



EXPORTERS OF CORRUPTION: BRIBE PAYERS INDEX (BPI), 2006

By Ivy Ndiewo

Transparency International has once again released its third Bribe Payers Index (BPI), 2006.

The BPI is a ranking of companies from 30 leading exporting countries Vis a Vis their propensity to bribe abroad. It is based on two questions asked to business executives from the companies in countries surveyed i.e what is the business practices of foreign firms in their countries?The executives are also asked to assess the international supply-side of bribery, and the likelihood of the foreign firms that do most business in their country to make undocumented extra payments or bribes.

According to this year's index, the supply side of corruption is still common, despite the existence of international anti-bribery law criminalizing this practice. A lot of wealthy nations ranked in the top particularly pay bribes to developing economies. The countries included in the index are the leading international or regional exporting countries, whose combined global exports represented 82 per-

cent of the world total in 2005. According to the BPI, a score of 10 indicates a perception of no corruption, while zero means corruption is seen as rampant. However, good performance was from those countries that were ranked between 7-10. This score cannot be said to be a benchmark in terms of good standards and performance. Switzerland leads the ranking with a score of 7.8 an indication that things are not as perfect as expected.

French and Italian companies were among the worst perpetrators from respondents in low income countries in Africa, whilst India consistently scored worst on most regions and sub-groupings.

China, the world's 4th rich country ranked 29th. Turkey is in the 27th place despite ratifying the OECD convention which is a show of poor performance, while the USA which blazed new trail with its Foreign Corrupt Practices Act of 1997, was ranked behind many OECD countries.

In Asia, Singapore, Hong Kong, and Taiwan strong domestic Anti-Corruption Legislation, did not translate abroad.

Despite anti-corruption legislations being put up, and domestic

legislation being introduced in many countries, corruption is still eating the world economy undermining the best effort of government in developing nations to improve governance, thus poverty is forever experience.

With poor structures in most African countries, "foreign companies that commit the crime of bribery are undercutting Africa's anti-poverty efforts and African countries should prosecute them vigorously," said TIS Regional Director for Africa, Mr. Casey Kelso.

This year's index results were drawn from more than 11, 000 responses from 125 countries polled in the World Economic Forum's Executive Opinion Survey 2006.

...foreign companies that commit the crime of bribery are undercutting africa's anti-poverty efforts ...

The full results of the BPI 2006

Rank	Country / territory	Number of respondents	Average score (Scale 0-10)	Standard Deviation	Margin of error (at 95% confidence)
1	Switzerland	1744	7.81	2.65	0.12
2	Sweden	1451	7.62	2.66	0.14
3	Australia	1447	7.59	2.62	0.14
4	Austria	1560	7.50	2.80	0.13
5	Canada	1870	7.46	2.70	0.12
6	UK	3442	7.39	2.67	0.09
7	Germany	3873	7.34	2.74	0.09
8	Netherlands	1821	7.28	2.69	0.12
9	Belgium	1329	7.22	2.70	0.15
10	US	5401	7.22	2.77	0.07
11	Japan	3279	7.10	2.87	0.10
12	Singapore	1297	6.78	3.04	0.17
13	Spain	2111	6.63	2.73	0.12
14	UAE	1928	6.62	3.09	0.14
15	France	3085	6.50	3.00	0.11
16	Portugal	973	6.47	2.79	0.18
17	Mexico	1765	6.45	3.17	0.15
18	Hong Kong	1556	6.01	3.13	0.16
19	Israel	1482	6.01	3.14	0.16
20	Italy	2525	5.94	2.99	0.12
21	South Korea	1930	5.83	2.93	0.13
22	Saudi Arabia	1302	5.75	3.17	0.17
23	Brazil	1317	5.65	3.02	0.16
24	South Africa	1488	5.61	3.11	0.16
25	Malaysia	1319	5.59	3.07	0.17
26	Taiwan	1731	5.41	3.08	0.15
27	Turkey	1755	5.23	3.14	0.15
28	Russia	2203	5.16	3.34	0.14
29	China	3448	4.94	3.29	0.11
30	India	2145	4.62	3.28	0.14

WHO IS BRIBING US? DRIVERS OF PROCUREMENT CORRUPTION

Interview with Chairman of the Kenya Institute Of Supplies Management (KISM) Mr. Chris Oanda

By Edward Muchai

Is it stretching the truth to suggest the lack of action against the bribe givers by the governments of leading industrial countries amounts to tacit support of bribe giving by these governments?

