

The following are Ambassador Stuart E. Eizenstat's remarks as prepared for delivery at the NYC Global Partners Summit "Public Integrity: Anti-Corruption Strategies, Economic Development and Good Governance" at Fordham University School of Law, June 7, 2012:

"The Critical Importance of Combating Corruption In Our Cities and Around the World"

I want to congratulate Meyer Feldberg, President of the New York City Global Partners; New York City Mayor Michael Bloomberg; New York City Commissioner for the United Nations, Consular Corps and Protocol Marjorie Tiven; Commissioner Rose Gill Hearn, of the New York City Department of Investigation; and Professor Esther Fuchs, for their leadership in highlighting the critical importance of cities around the world taking concrete steps to combat the cancer of corruption, which robs their own treasuries and their citizens of the benefits of investment and sound public procurement.

I have personally been involved in creating tools at home and abroad to fight corruption.

I. International Anti-Corruption Laws and Conventions

a. The FCPA and OECD Anti-Bribery Convention

i. History and Development

The importance of fighting corruption is relatively new on the public policy agenda. International efforts to combat corruption began in the United States. The Watergate scandal of the early 1970's that led to the unprecedented resignation of President Richard Nixon, prompted general investigations into the role major American corporations played in foreign political campaigns.¹ These investigations -- led by the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) -- discovered hundreds of U.S. companies in possession of bribery slush funds.² During the investigations, many of these companies admitted making millions of dollars' worth of illegal payments to foreign government officials.³

During Jimmy Carter's 1976 presidential campaign, in which I was his chief policy adviser, we made ethics in government, a major theme. Jimmy Carter pledged to have a government as "good as the American people". He specifically pledged that if elected president, he would root out corruption and make bribes by corporations to win contracts abroad a crime. When we entered the White House, this became an early priority. The business community was universally opposed, arguing that it would create an unlevel playing field for American business, which would have to compete for contracts abroad, including those extended by cities, with European and Asian companies who used bribes to officials to win bids.

¹ See generally Alejandro Posadas, *Combating Corruption Under International Law*, 10 Duke J. Comp. & Int'l. L. 345, 348-51 (2000).

² See, e.g., Angie Mohr, *The Biggest Bribe Cases in Business History*, San Fran. Chronicle (May 23 2012), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2012/05/23/investopedia82458.DTL>.

³ Dep. of Justice Fraud Section, *Foreign Corrupt Practices Act Anti-bribery Provisions: DOJ guide for lay persons* (2011) ("As a result of SEC investigations in the mid-1970's, over 400 U.S. companies admitted making questionable or illegal payments in excess of \$300 million to foreign government officials, politicians, and political parties.").

But the anti-Watergate feeling was strong enough to overcome the lobbying by corporate America and President Jimmy Carter signed the Foreign Corrupt Practices Act (FCPA) into law in 1977.⁴ The Act prohibited corrupt payments to foreign officials for the purpose of obtaining or keeping business.⁵

The concern of the American business community that they were at a competitive disadvantage to their global peers because of the Act, had some foundation.⁶ This economic disadvantage appears to have been real. By one estimate, American companies lost \$100 billion from differences in anti-corruption standards.⁷ American corporations pressed Congress and various administrations to recognize the futility of a unilateral approach to corruption in international business.⁸ Rather than lobby for the Act's repeal, however, American businesses seemed content with the lack of FCPA enforcement throughout the 1980's.⁹

Congress also recognized the challenges of a unilateral approach to international anti-corruption. In response, it passed a 1988 amendment to the FCPA that requested the President pursue discussions with the international community in an effort to have other nations enact FCPA-like legislation.¹⁰ When elected, President Clinton made taking action under the 1988 amendment a priority. When I was U.S. Ambassador to the European Union in 1993, the Clinton administration began urging the Organization for Economic Cooperation and Development (OECD) for the adoption of a comprehensive international anti-corruption convention.¹¹ Remarkably, Australia, Austria, Belgium, France, Germany, Luxembourg, Netherlands, Portugal, New Zealand, and Switzerland allowed tax deductions for bribes as regular business expenses at the time of signing the Convention.¹²

As Under Secretary of State, I led the OECD negotiations for the U.S. along with my Covington colleague Ambassador Al Larson (now chairman of Transparency International-America). I felt vindicated in helping to finally level the playing field 20 years after passage of the FCPA, when the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) in 1997, which required signing parties to pass anti-corruption laws similar to the FCPA.¹³ Finally, U.S. anti-corruption efforts had come full circle to the international community, at least the advanced industrial democracies.

Currently, thirty-eight nations -- responsible for two-thirds of international trade and three-quarters of international investment -- have joined the OECD Anti-Bribery Convention.¹⁴

⁴ Posadas, *supra* note 1, at 355-58.

⁵ Dept. of Justice Fraud Section, FCPA Anti-bribery Provisions, *supra* note 3, at *1.

⁶ See, e.g., Daniel K. Tarullo, *The Limits of Institutional Design: Implementing the OECD Anti-Bribery Convention*, 44 Va. J. Int'l. L. 665, 674 (2004).

⁷ See Posadas, *supra* note 1, at n.133.

⁸ Carolyn Hotchkiss, *The Sleeping Dog Stirs: New Signs of Life in Efforts to End Corruption in International Business*, 17 J. of Pub. Pol'y & Marketing 108 (1998).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 675-77.

¹² See generally Martine Milliet-Einbinder, *Writing Off Tax Deductibility*, OECD Observer (May 2000), available at www.oecdobserver.org. See also Peter Eigen, *Fighting Corruption In A Global Economy: Transparency Initiatives in the Oil and Gas Industry*, 29 Hous. J. Int'l. L. 327, 329 (2007); Justin Serafin, *Foreign Corrupt Practices Act*, 41 Am. Crim. L. Rev. 721, 742 (2004). These deductions were rarely claimed, however, given the difficulty in proving that bribes were a necessary part of the transaction in question. *Id.*

¹³ *Id.* at 680. The Convention did not go into force until 1999. *Id.*

¹⁴ Transparency International, Progress Report 2011: Enforcement of the OECD Anti-Bribery Convention (2011), available at www.transparency.org.

ii. Current Enforcement and Gaps

The inherently underhanded nature of extortion and bribery makes measuring the incidence of corrupt activities difficult.¹⁵ This in turn makes it challenging to fully evaluate the impact of both the FCPA and OECD Anti-Bribery Convention. If measured by public perception alone, it appears corruption may be growing. A 2010 Transparency International (TI) survey found the majority of over 90,000 respondents in eighty-six nations believed corruption levels were on the rise globally.¹⁶ This may in part be due to an increased level of public awareness, some research shows. So work by Transparency International and others to measure actual corruption, such as the number of bribes and side payments people must pay, remains important.

