

# On Corruption and Bribery

fighting to restore trust

by Jean-Pierre Méan



ebbf } mindful people meaningful work }



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**On Corruption and Bribery: fighting to restore trust**

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Bahá'í Distribution Services of Australia

173 Mona Vale Road

Ingleside NSW 2101

Published July 2021

ISBN 2370000819550

[bds@bahai.org.au](mailto:bds@bahai.org.au)

[www.bahaibooks.com.au](http://www.bahaibooks.com.au)

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*Honesty, virtue, wisdom and a saintly character  
redound to the exaltation of man, while  
dishonesty, imposture, ignorance and hypocrisy  
lead to his abasement.*

Bahá'í Writings

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# ON CORRUPTION AND BRIBERY

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## INTRODUCTION

For a long time and for many people, corruption has been considered as a necessary evil, a way to do business in many countries. Indeed corruption has been an ingredient of the social order for centuries.

Corruption in the ancient world is first evidenced by an archive listing the names of “employees accepting bribes” found in an administrative centre of the ancient Assyrian empire 3400 years ago.

The most famous instance of corruption in the ancient world is, however, that of Verres, the Roman governor of Sicily, who was prosecuted by Cicero in the first century B.C. for acts of corruption and abuse of power. He is said to have bought first his praetorship in Rome and to have then abused it to obtain his governorship. He abused the latter so well that he ruined Sicily, a

rich province at the time, thus starting a long series of the Sicilians' frustration with government which contributed, over the centuries, to shape the mafia. One of the plots which he allegedly used was to "name non-existent slaves, charging that the landowner held a slave that was suspected of plotting rebellion and that the owner was actively hiding him. When the owner, quite understandably, could not produce the slave (which he didn't own), Verres would throw him in prison until a bribe could be paid for the landowner's release".<sup>1</sup>

According to the *American History Companion*,<sup>2</sup> corruption was widespread in America prior to the American Revolution. It is reported that Capt. Samuel Argall, deputy governor of Virginia from 1617 to 1619, boasted openly of his intention to "*make hay whilst the sunne doth shine, however it may fare with the generality*". Attempts to correct the situation were largely unsuccessful as a number of judges seem to have espoused the opinion, expressed by one of them, that in cases which were brought to justice "...*the Nicetyes of the Law ought not to be observed*".

The idea that government positions should be used for private gain undoubtedly finds an echo in the thinking of many rulers of countries where the rule of law is

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1 Wikipedia.

2 *The Reader's Companion to American History* by John A. Garraty (Editor), and Eric Foner (Editor), published by the Houghton Mifflin Company, New York, 1991.



not well established. By contrast, the Baha'i Writings emphasise that those engaged in government service are exhorted to "*approach their duties with entire detachment, integrity and independence of spirit, and with complete consecration and sanctity of purpose*".<sup>3</sup>

Fighting corruption is an implementation of at least three EBBF core values: ethical business practices, social responsibility in business and values-based leadership. Indeed, corruption figures high on the list of *unethical business practices*, not only because it is an unfair way to gain an advantage in the competitive battle but also because it requires lying and dissimulation. Corruption is also socially *irresponsible* because it is giving priority to private gain over the common good and is excluding from public services to which they are entitled the poor who cannot pay a bribe to obtain those services; furthermore, the amounts diverted to corruption are such that they could make a substantial contribution to development. Last but not least, eliminating corruption in business can only rest on an *act of leadership* inspired by ethical values. Just as the fish rots from the head, departing from corrupt practices requires a morally healthy head.

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3 Abdu'l-Bahá, cited in *Trustworthiness: A Cardinal Baha'i Virtue*, compiled by the Research Department of the Universal House of Justice, January, 1987.

## DEFINITION

*Man's merit lieth in service and virtue and not in the pageantry of wealth and riches.*

Bahá'í Writings

Corruption is broadly defined as the abuse of entrusted power for private gain. It is often used interchangeably with bribery which, according to *Black's Law Dictionary*,<sup>1</sup> is “the offering, giving, receiving or soliciting of any item of value to influence the actions of an official or other person in discharge of a public or legal duty.” The other forms of corruption include embezzlement, fraud, collusion, favouritism and extortion.

Contrary to other crimes, both parties immediately involved in corruption (a public or private official with some discretionary powers and an individual or enterprise expecting a favourable decision) profit from it so that neither of them has an incentive to report the crime. On the contrary, both have an interest to make sure that nothing transpires. There is no specific victim other than the public at large, which remains most of the time ignorant of what has taken place. This explains why the number of corruption cases which are prosecuted criminally is only a very small fraction of all cases (fewer than 5%). In order to

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1 [https://en.wikipedia.org/wiki/Black%27s\\_Law\\_Dictionary](https://en.wikipedia.org/wiki/Black%27s_Law_Dictionary)

understand corruption better, it is appropriate to make a distinction between petty and grand corruption.

*Petty corruption* is the demand of a relatively small payment made by a public official in order to issue a permit, ignore a violation of the law, clear goods through customs or people through immigration, obtain a telephone line, have access to education or obtain a degree, etc. The impact of this petty corruption should not be underestimated. The poorest of the poor are excluded entirely or partly by it from many public services, including e.g. medical care, because they cannot pay the necessary bribe. Petty corruption is the ugly face of corruption which poisons the daily life of many.

In the 2003 *Global Corruption Report* of Transparency International, Gopakumar Krishnan, a programme manager at TI's Secretariat reports,<sup>2</sup> that according to an independent survey, "...in the city of Bangalore, southern India, one in two women receiving care at a public maternity hospital is forced to pay a bribe in order to have a doctor attend her delivery. An astonishing 70 per cent have to pay the orderly in order to see their own baby. The gender of the baby determines how much the bribe will be. If the baby is a boy, the parents have to pay Rs 300 (US 6), if it is a girl, the bribe is considerably less at Rs 200 (US 4)...."

