent of the vote, followed by other issues such as human rights, environment and labour conditions.

## **The Shell journey**

So how have we tried to tackle that “corrosive influence”? In 1976, Shell first issued the Shell General Business Principles. That was the start of the journey that we have taken over the past few decades to develop a systematic and universal approach to the problems that bribery and corruption pose for a company like Shell. And it is an ongoing journey: we published our latest set of Business Principles in 1997, which provided greater clarity and direction on issues such as political payments and human rights. The Principles are under constant review and Shell takes them very seriously.

The Shell General Business Principles are the cornerstone of Shell’s fight against corruption. They spell out in unambiguous language exactly where Shell stands on business conduct and makes it clear that breaches of those principles by employees will not be accepted.

The section on business integrity in the Shell General Business Principles is particularly robust. Among other things, it states that “The direct or indirect offer, payment, soliciting and acceptance of bribes in any form are unacceptable practices.” Please note that the principle makes no distinction between facilitation payments and bribes—facilitation payment is defined as the making of small payments to low-level officials through an intermediary to ensure a smooth passage through customs or other inconvenient procedures. Our policy is not to make facilitation payments and we seek to ensure that our joint venture partners, agents, contractors and suppliers do not make them either. That is part of our blanket approach to the problem, which ensures that no country feels that it is being singled out for special treatment. As a global company, we have global standards.

## **Assurance**

Regrettably, statements such as those that I have just outlined are still often greeted with some scepticism, and much of corporate responsibility and transparency is regarded by outside critics as box ticking and empty words. So how does Shell ensure that such standards are being lived up to? The main method is through an extensive assurance process: Shell Country Chairs, appointed in each country to be both recognizable figureheads and to be responsible for the reputation and interests of the Shell Group in that country, are required to investigate and report all incidents of bribery and facilitation payments and attempt to stop such practices. Furthermore, they are required to sign a “Country Chair letter” that describes all Business-Principles-related successes and concerns that have occurred throughout the year. That letter is taken to the highest authority within the Group: the Committee of Managing Directors. Lessons from the annual process are fed back to Country Chairs as part of the annual review process. The Country Chair also has a follow-up face to face meeting with one of the Managing Directors to discuss implementation of the Business Principles in that particular country, the related issues and their action plan for the following 12 months.

We also use internal and external audits to look at business practices at all levels of the Group which, among other topics, include bribery and

corruption, conflict of interest, and examining the processes around reporting and any mitigating incidents.

We are in no doubt that transparency starts at the very top. The best way to get rid of corruption is by example. Without the right culture at the top of the company, any practical steps will be a waste of effort.

### **Practical steps**

So how does Shell, at the most basic level, try to deal with and root out corrupt practices? As you will be aware, fine words from senior managers will do little to stamp out the problems. Our approach can be divided up into three methods that we have found useful.

First, we have tried to create an anti-corruption culture within our businesses. The Business Principles are the main tool in that. However, Country Chairs also use a common approach that emphasizes the benefits of a transparent yet firm attitude towards corruption. While the basic principles and policy are fixed, the individual countries are encouraged to develop specific guidelines to reflect local traditions and cultures, for example, in the giving and receiving of gifts. Also, high among their priorities is avoiding the creation of a blame culture: people must not be deterred from admitting mistakes and discussing possible ill-conceived actions and dilemmas that they face in their working environment. On the other hand, it is also important to stand firm on obvious cases in order to give a clear signal that there is no room for staff who allow themselves to be corrupted or use corrupt methods.

Nevertheless, the creation of such an anti-corruption culture is hard to evaluate and, at best, Country Chairs can only estimate how far they have been successful in creating such a culture, which is why there is such a strong need for practical action.

However, we do have some indication of how we are doing: in the Shell People Survey of 2002, an independently conducted poll of Shell employees conducted once every two years, 78 per cent of the 82,000 people who filled in the questionnaire positively agreed with the statement that “Shell acts with integrity in its dealings with the society/community in which we operate.” I feel that that figure is a strong reflection of our progress, especially as it outstrips both the industry average and results from previous employee opinion surveys.

I would suggest that our results in creating an anti-corruption culture have come about not only because of our work within Shell but also partly because of our work externally with international organizations, supporting initiatives such as the OECD Guidelines for Multinational Enterprises, the Transparency International Business Principles for Countering Bribery and the new United Nations Convention on Corruption and by attending and enthusiastically supporting conferences such as this one.

Our second practical step involves a more tangible approach. We make sure that all staff members are aware, through e-mails, booklets and training courses, of company policies on bribery and corruption, which include clear

guidelines on gifts, political contributions, hospitality and potential conflicts of interest. We also have a management primer that spells out exactly what bribery and corruption entail and the various strategies that management can employ to deal with the problem. The primer is available on our external web sites and we are proud that approximately 1,000 copies of the primer are downloaded each month.

The primer goes further than just providing guidelines: it includes a booklet that details case studies and problem-solving exercises that amply demonstrate why bribery and corruption are so much more complex than the hackneyed image of a brown envelope stuffed with money.

Those case studies are based on choices that Shell staff members have had to face in real-life situations. In truth, though, dilemmas arise where it can be almost impossible to make a judgement. Let me give you a couple of examples:

- A Shell manager attends a golf tournament at which Shell is one of the sponsors. During the tournament, a raffle is held in aid of a local charity. To his surprise, the Shell manager wins first prize: a holiday abroad, including first-class travel and luxury accommodation. The prize is non-transferable. Should the Shell manager accept the prize in good faith or decline citing the Business Principles, which, despite their unambiguity, would appear not to cover such a case?
- A Shell employee has been sent abroad to work on a project with a well known supplier of Shell. The project has gone well and at the end of his time in the country, he flies his wife out for a week's holiday at a hotel recommended by the Chief Financial Officer of the business partner. At the end of the holiday, the Shell employee discovers that the local company has paid the bill already. What should the Shell man do?

It is clear, then, that such dilemmas are not usually simple to resolve. However, a company culture that encourages transparency and honesty and that has clear guidelines on acceptable behaviour should be able to help us to deal with such dilemmas. James Wolfensohn, President of the World Bank, once commented, "Corruption is a problem all countries have to face. Solutions, however, can only be home-grown." That is as true for companies as it is for countries: the antidote to corruption lies within.

Shell realized over time that those primers were not enough, so our third, and most important step was to emphasize communication. Changing employment patterns and the increased pace and extent of information exchange mean that organizations can no longer rely on traditional approaches to trust and confidentiality in the workplace. The old system whereby staff might report concerns to senior management is now, by and large, redundant. Companies have been forced to implement practical schemes for staff to report corrupt practices. In the United Kingdom of Great Britain and Northern Ireland, for example, there is the "Speak Out" telephone hotline, run by an

external agency, which urges staff to report breaches of the Shell General Business Principles safely and confidentially.

Nigeria, adjudged by Transparency International as the second most corrupt country in the world and where Shell has huge operations, provides another example. Shell Nigeria runs a similar whistle-blowing scheme. Under assurances of confidentiality, any employee can approach senior management in three ways: in person, on a telephone hotline or to a designated e-mail address. The results have been dramatic and show that companies can make a difference even in countries where corruption is endemic. The figures are worth looking at. The hotline was launched in February 2000. Of 520 submissions, 445 have been fully investigated, of which 53 have resulted in management having to take action. In practical terms, that has resulted—among other things—in 48 staff members leaving the company’s employment. The scheme is now being extended to our customers and general public.

## **Conclusion**

The Shell approach, then, begins at the top: our senior managers lead by example and by creating a clear and unequivocal policy on how to deal with bribery and corruption. Through the creation of an anti-corruption culture and by emphasizing communication with our employees, Shell is taking serious steps to eradicate corruption within the Group. With the Shell General Business Principles as our guide to best practice, we are confident that we are winning the fight. But we are more than aware that we have not succeeded in our quest so far. The journey is ongoing. As a way to report on our successes and failures in that journey, we publish each year in the Shell Report how many bribes Shell people have been offered. According to the latest Shell Report, Shell had acted 101 times in 2002 to prevent facilitation payments and Shell personnel had accepted four bribes. Those are the incidents we know of. How many more incidents are we not aware of? The certainty that the problem can never be fully eradicated means that we can never stop being vigilant; that we must be always proactive in dealing with the issue.

Vigilance and transparency are key—as someone said: “Sunlight is the best disinfectant.” It is clear, then, that none of us can afford to rest on our laurels. We must continue to learn from the examples of others, to share best practice, work in conjunction with legislators and each other and remember that corruption is a never-ending problem. After all, if we do not deal with corruption, we will all suffer. Abraham Lincoln, arguably the greatest United States President, memorably said: “You can fool all of the people some of the time and some of the people all of the time, but you cannot fool all the people all of the time.” The moral is simple: any company or individual that thinks it can ignore corruption will be found out and the consequences are serious.

## **Measures against corruption: the approach of the Republic of Korea**

Nam joo-Lee

Chairman of the Korean Independent Commission against Corruption

I am pleased to see you at this historic event for the signing of the United Nations Convention against Corruption. I find it very meaningful to come to this Panel to speak about anti-corruption strategies and the role of the private sector in the Republic of Korea.

I will briefly outline the current conditions of corruption in the Republic of Korea and then the functions and achievements of the Korean Independent Commission against Corruption (KICAC), a body launched fundamentally to resolve corruption-related problems. Also, I will talk about the role of the private sector in addressing corruption.

I sincerely hope that today's speech will shed light on the anti-corruption efforts of my Government. It is also my hope that our experiences can contribute to the ongoing development of practical anti-corruption measures that may be of value to other countries and regions.

### **Government, private sector and civil society**

There are three sectors: government, private sector and civil society. Among the three, the latter is creating a free-spirited and independent sphere. It has established a new set of rules for reform and presented new values in its interaction with the other two sectors. Various changes, including political, economic and social, have been achieved through that process.

In the past half century, the Republic of Korea has striven to overcome national division and achieve greater economic development, and that effort will continue.

Since the inauguration of participatory government, the role and participation of non-governmental organizations in civil society have become more essential than ever. The anti-corruption sector is no exception to that.

Reality bids us to acknowledge, however, that, despite noble anti-corruption efforts by our civil society, the scourge of corruption persists in the Republic of Korea. How can we account for that? Evidence suggests that corruption awareness and a so-called "self-purification" process in the political and business sectors are not working satisfactorily.

The Republic of Korea is at a crossroads now, moving from the era of authority to the era of democracy. Our nation is undergoing a process of rapid economic growth and modernization and, more often than not, our people have difficulties in keeping up with the external changes in terms of value.

Moreover, at the very time when a greater number of voices in our nation are raised for transparency and integrity, the simple truth is that institutional

reform efforts from the political arena and the Government essentially fail to respond to public calls for change.

As the national economy becomes ever more interwoven into the global economy, I believe that we must follow the international trend. To resolve the issue of corruption is the first assignment.

### **Anti-corruption efforts in the Government**

Given the circumstances, past administrations have exerted various efforts to cope with corruption problems. A series of measures and legislation by past administrations have provided the institutional foundation to prevent corruption.

To cite but a few major pillars of the anti-corruption infrastructure: the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions was enacted in 1999; the Anti-Corruption Act and the Money Laundering Prevention Act were enacted in 2001; KICAC was established in 2002; and the Code of Conduct for Public Offices was established in 2003.

KICAC was established in January 2002, in accordance with the Anti-Corruption Act enacted in 2001. It is the major national anti-corruption authority that is both comprehensive and independent in nature.

The Commission consists of nine Commissioners, including the minister-level Chairman, three of whom are recommended by the National Assembly, three by the Chief Justice of the Supreme Court and three by the President. Each member serves a three-year term and can be reappointed for an additional term. Commissioners cannot be dismissed or removed, which ensures that KICAC members have the independence to perform their duties appropriately. A secretariat with nearly 160 staff members, has been established to perform core functions of the Commission.

I would say our Commission outgrew the past simplistic exposure and punishment of corrupt acts. It is a comprehensive anti-corruption body in the sense that it systematically connects activities, such as handling corruption reports, improving institutions, formulating and assessing policies and carrying out education and promotion.

The presence of an organization exclusively in charge of anti-corruption measures indicates the will of the Government to promote national reforms, with the eradication of corruption as a top priority of the national development agenda.

### **The role of the private sector**

However, the Government's anti-corruption policies and the institutional framework by themselves cannot thoroughly eradicate corruption. Only when there is continued assistance from the private sector, such as monitoring and control by civil society and corporate reforms in governance and ethics, can our policies work effectively.



In the Republic of Korea, the citizens' movement grew spontaneously from the late 1980s. By the 1990s, with the advancement of democracy and local self-government, civic groups experienced rapid growth in terms of both size and quality.

Some of those groups made outstanding achievements. The Citizens' Coalition for Economic Justice, founded in 1989, founded the Real Name Financial Transactions System; People's Solidarity for Participatory Democracy, established in 1994, developed a movement for *chaebol* reform (political reform) and the eradication of injustice and corruption; lastly, in 1999, civic groups gathered together an "anti-corruption movement with people's participation" and inaugurated TI-Korea.

Those civic groups not only drafted various practical policy alternatives to resolve corruption problems in Korean society; they also acted as major players in enacting anti-corruption legislation, the Anti-Corruption Act and the Money Laundering Prevention Act.

Let me move on to our Commission's major initiatives.

### **New anti-corruption initiatives**

#### *Introduction of a system of checks and balances*

It is necessary to build a multi-monitoring system for effective prevention of corruption. Given that political manipulation, nepotism and cronyism still exist in Korean society, anti-corruption efforts should not be exclusively exercised by one particular agency.

For that reason, KICAC has set up an integrated information system that electronically coordinates anti-corruption activities of inspection agencies, such as the Board of Audit and Inspection, the Ministry of Government Administration and Home Affairs, the Public Prosecutors' Office, the Korean National Police Agency, as well as economic regulators, such as the Financial Supervisory Commission and the Korea Fair Trade Commission. Through that innovation, we conduct systematic analyses of their initiatives and activities and try to come up with alternatives and solutions.

#### *Evaluation and monitoring*

KICAC has commenced its evaluation of the level of integrity in each administrative agency and the results were made public. The level of integrity, which indicates experience and awareness of corruption by civil service applicants and public officials, is measured to improve processes in each government agency.

The Code of Conduct for Public Officials was enforced as of May 2003. The Code has drawn from existing codes of conduct and supplemented them to better cope with the current circumstances. It also states specific details to create a new image of public officials.

### *Education and promotion*

We provided anti-corruption education for elementary and secondary school students, who account for 30 per cent of the total national population. I believe the Commission will be able to draft a more sustainable and comprehensive education plan following consultations with relevant educational authorities. Inspection and code of conduct officers at each agency are conducting anti-corruption education for public officials.

For private sector assistance, we are preparing to open the Corporate Ethics Support Center, aimed at increasing transparency of individual companies and the transactions between companies.

### *A system of cooperation*

Civil society groups are the major players in giving greater value to a clean society, monitoring injustice and maintaining political neutrality. Our Commission has formed a public-private joint council to discuss its major policies and gain support from civil society.

We will grow out of a conventional Government-initiated approach and establish a system of cooperation to enable two-way communication. I am confident that we will be able to reap invaluable results out of such efforts.

### **Conclusion**

I have briefly explained the anti-corruption strategies of the Republic of Korea, the main functions of KICAC and the role of the private sector.

I would like to add that extended participation of civil society, with an attitude of constructive criticism and equal footing, will help ensure the efficiency and continuity of measures to prevent corruption.

I would like to ask your continued interest and encouragement in our commitment and practical efforts to eliminate corruption from our social and economic landscape.

## **Investigating grand corruption**

Eva Joly

Special Adviser to the Government of Norway  
for the Fight against Corruption and Money Laundering

It is a great honour for me to be here on this historic day. The Marcos case in the late 1980s first highlighted the problems associated with retrieving assets stolen by corrupt political leaders and returning them to the people from whom they were stolen. During my years as an investigating magistrate, I saw people convicted of economic crimes in France who were able to find refuge in Latin America simply because there were no legal means to prevent their escape. Consequently, I am delighted that today marks the introduction of international measures that can address that kind of problem directly.

Today, I would like to focus on the implications of just one of the provisions of the United Nations Convention against Corruption: article 52, which deals with politically exposed persons—that is, individuals who are or have been entrusted with prominent public functions. That provision, by acknowledging that the financial affairs of politically exposed persons may require special monitoring, makes it more difficult for us to deny responsibility for the corrupt activities of our leaders. We have heard the Minister of Justice of Kenya say today that it is one of the most corrupt countries in the world and that the State coffers have been pillaged of billions of dollars. And we have heard the Minister of Justice of Peru tell us that the Government of former President Alberto Fujimori damaged Peru's opportunities for economic development by looting public assets that have never been completely recovered. In that case, former intelligence chief Vladimiro Montesinos made for his own use thousands of secret video recordings of his meetings with members of every branch of government, opposition party members, business people, journalists, military officials and others. His intention was to preserve evidence of their corruption that he could use to exact their cooperation. However, that evidence also implicated Montesinos himself. In effect, those recordings—which eventually fell into the hands of the authorities and are now publicly available—provide valuable insights into how a corrupt State network functions and how a country can be controlled through corruption.

Corruption is a fact of life that cannot be ignored. The Elf case—in which I was involved as investigating magistrate—showed that countries can be impoverished by their leaders, sometimes in situations where the leaders' actions are not even prohibited by law. The Elf case also demonstrated that corruption can be common business practice. We found that there were three techniques that could be used for enrichment in countries where there is power to be corrupted and oil.

The first of those techniques was the oil company practice of paying extravagant “signature bonuses” for exploration rights and the additional

bonuses that fall due when the companies reach agreed levels of production. Those bonuses have traditionally been regarded as common business practice; they can be seen as a demonstration of the oil companies' commitment to expensive, long-term projects. However, their diversion, with the collusion of the oil companies, to the accounts of individuals rather than the State treasury, is corruption.

The second technique involved the siphoning off of a portion of the purchase price of every barrel of extracted oil, for diversion to offshore bank accounts, slush funds and shell companies managed by individuals employed by Elf. That money was used to make cash bribes to heads of State, oil ministers, finance ministers and their associates in the producing countries, all of whom had their own personal offshore accounts and shell companies. At that time, in the early 1990s, Elf was France's biggest company and controlled by the State. That was not an isolated practice in a single country or region, or by a single company. We discovered that oil companies were offering cash bribes to secure business contracts in Africa, Latin America, Spain, Germany and the Russian Federation.

The third technique is the practice of oil mortgaging, where future oil revenues are mortgaged against immediate oil-backed loans to the Government. A Government can use future oil production as collateral for loans when it is short on foreign exchange reserves or in arrears on debt service payments or in urgent need of ready cash for purchasing weapons. Not in itself illegal, that policy, nevertheless, can and does leech a country's future wealth and, in some cases, compromises its chances of achieving any form of sustainable development. However, we investigated oil mortgaging deals that were not transparent and that were not routed through the Ministry of Finance or the Central Bank, where interest rates were manipulated to produce money that was transferred into slush funds, and where oil company executives and politically exposed persons in the producer countries benefited directly and personally. Those practices were not the exception in many of the countries we investigated but practically the rule.

Article 52 of the United Nations Convention against Corruption establishes special measures to monitor the personal financial affairs of politically exposed persons. If such measures had been implemented in the early 1990s, the Elf case and the pillaging of State resources of Kenya and Peru may not have occurred. The bankers involved would have had the responsibility of applying those rules and of asking all the questions they should have asked but did not. The fight against corruption involves greater transparency and cooperation from the banks in the private sector. History tells us that education and conscience are important but not enough. Effective preventive rules, such as those in article 52, need to be established and implemented in good faith.

Article 52 provides that States parties shall require financial institutions within their jurisdictions to verify the identity of customers; take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted

with prominent public functions and their family members and close associates.

Recommendation 6 of the revised 40 Recommendations of the Financial Action Task Force (FATF) stipulates that, in addition to regular due diligence procedures, financial institutions should have appropriate risk management systems in place to determine whether a customer is a politically exposed person; obtain senior management approval for establishing business relationships with such customers; take reasonable measures to establish the source of wealth and source of funds; and conduct enhanced ongoing monitoring of the business relationship.

Speaking personally, I would go further. In my view, an outright ban on the movement of large sums of money into the accounts of individuals who occupy important public posts or who have occupied such posts would not be a bad idea. Indeed, I would also have no hesitation in applying that ban to the directors of State-owned companies. Nevertheless, I believe that article 52 of the Convention and Recommendation 6 have a great future and will substantially contribute to greater transparency in business.

It is important not to lose sight of the fact that corruption does not simply line the pockets of those with the capacity to acquire illegally State assets for their own enrichment. It can have far more deadly consequences. In a unique agreement between the United Nations and a Member State, the Special Court for Sierra Leone was established to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Court's Chief Prosecutor, David Crane, has established that proceeds from the illegal sales of "blood diamonds" are being used to fund civil war in Sierra Leone. Mr. Crane, who also believes that Al Qaeda uses the diamond trade to fund its international operations, intends to prosecute those who profit from the trade. Conflict diamonds are estimated to account for around 4 per cent of the \$7.8 billion of annual diamond trade.

With regard to the Democratic Republic of the Congo, the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo has recently issued a report that established links between illicit trade and enrichment and the persistence of the civil war that has caused between 2 million and 3 million deaths since 1998.

That is why article 52 of the Convention has to be implemented quickly by all Member States. I believe that is the most important work that lies ahead for our individual countries. We have to identify those who should be monitored and supervised and the information that should be communicated.

The hope is that people currently in a position to loot the State assets of their country can be prevented from doing so in the future with the new provisions established in the new Convention.

## Conclusions

The discussion was extremely fruitful in providing concrete proposals for States parties and the private sector in implementing the provisions of the United Nations Convention against Corruption.

Participants recognized that the fight against corruption, to be successful, required an integrated and long-term strategy involving changes affecting the political, social and economic spheres.

Participants agreed that the struggle against corruption had to focus on *prevention*. Corruption must be stopped at its source. In particular, a system of controls based on checks and balances was proposed to maintain and promote the *efficiency, effectiveness and integrity of public administration*. While efforts of mere self-purification were considered insufficient, several participants mentioned the sanitizing effects of enforceable codes of conduct.

Participants emphasized the importance of *an independent, apolitical and impartial judiciary*, as well as a strong and independent prosecutorial service.

Several participants emphasized the important role of *strong and independent anti-corruption agencies*, with a comprehensive mandate including prosecutions, prevention and raising public awareness.

However, participants also agreed that no institution or sector could effectively conduct its struggle against corruption in isolation. *An integrated system of collaboration* was needed, involving all institutions active in the fight against corruption, including audit functions, public prosecution, police, financial supervisory functions, public administration and private sector supervisory bodies.

Moreover, participants recognized the need for actively involving *the private sector and civil society* as equal partners in the fight against corruption, in particular by promoting transparency in decision-making and access to information, and a two-way system of communication inviting constructive criticism of government.

It was noted that public empowerment must start with youth. Education programmes in secondary schools were mentioned as a useful tool in that regard.

Several speakers pointed out that specific scrutiny needed to be applied to politically exposed persons. The declaration of assets and regular monitoring of the wealth of public officers, in particular in high-ranking positions, was identified as crucial in that context.

Furthermore, the establishment of an international register of companies involved in corruption cases was proposed.

Dealing with widespread corruption under prior regimes was particularly challenging. Often the very same institutions that should be at the forefront of

the fight against corruption, such as the judiciary and law enforcement bodies, needed to be cleaned up first.