For quite some time foreign governments implicitly supported corruption perpetrators from their country as long as they were practicing elsewhere. So, if I am a big industrialist from a foreign country, and I mess up here I am excused back home. In the past this used to be the case, and undoubtedly still is the case for quite a number of enterprises coming from many countries. But now we see the international community standing up to boldly question some of these

governments for the conduct of some of their enterprises registered back in their countries, where they are perceived to be unethical in bidding for business in the conduct of commerce in foreign countries. By and large, foreign governments have used their leading industrialists and companies as tools of competitive commerce. This is because there is still competition amongst nations to bring resources back home to develop the local economy. But as the world becomes a much smaller place there is very little differentiation between where you take the wealth that you have created from elsewhere, as there is no home anymore. We shouldn't condone the looting of resources through corruption and lead to winning tenders unfairly by foreign firms, sim-

ply because a firm is from a developed country. We should stand firm and say this is not fair. The same standard we use to judge our local firms in the local environment should be applied to foreign firms. We should play by the same equal rules that we expect local firms to play by. I don't think any firm that does not do this is doing any favour to their government as it makes it difficult for that government to stand on a high pedestal of ethics and say this is right or this is wrong.

Is enough being done to bribe givers?

Let's take the case of Americans. The US issues decrees banning even their own people trading overseas from benefiting from acts of corrupt commerce. They are banning not only their own people but also their dependants, so the same standards they apply for foreigners are the same standards that apply to their own.

There have been well publicised cases in American commerce where big CEOs have been dealt with ruthlessly. I don't think many foreign governments especially developed countries are going through the 19 and 20th century practice of condoning cowboyish practice of corrupt commerce as away of advancing their own wealth overseas. But they are not angels either. We know corruption is a world wide endeavour. It has no boundaries. It is in developed countries, it is here in developing countries and it is a vice that is as inhuman as any other sin. We must not relent. We must keep fighting. We cannot give up because it is a vice we need to contain.

How does the "supply side of corruption" or what role do foreign investors and development agencies play in escalating cases of corruption in developing countries?

At times, most of the bribe givers fear being locked out of future contracts. For instance, if by leaving a big project like the proposed Mombasa to Malaba Road means having to wait longer. Such projects don't come by often, and in Kenya it can take close to 40 years. The fear of big companies then is, if they are locked out of such a big contract they will be out of the running for quite a while. They have to go somewhere else and wait for 10 years before another big contract comes along. If everyone was playing fair then you could bid without fear. Very often, there is this fear amongst large enterprises that unless they participate in inducement of one form or another they are likely to be locked out in future business.

This is what drives companies on the supply side. If you see big foreign enterprises engaging in graft then it shatters the confidence of the local enterprises and the local economy to catch small

fish, and cause them to observe the fair play regulation. So, in a way it is as if this is an internationally accepted mode of doing

business, and that is the message spread in developing countries. It defeats the course because it sends contradictory messages when you see foreign enterprises participating in interest peddling of one form or another that leads to procurement corruption. It is contradictory for foreign governments that are giving aid for development and preaching transparency to engage in such kinds of trading in the local economy. Often, people cannot distinguish between the government and the foreign policy of the government, and the actions of foreign companies that come from those regions, behaving in a manner contrary to what their governments actually observe. This is what drives people to say there are double standards.

Why in your opinion do you think the anti-corruption legislation has not effectively helped in curbing corruption in the procurement process?

There are a number of expectations that stakeholders have on anticorruption legislation. Many were assuming and expecting that this is a perfect antidote to finish corruption. You realize even legislation itself is a process. Often, legal experts have argued that, anti-corruption legislation is still very new and is yet to be fully tested to determine how sound it is. That is why you find many constitutional challenge cases taken to court on anticorruption legislation decisions. This is the phase we are at now.

At basic level anticorruption legislation is akin to building a *boma* around your livestock. For example if you relate the anticorruption and procurement process in general without implementing the procurement Act as has been discussed and legislated, it is not going to be possible for the anticorruption legislation to curb procurement corruption.

Without fixing the code of conduct and the legal framework within which procurement practitioners operate, you will have sub optimal measures that cannot rectify and improve the procurement process both in the private and public sectors. We are probably expecting too much from a process that is yet to be completed.