Enforcement of current laws is another metric for analyzing the impact of international efforts to combat corruption. When viewed through this lens, American efforts under the FCPA vastly outpace efforts by other OECD members. FCPA prosecutions -- led by the DOJ and SEC -- are now occurring at record rates. Between 1977 and 2000 there were an average of only three FCPA prosecutions per year.¹⁷ Starting in 2005, prosecutions began to steadily increase.¹⁸ 2008 marked a pivotal year for FCPA enforcement when three major cases against Siemens, KBR/Halliburton, and BAE Systems ended with the companies each paying penalties of \$400 million or more.¹⁹ Encouraged by these successful prosecutions, U.S. officials brought a record seventy-four FCPA prosecutions in 2010 alone.²⁰

Given the sizeable sums being collected by the Government, there may be a temptation to see revenue-generation as the key driver of increased FCPA prosecutions. But John Ashcroft, the Attorney General in 2005, when FCPA prosecutions soared cited two major events, seemingly unrelated to battling foreign corruption at first glance, and having nothing to do with increasing revenues, played a pivotal role in the rise of prosecutions.²¹

First, Ashcroft noted that the September 11, 2001 terrorist led to unprecedented levels of cooperation in multinational investigations.²² These new law enforcement channels made FCPA investigations easier to conduct. Additionally, after 9/11, the U.S. began to realize that financing of terrorist activities was often linked to corruption in foreign governments.²³ This led to the prioritization of FCPA cases internally at DOJ.²⁴

In addition to 9/11, Ashcroft also believed the increase of FCPA prosecutions was rooted in the Enron, WorldCom, and Adelphia scandals.²⁵ These scandals led to the passage of the Sarbanes-Oxley Act in 2002. This Act dramatically increased corporate reporting mandates and also made the

¹⁵ See, e.g., Tarullo, *supra* note 6, at 683 (noting the difficulty in measuring the OECD Anti-Bribery Convention's impact).

¹⁶ See David Hess, *Combating Corruption through Corporate Transparency: Using Enforcement Discretion to Improve Disclosure*, 21 Minn. J. Int'l. L. 42, 48-49 (2012).

¹⁷ See Alberto Gonzales et. al., *Forecasting the Future of FCPA Enforcement*, Corporate Counsel (May 9, 2012) available at <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202552821910>.

¹⁸ *Id.*

¹⁹ *Id.* See also Mohr, *supra* note 2. (Siemens paid \$450 million, KBR/Halliburton paid \$579 million, and BAE Systems paid \$400 million).

²⁰ Gibson Dunn LLP., 2011 Year-End FCPA Update (2012) available at www.gibsondunn.com.

²¹ See John Ashcroft and John Ratcliffe, *The Recent and Unusual Evolution of an Expanding FCPA*, 26 Notre Dame J.L. Ethics & Pub. Pol'y, 25 (2012).

²² *Id.* at 28.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 30.

Government reassess its treatment of corporations as criminal defendants.²⁶ This legal change also led to an increase in FCPA prosecutions.²⁷

The increased FCPA enforcement, and the fines associated with it, serve as a major deterrent to companies engaging in corrupt behavior. Furthermore, since the U.S. Government bases leniency on the quality of a corporation's compliance program, companies have a strong incentive to establish robust internal checks against acts of international bribery.²⁸ The impacts of this incentive can be seen in the growth of FCPA compliance programs and services.²⁹

Unfortunately, the OECD Anti-Bribery Convention has not been similarly enforced. Before the ink was dry, skeptics believed the Convention was an empty measure to remove the problem of corruption from the public eye, without really changing conduct.³⁰ The OECD and the nations listed have since taken measures to repeal the allowance of tax deductions for foreign bribes.³¹ While this is a promising sign, there is still reason to question the true commitment certain nations have to enforcing the Convention. Of its thirty-eight member nations, only seven (including the U.S.) actively enforce the Convention.³² Twenty-one do little or nothing to enforce the Convention.³³ In fact the report on the Convention's progress, conducted annually by Transparency International, found lack of political will as a major impediment to the Convention's success.³⁴ As Daniel Tarullo -- a former American diplomat intimately familiar with the OECD -- put it, "the U.S. pressure succeeded only in getting other countries to sign the Convention, not in changing the underlying game being played by other countries."³⁵ Additional findings from TI's annual report indicate enforcement of the OECD Anti-Bribery Convention is inconsistent at best:

- Germany is currently prosecuting 22 bribery cases. Last year Germany received around \$800 million to settle a bribery case brought by the German government against Siemens.³⁶ This is a positive sign. TI found that Germany's current legal framework, however, does not serve as an adequate deterrent to foreign bribery because of limitations of civil penalties, lackluster whistleblower protections, and lack of institutional support at the federal level.³⁷

²⁶ *Id.* at 30-35.

²⁷ *Id.*

²⁸ See Hess, *supra* note 15, at 50-51.

²⁹ There do not appear to be clear statistics on the number of compliance programs and services being offered. But, a growth in the FCPA compliance industry can be inferred by a brief review of law firms and consultant firms commitment to FCPA services. See, e.g., Gibson Dunn, *supra* note 16. See also Joanne Sammer, *Don't Do As Wal-Mart Does*, Business Finance (Apr. 24, 2010) available at <http://businessfinancemag.com/article/dont-do-wal-mart-does-part-2-0427> (noting that a number of a companies have stepped up FCPA compliance recently).

³⁰ See Tarullo, *supra* note 6, at 679 - 681 (noting that a number of signatories joined the Convention as a means of removing corruption from the public discourse without the intention of enforcing its provisions).

³¹ By 1998 OECD efforts to change the beneficial tax treatment of bribes in the nations listed was largely succeeding. See generally OECD, Implementation of the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials (1998), available at http://www.oecd.org/documentprint/0,3455,en_2649_34859_2048300_1_1_1_1,00.html.

