

## Corruption and public services

by

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# 1. Introduction and summary

Corruption is much more than a moral issue. It undermines public services and democracy. When citizens have to pay bribes to get healthcare or fair policing, or contracts are awarded to those who pay bribes, it threatens society as a whole. Corruption wastes public money by diverting it into the hands of corrupt politicians, businesses and their agents. It perverts public policy decisions, by buying decisions which suit the interests of the rich and powerful elite. It steals wealth from countries and places it in tax havens for the benefit of corrupt individuals.

One set of problems concerns the extent to which individual public employees demand bribes from the public to provide the service they are entitled to. This undermines public services. It needs to be eradicated by implementing employment practices, including pay, which minimise the temptations to corruption and maximise the incentives to ethical behaviour.

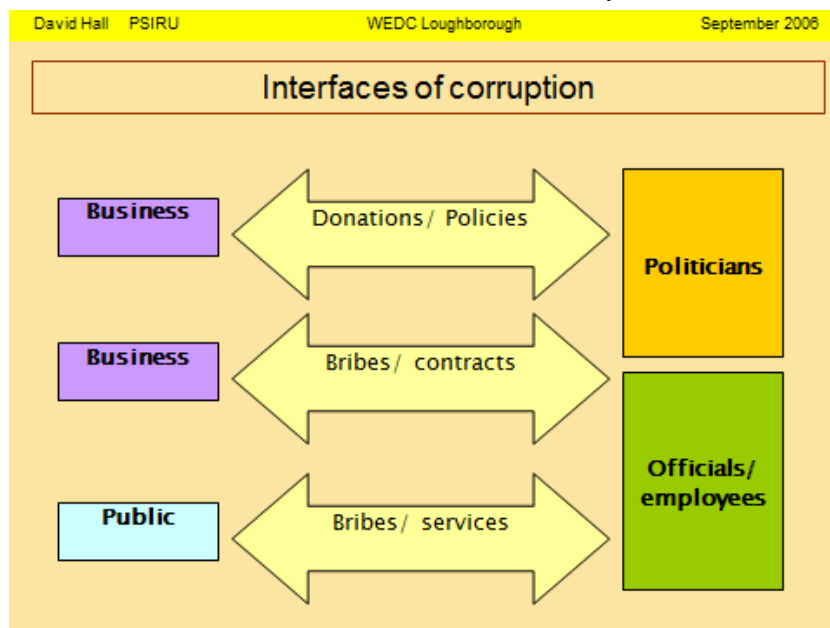
The bigger problems concern the corrupt networks of senior officials, politicians, and domestic and foreign businesses. Government contracts and privatisations are at the heart of these systems. Policies which favour privatisation also create the conditions which are most favourable to corruption.

Corruption is often discussed as though it was a problem only in developing countries. It is blamed on the countries themselves for having poor ‘cultures’ which tolerate corruption. This is contrary to the evidence which shows that the overwhelming majority of people in all countries are strongly intolerant of corrupt practices.

Donors and international institutions like the World Bank like to portray themselves as supporting ‘anti-corruption’ initiatives. In practice, their policies favouring privatisation provide greater incentives and opportunities for corruption. Moreover, donor countries and the World Bank have actively discouraged developing countries from prosecuting multinational companies for corruption.

Ending corruption requires public and political organising to demand that political leaders represent public interests, not the interests of rich individuals and powerful companies, and to hold them accountable. Transparency, accountability and public participation are key elements in this, as are strong and independent systems of audit, and courts prepared to prosecute, fine and ban corrupt companies and officials.

Chart A. Interfaces of corruption



## 2. 'Petty' corruption: bribes for services

One kind of corruption is when people are expected to pay bribes in order to get the service they are entitled to from a public employee. The employee is making use of his or her position to get extra income, at the expense of citizens or the service itself. Typical examples are the payment of bribes to water workers to record false meter readings; to health workers for providing treatment at an earlier date; or to customs officials to allow goods to be smuggled without paying duties.

This is sometimes described as 'petty corruption' to contrast it with the 'grand corruption' of large-scale fraud by politicians and companies. It seriously damages public services. Citizens are cheated. It breaks the principle of fair and equal treatment. It undermines the integrity of public servants. Those who most need services find themselves having to pay as if the service was just a matter of private profit. What should be a public service is converted into another commercial transaction. It also weakens public resolve to tackle bigger corruption. It must be eradicated.

The best-known picture of corruption is the index published by Transparency International (TI) which ranks countries "according to their perceived levels of public-sector corruption."<sup>1</sup> Developing countries consistently appear as the most corrupt, and OECD countries as least corrupt. The problem of corruption is thus presented as a problem of the third world, and specifically of corrupt public employees. It is often incorrectly attributed to the culture of these countries being much more tolerant of corruption than the cultures of the OECD countries.

The index – and the analysis – are unsatisfactory. The index is not based on actual experiences or documented cases of corruption. It is based on the perceptions of people who participate in surveys. The survey participants consist almost entirely of business executives, consultants, or unspecified 'experts' many of whom are foreign, and businessmen some of whom may themselves have paid bribes or be part of corrupt networks. The perception of international business executives is not a reliable indicator of the culture of ordinary people.<sup>2</sup>

In fact, surveys of the public in various countries show that very few people, in any country, believe that corrupt behaviour is acceptable. Overwhelming majorities in Eastern Europe, and over 90% of Africans believe it is unacceptable.<sup>3</sup> By contrast, there is clear evidence of a corrupt culture amongst executives themselves in rich countries. A 2012 survey found that 24% of financial sector executives in the USA and the UK believed that they had to engage in illegal or unethical activity in order to be successful.<sup>4</sup> The evidence does not support the view that there are distinctive corruption-tolerant cultures in developing and transition countries.

The great majority of people surveyed in developing and transition countries do think that corruption is a big problem in their country.<sup>5</sup> In many states, people have anything but good experiences with the authorities when it comes to securing their and their families' basic needs. In these countries people are often forced to give and receive assistance from relatives, friends, or members of their community. Without good governance, without functioning, transparent public services equally accessible to all, giving gifts or money is often the only way people can obtain health care, building permits, court decisions and so on.

There is strong evidence that the most important factor affecting the extent of petty corruption is the pay of the workers concerned. When pay is too low to provide the necessities of life, or where it is significantly lower than the pay of other people with similar qualifications, then corruption is used as a way of making extra money. Studies in countries as diverse as Madagascar and Ukraine show that inadequate civil service pay is linked to petty corruption. In a number of Asian countries, water meter readers demanded bribes when their pay was below subsistence levels, but not after their pay was increased substantially. This has been known for a long time – customs officials in 18<sup>th</sup> century England were accepting bribes from smugglers because they were paid so little.<sup>6</sup> (See annexe)

This basic material factor is key to reducing the incentive for corruption. Effective disciplinary and criminal sanctions provide further deterrence. Building and maintaining confidence in effective and democratically accountable public services depends on more political actions – especially addressing the problem of 'grand

corruption.’ Where there is a lack of confidence in the state itself, people may fall back on informal mechanisms, including reliance on friends, family and the economic reliability of petty corruption.<sup>7</sup>

### 3. State capture and privatisation

‘Grand corruption’ by political and business elites is a significant threat to democracy and sustainable development. It involves the payment of bribes to gain contracts and the purchase of political influence. There are three key features that set it apart from ‘petty corruption’:

- It involves systematic networks as well as individual bribes.
- Privatisation, including outsourcing of government contracts, forms a core part of business - politician relations.
- Multinational companies, based in the rich countries which are supposedly ‘clean,’ are playing a huge and extensive role in the corruption process.

#### 3.1. State capture and legal corruption

The concept of ‘state capture’ was introduced by two World Bank researchers to describe the situation in some of the former communist countries of eastern Europe. They found that firms were deliberately adopting strategies of networking to influence government officials and politicians to change the laws and regulations in their favour, and partly accomplished this through corrupt payments.<sup>8</sup>

One example of this kind of network developed in Italy in the 1990s. Politicians from various parties, on the one hand, and groups of companies on the other hand, agreed to allow the companies to share out the contracts amongst themselves, and decide on the prices. The companies agreed to pay enough money to keep the politicians happy, and for the money to be shared amongst all the parties involved. Middlemen were brought in to launder the money and keep the payments secret. The whole system was a way of gaining and sharing power and money, at the expense of democracy, transparency and public accountability.<sup>9</sup>

Chart B. Networks of corrupt exchanges

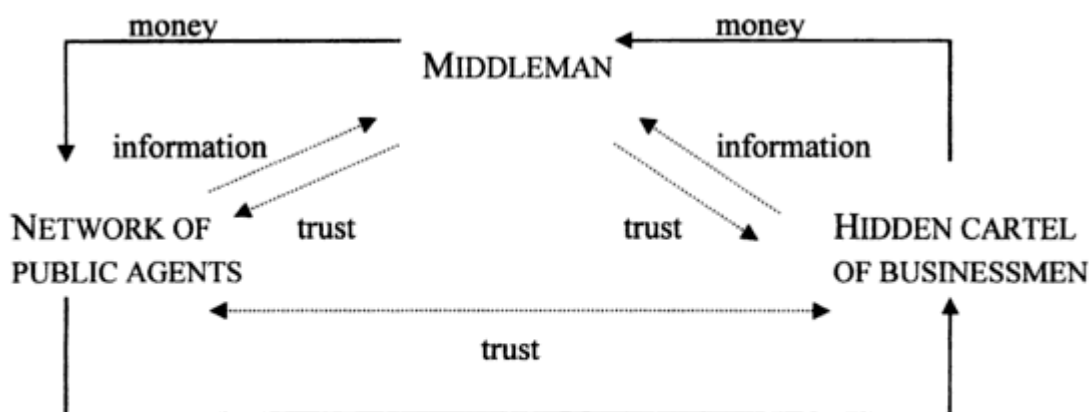


Figure 1.6. Complex web of exchanges involving middlemen.

Source: Della Porta and Vanucci (1999), p. 22

There is evidence of similar systems in other countries. In Ireland, an inquiry found that Charles Haughey, prime minister between 1979 and 1992, had “devalued the quality of a modern democracy” by accepting about €1 million in cash from wealthy business people over a period of 17 years, concealed through a network of offshore bank accounts.<sup>10</sup> Such networks also exist in a number of developing countries, including Nigeria, where governments have developed corrupt relations with both local businesses – who are favoured with the proceeds of privatization – and multinationals, such as oil and electricity companies.

The interface between politicians and businesses is now seen as similarly corrupt in many more countries.

Nearly three-quarters of Europeans think corruption is a major problem in their country, and in the institutions of the European Union itself. They have clear views on where the corruption is taking place: 47% think that the most corrupt actors in the system are those who award contracts. The most frequently cited explanation for corruption is that “there are too close links between business and politics.”<sup>11</sup>

In India, according to a 2011 report by KPMG, even Indian businesses agree that the major problem in India is not petty corruption (‘bakshish’) but rather:

- “Scams to the tune of thousands of crores (one crore = 10 million rupees) that highlight a political/industry nexus .....a web of companies and middlemen,” based on the willingness of the private sector to pay bribes.
- More than two-thirds of businesspeople (68%) admit that corruption in India is initiated by the private sector, and 42% say that bribery is considered ‘acceptable’ in their sector.
- The sectors identified as most corrupt were those where government contracts or privatisations are at stake – construction, followed by telecoms, with public services in third place, just ahead of the financial sector and defence.

These networks use illegal payments (bribes), but also build ‘networks of influence’ through legal payments – donations to political parties, or employing lobbyists to convince politicians to adopt certain policy positions. For the companies, it is a rewarding business strategy. It “involves efforts on the part of private interests to rent access and influence within well-institutionalized policy processes, often through political figures acting as middlemen.”<sup>12</sup> In developing countries, firms which spend money on lobbying get a bigger boost to their profits than firms which simply pay bribes.<sup>13</sup> In the USA, companies with political connections get more contracts after an election in which they backed the winner. In the UK and USA, banks have spent tens of millions on lobbying to prevent tighter regulation.<sup>14</sup>

These legal ways of buying influence work in the same way as illegal ‘corrupt exchanges’ such as bribes: “conceptually, legal corruption may be quite close to its illegal counterpart.... [and] many rich countries (G7 and OECD members) seem to be challenged cases as far as legal corruption is concerned.”<sup>15</sup> The *UN Convention against Corruption* includes ‘trading in influence’ as improper, but so far many states – including the Netherlands and Switzerland – have opted out of treating it as a criminal offence.<sup>16</sup>

State capture is thus not just a matter of criminal behaviour – much of what happens is constructed to be legal. It is a political problem, whereby public decision-making structures are captured for commercial interests. Government contracts or other assets are the focus of such processes, and privatisation is a central part of the system.

### 3.2. Privatisation

Privatisation, in all its forms, provides great incentives and opportunities for corruption and state capture.

- The sale of state-owned industries is a one-time opportunity to buy a profitable business, so investors have an incentive to pay bribes to increase their chances of getting it, and for a lower price.
- A long-term concession for water services, or a power purchase agreement for a private power station, or a PPP, is also a one-off chance to win a stream of government-backed revenue lasting 25 or 30 years, and so there are the same incentives to pay bribes.
- In all forms of outsourcing, whether it is refuse collection, construction, cleaning or medical services, contractors may pay bribes or form cartels or both in order to win profitable business.

Bribes or political donations form the currency with which these benefits are obtained, as summarised by the Nobel-prize winning economist Paul Krugman (talking about the USA): “As more and more government functions get privatized, states become pay-to-play paradises, in which both political contributions and

contracts for friends and relatives become a quid pro quo for getting government business... a corrupt nexus of privatization and patronage that is undermining government across much of our nation.”<sup>17</sup>

The author of a recent book on corruption in the EU says liberalisation is playing a similar role in Europe, where EU policies of extending the internal market have created more opportunities and incentives: “What the EU has done is allow corruption through its policies of increasing economic competition within the single market, including regulation of competition in the public procurement sector.”<sup>18</sup>

These links between privatisation and corruption exist in a range of different public services, in various countries.

### 3.2.1. Healthcare

The influence of the pharmaceutical companies on political processes is visible at global and national levels. This has a direct impact on health services. The effect is to divert large sums from public budgets for healthcare, and to undermine democratic policy-making.

At the global level, the multinational GSK persuaded the United Nations’ World Health Organization (WHO) to declare that swine flu had reached the level of a ‘pandemic’ – even though the WHO’s own rules did not justify this – and to recommend the use of Tamiflu as the best form of prevention. This led many countries to purchase huge quantities of Tamiflu, made only by GSK. In some cases they spent 1% to 3% of their national public healthcare budget to purchase the drug. The WHO had been advised by academics and others who had financial interests and connections with GSK.<sup>19</sup>

In Bulgaria, the pharmaceutical company, Sopharma was privatised in September 2000. Its owner became a member of the supervisory board of the National Health Insurance Fund (NZOK). Another manager became health adviser to the cabinet and helped draft a new law which created more favourable conditions for the privatised company. By 2011, Sopharma supplied more than 70% of the medicines to public hospitals. It charged three times more for its drugs in Bulgaria than it did in Turkey.

In the USA, three multinationals have been fined huge sums of money for corrupt marketing or mis-marketing of their drugs. AstraZeneca paid \$520 million, Pfizer paid \$2.3 billion, and GSK \$3 billion in fines. (See annexe)

### 3.2.2. Central government

Privatisation by outsourcing has become widespread in central government, and in the process increased the problem of corruption. The size of many central government contracts, especially in defence procurement and construction, creates greater incentives for companies to operate corruptly in order to get business.