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2 Sita Sekhar, *Maternity Health Care for the Urban Poor in Bangalore: A Report Card*, Public Affairs Centre, June 2000, p157.

*Grand corruption* involves large payments, paid to high ranking public officials or politicians (including ministers, heads of government agencies or, even, heads of states) as lump sum or as commission in order to obtain or retain a specific business, such as a arms sales, the building of infrastructures, or concession to exploit natural resources. Contrary to petty corruption, grand corruption remains hidden. More often than not, it is engineered by middlemen who are experts in channeling payments through off-shore financial centers and paper companies so as to make it impossible to trace them upstream to their origin or downstream to their beneficiaries.

In December 2008, the German engineering firm Siemens agreed to pay €1 billion in fines in Germany and the US to settle allegations that it had used slush funds to systematically bribe public officials in order to gain business in many countries. The amount of the bribes allegedly paid exceeded €625 million over the years 2001 to 2006 in a large number of instances which, in the words of Joseph Persichini, head of the FBI field office in Washington, D.C. “...were not an anomaly. They were a standard operating procedure for executives who viewed bribery as a business strategy.”

*Corruption of the judiciary* takes a middle place between petty and grand corruption. It is akin to petty corruption in its appearance because it impacts on the daily life of civil society. However, it often involves

amounts which bring it closer to grand corruption. Corruption of the judiciary is particularly perverse because it deprives the honest individual of the only protection it has against the abuse of private or public power. Without the judiciary, there is no remedy against violations of human rights or of contractual engagements.

In the 2007 *Global Corruption Report of Transparency International*, Jorge Fernández Menéndez, a radio and print journalist in Mexico, describes<sup>1</sup> how the Mexican justice system reacts to drug trafficking. The question asked in trafficking circles when it comes to sentencing is “Plata or plomo (meaning ‘silver or lead’, in other words what will make a judge comply with a corrupt demand: money or a bullet?). Among several examples, José Fernández mentions some odd findings by judge Humberto Ortega Zurita from Oaxaca: ‘Two men were detained in a car in 1996 with 6 kg of pure cocaine: the judge absolved them declaring that no one could be sure that the cocaine was theirs. Some time later, a woman was detained in a bus with 3 kg of cocaine taped to her stomach. The judge had no doubt: the woman was set free because he considered that ‘she did not carry the drugs consciously’”.

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1 Pages 77-79.

## THE EXTENT OF THE PROBLEM

*Blessed and happy is he that ariseth to promote the best interests of the peoples and kindreds of the earth.*

Bahá'í Writings

Corruption is one of the most widespread and least punished crimes. The World Bank has estimated, based on 2001-2002 figures, that the amount paid in bribes worldwide is some \$ 1 trillion which compares to a world GDP of \$ 30 trillion. If corruption has followed the development of GDP (and there is unfortunately no reason to believe that it has not) the amount of bribes paid to day could be some \$ 1.8 trillion (for a World GDP in 2007 of \$ 54 trillion). This is more than the GDP of all countries of the world except the 6 largest economies (US, Japan, Germany, China, the UK and France).

In its 2004 *Global Corruption Report*, Transparency International offers the following ranking of the most corrupt Heads of State:

Mohamed Suharto President of Indonesia, 1967-1998	\$15-35 billion
Ferdinand Marcos President of Philippines, 1972-1986	\$5-10 billion
Mobutu Sese Seko President of Zaire, 1965-1997	\$5 billion
Sani Abacha President of Nigeria, 1993-1998	\$2-5 billion

Slobodan Milosevic President of Serbia, 1989-2000	\$1 billion
Jean-Claude Duvalier President of Haiti, 1971-1986	\$300-800 million
Alberto Fujimori President of Peru, 1990-2000	\$600 million
Pavlo Lazarenko Prime Minister of Ukraine, 1996- 1997	\$114-200 million
Arnoldo Alemán President of Nicaragua, 1997- 2002	\$100 million
Joseph Estrada President of Philippines, 1998- 2001	\$78-80 million

#### Estimate of funds allegedly embezzled

Even more shocking is the impact of corruption on development aid. According to a US Senate committee estimate, the World Bank has lost about \$ 100 billion slated for development in the world's poorest nations to corruption since 1946, nearly 20 percent of its total lending portfolio. This figure is disputed by the World Bank but other experts concur that between 5 and 25% of the \$ 525 billion lent by the Bank since 1946 has been misused. This amounts to \$ 26-130 billion. An average figure of 15% or about \$ 80 billion is probably a safe guess for World Bank funds diverted from their original purpose and it can be safely assumed that the same percentage applies to the financing by the other development banks<sup>1</sup> as well as to financing from other sources.

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1 Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank.

A confidential source reported orally that, when she visited her brother, a government lawyer in a country of South East Asia affected by the Tsunami, she was surprised to see that the garage was completely filled by relief goods. Her brother explained that a truck fully loaded with these goods had showed up one morning in his driveway and that the driver had told him that he was under instructions to deliver them to him as it was his “share” as government lawyer. He did not think that he was in a position to refuse.