In a globalized world, action against corruption required an international approach. Several interventions emphasized the importance of States ratifying and implementing international anti-corruption instruments. In that regard, the United Nations Convention against Corruption, in particular the chapter on asset recovery, was considered to be a major achievement.

## **Panel two**

### **The Role of Civil Society and the Media in Building a Culture against Corruption**





## Introduction

Patricia Olamendi

Deputy Secretary for Global Affairs and Human Rights  
Ministry of Foreign Affairs of Mexico

Corruption is a problem that undermines institutions and can be found in every society. We cannot talk about it in a unilateral way. Many people declare that those who hold power in their hands, that is, government officials, cause it.

But that is a limited conception of the problem; corruption has two aspects. Corruption requires someone who is ready to ask for or to receive and another who is willing to offer or to give a bribe, with the aim of profiting from a decision or perhaps avoiding the fulfilment of a requirement or simply not observing the law.

It is necessary for government and society to recognize the harmful effects of corruption and to acknowledge their responsibility in preventing and combating it.

A transparent government, one that makes available to society the information it has, will produce a society that participates in decision-making and is therefore more *conscious* of the importance of respecting the law and of demanding that its Government strictly observes the law.

In that sense, society plays a crucial role in preventing and fighting corruption. Government and citizens alike have to accept the responsibility for corruption. Only in that way can they make progress in preventing and combating corruption.

That is why the United Nations Convention against Corruption includes an article on the participation of society in every action aiming at the prevention and control of a problem of such magnitude.

The more transparent government is and the greater the accountability to which it submits, the more responsible and participative society will be. Such participation will be promoted by raising awareness about corruption, an idea that is enshrined in the Convention.

This panel plans to discuss in detail the potential role of civil society and the media in promoting an anti-corruption culture. In particular, we would like to talk about the nature and scope of measures that could facilitate such participation. The speakers will share with us their experiences and help us to identify some of the lessons learned that can contribute to the formulation of preventive measures. When the speakers have completed their interventions, we will open the floor for comments and observations by the plenary.

## **The role of civil society and non-governmental organizations in building a culture against corruption**

Peter Eigen  
President of Transparency International

It is almost a festive occasion in Merida, Mexico; the occasion of a wonderful Convention being signed by so many States and by so many important people assembled in this room. Transparency International (TI) welcomes very much the new United Nations Convention against Corruption. We believe it is really a benchmark that will serve as a framework for the work of civil society and Governments alike in their joint efforts to combat corruption. Civil society organizations, working with Governments, have a very important role in making this thoughtful Convention a reality in the future.

The most important point I want to make is that we need to immediately take the initiative for monitoring the implementation of this Convention. I want to offer you the full participation and support of TI for preparing that kind of work, an endeavour that is absolutely necessary to turn such an important Convention into a reality. In order to illustrate what I believe the role of civil society organizations and the media can be in that process, I would like to refer briefly to a moment just seven years ago, when the international community made a major step in changing the legal system for international corruption by gathering together for the signing of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

It is worth recalling that just one or two years before the signing of the OECD Convention in 1997, the World Bank was interested neither in corruption nor in helping its member States to deal with corruption. At that time, both Governments and international institutions had failed to deal with corruption, in particular in the international arena, because a fundamental asymmetry existed between the magnitude of corruption and their capacity to regulate it. There was also an asymmetry because many Governments had jurisdiction over only a small geographical area and operated with a limited time horizon. Likewise, given the constituencies that many Governments had to serve, they were not able to stop a trend that, in recent decades, had made corruption one of the most devastating and all-pervasive ills of global society.

At the time, the World Bank, as a captive of the Governments of its member States, was unable to deal with corruption, which was accepted by practically everybody as a necessary evil of the international marketplace. The private sector had also failed—a private sector that had the global reach that Governments typically lacked, contrary to large multicultural corporations, which conducted transactions all over the world. The private sector was

caught by the prisoner's dilemma, namely, that if they hurt their competitors by bribing and, therefore, if they worked unilaterally to apply higher standards of integrity, they would lose contracts. They would jeopardize their economic existence. Hence an appeal to the ethics and social responsibility of the private sector was futile.

So it was necessary to change the attitudes of both the private sector and Governments. Under the leadership of the International Chamber of Commerce and the United Nations, there was a first attempt to draft an international convention against corruption. What was needed was a third player, a third actor, an actor that was able to bring in credibility, integrity, courage and an international network, to begin to draft the enabling framework for Governments and the private sector to do the right thing, to stop bribing and to fight corruption wherever it showed its ugly face.

It should not surprise you that I am a strong proponent of a powerful role for civil society organizations. When I talk about civil society, I include the media as part of the fight against corruption.

So, what are the strengths of civil society organizations? TI has by now an international network of national chapters in close to 90 countries. In their own wisdom and in their own authority, those national chapters, in coalition with their partners and governments, diagnose the corruption problem in their own society and develop ideas on how to address the weaknesses of their national integrity systems. What is so powerful is the understanding by civil society of the reality of corruption. The challenge is for civil society to make the most out of such strengths in order to become a valid partner.

What does that mean for the new Convention? The Convention is a wonderful step forward. It creates a global framework within which civil society can continue its important work, in particular in the new areas of asset recovery, mutual legal assistance, and the exchange of information and technical assistance to those signatory States that do not have the wherewithal to live up to the requirements of the Convention—those are all positive elements of the Convention. But there are also weaknesses, areas in which further development is necessary—and it is exactly in those areas where civil society organizations can play a very creative, dynamic and powerful role. Principally, they include those areas in which certain important clauses have been left as non-mandatory, for instance, private sector corruption. In addition, the rather strong text on political party financing in the early drafts of the Convention was eliminated in the final text. In general, the whole issue of political corruption is a weakness in the Convention. It is that area where civil society organizations will look over the shoulders of the traditional actors of global governance—meaning governments and their institutions, but also the private sector—to see whether we do not have to go a step further, that we do not have to develop mandatory standards in that area.

One of the most important lacunae in the Convention is the absence of a swift and forceful system for monitoring its implementation. The

implementation process is absolutely necessary. The experience of a number of international conventions in which TI has been deeply involved, such as regional conventions, including those of the Council of Europe or of the Organization of American States (OAS) in the western hemisphere, or the more recent Convention of the African Union, and most importantly the OECD Anti-Bribery Convention. All those instruments have taught us a lot of lessons about the importance of concrete expertise being developed, studies being done and on-the-ground verification taking place to assess whether the signatory States are indeed living up to their obligations.

In that area, I would suggest that TI mobilizes the expertise, mobilizes the participation of those institutions that are willing to help in taking stock of a number of issues that we need to address in preparation of the first meeting of the Conference of the States Parties to the Convention, so the parties to the Convention will hit the deck running when they begin their work.

There are certain topics that should be covered by the interim process, and the civil society organizations attending the Conference will meet afterwards to begin discussing those. The first is the issue of how to assist States in preparing for ratification, including making the necessary changes to their domestic laws. Second, there is the question of providing capacity-building assistance to enable States to carry out effective anti-corruption programmes. Third, there is a need to encourage reasonable consistency among the laws and regulations that will be implemented. Fourth, it is necessary to improve the channels for reporting corruption complaints and, fifth, to continue to raise public awareness. Sixth, it is essential to coordinate the review process of different conventions and avoid duplication. Seventh, it is important that the signatory States secure input from non-governmental groups, such as TI, other civil society organizations and the private sector, to participate in that effort.

That will involve, to a large extent, research to understand more about some of the important issues that are being regulated by the Convention, such as asset recovery, but it will also involve some of the traditional functions of civil society organizations in bringing their credibility and flexibility to follow up, monitor, and evaluate what is happening in many parts of the world. That can help make the provisions of the Convention a reality worldwide. It is in that context that TI, for instance, will give very high priority to the question of political corruption. In fact, the theme of the TI Global Corruption Report 2004, to be published on 25 March 2004, is exactly that—political corruption—for we know that no country in the world has found an ideal solution to the problem of political party financing.

As far as the private sector role in corruption is concerned, TI is deeply involved in helping with the monitoring of the OECD Convention. TI is also working with the private sector on Business Principles for Countering Bribery. TI is talking to groups of people in various sectors to commit them to “integrity pacts”, as we call them, where groups that are normally competing with each other for large projects make a set of pledges against corruption,

which are fortified through an “integrity pact”, including sanctions and blacklisting if a party pays or accepts a bribe. That makes competition more transparent and makes it much riskier to bribe in such a context.

TI will of course continue with awareness-building. It is surprising to see how much impact we have with the publication of the TI Corruption Perceptions Index every year. TI will continue to compare the propensity of companies from various countries to bribe in the international marketplace, as reflected in our Bribe Payers Index, last released in 2002. TI is also commissioning an annual Global Corruption Barometer, which looks at the institutions where corruption is most prevalent at the national level and at the attitudes of the general public towards corruption and its effects.

TI national chapters in the various countries of the world will do everything to follow what their Governments are doing and what their private sectors are doing, to make sure that the aims of the new United Nations Convention will be translated into action. We will give very high priority to that. It will tax TI resources, but we are willing to make the effort because we appreciate deeply the partnership with the United Nations, which has made such a tremendous effort, and where tremendous achievements have been reaped today. We are very much interested in continuing to work with bilateral supporters who may have an interest, in particular, in the early implementation effort we are trying to lead.

There have been many non-governmental organizations that have vastly overstepped their mandates, that are not themselves transparent, where accountability is weak, and where people do not know from where their legitimacy is drawn. TI believes that civil society organizations have to shape up, not only in the fight against corruption but also in other areas of governance. They have to strengthen their own transparency and accountability, and work on their own capacities so that they can make a real, substantive contribution, not only in trying to reflect the views and complaints of grass-roots society but also in interacting at the highest levels with research units, think tanks and international organizations in order to be competent in this very complex field. Civil society organizations have to learn, just as TI has learned in the past, to build coalitions. Smashing McDonald’s windows is not the answer. It is much more important to be armed with good arguments that can have an impact in a forum like the present one. It is a challenge for civil society organizations.

Civil society should seek to be seen as a partner complementing the efforts of other actors in the field of global governance, making sure that the United Nations Convention against Corruption becomes a reality.

## **The role of civil society and the media in building a culture against corruption**

Dileep Nair  
Under-Secretary-General for Internal Oversight Services  
United Nations

The role of civil society and a free and independent media in promoting good governance in any given country cannot be overstated. As Member States are gathered here in Merida to sign the United Nations Convention against Corruption, we know that the challenge of implementing the measures spelled out in the Convention is tremendous. The participation of civil society groups, including the media, in that effort is pivotal to the fight against corruption, and—using the words of the Convention—to enhance transparency and promote the contribution of the public to decision-making at the national as well as at the international levels.

The Convention itself strongly emphasizes the need for States to allow the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise awareness regarding the existence, causes and gravity of and the threat posed by corruption. A free and independent media, of course, can expose corruption and help to provide the public with access to critical information about bodies established to receive reporting of incidents.

Over the years, the United Nations has strengthened its partnership with civil society organizations to reach its goals in the fight against corruption. The United Nations Office on Drugs and Crime, the World Bank and the United Nations Development Programme work tirelessly to boost the efforts of civil society to increase the transparency and accountability of national institutions.

Playing a leading role in anti-corruption obligates civil society organizations everywhere to be credible voices of transparency, integrity and good governance. Civil society organizations should, therefore, adhere to codes of conduct and institute self-regulating mechanisms to ensure their credibility in their endeavours.

The United Nations itself is *championing integrity and good governance* within the Organization through the Secretary-General's reform programme and emphasis on transparency and awareness-raising activities. Integrity is a founding value embedded in the Charter of the United Nations and in the Universal Declaration of Human Rights. Additionally, United Nations staff members recently pointed to integrity as the most important of the three core organizational values, the other two being professionalism and respect for diversity.

In order to protect and reinforce the integrity of United Nations staff members, the Organizational Integrity Initiative was launched in May 2003 by the Office of Internal Oversight Services in collaboration with several other United Nations departments and offices. The goal of the Initiative is to strengthen integrity as a core value by which staff members act and work in harmony with the established guidelines on ethical behaviour.

The first phase of the Initiative was funded by a grant from the Government of Norway. That has enabled the development of a comprehensive programme, consisting of three components.

The first component is *capacity-building*. In order to strengthen capacity among executive and senior staff members, the Executive Programme on Corruption Control and Organizational Integrity was held at the Kennedy School of Government of Harvard University in June 2003. Fifteen senior-level United Nations staff members participated in the programme. Staff members with oversight responsibilities will undertake specified training aimed at strengthening professional ethical behaviour and integrity. In addition, a series of ethics training modules for staff members at all levels is being developed by the Office of Human Resources Management to complement ongoing learning programmes.

The second component is a *needs assessment activity*—taking the form of an Integrity Perception Survey—to gauge staff members' perception of the state of integrity in the Secretariat. The Survey also aims to highlight the perceived gap between established policies and actual staff behaviour. It will serve as a basis to identify and develop system-wide strategies and programmes in response to expressed needs. In addition, the survey will establish a baseline from which to measure the effectiveness of the Initiative's implemented programmes through future surveys.

An independent international consulting firm was contracted to administer the survey in absolute confidentiality to all Secretariat staff members worldwide in late January and early February 2004. Strategies and related programmes will be put in place in order to address areas identified by the survey.

Finally, the third component is an extensive *outreach and communications campaign* conducted in collaboration with the Department of Public Information to raise the awareness of staff members at all levels of the importance of integrity and the goals of the Initiative.

An obvious challenge ahead is to ensure that the Initiative has a sustained impact throughout the Secretariat. The Organization is, therefore, maintaining a collaborative approach to ensure that the reinforcement of organizational integrity is the business of all stakeholders and that lessons are being learned through strategic alliances with other United Nations offices and programmes.



A main goal is to involve staff members at all levels in highlighting the importance of integrity. That is being achieved through a range of publicity tools, such as lectures, printed and electronic materials and other events. The long-term goal is naturally to make sure that integrity has a high profile in the Organization in the years to come. The challenge is to incorporate the concern for integrity permanently in the Secretariat's programme of work.

Like so many other organizations around the world, private and public alike, we are learning and experimenting as we go along, eager to share our experiences with others and determined to strengthen our operations to enable the United Nations to fulfil its unique mandates in the most effective way.

## **The role of civil society and the media in building a culture against corruption: the experience of Spain**

Carlos Castresana  
Anti-Corruption Prosecutor, Spain

First, I would like to thank the Ministry of Foreign Affairs of Mexico and the United Nations Office on Drugs and Crime for the opportunity to be here and speak to you.

I would like to begin by pointing out the importance of the United Nations Convention against Corruption, which has been opened for signing and ratification this week. The adoption of the Convention is an acknowledgement that corruption has become a huge crime problem, and that it is becoming increasingly *transnational*. Therefore, it can only be effectively tackled through international cooperation. The Convention contains several mechanisms for cooperation among States, including the possibilities for collaboration among judiciaries of different States on extradition, on the recovery of stolen State assets, as well as on the eradication of *banking secrecy*, mechanisms of prevention and the participation of civil society and the media in a fight for which each of us is responsible. Thanks to those mechanisms, in the coming years we will achieve better results than the ones achieved until now. Through the Convention, the judiciaries will have at their disposal a valuable array of instruments. Corruption offenders do not respect national borders. Evidence and the proceeds of crime can be scattered around several countries other than the one where the crime occurred. The Convention will build bridges that had previously not existed.

Corruption is often treated as a *disease* when, the truth is, it is merely a symptom of a larger problem. One must identify the causes and consequences of the underlying problems.

There are two causes of corruption. The first one is personal, driven by greed, ambition and a longing for power. That cause was ironically presented by Groucho Marx when he said: "The key to success in business lies in honesty: if you manage to get rid of it, you've done it." We may not eliminate that cause, for it is inherent in human nature. However, we can combat its worst signs, which, if left untreated, can prove extremely harmful to every human society. The second cause is more serious and has larger repercussions, namely, poverty and underdevelopment. That argument has been graphically defined by Bertold Brecht: "Honesty begins with a full stomach." In poverty, we find the vicious cycle of corruption. Underdevelopment causes and establishes the conditions for corruption to grow in societies. The endemic presence of corruption constitutes the biggest threat to the people's development.

Those two causes need to be addressed when trying to prevent and eradicate corruption. Laws and their enforcement must fit the social realities

that we aim to regulate. It is essential to understand that criminal law does not affect public officials and economic operators in prosperous and developed societies the same way that it affects developing countries. They have more to lose and less to gain, while for the latter it is the opposite. A lack of action by Governments and the appearance of impunity constitute an invitation for the proliferation of corrupt practices.

Furthermore, corruption has changed some of its essential characteristics. It has increased as a result of globalization. The progressive eradication of the political, economic, tariff and geographical borders has increased the presence and influence of big business corporations. That has caused, even in democratic societies, a shift of the decision-making centre from the representative institutions to the markets. Of the 100 biggest economies of the world, 51 are enterprises. That demonstrates that some multinationals are more powerful than many countries. It is clear that certain States will not be able to tackle corruption without the assistance of the international community. Globalization resulting from increased liberalization and international transactions has caused the paradox effect of States and enterprises that are being corrupted not only within their borders but also beyond them. The issue is not about eradicating globalization, for it is irreversible, and also has some positive manifestations. The fundamental issue is reconsidering some of the changes implemented and reversing them when we recognize their negative effects.

Free trade has eliminated almost all restrictions for financial transactions, from or to tax havens. Such freedom, while positive in principle, needs to be assessed taking into account its consequences, in particular, the laundering of illicit proceeds, the volume of which is estimated by the World Bank to be 2-5 per cent of the global gross national product. Financial transactions worldwide represent 50 times the volume of goods and services traded.

Corruption and organized crime in developing countries provide financial benefits to the developed world. According to the United States Congress, the five principal banks in the United States of America receive \$500,000 million every year from stolen State funds. Also, according to a United Nations report on the situation in the Democratic Republic of the Congo, enterprises in Europe and North America are benefiting from the illegal exploitation of the natural resources of a war-ridden country. Although those enterprises carry out transactions in violation of Organization for Economic Cooperation and Development norms, there is no evidence that they have been punished by their respective States.

The citizens that make up so-called civil society and their enterprises are most affected by government corruption. That is because taxes collected for the common good are often later used for personal gain. Also, enterprises increase the prices of their products in order to cover what they were forced to pay governments or political parties in the form of bribes.

Action is needed by the courts of justice. However, such action cannot succeed without the proper implementation of article 11 of the recently adopted Convention. Serious efforts need to be made to establish an efficient and independent judiciary. In relation to public prosecutors, in most countries they are responsible for the investigation and the prosecution of corruption. They should therefore enjoy the same level of independence when exercising their functions. Research suggests that some of the most concerning acts of corruption occur within the justice sector. Therefore, it is impossible for institutions to take appropriate action if the officials who are in charge of the investigations depend hierarchically and functionally on those who are the subject of those investigations. In cases where it is not possible to guarantee the functional independence of the public prosecutors, it is essential to establish an alternative mechanism that will enable the victim of the crime or civil society to initiate legal action (private prosecution).

Article 13 of the Convention urges States parties and their citizens to take joint responsibility in combating corruption. A well-organized civil society represents an effective response to the democratic deficit suffered in many countries, where institutions have lost much of their credibility, initiative, critical capacity and control of public activity. Transparency International is the best example of an effective civil society organization that has dedicated its work to combating corruption.

Citizens who are members of non-governmental organizations must play a fundamental role in the fight against corruption. As electors, citizens can impose pressure that can influence government performance and decisions. As consumers, they can decisively demand transparency within enterprises. There has been a general trend that, unless civil society intervenes, governments face the dilemma of having to satisfy the interests of those who finance their electoral campaigns.

To decisively influence government actions, civil societies must rely on what we know as public opinion. Public opinion requires a well-informed civil society. Other fundamental agents that can play an active role in the fight against corruption include the media. The media can be described as one of the tools to eradicate corruption. As stated in the new Convention, it is essential for States parties to guarantee and protect freedom of information. At the same time, legal lacunae, immunities and privileges, a lack of international cooperation and of financial and human resources to handle corruption charges against politically or economically influential people make it impossible for the courts of justice to tackle corruption. In such cases, the media has often taken on the function of an in-kind tribunal, achieving on several occasions remarkable results in the fight against corruption.

The media's contribution to the fight against corruption rests on three fundamental conditions. Firstly, reporting any information should have no limits other than those imposed by the unconditional respect of the truth and those resulting from the professional ethics of the journalists. Secondly, professional secrecy should be guaranteed as the duty of preserving

information sources. Thirdly, journalists should have access to any information of general interest with exceptions being exclusively determined by the law and applying restrictive standards for official secrecy. In the investigation of criminal offences, for example, only the search of a house or wiretapping should be kept secret, for they are confidential by nature and the success of the investigation depends on their secrecy. Taking into account limits set by the presumption of innocence and people's rights to privacy, certain information should be made public through periodic announcements in bulletins.

However, another important aspect related to media and corruption must be addressed: the possibility of corruption of the media. Globalization causes the disappearance of small media. The heroic years of journalism belong to the past. The concentration of economic power in big international multimedia groups is jeopardizing freedom and pluralism of information. A large majority of citizens receive information through television. Public- and private-run television often lacks transparency both with regard to its information sources, its content and with regard to the persons or groups that maintain the economic and/or political control. States should facilitate agreements that secure plurality among television stations and other public media outlets.

The media has also often been used by governments for propaganda purposes and as a tool to withhold certain information from the public. Public media has at times been controlled by politics and is subject to *licensing* procedures or administrative concession. The power obtained in recent years could give it more independence, but usually big media monopolies are also subject to political pressure. The most effective source of power for the media is, however, the knowledge or information that is kept secret, not that which is published. It is, therefore, necessary to emphasize the importance of transparency of the media and its accountability to the public. In recent years, anti-trust laws have been revoked that were designed to prevent the concentration of single shareholders in big media enterprises. That has been a grave error, for abolishing the plurality and freedom of information is against the principles, ideals and foundations of democracy. In a society where influential enterprises or groups condition journalism, corruption develops, hidden in the shadows of human society.

When they are involved in criminal investigations, the same groups of people increasingly use their predominance in the media to defend their procedural acts and distort the truth. Such actions discredit the legal actions carried out against them and undermine the personal and professional credibility of the judges and prosecutors that charge them. Such acts were reported by Giovanni Falcone more than 15 years ago and since then have been used repeatedly. States need to be made aware of that. Securing the independence of the judiciary and the impartiality of the Department of Public Prosecutions requires legislation that protects public officials who fight corruption from unjustified attacks from the accused and the media.

Furthermore, when such attacks have occurred, institutions need to respond in defence of their actions.

A response to the challenges of corruption must build on a close partnership between civil society and the media. Governments must strike a balance between the interests of voters and those who funded their political campaigns. The recently adopted Convention establishes ways in which such interaction can take place and become more decisive. That will enhance overall development and reduce the enormous differences currently found between countries. The current approach needs to be amended and improved, for it is not sustainable and may jeopardize our future. In order for us to take full advantage of the benefits, the new Convention can guide us all towards our common goal.

