

Handling other people's wealth – the taint of corruption

The Rt Hon Clare Short



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We reproduce here the speech given by the Rt Hon Clare Short MP, Secretary of State for International Development, at the Society of Advanced Legal Studies Conference on 24 February 2000.

First let me say I very much welcomed the report prepared by the Society of Advanced Legal Studies Expert Working Group. I believe we all have an interest in protecting the integrity of the professions and sectors within which we work. We all need a sense of pride and honour as well as an income from the work we do. Corruption casts a long shadow and taints all that it touches. But most of all it is the poor of the world – one in five of humanity who live in abject poverty – who pay the price of corruption in wasted resources and lost development.

The issue of corruption is directly relevant to the prospects of reducing poverty in developing countries which is the goal of my department, the Department of International Development. It is impossible to work in the field of development and not be aware of the damage that corruption does in poorer countries. Some of that corruption – usually the larger-scale corruption – originates in industrialised countries through bribery and the possibility of laundering the proceeds of corruption allows it to go to a massively larger scale than it otherwise could. These are issues that need to be addressed with greater urgency.

I am conscious that I am speaking to a professional audience whose business it is to be expert in the law and its enforcement. I and my department are not experts in this field.

We have much to learn from you and are very grateful for the growing interest in this subject across your professions.

THE IMPORTANCE OF CORRUPTION

As I said, corruption damages development. I find it shocking that it has only been in recent years that this has been said clearly and openly. Corruption was, until recently, a taboo subject in international discourse. I have no patience with such inhibitions.

I want to pay tribute to Jim Wolfensohn, the President of the World Bank, for helping to bring about this change. You probably know the story of how his questions about a case of internal

fraud led to the exposure of wide but suppressed concerns in the Bank about corruption. It was not until 1997 – at the Annual Meetings in Hong Kong – that a policy on corruption was adopted for the first time by the Bank and Fund. One of my current priorities is to strengthen the work of my department in collaboration with the Bank to put in place strong anti-corruption programmes in the countries in which we both work.

There is a growing demand for action against corruption amongst poor people in developing countries and amongst a growing number of governments.

The new democratic government in Indonesia, for example, has acknowledged publicly that corruption was at the heart of the economic problems of the country and must be tackled if the new Indonesian democracy is to succeed.

Corruption is a cancer which inhibits development in a number of ways:

- The corrupt use of national budgets diverts scarce resources away from development.
- Corruption deters investment. Corruption increases the risks for domestic and international investors. And businessmen trying to work in corrupt societies waste time as well as money dealing with corrupt officials.
- And corruption hurts poor people especially. We recently contributed to a World Bank series of participatory poverty assessments asking poor people in 40 countries about their concerns and priorities. One of the main messages which came through was that corruption frustrates and angers them. It inhibited the access of the poor to basic services – school, healthcare, drugs and even wood for cooking: all required bribes. The poor also complained that they could not get justice. Corruption leads to oppressive policing and magistrates and judges that do not dispense justice to the poor. And poor people across the world felt powerless to do anything about it.

STRATEGY AND PARTNERSHIPS

So what can we do about this? Obviously the responsibility for what happens within countries rests with their governments. The role of my department is to support governments that are willing to take action against corruption.

We have been working in this area for some time – helping reform the civil service, the management of public finances and tax systems; helping establish anti-corruption commissions; and training police and judges. But we need to do this better. I will never forget the President of a very poor country saying to me ‘You gave us the separation of powers. Now I have corrupt magistrates across my country. What should I do?’

As your report makes clear, we – the richer countries – also have responsibilities to continue to work to drive out bribery from international trade and business; and to deter money laundering of funds corruptly acquired in developing countries. We need to see this in a larger framework.

One reason we need to work together flows from the reality of globalisation. We are living in a world where, more and more, countries are knitted into global world trading and financial systems.

The growing interconnectedness and interdependence of economies and societies, driven by the revolution in information technology and by the increased mobility of capital, is bringing all of us closer together.

Globalisation brings with it more business and financial links between countries. And the increased sophistication of financial systems gives opportunities for evil as well as for good. We need to ensure that globalisation and the increasing integration and sophistication of financial systems are not exploited or abused by corrupt businesses, governments or criminals.

Obviously these challenges extend beyond my own department and beyond government. Businesses are increasingly grappling with the pressure of growing ethical consumer movements as they also try to take advantage of growing global markets, invest and produce in developing countries. The quality companies have an interest in action against corruption. Otherwise, as they tighten their own standards they lose out to those who do not.

Police forces worldwide are also grappling with the consequences of globalisation as it becomes easier to launder the consequences of crime, be it arms sales, drugs or the growing mafia spreading its powers across the former Soviet Union.

We are working to join up government efforts, as government departments increasingly need to take account of the international dimension. As well as my own department, the Treasury, Home Office and Department of Trade and Industry, and Law Officers all have lead responsibilities in the areas your report covers.