## THE GEOGRAPHICAL AND SECTORIAL SPREAD OF CORRUPTION

*Dedicate the precious days of your lives to the betterment of the world.*

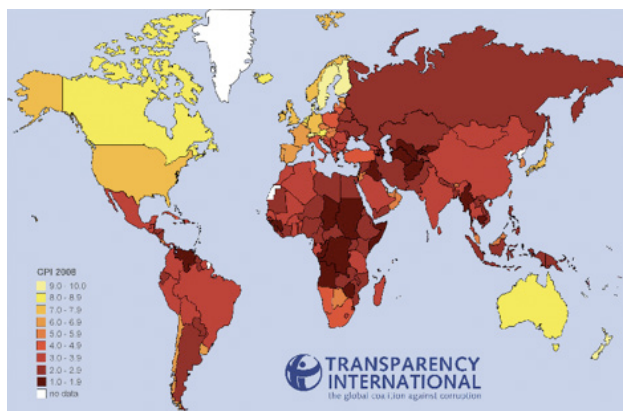
Bahá'í Writings

Transparency International, the global civil society organisation combating corruption, has issued every year since 1998 a Corruption Perception Index measuring the perceived levels of public-sector corruption in 180 countries on a scale from zero (highly corrupt) to ten (highly clean). The index is based on a survey by country experts of the following organisations and sources (2008):

- Asian Development Bank
- African Development Bank
- Bertelsmann Transformation Index
- Country Policy and Institutional Assessment
- Economist Intelligence Unit
- Freedom House
- Global Insight and Merchant International Group
- IMD
- Political Economic Risk Consultancy
- World Economic Forum.

Although the experts are all knowledgeable about the countries in their region, it is important to stress that the index does not measure corruption but the perception of it. Measuring corruption itself is impossible due to its hidden behind the scene nature.

A world map showing the scores of countries on a scale from 1 (very corrupt) to 10 (very clean) shows that corruption is endemic in Latin America, Africa, Eastern Europe and Asia (the developing or emergent countries) while North America, Western Europe, Australia and Japan ( the developed countries) fare better.



The full ranking of countries shows a more nuanced picture. The first ten countries appear to be all small or medium sized economies. Six are located in Northern and Central Europe (Denmark, Sweden, Finland, Switzerland, Iceland, the Netherlands), one in North America (Canada), one in Asia (Singapore)

and two in Oceania (Australia and New Zealand). The larger economies are lower down in the list: Germany ranks 14th, the United Kingdom 16th, Japan and the USA 18th, France 23rd and Italy 55th of 180 countries.

Country rank	Country	2008 CPI score	Surveys used	Confidence range
1	Denmark	9.3	6	9.1 - 9.4
1	New Zealand	9.3	6	9.2 - 9.5
1	Sweden	9.3	6	9.2 - 9.4
4	Singapore	9.2	9	9.0 - 9.3
5	Finland	9.0	6	8.4 - 9.4
5	Switzerland	9.0	6	8.7 - 9.2
7	Iceland	8.9	5	8.1 - 9.4
7	Netherlands	8.9	6	8.5 - 9.1
9	Australia	8.7	8	8.2 - 9.1
9	Canada	8.7	6	8.4 - 9.1
...				
14	Germany	7.9	6	7.5 - 8.2
16	United Kingdom	7.7	6	7.2 - 8.1
...				
18	Japan	7.3	8	7.0 - 7.6
18	USA	7.3	8	6.6 - 7.7
...				
23	France	6.9	6	6.5 - 7.3
...				
55	Italy	4.8	6	4.0 - 5.5

Table 1: 2008 Selected Corruption Perceptions Indices<sup>1</sup>

Of the ten countries at the lower end of the list six are in Africa (Congo, Equatorial Guinea, Chad, Guinea, Sudan and Somalia), one in the Americas (Haiti) and three in Asia (Afghanistan, Iraq and Myanmar).

<sup>1</sup> Source: Transparency International

Country rank	Country	2008 CPI score	Surveys used	Confidence range
171	Congo, Democratic Republic	1.7	6	1.6 - 1.9
171	Equatorial Guinea	1.7	4	1.5 - 1.8
173	Chad	1.6	6	1.5 - 1.7
173	Guinea	1.6	6	1.3 - 1.9
173	Sudan	1.6	6	1.5 - 1.7
176	Afghanistan	1.5	4	1.1 - 1.6
177	Haiti	1.4	4	1.1 - 1.7
178	Iraq	1.3	4	1.1 - 1.6
178	Myanmar	1.3	4	1.0 - 1.5
180	Somalia	1.0	4	0.5 - 1.4

Table 2: 2008 Selected Corruption Perceptions Indices<sup>1</sup>

Since 1999, Transparency International has also published at intervals of so far 3, 4 and then 2 years a **Bribe Payers Index** which looks at the propensity of companies from 30 leading exporting countries to bribe abroad on a score going from 1 (very high propensity to pay bribes) to 10 (very low propensity to pay bribes). This index is not comparable with the Corruption Perception Index since it covers only 30 countries while the CPI includes 180 countries. However here again, the countries at the head of the list are relatively small economies with Japan and the larger economies of Western Europe (with the exception again of Italy which is much further down the list) and North America following immediately. Most worrying is that the large emerging economies of Russia, China, India and Brazil all rank at the bottom of the list.

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1 Source: Transparency International

The Bribe Payers Index is based on a survey of 2,742 senior business executives in 26 countries selected on the basis of their Foreign Direct Investment inflows and importance and their importance in regional trade patterns.