SGS has been used by the World Bank and others to spearhead the privatisation of customs and other central government functions – despite this company itself being involved in high-level corruption. In 1996, it emerged that SGS had paid bribes to obtain a government contract for inspection services in Pakistan. Benazir Bhutto and her husband were convicted of paying bribes, and they fled the country. No action was taken against SGS. In 2012, the Pakistani Supreme Court demanded action to prosecute SGS, but still no case has been brought. The company was even a panellist at Transparency International’s anti-corruption conference in 2010, under the title of ‘Business principles for countering bribery: An effective tool for the private sector?’<sup>20</sup>

There is extensive corruption associated with USA contractors in Iraq in relation to security contracts funded by the USA federal government. Senator Leahy tabled a new bill on 4 January 2007 to combat war profiteering and public corruption, citing “mounting evidence of widespread contractor fraud and abuse in Iraq... At least 10 companies with billions of dollars in U.S. contracts for Iraq reconstruction have paid more than \$300 million in penalties since 2000 to resolve allegations of bid rigging, fraud, delivery of faulty military parts and environmental damage. Seven other companies with Iraq reconstruction contracts have agreed to pay financial penalties.”<sup>21</sup> The scale of losses from this USA-led corruption is significant. Nearly



\$9 billion in Iraqi oil revenues could not be accounted for. The cash was flown into the country by the USA in shrink-wrapped bundles and then distributed without any adequate accounting.<sup>22</sup>

The UK government has even proposed to outsource procurement services in the Ministry of Defence, so that a private company would handle all the tendering for defence equipment. This provides obvious further opportunities and incentives for corruption. In January 2012 four employees of a private company providing procurement services were convicted of fraud because they had sold confidential information to companies tendering for work. One of the multinational companies which advertises itself as a manager of procurement services is KBR – a company which has had to pay \$579 million to settle a prosecution in the USA for corruption. Major defence contractors, such as Babcock, see this as an opportunity to by-pass normal procedures of competitive bidding and instead become long-term ‘partners.’ As Geoff Allum, analyst at Arden Partners states, “A radically different MoD procurement structure will provide Babcock with a once in a lifetime opportunity. There is every chance that the MoD will move away from self-delivery and towards outsourcing, coupled with a preference for closer, partnership-style relationships with the private sector. No one is better placed than Babcock. This could be transformational.”<sup>23</sup>

### 3.2.3. Local government

Municipal and local governments globally have outsourced various functions. These include refuse collection, where contracts have been the subject of long-term systematic corruption by private companies in a number of countries, including the USA and Italy. Outsourcing is now often introduced on a wider scale, which encourages further corruption.

For example, Malawi introduced the so-called ‘new public management’ as advised by international institutions, in the belief that it would foster accountability, transparency and good governance. In practice it has created a breeding ground for corruption at the local government level, as a result of greater contracting-out, decentralisation, user fees, public-private partnerships (PPPs), and local discretion in spending without accountability. Contracts were awarded to senior officers and councillors and their relatives and friends, even when the service was not needed. Councillors used decentralisation to justify paying themselves larger expenses, or to simply embezzle money. ‘User fees’ were taken as personal income, as though they were bribes, and used as a pretext for extorting bribes. Public-private partnerships were created as networks to give privileged information about contracts.<sup>24</sup>

Local government is also vulnerable to corruption by multinational companies. The largest USA retail multinational Wal-Mart is subject to a number of court cases and investigations over corruption of local government planning officials in Mexico to gain a commercial advantage. According to the New York Times:

“Wal-Mart de Mexico had orchestrated a campaign of bribery to win market dominance. In its rush to build stores the company had paid bribes to obtain permits in virtually every corner of the country.”<sup>25</sup>

### 3.2.4. Electricity and water

Valuable long-term contracts and concessions in the electricity and water sectors provide a powerful incentive for corruption. There have been widespread payments of bribes by companies to gain power purchase agreements for independent power producers (IPPs), as well as bribes by water companies, on every continent.

- The ‘Gorilla’ file is a transcript of lengthy eavesdropping by the Slovak Intelligence Service (SIS) during 2005 and 2006. It was leaked at the end of 2011. It records a series of meetings involving leading Slovak politicians and executives of the private equity firm Penta, and others. The meetings largely concerned the payment of bribes by the multinationals involved in various privatisations, and the allocation of these bribes to individuals and parties. The discussions mostly focused on the privatisation of electricity and gas, but also involved healthcare, district heating, airport, and water. The energy multinationals mentioned include RAO UES (Russia), Enel (Italy), E.on and Siemens (Germany) and EDF (France). Regarding the latter, the transcript says, “The problem is that EDF as

a state company cannot pay the commission [bribe] directly, but through the consultancy firm EPIC.”<sup>26</sup>

- In the water sector, courts in France have convicted executives and public officials for bribes paid by Suez and Veolia subsidiaries in the cities of Grenoble and Angouleme and the island of Reunion. A 1997 report by the Cour des Comptes, France’s national audit body, said that the system of ‘delegated management’ on which Suez and Veolia built their national dominance was systematically flawed. “*The lack of supervision and control of delegated public services, aggravated by the lack of transparency of this form of management, has led to abuses.*” In Milan, Italy, in 2002 a senior executive of Vivendi (now Veolia) was convicted of planning to bribe local politicians in both the majority and opposition parties of city council in order to win the tender for a wastewater treatment plant in the south of Milan. The evidence included a floppy disk containing a letter by the Vivendi executive Alain Metz stating that he has “excellent contacts” within the right wing majority coalition (Polo delle Liberta, whose leader was Silvio Berlusconi), and planned to pay about €2 million to politicians, half of which would go to the majority parties, and the rest to the opposition and other “experts” and “mediators” whose names were not revealed.<sup>27</sup> Both groups “have come under scrutiny in a host of criminal and civil cases, with accusations that include bribery of public officials, illegal political contributions, kickbacks, price fixing, operating cartels and fraudulent accounting.”<sup>28</sup>

### 3.3. Multinationals

The role of multinational companies in these corrupt networks is already obvious from the examples above. The table below, listing the companies which have had to pay the largest penalties under the USA anti-corruption law, shows that they include some of the biggest companies in the world. One remarkable feature of this table is that, according to Transparency International, the Netherlands, Switzerland and Germany are three of the supposedly ‘cleanest’ countries in the world, yet each one has two companies in the list of top ten settlements for international bribery charges in the USA.<sup>29</sup>

Table 1. Multinationals charged in USA with international corruption: largest settlements

1	<b>Siemens</b>	Germany	\$800 million	2008
2	<b>KBR/Halliburton</b>	USA	\$579 million	2009
3	<b>BAE</b>	UK	\$400 million	2010
4	<b>Snamprogetti Netherlands/ENI SpA</b>	Netherlands/Italy	\$365 million	2010
5	<b>Technip SA</b>	France	\$338 million	2010
6	<b>Daimler AG</b>	Germany	\$185 million	2010
7	<b>Panalpina</b>	Switzerland	\$82 million	2010
8	<b>ABB Ltd</b>	Switzerland	\$58 million	2010
9	<b>Pride</b>	USA	\$56 million	2010
10	<b>Shell</b>	UK/Holland	\$48 million	2010

Source: <http://www.fcpablog.com/blog/2010/11/5/in-new-top-ten-eight-are-foreign.html>

Table 2. Multinationals from OECD countries recently barred or sanctioned by the World Bank

	<b>Macmillan</b>	UK	6 year ban	2011
	<b>Oxford University Press</b>	UK	Probation, subsidiaries banned for 3 years	2012
	<b>Alstom</b>	France	Probation, subsidiaries banned for 3 years	2012
	<b>Crown Agents</b>	UK	6 month ban	2011

Source: World Bank<sup>30</sup>

Source: Trace database <https://secure.traceinternational.org/Knowledge/Compendium.html>

It is no surprise to see Siemens at the top of this list. It has been repeatedly prosecuted in the last 15 years in Germany, Singapore and elsewhere for both corruption and cartels. While it paid a large penalty in the USA, the World Bank decided it was ‘too big to debar’ from contracts, and so only asked for a donation to anti-corruption causes. But Singapore did debar Siemens for five years, in 1996.

The case of Siemens demonstrates that corruption by a multinational company can be a systematic part of their business strategy over many years. Secondly, this is made easier by the assumption that a company from a country perceived as 'clean' could not behave in such a way. Thirdly, the enforcement mechanisms of international institutions and northern countries are not effective against such a company – it is 'too big to be punished.' Fourthly, the enforcement mechanisms of southern countries are more likely to be applied to such a company.

#### 4. The limits of existing initiatives

In dealing with the problems identified above, existing 'anti-corruption' initiatives by international institutions have limitations. These international initiatives share an overwhelming concern with achieving a 'level playing field' for international business, where no single corporation should be at a competitive advantage by paying a bribe which its competitors cannot, or will not, match. Reducing the role of public services is not a concern for them, indeed privatisation provides greater business opportunities. Nor are they principally concerned with weakening democratic decision-making because companies can obtain better deals from weaker governments. In attacking corruption, they often do not want to see national legal systems used to sanction multinational companies, but rather to keep such powers of sanction for the home governments who can often be persuaded to take a light touch approach.

This difference in approach means that many of the existing initiatives fail to solve the problems. Some of the policies of these institutions worsen the situation, in particular by promoting further privatisation.

##### 4.1. World Bank

The World Bank advertises itself as a leading anti-corruption actor. The empirical research by the World Bank Institute into state capture and corporate bribe-paying has provided valuable evidence on the processes of state capture. Its power to debar companies from bank projects is a significant potential deterrent to corrupt activities.

There are three major problems with the bank's activities in relation to the problems identified above.

The first is that it promotes privatisations, and provides loans linked to these privatisations. This creates conditions favourable to corruption and increases the amount of money available to be captured, as in the case of Nigeria. "There was evidence to show that an estimated US \$36 billion in annual revenue from the sale of petroleum and gas and annual huge loans from the Western lending agencies continued to be used for corrupt purposes. Despite this evidence, the World Bank and the IMF, in particular, violated their lending policies by continuing to lend more money to successive corrupt Nigerian regimes (see African Forum and Network on Debt and Development, 2007)."

This problem also arises from the activities of other international financial institutions and donors. The implementation of conditions can itself require corruption. A former president of Argentina, Fernando de la Rúa, was put on trial in August 2012 for allegedly paying \$5 million in bribes to senators in the year 2000 to pass a bill allowing companies to cut the hours and working conditions of their employees. The IMF had made this law a condition for the continuation of its loan to Argentina.<sup>31</sup> The UK government's Department for International Development (DFID) uses the Commonwealth Development Corporation (CDC), which acts as a private equity fund, to promote privatisation. The Crown Agents, another UK state body, acts as a private contractor to run public finance systems in developing countries. Both bodies have been implicated in corruption and fraud.

Secondly, international institutions have discouraged developing countries from using their own legal systems to punish multinationals. Two key episodes occurred in Pakistan and Indonesia, where donors and development banks actively insisted on the sanctity of contracts, and fought (successfully) to prevent legal action against corrupt privatisations. In Indonesia, after the overthrow of the dictatorship of Suharto, the USA and the World Bank fought hard, successfully, to prevent Suharto's corrupt private energy deals from being terminated, and instead insisted that these corrupt contracts should be honoured in full. They threatened to withhold further aid or loans until Indonesians backed down. In Pakistan, the IMF, World Bank

and the British government all threatened to withhold loans or aid unless the country dropped its prosecution of a mainly British-owned private electricity company. (See annexe)

Thirdly, the World Bank has failed to use its full power to debar corrupt firms from working on its contracts. These debarments have been applied to many firms, with substantial effect, but when it was faced with the prospect of debarring Siemens in 2009 it took the view that the company was too big to punish. Siemens was instead allowed to make generous donations to anti-corruption NGOs.

#### 4.2. OECD

The OECD anti-bribery convention commits member countries – that is, the richest countries in the world – to introducing legislation to criminalise bribery practiced overseas by companies based in OECD home countries. The convention was most strongly supported by the USA, which believed that its companies were at a disadvantage in competing for international business from governments, because they were deterred from paying bribes by the USA's own Foreign Corrupt Practices Act (FCPA), while those from other countries were not inhibited by similar legislation.

The major problem with the OECD initiative is that the member states have limited incentive to convict and punish their own multinational companies. There have been long delays in introducing legislation required under the convention, and little effective use of such legislation. The decision by the UK government in 2008 to abandon its prosecution of BAe, and instead accept a payment from the company, illustrates this weakness. BAe successfully lobbied government ministers to drop the case, arguing that it was in the UK national interest that they should be free to carry on their business globally.<sup>32</sup> The fact that the USA has used its own FCPA to prosecute many multinationals based in other countries – including BAe – indicates that the USA also does not believe that other OECD countries are effectively applying the legislation required under the OECD convention.

The OECD initiative was intended to demonstrate that developing countries do not need to prosecute multinationals for corruption, because the home countries of the multinationals would do so themselves. The initiative has failed to achieve these objectives because the level of prosecutions, outside the USA, is very low. One indication of this failure is that the USA itself has started to use its own legislation to prosecute non-USA multinationals.

#### 4.3. USA

The USA introduced the Foreign Corrupt Practices Act in 1977 in reaction to scandals over bribes paid by its companies abroad. The act and prosecutions under its provisions have had a positive impact in affecting the behaviour of USA firms. Since 2009, the number of such prosecutions has increased, and been extended to cover USA subsidiaries of European multinationals.

The greatest weakness is that the great majority of cases are settled by the company paying large sums to the courts in exchange for the case being dropped. It means that the evidence collected for these cases is rarely heard in public, companies are not debarred from future contracts, other governments do not see evidence which they could use to debar the companies, and the payments made by companies are often quite small in relation to the economic gains from the bribes.

Major USA companies, led by the USA Chamber of Commerce, are currently lobbying to weaken the law, specifically so that bribing officials of state-owned companies is not an offence.

#### 4.4. Transparency International (TI)

Funded by the World Bank, donor countries, and a number of multinational corporations, TI bills itself as an "international movement." It is the best known organisation dealing with corruption, and organises an annual anti-corruption conference.

The most publicised product of TI is its 'Corruption Perceptions Index', which ranks countries. The weaknesses of this have been discussed above. TI now also publishes a 'Bribe payers index.' This focuses on

the businesses that pay bribes. This index suffers from the same limitations and some new ones. The report does not name companies in its index. It simply ranks the countries in which companies are based, according to the perceived tendency of businesses from that country to pay bribes.

This leads to absurd results. The 2011 index said companies from the Netherlands are the least likely to pay bribes, only one year after the largest Dutch multinational – Shell – paid a \$10 million fine in Nigeria over corruption charges, and admitted to US diplomats that oil companies pay bribes to top Nigerian politicians. The same index rated the fourth cleanest country as Germany, only a year after the largest German multinational – Siemens – paid hundreds of millions of dollars to both the World Bank and the USA over widespread corruption for many years.<sup>33</sup>

TI's connection with multinational companies severely limits its credibility. Its supporters originally included Enron and Arthur Andersen, both of whom collapsed as a result of non-transparent accounting and Enron's corrupt activities. For example, Shell is one of TI's 'supporters.' The TI reports for 2011 do not mention any of the major corruption cases involving Shell during the previous two years.

The same shortcomings are evident in the structure and practice of the Water Integrity Network (WIN), which was set up in 2006 by TI and others to promote anti-corruption activity in the water sector. There have been many cases of corruption in this sector, most of them involving the water multinationals Suez and Veolia, a number of them in their home country of France. WIN then accepted a new member and sponsor, Aquafed, a global lobby organisation representing the water companies. The 2008 annual report of TI, jointly prepared by WIN, had a special focus on corruption in the water sector. In 288 pages, this report does not once mention either Suez or Veolia. Its country chapters do not cover France, the scene of the greatest concentration of corruption investigations in the water sector in the previous 15 years.<sup>34</sup>

## 4.5. Other approaches

### 4.5.1. Self-regulation and private auditors

Companies consistently prefer self-regulation on corruption, and reject outside scrutiny. They argue that their accounts are already externally audited, and that internal systems will be sufficient to prevent the company from paying bribes.

However, the track record of accountants in this role is poor.

