

Notes for Speech
at
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29 July 2009

Corruption: An International Perspective

1. For many years extending back before the 1950s it was the standard rhetoric that certain races and countries were inherently corrupt, but that corruption was not a disease that infected the western, developed world. It was commonly asserted that Africa, India, China, the Middle East, Indonesia, the Philippines and some South American countries were hot beds of corruption and that in order to do business in such places it was necessary (i.e. forced on others) to deal with the locals on the basis of what was said to be the corrupt culture of such places.
2. In China the Europeans pointed to the time of the 19th century concessions - in fact occupation by foreign interests and the fact that many foreign officials were "convinced" to side with the concessionaries as a result of bribes. They also pointed to the warlord period that preceded the Communist victory on the mainland in 1949.
3. In the Middle East and northern Africa the way in which foreign interests got their way and made their fortunes was frequently through the payment of massive bribes.
4. In Africa, especially with the demise of the empires of various European countries (Great Britain, Spain, Belgium, France, Portugal etc etc) there grew up the phenomenon of those in public life looting the assets of the states which they headed and slaughtering those who sought to prevent them from so doing or otherwise opposed them.
5. Names like Abacha, Amin and Obote spring to mind. So too do names like Fujimori of Peru and Marcos of the Philippines.
6. Sani Abacha who ruled Nigeria with an iron fist between 1993 and 1998 is reputed to have looted between \$US 2 and 5 billion (**billion**) from the public funds of that country. Ferdinand Marcos is alleged to have embezzled between \$US 5 and 10 billion from his country, the Philippines. Alberto Fujimori of Peru was small fish by comparison. The amount he is alleged to have embezzled is only about \$US 600 million. He is not on trial in Peru following his escape from Japan and extradition from Chile. The prize however is taken by Mohamed

Suharto who ruled Indonesia between 1967 and 1998. He is said to have stolen between \$US 15 and 35 billion.

7. All of this involved massive corruption. It spread from the top and permeated the societies.
8. What should not be lost sight of however is that in most, if not all, of the places in which there was such massive corruption, a good deal of the problem had at its root large foreign interests. It was they who sought and bought the concessions for oil, for mineral resources, for timber, for monopolies, for territory (as occurred in China in the 19th century) etc, etc, etc.
9. So at the very time that developed, sophisticated nations were pointing the finger at less prosperous and then less powerful nations, those very sophisticated nations were often deeply involved in the very corrupt practices they criticised.
10. In the western world albeit relatively late in the piece, the USA entered the arena with the passage in 1977 of the Foreign Corrupt Practices Act. It had two main thrusts. One addressed accounting transparency requirements under the Securities Exchange Act of 1934. The other addressed bribery of foreign officials.
11. It is worthwhile recalling that the passage of the American legislation arose largely out of the Lockheed bribery scandal in which that aircraft and aerospace manufacturer admitted to having paid foreign officials so that they would favour that company's products. The public uproar led to a wide ranging investigation by the US Securities and Exchange Commission in the mid 1970s in which over 400 US companies admitted to having made illegal, or at least questionable, payments to foreign government officials, politicians and political parties to secure favourable action by governments including the grant of concessions, the purchase of equipment and the creation of favourable tax and customs regimes. The amount revealed (which may have been part only of the total), even in the 1970s, exceeded \$US 300 million.
12. At that time the paradigm was that "corruption was the oil that greased the cogs of international commerce" nothing was said about the fact that those countries that were bribed paid more than they should have for the goods and services which were provided and that politicians and public servants in those countries grew fat on the proceeds that should have gone to the people to improve their lot, rather than to the corrupt.
13. It is worthwhile at this time to consider the table which is on the screen (annexure A) You will see that in some cases the amount said to have been stolen by those involved in corrupt practices approached 50% of the GDP of the country in question for one year - albeit that the embezzlements occurred over a period. One can readily postulate the effect that such losses from state treasuries had on the economies and health of the people in the countries where the

looting occurred. The second table which I now exhibit (annexure B) gives a good indication of what such massive deprivations mean to the people of the affected countries.

14. It is regrettable that in Australia, where we pride ourselves on being largely free of corruption, it took until 3 June 1999 for Australia to enact cognate legislation with the passage of the Crimes Amendment (Bribery of Foreign Public Officials) Act 1999. Twenty two years was certainly a long period of gestation - an elephant only takes 22 months to conceive and bring forth its offspring. It should be remembered that in Australia we are not immune from corruption - even at the Commonwealth level. The recent Australian Wheat Board scandal is eloquent testimony of this. That wake -up call resonated through our community and has already affected, adversely, our rating in the TI Corruption Perception Index - and rightly so.