Rank	Country/ Territory	BPI 2008 Score	Respondents	Standard Deviation	Confidence Interval 95%	
					Lower Bound	Upper Bound
1	Belgium	8.8	252	2.00	8.5	9.0
1	Canada	8.8	264	1.80	8.5	9.0
3	Netherlands	8.7	255	1.98	8.4	8.9
3	Switzerland	8.7	256	1.98	8.4	8.9
5	Germany	8.6	513	2.14	8.4	8.8
5	Japan	8.6	316	2.11	8.3	8.8
5	United Kingdom	8.6	506	2.10	8.4	8.7
8	Australia	8.5	240	2.23	8.2	8.7
9	France	8.1	462	2.48	7.9	8.3
9	Singapore	8.1	243	2.60	7.8	8.4
9	United States	8.1	718	2.43	7.9	8.3
12	Spain	7.9	355	2.49	7.6	8.1
13	Hong Kong	7.6	288	2.67	7.3	7.9
14	South Africa	7.5	177	2.78	7.1	8.0
14	South Korea	7.5	231	2.79	7.1	7.8
14	Taiwan	7.5	287	2.76	7.1	7.8

Table 3: 2008 Bribe Payers Indices<sup>2</sup>

Transparency has used the results of the Bribe Payers Index survey to rank industry sectors according to the degree to which firms are likely to bribe public officials. This ranking does not focus on foreign bribery but assess views of overall sector-specific corruption. It is based on a score going from 0 (firms very likely to pay bribes) to 10 (firms very unlikely to pay bribes). According to the survey, the most likely offenders are companies in public works and construction, in real estate and in oil and gas, while the least likely to pay

2 Source: Transparency International

bribes are those in fisheries, banking and finance and information technology.

Public works contracts & construction	5.2
Real estate & property development	5.7
Oil & gas	5.9
Heavy manufacturing	6.0
Mining	6.0
Pharmaceutical & medical care	6.2
Utilities	6.3
Civilian aerospace	6.4
Power Generation & transportation	6.4
Forestry	6.5
Telecommunications & equipment	6.6
Transportation & storage	6.6
Arms and defence	6.7
Hotels, Restaurant & Leisure	6.7
Agriculture	6.9
Light manufacturing	6.9
IT (computers/software)	7.0
Banking & finance	7.1

Table 4: Bribe Payers Indices by sector

## THE CAUSES OF CORRUPTION

*Be worthy of the trust of thy neighbour, and look upon him with a bright and friendly face.*

Bahá'í Writings

This chapter summarises the major causes of corruption.

1. Bribes are paid in order to obtain an advantage such as:
  - a permit or license
  - the exclusion of others from a service, e.g. the refusal of a license or permit to competitor
  - a contract, an order or a particular business
  - a judgment, regulation or legislation serving one's interest
  - favourable taxation or the exemption from customs duties
  - a scarce good or service, e.g. foreign exchange or a lodging
  - information, e.g. on a tender or a pre-warning of police action
  - expediting a routine official action, e.g. customs clearance or ship unloading.

A difference is made between a bribe paid in order to obtain something which the bribe receiver is prohibited to give or to which the bribe payer is not entitled, e.g. a driving license without passing

the required test (“against the rule corruption”); and a payment made in order to receive something that the payee is required to do and to which the payor is entitled by law, e.g, expediting the granting of a telephone line (“according to rule corruption”). Such “facilitation payments” are considered unavoidable in many countries and are therefore often tolerated, provided they remain modest. It should not be overlooked, however, that they are tantamount to jumping the queue in order to obtain an entitlement: in countries where the queue is very long, this means that those at the end of the queue will in fact never get their turn. In all fairness, facilitation payments should therefore be eliminated wherever possible.

Where a payment is requested by a public official in order to do his/her duty and there is no other way to motivate him, we are no longer faced with corruption but rather with extortion, which is a form of coercion. Contrary to corruption, extortion is not a victimless crime even though, more often than not, the victim of extortion will not report the crime, be it because of lack of evidence or for fear of reprisal.

2. There are multiple causes for bribes being solicited depending on the parties involved:
  - 2.1. One of the causes often mentioned especially for petty or small-scale corruption is the INSUFFICIENT REMUNERATION of civil



servants. One may hold against this argument that in countries where corruption is rampant, unemployment is often very high and that civil servants are privileged to the extent that they have a job and at least some remuneration. However, according to a rather perverse reasoning, the argument is often made that salaries of civil servants may be kept low because they have the opportunity to supplement it with bribes. In addition, salaries are often not paid with regularity and it is not unusual for civil servants such as police or customs officers or soldiers to be without salary for months or, in some cases, for years. Even when the salaries of civil servants are paid in full, unwritten rules may force them to support an extended family with cash or favours.

In the 2007 Transparency International Global Corruption Report on Corruption in Judicial Systems, Oluyeni Osinbajo, the Lagos State Commissioner for Justice and Attorney General reports (pp. 146 ss.) that the poor remuneration of judicial officers was identified as one of the factors pre-disposing to judicial corruption: “Judges earned less than US \$ 300 a month, along with an official car and home, both of which were withdrawn on retirement. Magistrates earned about US \$50 a month. Neither official car nor accommodation was available. It was virtually impossible for an honest judge to buy or build a home from

earnings alone.” The remuneration of judges and magistrates was considerably enhanced as one of the measures of a comprehensive Administration and Justice Reform project in the Lagos State. As a result of these measures, judicial corruption ceased to be a significant issue.

According to an article of Hanan Ben Rhouma in [www.afrik.com](http://www.afrik.com) on 27 May 2008, rebellious soldiers in Guinea were claiming the payment of US\$ 1600 per soldier for unpaid salaries going back to 1996; they were arguing that their salaries have never been paid entirely because the Minister of Defence kept a part of these for himself.

Remuneration also plays a role in large scale corruption although the goal there is not to complement a meagre salary but to maintain a standard of living where salaries have been eaten up by inflation or where additional expenses are incurred, such as medical treatment or studies of dependents abroad. The motivation may also be simply greed and the desire to live in luxury.