³² Transparency International, Progress Report 2011, *supra* note 13, at 5. (Denmark, Germany, Italy, Norway, Switzerland, the U.K., and U.S. actively enforce the Convention).

³³ These nations include Australia, Austria, Brazil, Bulgaria, Canada, Chile, Czech Republic, Estonia, Greece, Hungary, Ireland, Luxembourg, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, South Africa, and Turkey. *Id.*

³⁴ *Id.*

³⁵ Tarullo, *supra* note 6, at 667.

³⁶ See Sammer, *supra* note 21, at 1. See also Transparency International, Progress Report 2011, *supra* note 13, at 35-38.

³⁷ See Transparency International, Progress Report 2011, *supra* note 13, at 35-38.

- The United Kingdom was heavily criticized for terminating its investigation of BAE Systems in 2006. Until last year, U.K. anti-bribery prosecutions were conducted under a law dating back to Victorian times. Although a new law has been passed, there is real doubt that it will lead to active enforcement, as the U.K. only has two bribery cases currently pending.³⁸
- In 2011, France conducted eight prosecutions, with only one resulting in a conviction. In its annual review of France's OECD Anti-Bribery Convention compliance, TI found numerous French investigations had been publicized, but rarely reached any conclusion.³⁹
- Brazil said it was conducting eight investigations at the close of the year. Only one of these investigations had concluded, and the country provided no information on this one case.⁴⁰
- Russia joined the OECD Anti-Bribery Convention in April of this year. Given the country's size and influence, this is a welcome development.⁴¹ Two other major economies, China and India, have passed or proposed anti-bribery legislation. Neither is currently a member of the Convention.⁴² Passage of domestic anti-bribery legislation in these two countries, however, is a promising sign for those hoping to see the Convention's influence expand.⁴³

In conclusion, it is difficult to quantify the exact deterrent impact American prosecutions under the FCPA and international actions under the OECD Anti-Bribery Convention are having. While the enforcement activity of some signatories has increased in recent years, the lack of enforcement of anti-bribery laws by a number of OECD member nations is troubling. Continued verbal support for anti-corruption measures on the international stage, however, has led some commentators to note that anti-corruption measures will only grow in scope as time goes on.⁴⁴

II. Why Anti-Corruption Efforts Matter

There are a number of normative and practical reasons why officials at all levels of government and corporate management should take anti-corruption efforts seriously. Condemnation of corruption is a universal value, cutting across cultural, regional, and class lines.⁴⁵ Hammurabi's Code prohibited bribing judges and denunciation of corruption is found in the Quran⁴⁶ The Bible teaches us to "not accept a bribe, for a bribe blinds those who see and twists the words of the innocent."⁴⁷ That countries in Asia, North America, Europe, South America, and Africa all have laws denouncing bribery reflects a widespread moral abhorrence to corruption. But this is not reflected in reality in much of the world, in part because there is a failure to understand the harm done to corporations and nations engaging in corrupt practices and the numerous practical benefits accompanying transparent societies. Corruption is one of the greatest enemies to sustainable development and economic growth are hindered by the presence of

³⁸ *Id.* at 66-68.

³⁹ *Id.* at 32-33.

⁴⁰ *Id.* at 21.

⁴¹ See generally, OECD, Russia Joins OECD Anti-Bribery Convention (Feb. 17, 2012) available at http://www.oecd.org/document/37/0,3746,en_21571361_44315115_49695141_1_1_1_1,00.html.

⁴² Transparency International, Progress Report 2011, *supra* note 13, at 6-13.

⁴³ *Id.*

⁴⁴ See, e.g., Hotchkiss, *supra* note 8, at *2.

⁴⁵ See generally Elizabeth Spahn, *Nobody Gets Hurt?*, 41 Geo. J. Int'l. L. 861, 863 (2010).

⁴⁶ *Id.*

⁴⁷ *Exodus* 23:8

corruption.

a. Reputation

Even the perception of corruption can destabilize established governments, corporations, and institutions. Corruption creates societal instability by replacing rules and procedures with ad hoc practices based on personal connections.⁴⁸ These practices create a sense of arbitrariness that often leads to unstable societal and political tensions.

The Arab Spring revolutions which have convulsed the Middle East were catalyzed by a popular abhorrence to the link between public corruption and its link to power, wealth and opportunity. The wave of protests that brought down long-ruling autocrats began when a Tunisian fruit peddler burned himself over a “shakedown” by a petty local bureaucrats. In Egypt, allegations of corruption against President Mubarak and his confidants was a lightning rod for demonstrations in Tahrir Square. Last Spring, Egyptian sovereign debt was around \$35 billion, while newspaper reports, whether accurate or not, estimated Mubarak’s personal wealth at between \$40 and \$70 billion,⁴⁹ in a country where the per capita GDP in 2011 was around \$6000.

Recent events in China show how perceived corruption at the local level can roil the political waters. A report by the Chinese Academy of Governance found that over 180,000 “mass incidents” of civil unrest took place in China in 2010 in response to alleged corruption and local government land grabs.⁵⁰ In response to one particularly forceful local protest in Wukan, Chinese authorities took the unprecedented step of allowing villagers to hold a secret ballot election free from Communist Party influence.⁵¹ Earlier this year protests exploded in Guangdong and Henan provinces as a result of perceived corruption by local officials.⁵² In Henan, over 30,000 protestors reportedly took to the streets to challenge local embezzlement.⁵³ In Guangdong similar protests resulted in the punishment of several higher-ranking officials by the Communist Party.⁵⁴

These events come on the heels of a corruption scandal that shook the highest levels of the party. In March, Bo Xilai, the powerful party chief of Chongqing, was sacked for his role in impeding a corruption investigation.⁵⁵ It is rare to see such a high-ranking Communist Party official publicly admonished, but it reflected a defensiveness at senior levels of the Chinese government over public anger at the degree of perceived corruption in China.⁵⁶

⁴⁸ Brian Harms, *Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption*, 33 Cornell Int’l L.J. 159, 167 (2000) (citing Ibrahim Shihata, *Corruption – A General Review with an Emphasis on the Role of the World Bank*, 15 Dick. J. Int’l. L. 451, 579-82 (1997)).

⁴⁹ See, e.g., Phillip Inman, *Mubarak Family Fortune Could Reach \$70bn, Says Expert*, The Guardian, Feb. 4, 2011, available at <http://www.guardian.co.uk/world/2011/feb/04/hosni-mubarak-family-fortune/print>.

