



**15th INTERNATIONAL  
ANTI-CORRUPTION  
CONFERENCE**

**MOBILISING PEOPLE:  
CONNECTING AGENTS OF CHANGE**

**BRASÍLIA BRAZIL  
7-10 NOVEMBER 2012**

### **Short Session Report: Global Solutions**

**Session Title:** Enforcing anti-corruption laws – Time for a new model?

**Date & Time:** 9th November 2012 9.00-11.00

**Report prepared by:** Adam Foldes, Advocacy Advisor, Transparency International

#### **Experts:**

Adetokunbo Mumuni, executive director, SERAP

Andrew Feinstein, founder, Corruption Watch UK

Gretta Fenner, managing director, Basel Institute on Governance

Servaas Feiertag, legal counsel Transparency International Secretariat

William Bourdon, founding president, SHERPA

**Moderated by:** Gillian DELL, Transparency International Secretariat

**Session coordinated by:** Maud Perdriel-Vaissiere, managing director, SHERPA

#### **Main Issues Covered (500 words or more, narrative form)**

The session consisted of five presentations which dealt with the problem of enforcement of corruption offences. The main questions of the session were what can be done for better enforcement and are there innovative solutions?

The first presentation (Andrew Feinstein) dealt with corruption in arms trade which gives 40% of corruption present in global trade. Only half dozen large contracts are responsible for these figures, where corruption is enabled by secrecy which is claimed to be necessary due to national security reasons. If these cases of corruption meet any sanction only minuscule of the profit is imposed on the offenders as fines. The prosecutors are low on these cases and even the gravity of the corruption does not matter as shown that only 2 of the 502 violations of UN arms embargo led to legal actions.

The following presentation (William Bourdon) also used an arms trade example to show the difficulties of prosecuting foreign bribery. Through the case of the Malaysian purchase of French submarines, William Bourdon called attention to the difficulties in moving authorities into starting a criminal procedure. In this case, the cooperation of a civil advocate and of an investigative journalist was decisive, and the openness of the financial police to look into the case. As high-level politicians are implicated in this case, it is rather unlikely to see any procedure in Malaysia, and therefore it has to be brought to French jurisdiction. In such an action, NGOs have to face high risk when they operate in a restrictive environment and try to fight corruption.

In the third presentation, Servaas Feiertag addressed the issue that civil law has never been systematically picked up to fight corruption, and he elaborated on the advantages of civil law litigation. In these cases, anyone can take the initiative and does not have to wait for the prosecution. It empowers citizens and can help to recover assets lost to corruption. In civil cases, corruption does not have to be explicitly mentioned, which helps in depoliticising the case. He presented a new initiative, the Public Interest Litigation Platform, which will provide information, help networking, and facilitate concrete actions. As local ownership by NGOs is needed, therefore a central website as well as local hubs will function on this platform, and NGOs are invited to join. The first two topics will be access to information and land law.

Adetokunbo Mumuni presented a remarkable corruption case in which 6 million USD was embezzled from an education fund. A whistleblower reported the case, and an investigation following the report resulted in a major report. SERAP brought the case to the ECOWAS Court, as according to Nigerian laws, it would not have been successful to seek remedies before domestic courts, and the ECOWAS Court found the violation of the right to education and prescribed measures to the Nigerian Government.

In the last presentation, Gretta Ferner presented the collective action initiative of the Basel Institute. She emphasised that in this initiative, businesses act jointly and explained a case from Egypt in which companies could turn the illegal facilitation payments of a port authority into a legal contribution to the salaries of the port officials and workers. She stressed that when such collective action is built up, the presence of NGOs or the academia is essential so that it should not

result only in approximation of companies but in common good. This initiative is in an early phase and there are promising sign that allow further development.

### **Main Outcomes/Outputs**

- There is always a risk NGOs have to face when fighting corruption.
- You have to play a skilful game with the press so as to ensure support in your country and on international level.
- In every case and independent judge is essential.
- If no domestic prosecution is possible extraterritorial jurisdiction is needed.
- If criminal prosecution does not take a case still there are other venues such as international for a (e.g. ECOWAS Court), civil litigation, media pressure, judicial fora of other countries.
- NGO and media cooperation is essential.
- Even though corporations may face prisoner dilemma with regard to corruption still there is way out by building trust.
- Public interest litigations may be expensive but through pr bono help costs can be effectively reduced.
- Success is possible even without victory as even if a case is lost attention is raised to the underlying issue and pressure can be exerted through the publicity.

### **Recommendations, follow-up Actions (200 words narrative form)**

- Make transparent the use of intermediaries in arms trade.
- Outlaw offsets as procurement evaluation criteria.
- Use social media, books, film, games, old-fashioned campaigning.
- NGOs need effective protection to operate in anti-corruption field.
- SERAP will follow-up the enforcement of the ECOWAS judgement.
- SHERPA follows-up the Malaysian arms trade corruption case.

- **Basel Institute of Governance is in an early phase of its initiative by collecting knowledge of collective actions and building a database of them and will further develop its initiative.**
- **TI looks forward to launch the Public Interest Litigation Platform in cooperation with several NGOs.**

**Highlights (200 words please include interesting quotes)**

**Key Insights Recommended to be included in the IACC Declaration**

**Rapporteur's name and date submitted**

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