- 2.2. THE INSTABILITY OF THE POLITICAL SYSTEMS of many countries is another major cause of corruption. Politicians buy votes in order to get elected and, once elected, engage into corruption in order to secure their financial independence since they can hardly expect a

pension once they lose office. In many countries, the common view is cynically expressed that those who do not take advantage of this opportunity are naive and stupid rather than honest.

2.3. STATE CAPTURE occurs when interest groups such as corporations, business sectors (e.g. agriculture) or branches of society (e.g. a religious organisation) or of the government (e.g. the military) are able to influence the law-making process or the judiciary to their advantage. In many transition economies, corruption has developed exponentially following this capture of the state by a few oligarchs willing to buy off politicians, bureaucrats and judges to serve their self-interest. Such is said to be the case in Russia and other countries of the former Soviet Union.

2.4. PEER PRESSURE may also lead to public officials engaging into corruption because the latter is quasi institutionalised in their branch of the civil service. It is indeed difficult for newcomers to challenge a system of which their boss is part.

3. There are further reasons which apply as well for bribes being solicited as for bribes being paid:

3.1. All measures of corruption point to a link between poverty and a high level of corruption. However, poverty alone does not necessarily produce corruption. Indeed, in a state of absolute POVERTY, there cannot be much corruption because there is little money to pay bribes even though public

officials may be desperate to obtain them in order to improve their lot. Corruption will survive, however, in poor countries enjoying the mixed blessing of natural resources attracting large amounts of foreign investment and where weak state structures are unable to prevent the diversion of part of these amounts for the benefit of those who have the power to authorise these investments.

- 3.2. Because corruption is a victimless crime and those involved in it have no interest to report it, the RISK OF GETTING CAUGHT IS SMALL. For many prospective bribe payers and bribe receivers, the corrupt profit may thus outweigh the risk of punishment. This may change, however, as the number of prosecuted cases and the severity of the fines and prison sentences increase.

## THE WAYS AND MEANS OF CORRUPTION

*Let integrity and uprightness distinguish all thine acts.*

Bahá'í Writings

Corruption comes in varied forms and shapes and the imagination of the corrupt seems to have no limit as to the methods and paths followed in order to reach their goal. Whatever the root cause of corruption, it always involves *the abuse of discretionary power* or of control over a resource or a service as a lever. In this respect, each requirement for an official authorisation, each point of control and each regulation are potential toll stations. It is therefore not surprising that countries where corruption is rampant exhibit a particularly dense regulatory environment.

1. THREATS OF AN UNFAVOURABLE DECISION:  
it is unfortunately a frequent occurrence in certain countries for the police to stop drivers and accuse them of a real or alleged traffic violation with some hint that it can be settled with a direct payment. Customs or immigration officers may also accept a cash payment in order to clear goods through customs or individuals through immigration even if some documents are missing or defective. In many cases, the individual will take the initiative to offer immediate settlement if

he/she has the impression that the public official is open to this kind of transaction. Tax audits are also a favoured area for offering or soliciting a bribe because the assessment of the results of an audit depends to a large extent on the discretion of the auditor. In Italy, the “mani pulite” investigations into corrupt practices in the ‘90s revealed that a large number of tax auditors (the so-called “Guardia di Finanza” or “fiamme gialle”, because of the yellow flame adorning their military-like uniforms) were corrupt to an extent that it had to be considered as systemic. Following a tax audit, the results of the audit would typically be discussed in confidence with management and a bribe was negotiated in exchange for a favourable report. The bribe was then distributed among the team of auditors.

## 2. KICKBACKS ON GOVERNMENT

**CONTRACTS:** in many countries companies tendering for a public contract will be confronted with the solicitation of a percentage of the value of the contract to be paid to one or more public officials who have participated in the award. The request may be made before starting the tendering process or after the contract has been awarded with the vague threat of cancelling the award or of delaying the finalisation of the contract. Some companies will not wait for such a request but will rather try to improve their competitive position by offering the kickback in the first place. Whether

the kickback is solicited or offered, payment will typically be made through an intermediary to a letterbox company in an offshore centre.

3. BRIBES can be disguised in many ways, such as:
  - expensive gifts or lavish entertainment
  - trips without any or with little business justification or in accompaniment of a spouse or friend
  - financing the studies of the children of public officials
  - financing the medical treatment of a public official or of persons close to him/her

In all these cases, the distinction between a bribe and a legitimate gift or expense depends on (i) the amount involved in relation to what is socially usual or acceptable (i.e. e.g. what one would do for one's friends who are not business associates); (ii) the correlation between the expense and a decision of the public official favouring the donor; and (iii) whether the expense could be disclosed publicly without embarrassment.

4. PARTICIPATION OF PUBLIC OFFICIALS OR POLITICIANS IN COMPANIES INVOLVED IN GOVERNMENT CONTRACTS: for projects extending over a longer period of time, such as for the exploitation of natural resources, foreign investors are often invited, or take the initiative themselves, to form a joint venture with a local partner in which public officials or politicians are participating at preferential terms. These

preferential terms are, however, nothing else than a bribe destined to secure the award and the smooth running of the project.

