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Transparency International's Quarterly Newsletter



FROM THE CHAIRMAN

Corruption matters to companies

The arrest in Paris this summer of former German state secretary Holger Pfahls was a reminder of the complicity of Western governments in global corruption. Pfahls, wanted since 1999 over allegations of corruption in connection with the sale of 36 tanks to Saudi Arabia, is suspected of having received almost 2 million in bribes from an arms lobbyist at the centre of Germany's biggest ever political party funding scandal, dating from former Chancellor Helmut Kohl's term in office.

The complex constellation of players involved in corruption means that the pursuit of financial accountability and transparency must be a truly cross-sectoral effort with checks and balances on all sides. It requires action not just by governments, but also by the private sector, civil society, international organisations, and by individuals everywhere.

That is why I was delighted at UN Secretary-General Kofi Annan's announcement in June at a summit in New York that leading international companies have added the fight against corruption to the UN Global Compact's nine existing principles of good corporate citizenship in the areas of human rights, labour and the environment. The acceptance of this tenth anti-corruption principle by the Global Compact's more than 1,700 corporate and civil society members reflects the new global consensus on fighting corruption that was reached in the recent signing by more than 100 countries of the UN Convention against Corruption.

Although the Global Compact is a voluntary initiative, it is an essential complement to international conventions and national laws because it signals voluntary acceptance by companies of the new rules. The legal landscape has been transformed in the past decade with the criminalisation of cross-border bribery through the OECD Anti-Bribery Convention and other conventions.

The challenge will now be for business to put words into action. An increasing number of companies are already using the Business Principles for Countering Bribery, developed by TI and Social Accountability International with a group of multinationals, to benchmark their anti-bribery policies.

Support for the fight against corruption must also come from governments, not least by ratifying and implementing the UN Convention. OECD governments must do more to ensure that laws banning bribery abroad are enforced. In the fight against corruption, civil society - because it is bound neither by the limited time horizon of most democratic governments nor by a company's short-term share price - is well placed to pursue what is in the interest of all stakeholders.

Peter Eigen, Chairman, Transparency International

SPECIAL REPORT

Beyond compliance: the impact of criminal trials on Wall Street

By Justin O'Brien

The complexity of modern finance can make the detection of criminal or ethical wrongdoing extremely difficult prior to systemic failure. Yet some of the most high-profile cases to have emerged in recent years were not unexpected. If the publicly available company documents were adequately parsed, they represented, to paraphrase Gabriel Garcia Marquez, chronicles of corporate deaths foretold. Despite the shocking testimony on offer in state and federal courts in New York and elsewhere, successful prosecutions on substantive issues after jury trials have been very elusive.

Martha Stewart, demigod of American design, faces prison for lying to prosecutors, not the weightier charges of securities manipulation (dismissed by the judge) or insider trading (not even in the indictment). Frank Quattrone, one of the most successful investment bankers of the dot.com era, was tried unsuccessfully in October 2003 for impeding a federal investigation, not for complicity in the rigging of the lucrative IPO market. A retrial in May provided prosecutors with an unanimous verdict on the limited charges.

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SPECIAL REPORT

Corporate corruption

Justin O'Brien on the recent spate of corporate trials in the USA (page 1); TI's Jermyn Brooks looks at the corporate world's attempts to clean up (page 12); and John Bray of Control Risks on corruption in Asia's emerging markets (page 13).

CHAPTER FOCUS

Tackling corruption in Germany

TI Germany has been pressuring the government to enact a freedom of information law and has also been pushing for more transparency in government procurement.

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COUNTRY SPOTLIGHT

Media crackdown in Algeria

Djillali Hadjadj of l'Association Algérienne de Lutte contre la corruption, TI's contact group in Algeria, examines the increasing restrictions on free speech in the country.

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In the Headlines

» A sample of corruption reports from around the world

AFRICA

• MALAWI

Former ministers to face charges

Several ministers under Malawi's former president Bakili Muluzi are to face charges connected with the embezzlement of some US\$92 million from the state, the country's new chief prosecutor said on 23 July. The embezzlement took place during Muluzi's two terms in office from 1994 to May of this year when he handed power to his chosen successor Bingu wa Mutharika. The chief prosecutor said he was building a case against the unnamed ministers. More than US\$75m in aid was suspended in 2002 by the IMF and donor countries due to concerns over spending in the Muluzi administration.

Associated Press, 23 July 2004

• SENEGAL

Jailed newspaper editor freed

A Senegalese newspaper editor jailed after publishing articles alleging official corruption was released on bail following two weeks behind bars, media has reported. Madiambal Diagne, editor-in-chief of the daily newspaper *Le Quotidien*, had been in custody since 9 July on charges of disseminating false news, revealing confidential documents, and publishing information that could incite public disorder. Diagne was jailed after his newspaper ran articles alleging corruption by customs officials and complaining of political interference in Senegal's judiciary. A series of demonstrations and a one-day news shutdown had been organised since Diagne's arrest.

Associated Press, 26 July 2004

AMERICAS

• CHILE

Judge probes Pinochet finances

A court in Chile has started an investigation into allegations of corruption against former president Augusto Pinochet. Two human-rights lawyers earlier said they had lodged accusations of fraud, embezzlement and bribery. The claims were prompted by a US Senate report (see below) alleging that the US-based Riggs Bank helped General Pinochet hide up to US\$8 million and evade seizure of his assets. A spokesman for Pinochet has denied the allegations.

Pinochet's son, Marco Antonio Pinochet, said the money in the accounts had come from decades of hard work and donations from supporters, and not from state funds.

BBC News, 21 July 2004

• USA/EQUATORIAL GUINEA

Shocking report implicates bank

A US Senate report released in July found that the prominent Riggs Bank helped, among others, top officials of Equatorial Guinea siphon hundreds of millions of dollars in oil revenues to accounts set up for them in Washington. From 1995 until earlier this year, Riggs oversaw as many as 60 accounts containing as much as US\$700 million, making Equatorial Guinea its largest single customer. Some were government accounts, while others were the private accounts of President Teodoro Obiang Nguema, other government officials, and their families. Senators were angered that bank officials never reported any suspicious financial transactions involving Equatorial Guinea. Bank officials blamed the lack of an internal monitoring system. Riggs was fined a record US\$25m by federal banking regulators.

VOA News, 20 July 2004

• USA

Halliburton bribe claims probed

The US Securities and Exchange Commission (SEC) has launched a formal investigation into allegations that a Halliburton joint venture paid bribes to win a multi-billion dollar construction project in Nigeria. Kellogg, Brown & Root, a unit of Halliburton, owns one-quarter of a Madeira-based joint venture called TSKJ, which has been responsible for the Nigeria Liquefied Natural Gas project. Halliburton acknowledged the existence of an agent for TSKJ in connection with the Nigerian project since its inception in 1995. However, it suggested there was nothing untoward about the payments to that agent, believed to total up to US\$180 million. The allegations were unearthed by a French investigating magistrate, Judge Renaud van Ruymbeke, last year.

Financial Times, 12 June & 9 July 2004

• BRAZIL

Decade of healthcare corruption

A corruption scandal involving bribes and price-fixing in government health contracts threatens to create political turmoil for Brazil's government and opposition alike, and has unveiled glaring inadequacies in spending controls. For more than a decade, pharmaceutical companies, lobbyists and public health officials rigged government contracts and embezzled more than R\$2bn (US\$637 million), according to federal police investigations leaked to the press in recent days. The corruption scheme spanned the terms of several health ministers.

Financial Times, 2 June 2004

ASIA

• NEPAL

140 officials charged

The Commission for Investigation of Abuse of Authority (CIAA) has filed corruption charges against 141 government employees at the Special Court, including a number of high-ranking officials, for presenting forged educational certificates. The commission has cast a wide net, charging members of the police force, academia and the private sector on various corruption-related offences. A Nepal court also sentenced former government minister Chiranjivi Wagle to two-and-a-half years after finding him guilty of abusing his position to accumulate wealth.

Spacetime (Kathmandu), 27 May 2004;

Associated Press, 22 July 2004

• THAILAND

Activist gunned down

A leading Thai activist was assassinated hours after he testified at an anti-corruption hearing into a power project that was scrapped following a massive public campaign he had led, police said on 22 June. Charoen Wattaksorn, 37, was shot eight times by an unidentified assailant as he got off a bus, according to police. Charoen was a vocal activist who led hundreds of villagers in marathon protests against a government plan to build a coal-fired plant in a village in the province of Prachuab Khiri Khan, a plan opponents said would threaten the environment. After the government scrapped the project, Charoen

charged that officials had conspired with local businessmen to acquire public land that was to be used for the plant.

Dow Jones Newswires, 22 June 2004

EUROPE

• LITHUANIA

President impeached

This April, the President of Lithuania, Rolandas Paksas, became the first European head of state to be impeached, with the country's parliament voting to remove him from office on three counts of corruption. Paksas, who became president in January 2003, had been at the centre of allegations since December 2003 concerning links to Russian organised crime and intelligence services. Lithuania's constitutional court found he had "grossly violated the constitution". A week later the necessary two-thirds of parliament backed the court, voting to oust Paksas. To the last, Paksas portrayed himself as the victim of a corrupt system. His subsequent attempt to run for office in the June elections, despite his impeachment, was blocked by a constitutional court ruling.