## **Fighting corruption: the critical role of civil society**

Prashant Bhushan

National Campaign for People's Right to Information, India

No one can doubt that corruption among public servants is one of the most serious problems the world is facing today. That is especially the case in developing countries, where the problem is more severe. Corruption not only leads to leakage of public funds that were originally meant for public services and development, but it also has other negative influences. A former Prime Minister of India estimates that 85 per cent of public funds leak away as a result of corruption. Even the funds that are actually spent on public works and development are often spent on projects that may not serve public interests. Most of those projects have been selected to maximize the possibility and scale of kickbacks. They are usually large centralized projects where money flows to big contractors through a central source. That is one reason why corrupt governments promote huge centralized projects, though they may not be in the best interest of the poor. Large dams and irrigation projects in India are a good example of that. Such projects do not benefit the poor. On the contrary, many people become displaced and homeless as a result of such projects, which often benefit the rich, especially large corporations. Again, a major reason why they are promoted by the government is because of the opportunity they offer for large centralized kickbacks. Inevitably, that leads to the growth of corrupt corporations. Those corporations possess enormous powers. That perpetuates the cycle of corruption and undermines the accountability of institutions. In addition, it leads to increased disempowerment of the poor and undermines democracy.

Illicit funds acquired by corrupt public servants and the power that it earns them further strengthens their position in office. Money gained through illicit means is one of the main factors that guarantees the re-election of politicians.

The seriousness of the problem can be seen in India, where a recent Chief Minister of the State of Punjab has been charged with illicit enrichment. The total volume of the assets exceeded the annual health and education budgets of the state. It has also been estimated that the illegitimate funds of Indians holding accounts abroad in foreign banks are equal to the total gross national product of India.

Corruption can cause a lack of transparency and weak institutions that are not accountable to their people. That leads to further corruption and to the empowerment of corrupt public servants and corrupt corporations. Subsequently, that increases the impoverishment and the disempowerment of the poor and marginalized. The main causes responsible for the growth and institutionalization of corruption are a culture of secrecy combined with a lack of transparency and weak institutions, including the criminal investigative

agencies and a judiciary that lacks accountability. Often the legal regime that combats corruption is weak. However, in most cases, including in India, the legal regime has been weakened by corrupt institutions.

India has a strong and comprehensive anti-corruption law, however, very few of the innumerable corrupt public servants are caught and brought to justice. That is partly because there exists a culture of secrecy, which stems from not having an adequate law to provide for the right to information and the persistence of the colonial Official Secrets Act. That Act makes it an offence for public officials to disclose any information that they have acquired in their official capacity, quite the opposite of a whistle-blower protection act. Such acts make it difficult to detect corruption. Equally important, deep-rooted and pervasive corruption has also afflicted law enforcement agencies and their judiciary. That makes it easier for the corrupt to avoid accountability and punishment, whenever they should be charged.

An effective right-to-information campaign by civil society has seen the enactment of transparency laws by many states and by the National Parliament. However, in most cases, those laws are not strong enough and invariably deny access to official files and correspondence of public officials. Moreover, implementation of those laws is still poor, particularly in certain regions of the country where a strong and organized civil society is not present. There have also been attempts to reform and strengthen the institutions of accountability. Thus, recently, as a result of the intervention of the Supreme Court, the main agency that investigates corruption has been freed from the direct control of the Government and placed under the supervision of an independent statutory Vigilance Commission. Corruption has seeped into the judiciary, which is largely non-functional because of an overload of work. Though the problem with the judiciary is universally acknowledged, there is no organized civil society movement that pushes for judicial reforms. Those who hold powerful positions are largely corrupt and recognize that a non-functional and corrupt judiciary will allow them to escape punishment even when they get caught. Furthermore, the problem is the opacity of some international financial centres, in particular those located in tax havens, which provide easy and safe methods to obtain and retain illicit wealth.

### **Solutions and the role of civil society**

Solutions to the problem and the critical role that civil society plays in implementing those solutions have emerged from the above analysis. It is clear from the experience of the National Campaign for People's Right to Information (NCPRI) that transparency in all aspects of government functions is by far the most important measure to deter corruption, particularly when combined with an organized and vigilant civil society. If people were made aware of the official transactions taking place, it would be increasingly difficult for corruption to remain undetected. The Jan Sunvais public hearings



conducted by NCPRI, for example, illustrate that public exposure forces the accountability of corrupt officials.

To give a clearer picture of the problem today, it would be useful to illustrate how the previous public hearings were used to expose corruption in India. A detailed history of the right-to-information campaign in India is available for those who are interested. Public hearings have been used to expose corruption in the implementation of various development works in local villages such as Panchayats and its municipal district. Prior to such hearings, NCPRI volunteers collected official records and documents (mainly accounts and details of work done) relating to development projects on roads, housing for the poor, employment generation schemes and minor water projects. The volunteers (who reviewed whether the work illustrated by official records had indeed been conducted on the ground and whether all people involved were paid their wages) examined those records. In most cases, the information listed on the official records did not match the information gathered on the ground. A public hearing was held after there was a considerable amount of publicity in the local area. All the residents, concerned government officials and supervisors were invited to attend the hearing. Some well-known public officials and journalists were also asked to act as witnesses at those hearings.

At the hearings, the salient features of the official record were publicly read out and residents who, from their personal experience, could challenge the records were asked to speak. They pointed out the reasons why they believed the records to be false. They stated that, while they were the persons shown in the records as having received wages, they had not received them or had received substantially less than what was shown on the records. They further claimed that the information on the records, according to which hand pumps had been installed under the project, was false. The officials concerned were then invited to explain the allegations. Most officials who attended the hearings attempted to offer some explanation. The explanations were immediately shown to be bogus by local people who were present. The hearings exposed corruption at the local level to the public. Subsequently, they led to immediate action being taken against the officials and, in some cases, to the return of the funds. The hearings raised enormous interest, particularly among the poor and members of the marginal segments of society who previously had felt helpless and powerless to fight corrupt officials. The public exposure of such officials was empowering. The hearings also demonstrated that the power of information could expose corruption and bring about increased accountability.

While public hearings have become a useful instrument for exposing and dealing with corruption at the grass-roots level, they are not in a position to address corruption on a larger scale, such as in complex contracts negotiated by high-level government officials. To expose such high-level corruption, we need motivated civil society organizations and independent experts who are familiar with the structure of those sectors and with finances. The Centre for

Public Integrity in the United States of America has tried to use the Freedom of Information Act to gain access to basic information regarding such contracts, for example, the Iraq reconstruction contracts. However, one needs more detailed information that can be used for prosecution evidence. Unfortunately, most freedom of information acts, including the recent law in India, do not allow access to such information. Even a limited informed scrutiny by independent experts could be useful in exposing corruption in such contracts.

The success of the public hearings led to the intensification of the right-to-information campaign, which eventually led to right-to-information laws being enacted in about ten states and in the Parliament of India. It has also led to a demand for the right to gain access to information about criminal antecedents and the assets of candidates contesting in elections. Public interest petitions to secure rights were filed by various civil society organizations in the Supreme Court. The Supreme Court accepted those petitions for hearing and ruled that such disclosure of information was a fundamental right of citizens and necessary to enforce democracy. For the first time, in the recently held elections in five states, candidates were obliged to disclose on oath their criminal antecedents and their assets and liabilities. It was discovered that even the requirement of such disclosure deterred several candidates with criminal records and unexplained assets from contesting in those elections. Various civil society groups, including NCPRI and Transparency International, helped in summarizing that information and placing the findings in the public domain. An actively participating civil society will be able to expose those candidates who have made false statements and obtained illegal funds as a result of corruption. A vigilant civil society that monitors and tracks the actions of elected representatives, particularly bearing in mind what they had promised during their campaigns, will insist that all candidates become more accountable to the public in future elections. Such vigilance would undoubtedly be an enormous incentive for candidates to retain their integrity.

Today, technological progress has made it viable to videotape all public offices during working hours and maintain those records for public access and information. While it would not eliminate corruption, such transparency would certainly close many avenues for corruption. For example, one serious problem is the continued refusal of the police to register criminal complaints unless their palms are “greased”. That would not be possible if there was, at the police station, an accessible video record showing the interactions between the police and the complainant. Other government offices involved in dealing with the public, such as the Income Tax Office, the Municipal Corporation Office and the Electricity Office, could also use such a system. Though public servants may object to such a measure, there is no legitimate reason why a lack of transparency should prevail when it comes to monitoring how public officials conduct their official duties.

Apart from creating and implementing strong and comprehensive legislations to ensure transparency and the right to information, the legal

framework must also include laws that ensure the protection of whistle-blowers whose primary function is to expose corruption. That must include protection from victimization by the government and security against possible violence. India is beginning to see the spectre of violence unleashed against whistle-blowers. Furthermore, banking secrecy in many countries makes it difficult for law enforcement officers to establish a society free from corruption. Such banking secrecy must be abolished if corruption is to be effectively tackled. After the terrorist attacks of 11 September 2001, there has been growing awareness even among affluent countries that banking systems allow terrorists and other criminals to conceal their funds and transfer them without detection. We welcome the provision for mutual assistance in criminal matters proposed by the United Nations Convention against Corruption. However, we hold the view that more work needs to be done. India has witnessed and experienced the slow process involved, in particular with the banking secrecy policy of some countries, when gathering required information for the investigation of criminal offences. International civil society must come together to put pressure on nations that allow financial secrecy regulations.

Countries where corruption flourishes also have weak and corrupt judiciaries. States that are serious about tackling corruption must urgently launch judicial reforms and ensure that the criminal justice system works properly. In India, ensuring the effective functioning of the criminal justice system and judicial reform are major problems. That is because of the fact that judges of the higher bench are completely unaccountable. Judges of the Supreme Court and High Courts cannot be removed from office except through impeachment, which has proved to be completely impractical. One cannot even investigate a judge for a criminal offence without the prior permission of the Chief Justice of India. Furthermore, anyone who makes an allegation against a judge, even when justified, can be punished for contempt of court. It is only a strong civil society movement that can catalyse such reforms.

To the credit of the judiciary in India, much-needed reforms have been pushed by the tool of Public Interest Litigation (private prosecution). In some cases, that tool has also been used to good effect by civil society.

In summary, it may be concluded that a corruption free society must have:

- Strong and adequate laws, such as anti-corruption acts, right to information laws and laws to protect whistle-blowers.
- Strong, independent and properly functioning institutions to enforce accountability, such as investigative agencies, vigilance commissions and the judiciary.
- An organized and vigilant civil society that monitors the conduct of public officials and exposes corruption. Until such time that adequate laws and institutions exist, it is civil society that must

hold government accountable through public campaigns. Ultimately, it is only a powerful civil society movement that can break the vicious cycle of corruption in any society.

## **The role of civil society and the media in building a culture against corruption: the experience of Panama**

José Antonio Sossa  
Attorney General of Panama

Corruption is a serious threat of alarming proportions. To combat corruption, a society must work with every governmental and civil institution.

The media has a critical role in the development and qualitative strengthening of society. Today's society has changed dramatically since the beginning of the twentieth century, thanks to better communications and technological development. As Harold Laswell said, the work of the media—informing, guiding, educating and entertaining—has put the planet in our hands.

Nevertheless, such progress has also created a certain distance between the individual and the reality of the world in which he or she lives. In that space, the media reigns supreme, supported by the principle of freedom of speech. In that space, perceptions are formed, and the way society views certain facts or situations is influenced by all aspects of the media. In my opinion, the media can help significantly in the fight against corruption.

In the Universal Declaration of Human Rights, freedom of speech is explained in Article 19:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The media has a responsibility to use that freedom wisely and responsibly. Freedom of speech can be, and is, abused. Misuse can be identified in situations where different media outlets report radically different versions of the same situation. The worst misuse is when not one of them reproduces the truth.

It is also distressing that, in some countries, the communication media often irresponsibly sits in judgement on people and situations, without due regard to the facts or the evidence. Through carelessness or malice or in the prosecution of its own political agenda, the media can damage the dignity and reputation of individuals who do not have access to a public forum to defend themselves. Often, the law provides no means for such individuals to defend themselves. Instead of upholding the highest standards, the media can at times turn into a source of relentless slander and insult.

In “Letter to a young journalist”, Juan Luis Cebrian appropriately writes:

“To speak is the privilege of every free citizen; it does not belong to a social or professional caste constituted by journalists who have a card or

a diploma. Freedom of speech does not belong to us, but to our readers. And we have to be able to use it with good sense, without rudeness, and without fear.”

The *Latin-barometer* recently published a public opinion survey from Latin America showing that the credibility of the media had fallen from 50 per cent in 1998 to 36 per cent in 2003.

The survey also showed that in the media and in civil society, transparency is seen as a mechanism for fighting corruption. An important part of the media’s role is to join those who promote transparency as a means of eradicating the culture of secrecy in which corruption can thrive.

Limitations on freedom of speech must be regarded with great suspicion. Such limitations restrict not only what journalists can say, but also what society has the right to know. Moreover, the media has played principal roles in the democratization of our countries. It has defended freedom of speech, which has been a potent weapon in the battle against non-democratic forms of administration.

Corruption is an enormous enemy that requires the coordinated action of all democratic powers, in order to ensure a fairer and more stable society. The media is one of those powers, and the only way for it to guarantee its credibility and authority is to maintain the highest standards of professionalism.

In the fight to promote a culture against corruption, the media and the truth that it publishes must be unconditional allies in the defence of the rule of law, allies in the State’s fight against crime.

In Panama, we have just proposed a ground-breaking joint initiative with journalists and media owners to monitor and evaluate cases of slander or breaches of professional ethical values. We are acutely aware of the consequences of abuse of freedom of speech. We also understand the need for self-regulation to prevent cases from reaching court. If they do reach court in the future, it may actually be a consequence of the media and journalists taking responsibility for their own action, thus promoting transparency.

We are convinced defenders of freedom of speech as an important democratic institution, of transparency as a means of fighting corruption and of sanctions against those who harm society through their corrupt action. Societies must insist on strengthening their democratic institutions and must defend any action that leads to the eradication of corrupt behaviour.

## **Conclusions**

Both States and the private sector are responsible for preventing, fighting and eradicating corruption.

### **Public administration**

Institutions that are vulnerable to corruption, including law enforcement, tax collection offices and other public service institutions, should be subject to greater supervision.

### **Civil society**

The participation of civil society, including non-governmental organizations and the media, is fundamental to fighting and preventing corruption.

Pressure from civil society has forced governments to adopt and implement important reforms that combat corruption.

Public hearings to monitor government spending are vital in ensuring that resources have been used for the projects for which they were originally created.

Civil society organizations should adopt ethical codes and should be willing to undertake rigorous self-regulation in order to promote transparency, integrity and good governance.

Civil society should play an important role in areas where governments, the private sector and intergovernmental bodies have failed in effectively fighting corruption.

### **Communication media**

Civil society needs access to information in order to demand accountability from government. It is also vital that civil society organize itself, in order to increase its capacity to demand access to governmental information and constantly to scrutinize public functions and administration.

A free and independent press raises public awareness of the harmful effects of corruption and equips citizens with information about reporting bodies.

There is a need for anti-corruption campaigns to promote the adoption of uniform, ethical codes.

Civil society and the communication media should play an important role in monitoring and implementing the United Nations Convention against Corruption.

Civil society and the media must play a leading role in countries where the political will to combat corruption is lacking. However, non-governmental

organizations must face the challenge of maintaining their own legitimacy and transparency.

The media must play an important role in reporting corruption cases and raising awareness about anti-corruption policies, as well as providing information that can prevent and combat corruption.

A transparent civil society should be able to monitor the actions and the wealth of the candidates who seek high public office.

It is vital that the profession of journalism and the work of journalists be respected, including the right not to reveal information sources.

Without prejudice to the principle of freedom of speech, the media has a serious responsibility to ensure the integrity of the information they handle.

The media should be transparent in its handling of information and should never act as a political instrument.





**Panel three**

**Legislative Measures to Implement the  
United Nations Convention  
against Corruption**



## The legislative approach to fighting corruption

Lord Russell Johnston  
Former President, Parliamentary Assembly of the Council of Europe

In such conferences, dealing with a wide and complex set of problems, there is always the danger of detail overwhelming major propositions so that, in the old popular saying, “the wood cannot be seen for the trees”.

Since corruption is essentially an evasion of legislation, I could just say that it is not the law that counts so much as the way it is determined by the efficacy of the administrative and judicial structures through which it operates and the political and economic culture of the country in which it is applied. And when a country is deeply mired in corruption—when bribery is an accepted part of everyday living, a necessary part of the income of police and officials—extrication is hugely difficult.

On the plane coming over, in one of those popular United States political weeklies, I read a short interview with Mikhail Saakashvili, who led the so-called “Rose Revolution” in Georgia. I quote from him:

“We need to root out corruption and do this step by step. But we have a limited amount of time. We need first to create elite investigation units—small, well-paid, very well-selected people with help from the FBI and other enforcement agencies to investigate corruption. We cannot do anything economically if we cannot combat corruption. But to combat corruption the government should be strong, with enough revenue to sustain armed forces, police, security apparatus, courts. So it’s like a Catch-22 situation—What first?”

I knew Mikhail in the Parliamentary Assembly of the Council of Europe and later during his brief period as Minister of Justice of Georgia. I wish him well; he has a huge mountain to climb. I quote him not only because that is a current situation, but to stress that it is a problem many underdeveloped countries have and one that is often made worse, not better, by the actions of developed countries: the Elf trial in France is but one example. In the United Kingdom of Great Britain and Northern Ireland, investigations are under way into vast sums allegedly set aside for bribery to obtain a defence contract in Saudi Arabia. In Germany, if I am not mistaken, bribery is not against the law.

I want to do two things. First, I want to respond to the theme of our session by listing areas where legislative action is needed; and second, I want, in concluding, to focus on one controversial proposition addressed at the Conference of Speakers and Presidents of the European Parliamentary Assemblies, held in Strasbourg, France, in May 2000. As the then President of the Council of Europe’s Parliamentary Assembly, I chaired that conference—and Mexico participated which, I suppose, is why I am here. It is possible to make a very long list, so I will confine myself to three areas:

- Public expenditure and public procurement are first on my list. Where there is competitive tendering for public works, there always exists the risk of bribery: indeed, in many countries, it is regarded as normal to pay a certain percentage to obtain a contract. Often the size of the percentage is more significant than the acceptability of the tender! Independent auditing of all public expenditure is essential. And one must always remember that auditors can also be corrupted, as Enron showed in the United States. Freedom of Information Acts are relevant in that connection.
- Money-laundering is a huge problem. According to the International Monetary Fund, the amount of “dirty money” in circulation is now close to 5 per cent of the world’s gross domestic product (GDP). It is facilitated by the liberalization of capital flows but, with the cooperation of the banks and with the introduction of legislation that allows the seizure of unexplained wealth, it can be countered.

However, we must be quite clear about what we face. The main motivator behind the Strasbourg Conference on Corruption was Luciano Violante, then President of the Italian Chamber of Deputies. He has an impeccable record of crusading against corruption. I would like to quote one small part of his evidence because it is particularly chilling:

“In 1993, when I was the Chairman of the Parliamentary Anti-Mafia Committee, I asked a State witness for information on the investments and money-laundering techniques used by his organization.

“He replied, ‘If you have some money to invest, what do you do?’

“I answered, ‘I would ask an expert for advice.’

“To which he replied, ‘And so do we. If investment proves sound what do you do?’

“‘I go back to that same expert,’ was my reply.

“‘Exactly like us. And if it turns out to be a bad investment, what do you do?’

“‘I look for another expert, and go to someone else.’

“‘So do we. Except that we first kill the previous expert and make sure the second one knows what we’ve done. That’s the difference between you and us.’”

But the really clever ones do not murder. Murder may remove an obstacle but it makes a lot of noise. Corruption is silent and wins an accomplice.

- The probity of public institutions, especially and centrally, the parliament and the judiciary. Corruption flourishes where State institutions are weak, where loopholes in governmental policies on

regulatory regimes provide scope for it. I mention incidentally, but it is important, that some corruption emerges directly as a result of the excessive complexity of laws, regulations, permits and administrative procedures. Those must be made as clear and simple as possible and transparent. There ought to be strict rules of conduct for parliamentarians and likewise strict rules for the financing of political parties. In my view, there are a number of countries that have big problems here, as we can witness almost openly the link between financial donors and political parties. Lastly, the law has the difficult but essential task of protecting a free and investigative press, but preventing it from using its power to exploit privacy or partially to advance a political programme.

All this would require a profound change of attitude, but I feel that the present approach is getting nowhere. And it would require coordination of legislative change. As Luciano Violante said to us, “the fact that crime has become globalized requires that in response the rule of law must be globalized.”

## **Strengthening commitment and creating capacity via the African Parliamentarians Network against Corruption**

Augustine Ruzindana  
Member of Parliament, Head of Parliamentarians against Corruption,  
Uganda

On 5 February 1999, Members of Parliament from 10 African countries, attending a seminar in Kampala on Parliament and Good Governance: Towards a New Agenda for Controlling Corruption in Africa, issued the following statement:

“Corruption poses a grave danger to the well-being of African peoples and to the development of their countries. Corruption diverts scarce resources from basic human needs and destroys confidence in the integrity of our institutions.

“Corruption can best be controlled by strengthening systems of accountability, transparency and public participation in the governance processes of our countries. It is essential that we develop healthy, balanced relations between the state, civil society and the marketplace and that parliaments be strengthened as effective institutions of accountability in overseeing the policies and actions of governments.

“We are confident that progress can be made in bringing corruption under control. Though corruption remains a very serious problem in many African countries, there is also growing evidence of progress being made. We believe it is possible to apply the lessons learned and best practices of past anti-corruption campaigns to fight corruption across Africa.

“Our participation in this week-long seminar has revealed the great value of African parliamentarians coming together to share information, experiences and lessons learned in strengthening parliament in the fight against corruption. It is imperative that we build upon this experience by maintaining contact with each other and by reaching out to parliamentarians and parliamentary organizations throughout Africa.

“Accordingly, we hereby establish the African Parliamentarians Network against Corruption (APNAC) to strengthen the commitment and capacity of African parliamentarians to fight corruption by:

- Building the commitment and capacity of African parliaments to exercise accountability, with particular reference to financial matters;
- Sharing information on lessons learned and best practices;
- Undertaking projects to control corruption;

- Cooperating with organizations in civil society with shared objectives.”

Since its formation, APNAC has organized workshops and seminars and participated in conferences, workshops and seminars organized by other anti-corruption organizations. APNAC’s latest activity was a conference held in Nairobi from 3 to 4 November 2003. Among the topics discussed was the African Unity Convention on Preventing and Combating Corruption and Related Offences. I was re-elected Chairman with an executive committee of eight members.

With the Global Organization of Parliamentarians against Corruption (GOPAC), the International Monetary Fund and the World Bank, a workshop on anti-money-laundering and combating the financing of terrorism was organized on 5 November 2003 for the Eastern African Members of Parliament who had attended the APNAC conference.

At the conference in Nairobi, APNAC announced the creation of an annual award to an African who had made an exceptional, recognizable contribution to the fight against corruption. The first recipient of that award was President Mwai Kibaki of Kenya, in recognition of the measures his Government had taken in cleaning up the judiciary and also for having taken on grand corruption by seizing the assets and companies of the people under investigation for perpetrating a huge financial scam in Kenya. With the adoption of the United Nations Convention against Corruption, compliance with the provisions of the Convention will be one of the criteria for eligibility for consideration for the award.

The next major activity of APNAC is a conference in Nigeria in 2004 for parliamentarians from the West African countries. At that conference, the United Nations Convention against Corruption will be discussed together with the African Unity anti-corruption convention.

Last year, APNAC participated in the formation of GOPAC and became the regional chapter of GOPAC, which has similar objectives to APNAC. GOPAC is spearheading the formation of other parliamentary networks in Latin America, Eastern Europe and Asia. It is clear, therefore, that parliaments already have a ready-made infrastructure within them, which can be used to implement and create awareness for the United Nations Convention against Corruption. In addition, the Convention envisages the adoption of legislative and other measures required to establish as offences the acts mentioned in the Convention. APNAC has already dedicated itself to facilitate that in the case of the African Unity convention and will now do the same for the United Nations Convention.