15. In England the conventional wisdom was that there was *no* corruption. England was a land of gentleman, at least in public life, and gentlemen didn't do those sorts of things. Regrettably that myth was "busted" in 1993/1994. That was the time the "cash for questions" affair arose. You will recall that it was found that some of the "gentleman" who were members of Parliament were asking questions in the House in return for payments which had been made to them. This was unacceptable - of course - and as a result the then Prime Minister, Mr John Major, set up a Committee in late 1994 that was headed by Lord Nolan. Its function was to enquire into standards in British public life concentrating on Members of Parliament, ministers and civil servants, executive quangos and national health bodies.

16. The first report of the Nolan Committee in 1995 created quite a furore. It recommended full disclose of all MP's outside interests. It propounded seven principles of pubic life.

- integrity
- objectivity
- openness
- honesty
- leadership

Regrettably the report proceeded on the basis that legislation was unnecessary. It adopted the approach that as long as "gentleman" had clear principles to apply, they would apply them i.e. "gentleman" could be relied upon to do the right thing - as long as they knew what "the right thing" was.

The report stated:

"We cannot say conclusively that standards of behaviour in public life have declined". ... But there are weaknesses in the procedures for maintaining and

enforcing those standards and as a result people in public life **are not always as clear as they should be about where the boundaries of acceptable conduct lie**"

17. A principle without a sanction tends not to be very effective and that proved to be the case in England. The recent scandals involving politicians and ministers, extending to the highest offices in the land, is clear testimony of the ineffectiveness of the propounding of principles without any sanction. Towards the end of his life in 2007 even Lord Nolan was advocating that there should be legislation that dealt with the matters that had concerned his Committee back in 1994 to 1997.
18. By the 1980s and 1990s there was a general recognition that corruption was a serious problem not merely in developing countries but also in developed countries with their sophisticated systems of government and highly developed economies.
19. That led to action. In 1997 the Organisation of American states agreed to the Inter-American Convention Against Corruption (OAS Convention) which came into force that year. In Europe the OECD Convention on Combating Bribery of Foreign Public Officials was formulated and brought into force in 1999. More recently the United Nations has adopted the UN Convention Against Corruption (UNCAC) which came into force in December 2005 as the first legally binding global anti-corruption agreement. As at the end of 2006 140 countries had signed it and 92 had ratified it.
20. So in the old world the first advance was that in the late 1980s and into the 1990s there was a widespread recognition of the need to combat corruption. Action was taken; the paradigm changed. No longer was corruption to be regarded as the oil of international commerce, rather it was to be regarded as a bane of all nations; robbing the poor; enriching the dishonest and facilitating international crime and terrorism. It was in fact seen as the sand that interfered with the operation of free trade at fair and proper prices. It later came to be recognised that underlying international organised crime and much terrorism there is corruption, be it through money laundering, falsification of identity, illegal trafficking of arms, or customs and immigration officials turning a blind eye to what is occurring and even some nations facilitating the transfers of money and proving safe havens for illegally gotten gains. The enormous sums of money that are generated by the illegal drugs trade, like those of the illegal arms trade, need to be transmitted from country to country to be distributed amongst those who are involved in the pernicious activities. That can only be done if there are corrupt officials, systems or governments that allow it to be done.
21. Many nations and international entities have recognised the seriousness of the problem posed by corruption by the creation of specialised anti-corruption bodies or agencies. The European Union has required nations which wish to enter into the Union to have in place bodies whose

function it is to investigate, prosecute and eradicate corruption within and extending beyond the borders of the particular countries. This is a recognition at the highest level (at least in the statutes and conventions) that corruption is a serious problem and must be dealt with by everybody - developed and developing worlds alike.

22. Amongst the international bodies that have taken positive steps in this regard is Interpol. At its 69th General Assembly in Rhodes in 2000 Interpol mandated its Independent Group of Experts on Corruption (IGEC - which I am privileged to Chair) to prepare Global Standards for the then 187 police services that were Members of Interpol. That was done and at the 71st Meeting of the General Assembly held in Cameroon in October 2002 the Global Standards, which the IGEC had formulated and include a number of significant provisions dealing with corruption, were adopted without dissent and so became the standard for the police forces of the world.
23. That same body is in course of setting up the Interpol Anti-Corruption Academy in Vienna and in 2008 entered into a cooperative venture with UNODC for the running of this Academy.
24. However it is one thing to put an anti-corruption body in place. It is another thing to maintain it and provide it with the resources to service it effectively. Regrettably a number of countries have backslid on their anti-corruption activities.
25. In Italy Prime Minister Berlusconi was re-elected in April 2008. One of his first official acts was to abolish the anti-corruption agency which existed in Italy and to introduce an amnesty law in respect of political corruption, of which he was of course a beneficiary. A similar situation occurred in Slovenia. In Latvia, the new Prime Minister quickly took steps to neutralise what had been an effective anti-corruption body. In Romania a similar thing occurred whilst in South Africa the Scorpions which had been a very effective anti-corruption agency were disbanded administratively by the new president shortly after his election. The situation in South Korea is difficult to evaluate but there have been concerns expressed at the "reconstitution" and "amalgamation" of South Korea's anti-corruption agency with other parts of government. There are several other examples. However the news is not all bad.
26. For example the World Bank in conjunction with the United Nations through the UNODC has launched the Stolen Assets Recovery Initiative (StAR) to respond to the need to recover assets looted from various states. Lessons learnt from the events of Nigeria, Peru and the Philippines in particular, concerning the theft of public assets led to the establishment of the initiative under which a pilot programme aimed at helping countries to recover stolen assets is being implemented. Whilst neither the World Bank nor the UNODC would get involved directly in the recovery process, the initiative will assist relevant governments by advising and facilitating investigation, tracing, prosecution, confiscation and repatriation of stolen assets. The recoveries from the estate of the former President Abacha have shown just how effective well

