

Transparency in practice, lessons from development and EITI

I am honoured to have been asked to give the 2011 transparency International anti-corruption lecture, which is organised at this time of year, to mark the UN anti-corruption Day which falls tomorrow 9 December.

There is so much talk these days of transparency and anti-corruption, that it is worth reminding ourselves how recent it is, that corruption has been targeted and transparency advocated. Transparency International, which describes itself as “the global coalition against corruption”, was not founded until 1993, and perhaps because it was one of the earliest initiatives, takes a gentle, long term perspective. According to its website it believes that “keeping corruption in check is only possible if representatives of government, business and civil society, work together to agree a set of standards and principles they all support”. It also advocates “basic principles of coalition building, proceeding incrementally and being non-confrontational”

It was in 1996 that Jim Wolfenson, when he became President of the World Bank, was the first ever Bank spokesperson to raise the issue of corruption. He also brought the first World Bank policy paper on corruption to the Board annual meeting in Hong Kong in 1997, which I attended as the newly appointed UK World Bank Governor. Prior to this, before the end of the Cold War, the issue of corruption was seen as being too political and therefore breaching the World Bank mandate which requires it to focus on the economics of development, and not to interfere in the political affairs of any country. My point is to remind us all that, until 1997 i.e. 12 years ago, for the World Bank, and most development agencies, corruption was seen as a political issue that could not be raised. It was also of course the case that many of the countries represented on the World Bank Board were engaged in supporting corrupt behaviour by national companies, in a way I shall come on to. So, it was not just a question of not interfering in the internal affairs of developing countries, it was also a question of support for national companies. And thus, for example, everybody knew that President Mobutu of Zaire was a dictatorial kleptocratic, but he was a pro-western dictatorial kleptocrat, and was therefore in receipt of generous aid up until the

mid-90s. (The sad state of governance in the Democratic Republic of Congo is partly a consequence of this)

It was not until as recently as 1996 that the OECD Council recommended that bribes to foreign officials should cease to be tax-deductible! We should note they did not recommend, at this stage, that such bribes should be illegal, but merely that they should cease to be tax deductible. I have often wondered what it was that such companies wrote on their tax forms.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in December 1997, and entered into force on 15 February 1999. The US is entitled to take great pride in this. They imposed strict rules on their own companies, and then quite rightly worked to impose them equitably throughout the OECD. The Convention required countries, that are members of the OECD, to adopt national legislation to make it a crime to bribe foreign public officials. In the UK, weak legislation, to implement this commitment, was passed in 2001. This led to the first ever conviction of an individual for foreign bribery in international business transactions, in 2008. But in 2003, 2005, 2007 and 2008, the OECD working group on bribery criticised the UK failure to bring its law into line with its international obligations, and strongly recommended new legislation.

It was as recently as 2006 that the UK terminated a major foreign bribery investigation concerning the Al Yamamah arms sales contract involving BAE Systems and the government of Saudi Arabia. The story of British arms sales to Saudi Arabia is so murky, it's worth reminding ourselves of just how bad it was, and that it carried through from the late 60s until 2006, implicating every successive government. According to the Guardian briefing on BAE in Saudi Arabia, the US warned at the outset "Saudi requests for arms were not based on considerations of national security as much as private pressure by those most likely to profit from arms sales....." but successive governments took no notice.

Deal number 1, 1967

-42 Lightning fighters plus a radar contract

-Value £104 million (today's value £1.1 billion)

-Commission paid: at least £7.8 million (£85 million in today's values)

Foreign office archives identify the recipients of payments as, amongst others, 2 of the sultans brothers plus 2 other junior Princes.

BAE's commission payments on the 1st deal were not directly handled by the UK government, but government officials authorised them, and they were declared to no fewer than 3 official UK agencies. The Inland Revenue minuted privately "hard fact is that bribery is essential"

Government: Labour (Harold Wilson)

Deal number 2, 1973

-10 Strikemaster fighters plus training and maintenance organisation for existing Lightnings

-Value £253 million (modern equivalent £2 billion)

-Commission paid: more than £30 million (equivalent to £240 million today)

This was the first time the British government became directly involved in paying Saudi commissions. The Saudis demanded a "government to government" deal, because they were unhappy with the performance of the private companies. The Ministry of Defence signed a contract with Saudi Arabia, and took the money from Riyadh. It then employed BAE as lead supplier with an officially controlled profit margin. What the MoD did not tell the Saudi customer was, that the official "profit margin" was a fiction. The prices were inflated and millions of pounds in "commission" were channelled by BAE into anonymous Swiss bank accounts.

The government auditor noted that total consultants fees seem likely to exceed £30 million and that the auditor who examined BAE's costs on the Ministry's behalf, had stated that they had no means of ascertaining the identity of the recipients. The government auditor concluded that the government was up to its neck in bribery.