### **United Nations Convention against Corruption**

The adoption of the United Nations Convention against Corruption is a significant landmark, as it presents a universal standard to anti-corruption activists against which the record of countries can be measured. Anti-



corruption activists often get treated by governments as being the equivalent of political subversives. With that Convention, anyone involved in anti-corruption activities will be equated to democracy, human rights or environmental activists, even if those too often incur the wrath of their governments.

With regard to parliaments, the United Nations Convention urges States Parties to develop, maintain and implement anti-corruption policies and to establish practices aimed at the prevention of corruption. In some countries, the ratification process includes approval by their parliaments. All that cannot be accomplished without the participation of the legislature of each country.

National legislatures have to pass laws or strengthen existing laws and institutions in the following areas:

- Establishing as criminal offences corruption, money-laundering, embezzlement, illicit enrichment, abuse of office etc.
- Establishing or strengthening anti-corruption institutions and the audit bodies
- Protecting informants, whistle-blowers, prosecutors, corruption investigators and judicial officers hearing corruption cases
- Preventing the use of proceeds of corruption to finance political parties, campaigns and elections
- Gaining access to information
- Confiscation and seizing proceeds of corruption
- Creating bodies to monitor and enforce compliance with codes of conduct of public officials

Although fighting corruption is an executive responsibility, parliaments in their oversight role are better able to create an enabling environment to fight corruption in cooperation with civil society and the media.

Parliaments can also popularize the Convention with the participation of civil society and the media. That is because, in their role, Members of Parliament must interact with civil society and their constituents. In addition, parliaments conduct their normal business in the presence of the media and the public. Such parliamentary practices have the effect of increasing public awareness.

In conclusion, I would like to say that the implementation of the Convention can only succeed if parliaments are fully engaged as partners. The United Nations system generally deals with governments, that is, the executive. However, if the United Nations continues with such a practice, then the implementation of the Convention will end at the level of ratification and accession. Parliaments must be engaged to put in place appropriate anti-corruption and good governance legislation.

That, together with the enforcement of compliance through the oversight role of parliament are crucial for the successful implementation of the Convention.

It, therefore, means that the training, technical assistance and other capacity-building mechanisms envisaged in the Convention must include parliaments as well. It is already a serious omission that parliaments were not involved in the evolution and formulation of the Convention. It will, however, be a more serious error if parliaments do not become participants in the implementation of the Convention. Without parliaments having some feeling of ownership of the Convention, the passing of the laws required by the Convention may prove more difficult, and monitoring compliance and implementation may become just a routine public relations exercise.

We in APNAC undertake to popularize the Convention and also to prevail on our national chapters to facilitate the passing of the necessary legislation required by the Convention. That, however, cannot be a one-sided affair: we invite the United Nations to be a partner with us either directly or through GOPAC.

## **How the International Bar Association can assist in the promotion and implementation of the United Nations Convention against Corruption**

Fernando Pombo  
Secretary-General of the International Bar Association, Spain

I would like to thank the United Nations for the opportunity to speak as part of this extraordinary occasion. The signing of the United Nations Convention against Corruption signifies a historic accomplishment in the ongoing battle against corruption. As Secretary-General of the International Bar Association (IBA), it is a great honour for me to attend this event. I also convey the warmest greetings from our President, Ambassador Emilio Cardenas, who unfortunately was unable to join us to celebrate this milestone.

As a young university student, I was taught that celebrated sentiment of Thucydides, reflected in 1887 by Lord Acton in a letter to Mandell Creighton: "Power tends to corrupt, and absolute power corrupts absolutely." I believe the quote is universal in value, challenging us never to forget or underestimate the disruptive presence of corruption.

Several efforts have been made by the international community to combat corruption at the national and regional levels. During each stage, the methods discussed and developed have undergone transformations that ultimately assisted in the preparations for the initial drafting of the Convention. The two-year drafting process for the Convention was arduous, as many delegates and officials met and discussed the many contributing factors and issues prevalent in the global community. Although several initiatives have already been established to curb the levels of corruption, today's event is a marvellous demonstration of the international community's dedication and agreement to strengthen the campaign against extortion and provide a comprehensive standard of principles for monitoring and combating corruption.

From experiences around the world, it has been evident for many years that corruption has been like a plague, essentially infecting the core of values of countries and their rulers and destroying fundamental human and commercial rights. Alarmingly, its presence has not been restricted to certain regions. Perceptions of corruption also vary considerably. Corruption has a corrosive effect on society and fundamental issues such as the rule of law.

Barriers of many kinds undermine the efforts to combat extortion; one such barrier includes corruption in the judicial system. Corruption within all levels of the judiciary, including lawyers, is particularly disturbing as it precludes the proper legal instruments from being effectively used to prevent corruption. Investigations conducted to determine the extent of bribery in political parties and the recent measures taken by President Kibaki of Kenya to rid his country's judicial system of corruption reveal not only the different

forms of extortion, but also the complex and dynamic nature of corruption and its presence in both domains.

Corruption has been a prevalent problem and often devastates the internal framework of the government. Such damage in turn causes the government to be less efficient, effective or impartial. Sadly, corruption normally discourages leading international investors from investing in a country, thus delaying economic development and impeding social and personal growth. Often the allocation of funds for the development of essential programmes and services are misappropriated, resulting in assistance not being provided to the right individuals.

On the brighter side, as we have witnessed, the global response to the Convention is positive and well received. Governments and non-governmental organizations have worked together closely to establish a set of guidelines to combat extortion. The Convention has been a profound measure and marks the beginning of an international standard that will adequately monitor corruption. A number of Governments, non-governmental organizations and other organizations have been involved with the preliminary planning and general drafting of the Convention. Organizations as varied as Transparency International and the International Chamber of Commerce have assisted in the development of the anti-corruption legislation. It is evident that the Convention is a bold measure against corruption.

IBA is a global federation of 16,000 private lawyers, and 192 law societies and bar associations from around the world; it influences the development of international law reform and shapes the future of the legal profession. Along with those institutions and countless other international groups and non-governmental organizations, IBA encourages the development of effective international law reform to ensure that the appropriate legal devices are utilized to prevent corruption. IBA applauds the efforts undertaken by the international community to establish a secure and just standard of monitoring and combating corruption. It must also commend the United Nations Convention against Corruption, as it addresses key issues in international law, including the rule of law and accountability, thus allowing it to serve as a strong mechanism for anti-corruption. It also provides an outline that will ensure the implementation, prevention and enforcement of anti-corruption legislation.

As an organization that strives to work on the protection and promotion of human rights and the rule of law, IBA stresses the importance of the implementation of the Convention to fully respect human rights and fundamental rights in each State, particularly in connection with the principles of a fair trial, the presumption of innocence and the right of defence. In that regard, IBA highlights that the independence of lawyers to represent their clients is fundamental to maintaining the international norms of equal justice and due process set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Therefore, following the concerns that have arisen in connection with Recommendation 16 of the

40 Recommendations of the Financial Action Task Force on Money Laundering and the implementation of Directive 2001/97/EC, IBA stresses the importance of the legal professional privilege not to protect lawyers who are involved in corruption or money-laundering, but to safeguard every person's right of defence as an indispensable element of a fair trial.

IBA fully supports article 5, paragraph 1, of the Convention, which calls for all States to implement and maintain effective anti-corruption policies, and article 13, paragraph 1, which calls for active participation of individuals and groups outside the public sector. Similarly, article 13, paragraph 1 (d), encourages the unhindered distribution of information regarding extortion with only necessary restrictions on such freedom.

As the "global voice of the legal profession", IBA understands the duty to promote the exchange of information worldwide. Moreover, the goals and tasks that have been successfully accomplished cannot be attributed to its individual membership and dedicated staff members alone, but to its resourceful member organizations across the globe. Such organizations make invaluable contributions that continue to strengthen IBA's presence throughout the world.

Lastly, IBA believes that the establishment of a conference of States parties in article 63 of the Convention will ensure that all States take adequate measures to implement anti-corruption legislation by reviewing the whole implementation process. The article also clearly establishes a system that will serve as an effective tool to monitor countries and oversee that commitments have been realized. The Conference will also bind the international community to uphold its obligations to the Convention. That is of the utmost importance since, as the Convention contains binding and discretionary provisions, there may be differences in its implementation, which may create uncertainty in international trade.

IBA stands prepared to assist in the promotion and implementation of the Convention through a number of avenues. A new division has been created within IBA called the Public and Professional Interests Division. Within the Division, a Bar Issues Commission has been created to provide bar associations and law societies with the perfect opportunity to participate in an open forum to address concerns relevant to the global community through discussions and projects. Both the Division and the Commission will enable IBA to expand the scope of its activities within the international community.

IBA is also able to promote the Convention through its unique infrastructure. It will continue to utilize its network of individual lawyers, bar associations and law societies, sections and committees and media outlets to promote and strengthen the efforts being made in the field of business law, especially with regard to the Convention. Committees, such as the Business Crime Committee of the Section on Business Law and especially the Anti-Corruption Working Group and the Money Laundering Implementation Group, have been meeting and working to develop proposals that focus on legal

reform related to business crime. In past and ongoing projects, IBA has relied on the assistance of its member organizations to provide extensive accounts describing the role of human rights and the rule of law in their respective regions. In doing so, IBA is able to maintain its international influence.

Another method for promoting the Convention will involve the continual usage of our educational platforms. Education has always been a strong component of IBA, and it is keen to continue in that tradition by providing solid educational programmes. Throughout the world, IBA has organized training programmes for private lawyers, in-house counsel, judges, academics and young developing lawyers. For example, IBA offers a basic training course on the fundamentals of international legal business practice, which encourages discussions and serves as an educational outlet to spread current information about the legal implications of globalization. Furthermore, IBA has developed, in partnership with the College of Law of England and Wales, a practical distance-learning-based International Practice Diploma Programme. In its first year, the Programme has attracted 250 lawyers from 57 countries around the globe. The Programme, in providing sophisticated training in many areas, including the Convention, is an ideal vehicle to be utilized by lawyers in all countries.

In addition, IBA's Human Rights Institute, founded in December 1995 under the Honorary Presidency of Nelson Mandela, has frequently organized projects, including the development of a number of educational and training programmes for the rule of law and human rights in countries such as Swaziland and Zimbabwe. The institute, in conjunction with the United Nations, has also developed a training manual on human rights for lawyers, judges and prosecutors and organized judicial workshops. The Institute has established a panel of representatives from IBA sections as well as experts to develop educational material on corporate social responsibility. Working programmes in conjunction with the advisory panel will assist in the coordination of activities that focus on improvements in that area. Educational and training programmes are essential resources for the dissemination of information and will not only enable IBA to highlight the provisions of the Convention, but also detail the current developments in the field of corruption.

Moreover, the educational platform also includes many specialty conferences, colloquiums and council meetings held around the world. For example, IBA, with the support of the International Chamber of Commerce and the Organization for Economic Cooperation and Development, sponsored for sophisticated business lawyers a Conference on the Great Awakening Giant of Anti-Corruption Enforcement in Paris in April 2003. The conference offered a variety of workshops, ranging from the new global legal framework and anti-money-laundering laws to practical challenges in international business and solutions to dealing with potential legal violations. The conference was an excellent opportunity for IBA to present the latest developments in the field of anti-corruption. Another anti-corruption conference being developed is to be held in Paris in the first part of 2004.

During the IBA annual conferences held in Durban in 2002 and in San Francisco in 2003, numerous workshops were offered on the subject of corruption. Once again, the workshops discussed the institutional framework of corruption, the legal and moral standards in corruption and the issue of corruption within international trade. IBA will continue to utilize conferences as an important educational resource to reach practising lawyers.

Apart from its numerous conferences, IBA also holds discussion sessions during the meetings of its Council. Such sessions not only provide a forum for open dialogue, but also encourage Council members and special delegates to develop strategies and proposals to address critical issues in the world of international law.

IBA can utilize its media resources as additional tools to publicize the Convention. IBA effectively uses its business journals, newsletters and flagship magazine, *International IBA News*, to reach its membership and the global community. Those publications are all widely circulated and often available via the Internet, highlighting developments in international law and within the legal profession. The IBA web site is visited over 1 million times per month and provides access to information regarding IBA activities and projects.

As a truly global voice, IBA has the depth and coverage not only to disseminate information broadly across the profession, but through its activities at the national and international levels, to influence the development of law. With many of its activities providing pragmatic information to sophisticated practising lawyers, IBA is able to provide information to individuals in a position to effect change, at the working and policy levels.

Years of corruption have prompted the international community to finally develop a profound measure that not only addresses the issues of corruption, but also examines its various components, determines preventive methods and addresses the importance of enforcement. After years of tireless efforts to solve the problem of corruption and examine its complexities, the United Nations Convention against Corruption is a ground-breaking result of that work.

While the battle to rid global society of corruption may take generations, IBA stands prepared to continue to work side by side with the United Nations and other international organizations to support in all ways possible the Convention and the other important work of the United Nations. I pledge that IBA will continue to be a beacon for reform in the international legal community, as well as a tireless supporter of the Convention and our common battle against corruption and its negative attributes. IBA will continue to sponsor educational programmes that underline the theoretical and practical aspects of the Convention. Using its diverse resources, IBA will promote the Convention, allowing it to evolve into a living and breathing document, a document that will yield positive results.

## **Anti-corruption systems in the Republic of Korea and Asia**

Kim Yun-Seek  
Executive Member of the Special Committee on Ethics  
National Assembly, Republic of Korea

It is a great honour and privilege for me to share my views with you at this historic occasion of the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption. Let me take the opportunity to extend my heartfelt appreciation and congratulations to all those who spared no effort to successfully draw up the United Nations Convention against Corruption.

As you all know, as our common enemy, corruption is a serious problem, disrupting political, economic and social cohesion, thereby aggravating poverty and undermining stable growth. Moreover, corruption is prevalent worldwide, which magnifies the need for global action led by a United Nations convention.

Against such a background, I would like briefly to review the anti-corruption systems of several nations, focusing on the Republic of Korea and other nations in Asia. Then I hope to shed light on the kind of strong and comprehensive legislative measures that each nation must take in order to effectively implement the United Nations Convention against Corruption.

The Convention requires signatories to take even stronger legislative actions conducive to facilitating the implementation of the Convention. Otherwise, the Convention will fall short of being an effective, concrete means to fight corruption.

### **Anti-corruption policies in Asia—Singapore and the Hong Kong Special Administrative Region of China**

Let me first take stock of the situation in the Asian region, where I belong. The early enactment of anti-corruption laws and the implementation of anti-corruption policies increase a country's chances of ranking well on Transparency International's Corruption Perception Index.

A case in point is Singapore, where the Corrupt Practice Investigation Bureau was established in 1952 as an independent body reporting directly to the Prime Minister on the prevention and investigation of corruption. Ever since then, Singapore has been committed to eradicating corruption and promoting market liberalization based on the rule of law, fairness and transparency. The efforts have paid off, as is evidenced by Singapore's top ranking on the national competitiveness index over the past five consecutive years.

The Bureau reserves the right to investigate the corrupt practices not only of public servants but also of those in the private sector. The Bureau is



also entitled to arrest, confiscate and search without a warrant. At the same time, it is committed to taking strict preventive measures.

The Prevention of Corruption Act of 1937 was revised in 1960 to drastically expand the authority of the Bureau. The Act provides for a set of heavy punitive measures, including a provision that subjects those public servants who accepted bribes to imprisonment of up to five years and fines of up to \$5,000.

Another good example of the anti-corruption drive can be found in the Hong Kong Special Administrative Region of China. The Independent Commission against Corruption was set up in 1974. The Commission is entitled to investigate, arrest, detain, release on bail and confiscate, in connection not only with corruption-related crimes but also to abuse of power. Moreover, the Commission encompasses broad and diverse fields, making not only the public and private sectors, but also the general public, eligible for various anti-corruption activities and educational programmes.

I believe such initiatives greatly contributed to the good ranking that the two jurisdictions have had on the Corruption Perception Index list released by Transparency International in the past five years, outstripping other jurisdictions in Asia with similar cultures.

Of course, there are some countries with high Corruption Perception Index rankings that do not have any particular anti-corruption act or an independent supervisory body. At the same time, the existence of the relevant institution alone does not necessarily guarantee a corruption-free nation. Still, legislation and the implementation of a system remain critical factors for ensuring the integrity of a social system, transparency, public sector accountability and good governance.

### **Anti-corruption policies of the Republic of Korea**

I would now like to turn to the case of the Republic of Korea, my own country. Admittedly, it remains low in Corruptive Perception Index rankings.

Fortunately, the Administration of Kim Dae-Jung and the National Assembly finally succeeded in enacting the Anti-Corruption Act in 2001, based on their firm commitment to a reform-driven legislation on eradicating corruption. At the same time, an Independent Commission for Anti-Corruption was set up, which reports directly to the President.

The Anti-Corruption Act specifically sets out anti-corruption provisions in the form of the Public Servants' Code of Ethics and related Decrees. The Act also includes provisions on status guarantee and rewards for whistleblowers.

Moreover, citizens have access to a dedicated Internet web site around the clock, where they can report on any corruption case. Furthermore, the Act Relating to the Prevention of Money Laundering was enacted in tandem with the Anti-Corruption Act, with a view to maximizing synergy.

Perhaps the most outstanding significance of the Anti-Corruption Act is that it paved the way for public servants to take the initiative in corruption supervision, by creating mechanisms to protect and reward whistle-blowers. That is in clear contrast with the past, when public officials were regarded as objects of supervision, as if they were only potential corruption perpetrators.

Another breakthrough in the Republic of Korea's anti-corruption drive is the recent enactment of the Act on the Appointment of Special Prosecutor to Investigate Corruption Scandals of the President's Acquaintances and Close Aides. The Act provides that an independent prosecutor is appointed to disclose any corrupt practices through investigation and to punish all those implicated with corruption cases.

Lately, the Prosecutor's Office has conducted drastic investigations into illegal political funding, the acknowledgement of which has long been taboo. As a result, those enterprises and a number of leading politicians and lawmakers involved in creating illegal funds are now facing judicial action. That is a significant milestone for the Republic of Korea, in that it has finally begun to break the chronic, collusive link between those in political and business circles.

Clearing up the corrupt culture of a nation requires the political circles and high-level officials to become clean first, which then leads to clean public and private sectors. And that is exactly what was meant by the old Korean saying: "Only when the upper reaches of a stream are clean will the lower reaches be clean."

### **Need for diverse anti-corruption initiatives in line with the digitalized environment**

Now let me move on to the topic of how the introduction of a digitalized environment can help facilitate anti-corruption actions. What seems particularly relevant in preventing corruption today is to install a transparent and open administrative system online at the central and local government levels and to disclose the administrative process over the Internet in real time.

A good example would be the capital city Seoul. The Seoul metropolitan government installed an "open system" on the Internet, and enabled all citizens to gain access and track all the processing of civil affairs. The initiative did much to ensure transparent, corruption-free administration and enabled Seoul to win the Best Practices e-Government Grand Prix at the Fifth World Government Innovation Forum, sponsored jointly by the United Nations and the Government of Mexico. I believe that that example clearly testifies to the effectiveness of the e-Government System in preventing corruption.

### **Conclusion**

So far, I have listed a series of policy options. But we know all too well that such legal and institutional frameworks are just some of the required

conditions, not a sufficient condition. Therefore, what is even more important in realizing a truly clean, corruption-free society would be to put in place a “national integrity system”, in which the government, businesses, citizens and non-governmental organizations can join hands to participate in the collective drive against corruption.

The worldwide prevalence of corruption makes its eradication beyond the reach of an individual nation. Only when all nations around the world come together to forge a coalition can corruption be effectively driven out.

Therefore, I would like to solicit assistance from you in implementing the United Nations Convention against Corruption. Let us commit ourselves to participating actively in the legislation process of our respective nations, thereby putting in place a strong and comprehensive mechanism conducive to implementing the Convention. Let us closely join our hands for the cause of anti-corruption.

In closing, I would like to highlight the historic significance of the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, which I believe will serve as a turning point for the entire international community to transform itself into a more transparent world. And let me also reiterate my gratitude for all the efforts the Government of Mexico has exerted to put this Conference together.

## **Implementing the United Nations Convention against Corruption: existing and proposed legislation and other measures in South Africa**

Penuell Maduna  
Minister of Justice, South Africa

I am honoured to have been requested to address this meeting on my country's legislative and other measures against the scourge of corruption that I have cause to believe will encourage our collective effort at implementing the United Nations Convention against Corruption, which my country has signed.

As one of its last tasks before it went on recess at the end of November 2003, the South Africa national Assembly, the Lower House of Parliament, enacted a very important Bill, namely the Prevention and Combating of Corrupt Activities Bill, which will undoubtedly revolutionize South Africa's approach to the worldwide problem of corruption. Once it has been adopted by the National Council of Provinces, the Upper House, and has been signed and promulgated by the President of the Republic of South Africa, it will come into effect, thus replacing the Corruption Act of 1992.

That Bill reflects international best practice in legislation dealing with the prevention and combating of corruption and related corrupt activities. It provides for, among other things, the following:

- The strengthening of measures to prevent and combat corruption and corrupt activities
- The creation of the general offence of corruption and offences relating to corrupt activities
- Investigative measures in respect of corruption and related corrupt activities
- The establishment and endorsement of a register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts
- The placing of a duty on certain persons holding a position of authority to report certain corrupt transactions
- Extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities

For the Government of South Africa, the Bill represents a radical departure from the existing provisions relating to corruption contained in the current Corruption Act of 1992. Noteworthy in that regard are the following provisions:

(a) Clause 10, which seeks to replace the common law crime of bribery, prohibits receiving or offering unauthorized gratification by or to a person who is party to an employment relationship. Whereas the common law crime of bribery only applies to persons in the public sector, the offence in Clause 10 also applies to persons who are party to an employment relationship in the private sector;

(b) In terms of Clause 17(1), any public officer who acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence. However, that offence does not apply, among others, to a public officer who acquires or holds such interest as a shareholder of a listed company or whose conditions of employment do not prohibit him or her from acquiring or holding such an interest;

(c) Clause 23, which provides for an ex parte application by the National Director of Public Prosecutions for, and the issuing by a judge of an investigation direction in respect of, the possession of property disproportionate to, or not commensurate with, a person's present or past known sources of income or assets. Before issuing such a direction, the judge must, however, be satisfied that, among other things, the person affected maintains a high living standard through the commission of corrupt or other similarly unlawful activities, or that such pecuniary resources or properties as such a person may be in possession of are the instrumentalities or the proceeds of corrupt activities or other unlawful activities. Following the issuing of an investigation direction, the National Director has the following powers:

- (i) He or she may summon the suspect or any other person specified in the investigation direction, who is believed to be able to furnish any information relating to the property in his or her possession or under his or her control, to appear before him or her or a person authorized thereto, at a time and place specified in the summons, and to be questioned or to produce that property;
- (ii) He may question that suspect or other person, under oath or affirmation, and examine or retain for further examination or for safe custody such property;
- (iii) He or she may enter any premises where the suspect is or is suspected to be and there inspect and search the premises, examine and seize any property found on the premises which has a bearing on the investigation in question;

Any person who refuses or fails to give any information or explanation when required to do so in terms of the above provisions is guilty of an offence and liable to a fine or to imprisonment for a period not exceeding 10 years.

Such a necessary but invasive procedure is over and above certain provisions of our tax law regime, which empower the South African Revenue Services to assess individuals and businesses for tax liability, including such things as lifestyle audits.