directed initiatives can be in this regard. I was privileged to be chosen to assist in the review of the initiating documents for StAR and I am quietly confident that the initiative will lead to good returns and so provide both an incentive to a number of nations to pursue looted state assets and to provide an additional deterrent for those who would loot them.

27. In our own region Malaysia, Thailand, Hong Kong and Indonesia have made real efforts in their anti-corruption strategies. The National Anti-Corruption Commission of Thailand is now an independent constitutionally founded body with good funding and a clear will to ensure that there is probity in public life. The prosecution and conviction of former Prime Minister Thaksin is a prime example of both the independence and the effectiveness of this body.
28. The Government of Malaysia has this year constituted its anti-corruption agency as a commission independent of government, with an assured income, splendid technical facilities including a new specialised training academy and a well trained committed staff. The capital appropriation this year just for training was 32 million ringit. Its recurrent expenditure budget was of the same order and the government has undertaken that its existing staff of 1380 would be increased to 5000 over the course of the next five years. Indonesia has set up a specialised anti-corruption body with wide powers. I was asked by the government of the then President Wahid to participate in the drafting of the Bill for the setting up of this agency. I was, of course, delighted to take part in this important exercise. Later I was called back to Indonesia by the then Attorney General Lopa, to advise on and draw a Bill for a statute to effectively reverse the onus of proof in corruption cases where the subject of a prosecution had assets that were far in excess of those that could legitimately be explained. To my delight both statutes were adopted.
29. The recent re-election of Susilo Bambang Yudhoyono for a second term is a good augury for the success of this body, recognising a difficult task which it has and the fact that it has begun its task from a mark well behind scratch.
30. In Hong Kong the ICAC remains a world leader in all fields of anti-corruption activities - investigation, corruption prevention and education/ community involvement. Notwithstanding the fundamental change in the government of Hong Kong, since its handover by the British to the Peoples Republic of China in 1997, the ICAC Hong Kong has remained an effective, innovative and vibrant body for combating corruption in both the public and private sectors.
31. In Australia Tasmania is in the course of setting up an anti-corruption commission. That is to be applauded. When that process is complete there will then be specialised anti-corruption bodies in Queensland, New South Wales, Western Australia and Tasmania. However lest it be thought that we can rest on our laurels here in Australia, may I draw attention to some less than encouraging states of affairs.

32. Here in Queensland there is of course the involvement of what was formerly the Criminal Justice Commission now the Crime and Misconduct Commission, in the Heiner Affair in which, by direction of Cabinet, documents relevant to an inquiry and to possible criminal and other proceedings were destroyed. The opinion has been expressed by a former Chief Justice of the High Court of Australia, the now late Rt Hon Sir Harry Gibbs GCMG AC KBE, that these activities involved *prima facie* a criminal offence. A like view has been expressed by a leading silk in Queensland and a recent and lengthy submission by Mr DF Rofe QC (a very senior practitioner at the NSW Bar) has raised serious questions as to the actions involved in the destruction of the documents in question. Regrettably this matter does not appear to have been taken up by the anti-corruption body to which it has been referred, notwithstanding the eminent opinions that have been expressed and the writing of a letter by a number of former judges (of whom I was one) and eminent practitioners seeking to have the matter made the subject of an investigation and the appointment of an independent Special Prosecutor in order to restore public confidence in the administration of justice, especially in Queensland.
33. In New South Wales the ICAC, of which I was Commissioner between 1994 and 1999, has gradually but effectively had its budget reduced in *real* terms. In the financial year 1994/1995 when I became Commissioner, its recurrent appropriation was \$13.157 million. In 1999 the recurrent appropriation was only \$13.377 million i.e. a mere 1.6% increase, notwithstanding that during that time inflation averaged some 7%. At the present time the recurrent expenditure budget of the ICAC is some \$15 million. If one were to take the recurrent appropriation for 1994/1995 and merely apply the inflationary rate of 4.5% per annum (fairly conservative until the current GEC) the recurrent appropriation should be \$21.682 million. This means that in real terms the recurrent expenditure budget of the ICAC in New South Wales has been reduced by just over 44%.
34. What this means in terms of personnel is quite stark. During the time I was Commissioner of the ICAC our staffing was just under 150 employees. As at the 20th year of the ICAC in early 2009 it was down to 112 - a reduction of 38 or just over 25%. There is no question but that a reduced staff is just not able to do what a proper staff can do. The comparison between New South Wales and Malaysia is revealing.
35. One must ask the question, both in the national and international spheres:
- How serious are the political leaders of the various nations and of our own states about combating and eliminating corruption in the public sector?

