



# Corruption and the Private Sector

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[www.transparency.org](http://www.transparency.org)

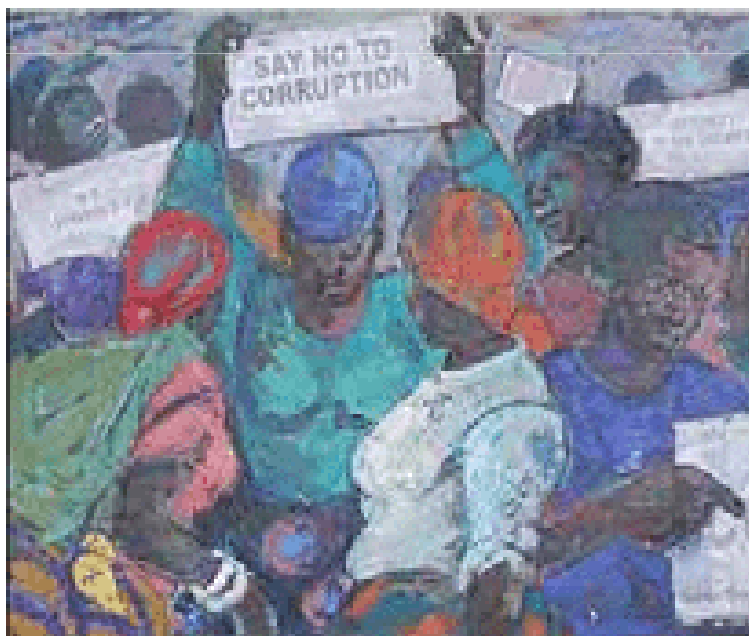
# National Chapters around the world



*The political muscle, legitimasing force and innovators of the movement...*

# TI's vision

A world in which  
government, politics, business, civil society and  
the daily lives of people are free of corruption.