(d) Chapter 6 of the Bill provides for the establishment of a Register for Tender Defaulters in the Office of the National Treasury. In terms of Clause 28, a Court may, in respect of an accused who has been found guilty in respect of corrupt activities relating to tenders and contracts, in addition to imposing any other sentence, issue an order in terms of which the particulars of the convicted person or enterprise must be endorsed on the Register. That may include the endorsement of enterprises, partners, managers and directors involved in the commission of the offence. Furthermore, the National Treasury may or must, as the case may be, where the Register has been so endorsed, impose certain restrictions in respect of the persons or enterprises so endorsed. That includes the termination of an agreement, the determination of a period (between 5 and 10 years) for which the endorsement must remain on the Register and the disqualification relating to future tenders and contracts;

(e) Clause 34 creates a duty to report certain corrupt transactions. However, it is important to note that such a duty only applies to persons holding a position of authority as defined in the Bill. The duty only applies where such a person knows or ought reasonably to have known or suspected that certain serious offences were committed and where the offence involves an amount of 100,000 rand or more;

I am proud to say that South Africa has, within two years of the adoption of the South African Development Community Protocol against Corruption on 14 August 2001, succeeded in drafting, accepting and approving legislation in compliance with the mentioned objectives of the Protocol. In some instances, as mentioned, the Bill goes well beyond what is required by the Protocol.

Needless to say, the enactment of the Bill will ensure our country's compliance with the United Nations Convention against Corruption, adopted by the General Assembly on 31 October 2003.

Last but not least, the Bill, once enacted, will constitute a critical component of a panoply of legal instruments the Government uses in its fight against crime, in particular, organized crime and corruption. Some of the legal instruments are the following:

- In 1995 and 1997, numerous amendments to the Criminal Procedure Act of 1977 were enacted in order to strengthen our bail laws.
- In 1996, Parliament enacted the Special Investigating Units and Special Tribunals Act of 1996, in terms of which the President of the Republic may establish a Special Investigating Unit and quasi-judicial tribunals on, inter alia, the ground of alleged corruption in connection with the affairs of any State institution.

- In 1997, we provided for the imposition of minimum sentences in respect of certain serious offences, including corruption.
- In 1998, Parliament enacted the Prevention of Organized Crime Act to prevent and combat organized crime, money-laundering and criminal gang activities.
- In 1998, the National Prosecuting Act was enacted, providing for the establishment of a single national prosecuting authority. In 2000, the act was amended to provide for the establishment of a Directorate of Special Operations with the aim of investigating crime committed in an organized fashion; corruption was proclaimed as an offence to be investigated by such a Directorate.
- The approval of the establishment of a Specialised Commercial Crime Unit was given during 1999 and the Unit was established on 1 August 1999, specifically to effectively combat spiralling commercial crime, including corruption. The unit has been so successful that it is now being rolled out to major centres in the Republic of South Africa. Its successes have included 22 convictions for corruption to date.
- In 2000, the Protected Disclosure Act was enacted in order to provide protection for persons who disclose information relating to criminal or irregular conduct, including corruption, in their places of work.
- In 2002, the Regulation of Interception of Communications and Provision of Communication Related Information Act was enacted in order to bring the legislation dealing with the interception and monitoring of communications into line with the latest communications technology. The Act undoubtedly helps law enforcement entities to deal with a whole host of serious criminal activities, including corruption, through monitoring and intercepting the communications of criminals and their associates.

The new Bill, which seeks to address both active and passive participation in corruption and related unlawful activities, as well as extortion in conjunction with other new legislation in the Republic of South Africa, such as the Electronic Communication and Transactions Act, will become an extremely effective tool in the fight against corruption.

Provision has been made in other legislation for the seizure and ultimate forfeiture of assets associated with the commission of crime or as proceeds of criminal activity. Appropriate administrative law procedures, as well as provisions relating to access to information, all of which are critical in the arduous task of combating corruption, exist in our legal system.

I must also mention that my colleague, the Minister for Public Service and Administration, who addressed the plenary yesterday, has introduced various comprehensive administrative measures in order to prevent and

combat corruption in the public sector. We can thus proclaim without any fear of contradiction that, with the enactment of the Bill, we will have in place a comprehensive and well-coordinated anti-corruption plan.

However, it is axiomatic that a proper anti-corruption strategy, a correct anti-corruption plan, intelligence, appropriate legislation and rigorous law enforcement are, in and of themselves, not adequate. As corruption is frequently a product of the culture of society, a change in the culture is necessary and can indeed be achieved through proactive work, awareness-raising, education and training.



## The role of parliamentarians in the fight against corruption

John G. Williams  
Global Organization of Parliamentarians Against Corruption  
Member of Parliament, Canada

I would like to begin by complimenting the work that has been done in drafting and bringing forward the United Nations Convention against Corruption. But, as we have established in the course of this conference, the work starts here—it does not end here. From here, we have to acquire the signatures to make the Convention effective, we have to have it ratified, and we have to have it implemented. Without implementation, it is only a piece of paper and, as such, will do nothing. It is that implementation that is going to be perhaps the most difficult task. We have also heard during the conference about the need to monitor the progress of the implementation of the Convention because, if we do not measure something, we cannot manage it. Therefore, monitoring the progress is going to be absolutely essential. It does rest with us to put this Convention into being. There are so many people, literally billions of people around the world, depending on our success. We cannot allow ourselves to fail.

I want to begin by talking about accountability. We have talked a lot about accountability. But what is accountability? I define accountability as forces beyond your control that cause you to think and act in a certain way. I draw a line under *beyond your control*. By way of example, allow me to use what I call my speeding analogy. In Canada, the roads are wide and the roads are straight and we have speed limits of 100 kilometres per hour on the freeway. But I always drive 110. Why do I drive 110? Because I know if I meet the police with the radar, they are not going to stop me. I am going to get away with it, so I can break the law with impunity. However, I do not drive 30 kilometres over the speed limit because I know the converse will be true: the police will not let me get away with it. I will get an expensive ticket, and too many tickets mean demerit points, my car insurance goes up, I lose my licence. The motivation is beyond my control because I cannot control the police. I can take a little but I cannot take a lot.

The same principle applies with corruption. If you think you can get away with it, you will do it. So there are two simple rules that we can draw from that: firstly, the chances of being caught have to be reasonably high and, secondly, the pain for getting caught is more than you are prepared to pay. When those two conditions exist, you will not participate in the crime, be it speeding, be it corruption, be it bank robbery, be it anything else. If the chances of getting caught are quite high and you know you are not going to like the price that you have to pay, then you will not do it. In China, they execute people involved in corruption: the price is high but the chances of getting caught are minimal, so people still do it. Lord Johnston has just said that the price for bad advice by some people was that they were eliminated—

people got the message that the price is high, but the chances of getting caught are quite small, so the problem persists. Corruption is a crime that persists just like any other crime. We will never ever eliminate corruption. Do not fool yourselves that we can eliminate it; we can only control corruption the same way we can only control speeding on the highways. We will never stop it; we can only control it by putting in place such forces. Let us make it very clear that if you take part in corruption, you are going to get caught, and you are not going to like the consequences.

In the democratic world we talk about democratic government. Now, what is a democratic government? It is the opposite of a dictatorship. A dictatorship has no proper accountability; it has no one looking over the shoulder saying you cannot do that. So, democratic government means an accountable government.

A government should exert a force that is beyond its own control. There should be a force that ensures that the right thing is done. And that should be the role of parliament. Although I am the first to admit that, in many cases or even most cases, parliament is not beyond the control of government and therefore it is not that independent force that holds them accountable. Through patronage, through bribery, through opportunity to move into cabinet, through the opportunity to advance one's career, to win an election, there are many, many different ways governments can manipulate parliamentarians so that the parliamentarians do the will and the wish of government. The result is that when government introduces legislation, government takes it for granted. The parliament will approve that legislation. Of course, one analogy is that of Enron. Enron took it for granted that Arthur Andersen, the auditor, would approve their illegal schemes for massaging their financial statements. Parliaments have bought into that system. Parliament and parliamentarians have become corrupt, some in a big way, some in a small way, but by and large, parliament and parliamentarians are no longer accountable or hold government accountable; rather, they have become subservient to government.

Parliaments have four fundamental objectives. Firstly, parliament approves the legislation that government brings forward, asking for our endorsement. Secondly, parliament approves a budget and a taxation policy in order for government to raise the funds to run the country. Thirdly, government asks for parliament's approval for the spending of the money raised. And fourthly, government reports to parliament. So, when we approve the legislation, approve the budget and the taxation policy, when we approve the spending and the estimates, they report to us. That indicates to me that we should be in a position of authority over government rather than the other way around. And when that system fails, as it has failed in many, many countries, then the whole system collapses. That is why we are finding today that civil society is filling that gap and demanding accountability. They are the ones that are calling for the system to be fixed, rightly so because parliaments are failing. But in my opinion, it is more important to fix the problem than to try to go around it another way. Parliaments have to be back where they belong.

We are all familiar with the standard organizational pyramid of the workers at the bottom, rising up to the top and of course each one held accountable by the superior above them. But when you get to the top, when you get to the cabinet and the Prime Minister or the President, who is holding them accountable? That is when you have another triangle going outwards from the President and the Prime Minister and the cabinet to the parliament. From the parliament, the pyramid broadens again, being accountable to the people; the people are at the top. That can take place only through openness, transparency, open and free media that allows the public to know what exactly the parliamentarians and the government are doing. The public has the collective wisdom to choose the parliamentarians wisely. The public does not want crooks in their parliament. They want people with honesty and integrity; and if they are given clear information, through openness and transparency, to make a free and fair choice, they will make the right choice. They will elect a parliament to whom they have delegated the authority of holding the government accountable. In such an atmosphere, parliament is back to being that force beyond the control of government.

And from there we start with the Global Organization of Parliamentarians Against Corruption (GOPAC). Here today, we have Augustine Rusindana, who is the Chairman of the African Parliamentarians Network against Corruption, and the Moderator Senator Jauregui, who is the Chair of the Latin American Parliamentarians against Corruption. The three of us are cooperating to move that particular organization forward. We recognize that parliamentarians rarely have the resources of the government. That is why each branch of GOPAC is being mentored by a multilateral organization to help support the branch's efforts. Our Latin American chapter has negotiated a memorandum of understanding with the Organization of African States. The Organization of Africa States will provide those parliamentarians with the research capacity in order to promote democracy, enabling them to identify democratic failings when they arise. We will be able to measure the progress; we will be able to see how much progress they have made. We will now have the resources to monitor the progress of the fight against corruption throughout the world. The United Nations and the United Nations Development Programme have agreed to mentor the Middle Eastern chapter, which has begun to be organized. The Asian Development Bank is mentoring the North East Asian chapter, composed of China, Japan, Mongolia and the Republic of Korea. As we develop those chapters, each chapter is to have a mentor that has the resources and the capacity to do the work on behalf of parliamentarians, who do not have the resources to do the research themselves.

We have also recognized the need for training and capacity-building for parliamentarians and parliaments. As I fictitiously said, it takes eight years to train a doctor and four years to train a carpenter and a plumber, but in Canada you can elect a Member of Parliament in 35 days. That imbalance becomes apparent because parliamentarians arrive in parliament having no experience. We may have been carpenters or plumbers, accountants or lawyers, but we

were not parliamentarians. We have perhaps one of the most responsible positions in the country, and yet we have absolutely no training. Now, for those of us who have been to the doctor and had surgery, we would not want the surgeon to say: "This is my first day on the job, I hope it's OK." One would become quite apprehensive if that were to happen. Yet, we send people to the parliament and the legislature as our elected representatives. When they arrive, they wonder what they are supposed to do. Someone might say, "Follow me, I know how the game is played." We have to break that cycle and we have to do it through training and building capacity for parliaments. We have to work as a mentor with our mentoring agencies to monitor and develop real measurable progress on the Convention against Corruption. At the global level, we have a task force that we are developing on the fight against money-laundering. We are also considering the issue of election financing. We are developing a code of conduct for parliamentarians. Those are only a few of the items on the GOPAC agenda that we are considering. However, at this point in time, we lack sufficient funds to develop expertise on those given areas. As we raise more resources, we are then going to be enabled to move such agendas forward.

I am excited about the idea of making parliamentarians, that effective voice on behalf of society that is elected by society, hold government accountable. I can assure you, we will do everything we can to develop and strengthen and move the agenda of the United Nations Convention against Corruption forward because, as I said, we cannot afford to fail.

# **Legislative measures against corruption in Chile**

Luis Bates Hidalgo  
Minister of Justice, Chile

## **Introduction**

The following paper summarizes the principal legislative measures adopted by Chile to promote integrity and to comply with international conventions and instruments against corruption. As far as integrity is concerned, the Government has made an unprecedented effort to modernize the public administration and its institutions, and to bring them into compliance with the principle of integrity.

In that respect, there were two important legislative events during the past decade, in 1999 and 2003.

## **The laws published in 1999**

Two laws were published in December 1999: Nos. 19.645 and 19.653. Both of them were drafted by the National Committee for Public Ethics over a period of four years. The main objective of that body was to produce proposals for public policies and legal initiatives, which reinforce the procedures and institutions that monitor compliance with legal and ethical obligations in the public administration, thereby promoting democracy. It includes a group of people of the highest intellectual and moral standards who are not involved in narrow-minded discussions or subject to political pressures or temporary schools of thought; many from that group are present here today. They focused on identifying lacunae in our legislation and proposing appropriate measures to fill them. The Committee prepared bills for the Government and supported several legislative proposals which, after five years of work, generated the above-mentioned laws. We will begin with Law No. 19.653, which carries the title On the Integrity of the State Administrative Bodies and which modified Law No. 18.575, the Organic Law of the General Basis for State Administration.

The key provisions include the following:

1. Several new principles were incorporated, concerning open competition for public contracts, and equal treatment based on contractual conditions, as well as with respect to the competition procedure. For the first time, clear rules had been established for the awarding of public contracts;
2. It was clearly established that administrative acts should be made public. Access to information has been properly regulated, including exceptions and procedures. That was another innovation allowing all citizens of Chile to know what the State does;

3. Principles were incorporated that establish a merit- and performance-based remuneration system and promote competence in the carrying out of public functions, unlike the old system where similar functions and responsibilities were necessarily remunerated equally;
4. Incompatibilities in the exercise of public functions were regulated, to avoid conflict of interest due to economic or personal relations. For the first time, tax officers are no longer allowed to exercise private business activities falling within their functions. Such practices had never before been controlled in Chile and, until 1990, were practised with regularity;
5. An absolute legislative innovation was introduced, obliging certain public servants, including the Head of State, parliamentarians, high-level members of the Courts of Justice, certain senior-level government officials, local judges and the managers and directors of State-owned companies, to declare their assets, both upon entry into and termination of their office. The declaration of assets includes their professional and personal financial activities;
6. Some behaviour linked only indirectly to corruption is addressed, such as the misuse of classified information, influence peddling, misuse of air miles and acceptance of gifts of any nature. More serious forms of corruption are appropriately sanctioned with dismissal;
7. The implementation of integrity standards was extended to include regional and municipal governments, as well as mayors and public servants in high-level offices with the mandate to monitor compliance. The principle of integrity was decentralized in order for it to be appreciated by everyone. Its implementation is monitored by the public;
8. Members of Parliament and Senators must carry out their functions according to the principles of integrity and transparency. That rule was included in the Standing Orders of the Senate, elevated to constitutional status. It prevents members of Parliament or the Senate from debating and voting on subject matters that are of direct and personal interest to them or their relatives. It marks a substantial accomplishment. Citizens remember several shameful incidents in the past when parliamentarians voted for projects that clearly favoured themselves or their close relatives. That will no longer occur;
9. Finally, subsection 2 of article 52 of the Organic Law, now modified, defines a public official of integrity as someone who “demonstrates irreproachable official conduct, and an honest and loyal fulfilment of his functions or office, and values the public’s

interest higher than his own". It applies to both public officials and members of government.

The use of the term *public interest* as defined in article 53 introduces novel elements to the discussion that do not merely correspond to behaviour that is irreproachable or faultless. I highlight that *public interest* cannot be achieved through the individual will of the public official nor through his or her performance. Furthermore, the use of suitable diagnostic means, decision-making and control requires knowledge and training. However, one can discuss all the various skills that are required to ensure that the *public interest* has pre-eminence over the individual interest.

Law No. 19.645 brought important changes to article V, Book II of the Penal Code, as well as to the offences against sexual self-determination, the most significant amendment of that section of the law for many years. First, it is significant because it amends a section of the law covering offences committed by public officials that was left untouched and apparently forgotten for decades. Secondly, the amendments demonstrate both the highest technical standards of legislative drafting and expert knowledge of Criminal Law. Moreover, the catalogue of criminal offences has been updated and adjusted to the needs of a modern democracy.

As I mentioned earlier, the Bill was born as a legislative proposal, which was further strengthened and improved by many different players, and eventually adopted by the Government. The most significant elements of the law include the introduction of new offences, such as trading in influence and abuse of classified information, offences that are already contained in many of the more advanced penal codes. Moreover, it introduces a definition of bribery, ensuring that no offer or request for any form of economic benefit for a corrupt public official will be left unpunished. All such legislative changes were reviewed and endorsed by the Congress of the Inter-American Convention against Corruption during 2003.

### **The laws published in 2003**

The second significant legislative event provided a variety of rules for the promotion of integrity and the control of corruption. Those rules established the Presidential Consultative Committee to Strengthen the Principles of Transparency and Public Integrity, composed of important people and professionals who provided technical expertise and analysis of the subject. The Committee has also been working on related matters, such as the financing of political campaigns and parties, the regulation of lobbying and other amendments of the regulatory system aimed at enhancing integrity.

The main achievements of those laws include the following:

1. The amendments are more comprehensive than those introduced in 1999. That may be due to the impact of corruption on public life in Chile in the period 2002-2003, in particular because of several specific cases that alarmed both government and civil society, and

raised awareness concerning the need for even more radical measures than those adopted four years earlier;

2. The laws address not only questions relating to criminal law, but also issues pertaining to administrative and financial management. In that sense, the measures contain amendments to laws that had not yet been addressed in 1999 and speak to old and unsolved problems of the legal system in Chile. Examples in that context include confidential expenses of various public government departments or administrative sections, public tender and procurement procedures, and the financing of political campaigns and parties. We should also mention Law No. 19.829, which was publicized in 2002; bringing the national legal framework into compliance with the Anti-Bribery Convention of the Organization for Economic Cooperation and Development, which had been signed and ratified by Chile.

The following is an outline of the key provisions of the above-mentioned laws.

#### **Law No. 19.886, of 2003, on Public Procurement Contracts for the Supply and Provision of Services**

That law regulates all contracts concluded by the public administration against payment, for the supply of materials or the provision of services required to carry out its functions. It is an effort aimed at standardizing *administrative procedures for the purchase of goods and services*. Moreover, the law establishes that the public administration must function efficiently and effectively, including in the awarding of public contracts.

The new law creates the necessary institutions to ensure efficiency in procurement and fair competition governed by proper procedures. Moreover, there are plans to develop new mechanisms to enhance procedural transparency. It is intended that the new law will enter into force without prejudice to any complementary regulations which may be required in order for the law to become operational. In other words, that the regulations complementing the current Public Procurement Law will continue to be applied to all aspects of the law until the new regulation is published, unless they prove incompatible with the new law.

It is expected that, with the introduction of that legislation, the State will be able to save up to US\$ 10 million in the first year of implementation. The result will be better services and welfare for the citizens, since the law provides easy access and clear rules for more than 200,000 procurement and tender opportunities. The goal is that by the end of the first year, 100 per cent of the purchases and public engagements effected under that law will be published at [www.chilecompra.cl](http://www.chilecompra.cl).

Public sector contracting reform involves all institutions and agencies to which Law No. 18.575 applies: ministries, governors, as well as Public



Entities and Services that have been created in order to fulfil public functions, including the Office of the Auditor General of the Republic, the Central Bank, the armed forces, the regional governments and the municipalities. State-owned companies that have been created through law are an exception. As far as municipalities and the armed forces are concerned, the law will enter into force on 1 January 2004 and 1 January 2005, respectively.

With respect to tenders, the law makes it compulsory to issue a public tender when the respective amount supersedes a certain threshold. Non-public tenders and other direct contractual engagements will have to be justified, giving reasons. Moreover, the cases in which it remains possible to opt for a non-public tender procedure or another form of direct contractual engagement are specified in the law. The causes for declaring a tender procedure as invalid are regulated in the law, as well as the procedure to report such a decision. Furthermore, the law contains provisions regulating procedures to modify or to terminate a public contract.

The agencies mentioned in the law have to publish a tender, notify potentially interested parties, negotiate and award contracts and in general handle all processes associated with the acquisition or contracting of goods, services or maintenance through the Government Information System on Purchases and Contracts ([www.chilecompra.cl](http://www.chilecompra.cl)) that was established by the law. That system should be public and free of charge.

### **Law No. 19.884, of 2003, on transparency, limitations and control of electoral expenses**

The goal of Law No. 19.884 is to regulate the funding, limits, control and transparency of the electoral expenses of political parties and candidates. It follows the electoral Law No. 18.700, the Organic Constitutional Law on Popular Ballot and Scrutiny, and Law No. 18.695, the Organic Constitutional Law on Municipalities.

That legislation responds to the long-standing desire of the public of Chile to address the issue. Until now there has been no regulation of expenses of political campaigns, which led to obvious and noticeable inequalities in access to power.

The law aims at limiting the reimbursement of electoral expenses to the principal electoral events. To mention some examples, in an election to the Senate, expenses should be limited to 3,000 promotion units (approximately 51 million Chilean pesos, that is, about \$82,258), plus an amount resulting from multiplying *four hundredths of a promotion unit* with the first 200,000 registered voters, plus the multiplication of *three hundredths of a promotion unit* with the following 200,000 registered voters, plus *two hundredths of a promotion unit* with the remaining registered voters in a certain district. For the parliamentary candidates, the expenses cannot exceed 1,500 promotion units (approximately 26 million Chilean pesos, or \$41,129), plus the amount resulting from multiplying *three hundredths of a promotion*

*unit* with the number of registered voters in the certain electoral district. For a presidential election, expenses are limited to *three hundredths of a promotion unit* multiplied with the number of registered voters in the electoral register of the country. Furthermore, electoral expenses that parties incur for their candidates are limited to one third of the entire election expenses, including those that were effected by independent candidates. Similarly, the private financing of electoral campaigns is limited. No person is allowed to donate to any candidates more than the equivalent of 1,000 promotion units (that is, approximately 17 million Chilean pesos, or \$28,000), in a single electoral campaign. Moreover, the total amount one person is allowed to give to different candidates or to political parties must not exceed the equivalent of 10,000 promotion units. When corporate entities make contributions that are economically motivated, the donation must be approved by an explicit decision of the company's senior management.

Like most modern legislation on party and electoral campaign financing, the State finances and/or refunds electoral expenses incurred by political candidates and parties, with the exception of candidates running for President. Therefore, at the beginning of an electoral campaign period, each registered party that presents candidates for election as Senator or Member of Parliament or the Council, can claim from the State campaign finances corresponding to the number of votes obtained in the last similar election, including those obtained for independent candidates that had entered into a pact or an under pact with the respective party, multiplied by the equivalent of one ten thousandth of a promotion unit. Those parties that did not take part in previous elections will have the right to receive an amount corresponding to the amount received by the political party that obtained the fewest votes in the most recent election.

Finally, another control on electoral contributions has been established by regulating which contributions can be *anonymous*, reserved or public. All contributions by private persons may be made anonymously. However, during the electoral campaign period, no candidate or political party may receive as an anonymous contribution more than 20 per cent of the legally allowed electoral expenses. Any contribution which supersedes that limit, but at the same time amounts to less than 10 per cent of the total of the expenses that the law allows for one candidate or one political party, must be reserved, unless it corresponds to more than 600 promotion units in the case of a single candidate or 3,000 promotion units in the case of a political party. In that case, the contributions must be transferred directly into an account established by the Electoral Service for that purpose.