INTERNATIONAL PARTNERSHIPS

In our development work, we need to do more to help developing countries to put in place systems that help root out corruption. The international development community is seeking to work collaboratively to make the international development effort more effective. Currently the World Bank, Regional Development Banks, UN agencies and all the donor

countries have separate programmes and projects, procurement and accounting systems in each of the countries in which we work. We tend to see crumbling government systems, widespread corruption and each of the development agencies seeking to set up separate systems to protect its own projects. This is a grossly inefficient way of working and it means that the \$50 billion international development investment achieves massively less than it could.

The World Bank has therefore proposed, and we are strongly supporting, a new Comprehensive Development Framework process for defining the key development policies and programmes in a country led by the local government. The challenge is to persuade all the donors and development agencies to pool their efforts and help to strengthen local systems and local leadership. We are currently working to try to ensure that comprehensive anti-corruption programmes are a central part of the framework.

Similarly, corruption and governance issues must also figure in the new IMF/World Bank Poverty Reduction Strategies. These will apply first to those countries which will benefit from debt relief, under the enhanced debt relief initiative for which so many people across the world campaigned. It is obviously important that resources which are made available through debt relief or IMF and World Bank programmes are used productively and ‘uncorruptly’.

I am also working very closely with my Dutch, Norwegian and German colleagues to push the international system to embrace reform more rapidly. As part of this the Dutch are hosting a meeting in April [2000] to consider how bilateral donors can work together and with the World Bank better to address corruption. We will be looking for *implementation* and practical solutions. Our understanding of the undesirability of corruption does not need further elaboration. What we need now is action on the ground.

We are also trying to foster a deeper understanding of development issues in the UK and the importance of action on corruption. As the world globalises, we need our people to understand the change that is taking place so that there will be support in the UK for the joint international action needed to make progress. We are currently holding our second set of Forum meetings in each region. Corruption is one of three issues on which we are engaging in these forums.

But above all what we need is to support a strong lead on corruption from developing countries. With the help of the World Bank Institute, representatives of seven countries in Africa have developed comprehensive anti-corruption programmes. I am keen that the UK and the other donors get behind these efforts. I want us to help to develop similar programmes wherever they are useful.

In our individual country programmes, we will also strengthen our strategies to tackle corruption. Studies of the effectiveness of aid show that it can have major impact where we transfer resources to countries with high levels of poverty that are willing to reform. Where governments are positive, we will support their efforts.

These are likely to involve a variety of measures including public service reform, better financial management, financial sector reform and the strengthening of civil society.

Where governments are not committed to reform, we are increasingly working with civil society to strengthen the voices demanding reform.

Let me now turn from those areas where my department is in the lead to some areas where we are the junior partner. I want to set out some of the ways in which we are contributing to the thinking and activities of other government departments and helping to link up the domestic and international effort.

BRIBERY OF FOREIGN PUBLIC OFFICIALS

First, the question of international bribery. One of the major international achievements in recent years has been the conclusion of the OECD Convention on the bribery of foreign public officials in the course of international business transactions. We should acknowledge the leading role which the US played in pushing for this convention. Their motive may have been to ensure that other countries were operating to the same standard as the US firms under the Foreign Corrupt Practices Act. But the result has been a convention which is now in force which can profoundly affect the culture of international business transactions.

For its part the UK ratified the convention at an early stage. We were able to do this since bribery was already a criminal offence in the UK. However we are – as you are aware – contemplating a new law on corruption. This will respond to a Law Commission report. Jack Straw has announced a review to take account of our obligations under the OECD Convention, and also under the Council of Europe Criminal Law Convention on Corruption and other international instruments.

Proposals on reform of the law have yet to come to ministers and no decision has been taken on the timing of legislation. It is interesting to note that we have been urged to act quickly by the Neill Commission on Standards in Public Life. Their particular concern is to ensure that bribery cases involving MPs are clearly within the criminal law! I cannot today give a government view on what the working group report says about this. But I can say that I have carefully noted your view. Your report makes it clear that bribery which takes place wholly overseas would not be caught by the present law. This is something which members of the public may find both surprising and wrong. The report argues the case for extension of extraterritorial jurisdiction to remedy this gap. I understand that this is something which the US has recently done by way of amendment to the Foreign Corrupt Practices Act as part of its implementation of the OECD Convention. Many other governments are taking similar action. And the report points out that such a change is required to ensure that tax relief is not available in the UK for bribes which are organised and offered abroad.

The argument which is made against extra-territorial jurisdiction is that offences which are difficult to investigate should not be included in the criminal and that a law which cannot easily be enforced will fall into disrepute. I am sure you will all have views on the strength of this argument.

We are in the meantime working with the DTI to ensure that business is fully aware of the intentions of the Convention. We will also be continuing to support businesses which wish to strengthen their ethical commitment. We are supporting the Ethical Trading Initiative, through which many major British

retailers are working with trade unions and NGOs to improve the quality of their supply chain overseas.

We have also funded an advisory service led by the Prince of Wales' Business Leaders' Forum to provide advice to business on ethical codes. And we are also funding Transparency International to investigate whether we can develop a standard – rather like other quality standards which businesses seek to achieve – for integrity systems within businesses.