Company accounts are scrutinised by external auditors, who are expected to identify and report serious financial problems. But they have a strong incentive *not* to do so, because the company is their client, and they fear losing business if they report or publicise problems, including bribes. German prosecutors have been investigating whether KPMG Germany ignored questionable payments on Siemens' books. They suspect that employees at Siemens funnelled hundreds of millions of dollars into slush funds over several years to bribe potential customers.<sup>35</sup>

The failure of company auditors was also highlighted in the financial crisis of 2007 and 2008, when major banks and financial institutions became insolvent and were rescued at huge expense by taxpayers. Not one of these disasters had been spotted in advance by their auditors. Over 28 financial companies – in the UK, USA, Germany, Iceland, The Netherlands, France or Switzerland – received clean bills of health from their auditors just days before they were demanding state aid to protect them from bankruptcy. The cases involved all the big international accounting firms, who subsequently were paid by governments for advice on how to be alerted to such problems in future.<sup>36</sup>

## 4.6. Whistle blowing

A number of countries have introduced legal protection for whistle-blowers. Whistle-blowers are seen as key sources of information for public prosecutors. Protecting them creates a deterrent because companies are aware of the risk of exposure from inside. The USA has strengthened this further by providing rewards for whistle-blowers where their information leads to prosecutions.

However, whistle blowing depends on individuals making decisions, in isolation, based on the individual person's conscience. It does not systematically develop greater accountability, transparency or public participation in the political process as a whole. The individuals themselves also remain vulnerable, even when there is legislative protection. In the USA, the whistle-blowers who exposed fraud committed by the private companies such as WorldCom have said they feared for their lives.<sup>37</sup> The UK Department for International Development inadvertently publicised the name of a Nigerian who exposed corruption connected with UK funds; as a result he had to flee Nigeria. An employee at the Central Bank of Kenya (CBK) who revealed massive corruption at the bank spent the rest of his life poor and frequently unemployed.<sup>38</sup>

While whistle blowing is a valuable source of information, the protection of the individuals themselves remains weak and should be strengthened.

#### 4.7. Women and corruption

In 2001, an academic study found that a higher proportion of women in parliament was linked to lower levels of corruption. Another found that women were more likely to condemn bribery and less likely to offer bribes. The same year, a World Bank report argued that societies where women have greater rights and a greater presence in public life are less corrupt and more efficient, and so gender equality was itself a way of reducing corruption. Another more recent study, published in 2011, also found that a higher proportion of women in a country's legislature and labour force is linked to a lower level of corruption. This evidence has been used to argue that women are intrinsically more altruistic than men. The Finnish government has argued that its low level of corruption is partly due to the prominent role of women in Finnish society.<sup>39</sup>

These findings can also be explained by the fact that stronger democracy results in greater participation by women, and suggest that it is the democratic improvements which reduce the level of corruption – not the gender of the individuals involved. It is true that women are less involved in corruption, but this too can be due to the fact that they have fewer opportunities to be corrupt, and have much less access to the powerful networks which are the vehicle for most corruption. Where public employees demand bribes, it is usually linked to inadequate pay. For that reason, hoping that the employment of women will by itself reduce corruption is another way of saying that women are more likely to accept pay below subsistence levels<sup>40</sup>

The anecdotal evidence is not consistent. It is easy to find examples of women standing up against corruption – for example, Dilma Rousseff, President of Brazil, has been prepared to operate a 'zero tolerance' policy against leading members of her own party who are corrupt. But it is also easy to find examples of extremely corrupt practices by women. For example Shirley Porter, a former leader of Westminster Council in the heart of London, deliberately used municipal loans to persuade voters for opposition parties to move out of the council's area.

A new study, using data from countries with more than 99% of the world's population, has now established the distinction between the political and gender factors very clearly. Better democracy – stronger rules of law, and stronger political rights – are very strongly linked to lower levels of corruption. When these institutional effects are taken into account, the higher proportion of women in public life is not by itself statistically significant:

“Achieving an advanced state of liberal democracy and/or strengthening liberal and democratic institutions over time are both validated explanations of corruption prevalence and consistent predictors of changes in corruption over short periods of time.... The association between women in government and corruption constitutes a typical example of spurious correlation.”<sup>41</sup>

Greater transparency, stronger law enforcement, greater democratic rights are thus the keys both to improving gender equity and reducing corruption.

## 5. Better approaches

This section sets out a series of measures to deal with the problems of public service corruption, state capture and corrupt multinationals described above. They are evidence-based. There are well-established examples of their use and effectiveness. They include a much stronger dimension of social, political and union organisation than is usual in international institutions' initiatives.

### 5.1. Payment

The single most important solution to the problem of corruption by public service workers is paying a proper living wage. As noted earlier, successful attempts at reforming water services where corruption was a problem, for example in Cambodia and Bangladesh, have included doubling the wages of the workers responsible for meter readings and household connections.

The same point was made in the 18<sup>th</sup> century by Tom Paine, when he submitted a pay claim for the customs officials of England. He pointed out that corruption and incompetent staff were leading to a loss of revenue and argued, "the most effectual method to keep men honest is to enable them to live so.... An augmentation of salary sufficient to enable them to live honestly and competently would produce more good effect than all the laws of the land can enforce.... The officers would be secured from the temptations of poverty, and the revenue from the evils of it; the cure would be as extensive as the complaint, and new health out-root the present corruptions."<sup>42</sup>

### 5.2. Worker-community links

Relations between workers and communities, and the status of workers in relation to communities, can play a crucial role in improving a service and reducing the incidence of petty corruption. It increases mutual respect and confidence, and by-passes the senior officials and contractors who are often the driving force behind corrupt practices.

There are examples of the positive effects of this approach:

- Water and sanitation workers on a slum project in Ahmadabad (India) were exposed to regular contact with local communities and NGOs. This public exposure strengthened community scrutiny of possible attempts at corruption, and also created stronger commitment by the workers to supplying poor households with network services. The level of corruption was far lower as a result, with contractors complaining that they cannot get contracts on the project from bribery, and the relationships generated a positive cycle of gratitude from local inhabitants, and consequent pride by employees: "At the end [of each project] we feel that we have really accomplished something. People give us so many blessings. We see and feel this sentiment."<sup>43</sup>
- Workers on a rural water supply project in Azad and Jammu (Pakistan) were expected to work unusually closely with the communities, and formed close bonds with them: villagers reciprocated by calling them 'heroes'. One junior engineer said that "we will go where no one else will go. We will work late into the evenings, we work on Sundays, we work with the people, we don't exclude them. This is how we are seen by the people". There was very little corruption, with attempted bribery rejected by workers both because of project rules and because of "the trust that had developed between the staff and villagers".<sup>44</sup>
- A great improvement in public service delivery in Ceara, Brazil, in the 1990s was based on the same approach. Instead of following the cynical view of neoliberalism that "the public servant is presumed guilty of self-interest unless proven otherwise", the government deliberately built on the commitment of its workforce. Workers were given a larger and more varied set of tasks than normal, especially in developing closer connections and responsiveness, which created trust and respect, "contrasting with traditional development advice which restricts workers' discretion to the programme specification." The process also professionalised the public service, appointing new employees by open competition, not by patronage. As well as improving services, these new relationships almost eliminated corruption, sharply reducing the re-election rate of mayors known to be corrupt. The government actively promoted the public image of the workers, and at the same time

encouraged communities to expect the best and most honest performance between workers. The process was a complete contrast to the treatment of workers encouraged by ‘new public management’:

“Government itself fed the high dedication of these workers with repeated public demonstrations of admiration and respect for what they were doing. It publicised the programmes incessantly, even their minor successes. It gave prizes for good performance, with much pomp and ceremony...All this contributed to a new respect for these workers by the public – remarkable in a time of widespread contempt for government....Communities were actively encouraged to make demands on public authorities and their workforce.... the government urged communities to act as monitors: “this programme is yours and it is you who will determine its success... make sure that those who are chosen abide by the rules ... if these rules are breached ... we want to hear about it.”<sup>45</sup>

### 5.3. Meritocracy and civil service

The creation of an independent civil service – appointed on merit to ensure that policy advice and public services were provided objectively, and not by politicians – was a crucial step in building European and other states in the nineteenth century. It has been equally important in building effective states and public services in developing countries today. The economic successes of Asian countries such as South Korea were made possible through an effective state system based on a meritocratic civil service which was ‘embedded’ in government but at the same time ‘autonomous.’ Countries such as Brazil and India have also built success with some level of meritocracy in the civil service.<sup>46</sup>

The absence of this is a problem, especially in countries where the state lacks public confidence. Central European countries including Poland, Hungary, Slovakia and Slovenia have failed to establish an independent civil service, and deliberately made political appointments easier, so that each party which comes to power expects “to staff the most important public administration offices with party members and associates as well as their own friends and acquaintances, without examining their professional qualifications.”<sup>47</sup>

Changing such conduct by enforcing merit-based recruitment is an important way of protecting and advancing quality public services. It is also important to promote sustainable development and to oppose corruption:

“A competent and meritocratic core civil service, autonomous from clientelistic networks and at the same time responsive to society characterised by... long-term career outlooks. These traits make civil servants more professional and more detached from powerful rent-seeking groups attempting to influence them. A competent, meritocratic and ‘results-oriented’ core bureaucratic system is a key ingredient in avoiding state capture and other forms of predatory behaviour.”<sup>48</sup>

The use of consultancy contracts, exchanges, and units staffed partly by business representatives within government all have similar effects. They undermine the integrity of the civil services and provide greater opportunity for legally-engineered influence and capture of key government policies. Examples include:

- In the UK, the management consultancy McKinsey & Company has gained £14 million in contracts to advise on health service reforms which will open up the health service to even more work for private firms. McKinsey staff move in and out of the Department of Health, and the firm offers hospitality to government officials including hosting meetings of government policy teams.<sup>49</sup>
- In Germany a ‘staff exchange programme’ between civil servants and private businesses was introduced in 2004, initially without public knowledge, so that civil servants could “increase understanding of their concerns and interests.”<sup>50</sup>
- In many countries, there are now PPP units within finance ministries, which include business representatives, endowed with powers to promote the use of PPPs by government. Such practice gives business interests excessive influence over decisions, with major long-term implications for public finances.



Building an independent civil service committed to national and public interests, with appointments based on merit, free of political patronage, with a secure career structure and pay and conditions reflecting their responsibilities, remains key to dealing with corruption. Such a civil service is strong enough to resist the demands of corrupt networks. The privatisation of policy-making must be ended.

#### 5.4. Resisting privatisation

The connection between privatisation and corruption reinforces the need to oppose privatisation. Both the sale of public companies and the outsourcing of public work create further opportunities for corruption.

There are already many cases of successful anti-privatisation campaigns around the world, in a wide range of sectors. The most successful campaigns have involved broad-based movements where unions and social movements have worked together to prevent or reverse privatisation efforts

Investment in quality public services provides the strongest inoculation against privatisation.

#### 5.5. Public audit and freedom of information

A strong public audit function is of the greatest importance in fighting corruption. A good example is the recent work of the audit commission of India, the CAG. This body has played a key role in exposing the cost of the corrupt sale of coal and telecoms licenses to private companies, including Essar Power, part of one of the biggest companies on the London Stock Exchange. In 2012, CAG reported that the government allocated coal licenses for \$36 billion less than their true value – equivalent to an entire year’s income tax revenues. In 2010, it reported that a similar amount had been lost by corrupt allocation of private telecoms licences.

The need for strong public audit is actively promoted in Latin America by the ‘Iniciativa TPA’, an international body that actively encourages civil society organisations to promote transparency, public participation, and accountability in public audit systems in Latin America.<sup>51</sup> It has identified key problems with audit institutions, including the common refusal by audit institutions to release information publicly, partly due to a culture of secrecy and partly through fear of disclosing information.<sup>52</sup>

Audit reports must be disclosed and published to unleash democratic political demands for action against corruption identified by auditors, and to protect the auditors themselves:

“Through the peer pressure of societal control and increasingly assertive civil society organizations ... *mobilizing political power is often more important than increasing technical capacity* ... [an]external audit can be a dangerous endeavor in inauspicious political contexts.”<sup>53</sup>

Ending corruption thus requires strengthening democratic participation, and protecting the independence and integrity of audit institutions and their staff. Unions and Public Services International are well placed to contribute to both elements, through participating in active campaigns for information and protecting workers involved in audit. “We must provide a shelter for the work of public auditors and protect them from the usual custom of ‘shooting the messenger.’”<sup>54</sup>

The Iniciativa is supported by ULATOC ([www.ulatoc.org](http://www.ulatoc.org)), an organisation of workers involved in public sector audits in Latin America. Founded in 2004, it has members from countries across Latin America, including Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, and Paraguay. Many PSI affiliate unions are members of ULATOC. The organisation has formed links with similar organisations in Spain, Italy, France, Belgium and Luxembourg, and with representatives of workers in the EU Court of Auditors. It works with other organisations to strengthen the role of auditors, and to protect the professional independence and integrity of workers in public audit institutions, including the network of Latin American experts in public control.<sup>55</sup>

Freedom of information legislation plays a similar crucial role. In this case, it is the public who are empowered by the ability to expose actual or potential corruption.

## 5.6. Effective sanctions

Effective legal and disciplinary sanctions are necessary to deal with all forms of corruption. Singapore is not a model of democracy, but it does provide an example of a series of policy measures which are effective. These include the creation of an independent civil service, whose salaries were repeatedly increased to keep pay in line with the private sector, on the grounds that “the government has to be able to persuade talented Singaporeans to join politics and the civil service and to motivate them to behave ethically and rationally for the national interest.”

At the same time there is an extremely strict and firmly enforced regime of penalties for corrupt behaviour, which applies to both top-level and ‘petty’ corruption, and to both public employees and private companies, foreign as well as local. The anti-corruption agency has powers to investigate bank accounts and expenditures. The penalties include five year jail sentences and fines of \$100,000.

These laws have been enforced rigorously against multinationals. In 1996, a middleman was convicted of paying bribes totalling US \$9.8 million on behalf of his multinational clients. The government reacted by banning all five companies – Siemens, Pirelli, BICC, Tomen, and Marubeni – from bidding for any government contracts for five years. “The ban applies to all government projects. Firms associated with the five companies, any new company that the firms may jointly set up, and firms that share the same directors as the five are also debarred.”<sup>56</sup>

These systems of sanctions can be replicated elsewhere. It requires a commitment to building and supporting a strong public service, and a readiness to apply powerful sanctions against the most powerful politicians, officials, and businesses, including foreign companies.

## 5.7. Popular action and campaigns

The problem of state capture requires a political response. Technical solutions are not by themselves sufficient if the government which controls the administration is itself captured by the interests these mechanisms are supposed to control.

There is a wide range of political actions that may address the issue of capture. The most striking recent examples are the uprisings of the Arab Spring, in which privatisation and corruption were key issues. Other actions include broad-based campaigns, especially those which try to mobilise the public around the issues of democracy, transparency and accountability.

### 5.7.1. Uprisings against corrupt privatisations: the Arab Spring

The Arab Spring uprisings of 2011 were prompted, in part, by widespread popular reaction against corrupt privatisations carried out by the ruling elites over many years. These privatisations were encouraged by international financial institutions and the EU. Years of trade union actions against privatisation laid the foundations for the popular revolts in Egypt and Tunisia.

A top army general, quoted in April 2011, attributed anger at Egypt’s privatisation programme, involving the transfer of billions of dollars worth of public assets to private hands, as aiding the Egyptian revolution that toppled the Western-backed Hosni Mubarak from power.<sup>57</sup>

In Egypt, the first massive demonstrations in Tahrir Square, on 25 January 2011, were sparked by a plan to privatise social insurance. A series of strikes by public workers and workers in privatised companies organised by independent unions of the newly-formed Egyptian Federation for Independent Unions (EFIU) were pivotal in forcing Mubarak to step down. This was followed by a strong campaign to stop the privatisation program and reverse the corrupt deals which had already been carried out, including a series of court cases brought by the Egyptian Centre for Economic and Social Rights (ECESR) over corrupt privatisations.<sup>58</sup>

In July 2011, the interim Egyptian government terminated the privatisation programme. By September 2011 the courts had renationalised four companies: Omar Effendi, Egypt’s “flagship” department store, Shebin El-

Kom Textile Company, the Tanta Company for Linen and Derivatives, and the Steam Boilers Companies. The courts noted that these corrupt privatisations had been made because they were required by international financial institutions in order to secure loans. The [court found](#) that the companies were sold at prices far below their true value. In June 2012 the courts convicted Mubarak himself of corruption but acquitted his sons – to widespread public outrage.<sup>59</sup>

The international financial institutions continue to promote privatisation. In early 2012, the European Bank for Reconstruction & Development (EBRD) strategy declared that privatisation and liberalisation under the Mubarak dictatorship had been successful, and promoted further privatisation of water, roads and electricity. Egyptians, including the new independent unions, continue to oppose this.