Government: Conservative (Edward Heath)

Deal number 3, 1978

-Lightning follow-on contract

-Value: £400 million (modern equivalent £1.4 billion)

-Commission paid: £60 million (modern equivalent £216 million)

Government: Labour (James Callaghan)

In modern currency values, BAE's 3 big deals were worth £4.5 billion. And the commissions paid under the counter to intermediaries and Saudi royals totalled more than £500 million.

But after this, the MoD went on to administer an even bigger contract, Al Yamamah. the details published by David Leigh and Rob Evans of the Guardian on Thursday, 7 June 2007 inform us that it is alleged that BAE secretly paid Prince Bandar of Saudi Arabia more than £1 billion. it is claimed that payments of £30 million were paid to Prince Bandar every quarter for at least 10 years. An enquiry by the Serious Fraud Office is understood to having uncovered the details of the payments to Prince Bandar, but the investigation was halted in December 2006 after a review by the Attorney General, Lord Goldsmith. He said it was in Britain's national interest to halt the investigation, and that there was little prospect of achieving convictions. Tony Blair said he took "full responsibility" for the decision.

There is not time tonight to describe the battle we had in government over the disgraceful British Aerospace deal to sell an obsolete military air traffic control system to Tanzania. All of this is now a matter of public record and BAE has been required to repay £30 million to Tanzania. But I always said if they would go to such corrupt lengths for what for them was a small contract, what else would they do? In the case of Saudi Arabia, we now know ,with the full collusion of successive governments from Harold Wilson to Tony Blair. And it is fair to assume that other OECD governments were doing the same.

It was for the UK, the embarrassment of these revelations, together with pressure from the OECD, that led on to the 2010 Bribery Act. And thus the UK was brought kicking and screaming into compliance with the OECD Convention 11 years after it came into force. Any review of press coverage, as the act came into force is a strong reminder of the reluctance of much of UK business to be held to international standards.

I take this opportunity to remind us of this recent history because so much of the discussion of corruption focuses on deficiencies in government systems of the South. indeed TI's Corruption Perception Index finds countries of the South consistently at the

bottom levels of the index, though TI explicitly recognises that the North is partly responsible for the corruption of the South as a bribe payer.

This brings me on to the issue of corruption and development, and the constant stream of media stories suggesting that British aid is wrong redeployed because there are risks of corruption in many of the countries in which it is spent.

If I may, I will digress for a moment. I remember well in 1977 when I left the Home Office and went to work as the director of a community organisation based in Handsworth in Birmingham; when I met with our auditor to discuss our financial systems and bookkeeping I suggested we might keep a few pounds in a tin as petty cash to pay for milk and tea and other small items. He told me strongly something I have never forgotten, that I owed it to everyone who worked in the organisation to set up a system that could not be fiddled. It was impossible to know what pressures and temptations individuals might be subjected to. If systems were tight, no one could be tempted and it would be better for everyone.

TI make this point clearly on its website “people are as corrupt as the system allows them to be”. When it comes to developing countries it is often the case that governments have over the years offered jobs in the public sector to more people than it can really afford (a problem not confined to developing countries). Over time, wages in the public sector tend to decline to such a level that people cannot live on the income that they take home. We find that in such cases policemen start taking small payments from members of the public and minor officials make similar charges. The question each of us should ask ourselves, is if we were unable to feed our children with the salary we were paid, and such practices were widespread, would be joining in? Such examples show that petty corruption is usually a result of bad systems rather than morally defective people. The challenge for development is to help countries out of such a trap. There have been various programmes where funding being made available for public sector reform in order to offer redundancy to older workers, slim down the size of the public service and provide better wages for those that remain. They tend not to be favoured by the commentariat.

Thus we must be clear that working for development, anti-corruption and good governance is not a question of hectoring from the moral high ground or denunciation and threats of the withdrawal of aid, but help to build systems that prevent such corruption. This is an important purpose of budgetary aid, so disliked by so many commentators,

where development funds are put into government budgets on condition of joint work to build well-organised public financial management and procurement systems. The prize from such work is that people in poor countries with weak institutions see aid well spent, help provided to build up the capacity of government systems, and their own tax revenues better protected and better spent.

Humanitarian catastrophes—floods, droughts, tsunamis and other such events, take up about 10% of global aid spending. With climate change, it is likely that there will be more such catastrophes and the need for more such spending. Clearly such events provide a different challenge. The UN system is well organised to move food and other supplies across the world from regional bases, but donors need to insert money into the system so that supplies can be procured (and often donors are quicker to announce to the media than they are to pay up). But delivery on the ground has to be organised through NGOs, and speed is of the essence. Efforts must be made to ensure that money is properly managed and spent, but some risks have to be taken in such circumstances and those who denounce Dfid if some money goes astray in such circumstances give no consideration to the conditions in which they are working.