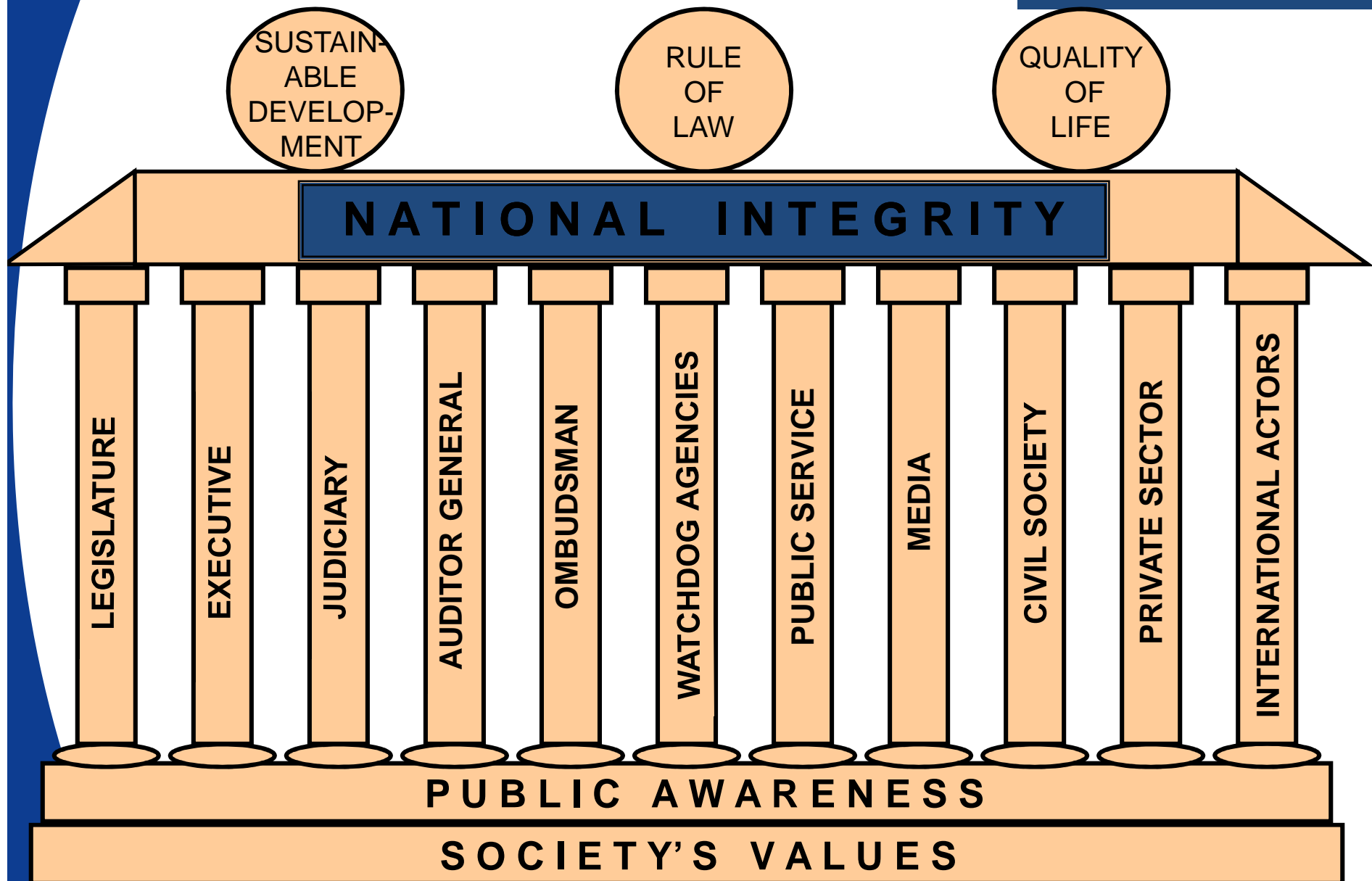


# How does TI define corruption?

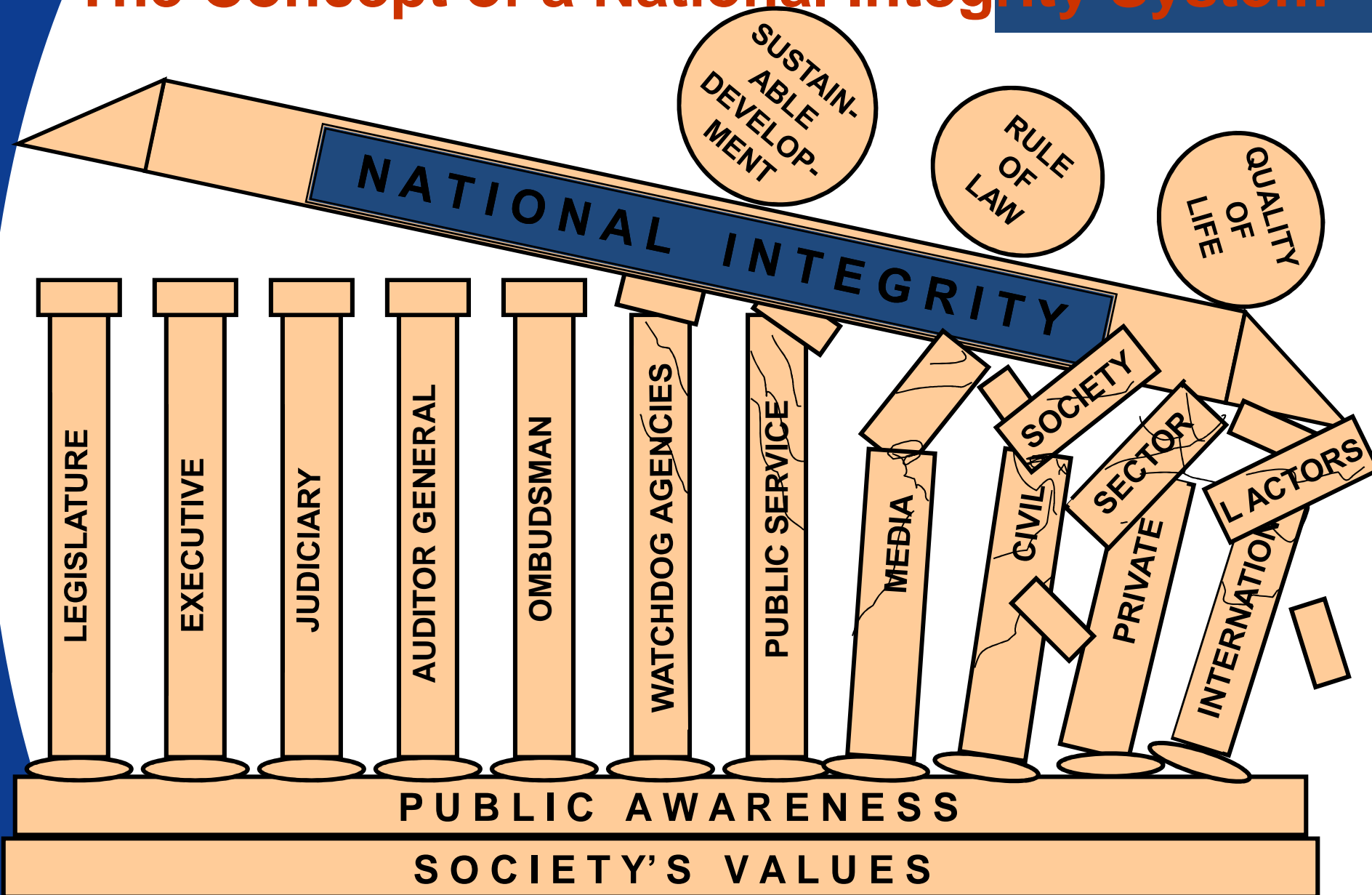
**Corruption is...**

...the abuse of entrusted power for private gain.

# The Concept of a National Integrity System



# The Concept of a National Integrity System



# Making the business case for anti-corruption action

	Benefits from engaging	Risks from not engaging
<b>Individual company action</b>	<ul style="list-style-type: none"> <li>• Obtain competitive advantage of becoming the preferred choice of ethical customers/consumers</li> <li>• Attract investments from ethically oriented investors</li> <li>• Attract and retain highly principled employees, improving employee morale</li> <li>• Qualifying for reduced legal sanctions in jurisdictions like the US and Italy</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal prosecution, in some jurisdictions both at company and senior management levels</li> <li>• Exclusion from bidding processes, e.g. for international finance institutions and export credit agencies</li> <li>• “Casino-risk” – no legal remedies if a counterpart does not deliver as agreed and/or keeps increasing the price for doing so</li> <li>• Damage to reputation and brand</li> </ul>
<b>Collective action by business</b>	<ul style="list-style-type: none"> <li>• Reduce the cost of doing business</li> <li>• Create a level playing field overcoming the “prisoner’s dilemma”</li> <li>• Improve public trust in business</li> <li>• Influence future laws and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Missed business opportunities in distorted markets</li> <li>• Policy makers responding by adopting tougher and more rigid laws and regulations; internationally, regionally and nationally</li> </ul>

06/01/2011

# Regulating Corporate Corruption: a changing landscape

- **New legal frameworks**
  - OECD Anti-Bribery Convention (1997)
  - UN Convention against Corruption (2003)
  - Regional and soft law instruments; Sarbanes-Oxley Act (US)
- **Corporate governance reforms**
  - EU: France, Germany, UK
  - US: Post-Enron changes
- **Growth of Corporate Social Responsibility**
  - UN Global Compact 10th Principle
  - Corporate Reporting
  - Socially responsible investing



## key findings

- Diagnostic: corruption in the private sector: bribery and much more: persistent, interlinked, dynamic, devastating – and growing
- A focus on narrow corruption risks (bribery) does not work: risks are interlinked and mutually re-enforcing
- Anti-corruption and compliance efforts are essential components of corporate citizenship but so far not fully integrated into related reporting and monitoring activities
- a first generation of CSR and AC initiatives has come to fruition: more of the same will not do: a step change is required: independent verification, measure performance
- Corporate integrity is a systemic achievement that involves many stakeholders from executives, workers and owners to regulators, investors, consumers, media