⁵⁰ See *Rising Protests in China*, The Atlantic, Feb. 17, 2004.

⁵¹ *Id.*

⁵² See *China Punishes Corrupt Officials After Village Protests*, AFP (Apr. 25, 2012) available at <http://www.smh.com.au/world/china-punishes-corrupt-officials-after-village-protests-20120424-1xja3.html>; Joseph Wu and Helena Zhu, *Protest Against Corruption Erupts in Eastern China*, Epoch Times (Jan. 4, 2012) available at <http://www.theepochtimes.com/n2/china-news/protest-against-corruption-erupts-in-eastern-china-169388.html>.

⁵³ Wu, *supra* note 65.

⁵⁴ *China Punishes Corrupt Officials After Village Protests*, *supra* note 65.

⁵⁵ See Michael Wines and Jonathan Ansfield, *Report on Ousted China Official Shows Effort at Damage Control*, NY Times, Mar. 19, 2012.

⁵⁶ *Id.*

And just this week, Transparency International has published a report citing graft, corruption and rent-seeking in Europe as a potential barrier to reform and effective privatization. This reminds that public sector corruption is a global problem that requires vigilant, ongoing action; we can never be complacent about it.

Corporations also suffer when they are perceived to have corrupt practices. In April of this year, an extensive *New York Times* report on bribery of Mexican officials by Wal-Mart officers shook one of the most profitable corporations in the world.⁵⁷ Wal-Mart stocks plunged after the story broke.⁵⁸ The allegations raised serious questions for investors, who began to forecast the costs of navigating an FCPA prosecution for Wal-Mart.⁵⁹ One analyst predicted the allegations could cost Wal-Mart over \$4 billion.⁶⁰ Acknowledging that possession of a positive corporate reputation is a vital asset for contemporary business,⁶¹ Wal-Mart's Chairman instantly promised shareholders that "acting with integrity is not a negotiable part of [their] business," and that extensive internal reviews would soon follow.⁶² Outside of the impact on stock prices, there may be other tangible reasons why a company's reputation for corruption can be harmful. In particular, corporations can either attract or detract young talent depending on their reputation.⁶³ Therefore, the strength of talent pipelines -- like stock prices -- can largely depend on whether a corporation is perceived to be corrupt.⁶⁴ Use of third-party agents can create problems for corporations seeking to avoid the perception (or reality) of corrupt business practices. For example, in 2010 Alcatel-Lucent, on whose board I sit, paid more than \$137 million in fines to settle an FCPA investigation into illicit payments in Costa Rica, Honduras, Malaysia, and Taiwan.⁶⁵ The FCPA investigation of the company found that third party agents served as conduits for bribe payments. The fine was mitigated by the bold action taken by Alcatel-Lucent's Chief Executive, Ben Verwaayen, who took over the helm after the alleged payments were made and swiftly took the unprecedented step of terminate all of the company's agents.⁶⁶

Corruption and Sustainable Development

Neither corporations nor governments benefit in the long run when a bribe is requested, offered, or delivered. Corruption is indicative of lacking political accountability, disrespect for property rights, and less transparent markets. All of these factors mitigate growth and retard development in both the public and private sectors.

⁵⁷ See generally David Barstow, *Wal-Mart Hushed Up a Vast Mexican Bribery Case*, NY Times (Apr. 21 2012) available at <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all>.

⁵⁸ See, e.g., Stephen Foley, *Wal-Mart Shares Plunge After Mexico Corruption Allegations*, The Independent (Apr. 24, 2012) available at <http://www.independent.co.uk/news/world/americas/walmart-shares-plunge-after-mexico-corruption-allegations-7670579.html>.

⁵⁹ See Abram Brown, *Mexican Bribery Scandal Could Cost Wal-Mart \$4.5 Billion; Shares Down 4.7%*, Forbes (Apr. 23, 2012) available at <http://www.forbes.com/sites/abrambrown/2012/04/23/spooked-investors-sink-wal-mart-nearly-5-after-bribery-revelations-at-least-4-5b-penalty-likely/>.

⁶⁰ *Id.*

⁶¹ See Eigen, *supra* note 23, at 339.

⁶² See Blade, *No Tolerance for Corruption: Walmart Chairman*, AFP (Jan. 6, 2012) available at <http://news.yahoo.com/no-tolerance-corruption-walmart-chairman-184120516.html>.

⁶³ See Eigen, *supra* note 23, at 339.

⁶⁴ *Id.*

⁶⁵ See *Alcatel-Lucent Pays \$137 Million to Settle FCPA Probe*, Wall St. J., Dec. 27, 2010.

⁶⁶ *Id.*

Corruption indicates a lack of political accountability,⁶⁷ which is tied to minimal economic freedom.⁶⁸ Recent studies measuring economic freedom find that increases the level of economic freedom as they measure it to be associated with statistically significant, higher levels of average economic growth during the same period.⁶⁹ Other studies show that countries ranked highly on the Economic Freedom of the World Index recognize average annual real GDP Growth of 3.4%. This is compared to the 0.4% growth for countries ranked in the lowest tier on the Index.⁷⁰ Conceptually, these statistics are not surprising. Corruption -- displayed by lack of political accountability -- lowers investment since lenders are reluctant to lend when borrowing governments are not being honest about their financial prospects.⁷¹ In corrupt societies, the aid that does come in is often misallocated or used merely for the benefit of individual officials.⁷² Misallocation of resources can deplete government revenues. Some studies suggest countries have lost up to 20% of their internal revenues through corruption.⁷³

Corruption also limits market transparency which further frustrates development.⁷⁴ Lack of transparency creates inefficiencies and ossifies markets by excluding new participants.⁷⁵ Corruption-fueled inefficiencies thus limit economic prosperity on a national level. Complicated land acquisition laws in India create numerous opportunities for corruption at the local level.⁷⁶ These inefficiencies are hindering private sector growth, as manufacturers are becoming hesitant to acquire land in India. The result has been a 2% drop in the nation's growth rate.⁷⁷ In another example, Guatemala reported a 43% savings in medicine purchases after it eliminated corrupt policies that limited competition and were susceptible to bribery.⁷⁸ When new competitors are not allowed into the market, quality control and infrastructure can suffer as well.⁷⁹ Because certain contractors operating in a corrupt society need not worry about producing the most competitive product in order to secure a contract, the quality of infrastructure can be reduced.⁸⁰ This weak infrastructure, along with the bureaucratic delay often associated with lacking transparency, has ramifications for the private sector as well.⁸¹

⁶⁷ See generally Toke S. Aidt, *Corruption, Institutions, and Economic Development*, 25 Oxford Rev. of Econ. Pol'y 271 (2009).