The biggest challenge in international development is to try to bring some hope and relief to the poorest people living under the most oppressive and corrupt governments, who have no wish to reform. In such cases, interventions like budgetary aid are impossible. This is another area where there are frequent media criticisms of money spent in such countries and calls to cut off aid as though that will punish the government rather than the poor. The challenge is to find ways of spending money that bring relief, and if possible development. Work through NGOs to support local schools and healthcare, rather than help build government systems is possible but bring no sustainable results. There have also been in the last decade or so, experiments with small financial transfers to the poorest people. An official working for DFID told me recently of his visit to very poor families in the Kibera slum in Nairobi. The recipients of small financial transfers said they spent the first amount on food for the family, and after that on private education for their children because the public system was so poor. This is a moving example of the very poorest in the world investing what little they had in the hope of lifting up the lives of their children through education..

However, before I move on to the big fish, we must never forget that development is not just Aid. Fair trade rules would give the poorest countries a chance to grow their economies and lift up the conditions of their people. This was meant to be the objective of the Doha Trade Round, launched in 2001. It was called the Development round, but there has been no result. In the meantime, the least developed countries provide less than 2% of world trade. We could easily agree to be more generous in providing tariff free access for all their products which would give their economies a real boost and cost us very little. But there has been no progress.

Most people are aware that the poorest countries and poorest people will suffer most from climate change, and thus arrangements like the Clean Development Mechanism, that enables such countries to invest in renewables are an intelligent form of Aid.

In recent years, we have also engaged in Security Sector Reform, helping countries to organise their military, police and intelligence agencies effectively to deal with the real challenges they face, and to try to clean up defence procurement which, as we have seen, has been a murky area for very many years. The poorest and most fragile countries are often engaged in conflict or newly emerged from conflict, and they pose a real challenge for development. As the newly established Independent Commission for Aid Impact has advised in its recent report to the UK Department International development, the laudable aim of the Department to work more in fragile states will impose greater risks that aid money may go astray. The Secretary of State has accepted all their recommendations but I fear there was a regrettable focus on protecting aid money rather than on building systems that will provide a better future for the people of such countries. If we cannot take any risks, we may not achieve very much. Our experience in Afghanistan, and the terrible corruption that there is after 10 years of massive international aid, shows that we have many lessons to learn to get this right.

The final issue I wish to tackle is that of grand corruption and this brings me to the extractive industries and the EITI. Again, in this field, it is only in the last 10 years that concern has been expressed about resource wealth feeding corruption and conflict, and the failure of vast oil and mineral resources to lead to sustainable development and the reduction of poverty. (See Thorsten Benner and Ricardo Soares de Oliveira 2010). In the Cold War years, Western governments major concern was security of supply and companies shared that concern together with an anxiety to secure their profits and avoid

nationalisation. The World Bank, and other banks and investment institutions, cared only about the return on investment and not about the wider governance and social consequences of their investments in this sector.

Research evidence has been available since the founding of OPEC in the 1970s that, paradoxically, the discovery of oil and other natural resources, tended to undermine and not improve poverty reduction and economic development. For a long time explanation focused on currency appreciation and fluctuations in revenues. As early as 1975 the Venezuelan oil minister, who was a co-founder of OPEC said “I call petroleum the Devils excrement, it brings trouble..... waste, corruption.... public services falling apart. And debt, debt we shall have for many years”. It was, again, only from the mid 90s onwards that the perverse outcome of oil extraction in developing countries came into the spotlight. This was because research identified bad governance as the driver behind very dismal development in resource rich countries. The research suggested that oil, and mineral rich states in the developing world were more likely to suffer from lack of provision of basic public goods, corruption, and civil war than comparable non-resource rich countries and also more also more likely to be poorer (See Collier and Hoeffler (2004);Rose (2001)). These findings were generally referred to as “the resource curse” but countries like Norway and the UK in the case of oil, and Canada and Australia in mining are not so cursed. It is clear that the problem is governance, not the nature of the resources themselves, although it is true that fluctuating prices, resource depletion and the likelihood of currency appreciation, do pose particular difficulties.

It is clear also that poor development outcomes were caused by the link between international and domestic factors i.e. the interaction between multinational companies and their shareholders and investors, host governments and greedy elites. The work of TI and the OECD Convention on Combating Bribery were important influences on public debate. Global opinion turned against major companies, particularly oil companies, and denounce their behaviour. The old slogan that “the business of business is business” was no longer acceptable.

