

GUEST ESSAYS

CIVIL SOCIETY & THE PRIVATE SECTOR

CIVIL SOCIETY AND BUSINESS: MEETING A RISING CHALLENGE TO PROSPERITY AND SECURITY

FRANK VOGL¹

INTRODUCTION

Lukas Straumann is a seemingly mild-mannered, low-key Swiss citizen with an iron determination to fight corruption. Straumann, Executive Director of the Bruno Manser human rights and rain forest protection fund, has worked tirelessly to build international action to protect the rainforests of Malaysia and their indigenous peoples from destruction by a formidable government and business partnership.

His work has been aided by courageous journalism, notably by former BBC reporter Clare Rewcastle; investigations by UK-based civil society organisation (CSO) Global Witness; years of dedicated work by film-makers Erik Pauser and Dylan Williams; and the extraordinary bravery of the forest peoples of Sarawak. In a 2016 documentary film, *The Borneo Case*, and a 2014 book, *Money Logging*, Straumann and his partners describe how Abdul Taib bin Mahmud, who served as Governor of Sarawak, Malaysia, for over 30 years, established more than 400 businesses in 25 countries. The work by Straumann and his friends to expose Taib Mahmud's timber activities drove him from office.

The campaign continues, despite threats to the lives of many of those who are involved. Greater global awareness of this environmental tragedy is likely as the documentary is shown internationally,

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thanks in part to Jess Search, chief executive of the non-profit Britdoc group, which helps campaigning film-makers to develop and distribute their movies.

This campaign, bringing together people with diverse and complementary talents, demonstrates how civil society leaders can challenge business corruption and strive to save lives and the environment. The world's wealthiest countries, however, continue to import furniture and other goods made with the timber from corporations such as those controlled by Taib Mahmud, while also placing strategic and business interests at the top of their priorities when dealing with the government of Malaysia. Straumann has concluded, at least for now, that:

"No national government is willing to risk its relations with a leading figure in the government of another sovereign state because of corruption."

Civil society has been active for more than 20 years in campaigning to curb business corruption across the world. It has exposed scandals; forged multi-stakeholder partnerships with business and government; initiated transparency pacts and integrity pacts with groups of enterprises bidding on public procurement; set high standards of business ethics and campaigned for their adoption by the world's largest companies; challenged banks over their money-laundering operations; documented the degree to which companies pursue in-house anti-corruption compliance training with their employees; led the charge for new international conventions and national laws and regulations to curb bribe payments by firms to foreign government officials; forged new technologies to improve transparency and honesty in public procurement; and worked closely with investigative reporters and editorial writers to successfully raise public awareness across the world of the intense damage that business corruption does to economic well-being and security.

The combination of all of these initiatives and actions has resulted in a heightening of international awareness not only of the scale of business corruption, but also of the need for far greater enforcement of conventions, laws and regulations to shame and punish businesses, and their top executives, who engage in corrupt practices. Moreover, the scale of most of the different types of anti-business corruption actions pursued by CSOs has increased significantly over the last two decades. Many civil society leaders have worked with great dedication at international and national levels on these topics.

We have seen the development of many "islands of integrity," to borrow a phrase once coined by Peter Eigen, the founder of anti-corruption CSO Transparency International. But I believe these islands remain in the midst of great oceans of corruption.

In many respects the multiple efforts by civil society to reduce business corruption have proven to be far from sufficient. We may be losing the battle today as increasing numbers of businesses become more sophisticated, using new technologies and creating multiple secret companies sheltered in offshore havens to assist them. Tax evasion and avoidance is an increasing aspect of global corporate corruption.

Overall, perhaps civil society has so far planted many seeds that in time will blossom and change the landscape. This article looks at some of those seeds and some of the “islands of integrity,” both to describe some of the initiatives that are underway, and underscore the immensity of the challenge.

BUSINESS CORRUPTION

Business owners commit corrupt acts when they abuse the power entrusted to them by their stakeholders for their personal gain.

The goals of business should not only be the maximisation of profits in honest and ethical ways; they should also embrace supporting the broad interests of all those stakeholders who make the business viable: shareholders, employees, customers and suppliers. Business owners should see themselves as being accountable to their stakeholders. Many do not. Many owners of many businesses cheat their stakeholders by taking for themselves and their co-owners an excessive portion of the profits and so short-changing those who have made their businesses possible.