Financial Times, 7 April 2004

• RUSSIA

Foreign editor murdered

Paul Klebnikov, 41, American-born editor of the recently launched Russian-language version of US business magazine *Forbes*, was fatally shot, in an apparent contract killing, as he left the publication's Moscow offices. Previous contract killings of journalists have frequently been linked to the subjects of their articles - such as those probing corruption in the military - or commercial conflicts linked to control of publications and their advertising revenues. *Forbes* sparked criticism from Russia's secretive business elite after it published a list in May of the country's 100 wealthiest people, who between them control one-quarter of the total GDP. According to Reporters Without Borders, five Russian journalists were killed last year; few such crimes have been solved.

Financial Times, 12 July 2004

• SWITZERLAND/NIGERIA

ABB subsidiaries plead guilty

The US and British subsidiaries of ABB Ltd, a Swiss equipment-maker, pleaded guilty to paying more than US\$1 million in illegal bribes to win oil contracts in Nigeria, according to the US Department of Justice. Each company was charged under the Foreign Corrupt Practices Act; the UK firm was charged under a section

of the law added in 1998 that prohibits foreign companies from any act involving the bribery of a foreign official in the US. As part of the deal, each company agreed to pay a fine of US\$5.25m. In June, ABB also announced that an internal probe at one of its units in Italy uncovered irregularities worth US\$70m.

Associated Press, 7 July 2004

MIDDLE EAST

• IRAN/NORWAY

Statoil fined over Iranian bribes

Oil company Statoil was found guilty of bribery and fined 20 million Norwegian kroner (US\$2.9m). According to Okokrim, Norway's economic crime body, Statoil paid US\$15.2m in consultancy fees to secure contracts in Iran. Okokrim concluded that Statoil's consultancy agreement represented a criminal offence under a law introduced on 4 July 2003. But the company's board insisted that "there is no basis for criminal liability charges against either Statoil as an enterprise, or against individuals in Statoil".

BBC, 29 June 2004

• IRAQ/USA

Coalition spending audited

The US-led occupation authority spent billions of dollars in Iraqi oil revenues last year without following its own procedures, auditors working for a United Nations oversight body have found. The findings by KPMG, the accounting firm, were presented in Washington to the International Advisory and Monitoring Board (IAMB), a watchdog set up by the UN to oversee spending of Iraqi funds by occupation authorities. According to the presentation, the Coalition Provisional Authority skirted its own rules for awarding contracts, with some expenditures receiving "inappropriate authorisation", including contracts awarded without any competitive bidding. During its year of existence, the CPA earmarked more than US\$19 billion of Iraqi funds placed under its control by a UN resolution. Meanwhile, no less than nine separate investigations are currently underway into corruption in the pre-war UN humanitarian programme known as Oil for Food.

Financial Times, 12 July 2004

Changing Perspectives

By David Nussbaum

On an early morning flight out of Berlin, I struck up a conversation with the person seated next to me. He worked in the international pipeline industry and his reaction to my job was a combination of interest and incredulity. As we spoke, I noticed three themes in his response to the question of corruption, which reflected challenges that still face TI.

He started by maintaining that of course his firm was not involved in corruption or bribery. But as we explored the prevalence of corruption in international construction, it soon came out that they did use "agents" overseas, and that some of the company's foreign branches operated to different standards than the 'home' company. So, the first challenge for TI is to continue to promote greater awareness of what corruption entails. The corruption on Wall Street, explored in this issue by Justin O'Brien (p. 1), is quite remote from the classically corrupt overseas construction project.

My fellow traveller then suggested that no "real harm" was done by a little bribery or corruption: it greased the wheels of commerce. I told him about the moving speech I had heard in May 2003 at the 11th International Anti-Corruption Conference in Seoul from Kuraiti Murungi, Minister of Justice and Constitutional Affairs in Kenya: "Where I come from ... we have seen corruption deny medicines to our hospitals, literally remove desks from our classrooms. It has systematically eaten away at the very fabric of our society."

I also mentioned the risks to companies of engaging in corrupt activities. Had I been speaking with him today, I would have told him about Canada's Acres International. It paid bribes in Lesotho some years ago, and has now been debarred by the World Bank for three years. So another of our tasks is to show that the consequences of corruption - on both ends - are serious and dangerous.

Perhaps now wishing he had been seated elsewhere, my fellow passenger argued that "we would behave cleanly if we could, but we can't", because competitors bribe. But again, TI has solutions. We spoke of real-world tools for creating change, of Integrity Pacts for contracting, of adopting the Business Principles for Countering Bribery - as Jermyn Brooks advocates here (p. 12) - and of true due diligence for international operations, which takes human relations into account, as John Bray explores in an article focusing on Asia (p. 13).

As we arrived at our destination, he seemed to acknowledge that there actually were steps that companies could take. We in the anti-corruption movement must continue to advocate such practical measures, to help realise the world free of corruption for which we are fighting.

*David Nussbaum,
Chief Executive, Transparency International*

For the latest global corruption headlines, see TI's Daily Corruption News:

www.transparency.org

Global Initiatives

» An overview of work by international organisations



UN Secretary-General Kofi Annan at the UN Global Compact summit in New York on 25 June. Photo courtesy of UN/DPI.

UN

New anti-corruption principle for the Global Compact

A tenth principle calling on companies to work against corruption was added to the existing nine principles of the UN Global Compact. TI welcomed this development, which successfully concludes a consultation process that involved the Global Compact's more than 1,700 corporate and civil society members. TI worked closely with the UN Global Compact office to integrate the new global consensus on corruption into the Compact.

See also www.unglobalcompact.org

UN/TI

New transparency tool kit

The United Nations Human Settlements Programme (UN-HABITAT) and Transparency International launched their Tools to Support Transparency in Local Governance this May in Nairobi, Kenya. The publication is a guide for all urban stakeholders - policymakers, professionals, the private sector, civil society organisations and concerned citizens - wishing to improve the quality of life in their cities. The publication combines the knowledge and lessons from UN-HABITAT's extensive experience in the field of urban governance, with TI's expertise in monitoring and combating corruption. A collection of 29 tools and nearly 70 case studies, this "toolkit" will assist those interested in improving transparency, combating city-

level corruption and inefficiency, and promoting effective citizen participation. See: www.unhabitat.org/governance

G-8

Sea Island on corruption

At the close of the G-8 summit at Sea Island in the USA, summit members announced a set of anti-corruption actions they had agreed to undertake. These included becoming parties to the UN Convention against Corruption, enforcing the provisions of the OECD Anti-Bribery Convention, denying safe haven to officials guilty of corruption and focusing on the transparency elements of trade agreements. In May the G-8 Ministers of Justice and Home Affairs also met and issued a Declaration on Recovering Proceeds of Corruption. In this, the G-8 countries commit themselves to establishing powerful mechanisms for asset recovery. For more information, see www.g8usa.gov

ADB/OECD/TI

Asia-Pacific meeting takes a tough line on corruption

The 5th Steering Group Meeting of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific was held in Manila, Philippines, on 5-7 July. TI Secretariat Regional Director Peter Rooke participated in the meeting on behalf of TI. The group adopted a strategy and work programme for 2004-2006. The participants agreed that the prevention and sanction of con-

licts of interest and of corruption in public procurement are foremost among the problems to be addressed in the near future. The Steering Group also decided that the Initiative will hold training seminars at the Malaysian Anti-Corruption Academy, starting in early 2005, on topics such as the UN Convention, whistleblower protection, conflicts of interest, mutual legal assistance, forensic accounting and public opinion surveys.

TI/OECD

TI Report Card on OECD convention enforcement

TI is planning to publish a Report Card on Enforcement of the OECD Anti-Bribery Convention in October 2004, to highlight the need for national enforcement and identify steps to overcome obstacles. This will be the first of a planned annual TI assessment of the state of OECD Convention enforcement. All 35 signatories have ratified the Convention and have passed national legislation implementing the Convention's prohibition of foreign bribery. However, few countries as yet appear to have taken action to enforce this prohibition. Widespread enforcement is critical because many governments may be reluctant to prosecute companies for foreign bribery if other governments aren't prosecuting those companies' competitors. The Report Card will be submitted to the OECD Working Group on Bribery, which monitors the implementation of the Convention, and to the governments that have signed the Convention.

OECD

Italy reviewed

In April 2004, a team of examiners from the OECD Working Group paid an on-site visit to Italy as part of the Phase 2 review of Italy's enforcement of the OECD Anti-Bribery Convention. The Italian government initially refused to invite TI representatives to make a presentation to the visiting examiners, but the government reversed its position after a TI protest to the OECD. This was important for maintaining the precedent of TI input to the Phase 2 examination process, which has been followed in all such reviews to date.



Towards more transparent investment in the Middle East and North Africa

The OECD organised the OECD-MENA Investment Steering Group Meeting in Amman, Jordan, on 30 June & 1 July to examine ways to improve the region's investment performance. Members of the Lebanese Transparency Association (TI Lebanon) represented TI.