# Business in a global economy

- Importance of business
  - Economic power of business dwarfs most other institutions and entire nations
  - Unprecedented global economic inter-linkages through trade, investment and supply chains
  - Unprecedented business influence on every day lives
    - **privatisations and private sector involvement in essential goods, services, pension savings**
    - **market mechanisms to tackle public policy issues (global warming)**

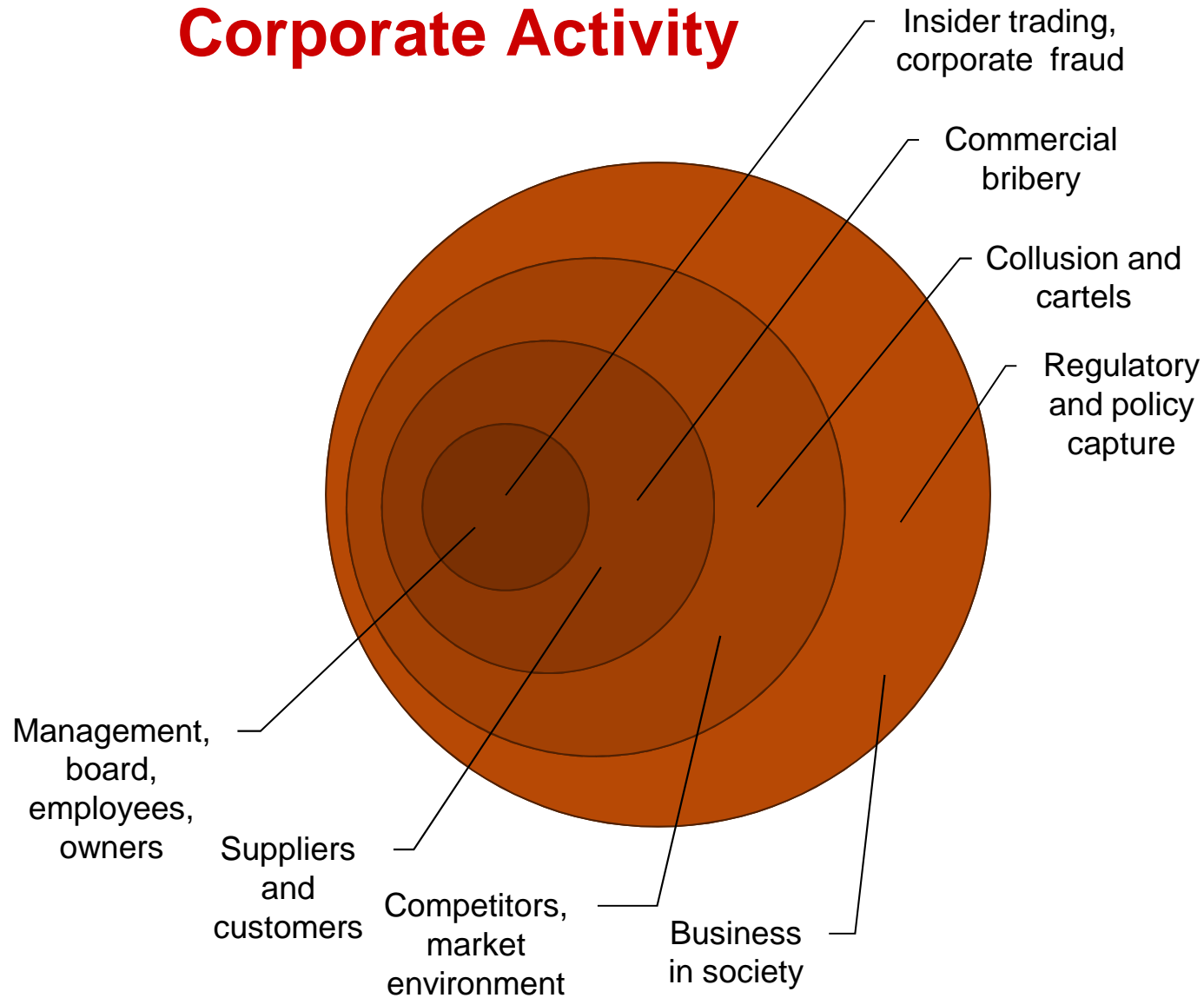
# Business in a global economy 2

- Dynamic environment
  - new economic centers: Brazil, Russia, India, China and others
  - new players and instruments: e.g. sovereign wealth funds, carbon markets
  - deregulation and globalisation in product and financial markets, coupled with falling communication and information costs => easier to conceal information, manipulate financial accounts and divert assets and funds
  - stronger focus on short-term profitability and shareholder value => more pressures to succeed

# More than just supply side bribery..

- Small payments to get things done: nurtured by red tape, significant, underestimated adverse impact
- Bribe payments to win business a persistent, widespread and still growing concern
- More than just bribes: use of familiar connections a significant issue
- Private-to-private corruption (commercial bribery): under-researched and under-addressed by policymakers
- Bribery issues linked to a much larger set of corruption issues
  - Inside company (fraud, self-dealing etc), in value chain, in market environment, in society
  - all these corruption risks are interlinked and mutually reinforcing
  - all illegal and harmful: moral ambiguity if some ostracized, some tolerated
  - all share covert organizational infrastructure of work-arounds, secret communication, off-book payments

# Corruption and Spheres of Corporate Activity



# Inside corruption: concern for all

- Entrusted powers abused for private gain