### **Law No. 19.882, of 2003, that rules the new Staff Policy for Public Officials**

The Law also creates the national directorate for the civil service as a decentralized public institution, with legal personality and its own budget. It reports to the President of the Republic through the Ministry of Finance and it

is to coordinate, monitor and measure the performance of staff within the various services of the civil administration of the State.

Its functions include participating in the drafting of human resource-related policies for the public sector administration and collaborating with the various public entities in their decentralized implementation, within the overall framework of State modernization, promoting reforms and measures to improve human resource management in the public sector; and advising the government authorities as well as State secretaries and superintendents in all matters related to human resources, in order to ensure the efficient and effective running of the Public Senior Management System.

The objective of that system is to create professional and efficient human resources, working in teams towards improving the management of public service institutions and the delivery of goods and services to the community. Such teams implement the decisions of the President of the Republic, who is elected by direct vote and is responsible for the administration of the State.

Professional competence, integrity and honesty are the basic criteria of merit that have to prevail in appointments to senior public management positions and their remuneration. The Senior Public Management System provides *equal opportunities* and universal standards governing access to public management positions, which are based on the principle of merit and geared towards reducing mono-political control of entry barriers by political parties and other organizations.

The system will also ensure higher levels of transparency, integrity and ethical conduct by encouraging technical-professional achievements and diminishing the risk of undue influence in management decision-making.

**Law No. 19.863, of 2003, about remuneration for government officials and other key positions in public administration, as well as provisions on special expenses**

That legal body regulates the competencies of the Senior Management System. In addition, the entity regulates special expenses incurred by certain ministries and other bodies mentioned in article 10 of the law. Under article 10, they are authorized to incur expenses related to certain public functions, such as internal and external security, national public order, and other State actions that, by their nature, need to be reserved or kept secret.

For a long time, some *Offices of the State Secretary and the strategic ministries* enjoyed the possibility of disposing of so-called “reserved” funds as a part of their public budget. Hence, they were not subject to detailed controls by the Auditor General of the Republic.

**Law No. 19.862, of 2003, Establishment of Registers of Institutions that Receive Public Funds**

That law mandates the establishment of a register to regulate the transfer of public funds to institutions. The purpose of it is to prevent the creation of private entities that circumvent accountability structures and receive public funds.

## Conclusions

Participants agreed on the crucial role of parliament in ratifying and implementing the United Nations Convention against Corruption. Responsibility in that respect is multifaceted. Parliament not only must adopt legislation but also must constantly monitor its effective implementation. It was agreed that the role of parliament in the fight against corruption needed to be strengthened. Parliament could reach out to civil society more easily than other State institutions. Therefore, international organizations should not exclusively deal with Governments, but should enhance their efforts to involve parliaments in the ratification and implementation of the Convention.

For that purpose, parliamentarians needed, first of all, to take ownership of the Convention. Since they were not involved in its development, there is a need to raise awareness among parliamentarians of the United Nations Convention against Corruption and the various obligations arising from it. That would best be achieved by using existing networks and associations of parliamentarians, such as the Global Organization of Parliamentarians against Corruption, the African Parliamentarians Network against Corruption, and similar platforms that allow for the exchange of lessons learned and the identification of best practices in combating corruption.

Countries would need to develop laws to implement the United Nations Convention against Corruption. Participants emphasized the importance of establishing the institutional framework responsible for the implementation of those laws in conjunction with the legislative process. In that context, participants agreed that independent anti-corruption agencies—having a broad mandate, ranging from prosecution to administrative reforms, to raising public awareness and education—had worked well in some countries. However, anti-corruption agencies could not operate successfully in isolation, but would need to develop outreach programmes, establishing platforms for continuous collaboration and coordination with the public and private sectors, as well as civil society. However, anti-corruption bodies could only be effective when given strong investigative powers and a broad investigative mandate.

Furthermore, effective and credible sanctioning of corrupt practices was considered crucial. Anti-corruption laws should provide for heavy punitive measures, including imprisonment, fines and confiscation of illegal assets. Complementary legislation, such as laws against money-laundering and access to information acts, might also be required. Some participants also underlined the importance of extraterritorial jurisdiction in respect of the offence of corruption.

In order to solicit reports of corrupt activities, there was a need for legal instruments and institutional channels that encouraged public officials and citizens alike to report corruption incidents. Whistle-blowers must be protected and public officials should be obliged by law to report corrupt transactions that came to their attention.

National legislators should consider the establishment of registers for the purpose of placing certain restrictions on persons and enterprises convicted of corrupt activities related to tenders and contracts.

Participants also addressed the issue of political party financing, a topic of robust debate in many developed countries. They noted the apparent inability of parliaments to legislate effectively against excessive and non-transparent financing of political parties. In some countries, individuals or groups used political campaign funding to influence the formulation of policies, passing of laws and even the awarding of public contracts.

Although, in some countries, many of the laws required by the United Nations Convention against Corruption were already in force, many countries needed additional legislation that included provisions on recovery of assets and prevention.

It was noted that professional associations could provide a crucial control mechanism for compliance with standards of professional behaviour. They could also help to articulate and clarify their members' concerns with regard to certain aspects of the Convention. For example, bar associations had expressed their concerns about the protection of the professional privileges of their members.

Participants also highlighted the importance of new technologies in providing opportunities for more transparency. Governments could communicate more easily with their citizens through the Internet and could provide the public with more access to government information.

Finally, participants also acknowledged the crucial role of parliaments in holding Government accountable. In particular, parliament should carry out an oversight function with regard to public expenditure and public procurement.



**Panel four**

**Measures to Combat Corruption in National and  
International Financial Systems**





## **Legislative measures of the Council of Europe to address corruption and money-laundering in the international financial system**

Maud de Boer Buquicchio  
Deputy Secretary General of the Council of Europe

The Council of Europe is committed to three basic principles: human rights, pluralist democracy and the rule of law.

It is specifically on the relationship between the *rule of law* and the ease with which money passes through the international financial systems that I wish to focus my intervention on.

Over the last 20 years, the nature of criminality in general (and economic and organized criminality in particular) has been such that all those who fight economic and organized crime have become aware of the huge opportunities the international financial system gives to criminals to hide their ill-gotten wealth.

Criminals have always found ways to abuse the weak points of financial systems. As money (including virtual money) can now be moved across the globe in a matter of seconds, the jobs of law enforcement authorities, prosecutors and investigating judges worldwide have become increasingly more difficult.

So my starting point is that, if the international community wants to fight corruption internationally, it needs to be able to track down the proceeds that offenders make from corruption, wherever they finally end up. Experience shows that the most successful acquisitive criminals move their proceeds through complex layers of transactions from country to country. Thus, the international fight against corruption and the international fight against money-laundering are inextricably linked.

Money-laundering is, as everyone knows, the process by which criminals distance themselves from their crimes but where they can still get at their fruits. Law enforcement, nationally and internationally, needs to trace those proceeds to ensure that both the launderers and those that benefit from corruption are prosecuted and have their proceeds confiscated by domestic courts. Experience has shown that, in many countries, major confiscation orders, which are really dissuasive, can and do act as real deterrents to the commission of crime in general. Thus, by fighting money-laundering, you not only fight corruption but you also attack the underlying cause of acquisitive crime in general: human greed.

The international community needs to be able to cooperate effectively in that fight. We in the Council of Europe have long been involved with international judicial cooperation issues. Our treaties on mutual legal assistance and extradition are well known.

The Council of Europe was one of the first international organizations to voice real concerns about money-laundering. More than 20 years ago, the Committee of Ministers adopted a recommendation in which it warned against the dangers that dirty money in the financial system represented for democracy and the rule of law.

In the 1990s, the Council of Europe became increasingly concerned about the money-laundering threat for European countries with economies in transition, where the new and fragile financial regulatory structures made them particularly vulnerable. Much was undertaken to raise awareness about such dangers.

As a result, our landmark Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was adopted in 1990. That Convention provides an important blueprint for investigation, international cooperation, domestic prosecution and confiscation in relation to criminal proceeds. It is a successful Convention, open to non-European countries. The current number of ratifications stands at 43, which is good news because of the mandatory obligations it imposes on ratifying States to provide the widest measures of international assistance in tracing, freezing and seizing assets. That means that in Europe and even beyond, law enforcement and prosecutors will use its international cooperation provisions while carrying out international enquiries into corruption offences.

As I mentioned yesterday during the High-level Conference, legal and political instruments are of little use if they are not carefully monitored.

The Council of Europe has therefore developed monitoring systems in the areas of corruption and money-laundering.

In the area of corruption, the Group of States against Corruption (GRECO) is beginning its second round of mutual evaluations. One of the major issues it will be tackling in that round is the important relationship between money-laundering and a State's ability to seize and confiscate the proceeds of corruption.

In many ways, the success of the GRECO mechanism—which includes some 35 member States, including the United States of America—was based on earlier work begun by the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (now known as MONEYVAL).

Monitoring in that area began in 1997, following working methods of the Financial Action Task Force on Money Laundering. MONEYVAL is now completing its second round of evaluations.

MONEYVAL evaluations cover the legal, law enforcement and financial measures in place to fight money-laundering (and now terrorist financing). Financial assessment is therefore a critical part of that work.

Clearly, countries need to have in place sound preventive systems to trace dirty (or terrorist) funds as they pass through the financial system. Standards on the preventive side are constantly evolving. We use the international standards currently prevailing on the financial side, including the 40 Recommendations of the Financial Action Task Force on Money Laundering (and specific regulatory standards in the banking, insurance and securities sectors).

All preventive standards are underpinned by the difficulty of the financial sector and the non-financial sector to spot suspicious money movements and to establish sound customer identification rules.

At the end of our first round of evaluations, we drew up the following conclusions:

- We found there was an evident need for closer domestic analysis of exactly how money-laundering was being achieved in individual jurisdictions:
  - Was it through the banks?
  - Was it through shell companies?
  - Was it through the privatization system?
  - Exactly how vulnerable were the bureaux de change and the casinos?
- We found more work needed to be done in involving *non-bank* financial institutions and non-financial business and professionals (such as lawyers and financial advisors). The reporting of suspicious transactions in all of those sectors needs to increase. As standards get tighter in one sector, such as banking, the launderers look elsewhere—to insurance or to the securities market—as homes for laundered proceeds. The conclusion is that anti-money-laundering supervision needs to be improved in those areas.

Obvious abuses, such as the continued existence of bearer accounts, need to be addressed by the relevant Governments within realistic time frames. Credit and financial institutions need to pay closer attention to the identification of the ultimate beneficiaries of transactions if the customer identification rules are to have real weight. Moreover, staff in credit and financial institutions in many countries still need more guidance on how to identify suspicious money movements.

- Our experts also found that greater attention needs to be paid to company creation regimes and to risks inherent in rapid electronic payment systems and Internet banking. Systems in many countries still appear to have been designed to handle only paper-based identification systems. As States' financial structures develop, paper-based preventive regimes have become increasingly less relevant.

On the preventive side, we have observed the cost to the financial sector of putting in expensive systems to detect money-laundering and suspicious money movements. The challenge now is for law enforcement and prosecutors to act on that to ensure that launderers are prosecuted and major confiscation orders are issued.

Much remains to be done. We in the Council of Europe will continue to monitor these issues and press for changes where necessary. It is gratifying to see how countries have responded to our recommendations so far in MONEYVAL reports. On the standard setting side, work is to begin on drawing up a protocol to the Strasbourg Convention addressing preventive measures.

The Council of Europe will continue to develop its work, both in standard-setting and monitoring, in the fight against corruption and all crime generating proceeds passes through national and international financial systems.

## **The role of the judiciary in government integrity**

Ramesh Lawrence Maharaj  
Former Attorney General, Trinidad and Tobago

I would like to congratulate the Government and the people of Mexico for hosting this important and historic conference. I would also like to congratulate all the States that have decided to sign the United Nations Convention against Corruption, as their signatures are a testimony of their commitment to eradicate corruption and to promote honesty in governance. I served as an Attorney General and Minister of Legal Affairs in the Republic of Trinidad and Tobago, and I saw first-hand the need for Governments to be aggressive in their fight against corruption if sustainable development is to be achieved. I would like to take the opportunity to share with you some of my experiences as an Attorney General. It is hoped that what I have to say may assist government ministers and civil society in the battle against corruption.

Good governance is impossible if members of a government and public officials are corrupt. The presence of governmental and other official corruption also promotes corruption in the private sector.

A country's social and economic injustices cannot effectively be redressed if persons holding high public office and other public officials are allowed to continue to plunder the nations' treasuries. The United Nations, in recognition of the corrosive effects that corruption has on all aspects of life, took steps to eliminate corruption, which has a devastating effect on the moral fibre of society.

Corruption subverts the rule of law. It emasculates democracy and impoverishes nations. Corruption is a global problem. It has become systemic in many countries. Sustainable development requires the control of corruption. Corruption burdens the private sector, it deters foreign investors and it harms the environment. Corruption undermines trust and equity in government. Corruption diminishes the effectiveness of public policy. Corruption often has a political dimension and reflects the way that governmental power is executed in a country.

Corruption includes the abuse of political office for private gain, the abuse of public office for political benefits (even if no bribery actually occurs) through patronage and nepotism, the theft of State assets and the diversion of State resources.

A new dimension to corruption is currently developing in most Caribbean countries, including Trinidad and Tobago. Governments deliberately formulate and gear their policies and programmes to remain in office. Corruption, political favouritism and nepotism have become the norm. Public housing programmes, the provision of jobs, the awarding of contracts and scholarships and the administration of health and social programmes are

all geared to win votes and even to “voter pad” constituencies so that their supporters can reside and vote in particular constituencies.

Taxpayers’ monies are, therefore, used by Governments for party and/or personal or political purposes in order to ensure that the Governments remain in office.

Loans taken by Governments from leading international lending agencies are not, therefore, used for the purposes for which they are given. The loans are used by Governments to “kill” democracy instead of giving “more life” to democracy. The international lending agencies must pay greater attention to the use of their loans for corrupt purposes and they must engage the civil society in the monitoring of loans made to Governments by those lending agencies.

A burning issue in the world today is the impact of corrupt governance on problems associated with environmental degradation. Some Governments allow decisions to approve activities that have an impact upon the environment to be perverted by corruption. They are more interested in the money they receive from multinational corporations than taking steps to protect the environment for future generations. Government corruption causes or allows particular activities to take place, although it is well known that those activities have adverse environmental consequences for the countries concerned.

The most important method by which governmental corruption adversely influences a nation’s environment is the way in which it can determine decisions that favour powerful multinational corporations and others and permit them to exploit the natural resources by using practices that are inconsistent with sound practices of sustainability.

Corruption also operates to prevent proper government supervision of activities that may adversely affect the environment.

Corruption can enhance the impact of environmental disasters. That occurs when Governments ensure that proper decisions are not made for the environmental clearance of activities and that proper remedial action is not undertaken. Such action, or inaction, facilitates environmental disasters.

The situation is especially bad in countries that do not have a reputable court system. They do not have unbiased, competent, efficient and truly independent courts to stand up against governmental corruption and the influence of “money power”.

Corruption is an enemy of the people, as it takes away the lifeblood of a nation.

In order for the fight against corruption to be effective, steps must be taken by attorneys general to sustain the rule of law. They must enact clear legislation to fight corruption. They must take steps to establish an effective

law enforcement capacity and they must create alert statutory oversight agencies. They must also take steps to create an engaged civil society.

The United Nations Convention against Corruption is, therefore, an important tool that can be used to promote measures worldwide to eliminate and/or reduce corruption and to promote openness, transparency and accountability in governance.

Attorneys general must, however, be aware that action taken by them to fight corruption can cause their colleagues, or at least some of them, to hate and distrust them.

I served as an Attorney General and Minister of Legal Affairs for the Republic of Trinidad and Tobago between 1996 and 2001. I was a member of the Cabinet. I know too well the difficulties that individuals encounter in their attempts to fight corruption. As an Attorney General, I took the position that no government could genuinely fight poverty or genuinely redress other social and economic injustices in a country unless it took steps to fight corruption and promote openness, transparency and accountability in government.

Promising to fight corruption is a public relations exercise commonly used by political parties to assist them in winning office. Most political parties and governments appear to lack the passion or commitment to address the corrosive effects of corrupt governance.

The fight against corruption can never be successful unless Governments have a passion and a genuine desire to undertake it. Attorneys general undoubtedly have an important role to play in the government fight against corruption.

Attorneys general, however, do not have security of tenure, as they are vulnerable to dismissal at any time by their heads of government. They have to be prepared to ensure that the “carrot of office” is not in front of their faces to prevent them from doing their duties. They must be prepared to face any consequences, including the consequence of losing office for the honest and fearless discharge of their duties.

If the “carrot of office” is regarded by attorneys general as more important to them than the honest and fearless discharge of their duties, they will become subservient to their Governments. They will bury allegations of corruption made against their Governments or their political parties and consequentially aid and abet the stealing of taxpayers’ money.

Attorneys general cannot compromise their duties and functions. They are the guardians of the public interest. Any compromise by them would be tantamount to a betrayal by them of a duty they owe to the people to put national interests first.

The implementation by States of the United Nations Convention against Corruption can be frustrated and obstructed if attorneys general are not strong and fearless in the discharge of their duties.



Attorneys general therefore have an important role to play in the implementation of the United Nations Convention against Corruption. To make the Convention a reality and to ensure that the aims and objectives of the Convention are carried out, they can take the following steps:

- Ensure that their States sign the Convention and identify the necessary legislative framework to be established at the national level to implement the terms of the Convention.
- Enact and cause to be enacted the necessary laws to establish the required legal framework for the aims and objectives of the Convention to be achieved.
- Establish a process at the national level to ensure an honest judiciary. The judiciary must be competent and efficient and it must be independent.
- Establish or reform the investigative and prosecution machinery at the national level so that it can achieve the aims of the Convention.
- Establish an appropriate financial investigation unit to assist the investigative machinery in tracing the proceeds of corruption, in order to freeze, seize and confiscate profits of corruption, in accordance with due process of law.
- Take legislative action to create the necessary criminal offences as required by the Convention, so that loopholes in the law can be plugged to prevent offenders from escaping justice.
- Regulate financial donations to political parties. The large financial donations given to political parties cause those donors to have a hypnotic influence over Governments when the political parties win elections. Such donors exercise great influence over Governments. They are normally rewarded by Governments giving them large contracts, consultancies and concessions. Those Governments, therefore, do not represent “people power” but rather “money power”.
- Working in collaboration with other ministers, including the Minister for Social Affairs (or the equivalent) and the Minister for Foreign Affairs (or the equivalent) so that the measures of the Convention relating to preventive action against corruption, the participation of civil society (as far as the Minister for Social Development or the equivalent is concerned) and the measures relating to the promotion of international cooperation in Mutual Legal Assistance in Criminal Matters (as far as the Minister for Foreign Affairs or the equivalent is concerned) can be implemented.

During my tenure as Attorney General of Trinidad and Tobago, I took steps to have the laws of Trinidad and Tobago reformed in such a way that those laws contained several measures provided for in the Convention.

The Integrity in Public Life Act 2000 was enacted. The Proceeds of Crime Act 2000 contains measures dealing with illicit enrichment, insider trading, laundering of the proceeds of crime, freezing, seizing and confiscation of the proceeds of corruption and overcoming the obstacles of bank secrecy.

The Mutual Legal Assistance in Criminal Matters Act 1998 provides the legislative framework to facilitate cooperation with countries in mutual legal assistance in criminal matters.

The Freedom of Information Act 2000 created a statutory right of an individual to have access to government-held information.

The Constitution Amendment Act 2000 reformed the Parliamentary Committee System so that investigative parliamentary committees comprising government and opposition members could monitor and scrutinize every government ministry and government department. They have the power to investigate any public authority and to summon ministers and public officials before them.

It can clearly be seen, therefore, that attorneys general have an important role to play in promoting sustainable development in their countries. They can, by the fearless discharge of their duties, do a great deal to eliminate or reduce poverty in their countries and promote sustainable development. By their actions, waste and mismanagement and the stealing of their countries' assets can be reduced or even eliminated. The money saved can be used by Governments to provide relief against the many social injustices that exist in their societies.

## **The World Bank's contribution to the global fight against money-laundering**

Bess Michael  
Senior Specialist of Financial Sector, World Bank

I want to thank our host for this magnificent conference; and I would like to thank the Government of Mexico, in particular, for allowing me to be here. Today, I would like to talk about the World Bank's role in anti-corruption as well as in anti-money laundering.

In terms of the Convention against Corruption, we from the World Bank want to congratulate the world community on the new and important United Nations Convention against Corruption. We recognize that the Convention is ambitious—it covers a lot of important ground. We encourage countries to adopt clear, time-bound benchmarks for implementation, which we see as the key to the success of the Convention. We also recognize the need for monitoring compliance with the Convention.

In terms of the World Bank effort to fight corruption, in 1996, World Bank President James Wolfensohn identified corruption as a major deterrent to development and a heavy tax on the poor. Since then, the World Bank has adopted a multi-pronged anti-corruption strategy: preventing corruption in World Bank projects; helping countries combat corruption; mainstreaming good governance and anti-corruption into its policies and programmes; and supporting international efforts to combat corruption.

The World Bank has launched hundreds of good governance and anti-corruption programmes and initiatives in nearly 100 developing countries. We have worked on issues related to political accountability, helping countries enhance the competitiveness of their private sector, public sector management issues, civil society, as well as institutional checks and balances. Initiatives have ranged from disclosure of assets by government officials and public expenditure reforms to training judges and teaching investigative reporting techniques to journalists. The World Bank Institute has developed a major knowledge and learning centre on good governance and anti-corruption.

The World Bank is a leader in working with countries to help them diagnose governance challenges, and to assist them in creating appropriate policy responses and implementing anti-corruption programmes.

The World Bank is committed to ensuring that projects financed by it are free from corruption, setting up stringent anti-corruption guidelines, maintaining a hotline for reporting corruption complaints and a department of institutional integrity to investigate allegations of fraud and corruption in World Bank Group operations and allegations of staff misconduct. In terms of its project lending, the World Bank has moved towards longer-term lending programmes and is also working closely with partners in the international

community. The World Bank has been working very closely with Governments and international organizations. We have developed excellent diagnostic tools to identify and measure corruption.

We have also been able to make some progress in terms of advising countries on solutions to corruption problems, but there are challenges ahead for us. At the World Bank, we try to integrate into the mainstream anti-corruption equally throughout all of the programmes at the World Bank.

I would now like to focus on the link between corruption and money-laundering. Corruption, like other forms of crime, including fraud, organized crime and drug trafficking, generates proceeds. Those proceeds need to be cleansed so that corrupt officials can use them without any danger that they will be linked to crime. So that is the key: money-laundering facilitates crime and fosters illegal consumption and/or investment.

Well, what is the connection between anti-corruption, anti-money-laundering activities, anti-terrorist financing activities and the World Bank? Why is the World Bank involved in anti-money-laundering? There is a strong link between money-laundering and economic development. Good public governance, sound financial systems, the rule of law and fair legal institutions are widely recognized as prerequisites for development. In that context, money-laundering is a serious threat to sustainable and lasting economic development. Money-laundering provides the essential tool for criminals to benefit from their illegal activities. It gives them the mechanism to move proceeds from drug trafficking, arms trafficking and smuggling across borders to safe havens. Money-laundering facilitates public corruption; it erodes the rule of law and distorts macroeconomic policies with respect to the safety and soundness of financial systems. In developing countries, that can result in the outflow of legitimate funds for investment elsewhere.