EU

Whistleblowing becomes an obligation for EU officials

New staff regulations entered into force on 1 May as part of a comprehensive administrative reform undertaken by the European Commission. The reform includes new rules concerning reporting evidence of alleged wrongdoing. These rules deal not only with the protection of those who raise concerns about fraud, corruption or other misdeeds, but also with the obligation of officials to "blow the whistle". Both components are completely new to EU staff regulations. Lines of reporting are laid down as well as provisions for impartial advice to potential whistleblowers. In other news, the European Council has adopted a number of so-called "framework decisions" on matters including private-to-private corruption, money laundering and mutual legal assistance. An earlier such decision led to the adoption of a European arrest warrant, as yet poorly implemented, but with the potential to simplify the handling of cross-border crimes.

Dieter Frisch, TI Brussels, 30 April 2004

TI/BROOKINGS INSTITUTION

Taking a hard look at political corruption in the USA

As part of the launch of the Global Corruption Report 2004, TI and the Brookings Institution held a symposium on political corruption on 28 April in Washington, DC. Panellists said that the presence of money in politics was both inevitable and necessary, but they worried about how it entered the political system, its effect on government, and the appearance of impropriety it created. Different approaches were put forward, which variously advocated greater public awareness, political will and a stronger judiciary for prosecuting infractions.

One panellist concluded that ultimately there was not a perfect solution. "There is no end game to this," said Larry Noble of the Center for Responsive Politics. "This is all part of the care and feeding of democracy, and you can't get discouraged by it."

TI and The Brookings Institution

PTF/TI

PTF forges ahead

The Partnership for Transparency Fund (PTF) recently approved a grant of more than US\$13,000 to assist TI Czech Republic in an innovative survey to measure the propensity for corruption in four Central European countries - Czech Republic, Hungary, Poland and Slovakia - and to rank them according to the quality of their capital cities' anti-corruption institutions. This project is just one of 28 PTF projects in Africa, Asia, Latin America and Central and Eastern Europe. PTF, now in its fourth year, provides micro-grants - usually \$25,000 or less - to fund time-bound initiatives aimed at increasing transparency and curbing corruption in the public sector. Run by NGO activists and experienced volunteers, and funded by the international development community, the PTF is ready to consider funding applications from civil society organisations, including TI national chapters, that seek to promote specific initiatives to curb the misuse of public funds. For more information, see www.partnershipfortransparency.info

TI

Integrity Awards 2004: Anti-corruption heroes revealed

TI has announced the shortlisted candidates for this year's Integrity Awards. Including an economist, government officials, a lawyer and a journalist, the candidates hail from Turkey, Bosnia and Herzegovina, India, Germany, Greece, Bangladesh and Kenya. All are distinguished by an unflinching sense of mission and sacrifice. The winners will be announced in September. For more information or to receive a copy of the 2004 Integrity Awards video, please see: www.transparency.org/integrityawards

TI/IPYS

Exposé of corrupt judges wins award

A series of reports on corruption among Supreme Court judges in Ecuador won first prize for the Best Investigative Journalism Report on Corruption in Latin America and the Caribbean. The 2004 winner, Arturo Torres, of the Ecuadorian newspaper *El Comercio*, was chosen by an international jury of distinguished journalists and honoured at a ceremony in Buenos Aires, Argentina, on 13 April. The annual award is co-ordinated by Transparency International's network in Latin America and the Caribbean (TILAC) and the Instituto Prensa y Sociedad (IPYS) in Peru, and supported by the Open Society Institute (OSI). For more information, see: www.transparency.org/tilac/trabajo_en_re_d/premio_anual/index.html



Winners of the TILAC Investigative Journalism Prize. From left to right: Maria Fernanda Villosio (special mention), Arturo Torres (winner), Mabel Rehnfeldt (special mention). Photo courtesy of TXT.

TI Country Work

» An A to Z of TI chapter activities around the globe



In early 2004 Poder Ciudadano, TI's national Chapter in ARGENTINA, joined Red Puentes ("Bridge Network"), a coalition of 21 civil society organisations working on Corporate Social Responsibility (CSR) from Argentina, Brazil, Chile, Mexico, and the Netherlands and financed by NOVIB (Oxfam Netherlands). The network has organised meetings and conferences on CSR for its members and companies, and established a CSR journalism award.

A toll-free hotline launched by TI BOSNIA AND HERZEGOVINA in February had received 1,800 reports of corruption from local residents by mid-June. The inspection authorities have been singled out by complainants as among the most corrupt public institutions. Numerous reports were also received from professors and students relating to corruption in the country's uni-



versities. This triggered investigations into corruption at Banja Luka University, the results of which were presented in a public debate organised by TI-BiH in June. The chapter's Advocacy and Legal Advice Centres can be contacted by phone, internet and mail. The centre in Banja Luka is funded by the German government. An additional centre, funded by the EU, will open soon in Sarajevo.

In April, Transparencia BRASIL together with Kroll Brasil published the results of their second private-sector corruption survey. Approximately 70% of the companies surveyed reported spending up to 3% of their revenues on bribes. For 25%, these costs averaged between 5% and 10%. About half of the companies polled had participated or tried to participate in public procurement. Of these, 62% reported

having been asked for bribes. Some 21% of the companies polled stated that corruption is tacitly accepted in management policies. For more information please see www.transparencia.org.br/docs/private-sector-2003.pdf

In July TI CAMEROON launched a national coalition with three local civil society organisations (Cameroon Episcopal Conference, Global Network for Good Governance, Cameroon Communication Centre) that will work to increase public monitoring of the state budget. The aim of this ambitious budget-tracking exercise will be for citizens to have more control over the spending of public money, and a key component of the project will be access to information. The coalition has already received the commitment of three national newspapers to publish the results of budget monitoring.

TI CANADA and TI NIGERIA organised a conference in Abuja, Nigeria, in May on the "Integrity Pact for the Oil and Gas Sector in Nigeria" as part of their long-running joint project to address the issues of transparency and accountability in this sector. The conference was opened by Nigerian President Olusegun Obasanjo, and attracted more than 75 people from over 50 organisations, including representatives of civil society, business and the government. It was agreed to organise a follow-up workshop on the application of the Integrity Pact to the Niger Delta Development Commission (NDDC) in Port Harcourt, Nigeria. Following this workshop, training for the monitoring of the Integrity Pact will be conducted and, in the final phase, the Integrity Pact will be implemented. The Abuja conference was funded by CIDA, Nexen Inc., and StatOil, and received support from TI Norway, the TI Secretariat and the endorsement of the Extractive Industries Transparency Initiative (EITI) and the NDDC.

In June, Cheng Wenhao, Director of the Anti-Corruption and Governance Research Centre (ACGRC) at Tsinghua University in CHINA, signed a memorandum of understanding with TI on future co-operation. The Centre plans to identify a range of stakeholders to form a steering group with a view to launching a TI national chapter in China in early 2005. The Centre also donated RMB 100,000 (approx. 10,000) to TI for general support. While in Beijing, TI

Regional Director Peter Rooke and Programme Officer Liao Ran met with the China Society of Supervision and donor agencies. In Hong Kong, they then met ICAC Commissioner Raymond Wong and staff at the Community Relations and Business Ethics Development Centre to discuss continued co-operation. In Macao, TI was received by the Commissioner of the Commission Against Corruption, Cheong U, who expressed his willingness to endorse the OECD/ADB Anti-Corruption Action Plan.

In April Tsinghua University, TI, and the International Chamber of Commerce in CHINA jointly organised a two-day anti-corruption symposium for the construction sector in Beijing. The symposium was attended by more than 100 senior Chinese officials, representatives of construction companies, banks, surety companies and law firms from across China. The purpose of the symposium was to discuss surety bonding, and international best practice in the prevention of corruption in the construction sector. On the second day of the symposium, Neill Stansbury of TI-UK led an all-day workshop during which officials were trained in identifying and preventing corruption in the construction sector. Methods of prevention discussed included corporate ethics codes, professional ethics codes, enhanced due diligence, integrity pacts, independent assessors, and blacklisting. Following the TI visit, the Chinese authorities announced a decision to implement a blacklisting policy in five provinces and regions that would bar contractors convicted of bribery from working in construction projects. A list of corrupt contractors will be made available to local governments and those responsible for construction projects.

Transparencia por COLOMBIA, TI's national chapter in the country, launched a Comprehensive Ethics Programme which is expected to be implemented by at least 600 small and medium-sized enterprises (SMEs) in different industry sectors over the next two years. By launching the programme, the chapter hopes to secure the commitment of the business community to curbing corruption, and to provide them with a tool to increase their productivity and competitiveness. The SME ethics programme comprises 10 modules and uses software to assess a company's ethical climate. Financial support for this project

came from USAID and a coalition of other organisations, including the Merck Foundation and the Ethics Resource Center.