#### 5.7.2. Tax havens campaign - ATTAC Norway (& global chapters) and Fagforbundet

In order to avoid detection by tax authorities or criminal investigations the proceeds of corruption need to be hidden and tax havens are frequently used for this purpose because of the secrecy they provide. An innovative campaign on tax havens is emerging in Norway and in many other countries that can help make corruption more difficult as well as reducing tax avoidance. ATTAC Norway is working with the public service union Fagforbundet and municipal governments in a new campaign demanding that multinational suppliers sign a disclosure that they don't put profits into tax havens. Apparently some suppliers have already dropped out of procurement bidding on these grounds. The Norwegian Finance Minister is supporting the campaign with a pledge to require companies to file country-by-country financial reports by 2014.<sup>60</sup>

#### 5.7.3. South African unions campaign against corruption

In 2012, the Congress of South African Trade Unions (COSATU) launched a public campaign against corruption together with affiliates and civil society organisations. The municipal workers' union, SAMWU, had long argued for this. Its members have been active in exposing corruption at the municipal level across the country "because corruption has been a decisive factor in thwarting effective service delivery to many of our most impoverished communities."<sup>61</sup>

Corruption Watch runs an interactive website, [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za), an SMS-line and a call centre to report corruption in both the public and private sectors in South Africa. It focuses on exposing and ending corruption in service delivery – for example, police extortion of money from motorists – and the grand corruption of private contractors and officials swindling money out of government works contracts worth millions.

## 6. Conclusions and summary of recommendations

### 6.1. Defending public services against corruption and capture

This analysis of corruption finds different conclusions from the official international bodies. Instead of being concerned with creating a low cost 'level playing field' for international business, the focus should be on creating quality public services and preventing public policy from capture by commercial interests.

Fragmenting, minimising and under-funding the public sector is part of the problem of corruption in service delivery. The solution involves recognition of the value of civil and public services and the workers who provide these vital services.

The 'culture of corruption' which is so prominent in the minds of international businesspeople is angrily rejected by the majority of public opinion everywhere. It is privatisation, and the uncritical support for it by donors and development banks, which systematically creates unnecessary opportunities and incentives for corruption and policy capture. In addition, the commercial capture of the state through 'legal' corruption via political donations, influence trading, lobbying and infiltration of public institutions, undermines the power of democratic decision-making. It corrupts public policy decisions and public resource allocation.

Exposing corruption requires extra powers and autonomy for public audit bodies, strong freedom of information legislation to empower civil society organisations, and concerted campaigns for democratic financial decision-making, transparency and accountability. Relying on individual whistle-blowers or an improved gender balance, or self-regulation by the corporate sector or its private accountancy firms are not viable solutions on their own.

National courts should be able to apply powerful legal sanctions – including imprisonment and debarment from tendering – against corrupt elites and local and multinational companies alike, rather than simply excluding northern companies from the rule of law in countries where they operate, permitting companies to buy off prosecutions by making donations, or suppressing information of value to the public interest by confidential court settlements. International bodies and donors should support these powers by closing down the tax havens that protect the corrupt and the public monies they have stolen.

Finally, technical solutions are not the full answer. The effectiveness of combined actions against corruption depends on strengthening democratic and community organisations within every country, and developing strong links between unions and allies who support strong public services.

### 6.2. Recommendations

Public service workers and political integrity:

- All public service workers should be paid a decent living wage sufficient to remove incentive for corrupt exploitation of their position.
- Appointment, career progression, discipline or dismissal of civil and public service workers should be immune from political decisions,
- All public employees should be subject to a disciplinary code which includes strong sanctions against corrupt practices.

Commercial capture of public interests:

- Public policy-making should not be outsourced to consultants. Private consultants or business interests should not be appointed to bodies responsible for public policy decisions or assigning public contracts, such as PPP units.

Privatisation, outsourcing and procurement:

- International banks and donors should not require any form of privatisation as a condition of aid or loans.
- Procurement processes for goods or services should be completely public and transparent.
- A company should be banned from tendering for any public contract if it, or its parent or subsidiaries or associates, has been convicted of corruption in any country, or uses tax havens.

**Public audit and freedom of information:**

- Public audit bodies and their staff should have strong protection from political or commercial interference.
- Public audit bodies should have strong powers to require disclosure.
- Public audit bodies should be enabled and required to publish and publicise their findings and encourage public responses.
- Freedom of information legislation should require disclosure to all citizens of all categories of information about public finances, including civil service salaries and the terms of all contracts.

**Legal sanctions:**

- National courts should have power to sanction any multinationals operating in the country.
- Sanctions for corruption should include long-term barring from contracts of companies and any parents, subsidiaries, associates or successors, for long periods of time.
- The use by nationals or companies of tax havens should be banned, and/or any company which is part of a group that uses such tax havens should be excluded from future tendering.
- All corruptly-gained monies should be recovered and returned to the public treasury.

**Democracy and community:**

- Open interaction between public service workers and communities and civil society organisations should be encouraged and promoted.
- Increased public participation should be systematically developed to promote gender equity and financial accountability in public service budgeting and policy decisions.

**Some of these strategies can be pursued at the international level, including:**

- Demanding that the World Bank, IMF and other development banks and donors drop all privatisation conditions.
- Supporting international initiatives e.g. member states of the OECD to facilitate prosecution of multinational companies for corruption offences, including prosecutions in home countries such as USA or Netherlands.
- Working with campaigns such as those led by ATTAC and the Tax Justice Network to close down tax havens.
- Joining with national and international campaigns to implement strong whistle-blower protection legislation.

## 7. Annexe: sources of information and readings

Chartered Institute of Purchasing and Supply (CIPS) <http://www.supplymanagement.com/fraud-corruption/>  
*News and discussion, with international scope, on corruption in procurement and outsourcing.*

Corruption - Special Eurobarometer 374 (2012)  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

Jennifer Davis: Corruption in Public Service Delivery: Experience from South Asia's Water and Sanitation Sector World Development Vol. 32, No. 1, pp. 53–71, 2004  
<http://www.sciencedirect.com/science/article/pii/S0305750X03001979>

V. Fritz and A. Rocha Menocal Overseas Development Institute Working Paper 274 September 2006.  
(Re)building Developmental States: From Theory to Practice <http://www.odi.org.uk/resources/docs/2328.pdf>

Global Financial Integrity <http://www.gfintegrity.org> (2011), Illicit Financial Flows from Developing Countries: 2008-2009, Global Financial Integrity, Washington, <http://iff-update.gfip.org/>

Hellman, Joel S, Geraint Jones, and Daniel Kaufmann, 'Seize the State, Seize the Day: State Capture and Influence in Transition Economies', Journal of Comparative Economics, 31 (2003), 751–773  
doi:10.1016/j.jce.2003.09.006

OECD (1997), Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD, Paris, [www.oecd.org/bribery](http://www.oecd.org/bribery)

SEC FCPA Investigations list <http://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>  
*List of cases brought in USA under the FCPA*

Hellman, Joel S, Geraint Jones, and Daniel Kaufmann, 'Seize the State, Seize the Day: State Capture and Influence in Transition Economies', Journal of Comparative Economics, 31 (2003), 751–773  
<doi:10.1016/j.jce.2003.09.006>

Supreme Audit Institutions in Latin America: report on transparency, participation and accountability  
<http://iniciativatpa.files.wordpress.com/2010/10/tpa-in-sais-in-latin-america.pdf>

Trace <https://secure.traceinternational.org/Knowledge/Compendium.html>  
*Compiles information on corruption cases brought against companies*

U4 Anticorruption Resource Centre, [www.u4.no/index.cfm](http://www.u4.no/index.cfm)

Wall Street Journal corruption stories <http://blogs.wsj.com/corruption-currents/>

Warner, C.M., 2007. The Best System Money Can Buy: Corruption in the European Union, Cornell University Press.

## Annexes

### 8. Empirical evidence of the levels of corruption

#### 8.1. Africa

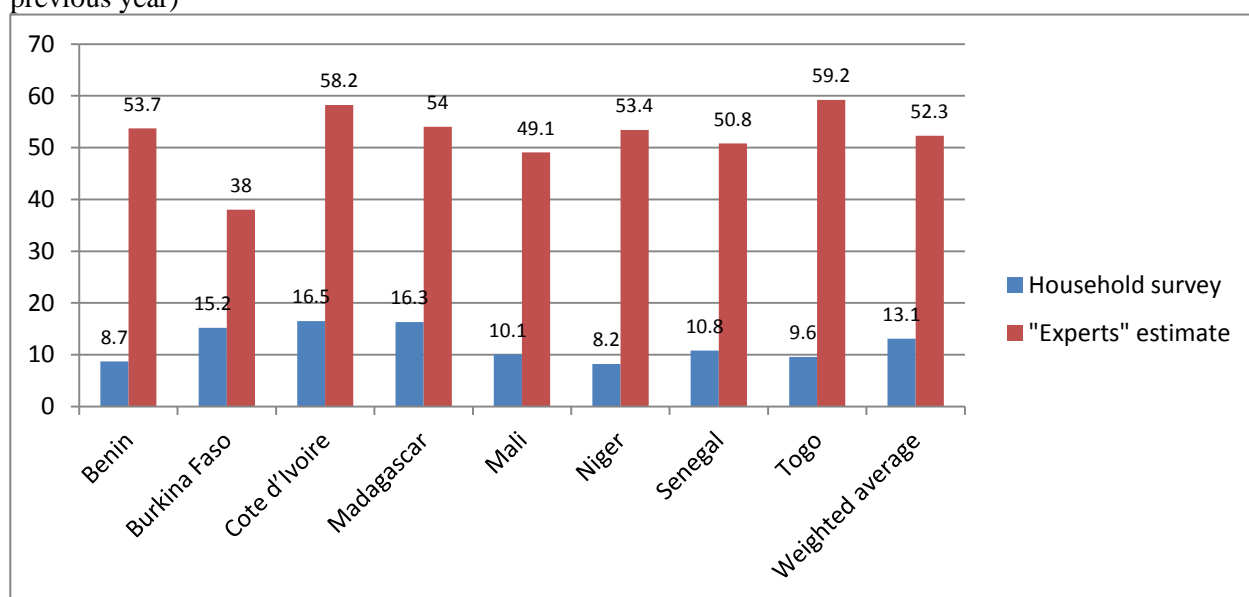
A comparison between the views of a panel of ‘experts’, and reliable data from household surveys in eight African countries in 2006 found that the experts’ estimates (52%) were four times higher than data on actual experiences (13%). The experts’ scores had no correlation whatsoever with reality – countries were ranked in the wrong order, and the errors were worst for those countries ranked lowest in the international indices. The only consistency was that in every country nearly all experts made inaccurate overestimates.<sup>62</sup>

The study also showed that the results were strongly affected by the ideology of the experts. Those experts who expressed support for neoliberal policies of more liberalisation and a weaker state, and smaller civil service were significantly more likely to over-estimate the extent of corruption.

The experts are also wildly wrong about a ‘culture’ of corruption. In the household surveys, less than 5% of citizens, on average, considered that receiving a bribe in the exercise of one’s duties is acceptable behaviour. The experts however expected that 32% would have thought so – based on their incorrect belief that Africans are more inclined to accept corruption.

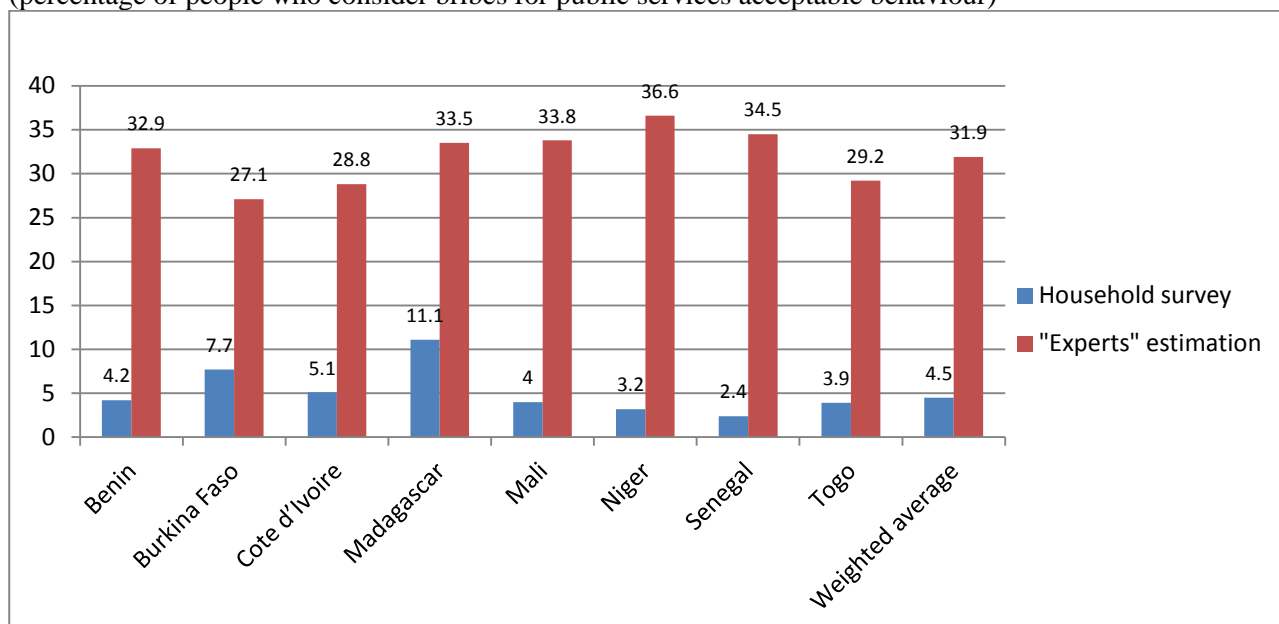
Nevertheless, the Africans in the household survey overwhelmingly believed that corruption is a major problem in their country. As in other countries, this perception may rather be a judgment about those at the top of the system.