⁶⁸ *Id.* See also Sean-Pierre Chauffour, *On the Relevance of Freedom and Entitlement in Development: New Empirical Evidence (1975-2007)*, World Bank Policy Research Working Paper.

⁶⁹ *Id.* at 6, 19. In this study, economic freedom is measured on an index by looking at 1) legal structure and security of property rights, 2) access to sound money, 3) the freedom to trade internationally, and 4) the regulation of credit, labor, and business. The first standard is measured by looking at elements indicative of corruption such as judicial independence, integrity, and military interference with the rule of law. See generally Chauffour, *infra* note 97, at 11.

⁷⁰ *Id.* (citing K.A. Getz and R.J. Coleman, *Culture, Perceived Corruption, and Economics*, 40 Business & Society, 1, 7-30 (2001)).

⁷¹ See, e.g., Alan Larson, *Promoting Development by Enhancing Integrity and Limiting Corruption*, Remarks to The World bank, May 30, 2012. See also Harms, *supra* note 65, at 165.

⁷² See Harms, *supra* note 65, at 165-67.

⁷³ United Nations Office on Drugs and Crime (UNDOC), *Promoting Health, Security, and Justice: 2010 Annual Report* (2010).

⁷⁴ See EITI, Fact Sheet 01 (2012) available at www.eiti.org.

⁷⁵ See, e.g., Spahn, *supra* note 62, at 875.

⁷⁶ See Simon Denyer, *India's Manufacturing Hits Brick Wall As Economy Slows*, Wash. Post, May 31, 2012, at A7.

⁷⁷ *Id.*

⁷⁸ See Anne Janet DeAses, *Developing Countries: Increasing Transparency and Other Methods of Eliminating Corruption in the Public Procurement Process*, 34 Pub. Cont. L.J. 553, 567 (2005).

⁷⁹ See *id.* at 894-99.

⁸⁰ Harms, *supra* note 65, at 165.

⁸¹ See Hess, *supra* note 15, at n.23.

Recent studies show increased bribery rates are directly associated with reduction in a firm's growth. One such study surveyed Ugandan firms and found a 1% increase in incidence of bribery led to a 3% reduction in firm growth.⁸² Similarly, the World Bank has noted that moving a business from a country with a low level of corruption to a country with a medium or high level of corruption is equivalent to levying a 20% tax on that business.⁸³ If corruption does lead to any benefits, they only come in the form of short-term gains for corrupt officials. Take for example recent events in Afghanistan. In 2010, Kabul Bank lost about \$900 million in insider deals and corrupt dealings benefiting an elite few.⁸⁴ As a result, an already fledgling economy was pushed to the brink of absolute ruin.⁸⁵ This sort of short-term gain for a few comes at the expense of long-term growth for government, citizens, and corporations.⁸⁶ In short, when it comes to sustainable development and economic growth, the concept of "efficient corruption" is little more than a dangerous fallacy.⁸⁷

c. Responses

The past decade has seen an explosion in the number of international groups and conventions focused on anti-corruption initiatives. The United Nations' adoption of the U.N. Convention Against Corruption (UNCAC) marked a global endorsement of the anti-corruption movement.⁸⁸ The convention - which seeks to prevent and criminalize corruption as well as increase international cooperation in corruption prosecution -- currently has 140 signatories.⁸⁹ There are other international agreements containing anti-bribery provisions, although like the OECD Anti-Bribery Convention, it is difficult to pinpoint their tangible impact.

EITI

In 1999 an NGO, Global Witness, published a report shedding light on the role played by the oil and banking industries in Angola's bloody civil war.⁹⁰ Global Witness then teamed with TI to expand the "Publish What You Pay" campaign, geared towards ensuring revenues from natural resource extraction reached transparent official budgets.⁹¹ After the campaign attracted the attention of George Soros and then U.K. Prime Minister Tony Blair, the Extractive Industries Transparency Initiative (EITI) was born.⁹² Through the use of disclosure requirements and intensive auditing, the EITI seeks to give the citizens of

⁸² See Aidt, *supra* note 77, at 676 (citing R. Fisman and J. Svensson, *Are Corruption and Taxation Really Harmful to Growth? Firm Level Evidence*, 83 *European J. of Dev. and Econ*, 1, 63-75 (2007)).

⁸³ UNODC, *Promoting Health*, *supra* note 82, at 36.

⁸⁴ See James Risen, *Intrigue in Karzai Family as an Afghan Era Closes*, *NY Times*, June 3, 2012, available at <http://www.nytimes.com/2012/06/04/world/asia/karzai-family-moves-to-protect-its-privilege.html>.

⁸⁵ See Jon Boone, *The Financial Scandal that Broke Afghanistan's Kabul Bank*, *The Guardian*, June 16, 2011, available at <http://www.guardian.co.uk/world/2011/jun/16/kabul-bank-afghanistan-financial-scandal>.

⁸⁶ See Harms, *supra* note 65, at 166.

⁸⁷ Aidt, *supra* note 77, at 271.

⁸⁸ See generally Maria Gavouneli, *Enhancing the Impact of the Convention: A Reflection Paper*, Expert Meeting of the OECD Anti-Bribery Convention: The Road Ahead (Nov. 21, 2007). The UNCAC appears to be facing the same enforcement problems as the OECD Convention. *Id.*

⁸⁹ See generally United Nations, U.N. Convention Against Corruption (2012) available at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

⁹⁰ Eigen, *supra* note 23, at 332-35.