TI FRANCE has been working on the issue of tax havens. The global flow of capital is impaired by the activities of some 60 banking and tax havens, also called offshore centres, which are sanctuaries for money laundering. Recognising that Europe is still home to a dozen tax havens operating on the continent, late last year the French chapter published a set of 10 proposals to fight abuse of offshore financial centres. The recommendations included broadening the definition of unlawful behaviour; interrupting all financial relations with unco-operative offshore centres; establishing fair competition rules in the field of taxation; and ensuring traceability of financial transfers. For a full list of the proposals (in English or French), write to TI France at transparence@online.fr.

Corruption is endemic in HAITI's public institutions, according to the first major report on corruption in the country, published in May by the Haiti Heritage Foundation (HHF), TI's national chapter-in-formation. The new survey, *The State of Corruption in Haiti 2003*, provides an overview of corruption in the country and

presents the results of two polls conducted by the chapter in November and December 2003. The survey was carried out by a polling agency of 315 households in the Port-au-Prince metropolitan area, in surrounding communities and among 40 private businesses. The survey was developed with the technical assistance of the TI Secretariat and was modelled on "integrity surveys" already carried out by TI chapters in Madagascar, Morocco and Senegal. For more information, contact Marilyn B. Allien, at: heritagehaiti@yahoo.com.

Meanwhile, the Haiti Heritage Foundation and the World Bank Institute co-organised a National Integrity Workshop in Port-au-Prince in July. The workshop provided a forum for representatives from the public sector, civil society, and the donor community to discuss policy and institutional measures needed to develop and implement an effective programme to increase transparency and improve govern-

nance in Haiti. Resource experts from Colombia and Senegal also participated.

Since 2002, TI ITALY has been working with the Municipality of Milan and the Public Prosecutor's office on ethics training and the introduction of the TI Integrity Pact in tenders for public works. As a result, the municipality has so far excluded 72 companies from competing in various bids, following evidence of collusion by these companies. The total amount of the tenders in question was more than US\$40 million. Following appeals by some of the companies that were barred from



TI Zambia launch of the Global Corruption Report 2004

Tackling corruption in Germany

TI Germany has been working on two fronts to curb corruption in the country: pushing the issue of a long overdue freedom of information law and fighting for more transparency in government procurement.

Securing access to information...

TI Germany has been lobbying for the passage of a freedom of information act. Germany is one of the last OECD countries without such a law, although the ruling Social Democrats and Greens had promised to create one in their coalition agreements in 1998 and 2002. Five civil society organisations, including TI Germany, drafted a bill of their own, to provide impetus and a model for parliamentary deliberations. This draft was handed over to Wolfgang Thierse, the president of the German parliament, on 1 April and passed down by him to the parliamentary parties which have a committee working on a bill. The speakers of both parties stated that the civil-society draft was very helpful for their work. In July, the government announced a draft was ready and promised to introduce the bill in the September parliamentary session. Meanwhile, in June, TI Germany and its partners began a public campaign on access to information to raise awareness of the importance of the draft law. *By Reinold E. Thiel, TI Germany.*

...and transparency in public procurement

A municipal waste disposal company near Cologne, Germany, announced on 1 June that it would apply the TI Integrity Pact (IP) to future investment and service contracts. The company had worked closely with TI Germany in developing a German model IP. The IP con-

tains clear anti-corruption commitments from the company and from all bidders for contracts, and provides for strict sanctions in case of violations, such as loss of contract, liability for damages and black-listing for future contracts. All bidders must sign the IP to qualify. The IP is part of a comprehensive effort by the company to eliminate corruption, including increased transparency of the procurement process, appointment of an ombudsman, use of the 'four eyes' principle (cross-checking, double signatures, etc.) and intensive internal training programmes. The company is particularly motivated to prevent corruption as it was implicated in a high-profile regional corruption scandal in 2002 under its former management. The company expects significant cost savings from its new approach. TI Germany is also in discussion with several other potential users of the IP, including the promoter of a major new international airport project outside Berlin. *By Michael Wiehen, TI Germany*



Access-to-information campaign poster: "foot the bill, but still in the dark?"

bidding, the Administrative Court of Appeal set legal precedent by upholding the sentences of the Municipality of Milan in the two initial cases it looked at.

TI-Italy has also recently conducted a survey with the public procurement offices of the municipalities of Milan, Bergamo, Genoa, Turin and Varese in order to assess the efficiency of anti-corruption legislation on public tenders. The results of these interviews were presented to the national office of public works in Rome.

TI LATVIA was invited by the Latvian government to assist the committee that monitors spending of European Union funds. This is the first time a TI chapter in any of the 25 EU member countries has been involved with oversight of EU funds at the national level. The role of the 33-member monitoring committee is to oversee distribution of the EU Structural Funds, from which Latvia benefits as a new EU member.

The Lebanese Transparency Association (LTA), TI's national chapter in LEBANON, hosted the Second Middle East and North African Forum on Corporate Governance in June. TI Lebanon organised the forum in co-operation with the Lebanon Corporate Governance Task Force (LCGTF), an LTA initiative including the main private sector organisations in Lebanon, the Center for International Private Enterprise (CIPE), the Global Corporate Governance Forum (GCGF), the World Bank and OECD, and many regional and local organisations. The Forum featured a corporate survey, conducted by LTA and the InfoPro Center for Economic Information, highlighting some alarming figures: more than 84% of respondents considered corruption an impediment to doing business in Lebanon; more than 87% admitted that firms in their line of business have to pay irregular "additional payments" to public officials; and more than



TI Source Book adaptation workshop in Casablanca, Morocco. From left to right: Muzong Kodi (TI-S), Rachid Filali Meknassi (TI Morocco), and Bachir Rachdi (TI Morocco).

85% of respondents confirmed that if they pay once they will have to pay again in order to get their work done. The event also witnessed the launch of the Corporate Governance Action Plan prepared by the LCGTF, resulting in a series of recommendations for the MENA region.

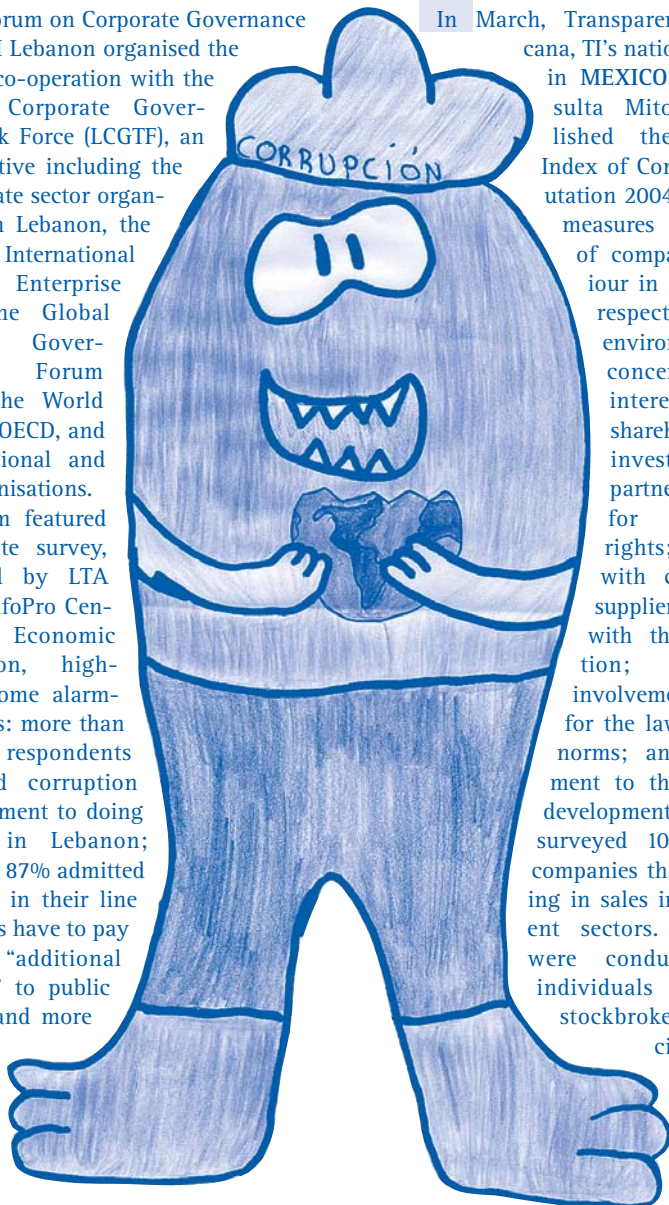
In March, Transparencia Mexicana, TI's national chapter in MEXICO, and Consulta Mitofsky published the Mexican Index of Company Reputation 2004. The index measures perceptions of company behaviour in eight areas: respect for the environment; concern for the interests of shareholders, investors and partners; respect for workers' rights; relations with clients and suppliers; relations with the competition; community involvement; respect for the law and legal norms; and commitment to the country's development. The index surveyed 108 Mexican companies that are leading in sales in 12 different sectors. Interviews were conducted with individuals including stockbrokers, publicists, economic analysts,

risk analysts, external auditors, certifiers, government officials, corporate lawyers, and businessmen. The top companies in terms of corporate reputation were: Grupo Industrial Bimbo, Instituto Tecnológico y de Estudios Superiores de Monterrey, Cemex, Nestlé and Universidad Iberoamericana.