5. FAVOURITISM involves giving preferential treatment to a friend or relative (known then as *nepotism*) in the granting of business (as supplier or buyer of goods or services) or in the appointment to a position. In this particular form of corruption, there is no exchange of money. However, a favour is expected in return at some later stage. This reciprocal favour may be of the same kind as the original one; it may also consist in blind loyalty or in political support (*clientelism*.) Because the consideration is not directly linked to the original favour, favouritism is difficult to combat and is not legally considered as bribery (although procurement or recruiting procedures often attempt to limit it.) However, those concerned have a strong perception of the biased and unfair decisions to which favouritism, nepotism or clientelism lead.
6. FINANCING OF POLITICAL PARTIES AND OF CANDIDATES TO PUBLIC OFFICE: political parties have an important role to play in a democratic system and in the defence of civil liberties. They do not exercise power directly but they influence the choice of candidates to public office; they also define policies when they are in power or limit the exercise of the government's powers when they are in the opposition. It is



tempting for them to abuse their position as power brokers to reward their financial backers with favours, such as the awarding of public work contracts, the granting of permits and licenses, the drafting of new laws, the granting of titles or the nomination to positions in the civil service or to ambassadorial postings. These abuses tend to be addressed by legislation on the financing of political parties rather than by anti-corruption legislation if the politicians involved do not hold a public office. Widely publicised scandals have led many countries to issue strict laws on the financing of political parties or to tighten existing laws, however, in view of the exponential costs of political campaigning, with mixed results at best.

7. TRADING IN INFLUENCE consists of accepting or granting an undue advantage in order that a person exercise his/her influence to favour the interests of another person with the administration or the public authorities, whether this exercise of influence is successful or not. However, not any exercise of influence qualifies as illegal trading in influence. In an attempt to draw a line between illegal trading in influence and legal lobbying, the Council of Europe *Criminal Law Convention on Corruption* thus only criminalises trading of “improper influence” while the *UN Convention against Corruption (UNCAC)* only covers those who “abuse” their influence.

## THE CONSEQUENCES OF CORRUPTION

*So long as one's nature yieldeth unto evil passions,  
crime and transgression will prevail.*

Bahá'í Writings

Corruption is inevitably accompanied by any of a number of negative consequences on the allocation of resources, the quality of goods and services, and safety.

1. First and foremost, corruption means a DISTORTION OF THE ALLOCATION OF RESOURCES. The market forces, which are supposed to bring about an optimal allocation of capital and labour, are no longer operating. The award of a contract does not go to the lowest bidder but to the one who pays the highest bribe which is in turn a cost and, as such, drives the price further up.

Corruption also distorts the allocation of resources and inflates the costs of projects in another way: where the bribe is expressed as a percentage of the total costs of the project, as is generally the case, those who control the specifications of the project (and who will also ultimately receive the bribe) have an incentive to over-engineer the project in order to optimise their commission. In extreme cases, projects have been completed although they had no justification,

such as bridges without a road or tunnels without a rail track; the only purpose of these projects was actually to support and disguise the payment of a bribe. In these cases, resources (in addition to the bribe itself) which could be usefully devoted to improving the life of all, are partly or wholly invested without any rightful purpose other than maximising an illicit gain of a few.

A misallocation of resources can also result in practically excluding the poor from a rare resource. Where there is e.g. a limited volume of subsidised public housing, corruption may lead to this housing being allocated not to the most poor but to those who can still afford to pay a bribe.

2. The distortion of the resource allocation through corruption does not only mean higher costs but also IMPACTS ON THE QUALITY OF THE GOODS OR SERVICES involved. A bidder assured to get the award of a contract for a construction project because of the bribe he paid, has little incentive to observe the highest quality standards. On the contrary, he/she will often try to recover the costs of the bribe by lowering these standards.
3. The impact of corruption on the quality standards may reach a point where it creates a SAFETY HAZARD. Indeed, in addition to securing an order, the bribe will often also serve to protect the supplier against the enforcement of the applicable safety standards with all the resulting risks for

public safety. In the earthquake which hit Izmit in Turkey in 1999, over 20 000 buildings collapsed (and many people died) because most of the buildings did not meet the requirements of Turkey's modern building code, most probably following payment of a bribe by the contractors.

This erosion of quality standards also occurs in petty corruption. A driver who obtains a driving license without having taken the required training is a safety hazard. The public officer who overlooks the illicit use or disposal of hazardous substances puts the public at risk of contamination.

4. Corruption is often used to COVER CRIMINAL ACTIVITIES from petty crime (the shop owner who pays off a police officer in order to avoid a parking ticket for his suppliers or customers) to organised crime (drug traffickers bribing customs officers in order to go through customs without a proper inspection). Corruption is actually used by organised crime on a large scale and makes the combating of such crime considerably more difficult. It is often coupled with favouritism (in the form of nepotism or clientelism) in order to cover up criminal activities with a veil of silence (known in Sicily as "omerta").
5. Corruption runs AFOUL OF THE RULE OF LAW which requires fairness and equality of treatment. There is no fairness, and no justice, where judges can be influenced by bribes. Nor is it fair for

permits to run a business to be attributed to those who pay the right amount or that access to medical care and the quality of it depend on bribing the medical personnel.

The absence of a reliable legal environment and of due process is also a strong disincentive for investments since the amounts invested are not protected against arbitrary decisions or confiscation. Where the investment does nevertheless take place, the investors will try to recover it quickly in order to limit their exposure in time.

6. Investment and business in general is further discouraged by the SLOWING DOWN AND THE MULTIPLICATION OF ADMINISTRATIVE PROCEDURES which accompany corruption. Working slow permits to extort a bribe for working faster and each additional procedure is another toll on the road to creating or developing a business.