⁹¹ *Id.*

⁹² *Id.*

resource-rich nations confidence that the money being received for natural resources is actually reaching government accounts in a non-corrupt manner.⁹³

Here too I was involved, serving on a small international task force created by Lord Brown, then head of BP, to recommend ways the Baku-Tblisi-Ceyhan crude oil pipeline could be a model extractive industry project at a number of levels, including avoiding corruption. We recommended, and BP agreed, to become the first energy company to sign the EITI pledge. Currently, thirteen resource-rich nations are members of the EITI.⁹⁴ An additional twenty countries are currently candidates to join the initiative,⁹⁵ and several countries and the European Union provide political, technical, and financial support to the initiative.⁹⁶ Today, over sixty of the world's largest oil, gas, and mining companies are supporting the EITI.⁹⁷

Joining the EITI, is not like joining of social club. in order to be part of the EITI, a country must go through a candidacy phase in which it issues an unequivocal public statement of its intention to implement the EITI, commits to work with civil society and companies in implementing the initiative, appoints a senior individual to lead the implementation, and establishes a multi-stakeholder group to create an implementation plan.⁹⁸ After becoming a candidate, and in order to become EITI compliant, the country must adhere to an additional fourteen requirements focused on engaging civil society and corporations as well as ensuring transparent corporate and government reporting in the oil, gas, and mining industries.⁹⁹ A country can only retain EITI member status if it consistently adheres to all of the candidate and compliance principles listed above.¹⁰⁰ Interestingly, the U.S. is not yet a member of EITI, but is in the process of becoming one.

UN Global Compact

In 1999, U.N. Secretary General Kofi Annan called on the world's business leaders to embrace and promote the core principles at the center of the U.N.'s mission.¹⁰¹ This challenge -- leveled largely in an effort to expand the U.N.'s reach to non-state actors -- eventually led to the public-private partnership known as the U.N. Global Compact.¹⁰² Initially the partnership only focused on the areas of human rights, labor, and the environment. But, in 2004, the Global Compact members decided to add a focus on anti-corruption.¹⁰³ This focus was formalized when the Compact agreed to a tenth governing principle, which stated that "businesses should work against corruption in all its forms, including extortion and

⁹³ *Id.* at 334.

⁹⁴ Azerbaijan, Central African Republic, Ghana, Kyrgyz Republic, Liberia, Mali, Mauritania, Mongolia, Niger, Nigeria, Norway, Peru, Timor-Leste. See EITI, Countries List (2011) available at <http://eiti.org/countries>.

⁹⁵ Candidate countries are Afghanistan, Albania, Burkina Faso, Cameroon, Chad, Ivory Coast, Democratic Republic of Congo, Gabon, Guatemala, Guinea, Indonesia, Iraq, Kazakhstan, Mozambique, Republic of the Congo, Sierra Leone, Tanzania, Togo, Trinidad and Tobago, and Zambia. *Id.*

⁹⁶ See EITI, Supporting Countries (2012) available at <http://eiti.org/supporters/countries>.

⁹⁷ See EITI, Supporting Companies (2012) available at <http://eiti.org/supporters/companies>.

⁹⁸ See generally EITI, EITI Rules: 2011 Edition (2011).

⁹⁹ *Id.* at 13.

¹⁰⁰ *Id.*

¹⁰¹ See Surya Deva, *Global Compact: A Critique of the U.N.'s "Public-Private" Partnership for Promoting Corporate Citizenship*, 34 Syracuse J. Int'l L. & Com. 107, 110 (2006).

¹⁰² *Id.* at 107-11.

¹⁰³ *Id.* at 114-15.

bribery.”¹⁰⁴ The Global Compact’s website indicates it currently has over 10,000 participant corporations. The adoption of the anti-corruption principle, however, does not seem to be resulting in tangible changes to business practices for a majority of those companies. Currently only 30% of participant companies have anti-corruption monitoring and disclosure practices in place.¹⁰⁵ The lack of voluntary compliance is problematic since the Compact lacks an enforcement mechanism.¹⁰⁶

Governments and multilateral institutions are now acting more forcefully to deal with corruption in countries to whom they extend assistance. U.S. foreign assistance contracts and agreements contain anti-corruption clauses. World Bank contracts contain similar anti-corruption provisions. Just a few days ago, the U.S. terminated funding for a \$20 million project to develop a Pakistani version of “Sesame Street”, after a local newspaper reported allegations of corruption by the local puppet theater working on the initiative. (Sebastian Abbot, “U.S. Ends Funding for Pakistan’s ‘Sesame Street’”, Associated Press, June 5, 2012). In the wake of the Arab Spring, the G-8 Summit this year gave prominence to transparency, fighting corruption, and the return of assets allegedly “stolen” by corrupt officials.

Open Government Partnership

In 2011, eight countries came together to establish the Open Government Partnership (OGP).¹⁰⁷ This multinational initiative seeks to secure concrete commitments from governments to “promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.”¹⁰⁸ While many international anticorruption conventions emphasize legal penalties for corrupt activities, the OGP seeks to limit corruption by focusing on transparency.¹⁰⁹ Therefore, the OGP encourages countries to focus on the use of technology to engage civil society in addition to government enforcement of legal penalties.¹¹⁰

After just one year in operation, close to fifty nations have joined the Partnership.¹¹¹ So far, member nations have taken steps such as creating websites that increase citizens’ abilities to understand how public resources are being spent and how to petition the government.¹¹²

Millennium Challenge Corporation

In 2004 President George W. Bush signed into law the Millennium Challenge Act.¹¹³ The Act established the Millennium Challenge Corporation (MCC), which has a multi-year budget of

¹⁰⁴ See UN Global Compact, About the Global Compact (2012) available at <http://www.unglobalcompact.org/AbouttheGC/TheTenPrinciples/anti-corruption.html>.

¹⁰⁵ See generally UN Global Compact, UN Global Compact Annual Report (2011).

¹⁰⁶ See, e.g., UN Global Compact, Sample UN Global Compact Entry Letter for the U.S. Companies Approved by the American Bar Association (2012) available at www.unglobalcompact.org/docs/news.../aba_sample_new.pdf (“It is our understanding that the Global Compact reflects shared values and principles between the United Nations and businesses such as our company, but that the Global Compact is not a grading or enforcement mechanism nor does it involve any concepts of profit or technology transfers.”).

¹⁰⁷ Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, the United States, and the United Kingdom founded the OGP. See Open Government Partnership, About The OGP (2012) available at www.opengovpartnership.org.

¹⁰⁸ See Open Government Partnership, OGP Brochure (2012) available at www.opengovpartnership.org.