More than 20 anti-corruption experts met in Casablanca, MOROCCO, in February to work on the adaptation of the TI Source Book to the social, economical and legal context of North Africa and the Middle East. Co-organised by Transparency Morocco and the TI Secretariat, the workshop was the first of a series of three regional meetings on the development of the Arabic Source Book, which has already resulted in the creation of a dynamic network of Arab activists. The new publication is expected to be a major resource on fighting corruption in the region when it is completed in 2005.

TI MOLDOVA organised a concert in May in Chisinau on the theme "No to corruption". The event was attended by more than 5,000 people, including representatives of international and governmental institutions. Popular Moldovan artists went on stage to perform and say "no to corruption". During the concert, 35 anti-corruption video spots were aired on two big screens and TI volunteers handed out anti-corruption materials from TI Moldova. The concert ended with an impressive fireworks display.

Meanwhile, in collaboration with the UNDP "Local Agenda 21" project, TI Moldova organised a series of roundtables on corruption for different interest groups in ten cities across the country. Altogether, more than 500 people participated. This spring, TI Moldova also conducted seminars for more than 400 civil servants in the



Academy of Public Administration. The seminars presented the negative effects of corruption and highlighted ways to prevent and fight it.

TI chapters in the PACIFIC region (Australia, Fiji, New Zealand, Papua New Guinea, Solomon Islands and Vanuatu) held a workshop with researchers in Fiji in March which marked the end of the AusAID-funded National Integrity System country study project led by TI Australia. In June, TI was invited by the Pacific Islands Forum to give a report to economy ministers from the 16 member countries, chaired by the Deputy Prime Minister of New Zealand, on the outcomes of the research and on TI's views on corruption in the region. TI PNG board member Peter Aitsi presented TI's report, supported by TI Australia board member Jane Ellis, which led to extensive press coverage. TI country studies for 13 Pacific island countries are available at www.transparency.org/activities/nat_integ_systems/country_studies.html

Aman - Coalition for Accountability and Integrity, TI's contact group in the PALESTINIAN TERRITORIES, has conducted research on the right to access information and file a complaint in the public sector. The group held a workshop in April to present the main findings of their research and make recommendations for new legislation, with the aim of lobbying the Palestinian Legislative Council to adopt a law on access to information. The workshop was attended by representatives of government, civil society organisations and the media. Aman held another workshop in April to present the findings of research on complaints in the public sector. This should help establish a system of public complaints in government ministries to enhance accountability in the public sector. For more information, see Aman's website: www.aman-palestine.org

TI Secretariat Regional Director Peter Rooke was invited by PAKISTAN's National Accountability Bureau to participate as a foreign expert in an international conference on the UN Convention against Corruption in Islamabad in April. TI Pakistan, meanwhile, is partnering with TI national chapters in Croatia, India and Nigeria, and the TI Secretariat, on a DFID-funded Information and Communication Technology project.

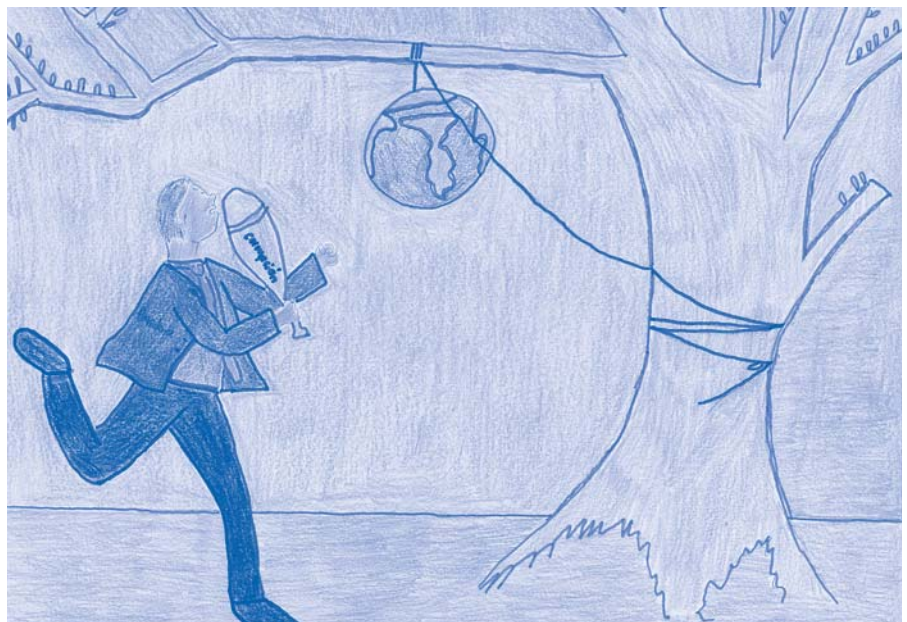
Reform of public contracting is coming to TRINIDAD AND TOBAGO. The government is soon to publish a Green Paper on procurement reform. After public discussion this should become a White Paper



Thousands of Moldovans come out to say "no to corruption"

stating the new policy to be enshrined in new laws and institutions. For the past six months the Trinidad and Tobago Transparency Institute (TTTI), TI's national chapter in the country, has been working with public and private sector representatives on the drafting committee. At the same time they have been preparing, in coalition with contractors, consultants and other stakeholders, to promote public discussion of the document and advocate radical reform. TTTI has also been actively seeking to have TI's anti-corruption tool, the Integrity Pact, implemented in a major

public project. The recent arrests of former government ministers and prominent local business people, and warrants for the arrest of foreign contractors on corruption charges relating to the construction of a new airport have highlighted the urgency of this reform. The charges arose out of the as yet unpublished report of a commission of inquiry into the airport project. TTTI headed a coalition calling for the probe and appeared before the commission to recommend corruption-prevention measures.



Above, a cartoon by Gregory Alexander Pasquier, aged 13, and, left, by Enrique Cordero from an anti-corruption drawing competition in Nicaragua, organised by the local branch of the German Agency for Technical Co-operation, PROCAPE-GTZ Nicaragua

Beyond compliance: the impact of

By Justin O'Brien

Continued from page 1



Courtesy of Chris Slane

The difficulties of securing successful substantive prosecutions have been magnified by flawed prosecutorial design. Conflating malfeasance with misfeasance - the doing of a lawful act in a wrongful manner - may create a plausible rhetorical strategy. It also carries a substantial risk of "blowback", leading to a recurrence of the problem later. Much of what occurred in the bubble of the 1990s and its aftermath was morally dubious, but not in itself proscribed by the criminal code. The distinction, lost in a culture that demands scapegoats, is an important one.

Civil vs. criminal trials

This uncomfortable reality was confirmed by the spectacular collapse of the grand larceny and securities fraud case against former Tyco chairman Dennis Kozlowski in early April 2004. Following six months of testimony in what was billed as the "corruption trial of the century", the judge ruled a mistrial because of fears that a juror had been intimidated. While significant media coverage concentrated on the perceived intransigence of Juror No. 4, a retired lawyer from the Upper East Side, the case also highlights why adoption of the civil route of securing compliance through financial penalties is a preferred strategy for federal lawyers. In a criminal trial, with a higher standard of proof required, defendants are likely to elude conviction unless criminal intent is proved alongside culpability.

Profound disagreements had emerged in the Tyco jury as to whether the prosecution had proved "criminal intent" in the alleged abuse by Kozlowski and Tyco's former Chief Financial Officer, Mark Swartz, of the company loan scheme, Kozlowski and Swartz justified their action on the basis that it was disclosed. While unedifying, this demonstrates that moral superiority is an insufficient basis for a successful prosecution.

Ducking the blame

Prosecutors in the multi-agency Enron Task Force convened to unravel the complexities of wrongdoing in the Houston conglomerate have been successful in securing guilty verdicts through plea-bargaining against executives up to, and including, the former Chief Financial Officer, Andrew Fastow. Building incrementally, the unobvious arm-twisting has now opened the door for charges to be brought against Jeffrey Skilling, the Chief Executive Officer, and Kenneth Lay, the company Chairman. Similar pressure on Fastow's counterpart at WorldCom has brought about the indictment of its Chief Executive Officer, Bernie Ebbers, accused of orchestrating an \$11 billion dollar deception, the largest securities fraud in American history.

For the prosecutors, the most difficult obstacle is whether a future jury will find the evidence tainted. After being paraded in handcuffs to demonstrate prosecutorial resolve, Kenneth Lay staged a remarkable press conference in which he accepted responsibility for Enron's failure, but refused to accept that there was any merit in the indictment.

The trials will finally focus on two interlinked basic questions: who was culpable and who had intent? Ebbers' lawyers have indicated that they will play the criminal intent defence, suggesting that the chief executive was the unwitting victim of accounting shenanigans, presented as legal by a subordinate now seeking absolution in return for co-operation. Lay has set the ground for a similar defence.

It is an audacious strategy, and one that has the potential to work. The jury in the Adelphia Communications trial took more than a week before handing out guilty verdicts to the Rigas family, which was accused of the most egregious example to date of the looting of a corporation for private benefit. The Rigas defence was designed to pour scorn on ten former employees who co-operated with investigators in exchange for leniency or immunity.