...they are banning not only their own people but also their dependants ...

How come the bilateral donors do not consider this due process that supersedes prosecution of anticorruption cases?

When you come to presentation of people on corruption cases in procurement, you are dealing with people who have acquired immense wealth. Corruption is an industry that employs enormous capacity to preserve itself. In Kenya, the AG's office and prosecutors are understaffed in terms of capacity and ability to relentlessly pursue these people.

These people (involved in procurement corruption) have inexhaustible pockets so they lease the best lawyers in town or they will import them and stretch their cases as far as possible. A quick fix on this will not be satisfactory with the kind of prosecution process we have at the moment. Anybody with an interest in prosecution of justice in this country should only hope that future corruption becomes difficult and discouraging. If this sees the light of day, you can rest assured and expect that this would be a deterrent in itself for future cases of corruption.

The lack of perceived balance in anticorruption efforts weakens the hand of the reformers, and those who support them in many countries, is this perception justified?

There is probably lack of perceived synergy on all the efforts geared to fighting corruption. For instance in Kenya you see the Maina Kiai group (KNCHR), the Ringera group (KACC), the AG's group, the Commissioner of Police, KISM and land reformers. All these people are addressing different facets of corruption. But many of them operate in the absence of effective legislation that supports them mainly because of lack of capacity even to implement and enforce legislation which already exists. These efforts have further been frustrated due to; lack of resources, capable people, money to drive the process, and we are left driving this initiative with different views and hence the perceived imbalance.

As long as there is any amount of agitation and noise against corruption, the question of imbalance will not arise. Perceived imbalance is for those who expect quick and uniform results across the board. I can assure you no anticorruption effort will raise many crosses on any ills and hang all of them at once. That will not happen. As we realize from our own countries, corruption is itself an industry. It has its own methods of fighting back and perpetuating even the perception of lack of success even where there are efforts to change. By the very fact that there

is a lot of noise, a lot of discussion and debate on the subject is in itself a good starting point. This is not a new phenomenon. It will not die suddenly.

The hands of these crusaders against corruption should not be discouraged. Wherever they are, they should rise up to do their very best within the framework they find themselves. Often, it can get very hot and dangerous for some of them depending on whose toes are being trampled on, but that should not discourage everyone else from rising up because at the end of the day corruption robs the common person, and whether we like it or not people can be perceived to be getting away with their loot and whichever acts of impunity they commit they are robbing the common man. Every noise no matter how low pushes the spirit forward.

With the tabling of the Supplies Practitioner Management Bill 2006, do you think the loopholes in the procurement process both locally and internationally, will be sealed? How will the Bill streamline the procurement sector?

The Supplies Practitioners Bill is meant to do three things. Firstly, to ensure that we establish a training and development required for the skilled workers in the procurement fraternity who will contribute to an enabling environment in the practice of ethical procurement. Secondly, we are going to create a board that will register those qualified and certified members so that those who are practicing have a certificate of practice.

This means they have a certain basic set of skills. Lastly, this Bill will enable us to lock any of those practitioners who are caught engaging in acts of procurement subversions. We are hoping the bill will bring a new climate of ethical conduct of officers and create the legal framework that enables the professionals to check one another, and exert peer pressure so that in the event that any procurement that takes place, we rely on the practitioners to provide technical advice and with this, we expect will result in less procurement corruption.

In terms of the international element, we expect most of the international firms that will be trading locally to be adjudicated by local practitioners. When local practitioners adhere to the code of ethics as pronounced and provided for by the Bill, then you expect that even the international players will be forced to play by fair judgment, which is locally evaluated by local experts.

PRIVATE SECTOR, PROCUREMENT AND FIGHTING CORRUPTION IN KENYA

By Kenya Parliamentary Journalist Association (KPJA)

To expect the Procurement Act, which comes into effect from October 1, to chart new beginnings in the way business is done in the country and arm-twist the stinging vice that corruption has become would be too big an ambition.

And the private sector continues to cast doubts on whether the Act which Parliament passed last year, would deliver on the miracle that the Kenyan public including the government expect it to; descend on corruption with a photo finish effect! A possible answer to the culture of impunity that has held the business environment hostage for more than a decade, yes, but the chairman of the Nairobi Central Business District Association (NCBDA), Mr Wafula Nabutola, says good laws remain the paper good that they are: when the will to uphold morals is elusive.