- **Incidence of corruption in public services in 8 African countries far lower level than estimated by ‘experts’**– (percentage of people who had been victims of corruption in public services in previous year)



Source: Razafindrakoto and Roubaud (2010)<sup>63</sup>

• **Low tolerance of corruption in 8 African countries – over-estimated by ‘experts’**  
 (percentage of people who consider bribes for public services acceptable behaviour)



Source: Razafindrakoto and Roubaud (2010)<sup>64</sup>

8.2. Latin America

In Latin America, evidence from Peru and Ecuador shows the same picture of a low level of petty corruption: between 2% and 6% of people had experienced the payment of bribes to workers in public services in the previous year.<sup>65</sup> In India, the data shows a higher level of petty corruption than elsewhere, but it appears to be falling. In 2010, 28% of rural households had to pay a bribe for some public service - but this is half the level among rural households in the 2005 survey. Moreover, there is a wide variation between different states: the lowest level of petty corruption is in Kerala and Andhra Pradesh, which suggests that there may be some features of the political system in these states which helps limit corruption. Kerala for example is noted for its policies of open and public ‘participatory budgeting.’<sup>66</sup>



### 8.3. India

Table 3. Proportion of rural households in India who paid bribes for public services, 2010

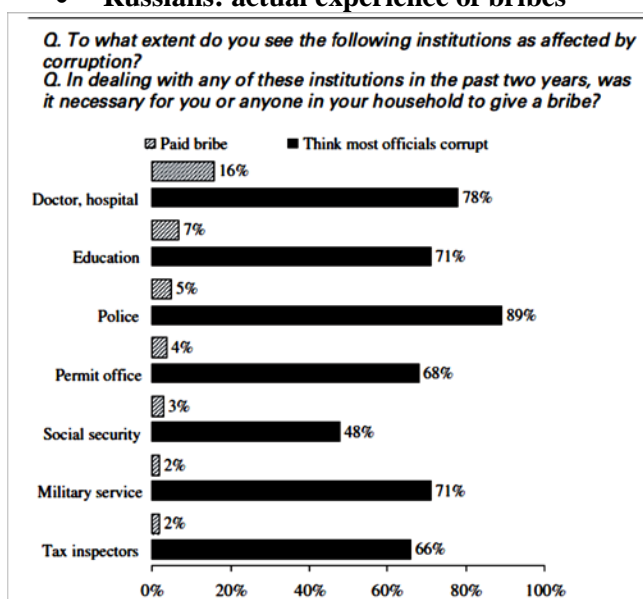
	Schools	Water	Hospitals	Any service
Andhra Pradesh	8	5	7	
Bihar	24	38	35	
Chhattisgarh	22	14	51	
Haryana	22	31	25	
Himachal Pradesh	12	13	14	
Karnataka	10	19	28	
Kerala	6	5	18	
Maharashtra	35	34	30	
Rajasthan	19	19	25	
Tripura	23	15	20	
Uttar Pradesh	18	28	20	
West Bengal	20	22	32	
<b>Average</b>	20	20	24	28

Source: India Corruption Survey 2010 (CMS) <sup>67</sup>

### 8.4. Russia

In Russia, there is a similar gap between beliefs and experience, and a similar disapproval of petty corruption. The actual incidence of bribery in each public service was between 2% and 16% - although 23% had paid a bribe in one service or another over the previous 2 years - and over two-thirds said corruption is not acceptable, even if it was the only way to get service. Nevertheless, 86% thought that most public officials are corrupt. This had no connection to their own experience with public employees, but was partly due to media stories about corruption, and partly because of conversations with friends, linked to a perception of “conspicuous consumption by new-rich Russians as proof-positive of corruption.”<sup>68</sup>

#### • Russians: actual experience of bribes



[Number of respondents: 1,606.]

Source: Centre for the Study of Public Policy, New Russia Barometer XV, 13–24 April, 2007.

Source: Rose and Mischler 2010 <sup>69</sup>

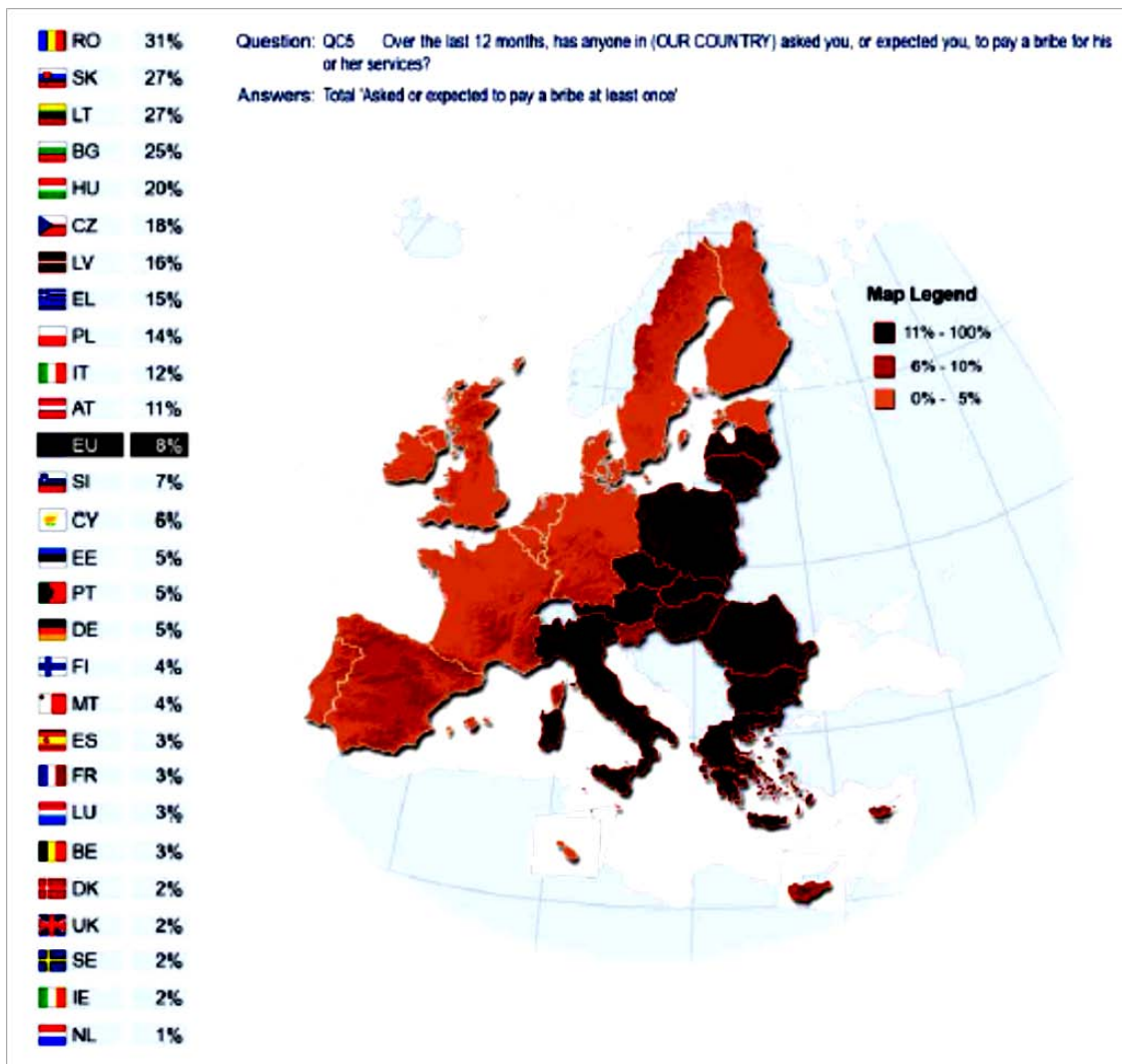
## 8.5. Baltic states

A similar picture emerged in a study of 10,000 households and health services in Estonia, Latvia and Lithuania. The proportion who had actually paid bribes to health service workers was less than 1% in Estonia, 3% in Latvia, and 8% in Lithuania in their most recent experience of healthcare, either before or after treatment. Moreover, a large majority regarded such payments as bribes and considered them unacceptable – there was no ‘culture’ of accepting bribes as normal. The belief that there is such a culture has no supporting evidence. A much higher proportion of people - about 13% - had made gifts of flowers, chocolates or drinks to doctors and nurses, but this was clearly distinguished from bribery and seen as part of a positive relationship with health workers: “people overwhelmingly supported the practice of giving gifts to health care professionals, stating that gifts were an expression of gratitude for care”. Despite the actual levels bribery and positive views towards health workers, about half the people in the study thought that there was a high level of corruption in their health services. This may reflect media influence, or a belief that the system is being corruptly exploited by those at the top of the system - for example, the excessive profits made by pharmaceutical firms as in the example of Bulgaria, below. These ‘perceptions’ do not mean that there is a high level of corrupt demands for bribes by health workers.<sup>70</sup>

## 8.6. Europe

Finally, a similar picture emerges from a 2011 survey of EU citizens who were asked about their actual experience of paying bribes to public service workers.<sup>71</sup> On average, 8% of the population had done so – lower than the average level of 13% in the study of African countries - but the levels were higher in the new member states of eastern Europe (20% on average) compared with the 15 western countries (5% on average). For specific services, the levels were low: only in relation to health services in five countries (Bulgaria, Lithuania, Hungary, Romania, Slovakia) had more than 10% of people had to pay a bribe in the last year.

- **EU countries, percentage of citizens paying bribes to public employees in 2011**



Source: Corruption - Special Eurobarometer 374 (2012)  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

## 9. Pay levels

### 9.1. Under-payment

Many public service jobs offer the opportunity for individuals to extort payments. Petty corruption is often observed in particular functions, such as police and tax officials, because there is greater opportunity for extortion – either by threats, or acceptance of bribes. But the nature of the job does not automatically lead to corrupt behaviour.

One crucial factor is the level of pay. If the pay of public employees is depressed below that of other similar workers, or below subsistence levels, then the evidence shows that petty corruption is much higher. A study of 31 developing countries in 2001 found that corruption was worse where civil service pay was low relative to other workers.<sup>72</sup>

This can be vividly seen from the experiences in Madagascar over a ten year period. When real pay for civil servants increased by 50% in the period 1995 to 2001, the proportion of people who paid bribes fell from 42% to 10%. A political crisis in the next two years interfered with the proper payment of wages – and the bribe rate rose again to 44% - before falling to less than 10% in 2004 as normal wage payments were restored.<sup>73</sup>

A study in Ukraine showed that the pay of public sector employees was 24-32% less than the pay of equivalent workers in the private sector - but the spending of both groups was about the same, because the public employees were finding ways of bringing their pay up through bribes and other measures.<sup>74</sup>

The key solution to this problem is paying a proper living wage. Successful attempts at reforming water services where corruption was a problem, for example in Cambodia and Bangladesh, have included doubling the wages of those water workers responsible for meter readings and household connections.

The same point was made in the 18<sup>th</sup> century by Tom Paine, when he submitted a pay claim for the customs officials of England. Paine was sacked by the government for writing the pay claim, but his subsequent political writings, “Common Sense”, “The Age of Reason” and “The Rights of Man” were international best-sellers. He played a leading role in the American revolution of 1776, and was made an honorary deputy of the French national convention after the revolution of 1789. Paine’s pay claim pointed out that the problems of corruption and incompetent staff were leading to a loss of revenue: “*Scarce a week passes at the office but some detections are made of fraudulent and collusive proceedings... Of late years there has been such an admission of improper and ill qualified persons into the excise that the office is not only become contemptible, but the revenue insecure.*”

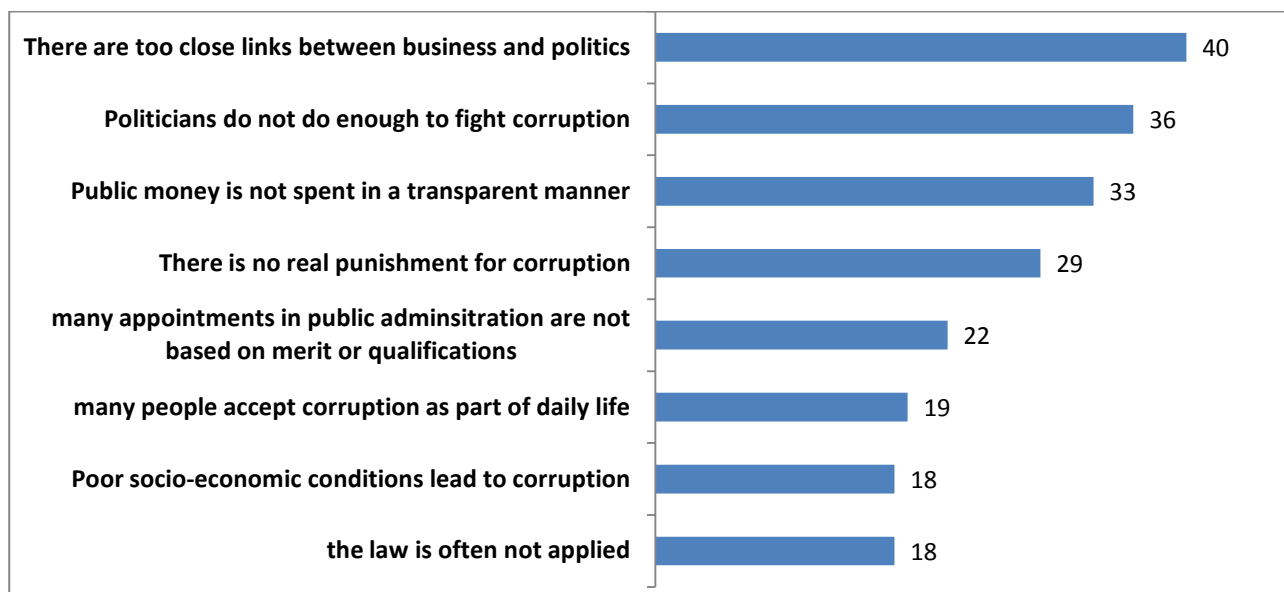
He argued that a well-paid and well-qualified staff would be less susceptible to corruption and generate more revenue for the state: “*the most effectual method to keep men honest is to enable them to live so... An augmentation of salary sufficient to enable them to live honestly and competently would produce more good effect than all the laws of the land can enforce... The officers would be secured from the temptations of poverty, and the revenue from the evils of it; the cure would be as extensive as the complaint, and new health out-root the present corruptions.*”<sup>75</sup>

## 10. State capture

### 10.1. European views

In Europe, despite relatively low levels of petty corruption, nearly three-quarters of Europeans think corruption is a major problem in their country, and in the institutions of the European Union itself. People have clear views on where the corruption is taking place: 47% think that the most corrupt actors in the system are those who award contracts, and the most frequently cited explanation for corruption is that “there are too close links between business and politics.”<sup>76</sup>

Table 4. European views of causes of corruption, 2011  
(Percentage who identified each factor as a cause for corruption)



Source: Corruption - Special Eurobarometer 374 (2012), answers to question 6C  
[http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf)

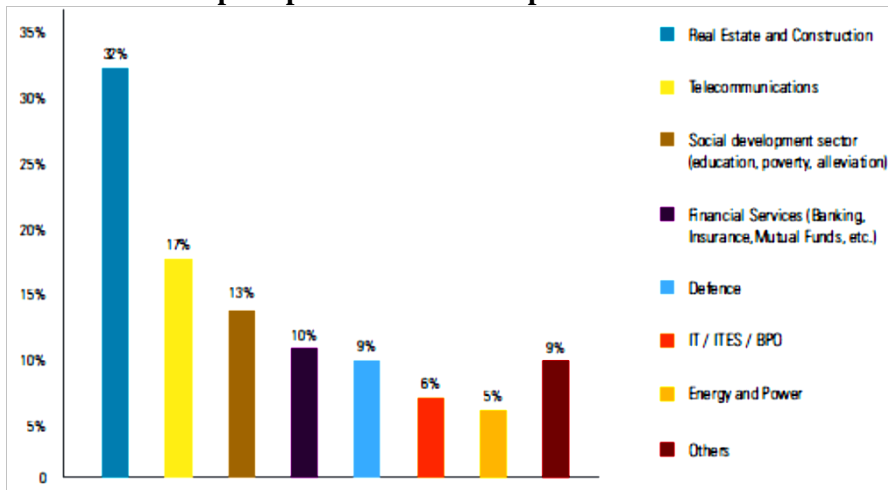
### 10.2. India

In India, according to a 2011 report by KPMG, even Indian businesses agree that the major problem in India is not about petty corruption (‘bakshish’), but rather:

- “scams to the tune of thousands of crores that highlight a political/industry nexus .....a web of companies and middlemen”, based on the willingness of the private sector to pay bribes.
- More than two-thirds of businessmen (68%) admit that corruption in India is initiated by the private sector, and 42% say that bribery is considered ‘acceptable’ in their sector.
- The sectors identified as most corrupt were exactly those where government contracts or privatisations are at stake – construction, followed by telecoms, with public services only in third place, just ahead of the financial sector and defence.

Billions are being drained out of the Indian economy as a result of this corruption, which has accelerated since the deregulation and trade liberalization of 1991.<sup>77</sup>

- **Business perception of most corrupt sectors in India**



Source: KPMG India Bribery and Corruption Survey 2011<sup>78</sup>

### 10.3. USA and UK lobbying and the financial crisis

In the USA companies gain financially from political connections. Appointing a new director who is connected to the party in government causes a rise in the value of the company's shares: investors expect that company to do better as a result. Following an election, there is a general relative rise in the value of the shares of companies connected to the winning political party, partly because: "companies that are connected to the winning party [following an election] experience a statistically and economically significant increase in their procurement contracts ... while those connected to the losing party suffer a decrease in contracts." These extra contracts were worth on average \$120 million per year to each company with the right connections in 1994, for example.<sup>79</sup>

This political influence has also affected the financial crisis.