Many businesses in many countries abuse their entrusted power by routinely paying bribes. Many small- and medium-sized businesses in many countries routinely pay bribes to the police for protection, to low-level officials for licenses and permits, and to customs officials to get their goods through the ports. These bribe-paying business people also frequently pay so-called agents to distribute bribes to government officials who allocate public procurement contracts, and they join with so-called competitors to form cartels to rig bids for such contracts.

Meanwhile, numerous major global corporations, including major banks, engage in corrupt practices in their domestic and foreign operations. Grand corporate corruption takes many forms: from bribes to foreign government officials for contracts and licenses; to the multiple uses of shell companies to hide transnational illicit trade, often in tandem with organised crime networks, including in arms, counterfeit medicines and fake pesticides; to assisting kleptocratic government leaders and their cronies to launder vast sums of cash into real estate, fine art, planes, securities, gold and other assets in the world’s largest financial centres, including London, New York and Zurich.

Such considerations go to the core of global security. Owners of legally registered gun shops in the USA sell substantial numbers of guns to many people who act on behalf of Mexican drug cartels that smuggle these weapons across the border. Gerardo Reyes, head of investigative reporting for Univision, says that 53 people are murdered every day in Mexico, mostly with guns. His chilling documentary, *The Fast and Furious Operation*, uncovers the dirty deals.

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More broadly, [Andrew Feinstein](#), a former South African Member of Parliament, in his book, *Inside the Arms Trade*, makes the case that corruption is of central importance to the arms trade and global security, and that this is not just a matter of corruption in the global south, but the global north as well. He asserts that:

“With bribery and corruption de rigueur there are very few arms transactions that are entirely above board.”

LEADERSHIP

With so much at stake it is encouraging that CSOs have made efforts to tackle every facet of corporate corruption. If they have not succeeded anywhere near sufficiently it is primarily for two reasons: first, the failure of governments to act on their own anti-corruption rhetoric; and second, the hypocrisy of too many leaders of major global enterprises. There is both a governmental and a business deficit when it comes to walking the integrity talk.

The long annals of business history do not suggest that corporations will come together in sufficient numbers and with such strident unified determination to curb corruption substantially on a voluntary basis. However, there are powerful leaders in the corporate world who are striving to do the right thing, and ensure that their corporations are models of integrity and social responsibility.

Paul Polman, the very fast-talking chief executive officer of Unilever, the Anglo-Dutch food industry giant, has worked tirelessly through the World Economic Forum (WEF), the United Nations (UN) Global Compact, the World Business Council for Sustainable Development and other organisations to promote business ethics across the many areas of corporate social responsibility. [Unilever](#) stresses that:

“Our distinct Purpose and our operational expertise across our business model will help realize our vision of accelerating growth in the business, while reducing our environmental footprint and increasing our positive social impact.”

Polman, and some other former top corporate executives, such as Norman Augustine at Lockheed Martin and Mark Moody-Stuart at Royal Dutch Shell, have been champions in promoting fair and square and non-corrupt business practices. But they are and were the exceptions. Most leaders of giant global enterprises are either silent on the corruption issue, or fail to provide concrete evidence that their firms go beyond regulatory compliance to operate in every respect with honesty and integrity. Too many corporations, for example, declare their anti-corruption policies, but see nothing wrong in taking advantage of clauses in laws related to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention that permit so-called “facilitating payments” to foreign customs, immigration and other government officials. Those payments are bribes.

In recent years, the increasing pressures by private equity firms and hedge funds on publicly listed companies to maximise short-term profits have dominated the actions of too many corporate leaders. The tone at the top of many multinational corporations is set by the determined effort to boost bonuses. No wonder that corporate corruption flourishes.

We cannot rely on business leaders alone to heal themselves of their greedy proclivities. Governments ought to take the lead. To do this demands that they build and sustain powerful systems of justice that have substantial resources to investigate corruption, the full freedom to prosecute even the most powerful political and corporate titans, the independence to hold open and fair trials, and the capacity to enforce meaningful punishments on those who are found guilty.

Very few governments are doing this today. In many global south countries, as well as countries in Central and Eastern Europe, there is neither the will to ensure that justice systems end impunity for leaders of the political and business establishments, nor the resources to build and sustain police forces and judges that ensure the security of citizens, rather than extort citizens.