MONEY LAUNDERING

Next, let me turn to money laundering. The development community has not until recently paid much attention to this as an issue. That is now changing. The Treasury leads in Whitehall on money laundering.

But my department are increasingly clear that we must develop our engagement because weak financial systems make possible laundering of the proceeds of grand corruption that plunder the resources of poor countries.

The Home Office and Treasury will be publishing a white paper in the spring. This will set out the action which the government will take to implement the draft EU directive on money laundering, strengthen compliance systems, and follow up a Home Office study on the systems for confiscation of assets. The white paper – which we expect will lead to legislation – will be informed by a study by the cross-departmental Performance and Innovation Unit on the pursuit and seizure of criminal assets. I hope you will bring the conclusions and recommendations of the working group report to the attention of the Treasury.

However, we should not confine our thinking to this country. The fight against money laundering is a good example of the need for international standards and action. If we had a perfect system in the UK we could not deter corruption alone. We need international action.

We are therefore exploring with the Treasury and the Foreign Office ways in which we can join the government's efforts to support the work of the Financial Action Task Force. We are ready to help to create regional bodies which will help raise standards in other countries.

We also need to ensure that law in the countries which suffer from corruption does not inhibit the effective application of anti-money laundering laws in the UK or impede effective legal co-operation. Your report confirms that money laundering offences can be committed in the UK on the basis that the actions of the owner of the funds would be a crime if they took place in England and Wales. But it would obviously be more satisfactory if the actions were clearly illegal in the country concerned. This is something we will increasingly raise in our dialogue and anti-corruption work with developing countries.


CONCLUSION

In conclusion, I am very pleased that we are living at a time when there is a growing international commitment to take action on corruption. In an increasingly integrated world its tentacles spread to all of us. Until the East Asian crisis it was often argued that Indonesia should be left to abuse human rights and engage in corruption because its economic development was

so successful. The crisis which threatened the massive development gains in East Asia and the performance of the world economy showed that such systems were unsustainable and I am pleased to say the arguments of the cynics are now completely overtaken.

But for me, worst of all, corruption hurts the poor. The eloquence of their anger at petty corruption worldwide shows there is no such thing as a culture of corruption.

And if we look at the poorest countries and continents in the world, we find terrible poverty side by side with great riches,

with corruption in between. And we see development delayed and poverty linger because massive resources are wasted and misused for corrupt purposes. We can and must do better. 

The Rt Hon Clare Short MP

Secretary of State for International Development

Collective rights: the case of indigenous peoples

by Alexandra Xanthaki

Pending agreement on a UN Declaration on the Rights of Indigenous Peoples, Alexandra Xanthaki examines the political theories and research supporting the need for recognition of collective identities and rights, which she claims have hitherto been overshadowed by the focus on rights of the individual.

Indigenous expectations for a 'Declaration on the Rights of Indigenous Peoples' that would include a wide range of collective rights have sparked lively debates between states, indigenous representatives and experts in the United Nations Working Group on Indigenous Peoples. Indigenous representatives insist that the individualistic view of the world is totally alien to the indigenous ideas of the world, their traditions, their past and their present. An exclusive emphasis on individual rights has not and cannot give effective guarantees for indigenous peoples, who require the simultaneous protection as *collectivities* in order to survive and flourish as distinct peoples and cultures.

Collective rights emphasise the value of protecting indigenous cultures and existence per se and reject assimilation and integration as valid modes of relating to indigenous peoples. Indigenous peoples have stated:

'The concept of indigenous peoples' collective rights is of paramount importance. It is the establishment of rights of peoples as groups, and not merely the recognition of individual rights, which is one of the most important purposes of this Declaration. Without this, the Declaration cannot adequately protect our most basic interests. This must not be compromised.' (emphasis added)

(UN Sub-Commission, *Indigenous Peoples Preparatory Meeting: Comments on the First Revised Text of the Draft Declaration on Rights of Indigenous Peoples*, July 1989.)

In contrast, some states use liberal theory in order to reject the notion of collective rights. The French delegate, for example, stated in the 1996 Working Group on Indigenous Peoples that collective rights did not exist in international human rights law, and therefore his government had reservations with regard to those articles that aimed to establish collective rights. In similar fashion, the US explained its rejection of indigenous collective rights (in its delegation's comments on s. 1 of the Draft Declaration in the 1995 Working Group) on the basis that:

'International instruments generally speak of individual not collective rights. ... Making clear that the rights guaranteed are those of individuals prevents governments or groups of (sic) violating or interfering with them in the name of the greater good of a group or a state ... In certain cases, it is entirely appropriate or necessary to refer to indigenous communities or groups, in order to reinforce their individual civil and political rights on the basis of full equality and non-discrimination. But characterising a right as belonging to a community, or collective, rather than an individual, can be and often is construed to limit the exercise of that right (since only a group can invoke it), and thus may open the door to the denial of the right to the individual. This approach is consistent with the general view of the US, as developed by its domestic experience, that the rights of all people are best assured when the rights of each person are effectively protected.'

The traditional approach of liberal rights theory recognises only two categories of rights holders: the individual and the