



Public Protector Adv. Thuli Madonsela's Address to the United Nations(UN) Global Compact in New York City on 10 December 2014

Programme Moderator;

President, Joyce Banda former President of Malawi;

Mr Georg Kell, Executive Director, UN Global Compact;

Excellencies;and

Distinguished guests

It is an honour and privilege to address you on the important occasion of the 10th anniversary of the UN Global Compact's 10th Principle, the Principle against corruption. I'm particularly grateful to Jobi Makinwa for this privilege.

Today is also a special day in the global governance calendar as it is International Human Rights Day, in commemoration of the ground breaking Universal Declaration of Human Rights of 1948.

On this day the entire world pauses to reflect on the ground covered and still to be covered with regard to the protection and promotion of all human rights for all persons. This year's theme aptly focuses on 365 days of advancing and protecting human rights.

It is worth noting that in his foreword to the UN Convention against Corruption, on which the Global Compact's 10th principle is based, former UN Secretary General Kofi Annan makes a compelling link between corruption and the erosion of human rights, among other things. Current General Secretary, Ban Ki Moon, has made similar pronouncements.

Speaking at the launch of Stolen Asset Recovery Initiative in 2007, General Secretary Ban Ki-Moon, said the following:

"Corruption undermines democracy and the rule of law. It leads to violations of human rights. It erodes public trust in government. It can even kill — for example, when corrupt officials allow medicines to be tampered with, or when they accept bribes that enable terrorist acts to take place."

I'm certain we are brought together by the fact that we all yearn for a better world, one that is inclusive, fair and just.

A Case Study

As I was pondering the focus of my address on ***"The role of Governments in Incentivizing Anti-Corruption"***, I came across a front page article in one of South Africa's dailies, The Star newspaper. The article reported that the Board of Directors of a company that I will refer to as "Clean Business Incorporated (CBI)" had resolved to reject a US\$20million construction contract awarded by one of the provincial government departments on the

grounds that there had been no tender or lawful bidding process. It was reported that the directors did not want to run foul of company law.

The article went on to announce that the directors of CBI had written to the department concerned and requested a reversal of the award of the contract and that the project be subjected to a lawful bidding process.

The act of CBI is globally recognized as voluntary disclosure, a practice the global community against corruption is currently considering as one of the key to combatting corruption. Some of the forums I have attended, where this was explored as a possible meaningful contributor to anti-corruption efforts, are the World Economic Forum Global Agenda Summit in Dubai, November 2014 and a Workshop hosted by Transparency International's (TI) PACI and the Pearl Foundation in the same City around the same time. When the story about CBI broke, the Good Governance and Integrity Team in my office, the Public Protector South Africa, discussed this development with much joy and approval.

You will agree with me that if a state contract was indeed awarded without a bidding process as reported, that transaction was most likely a corrupt one. I'm saying "if" in recognition of the fact that despite its noble intentions, the media often gets it wrong or find itself abused by information peddlers.

Nonetheless, if it all happened as alleged, the transaction in question is likely to have involved the use of entrusted power for personal gain. This is the definition of corruption according to Transparency International (TI).

While the UN Convention Against Corruption does not define corruption, its contents show that it works with the widest understanding of this malady as including bribery, trading in influence and embezzlement or other forms of diversion of public funds for personal gain.

Why should companies like CBI care about corruption?

In other words what's in it for them? We may even ask why governments themselves should care, beyond compliance with their obligations under the UN Convention against Corruption.

Programme Moderator, allow me to tell a story I have told too many times. The story is based on a poem written many years ago by a citizen of this country, the United States of America, by the name of James Patrick Kinney.

The poem, titled "***The Cold Within***", tells a story of six humans trapped by happenstance. They sit around a dying fire on a dark bitterly cold night, with each having a log of wood in their hand.

The first withholds his log after noticing a person from a church that is different to his and withholds his log because he doesn't want a person from another church to benefit from it.

Another sees a person of a different race across the fire and, not wanting that person to benefit, he withholds his log.

A poor man notices a rich man sitting across the fire from him and decides not to benefit the "filthy rich".

The rich man notices the poor man across the fire and decides his log won't benefit the "lazy poor".

A man from a historically disadvantaged background looks across and sees a person from a race group that has enjoyed unfair privileges and decides they won't benefit from his log.