Summary

36. On the positive side there has been a general recognition in international conventions and national legislation of the seriousness of corruption and there have been a number of initiatives

which have been taken in the international field to deal with corruption, there are ample reasons for concern that the rhetoric is not being matched by effective action and that in a number of instances nation states have taken steps to abolish or otherwise neutralise the effectiveness of anti-corruption bodies that have been set up within their jurisdictions.

37. Regrettably whilst the links between terrorism and corruption and between corruption and at least facets of the global economic crisis (GEC) are clear, there has been a concentration on the effects, namely such events as those of 11 September 2001 on the one hand and the meltdown itself on the other, rather than, or as well as looking at those matters by reference also to one of their contributing common causes - namely corruption.

38. It is my belief that unless there is strong leadership from those in authority, nationally and internationally, there is a real danger that the recognition of the scourge of corruption that is given to it in words and even in conventions and statutes will not translate into general effective action. The old maxim :

"A man of words and not of deeds is like a garden full of weeds."

has a real resonance in the field of corruption. There is a real danger that if all we have is speeches without effective, honest, selfless leadership (like that so wonderfully displayed by Festus Mogae of Botswana during his long period as Prime Minister) the weeds of corruption will spread and threaten the existence of the garden in which honest communities are entitled to live.

Brisbane, Australia

29 July 2009

The Hon Barry O'Keefe AM QC

Annexure A

ESTIMATES OF FUNDS ALLEGEDLY EMBEZZLED FROM 9 COUNTRIES¹

Political leader	Country	Stolen assets (\$ billion)	Average ² annual GDP (\$ billion)	Annual theft as percent of average nominal GDP	
				Lower bound	Upper bound
Mohamed Suharto (1967-98)	Indonesia	15 to 35	86.6	0.6	1.3
Ferdinand Marcos (1972-86)	Philippines	5 to 10	23.9	1.5	4.5
Mobutu Sese Seko (1965-97)	Zaire	5	8.8	1.8	1.8
Sani Abacha (1993-98)	Nigeria	2 to 5	27.1	1.5	3.7
Slobodan Milosevic (1989- 2000)	Serbia/Yugoslavia	1	12.7	0.7	0.7
Jean-Claude Duvalier (1971- 86)	Haiti	0.3 to 0.8	1.2	1.7	4.5
Alberto Fujimori (1990-2000)	Peru	0.6	44.5	0.1	0.1
Pavlo Lazarenko (1996-97)	Ukraine	0.114 to 0.2	46.7	0.2	0.4
Arnoldo Alemán (1997-2002)	Nicaragua	0.1	3.4	0.6	0.6
Joseph Estrada (1998-2001)	Philippines	0.07 to 0.08	77.6	0.04	0.04
			Average % of GDP	0.9	1.8

¹ Sources: TI (2004); World Bank
Stolen Assets Recovery (StAR) Initiative
(UN/World Bank 2007)

² GDP 1970-1998 (Indonesia); 1970-1997 (Zaire)

Annexure B

COSTS ESTIMATES FOR BASIC HEALTH PROGRAMS AND INFRASTRUCTURE³

	Item	Estimated cost
1.	Insecticide-treated bednets (ITNs)	\$10-30 per net (cost varies depending upon taxes and internal transport costs)
2.	HIV/AIDS treatment	\$150 per person per year ⁴
3.	Malaria treatment	<ul style="list-style-type: none"> • 10 cents per full dosage where chloroquine is effective (drugs only) • \$1 to \$2 per full dosage (artemisinin combination treatment, ACT, drugs only)
4.	Immunizations	<ul style="list-style-type: none"> • \$0.50 DPT (diphtheria, pertussis, and tetanus; three doses of vaccine) • \$1.50 (vaccines for a fully immunised child, including DPT; BCG, against a form of TB; tetanus; and measles. Total cost approx \$25, including health service delivery)
5.	Water	\$400 per connected household
6.	Roads	\$410,000 per kilometre of two-lane paved road

³ Sources: World Bank; (Fay and Yepos) 2003-table 6)

⁴ First line anti-retroviral treatment in poorer countries: UNODC, World Bank