Building a strong anti-money-laundering and counter-terrorist financing system provides a response to such threats and helps promote sound and long-term development. As problems of money-laundering and the financing of terrorism have become evident around the world, especially following the tragic events of 11 September 2001, the World Bank and the International Monetary Fund have intensified efforts to combat such criminal activities. In November 2001, the boards of the World Bank and the International Monetary Fund called for a joint action plan on anti-money-laundering and counter-terrorist financing to do the following:

- To develop a common anti-money-laundering and counter-terrorist financing methodology and global standard with the Financial Action Task Force against Money Laundering
- To incorporate the methodology as part of the financial sector assessment programme of the World Bank and the International Monetary Fund

- To increase technical assistance and capacity-building programmes in response to members' requests to strengthen regimes that combat money-laundering and the financing of terrorism

Financial sector assessment programmes are diagnostic tools or reviews that the World Bank and the International Monetary Fund conduct on a national economy to identify vulnerabilities and to help in devising technical assistance programmes. The World Bank and the International Monetary Fund, in partnership with the Financial Action Task Force on Money Laundering (FATF), and FATF-style regional bodies have developed a comprehensive methodology to assess countries' compliance with anti-money-laundering and counter-terrorist financing international standards. The boards of the World Bank and the International Monetary Fund endorsed the methodology in September 2002 and the Financial Action Task Force approved the methodology in October 2002.

We have started with a 12-month pilot programme that concluded at the end of 2003. Under the pilot programme, the World Bank and the International Monetary Fund assessed approximately 30 countries using the methodology. The FATF-style regional bodies assessed approximately 20 countries for anti-money-laundering and counter-terrorist financing.

What do we look for when we are assessing anti-money-laundering regimes as part of the financial sector assessment programmes? Under the methodology, we assess a country's performance vis-à-vis international standards. We look to see if countries have sanctioned or criminalized money-laundering, if they have provided provisions for the seizure, forfeiture and confiscation of assets derived from money-laundering and the predicate crimes to money-laundering (which now, with the revision of the international standards, the recommendations from the Financial Action Task Force, the goal is to expand the predicate crimes to money-laundering to include all serious crimes, including bribery and corruption). We look to see if countries have reporting requirements; that is, financial institutions must report suspicious transactions to competent authorities. We look to see whether countries have requirements for keeping records for at least five years, if countries require financial institutions to identify their customers and to engage in due diligence procedures where the risk of money-laundering is greatest. Now, with the revised 40 Recommendations of the Financial Action Task Force, one of the measures involves enhanced due diligence requirements for financial institutions that deal with publicly exposed persons; that is, financial institutions must ask their clients or potential clients who are senior foreign officials additional questions about their background and their portfolio in order for the institution to satisfy enhanced due diligence requirements.

We also look to see whether financial institutions have internal programmes, employee training programmes and anti-money-laundering compliance programmes. We look to see if national legislation allows for domestic and international cooperation among the competent authorities, as

well as whether the country has a financial intelligence unit that receives, analyses and disseminates anti-money-laundering information. A number of the key elements we look for are already included in the United Nations Convention against Corruption, including establishing a financial intelligence unit. We also look at the extent to which the country complies with international standards in terms of combating the financing of terrorism. We look to see if countries have ratified or implemented various United Nations instruments, including the United Nations Convention against Transnational Organized Crime, and the United Nations Convention for the Suppression of the Financing of Terrorism. We look to see if a country has criminalized terrorist financing as an independent crime, whether there are provisions to freeze, seize and confiscate assets related to terrorist financing and whether financial institutions are required to report suspicious transactions related to terrorist financing. We identify whether there are provisions that allow for international cooperation between competent authorities, whether the country has taken steps to ensure that alternate remittance systems are not used to finance terrorism, to ensure that wire transfers carry important information on the originator of the transfers, and also to ensure that charities are not abused and used to finance terrorist-related activity.

The importance of the methodology that we, with our partners around the world, have developed is to take a comprehensive approach to anti-money-laundering and counter-terrorist financing. We determine whether such regimes cover banks, non-bank financial institutions, such as money remitters, insurance companies, security firms, and also non-financial businesses, including casinos, real estate agents, dealers in precious gems and metals, and also professionals to the extent that the international standards also encourage the anti-money-laundering regime to cover lawyers and other professionals.

Technical assistance is an important focus of what we do at the World Bank. Not only do we conduct country assessments, but when we identify vulnerabilities in anti-money-laundering and combating the financing of terrorist regimes, we do so in order to propose to the Government needed technical assistance. We offer technical assistance on an individual country basis as well as on a regional basis. We provide different types of technical assistance, such as seminars on drafting anti-money-laundering, counter-terrorist financing legislation, training bank supervisors, helping to establish financial intelligence units and also working with financial intelligence units that have already been established to strengthen and enhance their operations.

In addition, we hold seminars for countries and international organizations that help us in conducting such assessments to help train the evaluators on the use of the methodology. We have held global dialogues to bring together senior members of government to discuss important issues related to anti-money-laundering and counter-terrorist financing. We have done that through video conferencing. We held over 40 global dialogues in 2002 and many in 2003, too. We also have been working with the International Monetary Fund, and we have done some studies related to

informal funds transfer systems. Our latest report for the APEC group was on alternate remittance systems. It is available on our web site.

As I mentioned, we have a number of programmes that we have been working on in terms of technical assistance. The key for us is to bring anti-money-laundering and counter-terrorist financing into the mainstream of the work of the World Bank and to encourage countries that are borrowing from the World Bank to consider anti-money-laundering as part of their assistance in terms of overall borrowing. We at the World Bank have also provided technical assistance, earlier in 2003, in terms of drafting a manual that is a reference guide on anti-money-laundering and combating the financing of terrorism. It is a document that we think is very comprehensive; it discusses international initiatives in the field and international standards; it is a work in progress. We have produced the first version of the manual and we intend to update it, certainly to take into account evolving international standards. We have translated the document from English into Arabic, French, Russian and Spanish and we have the manuals available at the World Bank, and on our web site ([www.amlft.org](http://www.amlft.org)). We encourage feedback to help us update our manual.

In addition, we have a global database of technical assistance needs. We encourage countries that are interested in seeking technical assistance from the World Bank on anti-money-laundering and counter-terrorist financing to either write to us directly or work with the regional Financial Action Task Force representative in your area to pass along your request for technical assistance; we will input the request into our database and it is on the basis of that that we will provide assistance.

So I want to conclude by stating that anti-corruption, anti-money-laundering and combating the financing of terrorism are issues of great importance to the World Bank. As demonstrated, we are working closely with Governments and with international organizations to accomplish our goals and we at the World Bank cannot do what we do without you.

## **Measures to implement the United Nations Convention against Corruption, with respect to the prevention of money-laundering in the financial system in Mexico**

Benjamín Vidargas

Vice-President for Legal Affairs of the National Banking and Financial  
Commission, Ministry of Treasury and Public Credit, Mexico

I thank the Ministry of Foreign Affairs for the cordial invitation to participate in this High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption.

Within the context of this panel, on measures to combat corruption in national and international financial systems, I will briefly analyse those measures under the United Nations Convention against Corruption, which have already been implemented to prevent money-laundering in the financial system in Mexico, as well as those on which we have been working to incorporate into the current legal framework.

Many countries, Mexico among them, are worried by the magnitude and rapid increase of organized crime and acknowledge the need to introduce regulations that hinder the flow of illicit proceeds into the legal economy, in order to prevent the further development of such criminal organizations, and to promote the integrity and reliability of their financial sectors.

States parties to the Convention recognize that corruption is no longer a national problem, but has turned into an international phenomenon that affects all societies and economies. That makes international cooperation essential for both the prevention and the control of corruption. States parties are also concerned about the links between corruption and other forms of criminality, in particular organized crime and economic crimes, including money-laundering.

Therefore, some of the most urgent priorities in the National Development Plan 2001-2006 of the Government of Mexico are the development of strategies to prevent and eradicate corrupt practices and stop impunity and to improve the quality of public sector management, as well as to sanction all activities linked to the handling of illicit proceeds, which adversely affect financial systems, as well as the core values of society.

Articles 14, 40, 52 and 58 of the Convention are concerned with the prevention of money-laundering, the applicability of bank secrecy rules, the prevention and detection of the transfer of illicit proceeds and the establishment of financial intelligence units.

With regard to article 14, since 1997, Mexico has introduced measures to prevent money-laundering in those financial institutions which are most



vulnerable to being used for such purposes, such as credit institutions and the stock exchange market, among others.

Such measures reflected the revised 40 Recommendations of the Financial Action Task Force on Money Laundering and the Principles of the Basel Supervisory Committee, including the obligation to identify their clients, to report transactions equal to or exceeding \$10,000, as well as those operations which (because of their amount, frequency, type or nature, or the persons or entities involved) must be considered suspicious or unusual. Also, the law requires that entities must report the activities and operations by their public officials or employees and which, because of their characteristics, generate any kind of suspicion.

Depending on the type of entity, the reports of the operations discussed must be submitted to the National Banking and Exchange Commission, the Insurances and Liabilities Commission or the Retirement Savings System Commission. The respective commission then forwards the reports to the Vice-Director-General for Operational Analysis at the Ministry of Finance and Public Credit. That administrative unit is the equivalent of what is known at the international level as a financial intelligence unit and acts as a national centre for collecting, analysing and broadcasting information about potential money-laundering activities.

In addition to the reports sent by the financial institutions, the financial intelligence unit receives information from the *customs authorities* on *cross-border money movements*, and has a mandate to conduct audits, in the case of suspected money-laundering operations. Furthermore, as a member of the Egmont Group, the unit is empowered by law to exchange information with the financial intelligence units of other countries, as required under articles 14 and 58 of the Convention.

In addition to the above-mentioned preventive measures, the normative framework also establishes the obligation for financial institutions to keep records of the effected transactions and of the documentation providing for the identification of the client for a period of not less than five years, as established by article 52 of the Convention.

In addition, financial institutions are obliged to keep all information concerning the reports of transactions secret, and they must instruct their staff members accordingly.

Furthermore, financial institutions must maintain internal structures that are responsible for evaluating operations that have been identified by staff as unusual and, in general, ensure the compliance of the institute with the legal framework.

All financial supervisory authorities, in coordination with various professional associations, have elaborated proposals for operational manuals, establishing policies and procedures that institutions must follow in order to comply with the relevant regulatory framework. Such manuals also include

case examples for transactions that require greater scrutiny, as described in article 52 of the Convention.

It is important to note that the preventive measures for money-laundering adopted by Mexico were reviewed with positive results by the Financial Action Task Force on Money Laundering in March 2000, during the first round of mutual assessment. Since June 2002, Mexico has been admitted as a member by rights to the Financial Action Task Force.

In September 2003, the second round of assessment took place, during which the Financial Action Task Force carried out a more detailed analysis of the country's system for the prevention of money-laundering and the financing of terrorism.

With regard to the obligation of creating an internal supervisory regime, as required under article 14 of the Convention, the law assigns the various supervisory bodies the responsibility to ensure that the financial entities fulfil all their legal obligations, among them, those relating to the prevention of money-laundering. Those supervisory bodies have the power to impose administrative sanctions for non-compliance.

In that context, the National Banking and Exchange Commission conducted a programme in 2003 aimed at strengthening the prevention of money-laundering. Under that programme, new guidelines for the supervision of the preventive processes against money-laundering have been created. In particular, the programme establishes the criteria and procedures that have to be applied when verifying whether the inspected financial entity complies with relevant regulations.

The guidelines include 16 different assessment measures, corresponding to the verification of the same number of legal obligations, including the following:

- That the financial institution has integrated its Communication and Control Committee, and that it fulfils the powers entrusted to it
- That it applies policies for the identification of the client
- That it applies systems to detect, register and report relevant operations, in particular, suspicious transactions, even when they are fragmented into several small-volume transactions
- That the institution submits its reports *within the prescribed deadline*

The guidelines ensure that the verifications are conducted in a consistent and homogeneous way, taking into account the particular conditions that prevail in each of the sectors concerned, as well as the nature of the transactions typically carried out, and establish uniform criteria according to which the degree of compliance with each obligation is determined.

At the same time, the powers of the supervisory bodies were expanded in order to provide them with the necessary prerequisites to carry out their inspections effectively.

The outcomes of the programme were satisfactory. Every financial institution that falls under the preventive regime against money-laundering was visited. The implementation of the Guidelines improved both the quality and quantity of the supervision.

States parties are further required to promote international, regional and bilateral cooperation among relevant institutions in the fight against money-laundering. The National Banking and Exchange Commission has signed a memorandum of understanding with all regulatory and supervisory authorities responsible for foreign institutions operating in Mexico. That enables the Commission to exchange information with the authorities on audits, including information relating to the prevention of money-laundering.

With respect to article 40 of the Convention concerning banking secrecy, it should be noted that there are several provisions in the financial laws that oblige financial institutions not to reveal information about the transactions effected by or services used by their clients, except to the depositor, debtor, bearer or beneficiary, to their legal representatives or to those who have been given by law or contract the power to access the account or to take part in the transactions or use of services. Since bank secrecy is not absolute, however, that liability is not absolute; the law itself provides for exceptions to the general principle. Financial institutions can therefore reveal protected information under certain conditions to particular institutions, such as the judiciary and the federal finance authorities for auditing purposes.

The judicial and law enforcement authorities can gain access to information and relevant documentation concerning transactions effected by an alleged offender for the purpose of investigation and prosecution of illicit proceeds based on the powers provided under the Constitution and the Criminal Code.

Therefore, Mexico complies with article 40 of the Convention, since bank secrecy, as provided under the current legal framework, does not constitute an obstacle to the judge or prosecutor when they need the respective information for investigation or prosecutions.

The law requires that the request for information and documentation must be submitted to the responsible supervisory body which has the responsibility to verify that the legal requirements are well founded and justified.

On that matter, it is worth noting that the National Banking and Exchange Commission is responsible for responding to such requests for information. Between 2001 and 2003, 80,000 applications were received and approximately 1,600,000 official letters needed to be processed. Those

numbers prove, in our opinion, that bank secrecy is not an obstacle to the dispensation of justice.

We have provided an overview of preventive measures against money-laundering in Mexico which, in our opinion, will help to implement the United Nations Convention against Corruption.

However, during the last quarter, the financial authorities have been working on several projects to revise the financial laws, as well as to launch new preventive regulations against money-laundering and the financing of terrorism, in order for Mexico to comply with both the revised 40 Recommendations of the Financial Action Task Force on Money Laundering and, at the same time, the requirements of the United Nations Convention against Corruption.

The main modifications to the financial laws are as follows:

- In addition to its regulatory powers concerning the prevention of money-laundering, the Ministry of Finance and Public Credit is authorized to issue regulations of a general nature, obliging financial entities to adopt its measures and procedures to prevent and detect acts or transactions that could favour, help, facilitate or further the commission of any terrorist crime.
- Furthermore, the Ministry is authorized to issue regulations applicable to bureaux de change and money transfer agencies, and the Department of Tax Administration is authorized to supervise, monitor and survey the compliance of such institutions with those regulations.
- The sanctioning regime of financial laws is brought in line with the 40 Recommendations of the Financial Action Task Force on Money Laundering and the United Nations Convention by enabling the supervisory bodies to impose administrative fines.

Among the main modifications of the regulatory framework that soon will enter into force, one specific chapter concerning the “know your customer” rules stands out. The minimum requirements that should be fulfilled by the financial institutions include the following:

- The clients must be classified according to the potential risk they pose to the institution.
- The opening of accounts or other long-term contractual relations which, because of their nature pose a greater risk, must be approved at the executive level.
- The transactional profile of clients must be determined.
- Stricter policies must be implemented for establishing accounts and other contractual relations with politically exposed persons.

The incorporation of those basic requirements for the application of a more effective “know your customer” policy will enable the institutions to detect and report suspicious transactions which, because of their characteristics, could involve acts of corruption or the transfer of the proceeds of such acts.

Finally, it is important to note that we, the financial authorities, are also working on a revision of our internal anti-money-laundering procedures, in order to improve the coordination among the authorities and to increase the effectiveness of the financial intelligence unit.

Through the present brief explanation, we have given a broad summary of the efforts undertaken by the financial authorities of Mexico to strengthen the regulatory and preventive framework against money-laundering and the financing of terrorism and to implement the United Nations Convention against Corruption.

## **Making a convention work—the Anti-Bribery Convention of the Organization for Economic Cooperation and Development**

Enery Quinoñes

Head of Anti-Corruption Division, Organization for Economic Cooperation  
and Development

It is standard practice to open presentations with an expression of pleasure and gratitude to our host and in this I want to join my fellow speakers in thanking the United Nations and the authorities of Mexico for their invitation to address this panel. The Organization for Economic Cooperation and Development (OECD) was an observer to the ad hoc committee negotiating the United Nations Convention against Corruption and thus, I had the privilege to observe first-hand some of the discussions. Given the scope and the complexity of the task that was accomplished, on behalf of OECD, I would like to congratulate the United Nations for such a brilliant achievement and I would like to pay special tribute to the members of the ad hoc committee, all of whom demonstrated flexibility and an open spirit of compromise, as well as a lot of stamina, in order to bring the negotiations to a successful conclusion. I also wish to congratulate my friends and colleagues from the United Nations Office on Drugs and Crime and the United Nations Office at Vienna, whose dedication and hard work in supporting the negotiations played no small part in the final outcome. Such admiration is all the greater given my own experience with the negotiations of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the difficulties that had to be surmounted in a convention that is only nine pages long, with 17 brief articles, and that was negotiated by only 34 countries.

It is drawing from such an experience that I would like to address my remarks to you today. The OECD Anti-Bribery Convention covers all sectors of business and its provisions have a significant impact on the international financial system. But I was invited by the organizers of this Conference to address the question of how the OECD Convention can help in the implementation of the United Nations Convention against Corruption, and I would, therefore, like to present a frank and objective appraisal of the effectiveness of the OECD Convention in the hope that that might provide useful insight into the United Nations Convention—a perspective from an older sibling, if you permit the expression.

My presentation will therefore cover the following areas: first, a brief background of the OECD Convention—and I promise it will be very brief for the benefit of those who are not familiar with it; second, a summary of the experience so far in implementing that Convention, especially through the monitoring process; third, a look at the major areas of concern and priority

issues that we need to address; and finally, what lessons can be drawn from the OECD experience.

The OECD Convention entered into force in 1999 and, at the time, relatively few States had ratified the Convention. If my memory is correct, I think there were less than 10. However, although they were few in number, those ratifying represented 60 per cent of combined total exports of the top 10 OECD exporting countries. Today, there are 35 States that are parties to the Convention: 30 OECD member States and 5 non-members; of those, 34 have adopted legislation to transpose the Convention into national law.

As I mentioned in my introduction, the OECD Convention is a very brief Convention. It focuses on a small portion of the broader corruption problem. It requires countries to criminalize the bribery of foreign officials, but only in the public sector; thus, unlike the United Nations Convention, it does not cover the private sector. The OECD Convention requires countries to set an autonomous definition of a foreign public official, which eliminates the necessity to refer back to the domestic law of the country where the public official is located. The definition is very broad, much like the definition in the United Nations Convention. The OECD Convention requires parties to have sanctions for natural and legal persons, including seizure and confiscation of the bribe and the proceeds of the bribe. It requires countries to have a broad territorial jurisdiction and also, if they can, to apply the nationality principle as another basis of jurisdiction in order to increase the effectiveness of the Convention. The OECD Convention also sets accounting and auditing standards that make it harder for companies to generate or hide bribe payments. In addition, it prohibits tax deductions for bribes paid to foreign officials. The Convention also has provisions on banking secrecy, money-laundering, mutual legal assistance and extradition—all of which play an important role in the fight against transnational financial crime.

But I would like to turn now to the key elements of the monitoring system in the OECD Convention. Yesterday, at a breakfast hosted by the Minister of Public Administration of Mexico, I remarked that if the substantive provisions of the Convention were the soul of the Convention, the monitoring process was its heart. The following are the key elements of monitoring as practised in OECD:

- First, all parties must undergo monitoring, that is, the monitoring procedure is already built into the Convention so any country that joins the Convention must undergo monitoring.
- Second, the results of the examinations are submitted to and validated by an international body of parties called the Working Group on Bribery in International Business Transactions, which is composed of all of the signatories to the Convention. It is, therefore, an evaluation by peers.
- Third, the parties must also implement the recommendations that arise out of the evaluations.

- Finally, the evaluations are made public, thereby providing information to all interested stakeholders. No country that is being reviewed may block its report from being published.

Now why did the framers of the OECD Convention already provide for a monitoring mechanism? I believe that they wanted to have a credible and objective measure of whether countries are living up to their obligations. They achieve that by examining countries in two phases. The first is to assess whether the legislation the countries have adopted to transpose the Convention into national law meets the standards of the Convention. That is what we call phase one. In phase two, which is not confined to simply an analysis of the legislation but also involves an on-site visit, the purpose is more to determine whether or not the country is actually applying its legislation in practice. That type of monitoring also provides a yardstick for measuring progress because we go back to countries to find out how they are implementing the recommendations and whether or not they are working to eliminate the deficiencies or weaknesses that have been identified. At a glance you can see where we stand in the monitoring procedures. We have almost finished phase one, with two countries left to be examined, perhaps by the end of 2004. We have just started phase two, with seven countries already reviewed. But we expect to finish phase two examinations for all remaining 28 countries by 2007.

Having described the monitoring procedure and how it functions, I think it is legitimate to ask ourselves whether any of that is making an impact on company behaviour in the conduct of international business transactions. To be very blunt, are companies, or individuals, bribing less as a result of the OECD Convention? If we look at Transparency International's Bribe Payers Index—and I am not referring here to the Corruption Perceptions Index but rather the index that measures the perceived propensity of companies to bribe—we find that many OECD member States are still on that list. That implies that the answer to the question is no. But it is interesting also to examine two other findings from Transparency International's 2000 Global Corruption Report which indicate that the answer might be a little bit more nuanced.

First of all, in summarizing the results of its survey among multinational enterprises as to the level of awareness of the Convention, Transparency International found that:

“Surprisingly the awareness of the Convention has hardly improved in the three years. Only 7% of all respondents expressed familiarity with the Convention compared to 6% in 1999.”

But Transparency International also went on to say:

“In a notable development, scores were found to have improved slightly since the 1999 survey: companies are marginally less likely to bribe now than three years ago.”



That last finding reveals that something interesting is at work, perhaps not as easily measurable as the level of awareness of the OECD Convention, but, nevertheless, something that is having an impact on company behaviour. I believe there is an increase in risk awareness. All companies are aware of the growing public intolerance to bribery and corruption. Even without criminal charges against a company, mere allegations of bribery and corruption or misbehaviour can irretrievably damage or destroy a company. Partly in response to that, companies are investing more in training company officials and employees, especially those who are in sensitive situations.

Companies are also creating internal mechanisms to encourage the reporting of wrongdoing and also to protect whistle-blowers, persons who come forward. In a survey conducted by OECD among large multinational enterprises, we also found an interesting trend: a shifting away from general references to ethics, principles and morals in companies' codes of ethics, to more specific references to national anti-bribery laws, as well as to international conventions, and to the fact that bribes paid to foreign public officials are no longer tax-deductible. Companies are also reacting to increased investor activism, especially as concerns demands for better corporate governance standards and more responsible corporate social behaviour, and that is forcing companies to be more aware not only of the risk, but also of the potential gain, to be had from taking a proactive stand on such issues.