The last man, a person who had never done anything without gain in his life, figures out all these people won't pay him and resolves to withhold his log.

The poem ends with the following words:

***"Their logs held tight in death's still hands
Was proof of human sin
They didn't die from the cold without
They died from THE COLD WITHIN".***

I'm certain that here I'm preaching to the choir. You've already decided that corruption hurts all of us and that you'll use the opportunities available to you or your log to combat it.

How does corruption hurt us, including the business community?

The cost of corruption equals more than 5% of global GDP (\$2.6 trillion), and corruption increases the cost of doing business by up to 10% globally. This is according to the World Economic Forum and the World Bank, respectively.

Our experience as the Public Protector South Africa and the African Ombudsman and Mediators Association(AOMA) particularly AOMA members with an anti-corruption mandate, is that corruption inflates the cost of state projects, through overcharging, overbilling and false billing.

Corruption also contributes to shoddy service delivery which results in delayed delivery and flawed service.

Corruption erodes the social capital of both countries and companies from countries perceived to have endemic corruption.

We must be careful though not to confuse endemic corruption with effective pursuit of it, coupled with transparency. South Africa, for example, is increasingly associated with corruption. While it cannot be denied that corruption is a problem, the key reason behind its visibility is that there is an aggressive pursuit of it, coupled with optimum transparency anchored in a free, independent and vigilant media.

Corruption also undermines social justice yet it is also exacerbated by social injustice, including poverty.

A note of some of the initiatives by business collectives at global and domestic levels

The UNGlobal Compact's 10th Principle is the most significant anti corruption collective initiative. The activities of TI are also increasingly drawing business in, particularly through PACI. Smaller initiatives such as the Pearl Initiative in the Middle East and the Clean Foundation in Africa are covering some ground. Large corporates are doing something individually, like Siemens, and collectively promoting clean business as a way of life under initiatives such as the Tallberg Foundation, the World Justice Project and emerging multinationals.

I've noted interesting domestic developments in South Africa such as anti-corruption pledges by Business South Africa (BUSA) and the Property Association. An innovative initiative has been introduced by the entire

engineering industry called "**civilution**". The brainchild of civil engineers, the ground breaking initiative seeks to mobilize the engineering industry to be change makers against corruption and shoddy work. These initiatives are inspired by the desire to save the industry's collective reputation while levelling the playing field.

What can governments do to enhance the role of business?

1. Incentivizing voluntary disclosure

The CBI case is potentially a case of voluntary disclosure. My preference though would be disclosure to appropriate law enforcement agencies or regulatory bodies. In our case it would be my office, the Public Protector which is the public administrative investigative body of last resort, or the Auditor General, which is the supreme audit body in the country. We've already had successful voluntary disclosures in other industries. However, the outcome should not undermine restorative justice or perpetuate price and market distortions. If room for undoing what was dishonestly done exists without causing too much disruption to innocent third parties, that route must be taken.

2. Tightening and extending whistle-blower protection to businesses

An effective voluntary disclosure regime requires some protection for both the companies and whistle-blowers. For example voluntary disclosure may mean some relaxation of certain criminal justice implications such as jailing of directors. In my view though, voluntary disclosure should not be without restorative justice. I've seen legitimacy eroded when that happens.

3. Protection of Whistle-Blowers

The protection of the whistle-blowers cannot be overemphasized. Apart from this being one of the areas of compliance under the UN Convention against Corruption, whistle-blowers are the life and blood of the fight against corruption.

This applies to whistle-blowers that are employees and those that may be contractors, directors, shareholders, internal auditor and competitors. Most countries only protect employees and even then there are a few perilous gaps.

The South African government is one of the countries with laws protecting whistle-blowers that are employees and is currently reviewing the Protected Disclosures Act to tighten and expand protection. The idea is to eliminate continuing risks of occupational detriments for employees who blow the whistle against corruption and other illicit conduct in the work-place while extending the coverage to none-employees.

4. Accepting constructive feedback from business

Governments should also provide space for business to speak out without fear of reprisals. The best response by government should be “if there is an element of truth let’s listen and change” rather than feeling slighted. In South Africa, business is part of the National Anti-Corruption Forum. Such forums are a good practice as long as space is created for candid, constructive feedback.