Campaigners like Global Witness, Transparency International and Open Society Institute, and some government officials in countries such as Norway and the UK, started to try to address the issue. The Publish What You Pay coalition of NGOs was formed. The diagnoses was that opacity was the problem. This led to the creation of EITI, announced

on behalf of the Department for International Development, by Tony Blair at the Johannesburg Summit on Sustainable Development in 2002. The idea is clear and simple, build a coalition of companies governments and civil society at international and national level, and require companies to report what they paid to governments and governments what they receive, and publish the figures so that the public can hold governments to account. It took a little time to recruit a Board with representatives of each sector, to establish a secretariat, to draw up rules and procedures and a multi-donor trust fund in the World Bank to provide technical support. From 2006 on, the organisation grew quickly. There are now 35 countries implementing the EITI. 900 million people live in these countries. More than 50 reports are expected to be published in 2012, including in Indonesia, the world's 4th most populous country, and Iraq a major oil and gas producer. The reports contain large amounts of information, for example we learn that in 2008 the Nigerian government received \$400 on behalf of each citizen from the production of oil and gas. The figure was \$15,000 per citizen in Norway, \$2500 in East Timor, \$200 in Mongolia, \$30 in Niger.

There is no doubt that the EITI has got off to a good start. There have been declarations of support from the G8, the G 20 and the United Nations General Assembly amongst others, but a recent evaluation has suggested that the simple pass /fail benchmark is inadequate. And various academic commentators have pointed out that a simple report of the amount of money paid by companies, and a reconciliation with government receipts, does not ensure that the original contract was fair, what was due to be paid was paid, that the money was properly spent, let alone that there are sensible plans to deal with price fluctuations and the economic consequences of exhaustion of resources. Some argue that the EITI is a narrow entry point that brings together companies government and civil society in resource rich countries in a way that shines a light on governance and corruption issues and that that is enough. Others suggest that this in no way delivers on the values and principles that EITI declares and suggest that it is time to build on the good start that has been made and develop a more sophisticated scoring system that encourages continuous improvement; EITI needs to help to strengthen national systems and encourage countries to ensure that contracts are fair, what is due to be paid is paid and that the resources are properly spent and invested for the benefit of the people.

The EITI have set up a Strategy Working Group to consider these questions. It remains to be seen whether the present coalition can hold together if higher standards are to be

encouraged. There are some countries and many companies that do not favour higher standards. As it is many companies will not even agree to disaggregated reporting of the payments companies pay to governments. The figures are reported separately by each company to the reconciler, but then aggregated into one sum for all company payments before being reported publicly, this is hardly a commitment to even minimal transparency. These questions underline the fact that a rhetorical and minimal commitment to transparency does not get us very far. This is the reason for the Dodd Franks legislation in the US which plan to require listed companies to report their payments for oil, gas and mineral resources to governments in the developing world, country by country, project by project. There are plans for similar provisions throughout the EU. We must conclude that a vague commitment to transparency is not enough to ensure good governance, and we cannot assume that multi-stakeholder groups on their own will have the capacity to build adequate systems of political accountability.

In addition there are important questions of money-laundering, transfer pricing and erosion of the tax base of the world, as multinational companies learn to move their revenues into jurisdictions where tax rates are minimal. The Department for International development in the UK is to be congratulated for its work with the Serious Organised Crime Agency, the Metropolitan Police, the City of London Police and the Crown Prosecution Service to hunt down money-launderers and bribe payers that are fueling corruption in developing countries. It is to be hoped that other development agencies will follow suit and that these efforts will be maintained as economic times get rockier.

My conclusions re that we must be clear that the current focus on corruption and improved governance is very new; northern countries and companies have been deeply implicated in corruption in the south; the efforts for reform since the late 90s have been important particularly the OECD Convention but that it remains to be seen whether these efforts will be maintained as economic conditions become tougher, and power swings from North America and Western Europe towards Asia. But we should never forget that the prize is enormous, particularly in the case of extractive industries. If these resources were properly managed, many of the poorest countries in the world would be able to develop their economies and improve the lives of their people by using their own resources without depending on outside Aid. The other potential prize is a better, more stable and equitable world order as we together face the challenges of growing population, climate change and strains on natural resources. As ever the morally preferable way forward is also the more

intelligent, and in the interests of all people. But although human beings have the capacity to see a better way forward there is a real danger that in the difficult years that lie ahead, governments and companies will lessen their commitment to transparency and anti-corruption. This is why the work of Transparency International and all its' national chapters, and hopefully an enhanced EITI, is so important in constantly shining a spotlight on these issues. I hope everyone here tonight will resolve to continue to support the work of TI and the UN Convention against Corruption as the pressures intensify in the difficult years that lie ahead.