Business as usual?

An alternative strategy adopted by the federal authorities has been to prosecute to the full extent possible relatively junior figures. It too can prove problematic. Juries may refuse to convict for actions mandated or tacitly accepted as standard corporate practice. This was underlined by the unsuccessful prosecution of four executives at Qwest Communications in a trial that was presented as a stellar example of enforcement resolve. Civil and criminal charges had been filed against the four executives in February 2003 in a blaze of publicity in both Denver and Washington DC. The Chairman of the Securities and Exchange Commission (SEC), William Donaldson, and the US Secretary of Justice, John Ashcroft, held a joint news conference at which they vowed to "pursue aggressively anyone and everyone who has participated in an illegal effort to misrepresent a company's financials and mislead the investing public".

According to the SEC's indictment, Qwest's business model, formulated by senior management and endorsed by the board, was predicated on earnings management. It "placed extraordi-

criminal trials on Wall Street

nary pressure on their subordinate executives, managers and employees to meet or exceed those earnings objectives at all costs". The trial ended in April with two acquittals, a partial acquittal on a third defendant, and deadlocked on a fourth accused of manipulating those earnings (*Rocky Mountain News*, 20 April 2004).

Wall Street exposed

A more productive approach has been that adopted by the Department of Justice in return for a deferred prosecution of Merrill Lynch, one of the most powerful financial brands in Wall Street. Merrill Lynch has become an unlikely lightning rod for internal governance change. Its tainted analyst research teams were the first to be targeted by New York State Attorney-General Eliot Spitzer in his pursuit of wrongdoing on Wall Street. Merrill settled without admitting liability but the malfeasance exposed by the publication of private email correspondence guaranteed industry-wide investigations. These resulted in fines of \$1.3 billion and significant exposure of the structural involvement of Wall Street in corporate scandal. Building on the template forged by Spitzer, the Department of Justice has agreed a settlement with Merrill over its dealings with Enron that has the potential to replicate the same effect.

On 17 September 2003, three of Merrill Lynch's most senior executives were indicted in Houston for knowingly and intentionally engaging in an illegal scheme to defraud by masking a loan to Enron as a transaction sale. They were further charged with obstructing a federal investigation and perjuring themselves before Congress. To avoid a corporate prosecution, Merrill agreed to a remarkable degree of external oversight. The corporation has been forced to appoint an external auditing firm to examine all structured finance deals. The auditing work will be overseen in turn by an attorney chosen by the Department of Justice. The company is explicitly barred from engaging in any form of structured finance deal in which any term of the transaction related to risk transfer (whether or not legally enforceable) is not reflected in the written contractual documentation. The case has caused considerable consternation on Wall Street. One prominent investment banker, who asked the SEC if the deal had industry-wide implications, was told, rather ambivalently, "not necessarily".

Under the terms of the agreement, Merrill is obliged to provide full and truthful disclosure about all aspects of the contract on which the former employees are indicted, and to provide the federal Enron Task Force with professional help to prosecute its case. Originally scheduled to begin in June 2004, the criminal

trial was postponed until August, providing the opening course in the menu of corrupt practices that will see Houston replace New York as the epicentre of legal argument throughout the autumn and winter of 2004.

The traditional response in the United States to episodic outbreaks of scandal in the financial markets has been the introduction of ever more detailed rules, resulting in ever more imaginative circumvention. In a pointed contribution to the debate, the most influential banker in the US, Federal Reserve Chairman Alan Greenspan, recently warned: "Rules cannot substitute for character." His remarks were amplified by another governor at the Federal Reserve, Susan Schmidt Bies, at the Bank Administration Institute's Fiduciary Risk Management Conference, held, ironically, in Las Vegas in April 2004: "Senior management must move

from thinking about compliance as chiefly a cost centre to considering the benefits of compliance in protecting against legal and reputational risks that can have an impact on the bottom line."

The public lynching of Merrill, which forces responsibility for

misfeasance back on to the corporation itself, is an innovative form of forced self-regulation that offers a way out of barren legalism. However, the deal also carries with it a risk of "blow-back" for both Merrill and the government. Its power to effect credible change rests on credible enforcement. Given the stakes involved should a mainstay of the financial markets be indicted as a criminal enterprise, that remains a very open question.

"The traditional response in the US to episodic outbreaks of scandal has been the introduction of ever more detailed rules, resulting in ever more imaginative circumvention."

ABOUT THE AUTHOR

Justin O'Brien



Dr Justin O'Brien is Senior Research Fellow at the Institute of Governance, Public Policy and Social Research at Queen's University, Belfast. The author of Wall Street on Trial (Chichester and Hoboken, 2003), Dr O'Brien's work focuses on the structural factors that facilitate corporate crime and corruption. He is academic director of 'Governing the Corporation, Mapping the Loci of Power in Corporate Governance Design', a major conference to be held in Belfast on 20-21 September 2004. Full details are available at www.governance.qub.ac.uk/govcorp

Leading by example: Ethics, TI and the private sector

By Jermyn Brooks

If ever there was a time for calling upon the private sector to behave more honestly, it is surely now. Repeated corporate scandals around the world have demonstrated how business leaders frequently ignore basic business ethics. Whether manipulating results, deliberately creating complex and opaque corporate structures, paying bribes to third parties and excessive remuneration to themselves, all in disregard for the stakeholders of the corporations they are supposed to serve, corrupt practices seem to have become accepted behaviour. The checks and balances that should have been in operation have also not functioned: auditors and legal advisers have forgotten their key role in supporting good corporate ethics, banks have continued to lend and develop profitable financial business when their customers were already overgeared, and the regulators have been blinded by a favourable public image of business leaders rather than applying hard analysis.

Given the poor performance of the private sector, what has been Transparency International's response? TI recognises that curbing corruption requires a combination of more effective laws and voluntary action by the business community. That is why we have supported anti-bribery conventions, including those of the OECD, the AU, the OAS, and, most recently, the UN. TI is now working to ensure that these conventions become law in the signatory states and subsequently monitoring effective implementation.

Of course, not all business is corrupt and many business leaders are tired of paying bribes to secure contracts. But many see no escape from the "prisoner's dilemma" unless they are prepared to exit whole markets. For some industry sectors, such as the extractive industries, this is not an option as untapped natural resources are to be found in the poorer, more corrupt countries of the world.

Faced with these challenges, and given the slow rate of public-sector reform and poor record of law enforcement, leading businesses and key industry sectors are beginning to take the initiative, supported by civil society and international organisations, in a host of anti-corruption efforts.

Transparency principle for the UN Global Compact

The voluntary agreement to comply with the ten principles of the UN Global Compact has now been signed by more than 1,700 companies and civil society organisations. The tenth principle, on anti-corruption, was added in June after receiving overwhelming support from the Compact's corporate members. The extension of the Compact to cover corruption was strongly supported by TI.

A separate effort, the Global Reporting Initiative (GRI), aims to codify reporting by businesses on non-financial performance. Areas covered include environmental, human rights, employment issues and business ethics, including compliance with the OECD Anti-Bribery Convention and a description of a company's anti-corruption policies. Use of the GRI is voluntary but growing, and civil society is scrutinising its application by the corporate world.

Taking a principled stand against bribery

TI and Social Accountability International worked with leading companies to develop the Business Principles for Countering Bribery as a guide to establishing and implementing corporate no-bribes policies. Since completion in 2002, the Business Principles have become recognised as a no-bribes standard for industry. They are seen as valuable "content" for the anti-corruption principle of the UN Global Compact, as a valuable starting point for the implementation of a no-bribes policy by industry sectors and

as a potential pre-qualification requirement for bidders on internationally funded projects. TI and industry representations are holding discussions to this end with the World Bank and other development banks.



Bribery on the agenda at Davos

The World Economic Forum (WEF) has convened industry groups, with TI support, to discuss ways of tackling corruption. The group shown to be the most corrupt in repeated TI surveys, engineering and construction, worked during 2003 using the TI/SAI Business Principles and the 2004 WEF meeting in Davos saw the signing of a public statement committing the industry group to a no-bribes policy. Efforts in 2004 have focused on implementation and how to turn the anti-bribery commitment into reality.

Two further industry groups, energy, and minerals and mining, did not make the same degree of progress but are committed to an attempt by all these industries to develop a common statement containing a no-bribes commitment.

Cleaning up public procurement

The Business Principles are complemented by the TI Integrity Pact, an agreement between a procuring agency and all bidders to a contract to comply with transparent and non-corrupt practices throughout the tendering process. Both represent voluntary agreements and both commit the private-sector players to no-bribes policies. But while the Business Principles cover the totality of a company's ongoing transactions and behaviour, the Integrity Pact is ideally suited to large procurement cases, such as major infrastructure projects in developing countries, where the danger of bribes and kick-backs is often high. Just as the industry-sector approach to no-bribes policies attempts to draw potential competitors together, so the Integrity Pact joins all bidders together on a level playing field, where price and quality of bid alone can decide the outcome. Companies, public sector agencies and organisations such as the World Bank are showing increasing interest in the Integrity Pact.