5. Blacklisting

Blacklisting is a useful disincentive against corruption. In South Africa this has taken off quite well. The incentive for other businesses lies in a transparent list that can be used by anyone, including competitors to alert organs of state and others who may not be aware of a company's black listing. This may help reverse the award state contracts awarded because

appropriate state agencies were not aware of such listing or exclude listed companies from bids.

6. Consistency in action

One of the things business yearns for is consistency in anti-corruption action. If it is known that certain actions will invariably incur specific outcomes, the system earns legitimacy. When there is a sense that some are targeted while the powerfully-connected get away with corruption, others seek to establish their own powerful connections or to undermine the system in whatever means available to them. In other words impunity and the appearance of selective enforcement should be eschewed.

7. Whitelisting

The opposite of blacklisting is being seriously considered as an anticorruption incentive in the World Economic Forum Agenda Council on Corruption and Transparency, among others. There is no agreement though regarding the role of the state, with some preferring self-regulation while others believe legislation and state involvement would enhance the impact of whitelisting.

8. Financial Incentives

Consideration should be to financial incentives for helping claw back state money lost through corruption and related malfeasance. What is often referred to as Bounty laws as seen in some states in countries such as the USA needs to be considered to encourage whistle-blowers.

A related consideration is the reversal of unlawful contracts and enabling other bidders to bid again in a level playing field, where the corruption involved entails contracts.

9. Beyond the criminal justice system

Corruption is a crime but it is more than a crime. Strategies to combat it should transcend the criminal justice system. We need a systems approach as envisaged in the UN Convention against Crime. In this regard, civil society and agents of socialization such as the education system and others should not be left out. It has always been known that a behavioral problem whose solution relies heavily on enforcement of rules, without value change, is bound to fail.

10. Enhance Cross border Collaborations

There's a tendency to see corruption as a problem of primarily developing country states and state operatives. In reality corruption is a global problem and sometimes it is outsiders that bring it into the states where it takes place. This is partially recognized in the OECD Convention against the Bribery of Foreign Public Officials. More cooperation and coordination needs to be placed in the enforcement of the cross national corruption transactions, including illicit capital outflows.

The future

Before contemplating the future, let us remind ourselves of some of the achievements of the ten years that we need to celebrate.

Key among the 10th principle's achievements is that today there is a universal acceptance that corruption is bad and there is global awareness of the many forms it takes.

In many states, laws have been passed prohibiting corruption and institutions and systems set up to prevent and combat it. The anti-corruption Convention has thus far been signed by 140 countries.

It is also worth noting that blatant forms of corruption such as embezzlement of public funds in the developing world and placing such funds in private accounts in the developed world is no longer the norm and that other illicit capital outflows are being attended to. Judiciaries are part of the solution whereas in some parts of the world they used to be part of the problem. Admittedly a few countries still have this problem.

The future is hope-filled as the tide is turning against corruption. Many emerging thoughts and initiatives are addressing the gaps while showing stronger political will toward preventing and combatting corruption. For example the African Union (AU) sees good governance, including anti-corruption as a key to the achievement of its Agenda 2063 and Silencing of the Guns by 2020.

The World Economic Forum is emerging with innovative ideas to bring business and other role players on board. It is also encouraging cross fertilization of strategies between anticorruption efforts and other causes in. For example synergies are being forged between anticorruption efforts and those directed at human rights, corruption and other crimes particularly organized crime, including money laundering are.

Business and general society, including young people are joining the fight in numbers bringing innovation, including technology and research to the party. Business is realizing that as long as there is injustice somewhere sustainable peace cannot be experienced anywhere. Many business leaders are embracing clean business as good business. Many investors are beginning to appreciate the interconnectedness of humanity and are consciously choosing value-based investment practices. They are no

longer prepared to act like hyenas feeding madly and leaving devastation for countries and communities as new grounds are dwindling as globalization consolidates.

The truth that broken societies far away have an impact on the entire world in terms of peace, security and migration, among others, has come to be accepted by world leaders and many business corporations. Other business leaders are going further to influence peers to embrace clean business.

Like the logs in the hands of James Patrick Kinney's people, the world we yearn for lies in our collective hands. That is the world that requires states that are accountable, operate with integrity at all times and are responsive to all people. That is a world that is inclusive, fair and just with every person's potential freed.

Thank you.

Adv. Thuli Madonsela
Public Protector of South Africa
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