  - self-serving executives: failing oversight, risky incentives
  - unchecked power of majority shareholders: risks of self-dealing and minority expropriation
  - corrupted worker representation: failing checks and balances
  
- A concern for all
  - economic fraud widespread, often involving senior managers
  - significant collateral costs: decline in staff morale, lawsuits, management distraction
  - Failure of corporate governance as catalyst of financial crisis

# Corruption in the market: collusion & cartels

- affecting all sectors, regions and often household brand names
- a new wave of private cartels that hits developing countries particularly hard
- tip of the iceberg: detection rate between 17 and 30%
- enforcement on the rise: record fines (US, Europe) and new enforcers (China, India)
- growing toolbox: civil liability, administrative fines + private damages, criminal penalties, lenience for defectors, rewards for informers, ethical blacklisting
- synergies with anti-corruption enforcement
- cartels often related to bid-rigging: India: Malaria medicines
  - information sharing between enforcement agencies

# Corruption & policy making: undue corporate influence

- lobbying is legitimate, but risks of undue influence are significant
- areas of concern:
  - direct political corruption and influence-peddling
  - conflicts of interest between government officials and business sectors
  - unequal access to policy-makers and decision-making processes
  - integrity and the balance of information and representation
- targets for intervention
  - office holders, politicians: transparency, penalties and revolving door regulations, but many loopholes remain
  - media and science: diversity, disclosure of funding, strong freedom of information provisions
  - lobbyists: emerging area of regulation: disclosure of activities, funding, lobbying register
  - business: the missing link: very limited disclosure and internal accountability to owners, board for lobbying activities