These voluntary initiatives, together with anti-bribery legislation, are all necessary to fight bribery and corruption in the private sector. By the very nature of private enterprise this fight will never be over, but most companies are recognising the advantages of ethical behaviour.

ABOUT THE AUTHOR

Jermyn Brooks

Jermyn Brooks was Global Managing Partner at PricewaterhouseCoopers until summer 2000. He was elected to the TI Board of Directors in May 2003.



Avoiding bribery in Asia's emerging markets

By John Bray

International companies working in East and South-east Asia operate in a political and social environment among the most complex, fluid and varied in the world. Too often, high levels of corruption have been part of that environment, and world-weary executives frequently ask whether it is possible to win business in a given Asian country without a pay-off, believing that there is no choice.

I argue that a willingness to bribe actually increases business risks, but it is important to acknowledge the scale of the problem. In 2002 Control Risks surveyed business attitudes to corruption: 64% of the Singaporean companies polled, and 60% of those in Hong Kong, reported losing international business in the past five years to a bribing competitor, compared with 32% of US and 26% of UK companies. One reason for this may be that US and UK firms are better able to avoid countries with high levels of corruption. Asian-based companies may have fewer choices.

In the long term, reforms may lead to improved governance in the region, but this process will be uneven, with frequent local setbacks. One businessman with long experience of Indonesia notes that political reforms have "democratised corruption". Bribes used to be centralised to a coterie of political leaders, their families and associates. Now, regional and local leaders are demanding their cuts as well. In the short term, political and social change may make the region more - not less - complex.

Against this background, it is not enough simply to tell companies to avoid corruption. Effective anti-corruption strategies need to demonstrate that it is possible to win business honestly, even in regions where bribery is commonplace.

Codes are not enough

As ever, the first task is to raise standards within one's own organisation: companies that enjoy high reputations for integrity may still face ethical dilemmas, but at least they are less likely to receive 'bare-faced demands' for bribes.

In Asia, the major Western companies typically make a point of translating their codes of business ethics into Chinese and other regional languages. Similarly, all the leading Japanese companies have codes of conduct; and Keidanren, the Tokyo-based business association, has recently revised its standard code of ethics. However, Japanese companies are less likely to make a public declaration of their values by publishing their codes, and the emphasis tends to be on legal compliance rather than problem-solving. A Japanese salaryman expressed a personal view to Control Risks: his company had made him sign a code of ethics not so much to instil a certain standard of behaviour, but rather so that it could disown him if things went wrong.

In other countries, standards are even more uneven, and few companies - whether Western- or Asian-based - place sufficient emphasis on training local employees.

Anticipating problems

Often the companies most sensitive to corruption severely stung in the past. An international executive with extensive, painful experience in Indonesia reports that his organisation has introduced the practice of 'corruption mapping' when planning major new projects. Rather than waiting for problems to come up, he

and his colleagues look ahead to assess where the operation will be most vulnerable.

A cautionary tale

The recent experience of a Western company in China illustrates the hazards of failure to anticipate problems, or to give proper training.

The company is a manufacturer of machine parts, and took over a series of formerly government-owned factories. Before making the purchase, it conducted a 'due diligence' review to check the factories' finances. However, it made no attempt to understand the network of relationships linking the factories with local suppliers, or to train its new Chinese employees. Some 18 months after taking over the factories, it discovered that key figures had been receiving kickbacks from local suppliers, and had to take drastic measures. One expatriate received veiled threats of violence.

The new owners might have conducted a more detailed review at the outset, laid down clear standards, and given their Chinese managers proper training.

Collective efforts

So far, Asian business associations have been slow to address the corruption problem collectively, in part because of its political sensitivity. However, there are a growing number of positive examples. In the Philippines the Makati Business Club is a member of a network known as Transparency Accountability Governance (TAG - www.tag.org.ph). The Makati Business Club is currently working with the Bureau of Customs and the Bureau of Internal Revenue to publish a series of booklets outlining how to avoid corruption - and how to appeal for help - when dealing with those agencies.

Similarly, in China, the London-based International Business Leaders' Forum (IBLF - www.iblf.org) is planning to set up a local China Business Links Forum in association with the Renmin University and with Chinese and international companies with offices in Beijing. The objective is to share best practice on business transparency standards.

Business has too often been seen as part of the problem of corruption in Asia. Working together, companies can be part of the solution.

"A willingness to bribe actually increases business risks"

ABOUT THE AUTHOR

John Bray



John Bray is Director (Analysis) at the Tokyo office of Control Risks Group, the international business risk consultancy (www.crg.com). He is the author of Control Risks' report Facing up to Corruption. A Practical Guide for Business.

Recent Reforms

» A global sample of initiatives to increase transparency and accountability

BULGARIA

New Public Procurement Act to enter into force

A new public procurement act was adopted by the Bulgarian parliament and is to enter into force on 1 October 2004. Positive changes include the establishment of a state public procurement agency that will implement the new law and administer a public procurement register. An arbitration court will be set up in conjunction with the new agency. However, the law excludes the delivery of medicines from public procurement procedures, which remains a controversial issue.

TI Bulgaria

CHINA

Government moves against bribery in construction sector

In May, the Chinese government decided to blacklist contractors convicted of bribery and to ban them from working on construction projects in five Chinese provinces. According to a government circular cited by Xinhua news agency on 9 May, the pilot scheme will see a list of corrupt contractors drawn up and made available to local governments and those responsible for construction projects in selected provinces. The blacklisted firms will be barred from access to the local construction market either temporarily or permanently. Meanwhile, China has adopted a new anti-money laundering law containing explicit provisions on corruption. Moreover, in May, Shanghai introduced the country's first province-level freedom of information law.

Transparency International

ECUADOR

New Access to Information law

Ecuador enacted its Transparency and Access to Public Information Law in May. Including many groundbreaking provisions, the law states that "access to information is a right guaranteed by the state", requiring that government agencies regularly disclose information about their functions, operations and finances. TI's national chapter in Ecuador, Corporación Latinoamericana para el Desarrollo (CLD), as part of an NGO coalition, was highly active in the law's drafting.

TI Ecuador

LATVIA

First-rate party finance law

Latvia's political party finance law has been amended by parliament. It has introduced limits on campaign spending, with an aim to stop the escalating television advertising 'war'. The law also places stronger controls on party income, prohibiting corporate donations and strictly limiting those from individuals. The Anti-Corruption Bureau hopes that this will help to reduce the vast number of bogus donors, estimated to be in excess of 65% in the 2002 elections. Monitoring done by TI Latvia and the Soros Foundation helped trigger these reforms.

TI Latvia

MADAGASCAR

On the right track

Madagascar has signed both the UN and AU anti-corruption conventions, and their ratification is expected soon. Meanwhile, the Conseil Supérieur de lutte contre la corruption (CSLCC), the country's highest anti-corruption agency, has finalised a national anti corruption strategy, to be adopted in late July at a national anti-corruption workshop. The CSLCC has also drafted an anti-corruption law, currently being discussed in the national assembly, and has set up an Independent Anti-Corruption Office to begin work in August.

Transparency Initiative Madagascar (TI Madagascar), July 2004

NIGERIA

Nigerian students to be schooled in corruption

Frustrated by a lack of progress in its war against corruption, Nigeria is taking its message to the classrooms. The Independent Corrupt Practices Commission (ICPC) has commissioned an anti-corruption curriculum which will be taught in schools and universities across the country in a matter of months. The ICPC is clearly hoping to make inroads with the next generation of Nigerians.

Sunday Times, 4 July 2004

NIGERIA/SWITZERLAND

Swiss return Abacha loot

The Swiss government has returned to Nigeria US\$50 million linked to the late dictator General Sani Abacha, according to

officials. The money is part of funds frozen in Swiss bank accounts in 1999 at the request of the Nigerian government, which accuses Abacha of looting more than US\$2.2 billion from state coffers. Around US\$500 million remain frozen in Swiss banks until ownership is verified.

Associated Press, 19 April 2004

SLOVAKIA

Politicians' relatives told to declare wealth

Slovakia will now oblige partners and children of elected representatives and top officials to declare their wealth every year under a new anti-corruption law passed by parliament. Under the law, which will take effect in October, the head of state, ministers, members of parliament, mayors and top officials at state and regional level, and even constitutional court judges, as well as their partners and children, will be bound to declare their financial details. TI Slovakia led the NGO alliance "Stop conflict of interest" over the past three years in pursuing the new law. The next challenge is implementation. For more information, see www.konfliktzaujmov.sk

Agence France Presse, 26 May 2004

WEST/CENTRAL AFRICA

Region makes strides in oil transparency

African oil giant Nigeria and neighbouring Sao Tome and Principe have committed to making public regular audited accounts of a major offshore zone now under development. The agreement also requires oil companies to publish on "an individual basis" all payments made to the countries' joint development authority. In May, Gabon, half of whose GDP derives from petroleum exports, announced that it would also be joining the Extractive Industries Transparency Initiative (EITI), a voluntary disclosure scheme initially launched by the UK government. Similarly, Ghana will be applying the EITI to its mining sector as it disclosed this June. Also in May, Angola's Sonangol made public bonus money, amounting to nearly US\$300m, received for an exploration concession for Cabinda Gulf Oil Company, a subsidiary of ChevronTexaco.