Some of the largest mortgage lenders in the USA spent over \$29 million in 4 years to prevent legislation to regulate their business more tightly. They were successful. The firms which spent most effort on lobbying were more risky in their lending, and so still suffered from a higher level of defaults by borrowers as the crisis hit. But the lobbying still paid off in the end: firms who had done most lobbying were more likely to be bailed out by the USA government.<sup>80</sup>

In the UK, banks spent even more, £92million in 2011 alone, to maintain close control over the economic and financial policies of the UK government. They used 129 different lobbying organisations, employing 800 people including 124 peers, about 16% of all the members of the unelected House of Lords. They made £6.11 million in donations to all three major political parties. Their gains included big cuts in corporation tax, the abandonment of plans for a government regulator of corporate behaviour, and the weakening of a non-profit pension scheme intended to benefit the poor.<sup>81</sup>

## 11. Some cases by sector

This section sets out a number of cases of state capture and corruption in different sectors. These cases demonstrate the extent and impact of corrupt networks, the role of privatisation, and the role of multinational companies. They also show the various ways in which such corruption can be damaging to public services.

### 11.1. Health: global and national state capture by pharmaceutical companies

Firstly, it looks at the ways in which pharmaceutical companies have perverted public policies, at global as well as national levels. This has a direct impact on health services. The effect is to divert large sums from public budgets for healthcare, as well as to undermine democratic policy-making.

#### 11.1.1. Global state capture: drug companies and the WHO

The World Health Organization is the international public sector agency for healthcare, set up by the United Nations. It is expected to issue standards and advice on healthcare for all countries.

In 2009 there was worldwide scare over 'swine flu.' The WHO monitored this and declared that it had reached the level of a pandemic, although according to the WHO's own procedures the evidence did not justify this. The WHO also advised that Tamiflu, a drug marketed by a multinational company, GSK, was a safe and effective protection against swine flu. This led many countries to purchase huge quantities of Tamiflu, in some cases spending between 1% and 3% of national public healthcare budgets. But the WHO had been advised by academics and others who had financial interests and connections with GSK, some of which were concealed. The company and the WHO also withheld data and evidence which showed that the drug was neither safe nor effective.<sup>82</sup>

The WHO has also taken the side of the drug companies against the interests of public health. For example in Thailand in 2007 the government decided to authorise generic manufacture of drugs for AIDS and heart disease, a decision welcomed by NGOs and the public, but opposed by the multinational companies who held the patents. The DG of the WHO, Margaret Chan, publicly supported the companies and criticised the government over this during a visit to Thailand.<sup>83</sup>

#### 11.1.2. Bulgaria: privatised drug company state capture

Sopharma is a Bulgarian pharmaceutical company, previously owned by the Municipality of Sofia, which was privatised in September 2000. In 2011 it supplied more than 70% of the medicines required by state hospitals and more than 50% of prescribed medicines. It is owned by Ognyan Donev, who is also chair of the Bulgarian employers' confederation, and co-owner of a major media group. In June 2012 he was charged with money laundering.

Sopharma has benefitted from capturing two key political positions. Firstly, Donev was a member of the supervisory board of the National Health Insurance Fund (NZOK) until 2011. Secondly, one of its senior employees, Gergana Pavlova, became the political supervisor in the Boyko Borisov cabinet in charge of medicines and hospital supplies, and was been responsible for a new law with three elements which favour the drug companies by weakening regulation. The law allows hospitals to buy medicines directly from companies, which will result in higher prices than the previous system of buying through a central state purchasing body, and gives a single official the authority to issue drug licences. The company sells drugs in Bulgaria for prices three times higher than in Turkey, according a TV investigative programme. Other problems include "specifications of equipment purchased by the health ministry and a particular supplier" and the destruction of € million worth of vaccines.

Pavlova was later dismissed but the law remained unchanged. Sopharma and other drug companies were investigated by the Bulgarian competition authority over allegations of a cartel. In February 2012 the European Commission started an investigation; and the Bulgarian parliament called for an audit.<sup>84</sup>

### 11.1.3. Serbia: bribery charges against multinationals

“[AstraZeneca](#) has been served with a criminal indictment by the Serbian authorities as part of a widening probe into alleged bribery by several pharmaceutical companies in the Balkan country. The Anglo-Swedish drug group said it had filed legal objections with the courts requesting them to drop the actions since receiving the indictment in August, which relates to “allegedly improper payments to physicians.” The action follows the arrests last year in Belgrade of senior officials at the Serbian Institute for Oncology and Radiology, as well as the heads of the Belgrade offices of AstraZeneca, [Roche](#), Actavis, [Sanofi-Aventis](#) and PharmaSwiss, concerning payments of around €50,000 during 2007-09.”

FT October 27, 2011 AstraZeneca indicted in Serbian corruption case

<http://www.ft.com/cms/s/0/d3589da8-0073-11e1-930b-00144feabdc0.html> - axzz21FlwtF3A

### 11.1.4. USA: GSK, Pfizer pay billions to avoid prosecution

“[GlaxoSmithKline](#) has agreed to pay a [record \\$3bn to settle US regulators’ charges](#) of aggressive marketing and the selective use of data from clinical trials in its promotion of drugs beyond their authorised uses, including an antidepressant that one of its sales reps called the “happy, horny, skinny pill”... Court documents included detailed descriptions of how the group entertained doctors and illegally encouraged the use of products including Wellbutrin, Paxil and Advair. The US Department of Justice legal filings said GSK made use of “cash payments disguised as consulting fees, expensive meals, weekend boondoggles and lavish entertainment.” Doctors who prescribed large quantities of Wellbutrin were invited to a “training session” in Jamaica, the documents showed.

The UK pharmaceuticals company pleaded guilty to criminal charges as part of the settlement, branded the largest case of US healthcare fraud.

FT July 2, 2012 GSK to pay \$3bn to settle US charges [www.ft.com/cms/s/0/02ea328-c468-11e1-9c1e-00144feabdc0.html#axzz21FlwtF3A](http://www.ft.com/cms/s/0/02ea328-c468-11e1-9c1e-00144feabdc0.html#axzz21FlwtF3A)

**“US drugmaker Pfizer has agreed to pay \$2.3 billion (£1.4 billion) in the largest healthcare fraud settlement in the history of the Department of Justice.** It comes after the firm was found to have illegally promoted four drugs for uses which had not been approved by medical regulators, and .....allegations that Pfizer paid bribes and offered lavish hospitality to healthcare providers to encourage them to prescribe four of the company's drugs.”

BBC 2 Sept 2009 Pfizer agrees record fraud fine <http://news.bbc.co.uk/1/hi/8234533.stm>

In 2004 Pfizer agreed to pay \$420 million (£265 million) to settle charges that its newly acquired subsidiary, [Warner-Lambert](#), had marketed an epilepsy drug, gabapentin, for unapproved purposes. And Pfizer is not alone in failing to change its behaviour in response to large fines. [AstraZeneca](#) paid out \$520m (£328m) in 2010 to settle civil charges of illegally marketing its anti-psychotic drug quetiapine. Seven years earlier it had been fined \$355 million (£224 million) for criminal and civil charges relating to the same offence -this time involving the prostate cancer drug gosarelin. In 2006 the Tenet Healthcare chain settled several civil fraud allegations for \$900 million (£568 million). “We found that in two different instances a particular hospital had paid kickbacks to doctors and had provided medically unnecessary cardiac services to patients.

BIJ Drug Regulation: Bitter pills for drug companies September 27th, 2010

<http://www.thebureauinvestigates.com/2010/09/27/drug-regulation-bitter-pills-for-drug-companies/>



## 11.2. Central government: corruption, customs and SGS

### 11.2.1. SGS and Pakistan

SGS has been used by the World Bank and others to spearhead the privatisation of customs and other central government functions – despite itself being involved in high-level corruption. This undermines the credibility of attempts at eradicating corruption, while allowing such a company to exploit the contracts for its own advantage.

In September 1996, the World Bank announced a number of ‘spot audits’ in selected countries, to try to uncover any corruption that might have been involved in Bank-sponsored projects. The World Bank selected a private company, Société Générale de Surveillance (SGS) of Switzerland to handle the first set of audits. The three countries announced after the memo was circulated were Poland, Kenya and Pakistan. A month later, it emerged that SGS had paid bribes in 1992 to obtain a government contract for inspection services in Pakistan:

SGS, the world’s biggest inspection and testing company, has admitted that it paid a substantial commission to a Geneva lawyer to enable it to start up a pre-shipment inspection programme for the government of Pakistan. In 1998 a Swiss magistrate indicted three individuals, including a former executive of SGS, and asked Pakistan to charge Ms Bhutto with money laundering and accepting bribes. In April 1999, Benazir Bhutto and her husband were found guilty of accepting bribes worth US \$9 million from SGS, were sentenced to five years in prison, and banned from holding seats in parliament for seven years. However, the multinational escaped with no punishment, until a prosecutor obtained a ruling barring the government from ‘allocating any business to SGS.’ The case continued to be unresolved even in 2012, when the Pakistan supreme court effectively dismissed the prime minister for failing to pursue the case.<sup>85</sup>

International institutions, such as the World Bank, and official global campaigns such as the IACC and TI, have been very forgiving to SGS. The company was even a panellist at the IACC conference in 2010, under the title of [‘Business principles for countering bribery: An effective tool for the private sector?’](#)<sup>86</sup>

### 11.2.2. Outsourcing procurement

The UK government has even proposed to outsource procurement services for the ministry of defence, so that a private company would handle all the tendering for defence equipment. This itself provides obvious further opportunities and incentives for corruption. In January 2012 four employees of a private company providing procurement services were convicted of fraud because they had sold confidential information to companies tendering for work. One of the multinational companies which advertises itself as a manager of procurement services is KBR – a company which has had to pay \$579 million to settle a prosecution in the USA for corruption. But major defence contractors, such as Babcock, see this as an opportunity to by-pass normal procedures of competitive bidding and instead become long-term ‘partners.’ “A radically different MoD procurement structure will provide Babcock with a once in a lifetime opportunity. There is every chance that the MoD will move away from self-delivery and towards outsourcing, coupled with a preference for closer, partnership-style relationships with the private sector. No one is better placed than Babcock. This could be transformational.”<sup>87</sup>

## 11.3. Local government

### 11.3.1. New Public Management: making the problem worse

Privatisation is a core element in the set of policies described as ‘new public management (NPM)’. Its supporters have argued that NPM will help reduce corruption, but by encouraging privatisation and outsourcing, decentralisation and management discretion over pay and hiring and firing of workers, NPM actually increases the scope for and probability of corruption.

NPM was implemented in Malawi with the belief that it would foster accountability, transparency and good governance. In practice it has created a breeding ground for corruption at the local government level, as a result of greater contracting-out, decentralisation, user fees, PPPs, and local discretion. Contracts were awarded to senior officers and councillors and their relatives and friends, even when the service was not needed; councillors used decentralisation to justify paying themselves larger expenses, or simply embezzle money; 'user fees' were used as a pretext for extorting bribes; public-private partnerships were created as networks to give privileged information about contracts.<sup>88</sup>

It also has a negative effect on workers' morale, and thus undermines a key factor which improves the integrity of a service, as seen with water workers in India: "In those instances in which a NPM-style reform was implemented with no concomitant driver that changed the way employees felt about their jobs, the result was resentment and eventually sabotage of the reform itself."

### 11.3.2. Walmart and Mexico

The largest USA retail multinational Walmart is subject to a number of court cases and investigations over corruption of local government planning officials in Mexico to gain a commercial advantage. According to the New York Times:

"Wal-Mart de Mexico had orchestrated a campaign of bribery to win market dominance. In its rush to build stores the company had paid bribes to obtain permits in virtually every corner of the country."<sup>89</sup>

Walmart covered up its own internal auditors' findings by arranging a whitewash report from managers involved in the corruption itself. USA congressmen have complained that the company is obstructing investigations by the USA authorities, and also state that Walmart is trying to conceal evidence of bribery by the company in five other countries, as well as possible tax evasion and money laundering in Mexico.<sup>90</sup>

Walmart has an extreme anti-union policy but tries to promote itself as a highly ethical company.

## 11.4. Electricity

Thirdly, we look at examples of corruption drawn from the privatisation of electricity and gas, specifically in Slovakia, Kenya and Nigeria.

### 11.4.1. The 'Gorilla' network of bribery in Slovakia

The 'Gorilla' file is a transcript of lengthy eavesdropping by the Slovak Intelligence Service (SIS) during 2005 and 2006. It was leaked at the end of 2011. It consists of a series of meetings involving leading Slovak politicians, and executives of the private equity firm Penta, which has a central role in the processes. The meetings were largely concerned with the payment of bribes by the multinationals involved in various privatisations, and the allocation of the money to individuals and parties. The discussions especially concern the privatisation of electricity and gas, but also of healthcare, district heating, airport, and water.

The energy multinationals mentioned include RAO UES (Russia), Enel (Italy), E.on and Siemens (Germany) and EDF (France). On EDF it says "The problem is that EDF as a state company cannot pay the commission [bribe] directly, but through the consultancy firm EPIC."<sup>91</sup>

### 11.4.2. Africa: corruption and the energy sector

- **Kenya:** Mr Okemo was the energy minister of Kenya between 1999 and 2001 and finance minister between 2001 and 2003. Mr Gichuru was KPLC managing director between 1983 and 2003. Mr Okemo and Mr Gichuru are alleged to have received over USD\$10million for contracts and agreements given to foreign companies as part of the privatisation processes which started during that period. According to the evidence, the money was transferred to accounts in the UK tax haven of Jersey, with the help of Knight Piesold, an international consulting firm specialising in energy projects. The case arose because the Jersey authorities wanted to extradite them.<sup>92</sup>

- **Nigeria:** In 1999 Enron set up a 290 MW Independent Power Project at Egbin Power Station in Lagos, with a 13 year power purchase agreement (PPA) with Lagos State. This deal formed part of the prosecutions in the USA for fraud against former Enron executives.<sup>93</sup> In January 2001 Enron sold the project to another USA company, AES, and a Nigerian partner, YF Power, part of the Yinka Folawiyo Group.<sup>94</sup> In 2006, the Peoples Democratic Party (PDP) called on the Economic and Financial Crimes Commission (EFCC) to probe the Lagos/AES power project claiming that it has cost the state over \$500 million.<sup>95</sup> Payments under the contract have caused massive losses for PHCN, and there have been continuing disputes between PHCN and Lagos State over who is responsible.<sup>96</sup> The Rural Electrification Agency (REA) was set up under the 2005 Act to fund the extension of connections in rural areas. Leading officials and politicians are now facing trial over charges of defrauding the REA of over NGN 5.2 billion (USD \$35 million) through contracts for grid extension or solar electrification which were used as conduit pipes with which funds of the Rural Electrification Agency were siphoned and were awarded to companies either not prequalified to be awarded the contract or were phony or existing companies. The former Chairman of the Nigerian Electricity Regulatory Commission (NERC), Dr. Ransome Owan, and his six commissioners were in 2009 removed from office and charged with 197 counts of fraud involving misappropriating money through fictitious contracts.<sup>97</sup> The cases were dropped in October 2010.<sup>98</sup>

### 11.5. Water

Finally, there have been a number of convictions for bribery to obtain water contracts, involving executives of subsidiaries of both Suez (formerly Lyonnaise des Eaux) and Vivendi (formerly Générale des Eaux). These convictions have happened in developed countries where institutional strength and the available resources allow authorities to tackle corporate corruption more effectively than in poorer countries.