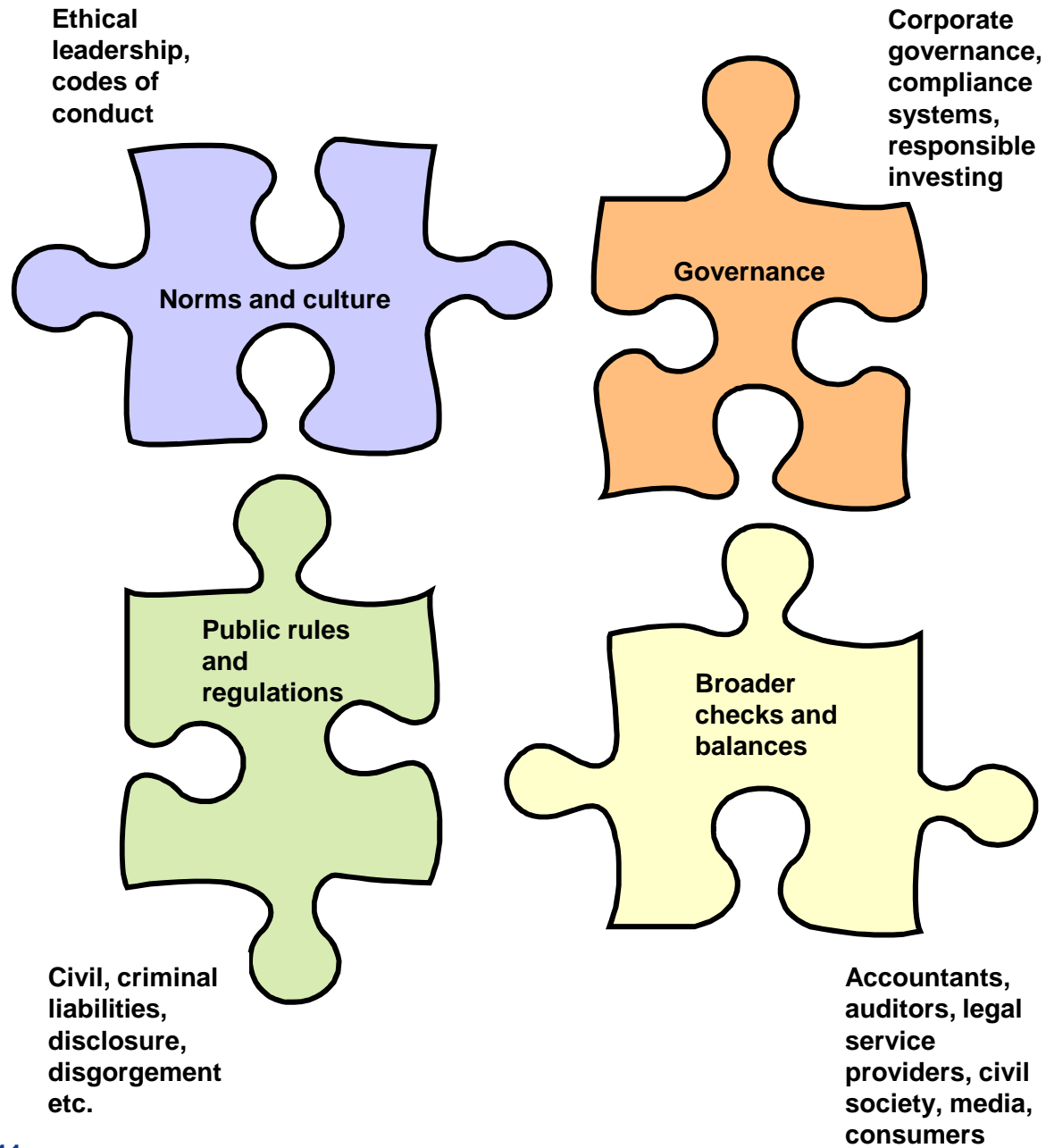


## Corruption and business: the transnational dimension

- Foreign direct investment (FDI) and global supply chains
  - corruption deters FDI
  - FDI not automatically a benign force for more business integrity, amplifies good and bad governance => commitment by companies essential!
- Persistent lack of awareness, training and compliance measures in international business
- Transfer pricing and mis-pricing

## Summary impact

- **Business: a clear case for corporate integrity**
  - corruption associated with higher costs, lost business opportunities, vulnerability to corporate crime, volatility, higher costs for capital, valuation, reputational damage, staff morale, management time, red tape, higher uncertainty
  - corporate integrity: better performance, reduced cost of capital, macro-economic: higher GDP growth, productivity, investment to GDP ratio
- **Markets: limited efficiency, higher prices, unfair competition**
- **Consumers: higher prices, product quality**
- **Investors, workers, owners**
- **Society: resource drain, nurturing of corrupt bureaucracies, political parties, governments**