Associated Press, 27 June 2004; Jeune Afrique L'Intelligent, 29 May 2004; Ghana Web, 1 July 2004; TI

Spotlight

Algeria's military-backed government flexes its muscles

*Since the re-election of President Bouteflika in April, in a poll marred by absenteeism and irregularities, civil society representatives have been bullied and freedom of speech severely curtailed, writes journalist and TI Algeria spokesperson **Djillali Hadjadj**.*

In February 2004, Muslim clerics in state-controlled mosques across Algeria launched a concerted verbal attack on an independent Algerian newspaper during weekly prayers. The sermons were even broadcast live on state television. This "witch hunt", launched from atop the country's minarets at the government's behest, targeted *Liberté*, a newspaper highly critical of Algerian President Abdelaziz Bouteflika. The clerics even named Ali Dilem, *Liberté's* famous cartoonist, who has had nearly 20 criminal charges levelled against him by the military in the past three years.

It is in this climate of intimidation, reminiscent of the Iran of the Ayatollahs, that Bouteflika began his second term this spring. Bouteflika - whose recent re-election was so marred by irregularities - has never masked his hostility towards freedom of expression. According to official results of the April elections, the incumbent president received 85% of the vote; although almost 50% of Algerians did not participate.

Algeria's journalists and activists have found themselves increasingly under pressure. In the weeks following the election, they were hit by a wave of repression. Arrests, hasty trials, and harsh prison sentences have been the norm. Algerians have been living in a climate of terror despite peaceful efforts to protest and defend basic human rights.

In TI's Corruption Perceptions Index 2003, Algeria ranked 88th out of 133 countries, with a score of only 2.6 against a clean score of 10, indicating a high level of perceived corruption. The government has made gestures towards transparency - notably by signing both the UN Convention against Corruption and the African Union Anti-Corruption Convention. But this has not been followed by concrete action, such as the introduction of a badly needed anti-corruption programme.

The gap between ordinary Algerians and those that hold power in the country is widening and corruption is on the rise. For most, much hardship lies ahead. And this in a land of plenty: revenues from oil and gas have risen steadily over the past five years.



Inside TI

TI remembers Sir Anthony Siaguru

The Transparency International movement was deeply saddened to hear the news that Sir Anthony Siaguru, chairman of TI Papua New Guinea, passed away on 16 April. His tremendous efforts in building a better world and curbing corruption will be greatly missed, not least in the Pacific region where his guidance and advice was sought from anti-corruption fighters. He will be remembered as a compassionate friend as well as founding member and chairman of TI PNG, and a valued member of TI's Advisory Council. His efforts were driven by his belief in young people and in the potential of PNG. His stature and commitment have inspired the TI movement as well as the outstanding work of TI PNG in promoting anti-corruption youth education programmes and fostering a new national integrity action plan.

First TI Europe & Central Asia meeting held in Yerevan

The first TI Europe & Central Asia Regional Meeting, organised by TI Armenia and the TI Secretariat, took place in Yerevan, Armenia, in June. National chapter representatives from 26 countries and other NGOs in the region participated in the meeting, which focused on political finance, government-civil society co-operation and strengthening the TI movement. The meeting was supported by the Council of Europe, the German Federal Ministry for Economic Co-operation and Development (BMZ), Open Society Institute, Organisation for Security and Co-operation in Europe (OSCE), the Swiss Agency for Development and Cooperation, and the British Embassy in Yerevan.

TI to move on asset recovery and money laundering

TI held a meeting on asset recovery and money laundering in London in May. The group agreed that several tools would be developed in 2004: a guide to the UN anti-corruption convention's provisions on asset recovery; 'how to' guides for asset recovery in major banking jurisdictions; an outline for model legislation; a case study illustrating bribery and corruption in international construction projects; and a study of techniques for laundering bribe payments. For more information, contact Gillian Dell at TI-S (gdell@transparency.org).



Transparency International e. V.
Otto-Suhr-allee 97-99
10585 Berlin
Germany

Tel: +49-30-34 38 20-0
Fax: +49-30-34 70 39 12
e-mail: ti@transparency.org
www.transparency.org

Editors

Jesse Garcia, Jana Kotalik

Contributors

Julien Attakla-Ayinin, John Bray, Jermyn Brooks, Marie Chene, Stian Christensen, Stan Cutzach, Kathrin Decker, Gillian Dell, Ben Elers, Marta Erquicia, Andrea Figari, Dieter Frisch, Martina Gernet, Djillali Hadjadj, Arwa Hassan, Victoria Jennett, Lene Møller Jensen, Jeff Lovitt, Anna Marra, Miklos Marschall, Gunnar Maul, Nelson Muffuh, Françoise-Nicole Ndoume, Justin O'Brien, Juanita Olaya, Babatunde Olugboji, Svetlana Podolskaia, Katja Pelzer, Silke Pfeiffer, Lisa Prevenslik-Takeda, Liao Ran, Diana Rodriguez, Peter Rooke, Alejandro Salas, Emilia Sicakova, Chris Slane, Stéphane Stassen, Kate Sturgess, Reinold E. Thiel, Sergei Tscherejkin, Chantal Uwimana, Michael Wiehen, Aled Williams, Toby Wolfe, Marie Wolkers, Catherine Woollard

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Please send comments and contributions to press@transparency.org.



TI's Global Corruption Report 2004 makes headlines

After the successful publication of *the Global Corruption Report 2004* in London and worldwide, TI launched the French version, *Rapport mondial sur la corruption 2004* (published by Karthala), in Paris in April and the Spanish version, *Informe global de la corrupción 2004* (published by Prometeo Libros), in Buenos Aires in May. The publication of the book was widely covered in the international media. The report was also launched by TI chapters in more than 25 countries around the world. Orders for the book were up significantly from last year, reflecting an increased interest in anti-corruption work and particularly in the book's central topic of political corruption. Next year's report, to be published in early 2005, will focus on corruption in construction and post-war reconstruction. To order the GCR, contact gcr@transparency.org.

Introducing the TI Secretariat Policy and Research Department

In November 2003, the TI Secretariat formed a new Policy and Research team within the larger advocacy department. Robin Hodess is Director of Policy and Research and other members include Anna Hakobyan, Carolin Schlippe, Aled Williams and Marie Wolkers. The team's work encompasses TI surveys, the NIS country studies, the development of an online Anti-corruption Handbook (as a follow-on project to the *TI Source Book*), and a Help Desk service for the Utstein partners - the development agencies of Germany, the Netherlands, Norway and the UK. The policy and research team also contributes to TI publications and programmes, and incorporates research into policy recommendations. The team also promotes exchange of knowledge and experience among TI chapters, and linkages with the expert community.

Thanks to our supporters

The TI Secretariat would like to thank TI Germany, who donated 10,000 to support Secretariat activities.

Calendar

- **20-21 September 2004, Belfast, UK**

International Colloquium "Governing the Corporation: Mapping the Loci of Power in Corporate Governance Design"

Organised by the Institute of Governance, Public Policy and Social Research Queen's University, Belfast. See: www.governance.qub.ac.uk/govcorp.pdf

- **25 September, 2004, Barcelona, Spain**

Workshop "Corruption in a Globalised World", organised by Transparency International and the Forum Barcelona 2004.

This workshop will discuss corruption from its definition to its effects, including some mechanisms aimed to fight it. Participants will include representatives from TI, the Center for Public Integrity, the International Center for Journalists, the UNODC and the World Bank. For further information contact Sarah Tyler (styler@transparency.org)

- **9-10 October 2004, Nairobi, Kenya**

TI international conference "Creating Change: Together towards a World Free of Corruption" Information on the meeting (which is associated with the TI Annual Membership Meeting) can be obtained from Stan Cutzach (scutzach@transparency.org) at the TI Secretariat.

- **Autumn 2004**

Launch of Transparency International's Corruption Perceptions Index 2004 and Global Corruption Barometer 2004

Special event

- **October 2004 (exact date to be confirmed), Nairobi, Kenya**
"New Anti-Corruption Governments: The Challenge to Deliver"

When new governments are elected on strong anti-corruption platforms, they often face enormous challenges in attempting to deliver on their election promises. Reform can be hindered by cultures of corruption in the very institutions needed to implement change, while opponents may seek to derail efforts to rein in corrupt networks. Tough choices have to be made about the costs, benefits and timing of particular reform actions, and all within a relatively short window of opportunity.

These challenges will be addressed at a special meeting organised by the Kenyan President's Office for Governance and Ethics, TI Kenya and the TI Secretariat to take place in Nairobi, Kenya, on 7-8 October. Taking experience from key countries on several continents (including Kenya, Georgia and Argentina), the meeting will aim to foster constructive dialogue among anti-corruption practitioners from those countries, offering viable strategies to support their reform efforts. For further information about the meeting, please contact Gillian Dell at the TI Secretariat (gdell@transparency.org).



Cartoon by Zapiro (Jonathan Shapiro), drawn during his recent visit to the TI Secretariat in Berlin