- **France:** there are three court convictions for corruption in France.
  - In Grenoble, a tribunal found that the corrupt award of a 25-year water concession to a Suez-Lyonnaise des Eaux subsidiary had damaged consumers. The court found that the water service had been privatised in exchange for contributions by Lyonnaise des Eaux to the mayor's electoral campaign, and other gifts, totalling over FF19 million. In 1995, the regional auditor found that over the lifecycle of the contract the excess costs borne by local consumers and taxpayers would be more than FF 1 billion (US \$150 million) (Hall & Lobina, 2001).
  - In Angoulême, the former mayor was jailed in 1997 for two years, with another two years suspended, for taking bribes from companies bidding for contracts, including Générale des Eaux.
  - In St-Denis, Ile de la Réunion, Executives of Générale des Eaux were also convicted of bribing the mayor of to obtain a water concession.<sup>99</sup>
- **Italy:** In 2002 a senior executive of Vivendi (now Veolia) was convicted of planning to bribe local politicians in the both the majority and opposition parties of Milan city council in order to win the tender for a wastewater treatment plant in the south of Milan, Italy. The evidence included a floppy disk containing a letter by Alain Metz in which Maetz states that he has "excellent contacts" within the rightwing majority coalition (Polo delle Liberta, whose leader was Silvio Berlusconi), and planned to pay total IT £4 billion bribes to politicians. About IT £2.3 billion would go to the majority parties, IT £300 million to the opposition and other money would reach "experts" and "mediators" whose names were not revealed.
- **USA:** In Birmingham Alabama, in January 2007, a fifth trial started in a series which is: "centered on allegations that high-ranking county officials accepted bribes from businessmen and their companies who were awarded millions in sewer contracts."<sup>100</sup> In Florida, a former Palm Beach county commission chairman has been charged with obtaining a personal profit of \$1.3 million from a land purchase deal by a water authority.<sup>101</sup> Privatised water company PSG was the object of investigations for corruption in New Orleans, Louisiana and Bridgeport, Connecticut. In May 2001, three former PSG executives and a former member of the New Orleans Sewerage and Water Board were indicted with paying and receiving a \$70,000 bribe in exchange for the recommendation that

the city renew its wastewater treatment contract with PSG for five more years. “Aqua Alliance, PSG’s parent company, agreed earlier to plead guilty to the charge of bribery and pay a \$3 million fine.” Although at the time the payments were made PSG was not a subsidiary to Vivendi, PSG was subsequently acquired by U.S. Filter, which in turn would be purchased by Vivendi in March 1999. In June 2001, two close associates of Bridgeport mayor Joseph P. Ganim pleaded guilty to charges of bribery, fraud and tax evasion in connection with bribes totalling US \$700,000 allegedly paid by PSG “in order to obtain a contract to operate the city’s wastewater treatment plant” (Tsybine, 2001: 6-7).

- **Argentina:** In 1995, under the presidency of Carlos Menem, and under strict conditions of the IMF, the water service of Buenos Aires was privatised to a joint venture of the water multinationals, Aguas Argentinas. Santiago Soldati, a businessman and close Menem ally, was the lead Argentine partner, who later sold his interest in the water company for \$100 million. The Argentine delegation that negotiated the loan included Minister of Economy Erman Gonzalez, later indicted for trafficking arms, and Secretary of Water Affairs Mario Caserta, later imprisoned for 2 years for laundering drug money. The minister in charge of the 1997 tariff renegotiation, Maria Julia Alsogaray, was tried for accepting multi-million dollar bribes in the privatization of the Buenos Aires port system.” (Loftus & McDonald, 2001).<sup>102</sup>
- **Lesotho:** In Lesotho, a major corruption trial concerning a water supply project involves prosecution of companies which were at the time subsidiaries of Lyonnaise des Eaux (now Suez), RWE and Bouygues (Hall, 2002). In May 2002, Masupha Sole, the former Chief Executive of the Lesotho Highlands Water Authority was found guilty on 11 counts of bribery and two of fraud for accepting some GBP 3 million in bribes from a dozen multinational and South African firms in return for contracts worth hundreds of millions of pounds<sup>103</sup>. In September 2002, the Lesotho High Court convicted the first company to face trial, Canadian engineering consulting firm Acres International, of paying bribes totalling nearly \$266,000 to Mr. Sole.<sup>104</sup>
- **Brazil:** In July 2001, Daniel Lopes, city councillor of Tangará da Serra, state of Mato Grosso, was murdered as he left the city hall in the same day where a vote was held which approved water privatisation. Initial police investigations related the murder to Mr. Lopes’ opposition to the privatisation. Further investigation led to the exposure of a major corruption scandal and the imprisonment of 14 people in March 2002, eight of whom were city councillors. Detained city councillors confessed having received from R\$10,000 to R\$40,000 each in exchange for voting to put a 30-year concession out for tender (Hall & Lobina, 2002). Tangará mayor Jaime Luiz Muraro was indicted on five charges including bribery and fraud.<sup>105</sup> Investigating authorities found that municipal funds had been used to pay part of the bribes.<sup>106</sup> Mr. Muraro revealed that expressions of interest in bidding for the privatised concession had come from firms based in France as well as in the Brazilian states of Mato Grosso and Paraná.<sup>107</sup>
- **Ghana:** In April 2000, Azurix was awarded a build own operate and transfer (BOOT) project situated in the north of Accra. Azurix denied press allegations that the company had paid a US \$5 million bribe to senior officials to secure the contract.<sup>108</sup> The World Bank, which had put up a US \$100 million loan, subsequently cancelled the project. In a letter to Ghana’s vice president John Atta-Mills, and published in the Ghana Tribune, the Bank’s director in Accra, Peter Harrold, said the choice of Azurix had not been made in a transparent manner. (Bayliss & Hall, 2001)
- **Jakarta, Indonesia:** In 1997, while the country was still under the control of President Suharto, Jakarta’s water supply was privatised, under the auspices of the World Bank. One concession went to a consortium led by Thames Water and another to a consortium led by Lyonnaise des Eaux. Both consortia included partners which were owned by friends of the president. After Suharto’s fall, these contracts were deemed to be corrupt and the two TNCs moved rapidly to negotiate new contracts with Jakarta City Council, to run from February 1999. However, these contracts were also the subject of bitter criticism on the grounds that they were never properly advertised, that the prices contained in them were excessive, and that Suharto’s son continued to hold a five per cent equity stake in the new Thames Water venture.

## 11.6. Other

### 11.6.1. Corrupt construction cartel in Ile-de-France

A clear example of a corrupt network can be seen in France. In the 1990s Suez and Veolia were already the largest water and waste management companies in the world, as they still are today. Together with Bouygues (which then owned the third largest water company in the world), they were also the three largest construction groups in France. In the early 1990s, these three companies and two others formed a cartel, which met with a similar small group of politicians from the major political parties in the Ile de France region around Paris. The meetings concerned building contracts worth €1.4 billion Euros to renovate 300 schools in the region. The companies decided who would get each contract, and at what price, but all agreed to submit bids to maintain the appearance of competitive tendering. In return, the companies agreed to pay a levy of 2% on the value of each contract, which was distributed according to the size of the parties in the region. The right-wing party RPR, the party of Jacques Chirac who later became president, got 1.2%; the socialist PS got 0.8%, and the Communist and other much smaller parties got a small share too.<sup>109</sup>

### 11.6.2. Privatisation in Russia

The privatisation of Russia's once state-owned industries is regarded even by supporters of privatisation as deeply corrupt: "some of Russia's most valuable companies were auctioned off to political insiders at knock-down prices." A recent court case in London revealed that Roman Abramovich, now best known as owner of the English football club Chelsea, paid \$2.5 billion to secure political support ("krysha") from the government of Boris Yeltsin which allowed him "to win a rigged auction in 1995 for an oil company and refinery."<sup>110</sup>

### 11.6.3. Luncheon vouchers in Argentina

Two large French multinationals, Sodexo and Accor, paid \$20 million in bribes to a member of the Argentinian parliament to suppress proposed legislation that would have forced employers to pay workers wages instead of luncheon vouchers. Providing luncheon vouchers is a profitable business for Accor and Sodexo – in India they have also been criticised for excessive profiteering by charging 6% commission.<sup>111</sup>

### 11.6.4. The channels of corruption: the case of NITEL and Nigeria

An adhoc committee set up the Nigerian Senate to investigate the extensive privatisation programme undertaken in the country since 1999 found that about 80% of these privatised companies have either collapsed or are operating less efficiently than they were as public entities. Numerous problems with the privatisation programme were raised, including pervasive fraud and corruption.<sup>112</sup>

The privatisation of the telecoms company, NITEL, shows how privatisations can be used to corruptly siphon off money.<sup>113</sup>

Firstly, by selling the entity for a price far below its true value, and ensuring that it is sold to members of the governing elite and their associates:

- The then president, Obasanjo, insisted that NITEL should be sold for only \$500 million – barely a third of its certified value – to a Nigerian company, Transcorp, in which Obasanjo himself bought a significant shareholding, making improper use of public money to do so. Transcorp also acquired oil production blocks and privatised hotel shares, at prices below their true value: "*Transcorp serves as the opposite arm of the Bureau for Public Enterprises, BPE. While the BPE acts as the sole seller of government enterprises, Transcorp is positioned as the sole buyer.*"

Secondly, by diverting some of the proceeds into hidden accounts, for private benefit:

- In 2009 Nigeria sold \$65 million worth of privatised state assets, but only \$5.2 million appeared in the public accounts of BPE. Over ninety per cent of the proceeds had gone missing.

Thirdly, by issuing consultancy and other contracts to companies owned by cronies

- Three senior managers of Transcorp were arrested by the Economic and Financial Crimes Commission (EFCC) in 2009 for using different companies owned by friends and cronies, mostly based in the USA, as fronts to siphon off US \$127 million by inflating and duplicating invoices for consultancy projects and contracts.

#### 11.6.5. Ireland

In 2006 an official tribunal reported that Charles Haughey, prime minister of Ireland three times between 1979 and 1992, had "devalued the quality of a modern democracy" by accepting about €1 million in cash from wealthy business people over a period of 17 years, concealed through a network of offshore bank accounts.<sup>114</sup> The prime minister of Ireland in 2006, Bertie Ahern, who was minister of finance under Mr Haughey, was obliged to admit that he also accepted gifts from businessmen, and used to "sign blank cheques later used by Mr Haughey for his personal benefit." Mr Ahern claimed that: "it was a misjudgement, although not in breach of any law or code of conduct."<sup>115</sup>

#### 11.6.6. EU

Examining corruption in Europe can begin with the EU itself. The 15 members of the European Commission, the highest political authority in the EU, were forced to resign en masse in March 1999, following a report which exposed extensive fraud in EC budgets and found that the members of the Commission had "allowed, or even encouraged, conduct which, although not illegal per se, was not acceptable."<sup>116</sup> One academic estimates that fraud and corruption take 10-20% of the entire budget of the EU.<sup>117</sup>

The EU budgets vulnerable to this fraud include large 'structural funds' to support investment in environmental infrastructure, including water systems. During the 6 year period 1994 to 1999, environmental investment financed from the Structural Funds amounted to over € billion, so the possible scale of fraud and corruption in relation to water and other environmental funds of the EU, based on a median of the 10-20% 'estimate', could be around €25 million per year.<sup>118</sup>

#### 11.6.7. Siemens

The giant electrical engineering firm, Siemens, has been exposed by recent German, USA and World Bank investigations as engaging in systematic and widespread bribery throughout the world over many years. For details, see [PBS/Frontline February 13, 2009 At Siemens, Bribery Was Just a Line Item](#) and [the Trace compendium](#). An online map shows the global extent of Siemens' corrupt activities: <http://www.propublica.org/special/the-world-wide-web-of-siemens-corruption>

The USA and German cases concerned bribes worth \$1.6billion. Siemens paid a record \$1.4 billion to settle the cases in the USA and Germany, without full trials. The World Bank accepted that Siemens will pay \$100m. to anti-corruption charities over the next 15 years. However, despite the evidence, the confessions, the convictions, and the continuing prosecutions, Siemens was not barred by the German or USA governments, nor by the World Bank, from bidding for contracts. Siemens enjoys contracts from the USA government worth \$1billion per year, and expects to double that by 2015. (Wall Street Journal 15 December 2011 [Shrugging off bribery case, Siemens gains favour in US](#) ; [World Bank 02 July 2009 Siemens to pay \\$100m to fight corruption as part of World Bank Group settlement](#)

Siemens executives have also been convicted for deliberately undermining trade union representation of its employees by paying \$30million to unrepresentative associations. ([Seattle Times 24 November 2008 Siemens Feldmayer to get 2 years probation, fine](#) )

There are continuing prosecutions against Siemens executives for paying over \$100m. in bribes to obtain a contract for national identity cards in Argentina in the 1990s. Siemens is also being prosecuted for beating and torturing a government employee who acted as a whistleblower (Bloomberg 13 Sep 2012 [Siemens Is Sued for Rights Violations by Argentine](#) <http://www.bloomberg.com/news/2012-09-13/siemens-is-sued-for-rights-violations-by-argentine.html> )

Chinese courts passed a death sentence, suspended for 2 years, on a senior executive convicted of receiving fines from Siemens; another was imprisoned for 15 years ([Caixin Online 06.30.2011 Siemens Bribery Scandal Ends in Death Sentence](#) )

Press reports in 2006 quoted Transparency International (Germany) as being shocked by Siemens involvement in corrupt behaviour.<sup>119</sup> This was surprising, since Siemens had already been frequently accused, and convicted, of corruption. For example, in 1992 Siemens was on trial for bribing the City of Munich over construction contracts.<sup>120</sup> In 1993 there were allegations that Siemens paid \$8 million in bribes to get work on a high-speed train link in Spain.<sup>121</sup> In 1994 a \$700 million Siemens power project in Gujarat (India) drew allegations of corruption.... America's General Electric (GE) protested at the time that it should have won the contract<sup>122</sup> In 1996 Siemens was one of five companies banned from government contracts by Singapore after a middleman was convicted of paying bribes on behalf of Siemens and four other multinationals.<sup>123</sup>

#### 11.6.8. UK development agencies: part of the problem?

The Commonwealth Development Corporation (CDC) is a private equity fund run by the UK's Department for International Development. In 2012 it was linked to money laundering and fraud by the James Ibori, governor of the oil-rich Delta State in Nigeria, who pleaded guilty to stealing up to £3 billion from the state.<sup>124</sup> According to the Financial Times: "CDC helped fund three Nigerian companies under investigation for providing a front behind which associates of Mr Ibori could launder money.... The fund put £62 million of money, backed by taxpayers, into Emerging Capital Partners, a US-based fund. ECP has in turn bought shares in Nigerian companies that anti-corruption campaigners say have been used by Mr Ibori's allies to process money gained through fraud."

Instead of investigating a complaint about this, DFID denied it and revealed the name of the Nigerian who had complained to ECP.

Another UK institution, the Crown Agents, carries out extensive work for the UK and the World Bank on reforms to public financial systems. It also acts as a private contractor to governments of developing countries, for example by operating procurement, banking, payroll and pensions systems, and is contracted by the UK government to deliver "humanitarian and post-conflict stabilisation services." A subsidiary, CA-legal, provides services to help deliver privatisations and PPPs, and has set up a specific project, Hanshep, to promote private delivery of healthcare in Africa. Yet in 2011 the Crown Agents was itself barred by the World Bank – but only for 6 months - for fraudulent lying in order to gain a World Bank contract.<sup>125</sup>

#### 11.6.9. Iraq and the USA

There is extensive corruption associated with USA contractors in Iraq in relation to publicly funded contracts (including water contracts), which has prompted new legislation. Senator Leahy tabled a new bill on 4 January 2007 to combat war profiteering and public corruption, citing "mounting evidence of widespread contractor fraud and abuse in Iraq.... At least 10 companies with billions of dollars in U.S. contracts for Iraq reconstruction have paid more than \$300 million in penalties since 2000, to resolve allegations of bid rigging, fraud, delivery of faulty military parts and environmental damage. Seven other companies with Iraq reconstruction contracts have agreed to pay financial penalties."<sup>126</sup> The scale of losses from this USA-led corruption is significant: nearly \$9 billion in Iraqi oil revenues could not be accounted for. The cash was flown into the country by the USA in shrink-wrapped bundles and then distributed without any adequate accounting.<sup>127</sup>

#### 11.6.10. USA hedge fund finances bribes in Azerbaijan

A USA hedge fund, Omega Advisors Inc., invested \$126 million in a venture bidding for privatised companies in Azerbaijan in the 1990s. The partner pleaded guilty to corruption under the FCPA, but attempts to prosecute the Czech businessman involved have been unsuccessful, because he has successfully claimed asylum in the UK colony of the Bahamas which will not extradite him.