# Holistic approach to corporate integrity

- Moral selectivity does not work: condoning price-fixing and collusion, while condemning bribery is not an option: both are illegal and harmful
- No excuse to not take action against corruption: tools, templates, collective initiatives and a set of good practices on how to proceed available
- Work on all internal checks and balances: corporate governance, employee empowerment, independent auditing
- Comprehensive approach to disclosure and reporting on all issues of material importance to public stakeholders
  - Corporate citizenship not only about environmental and social footprint, but also about:
  - respect for law: anti-corruption compliance
  - policy engagement: lobbying expenses and targets, public relations activities and process how they are arrived at

# Holistic approach to corporate integrity 2

- Stronger commitment to independent verification of performance: actively support monitoring, assurance, verification of disclosure, reporting, corporate codes and code implementation
- Active support for collective action: patchwork of tools: loopholes, proliferation, fragmentation and free-riding as central concerns
  - Tackle free-riding and work towards level playing field that reduces peer pressure to resort to corruption
    - join integrity pacts (individual tenders), sectoral agreements (industries), multi-stakeholder sectoral initiatives (EITI, META, COST)
    - Generates strong peer pressure for new entrants, laggards to follow suit
  - Support and raise awareness about international frameworks (UNCAC, OECD) emerging standards for reporting (e.g. GRI), CSR (ISO 26000)
  - Pool resources, shared learning for integrity: supply chain integrity, SME Tanzania example

# Possible Areas of Action

- Engage with Government
  - Positive legislative and policy reform
  - Adequate financing
  - Strict follow-up and enforcement
  - Timely and appropriate reviews
- Engage with Media
  - Sensitise the media to corruption agenda
  - Educate on key messages and issues
  - Use strategically, in tune with constructive engagement with other parties

## Possible Areas of Action

- Engage with Civil Society (TI and more!)
  - Establish close partnerships (currently not seen as tripartite member)
  - Cooperate on corruption-related campaigns (play to each other's strengths)
  - Mutual feedback on areas of concern, emerging issues and successes
  - Use established tools and best practice

# Government & regulators

- Close loopholes
- Expand use and continue to refine new generation of smart tools
- From designing laws and regulations to more attention to implementation (resources, enforcement)
- Focus on overarching corporate integrity system
  - Enabling conditions for investor and owner control, media, civil society watchdogs
- A renewed spirit of collaboration
  - Internationally
  - Across regulators: competition, anti-corruption, financial regulators
  - Multi-stakeholder
- A continued effort to cut red-tape



# Government & regulators

- Constructively engage with and listen to the business sector!
- Broader coalitions for corporate integrity and anti-corruption with
  - environmental groups (forestry, climate change, water)
  - consumer groups (reporting and disclosure standards, liability, lobbying and fair marketing)
  - human rights and corporate watchdog groups (supply chain integrity, responsible investment)
  - labour unions: whistle-blowing, stronger corporate governance
- More collective action:
  - an imperfect standard may be better than fragmentation and proliferation of codes and standards

# Helpful TI Tools

- Many useful resources, check out:
  - **Business Principles for Countering Bribery** - guidance on effective a-c programmes (including SME edition!)
  - **RESIST** – test and train yourselves on real-life scenarios of solicitation and extortion demands
  - **TI Self-Evaluation Tool** – check the design of your anti-bribery programme and its effectiveness
  - **UN Global Compact Reporting Guidelines** (10th principle) + **TRAC** -
  - **Integrity Pacts** – collective action in procurement
  - **Guidelines on Whistleblower Protection Legislation**

(for organisational best practice on WB protection, see fantastic resource by Public Concern at Work and PSI)

## Helpful TI Resources

- Many useful resources, check out:
  - Policy Papers (Strengthening Corporate Governance to Fight Corruption; Corporate Responsibility and Anti-Corruption; Making Anti-Corruption Regulation Effective for the Private Sector, Controlling Corporate Lobbying and Financing of Political Activities etc.)
  - 2009 Global Corruption Report: Corruption and Private Sector
  - OECD Anti-Bribery Convention Progress Reports
  - Indices: Global Corruption Barometer, Bribe Payers Index, Corruption Perception Index
  - Thematic or industry focused publications, at international or Chapter level

## **Latest Development - UNCAC**

- The only global anti-corruption instrument
- 140 signatory States
- Adopted 2003, in force from 2005
- Revolutionary in breadth & scope – prevention, criminalisation, asset recovery, technical assistance, MLA
- Includes provisions on private sector
  - Prevention (Art 12), society participation (Art 13), prohibition of foreign bribery (Art 15), bribery & embezzlement (Arts 21,22) protection of whistleblowers (Art 33) etc...