“The Act is very good. Yes, precisely, but corruption is a universal vice which can only be contained when the concept of good governance is embraced. Rules remain nothing when the attitude of the people is rotten. Good governance must be embraced both at the Central and the Local Governments,” Nabutola, told KPJA in an interview

He says the private sector wields the key to proclaiming an end to corruption, since there is no corruption without a conspiracy of two parties, and that “the government does more often make the procurement process exclusive thus chances of graft are high, and so one would expect the private sector to remain vigil as most supplies to the government come from the private sector.”

But how is the same achievable? According to Nabutola, the private sector should remain at the forefront of lobbying for the best practices in government. However, he says, this is possible when the private sector corporate enforce mechanisms of self regulation: “Like in any progress there are teething problems, but I can say we are doing well. Many organizations in the private sector are enact-

ing a code of conduct which defines how business ought to be done. This should go a long way in bringing in the moral aspects which the government will have no choice but to ape.”

“This Act is very good Yes, precisely, but corruption is a universal vice which can only be contained the concept of good governance is embraces,”

He continues: “Well, we have some distance to cover as a nation, although I think there are very good vibes coming from a number of companies. They (companies) have set standards and have become more answerable to shareholders which is good for the country’s (Kenya) moral fibre.” Nabutola, a land economist and a Rotarian who also a director at the Athi Services Water Board, doesn’t believe that there are any misgivings in the Act that could aid the execution of corruption, but says its (the Act) success depends on the implementation, besides the government’s ability to sensitise the public about what it entails.

“I think a lot depends on how the Act is marketed. If it is marketed and sold to all Kenyans so that they fully understand and believe in it, then it will work. As I’ve said before having read the Act, the principles are good, but, you know, as human beings we can always find a loophole to whatever we want by deciding to turn our backs to such principles. So we have to all understand the Act and embrace its morality aspect.”

He says the Act will be a waste of time if the goodwill is squandered. The role of the private sector therefore, according to him, would be best seen to culminate in concerted efforts aimed at protecting the gains of the public in their rights and freedoms by jealously guarding against any form of discrimination or delays. As the private sector and a key supplier of what government consumes, we must ensure that the government practices transparency in the tendering process and that we don’t allow conflicts of interests. Tenders should be competitively won.” He suggests the four-way test of trade; truth, fair, beneficial and source of good will.

But when the prescription he gives is put in place, the spelling to the demise of the vice would remain bold and that as a people, Kenyans will not just see corruption as bribery but as a mischief that compromises on quality and the best practices. That is why he shuns the culture of blame and refutes the notion that the private sector is the driver of corruption. “No. We should always strive to the conduct business at arm’s length and to heap blame on one person who is wrong. Corruption like a crime taking place in a village is inclusive, because we always have the whistleblower to the crime committed and which is a pointer that a conspiracy took place behind our backs.

“...if there is no enemy within, then the enemy without can do us no harm. We are all guilty on the face of graft, before we can be able to explain our conspiracies took place behind our backs.” He also insists that meaningless victory on the war on graft is all the country risks should developed countries and multinational orga-

Questions and Answers on Bribe Payers Index

1. What is the Bribe Payers Index (BPI) 2006?

The BPI is a ranking of 30 leading exporting countries according to the propensity of their firms to bribe abroad. This survey looks at the use of bribes by companies with headquarters in 30 of the world's leading exporting countries (either in global or regional terms). It is based on two questions¹ asked of 11,232 business executives from companies in 125 countries, who are surveyed about the business practices of foreign firms in their country. To assess the international supply-side of bribery, executives are asked about the propensity of the foreign firms that do the most business in their country to make undocumented extra payments or bribes. The survey is anonymous.

2. Which countries are included in the BPI 2006?

The 30 economies ranked in the BPI are: Australia, Austria, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, India, Israel, Italy, Japan, Malaysia, Mexico, the Netherlands, Portugal, Russia, Saudi Arabia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Turkey, the United Arab Emirates, the United Kingdom and the United States. The countries included are the leading international or regional exporting countries, whose combined global exports represented 82 percent of the world total in 2005 (source, IMF). While most of the countries in the survey are OECD countries, membership was not a selection criteria. Thus, OECD countries such as Norway and Denmark are not part of the list, while non-OECD countries like India, Israel, Singapore and South Africa for instance are included.