¹⁰⁹ See generally The White House, Fact Sheet: The Open Government Partnership (Sept. 20, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/09/20/fact-sheet-open-government-partnership>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Hillary Rodham Clinton, Remarks at the Open Government Partnership Opening Session, Brasilia, Brazil (Apr. 17 2012), available at <http://www.state.gov/secretary/rm/2012/04/188008.htm>.

approximately \$7 billion to dispense in foreign aid for poverty reduction and sustainable growth initiatives.¹¹⁴ The MCC places governance issues in general and the level of corruption in general at the heart of aid delivery, allocating funds to developing countries who show a commitment to 1) governing justly, 2) investing in their people, and 3) encouraging economic freedom.¹¹⁵ The MCC explicitly states transparency and anti-corruption efforts are at the heart of “governing justly.”¹¹⁶ The MCC gives developing countries tangible incentive to curb corruption. Many countries that just miss meeting MCC requirements do so because of an inadequate score on “controlling corruption,” which is treated as the only “hard hurdle” among the indicators used. If a country does not perform above the median on the corruption indicator, it is generally deemed ineligible for MCC funding, a reflection of the importance placed on good governance as a basis for development success. The majority of MCC programs to assist candidate countries to become eligible for full MCC assistance programs focus on anti-corruption initiatives. There is an “MCC effect” that has encouraged candidate countries to address areas of weakness such as corruption. MCC has documented country-specific efforts to successfully improve their anti-corruption indicators.

APEC

In 2004, Asia-Pacific Economic Cooperation (APEC) officially endorsed the APEC Course of Action on Fighting Corruption and Ensuring Transparency, which agreed to strengthen measures to prevent and fight corruption; deny safe haven to officials guilty of public corruption; engage civil society to fight corruption; and to cooperate among APEC member economies to combat corruption.

The G8: For many years, the G8 process has urged and advanced action against corruption, often driven by the United States. Hosted by President Obama, this year’s G8 Summit also stressed commitments on openness, transparency and inclusion, especially as an area of cooperation with partner countries in the Middle East and North Africa -- Tunisia, Jordan, Morocco, Libya and Egypt -- many in the midst of major transitions. Secretary of State Clinton has also been a tireless advocate for transparency and other anti-corruption efforts. Transparency International gave her their integrity award this year, in fact, for that stance.

Yet, despite all of these pledges and international focus, enforcement lags far behind enforcement. This is where cities can take a leadership role, and follow the path that New York City has taken.

III. The Role of Cities: Transparent Procurement

Cities can play a central role in combatting corruption. The discussion in Section I mostly focused on international efforts to curb the delivery of bribes through mechanisms such as the FCPA. This is sometimes referred to as the “supply-side” of bribery.¹¹⁷ Many of the conventions discussed,

¹¹³ See generally Rebecca Stubbs, *The Millennium Challenge Account: Influencing Governance in Developing Countries Through Performance-Based Foreign Aid*, 42 Vand. J. Transnat'l L. 621, 622-27 (2009).

¹¹⁴ *Id.* at 624-25.

¹¹⁵ *Id.*

¹¹⁶ Millennium Challenge Corporation, Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2012 (2012) available at www.mcc.gov.

¹¹⁷ See, e.g., Tarullo, *supra* note 6, at 681.

however, also attack the “demand-side” of bribery.¹¹⁸ Limiting the demand for corruption is primarily achieved by regulating the procurement process. A significant amount of procurement in the world occurs at the local level.¹¹⁹ Therefore, city officials can be a major source of corruption demand.¹²⁰

Focusing on Article 9 of the UNCAC, a G20 monitoring report recently highlighted the importance of fair and transparent government procurement systems in combating corruption.¹²¹ As noted above, lack of transparency is a common element of corruption and has negative effects on sustainable growth. To increase transparency in the procurement process, the UNCAC recommends that governments systematically publish all relevant information relating to the entire procurement process, emphasize a competitive bidding process, allow bidders sufficient time to prepare and submit their tenders, use objective and predetermined criteria for public procurement decisions, establish a clear chain of responsibility and accountability for the procurement process, establish effective system of domestic review, and establish procedures allowing for the suspension of private sector entities involved in corrupt practices.¹²² New York City provides a particularly strong example of what these global principles can look like at the local level, as the City has created mechanisms to combat both the supply and demand sides of corruption.

First of all, New York has an incredibly transparent procurement system. The City has an entire agency, the Mayor’s Office of Contract Services (MOCS), committed to transparent procurement.¹²³ MOCS works to ensure the approximately \$15 billion worth of procurement expenses in the city achieves the best value for taxpayers’ dollars while encouraging fair treatment of all vendors.¹²⁴ The MOCS only contracts with “responsible vendors,” who are defined as vendors who have the technical capability and financial capacity to fully perform the contract requirements, as well as the business integrity to justify the award of public tax dollars.¹²⁵ At the core of MOCS transparency is the VENDEX database. This database is accessible by the public, and contains information on prospective vendors and every city contract over \$100,000.¹²⁶ The MOCS responsible vendor criteria, along with information available via VENDEX, allow the City to avoid the market inefficiencies and quality control problems discussed above in Section II.

Vetting vendors under MOCS requirements is a task left to the city’s Department of Investigation (DOI). Among other things, this department collects facts on a vendor’s compliance for the contracting City agency.¹²⁷ Through robust funding and staffing of DOI, the City ensures the anti-corruption measures are being fully enforced.¹²⁸ DOI has sufficient resources to attack both the demand- and supply-sides of corruption. A city law mandates that *all* City employees have an affirmative obligation to report

¹¹⁸ See, e.g., OECD, Keeping Government Contracts Clean, OECD Observer (2008).

¹¹⁹ See, e.g., Joseph A. Cosentino, *New York City’s Procurement System: Reversing the Cycle of Corruption and Reactionary Reform*, 42 N.Y.L. Rev. 1183 (1988).

¹²⁰ *Id.* See also *Protesting ‘dictatorship’ and ‘corruption’ Chinese peasants and workers take to the street*, Merco Press (Nov. 22, 2011) available at <http://en.mercopress.com/2011/11/22/protesting-dictatorship-and-corruption-chinese-peasants-and-workers-take-to-the-streets>.

¹²¹ G20, Anti-Corruption Action Plan: Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment (2011).

¹²² *Id.* See also DeAses, *supra* note 86, at 561.