[The FCPA Blog](#) August 31, 2012 Lewis Sentencing Moves Forward  
<http://www.fcpablog.com/blog/2012/8/31/lewis-sentencing-moves-forward.html>

## 12. Discouraging the rule of law: power in Pakistan and Indonesia

### 12.1. Pakistan: Donors and IFIs prevent corruption proceedings against Hubco, SGS

In the early 1990s 16 Independent Power Projects were set up in Pakistan by multinational companies in partnership with local investors, with the backing of the World Bank. The largest of these was Hubco, the largest company quoted on the Pakistan stock exchange, 26% owned by National Power of the U.K. The World Bank and the UK's Commonwealth Development Corporation also invested by making large loans. These IPPs were given power purchase agreements (PPAs) under which the electricity authority for Pakistan, WAPDA, had to buy electricity at set rates. By the late 1990s WAPDA's finances were in serious deficit, as the price payable to the IPPs was higher than the price at which electricity was sold to end-users.<sup>128</sup>

In 1997 the then government of Pakistan pursued cases of alleged bribery in relation to these electricity contracts. Two contracts (one involving Southern Company (USA), and one involving National Grid (UK)) were cancelled on the grounds that they had been improperly obtained.<sup>129</sup> It also brought proceedings for alleged corruption against other IPPs, principally Hubco, and issued notices terminating the agreements because of the "kickbacks, overinvoicing and unlawful commissions". The company's chief executive escaped to the UK, having 'fled Pakistan following threats that he might be arrested.' Consumers brought court cases which resulted in the prices paid by WAPDA to Hubco being halved, and the company was ordered to stop paying dividends.<sup>130</sup>

The IMF, the World Bank and the UK government all urged Pakistan to drop its corruption case against Hubco, and in particular to separate it from the issue of the price of electricity. According to the Financial Times: "The future of an International Monetary Fund agreement, currently under negotiation in Islamabad, is also partly tied to the extent to which Pakistan resolves its dispute with the power companies"<sup>131</sup>. The British and other governments actively supported the World Bank's position: 'Britain and the G7 group of countries are said to be exerting pressure on the international lending agencies to get the Kapco and Hubco impasse resolved before rewarding Pakistan with financial help'<sup>132</sup>. A UK government minister emphasised that the action against Hubco was a step backwards for 'investor confidence,' rather than a step forward in the fight against corruption.<sup>133</sup>

As a result of all this pressure, the Pakistan government in December 1998 dropped the prosecution of Hubco. A week later, the prime minister instead turned on the Water and Power Development Authority (WAPDA), suspended trade union activities, and handed over control of energy transmission to the army (this was before the military takeover of Pakistan government itself). The union was suspended by presidential decree, which abrogated the right of the union to operate, even as a bargaining agent. One week after the military takeover and the suspension of trade unions in WAPDA. The World Bank authorised the IMF to proceed with a US \$1.3 billion bailout package for Pakistan, 'as it was satisfied with the government assurances for out of court settlement of two-year long row with the Independent Power Producers' (*The Nation*, 31 December 1998).

The high court in Pakistan continues to make fearless judgments on corruption and other issues, even against or against the wishes of ministers. In 2012 it disqualified the prime minister, after finding him guilty of contempt of court for failing to ask Switzerland to re-open a bribery case against President Zardari concerning SGS. The court had previously ruled against continued power seizures by the military government, and ordered the intelligence agencies to admit they held prisoners in secret custody.<sup>134</sup>

### 12.2. Indonesia: World Bank and donors protect corrupt private electricity deals

In 1992 the former dictator of Indonesia, president Suharto, with the encouragement of the World Bank, agreed to open the electricity sector to private companies through the introduction of IPPs.<sup>135</sup> These IPPs were set up by multinationals in corrupt partnerships with cronies of the Suharto government, supported by PPAs under which PLN undertook to purchase 80 per cent of plant capacity for a minimum of thirty years, at prices well in excess of PLN's selling price. The currency collapse of 1997 made these prices utterly unaffordable for PLN, and the overthrow of the dictatorship was seen as an opportunity to cancel the corrupt agreements and prosecute those involved for corruption.<sup>136</sup>



For the multinational companies, donors and the World Bank, however, these developments were seen as a threat. The dictatorship was seen as a “stable authoritarian government”, and its overthrow by democratic forces was seen as alarming because it “resulted in an opportunity for lower and mid-level actors to exercise unusual independence and authority.”

PLN’s failure to cancel the agreements was the result of resistance by the multinationals involved in the IPPs, supported by their governments and multilateral agencies. A corruption trial of USA multinational Edison over an agreement with Suharto cronies was dropped, partly at the request of the USA ambassador.<sup>137</sup> Instead, the multinationals pursued claims for breach of contract, including MidAmerican Energy, who won US \$573 million at arbitration,<sup>138</sup> and Florida Power and Light who won \$241million.<sup>139</sup> The companies also collected compensation from ‘political risk’ insurance: the World Bank’s insurance agency, MIGA, paid \$15 million to Enron on account of a power project that was cancelled, although even MIGA accepted that to proceed with the project was not a viable policy option. According to Luis Dodoro, MIGA’s general counsel and World Bank Group vice-president: “*While we understand the circumstances that led to (the Enron) project suspension, international law dictated that the cancellation be compensated.*”<sup>140</sup> MIGA then insisted that the Indonesian authorities had to reimburse them the \$15 million, and as an incentive, MIGA refused to issue any more coverage for business in Indonesia until the money was paid.<sup>141</sup>

Under this pressure from the World Bank and the USA, Indonesia dropped the anti-corruption prosecutions, agreed to increase electricity prices to sustain the rates of return guaranteed by the PPAs, and paid compensation to the companies which had withdrawn.<sup>142</sup> Even the Wall Street Journal, the leading USA business newspaper, published a front-page article in 2004 that was scathing about the role of the USA in protecting corrupt interests:<sup>143</sup>

“protecting the interests of major investors and creditors was at the center of the table in everything we did,” says Edmund McWilliams, who was chief political counselor at the U.S. embassy in Jakarta from 1996 to 1999. “Concerns about human rights, democracy, corruption never made it onto the table at all.”

..... amid talk in Jakarta of canceling business deals that had enriched Suharto friends, American diplomats and legislators strove to protect the contracts. Washington also pressed the Indonesian government to bail out private banks to restore liquidity. Most of the banks were owned by Suharto associates, who had withdrawn large amounts of money, much of which they didn’t have to pay back. The moment Indonesians threw out Suharto, we told them they had to honor contracts that favored his cronies.<sup>144 145</sup>

#### 12.2.1. France and Canada in Mexico

The 1997 local elections in Mexico City resulted in a landslide victory for the opposition, which had campaigned on an anti-corruption platform. The party promised to review all contracts awarded by the outgoing administration, and cancel those in which irregularities were detected. One casualty was a US \$400 million contract for rolling stock for the Mexico City metro, which had been awarded to a French-Canadian consortium. The response of the French and Canadian governments, at the highest possible level, showed little interest in the question of corruption:

“President Jacques Chirac of France and Jean Chretien, the Canadian prime minister, have sent strongly worded letters to Ernesto Zedillo, the Mexican president, protesting at the way a French-Canadian consortium was disqualified from a US\$400m tender to provide rolling stock for the Mexico City metro... A new tender for the metro rolling stock is expected only after Cuauhtémoc Cardenas, the mayor-elect, takes office in December and appoints a new management for the Mexico City metro... In his letter to President Zedillo, Mr Chretien lamented Mexico’s inadequate legal safeguards for foreign investors.” (Financial Times, 3 October 1997)

### 12.2.2. USA in Czech Republic:

In the Czech Republic in 1998, the US embassy responded to public accusations of corruption not with encouragement to investigate but with a bland statement:

The US embassy told CTK today that it had no information to suggest that the US computer firm EDS had bribed the former Christian Democrat (KDU-CSL) government in order to win lucrative defence contracts for the new army command information system... The embassy also said that it could not confirm claims that EDS had been warned on at least two occasions by embassy officials that it was under suspicion of corruption. (Czech News Agency, 24 July 1998).

Indeed, the embassy invoked the existence of the FCPA as evidence that a US company would not be corrupt:

The embassy added that US firms operating abroad were bound by the 1977 Foreign Corrupt Practices Act, which clearly bans offering of bribes in order to win contracts. If an American firm was found guilty of offering bribes in the Czech Republic it would also have to face responsibility back home in the US, and would at least lose the right to compete for US government orders, it went on. (ibid.)

### 12.2.3. Undermining the laws

International business groups attacked court decisions against privatisation processes in the Philippines in the 1990s: 'Loud complaints about "terrorists in robes" have resonated in government and business circles in the past month as the courts delivered a series of blows to investor confidence with controversial rulings against the state's privatisation programme.'<sup>146</sup>

In relation to a number of failed privatisations in Argentina, multinationals have consistently attempted to have all issues concerning their contracts determined by commercial arbitration rather than the courts of Argentina. In 2012 Chevron dismissed a decision by the supreme court of Ecuador by saying that "Chevron does not believe that the ruling is enforceable in any court that observes the rule of law. The company will continue to seek to hold accountable the perpetrators of this fraud." This was criticised by the court for 'manifest bad faith' and 'abusive' conduct, and by the lawyer for the indigenous communities as racist: "Chevron does not want to ever recognise that indigenous or poor people have the right to access justice."<sup>147</sup>

### 12.2.4. The UK

The dangers of a complacent assumption that corruption only exists in the developing countries was illustrated by Kim Howells, then UK minister of state for foreign affairs, in 2006, while on an official visit to Kenya. Howells made a public speech insulting an entire people, in which he claimed that Kenyans "can be bought. From the person who works at the docks in Mombasa up to the government ... You can buy off politicians, you can buy off policemen. The weakness has been recognised by drug traffickers and probably by terrorists too ... and that is very bad news for us."<sup>148</sup>

However, the next two months revealed some quite serious problems in the UK in relation to the possibility of buying parliamentary seats, the suppression of corruption prosecutions "in the national interest," and payment by a British company of a large bribe to Tanzania, Kenya's neighbour, in order to obtain an arms sale.

In December 2006, UK prime minister Tony Blair was interviewed for over an hour by police investigating possible illegal donations to the Labour Party. This was unprecedented in the UK.<sup>149</sup> One of the allegations is that Blair, or his party, used the traditional British practice of giving 'peerages' – unelected lifetime seats in the upper house of parliament – as a means of rewarding people for services to the country, and also the party. One of the peerages was given to Paul Drayson, who owned a biotech company called Powderject, which gave £50,000 to the Labour party in 2001, and in 2002 was awarded a £32 million contract to provide smallpox vaccines, without open competitive tendering. He had given a total of £1 million to the Labour party by 2005, when he was given a peerage and also made a government minister for Defence procurement.<sup>150</sup> The police investigation into the scandal did not lead to any prosecution. In the UK, this is nearly always legal, as long as the politician gives another reason for the peerages.<sup>151</sup>

The UK authorities have also been investigating Britain's biggest arms manufacturer, BAe, over bribes it had paid to win a very large arms contract with Saudi Arabia. The company lobbied publicly to get the prosecution dropped – not because it was innocent, but because it would be bad for future business. In December 2006, Tony Blair announced that the BAe investigation was going to be dropped, on the grounds that the national security of the UK might be jeopardised if the company was prosecuted.<sup>152</sup>

### 13. Examples of action against corruption

#### 13.1. Prosecutions within developing countries

The former president of Argentina was put on trial in August 2012 for allegedly paying \$5 million in bribes to senators in the year 2000 in order to pass a bill allowing companies to cut the hours and working conditions of their employees. The IMF had made the passing of this law a condition for the continuation of its loan to Argentina. (**Argentine ex-president appears on corruption charges** Deutsche Welle 15.08.2012 <http://www.dw.de/dw/article/0,,16168626,00.html> )

In Colombia, a left-wing anti-corruption campaigner, Gustavo Petro, has been elected mayor of the capital city Bogota. The previous mayor and the owners of a construction company were convicted of corruption and imprisoned for 7 years. A new anti-corruption law imposes a 20-year ban against any public contract from being awarded to people who have been convicted of such offences, including partners, parents and subsidiaries. But there are still limitations. The bans do not apply to publicly quoted companies, and the government has passed a new law which encourages PPPs, and allows companies themselves to propose public projects which then have to be evaluated – provisions which increase the incentive and opportunity for lucrative corruption. (FT May 8, 2012 Train leaves the station, slowly <http://www.ft.com/cms/s/0/358697ac-92da-11e1-aa60-00144feab49a.html#axzz25JcYVkvK> ; FT May 8, 2012 Infrastructure: Pressing need for better transport <http://www.ft.com/cms/s/0/4fd1e216-9441-11e1-bb47-00144feab49a.html#axzz25JcYVkvK>)

#### 13.2. Auditors actions

The audit commission of India, the CAG, has played a key role in exposing the cost of the corrupt sale of coal and telecoms licenses to private companies, including Essar Power, part of one of the biggest companies on the London Stock Exchange. In 2012 it has reported that the government allocated coal licenses for \$36 billion less than their true value – equivalent to an entire year's income tax revenues. Two years earlier it published a report estimating that a similar amount had been lost by corrupt allocation of private telecoms licences.

#### 13.3. Singapore

Singapore's effective programme against corruption drew on the British model of an independent civil service. But it was not at all based on the 'culture' of northern countries. For Singapore the British (and Americans) set a terrible example to be avoided: "Corruption was a way of life in Singapore during the British colonial period because of the British colonial government's lack of political will."<sup>153</sup>

Police and other civil servants were corrupt because of low salaries, opportunities to demand bribes, and ineffective enforcement of anti-corruption laws. The British Military Administration, which took over after 1945, was derided as the Black Market Administration "because of its arbitrary requisition of private property, gross mismanagement of the distribution of rice, financial inefficiency, and scandalous corruption."

In addition to these problems with the British, the Minister of Education was exposed for accepting a huge bribe of \$700,000 from American donors. The determination of Singapore governments to stamp out corruption was despite these experiences with northern cultures, not because of them.<sup>154</sup>

Northern culture has continued to be unimpressive: in 1996 Siemens and a number of other multinational corporations attempted to bribe the Chief Executive of the Public Utilities Board. They were convicted of corruption, fined and debarred for five years from Singapore government contracts.

### 13.4. Jordan

There has been a similar reaction in Jordan, with campaigns led by trade unions and focussed on restoring cuts in pay, conditions and jobs, and cancelling and reversing corrupt privatisations. Once again the international financial institutions have been identified as encouraging the privatisation process:

“At the start of the last decade, Jordan began introducing a string of liberal economic policies which made the country a showcase of International Monetary Fund-guided reforms. Foreign investors were courted in order to create jobs and obtain hard currency. Substantial stakes in state enterprises were sold to investors including Brunei's sovereign wealth fund, France Telecom, cement maker Lafarge and Canada's Potash Corp of Saskatchewan. But last year's Arab Spring uprisings elsewhere in the Middle East emboldened opponents of the reforms, and their opposition has developed into a broad backlash against economic policies designed to aid the private sector. Members of parliament, union activists and tribal leaders have made demands ranging from the renegotiation of privatization deals, in order to recover billions of dollars in royalties that were allegedly lost, to the repurchase of majority stakes in some companies by the state.”<sup>155</sup>

The government has already halted the privatisation programme, including cancelling the proposed privatisation of the post office and the private building of a new port, and frozen the PPPs programme. It has also had to promise to investigate the past privatisations and consider renationalisation of some. A parliamentary committee has recommended the abrogation of the sale of 37 percent of Jordan Phosphate Mines to Brunei in 2006, and demanded that ministers involved in the sale be referred to the prosecutor-general on corruption charges. A corporate lawyer has complained: "None of the large privatization deals concluded in the last decade have any legal certainty now because of parliament's ability to demand the invalidation of these deals, and this is creating a lot of caution among new investors."<sup>156</sup>

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