## THE SPIRITUAL ASPECT OF CORRUPTION

*O Ye that pride yourselves on mortal riches! Know ye in truth that wealth is a mighty barrier between the seeker and his desire, the lover and his beloved. The rich, but for a few, shall in no wise attain the court of His presence nor enter the city of content and resignation.*

Bahá'í Writings

*It is easier for a camel to go through the eye of a needle than for a rich man to enter the Kingdom of God.*

Bible

Because corruption involves the derailment of institutions and offices from their original rightful intent and because of the deception and subterfuges which this requires, corruption destroys trust. In a society plagued by large scale corruption there is no room left for trust. From the low level civil servant to the government minister, all those involved in corruption are by force also involved in deception, be it by simply but vigorously lying about their acceptance or payment of a bribe, or by using sophisticated financial techniques to hide their action. The suspicion of corruption ends up attaching to each and everyone because it becomes impossible to distinguish between the honest

individual and the ingenious crook highly skilled in disguising reality.

It is further impossible for the corrupt and the corrupted to ignore that their acts do not only break the law but also violate the very principle of justice. The rationalisations used to justify the payment of bribes (“the competition does it”, “it is the way to do business in this country”, “nobody will suffer from it”, “bribes are a special kind of tax”, etc.) are attempts to suppress the feeling of guilt about the unfair and unjust character of corruption, which provides preferential treatment to the rich and corrupt and excludes the poor from services to which they are entitled or allows small cliques in power to appropriate the natural resources of entire countries for their exclusive benefit.

Beyond the impact of corruption on the lives of others, corruption also has a destructive impact on those involved in it themselves. Corruption is dictated by greed which is surrender to materialism and the ego. This conjunction is corrosive to the soul. It is dragging it down and preventing spiritual development.

Indeed, “...in the Bahá’í view, the displacement of a transcendent understanding of life by an ascendant materialism is responsible for the scepticism, alienation and anomie that characterize contemporary existence... Social advancement, we know, arises from the ideals and shared beliefs that weld society together. Meaningful social change results as much from the development of qualities and attitudes that foster

*constructive patterns of human interaction as from the acquisition of technical capacities... Legal imperatives and penalties, while essential, are limited in their efficacy ... The emergence of public institutions that engender public trust and that are devoid of corruption is intimately bound up with a process of moral and spiritual development".<sup>1</sup>*

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1 *Overcoming Corruption and Safeguarding Integrity in Public Institutions: a Bahá'í Perspective*, prepared by the Bahá'í International Community and presented at the intergovernmental Global Forum on Fighting Corruption II, The Hague, Netherlands, 28-31 May 2001.



## THE LEGISLATIVE INSTRUMENTS TO COMBAT CORRUPTION

While most countries have outlawed corruption of their own civil servants, it is only recently that this prohibition has been extended, by some countries, to foreign public officials.

1. The precursor of all legislation criminalizing international bribery is the *US Foreign Corrupt Practices Act* (FCPA) enacted under the administration of Jimmy Carter in 1977 following investigations by the United States Securities and Exchange Commission which resulted in 400 US companies admitting to have made payments of more than US \$ 300 million to foreign government officials, politicians and political parties in order to secure a favourable decision or to ensure that public officials discharged their duties. This behaviour was exemplified by the Lockheed scandal when it was revealed that Lockheed had paid bribes to public officials in several countries in order to cause these countries to buy its F-104 Starfighter.

The FCPA created an uneven playing field for US companies because they were under a prohibition to pay bribes in international business while their competitors of other countries were not and could even deduct bribes from their taxable profit as a

business expense. It was nevertheless considered important to pursue the route of criminalising corruption on the supply side (i.e. in the countries with the highest shares of exports and of foreign investments and hence with the corporations most likely to pay bribes abroad) rather than on the demand side, because of the widespread weakness of the legal systems in the countries where most bribes tend to be paid.

2. The result of these efforts was the adoption in 1997 of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD Anti-Bribery Convention) which entered into force on 15 February 1999 after the required number of ratifications had been obtained.

The OECD Anti-Bribery Convention is flanked by:

- *Commentaries on the Convention*
- *Revised Recommendation of the Council on Combating Bribery in International Business Transactions* (legislative amendments required to give effect to the Convention and to the criminalisation of the bribery of foreign officials, measures in the fields of accounting, audit, public procurement, international cooperation and follow-up)

- *Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials* (encouraging parties to the Convention to deny the tax deductibility of these bribes)

The OECD convention also provides for a *Procedure of self- and mutual evaluation* to review the legislation enacted by the parties to the Convention and to monitor its implementation.

All OECD members and a number of non-OECD members have enacted national legislation to fulfil the requirements of the OECD Convention.

3. *The UN Convention against Corruption (UNCAC)* came into force in 2005 after it had been ratified by 30 countries. In the meantime a majority of the 140 signatories have deposited their instruments of ratification. It includes preventive measures for the public sector, the judiciary and the private sector; the obligation for the States Parties to criminalize corruption and to enforce the relevant legal provisions; and provisions on international cooperation and asset recovery, i.e. the recovery of the proceeds of corruption. It covers not only corruption but also offences ancillary to corruption, such as embezzlement, trading in influence and money laundering.

The implementation of UNCAC is monitored by a Conference of the States Parties to the Convention assisted by the *United Nations Office on Drugs and Crime (UNODC)*.

4. The Council of Europe Conventions: two Conventions have been issued by the Council of Europe: a *Civil Law Convention on Corruption* and a *Criminal Law Convention on Corruption*. While the latter addresses the criminalisation of corruption by the signatories, the former provides for compensation for damages as a result of acts of corruption as well as the invalidity of contracts and whistleblower protection. A monitoring mechanism for both conventions is established under the aegis of the *Group of States against Corruption (GRECO)*, which carries out a process of mutual evaluation of compliance with the obligations undertaken under the Conventions.
5. There are several other international legal instruments addressing the issue of corruption, such as the *Inter-American Convention against Corruption*, adopted by the Organisation of American States (OAS) and ratified by all members of the OAS, the *South African Development Protocol against Corruption* adopted by all 14 members of the South African Development Community and the *African Union Convention on Preventing and Combating Corruption* adopted by 43 and ratified by 28 countries of the African Union as of the end of 2008.