¹²³ See generally New York City, About MOCS (2012), available at www.nyc.gov/html/mocs/html/about/about.shtml

¹²⁴ *Id.*

¹²⁵ See generally New York City, Vender Responsibility, MOCS, available at <http://www.nyc.gov/html/mocs/html/procurement/responsibility.shtml>.

¹²⁶ *Id.*

¹²⁷ New York Department of Investigation, Bullet Points from New York City Department of Investigation (DOI) (2012).

¹²⁸ *Id.*

any corrupt acts taking place in City government.¹²⁹ With 400 members, DOI is able to investigate the high volume of claims coming through these avenues.¹³⁰

Government agencies need not have the financial stability or size of New York City in order to pursue similar anti-corruption measures. Even under-resourced local agencies can do their part to combat corruption via transparency in procurement. Take for example the Los Angeles Unified School District (LAUSD). The LAUSD is currently facing a budget shortfall of over half a billion dollars.¹³¹ Despite this, the department runs an incredibly transparent procurement process. In an effort to maximize competition and provide the highest quality goods to LAUSD schools, every single individual associated with an LAUSD procurement contract plays a role in ensuring transparency under the LAUSD Contractor Code of Conduct.¹³² The Code of Conduct goes so far as prohibiting contractors and any of their representatives from contacting any LAUSD official during the bidding and contracting process, thus ensuring that even the appearance of undue influence is eliminated from procurement.¹³³ LAUSD further promotes transparency by maintaining a website that stores procurement information so that any party interested can view current and upcoming bids and contracts.¹³⁴

The examples of LAUSD and New York City show steps local officials can take to increase the public's confidence in local government and combat corruption. Given the amount of contracting done at the local level, it is fair to assume international attempts to combat corruption will be frustrated without comparable efforts by local governments across the globe.

CONCLUSION

Global efforts to combat corruption, which started with the FCPA, continue to receive verbal political support around the world. There is a question, however, as to whether this verbal support is translating into actual enforcement of anti-corruption initiatives internationally. Enforcement of the numerous conventions currently in effect should be prioritized since corruption limits sustainable growth. Finally, as highlighted by the example of New York City, local governments can play a key role in increasing transparency and limiting corruption through open procurement practices.

¹²⁹ Rose Gill Hearn, *The New York City Department of Investigation: A Century of Oversight*, NYSBA Gov., L. and Pol'y J. 36 (Winter 2011).

¹³⁰ *Id.* at 33.

¹³¹ See, e.g., Tami Abdollah, *LAUSD Budget Shortfall: \$543 Million and Thousands Could Be Laid Off*, Southern California Public Radio (Jan. 10, 2012) available at <http://www.scpr.org/blogs/education/2012/01/10/4220/la-unified-543-million-budget-shortfall-parcel-tax/>

¹³² LAUSD Ethics Office, *Los Angeles Unified School District Contractor Code of Conduct* (2012) available at www.lausd.net/ethics.

¹³³ *Id.*

¹³⁴ LAUSD, Procurement Services Division website (2012) available at <https://psd.lausd.net/vendors/>.

Appendix A

This appendix displays the relationship between two indexes: Transparency International's Corruption Perceptions Index¹³⁵ and the World Bank's Ease of Doing Business Rankings.¹³⁶

Transparency International's Corruption Perception Index ranks countries/territories based on how corrupt their public sector is perceived to be. A country's rank indicates its position relative to the other countries/territories included in the index.

The World Bank's Ease of Doing Business Rankings rank economies on their ease of doing business. A high ranking on the ease of doing business index means the regulatory environment is more conducive to the starting and operation of a local firm. The rankings for all economies are benchmarked to June 2011.

Based on these rankings, Table 1 shows the top ten most transparent nations and their correlating Ease of Doing Business rank. Table 2 shows the ten least transparent nations and their correlating Ease of Doing Business rank. The next two tables provide similar information, but focus on the top ten and bottom ten nations from the Ease of Doing Business Rankings.

TABLE 1: Ten Most Transparent Nations

Country	TI Transparency Ranking	Ease of Doing Business Ranking
New Zealand	1	3
Denmark	2	5
Finland	3	11
Sweden	4	14
Singapore	5	1
Norway	6	6
Netherlands	7	31
Australia	8	15
Switzerland	9	26
Canada	10	13

TABLE 2: Ten Least Transparent Nations

Country	TI Transparency Ranking	Ease of Doing Business Ranking
North Korea	182	(unavailable)
Somalia	182	(unavailable)
Myanmar	180	(unavailable)
Afghanistan	180	160
Turkmenistan	177	(unavailable)
Sudan	177	135

¹³⁵ The index is available at <http://cpi.transparency.org/cpi2011/results/>

¹³⁶ The ranking is available at: <http://www.doingbusiness.org/rankings>

Uzbekistan	177	166
Haiti	175	174
Iraq	175	164
Burundi	All tied at 172	169
Equatorial Guinea		155
Libya		(unavailable)
Venezuela		177

TABLE 3: Ten Easiest Countries to do Business In

Country	Ease of Doing Business Ranking	TI Transparency Ranking
Singapore	1	5
Hong Kong	2	12
New Zealand	3	1
United States	4	24 ⁱ
Denmark	5	2
Norway	6	6
United Kingdom	7	16
South Korea	8	43
Iceland	9	13
Ireland	10	19

TABLE 4: Ten Most Difficult Countries to do Business In

Country	Ease of Doing Business Ranking	TI Transparency Ranking
Chad	183	168
Central African Republic	182	154
Congo Republic	181	154
Eritrea	180	134
Guinea	179	164
Democratic Republic of the Congo	178	168
Venezuela	177	172
Guinea-Bissau	176	154
Benin	175	100
Haiti	174	175

ⁱ The U.S. ranking on TI's Transparency Index may be surprising. The Index reflects views of "observers from around the world, including experts living and working in the countries evaluated". See Transparency International, What is the Corruption Index: Frequently Asked Questions (2011). For the purposes of the index, TI defines corruption as "the abuse of entrusted power for private gain." *Id.* One article notes two potential reasons for the perception of increased corruption in America: 1) failure of the regulatory process in the mortgage crisis which led to record foreclosure rates and 2) flood of spending on political campaigns in the wake of *Citizens United v. FEC*. See Patrick Donahue, *U.S. Falls in Corruption Ranking as Crisis Hits Confidence*, Bloomberg, Oct. 26, 2010.