**Riveting Read!!! (have it by your bedside!)**

# UNCAC Review Mechanism

- No review mechanism – critical!
- Failure in Jordan (2006) and in Bali (2008)
- Key agenda item for Doha (Nov 2009)
- Two blocks and the clueless
  - “Like-minded“: Chile, Liechtenstein, Mexico, Peru, EU, Switzerland, Turkey
  - “Other“: Algeria, Angola, China, Egypt, Iran, Pakistan, Russia, Venezuela, Zimbabwe
- Coalition of Civil Society for the UNCAC

## 3 Key Issues

	The Other (L.4)	Like-Minded (L.5)
Civil Society Participation	[Nothing]	Active participation (paras 7, 17, 29)
Country Visits	Only at the direct request of the state being reviewed (para 27)	As a general rule, country visits to take place (para 28)
Publication of Reports	Reports to remain confidential. Summary reports to be made available to a inter-governmental review group for information purposes only. (para 41)	Reports to be made public, except in exceptional circumstances (para 35)

# Outcome on Review Mechanism - 1

## Resolution L9

- **Self-assessment with optional civil society inputs.**  
Government “shall endeavour” to do so in “broad consultations at national level with all relevant stakeholders, the private sector, individuals and groups outside the public sector”
- **Review teams** of two countries conduct peer reviews of reviewed country through review of the self-assessment, constructive dialogue and review of material from competent international organisations and other review mechanisms.

## Outcome on Review Mechanism - 2

### Resolution L9

- **Optional country visits:** If agreed by the State party under review, the desk review should be complemented by any further means of direct dialogue such as a country visit or a joint meeting at the UN Office in Vienna.
- **Optional civil society inputs during optional country visits.** If there is a country visit, States Parties are encouraged to facilitate engagement with all relevant national stakeholders during that visits. Apparently no civil society inputs if there is a joint meeting at the UN Office in Vienna.



## Outcome on Review Mechanism - 3

### Resolution L9

- **No small expert review body reviewing country reports.** Country review reports are finalised upon agreement between the reviewing States Parties and the State Party under review.— no higher review body, such as expert review group, only the two peer reviewers.
- **Publication of executive summaries of the reports but not full reports.** States Parties are encouraged to publish the full report or part of it.
- **Large and unwieldy body reviews thematic reports,** evaluates process and identifies TA needs. An Open-ended Implementation Review Group is established, meeting annually.

## Outcome on Review Mechanism - 4

### Resolution L9

- **Two five-year review cycles--** The first five-year review cycle from 2010 to 2015 will cover Chapters III (Criminalisation and law enforcement) and IV (International cooperation.) The second five-year review cycle from 2015 to 2020 will cover Chapters II (Preventive measures) and V (Asset recovery).
- **Terms of reference for the mechanism reviewed at end of first review cycle.**
- **Budget language a surprise, US concession on funding from the regular UN budget**

# Other Resolutions

## ■ Preventive

- Working Group; UNODC studies, best practice examples & evidence-based approaches
- Private sector -- private sector integrity, regulation models for the private sector, partnerships between the public and private sectors to combat corruption

## ■ Technical Assistance

- Encourages States and the UNODC to develop & promote coordinated partnerships, including between the public & private sectors, to leverage resources for technical assistance efforts.
- Expert Group established

## And the local winners are...

- See the spreadsheet!



# TRANSPARENCY INTERNATIONAL

the global coalition against corruption

**Thank you very much for your interest.**

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