Although there may be an increase in risk awareness, there is still criticism that the OECD Convention is weak in its enforcement. At joint meetings of Transparency International and OECD in October 2002, we tried to identify some of the reasons for that weak or insufficient enforcement. On a national level, it was noted that in many countries, there is a lack of staff and a lack of training of law enforcement officials. There is also difficulty, despite international conventions, in obtaining mutual legal assistance. There is also a lack of complaints, perhaps due to low public awareness or perhaps simply because individuals do not know where to go when they have allegations of bribery or complaints. There are also statutory limitations; some statutes of limitations may be too short to allow sufficient time for investigations and prosecutions, and there is also, in some cases, a lack of proactive government support.

But the picture is not all negative. We have to keep in mind that there has not yet been sufficient time to fully realize the impact of the OECD Convention. Some national laws have been in effect for a very short period of time, much less than the four years that the OECD Convention has been in effect.

We have started to see some cases that have been properly prosecuted and, more importantly, we are starting to see more cases that are being investigated that will hopefully lead to prosecutions. So OECD is very conscious that we need to be addressing the possible reasons for insufficient enforcement either directly or through recommendations made to countries

during the monitoring process. For many countries, OECD has recommended that they promote programmes for raising the awareness of law enforcement officials, diplomatic personnel, the business community and accounting and auditing firms; but it has also recommended to countries to ensure that there are adequate resources and training. OECD has also recommended that countries improve channels—both formal and informal—for providing mutual legal assistance and is also calling on member States to provide developing countries with technical assistance in that area.

OECD has also recommended to some countries that they review their statutory limitations in order to ensure that there is adequate time for investigation and prosecution. OECD itself must address some grey zones—we need to clarify the extent to which the Convention does apply to foreign subsidiaries involved in foreign bribery transactions and to certain bribery transactions involving foreign political parties and candidates. OECD also needs to consistently follow up the reviews of countries to evaluate how well they are implementing the recommendations.

Let me turn now to the lessons learned. The first lesson is that monitoring is the key to effective implementation. I am more and more convinced of that and I believe that my colleagues involved in other international conventions and arrangements with monitoring procedures such as the Financial Action Task Force on Money Laundering would agree. I recognize that, in deciding on a monitoring mechanism in the United Nations, there are very difficult issues to resolve, not least those pertaining to the sovereignty of nations, the resources necessary to carry out the monitoring procedure, and the sheer mechanics of devising a mechanism to review as many as 120 countries. But I believe that none of those problems are insurmountable. Just look at the difficulties that were overcome in concluding the United Nations Convention against Corruption. Governments were committed and courageous enough to take that step and I believe that the Conference of the States Parties to the United Nations Convention against Corruption, which will convene after the Convention enters into force, will demonstrate the same courage and political will that were demonstrated by the ad hoc committee that negotiated it.

In the meantime, there is an increased need but also an increased opportunity for cooperation among the different international organizations engaged in the fight against corruption—both intergovernmental organizations and non-governmental organizations—and between the different agencies and chapters of those organizations. There is a wealth of information that is being produced by various anti-corruption initiatives, whether legally binding or not, and those initiatives are generating political momentum that can be harnessed in support of national legal and institutional reforms that can help signatories of the United Nations Convention, through the provision of technical assistance, to fully realize their commitments.

Finally, there is the matter of political will. In fact, it is easy to speak about political will when Governments take some highly visible action, such

as adopting a comprehensive anti-corruption plan or strategy, or when they sign a convention of this nature, but real political will is tested over the long run in terms of the resources that are put at the disposal of those who have the mandate to carry out the political reforms or in the resolve of the Government to prosecute high-level political figures that may be exposed. To deliver on its promises, political will must be renewed every day and sustained over time. Today, we live in a world very different from that of 20 years ago. While it is not a perfect world, there is more transparency and accountability than at any other time in recent history. And that in itself presents us with a great challenge as well as a great opportunity.

## **Challenges to effectiveness in the global anti-corruption system**

Creon Butler

Chief Economist of the Ministry for Foreign Affairs,  
United Kingdom of Great Britain and Northern Ireland

The completion of the negotiation of the United Nations Convention against Corruption is a tremendous achievement for all concerned. It reflects a vast amount of work; and yet, in a number of respects, the effort has only just begun.

The significance of the United Nations Convention against Corruption as a global standard for measures to combat corruption is well understood. But to make that standard a reality for the ordinary man or woman on the street in many parts of the world, it is going to require a lot more work from political leaders, officials in all branches of government, and non-governmental organizations.

We are all most grateful to the authorities of Mexico for hosting this week's signing ceremony. The already large number of signatories to the Convention shows that it has been a great success. But this set of specialist seminars has also been particularly valuable, as it has enabled us to focus on the challenges of making the United Nations Convention against Corruption a reality. I am very grateful to the organizers for inviting me to participate.

In my remarks I want to focus on three issues:

- First, I want briefly to review the United Kingdom's participation in the development of an international framework to combat corruption through measures in the financial system.
- Second, I want to look at some of the challenges we now face in further strengthening the operational effectiveness of that system, particularly in the aftermath of the terrorist attacks of 11 September 2001.
- Third, I want to highlight some of the ways in which the Government of the United Kingdom is seeking to help other countries in that global effort.

### **Development of the international framework**

The current framework is the result of the convergence of *two* strands of work.

Firstly, the development of a global anti-money-laundering system: this had to be implemented through new legislation, and new institutions, at the national level.

But it quickly became apparent that, to be effective, such work needed to be coordinated at the international level, partly to ensure agreement on best practice and to ensure that the national components are joined up effectively, but also partly to spread the word to other countries. That, in turn, led to the development of the Financial Action Task Force on Money Laundering (FATF), its 40 Recommendations, the list of non-cooperative countries and territories, the development of FATF-style regional bodies and, most recently, the joint efforts involving the Financial Action Task Force and the International Monetary Fund.

In addition to developing the “base platform” anti-money-laundering system, it also became necessary to adapt it to deal with new challenges for which it was not originally specifically designed, such as *action to counter terrorist finance*. So, the Financial Action Task Force also developed the Eight Special Recommendations on Terrorist Financing. Anti-corruption work, similarly, is a relatively new target for the anti-money-laundering system.

The United Kingdom has been an active participant throughout that process, from the initial development of national legislation against money-laundering through participation in the Financial Action Task Force, through technical assistance to other countries to facilitate the enhancement of national legislation and institutions and through efforts to promote the development of FATF-style regional bodies.

The second strand of work has focused on developing *an international framework for measures to combat corruption*. That has developed in a similar way through national legislation and new institutions, but with increasing recognition of the need to coordinate those efforts through international instruments.

A key instrument to date has been the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The United Kingdom ratified that Convention in 1998. We were then reviewed under phase one in December 1999. That review raised some doubts over whether our anti-corruption laws, dating back to the previous century, complied in every detail with the terms of the OECD Convention. We included new clauses in a new section on bribery in the Anti-Terrorism, Crime and Security Act, enacted in February 2002. That put beyond doubt the extraterritorial application of our laws. We are now working towards a further OECD review, due to be completed in mid-2004.

Finding a place for the new legislation in the Government’s legislative schedule was not easy, given the massive workload and the fact that it was not clear that it was absolutely necessary; the British Cabinet considered the issue to be important and there was very widespread support for the new legislation.

The United Nations Convention against Corruption now reflects a further critical stage in the development of the anti-bribery standard. Once again, we have been a keen participant from the start, among other things, acting as

Vice-Chairman of the Ad Hoc Committee. And even before signing the Convention, we have been actively reviewing whether there might be additional measures we would need to take for ratification.

Our current assessment is that we meet all the requirements in the chapter on preventive measures, that it will not be necessary to create any new United Kingdom offences to comply with the requirements on criminalization and law enforcement. And, in relation to international cooperation, we have a fully effective system for providing mutual legal assistance through our central authority—the Home Office. We are now focusing on any other legislative requirements that might prove necessary, for example, in the area of mechanisms for asset recovery.

Critically, the United Nations Convention against Corruption takes the important step of enshrining in an international convention on corruption—in article 14—key principles of the emerging global system for combating money-laundering.

Lastly, the United Kingdom also ratified earlier this week the Council of Europe Civil Law Convention on Corruption, which includes measures to include international cooperation in combating corruption and criminalizes a large number of corrupt practices.

The convergence of those two strands of work is a very important development, one that we need to continue to build on.

## **Challenges ahead**

What are the challenges ahead?

First, for global anti-money-laundering, we need to focus on ensuring the *cost-effectiveness of the emerging system*. For example, we are all familiar with the flood of suspicious transaction reports that followed 11 September 2001. In the United Kingdom, the figure has increased several fold from the 20,000 reports that preceded the attack. That work is vital to ensure that the system does the job we want it to, that we retain the confidence of private sector participants who provide the reports and bear a significant cost and that the system remains effective for *all* serious crimes, including corruption.

Another issue is the patchy extent of cross-border requests for information. Are parties making full use of the access systems that are available? If not, why not? A key part of that will be to develop more practical experience of tackling anti-corruption cases through international cooperation. There are no better ways to establish long-term cross-border ties between the key institutions.

Second, we need to consider whether there are any aspects of anti-corruption work that require new recommendations or adaptations in the global anti-money-laundering system. Corruption-related flows differ from both drug trafficking and terrorist financing. The amounts may not be as small as terrorist financing, the flow patterns differ from drug trafficking and the

matching information required to make sense of suspicious transaction reports is also different.

Third, we need to ensure that the costs of the developing global system do not fall disproportionately on countries with limited resources, without giving them the necessary assistance to cope.

Fourth, in every national system for combating money-laundering, there is a vast range of actors. It is vital not just for national effectiveness, but also for international cooperation that we develop increasingly strong cooperation between those actors.

Against the above background, we see the role of the United Kingdom as having three key components:

- Continuing to contribute to the development of best practice at the national and international levels.
- Continuing to ensure compliance in our own legislative and administrative systems to the emerging best practice.
- Helping other countries participate fully in the global system, through technical advice and assistance on anti-money-laundering, by playing our part in peer reviews, through the development of new institutions—such as FATF-style regional bodies (Central Asia being a current priority) and through broader initiatives to help other countries strengthen their public administration and hence their preventive measures against corruption.

No one should underestimate the scale of the task we are all engaged in, nor could anyone doubt the progress that has been made in recent years—from a situation where corruption in many countries was regarded as an unavoidable evil to one in which it is being confronted head on.

Recognition of the vast damage that corruption can do to national economic prospects, social and political stability and, ultimately, global security has been a key driver in that.

The first step has been to establish best practice and global standards. The United Nations Convention against Corruption is a major achievement in that respect, but we are now getting more and more into the hard slog, which is about implementation, both at the national level and in making the systems for international cooperation that we have established work on a day-to-day basis across an increasingly broad range of countries.

That will be the real challenge in the next few years. The United Kingdom, for one, is fully committed to playing its part.

## Conclusions

The meeting concluded that corruption affects social, economic and political development. It undermines the private sector and hinders foreign investment. Participants agreed that corruption no longer could be considered a local or national problem, but that it was an international phenomenon affecting every society and every economy. Therefore, international cooperation was essential when it came to preventing and controlling corruption. In particular, there was a need to develop and apply instruments allowing for the provision of mutual legal assistance, extradition and the exchange of information.

Participants warned against abusing the anti-corruption agenda for political purposes, as that had happened time and again in the past. The fight against corruption required continuity, political will, leadership and political and budgetary independence of anti-corruption institutions. An independent, honest and impartial judicial system and the active involvement of civil society were also of crucial importance.

Within the context of the United Nations Convention against Corruption, participants emphasized the importance of effective regulations and rules that prevented illicit proceeds generated by corruption and related behaviour from infiltrating the legal economy and giving rise to organized crime.

Participants concurred that strategies aimed at the prevention and control of corruption needed, in particular, to focus on eliminating the impunity of corrupt practices and promoting the effective management of public assets.

As far as the laundering of the proceeds of corruption was concerned, participants agreed that financial institutes should be held liable for their involvement in the transfer of proceeds from corruption and that they must keep registers and documentation allowing for the tracing of transactions and the indemnification of the beneficial owner of an account. Also, participants shared the opinion that bank secrecy should not be an obstacle to criminal investigations.

The meeting, moreover, underlined the nexus between corruption, money-laundering and the financing of terrorism and concluded that, as a consequence, the fight against corruption would also further the fight against the other two phenomena.

Participants also recognized the importance of involving non-banking service providers, such as lawyers and financial advisers, into the fight against corruption, in particular by obliging them to report suspicious transactions.





**International Group for Anti-Corruption  
Coordination: report of  
the fifth meeting**



## **Background**

The fifth meeting of the International Group for Anti-Corruption Coordination was held in Merida, Mexico, on 11 December 2003, in conjunction with the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption. The inter-agency coordination initiative had been launched by Louise Fréchette, Deputy Secretary-General of the United Nations, who had convened two meetings in New York on coordination of anti-corruption activities, on 2 and 26 November 2001, respectively.

## **Objectives**

The objective of the fifth meeting of the International Group for Anti-Corruption Coordination was to explore its role in promoting ratification and implementation of the United Nations Convention against Corruption. More specifically:

- To discuss the effectiveness of the Group in providing a platform for inter-agency coordination and cooperation and to review the database and its practical applications, including the analysis of anti-corruption initiatives worldwide.
- To discuss multi-agency collaboration, integrity initiatives and enforcement systems in international and regional organizations.
- To review existing monitoring mechanisms for international legal instruments.

## **Discussion**

The participants were welcomed by Dileep Nair, Under-Secretary-General for Internal Oversight Services, who also chaired the meeting.

### *The importance of partnerships and international coordination*

Antonio Maria Costa, Executive Director of the United Nations Office on Drugs and Crime, highlighted the importance of effective coordination and active collaboration among all the stakeholders involved in the fight against corruption and described the role and objectives of the International Group for Anti-Corruption Coordination in that context. He emphasized that, in order to be successful, coordination had to be based on the comparative advantages of each organization; hence organizations should deepen rather than broaden their initiatives. He reaffirmed the commitment of his Office to cooperation in the area of anti-corruption and good governance; he stated that inter-agency collaboration could provide huge benefits in terms of quality of international actions, thus improving not only the quantity of results but also the quality of the work.

Paul Lachal Roberts of the European Anti-Fraud Office spoke on behalf of the Director of the Office. He emphasized the importance of cooperation

and coordination in view of the implementation of the United Nations Convention against Corruption, calling upon the participants to work together in the spirit of the Convention by developing cooperation strategies, by investigating together matters of common interest and by sharing information and experiences. He underlined the importance of effectively protecting the investments made in the field of development aid in order to maintain the goodwill of donors. Only if all shared that view, that is, the donors, the recipients and the oversight institutions, could the common goal of curbing corruption be achieved.

Maud de Boer Buquicchio, Deputy Secretary-General of the Council of Europe, highlighted the importance of a regional approach in combating corruption and other forms of serious crime, since it allowed for tailor-made measures addressing the specificities of the respective region, faster and easier agreements on principles, objectives and methodology, further-reaching commitment and greater acceptance of monitoring mechanisms. She underlined the added value of a concerted regional effort and the advantages of bringing together varying working methods and managerial cultures to provide a multidisciplinary approach. She reconfirmed the Council's commitment to the International Group for Anti-Corruption Coordination as a forum in which to coordinate the considerable number of actors involved in the fight against corruption and facilitating synergies between the different approaches, while making use of each organization's area of specialization. With regard to the monitoring and follow-up of international anti-corruption instruments, she recalled that the experience of the Council of Europe Group of States against Corruption (GRECO) had shown that on-site visits and face-to-face discussions were an important element in the effective monitoring of the implementation of anti-corruption standards. She also drew attention to the possible multiplication of monitoring mechanisms and the ensuing issues that would need to be considered, namely, the increased workload for State institutions, the possibility of contradictions and inconsistencies, the need for increased coordination between the various organizations, the need for highly specialized evaluation teams and the cost of the monitoring activities. She concluded by welcoming the establishment of the International Group for Anti-Corruption Coordination and reiterating the Council of Europe's readiness to share its experience.

Daniel Kaufmann of the World Bank Institute highlighted the importance of inter-agency coordination and cooperation in the context of data collection and analysis. He said that there was an increasing amount of global data that could be used for a large variety of purposes, including the monitoring of the implementation of international instruments against corruption. He further briefed the participants on some of the main lessons learned from a systematic analysis of past anti-corruption work, adding that the anti-corruption agenda needed to be significantly broadened to encompass all areas of governance, allowing for an analysis of the incentives for corruption and the formulation of preventive policies and systemic reforms.

*The role of the International Group for Anti-Corruption Coordination in promoting the United Nations Convention against Corruption*

Oliver Stolpe of the United Nations Office on Drugs and Crime presented the International Group for Anti-Corruption Coordination database of ongoing anti-corruption projects and current levels of coordination. He noted that, at the outset of the database project, the United Nations Office on Drugs and Crime had estimated that there were 50-60 agencies handling around 2,000 projects aimed at assisting Member States in curbing corruption. A preliminary analysis of the data provided by a dozen donor organizations suggested that there was a lack of information-sharing and coordination, duplication of efforts, gaps in coverage and often competition instead of complementary efforts. Hence, there was a need for an inventory of anti-corruption efforts, the analysis of anti-corruption project patterns, the sharing of information across agencies and the development of a platform for building partnerships. The database, which had been created in order to address some of those needs, allowed for data to be analysed according to time, geographical dimension, implementing agency, donor, nature of the assistance and project name and number. So far, the project database had included 881 anti-corruption projects and activities. However, in many areas, sufficient data were still scarce. Mr. Stolpe concluded by underlining important next steps, including broadening the membership of the International Group for Anti-Corruption Coordination, data verification, entry of additional data and the bulk import of data from other existing databases.

Participants recommended equipping the web page of the International Group for Anti-Corruption Coordination with a feedback mechanism in order to allow for the assessment of the practical value and actual use of the database. Further, it was suggested that there be more focus on country-level data collection.

*Multi-agency coordination and cooperation in support of the United Nations Convention against Corruption*

Paul Lachal Roberts of the European Anti-Fraud Office focused his presentation on the conduct of joint investigations and the challenges involved. The need for joint investigations arose from a significant number of aid projects funded from multiple sources and staffed by two or more agencies. Rather than conduct what was often parallel investigations with inevitable overlap and points of common interest, the objective was to share the work while allowing for each agency involved to maintain its focus and independence. Particular challenges emerged, however, when it came to information-sharing. Confidentiality requirements might often not be compatible with the interests of cooperation. In the long run, formalized inter-agency agreements would be called for; however, that would not stand in the way of ongoing cooperation efforts.

John McCormick of the World Bank spoke about the opportunities and challenges posed by the United Nations Convention against Corruption to

departments responsible for maintaining institutional integrity and protecting the financial interests of their respective organizations. In particular, he envisaged that, much like after the entering into force of the Anti-Bribery Convention of the Organization for Economic Cooperation and Development (OECD), a change of thought would be triggered by the new Convention causing companies and individuals to come forward and provide information on fraud and corruption. That would raise a series of questions, such as how to deal with requests by such informants for confidentiality, if and how to recognize cooperation as a mitigating factor and, at the same time, how to balance the interest to give incentives for cooperation with the goal of appropriately sanctioning wrongdoers. In view of inter-agency cooperation, concerns arose with regard to the sharing of information across organizations without breaching confidentiality or how to obtain cooperation in cases when the conduct could not be sanctioned by one of the organizations.

Mark Gough of the United Nations Office of Internal Oversight Services (OIOS) discussed the approach of his Office, which in recent years had received more and more serious and complex cases where the allegations, if substantiated, would require the matter to be resolved via a national jurisdiction. Such a rise in the number of cases involving allegations of criminal wrongdoing had required a new strategy applying a risk management approach. That approach equated to a strategy whereby recurring problems were tackled as opposed to simply attending to matters one case at a time. He highlighted that, without preventive measures, the number of cases coming to the Office of Internal Oversight Services would simply continue to rise. One case in point was a current enquiry being undertaken by the Office of Internal Oversight Services, the European Anti-Fraud Office and Italian financial crime experts, the Guardia de Finanza, in Kosovo. Collaboration between international actors required a major allocation of time and resources and posed procedural difficulties but was necessary because of the magnitude of the allegations and the cross-cutting impact of corrupt practices.

Rainer Bührer of the International Criminal Police Organization (Interpol), briefed participants on the ongoing services and technical cooperation activities of his organization, including the development of an encompassing code of ethics and a code of conduct for law enforcement, the creation of an international system of national contact points for corruption investigations, a Library of Best Practices and the formulation of Global Standards to Combat Corruption in Police Forces/Services. The technical cooperation activities of Interpol focused on the latter aspect and included the design and delivery of ethics- and skill-based training and providing policy advice and technical expertise for the implementation and monitoring of the Standards. However, Interpol was suffering from lack of funding of law-enforcement-related technical assistance activities.

Vera Devine of OECD presented experience of her organization with monitoring the implementation of its Anti-Bribery Convention in 35 countries. The monitoring consisted of self-evaluation and mutual evaluation. The

examiners were selected, thus ensuring that the examining team was composed of examiners with various professional backgrounds and legal systems. In the first phase, the monitoring focused on the compliance of the national laws with the Convention, which was assessed through questionnaires. The report was first reviewed and commented on by the examined country and then submitted to the OECD Working Group on Bribery, which adopted it by consensus. The examined country had no right of vote. In case the report contained recommendations for the amendment of the laws, phase one was followed by “phase one plus”, aimed at verifying that the country indeed complied with the recommendations. Phase two was an attempt to identify eventual problems in the effective prevention, detection and prosecution of bribery cases. For that purpose, an on-site visit was conducted. Several issues had proved to be essential to the successful monitoring of the Convention. Firstly, monitoring was necessary to create and maintain political momentum, since signatory States were aware that their progress would be subject to international scrutiny. Peer pressure ensured that the progress review was taken seriously. Public reports additionally increased the pressure and enhanced public awareness. The active engagement of signatory States in the examination process encouraged the sharing of best practices and provided access to expert advice. Most importantly, monitoring provided a clear picture of how successful the Convention had been.

## **Conclusions and recommendations**

Several topics were proposed for further discussions at the sixth meeting of the International Group for Anti-Corruption Coordination, including the following:

- *Anti-corruption agencies and national anti-corruption programmes.* Why is it that the majority of those institutions and programmes fail, what are the critical success factors and what general lessons could be drawn (Office of Internal Oversight Services/World Bank Institute)?
- *Law enforcement.* Are there examples of successful programmes to strengthen the integrity and capacity of law enforcement agencies (Interpol)?
- *Listing of companies found to use corrupt practices, voluntary disclosure programmes, information exchange and confidentiality, debarment and other sanctions;* legal (jurisdiction and due process) and practical challenges of such instruments and policies (World Bank, OECD, European Anti-Fraud Office, Association of Inspectors General, Asian Development Bank).
- How the International Group for Anti-Corruption Coordination and its members could add value to the United Nations Convention against Corruption in more practical terms: priorities and joint programmes and activities.



Participants concurred that the decision on the thematic discussion would be taken by the Steering Committee of the International Group for Anti-Corruption Coordination.

The Office of Internal Oversight Services envisaged that it would brief the International Group for Anti-Corruption Coordination members at the sixth meeting on the findings of the Organizational Integrity Survey.

The sixth meeting of the International Group for Anti-Corruption Coordination was scheduled to be held in mid-2004, possibly back-to-back with another event. It was agreed that it should not be held in Vienna. At the sixth meeting a new Chairperson of the Group and Members of the Steering Committee would be elected.