## BUSINESS INITIATIVES TO COMBAT CORRUPTION

The international business community has launched various initiatives in order to combat corruption. It has been guided thereby by the recognition that corruption was not only unethical but also illegal and that engaging into corrupt practices could be very costly, not only in fines (not to mention jail sentences) and legal fees, but first and foremost in reputational loss. Business' concern has also been to make sure that the arm of the law reaches all equally and establishes a level playing field where all competitors play by the same rules.

The first model of a programme to promote integrity and combat wrongdoings in a corporate environment is found in *Chapter 8 - Part B of the United States Federal Sentencing Guidelines Manual* which lays out how a compliance and ethics program must be structured in order to alleviate the culpability of corporations where criminal conduct occurs. In law, corporations are indeed criminally liable for such conduct but can reduce their liability if they can demonstrate that they have taken appropriate measures to create an environment where such conduct is not likely to occur. Corporations are therefore increasingly adopting anticorruption policies. The best practices in this respect are:

1. The *TI Business Principles for Countering Bribery*, issued under the aegis of Transparency International and Social Accountability International, have been drafted by a Steering Committee composed of representatives of business, academia, trade unions and non-governmental bodies and provide the framework for companies wishing to implement an anti-bribery programme. An edition of the Business Principles specifically designed for small and medium-sized enterprises has been issued as well as various tools, including a Guidance Document for implementing the Business Principles. Transparency International, based in Berlin, is the leading civil society coalition fighting corruption. It has been founded in 1993 and is publishing a widely publicised *Corruption Perception Index* on a yearly basis, a *Global Corruption Barometer* and a *Bribe Payers Index*. It is also involved in global anticorruption efforts and, through over 90 local chapters, in national initiatives to curb corruption. Social Accountability International is an organisation devoted to promote human rights for workers around the world and best known for its social accountability standard, SA 8000.
2. The World Economic Forum Partnership Against Corruption Initiative (PACI), launched by a number of chief executive officers at the Davos conference in January 2004. The *PACI Principles for Countering Bribery* were developed by a task

force consisting of representatives of member companies of the World Economic Forum in partnership with Transparency International and of the Basel Institute of Governance. They are patterned along, but are not identical with the TI Business Principles for Countering Bribery.

3. The International Chamber of Commerce (ICC) *Rules of Conduct and Recommendations for Combating Extortion and Bribery*. The ICC is the leading worldwide business organisation. Its Anti-Corruption efforts focus on self-regulation to address extortion and corruption and its Rules of Conduct, last revised in 2005, outline the basic measures which companies should take to prevent corruption. The ICC Rules are complemented by a handbook entitled *Fighting Corruption - International Corporate Integrity Handbook* which provides practical help and guidance.
4. There are many other private instruments or initiatives in the field of anti-corruption, such as:
  - The *Common Industry Standards for European Aerospace and Defence*
  - The *Extracting Industries Transparency Initiatives (EITI)*
  - The International Association of Oil and Gas Producers' *Guidelines on Reputational Due Diligence*
  - The United States *Defence Industry Initiative (DII) on Business Ethics and Conduct*

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## ABOUT THE AUTHOR

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After various legal positions with the Alcan Group (an international producer of aluminium and aluminium products now part of Rio Tinto) in Switzerland and Canada, and with Landis & Gyr (a Swiss international manufacturer of electricity meters, building controls and payphones, later acquired by Siemens of Germany) as General Counsel, Jean-Pierre Méan joined the SGS Group in Switzerland in 1996 (SGS is the world's leading inspection, verification, testing and certification company with 52'000 employees around the world) as Senior Vice President of Legal and Compliance and member of the Group's Management Board. In 2002 Jean-Pierre left SGS to take the position of Chief Compliance Officer at the European Bank for Reconstruction and Development in London before returning after two years to his position at SGS until 2008.

Jean-Pierre was first confronted with corruption in 1977 when he had to supervise compliance with the recently enacted Foreign Corruption Practices Act in the Europe, Africa and Middle East Region of the Alcan Group. When with Landis & Gyr, he wrote the Group's first Code of conduct including a ban on any form of bribery. Soon after he joined SGS, the

company was drawn into a major corruption scandal in relation with a contract with the Government of Pakistan going back to the early '90s. In order to re-establish the reputation of the company as the global benchmark for quality and integrity, Jean-Pierre was asked to implement and manage a strict anticorruption program incorporating all elements of internationally recognised best practices. He also represented SGS on the Steering Committee of the Business Principles for Countering Bribery, an initiative sponsored by Transparency International and Social Accountability International.

Jean-Pierre holds a doctorate in law from the University of Basel, Switzerland, and an LL.M. from the Harvard Law School. He is also a graduate from the College of Europe in Bruges/Belgium and is admitted to the bar in Québec/Canada and Switzerland. He is now acting as a lawyer specialised on corporate anticorruption and integrity programs.

Amongst his current positions we include:

- Member of the Commission on Anti-Corruption of the International Chamber of Commerce, Paris, France
- Vice President of the Swiss Chapter of Transparency International, Bern, Switzerland
- Member of the Board of Trustees of the Foundation Caux Initiatives of Change, Lucerne, Switzerland

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