Many advanced industrial countries also have vast gaps in their law enforcement systems when it comes to business corruption. The scale of laundered cash flowing in all manner of investments into these countries attests to the fact that justice systems are too often too weak to engage with the money laundering armies of enablers, such as accountants, agents, brokers, consultants and lawyers, and the major financial institutions that they work with. No institution has done more to prosecute major corporations for bribing foreign government officials and for investigating the corrupt actions of the world's largest banks than the US Department of Justice. The banks, for example, have settled US cases by paying tens of billions of US dollars in fines. But the banks may well just see this as a routine cost of doing business. After all, despite money laundering, fraud, interest rate and exchange rate manipulations, not a single chief executive of a major bank has been put on trial, let alone sent to prison.

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CIVIL SOCIETY AND BUSINESS

There are a number of roles that civil society can play in taking on the challenges outlined above:

EXPOSING

Reform must start with evidence. In no area of activity involving civil society has there been as much success in the fight to curb corporate crime than in building research, marshalling the incriminating facts and then exposing the misdeeds. CSOs, combining or working with investigative reporters, have been particularly active and effective in exposing corruption related to natural resources.

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The major Hollywood movie *Blood Diamond*, based on research by Global Witness, brought into sharp perspective the enormous security threats that are posed by corrupt regimes and their agents in managing precious minerals that are in the ground in their countries. The movie probably helped to educate many people around the world about the connections between illicit trade in precious minerals and terrorism and civil war. Global Witness has been unrelenting in keeping pressure on governments to curb activities in this lethal area.

The work of Lukas Straumann and his colleagues is another of the many examples of excellent research, good journalism and campaigning that is making it ever harder for crooked business people to hide. Thanks to the extraordinary work of the non-profit International Consortium of Investigative Journalists the world saw and read the Panama Papers, which produced more than 4,700 media reports and led over 70 countries to start investigations into the secret activities of business people who use shell companies in places such as the British Virgin Islands to hide their activities.

PARTNERSHIPS

A key response that is at the core of a wide range of projects and programmes in many countries is for business and government to join together with civil society in what the US CSO the Center for Private Enterprise (CIPE) calls '[Collective Action](#)'. CIPE has done exceptional educational work on business ethics, especially with small and medium-sized enterprises with thousands of companies. It defines 'Collection Action' as:

"...a coordinated, sustained process of cooperation among private firms and other stakeholders. It amplifies the impact of company efforts, brings vulnerable and individual players into a supportive alliance, and levels the playing field. In the fight against corruption, a coalition of companies united by a set of principles and standards can have a far greater aggregate impact."

Jermyn Brooks, a veteran adviser to Transparency International who has sought to convince businesspeople across the world to adopt anti-corruption business principles, told me in an interview for this article that a host of pioneering projects are underway in many countries. He noted, for example, projects in Egypt, Nigeria and Vietnam, where businesspeople, often guided by CSOs, are pushing ahead with joint programmes that explicitly seek to ensure there is public sector contracting where no bribes are either demanded or paid.

From Colombia to India, civil society groups have been highly active over a number of years in promoting voluntary transparency pacts and legally binding integrity pacts where rival bidders are subjected to civil society monitoring in seeking individual major public sector contracts. In Hungary, Mexico and numerous other countries, civil society groups have been pressing both governments and businesses to be more transparent and pushing to monitor corporate activities.

COMMITMENTS

Jermyn Brooks, together with Susan Cote-Freeman, who until her recent retirement led the Transparency International business team, have pressed hard over many years to secure commitments against bribe-paying by major corporations at the WEF and under the UN Global Compact. I believe

that as a result the rhetoric coming from business leaders has improved, as have the statements that firms make about anti-corruption on their websites. But both Brooks and Cote-Freeman admit that it is difficult to monitor actual performance. Nevertheless, their work, and that of others who have laboured in this area, combined with special initiatives in the healthcare and defence sectors promoted by the UK chapter of Transparency International, has increased awareness among business leaders across the world of what the anti-corruption standards should be for their enterprises.

INDUSTRY COALITIONS

Multi-stakeholder networks based on industrial sectors have deepened the 'Collective Action' approach. These now involve the construction, extractive, fisheries and textiles initiatives. The first and largest of these is the [Extractive Industries Transparency Initiative](#) (EITI), with over 60 countries participating. It owes its origins in large measure to [Publish What You Pay](#) (PWYP), an international civil society coalition launched in London by six CSOs (CAFOD, Global Witness, Open Society Foundations, Oxfam, Save the Children and Transparency International) that now embraces over 800 organisations across the world. PWYP says that it has been successful in influencing a growing number of governments to provide far more information to the public on the management and finances of extractives. It has [stated](#):

"PWYP's underlying message is simple and powerful: the citizens of countries that are rich in natural resources should not be poor. The campaign was launched because citizens have a right to know how much money is earned from the extraction of natural resources."

The [Construction Sector Transparency Initiative](#) (CoST), a group launched in 2012, like EITI brings together around one table the representatives of governments, business and civil society to find ways to curb corruption. Its Chair, Christiaan Poortman, recognises that he is working in one of the traditionally most corrupt sectors. While both government officials and companies involved in construction all agree that in theory a totally transparent marketplace for public procurement, especially for infrastructure procurement, will best serve citizens and business alike, the culture of kickbacks and bribes for contracts is deeply embedded in many national and local government authorities across the world. Portman notes that CoST has developed a detailed system of some 40 indicators that, when applied in transactions, from the initial planning and bidding for contracts all the way through to every aspect of implementation, largely secures safeguards against corruption. The key is to find governments willing to enforce the system. So far 15 have signed on.

ONLINE DATA

Gavin Hayman, the determined chief executive of the [Open Contracting Partnership](#), now sees his organisation working with more than 20 governments where corruption is rampant, including Afghanistan, Nigeria and Ukraine. Chile and South Korea are among countries where governments have pioneered in this field and demonstrated that vast savings in public finances can accrue by going online.

Hayman's organisation is helping governments to use the newest technologies to put all aspects of public contracting online, which helps to secure transparency and make it far more complicated for officials to rig bids and for contractors to make secret payments. The critical components of the

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comprehensive system that the Open Contracting partnership is promoting relate to assessing all available data, committing and engaging partners, sharing the data as widely as possible, ensuring the information is used and innovating. Hayman stresses that Open Contracting's approach creates a level playing field that "...encourages the best company offering the best service at the best price."

Civil society's critical roles in this process, says Hayman, relate to being advocates and experts and forging the multi-stakeholder partnerships that can launch and develop open contracting systems. Further, civil society groups have vital monitoring roles to ensure that contracting processes produce the desired outcomes. "It is very important that citizens see that public procurement is free of corruption," adds Hayman.

Data-driven open contracting can work for both large-scale projects and small ones. If operated well then it can have the enormous benefit of demonstrating to small and medium-sized enterprises that they can have a fair chance of winning public contracts and they no longer need to be concerned that they will lose out to big bribe-paying competitors. As this perception spreads and as increasing numbers of companies win public contracts for the first time, so national economies can start to see a shift by businesses from the informal sector, where regulation and tax collection do not exist, to the formal economy. The larger the formal economy becomes, the greater are the prospects for building institutions, not just for public procurement, but also for justice that can counter corruption.

THE CHALLENGE NOW

Finally, so many of the diverse initiatives pursued by civil society to combat business corruption go alongside efforts dating back to the mid-1990s to create effective laws that criminalise corporate bribe-paying. Back then, for example, German corporations could bribe foreign government officials and deduct the costs from their German taxes. Now, thanks to the leadership of civil society there is a formidable web of conventions, such as the OECD Anti-Bribery Convention, the UN Convention Against Corruption and large numbers of relatively new national laws and manifold regulations, including tough measures in a rising number of countries against money laundering and tax evasion. New laws and regulations against tax avoidance are likely before long.

The challenge before civil society today is to push all those governments that have passed new laws and agreed to the conventions to enforce them. Unless this happens, all of the outstanding projects that people such as Brooks, Hayman and many others have been promoting, and all of the multi-stakeholder initiatives promoted by CIPE, EITI, CoST and others, will amount to just "islands of integrity."

Far more must be done, demanding far greater civil society leadership and engagement in all countries to end business impunity, expose business bribery, and challenge governments to enforce the laws. Failure here will be most costly. Business corruption is undermining the prospects for national prosperity in scores of countries, while increasing the threats to international security.