3. When, where, with whom and by whom was the survey carried out?

The BPI survey uses the Executive Opinion Survey (EOS)² carried out by the World Economic Forums (WEF) partner institutes between February and May 2006. It surveyed 11,232 representatives from the private sector in 125 countries, whose combined Gross Domestic Product represent 98 percent of the world total. The WEF is responsible for the overall coordination of the survey and the data quality control process, but relies on a network of partner institutes to carry out the survey locally.

[_www.transparency.org/policy_research/surveys_indices/bpi](http://www.transparency.org/policy_research/surveys_indices/bpi)

Due to the range of countries surveyed, the method of conducting the survey has been slightly adapted to suit the different operating environments. The survey was conducted through the following format: face to face interviews, by mail, by telephone and via internet (the online version represented 13 percent of the 11,232 responses). The WEF makes every effort to ensure that the sample of respondents is representative of the national business sector, both in terms of the share of production by industry, the size of company and the range of company types (domestic, foreign and partly state owned).

4. Why does the BPI rank countries rather than companies?

The supply side of corruption in international business transactions implies a shared responsibility between companies operating abroad and their home governments. This survey indicates the success and failure of governments to control corruption abroad by companies headquartered in their national borders. It also indicates the success and failure of companies to ensure their employees comply with the highest standards of business practice. This is the particular aspect the BPI is examining.

The BPI does not identify cases of corruption or assess behaviour at the company level. With more than 60,000 multinational corporations in operation worldwide, composed of more than 600,000 foreign affiliates, a ranking based on experience with each of these individual companies would require doing a market survey of a different nature. In addition, the evaluation and ranking of individual corporations requires a different type of assessment. By asking senior executives to assess the behaviour of foreign companies doing the most business in their country, rather than asking

them to name companies, the survey is able to focus on clearly identifiable patterns based on respondents' own experiences, rather than specific cases.

5. What can a country do to improve its ranking in the BPI?

Scores for each country reflect both the responsibility of the authorities and of the companies, mainly multinationals, from those countries. There needs to be commitment and action from both governments and companies. Commitment can be expressed by adherence to existing international anti-corruption conventions at the country level and by inclusion of codes of conduct at the company level. Action must include both preventative and enforcement measures. Signing international conventions such as the OECD anti-bribery convention or the United Nations convention against corruption and passing laws outlawing bribery, though important, are not enough.

The leading exporting countries need to properly enforce those laws. That means providing the resources to ensure that investigations and court proceedings can take place in an independent manner. It also means conducting strong education campaigns to ensure that the corporate sector is aware that bribery is illegal, at home and abroad. The business community needs to take its commitment to anti-corruption more seriously and particularly to ensure compliance by its intermediaries abroad. The introduction, implementation and monitoring of anti-corruption compliance codes and business codes in all their offices around the world and provision of appropriate training are key measures to be taken by multinationals.

6. What is the difference between the BPI and the CPI?

The Corruption Perceptions Index (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians in those countries, while the BPI ranks countries in terms of the propensity of companies headquartered in their country to bribe abroad. A further difference is that the BPI reflects only the views of the private sector (local and foreign companies) on foreign bribery as based on their experience in a particular country of operation, while the CPI reflects the views of business people and analysts from around the world, including experts who are locals in the countries evaluated. The CPI is a composite index drawing on corruption-related data from multiple expert and business people surveys carried out by a variety of independent and reputable institutions.

7. What is the difference between the BPI and the Global Corruption Barometer?

The BPI assesses the international supply side of bribery from the perspective of private sector representatives, while the Global Corruption Barometer assesses the general public's attitudes toward, and experiences of, corruption in their country. See http://www.transparency.org/policy_research/surveys_indices/gcb

¹ Respondents were first asked:

"From the list of countries below, please select those nationalities of the foreign-owned companies doing most business in your country"

They then had to score countries on a 7-point scale system (from 1=bribes are common, to 7=bribes never occur) by answering the question:

"In your experience, to what extent do firms from the countries you have selected make undocumented extra-payments or bribes?"

Note that the BPI rankings are based on a standardised score out of 10.

² The data and indices generated from the EOS are the core ingredients of the Global Competitiveness Report, recognised as one of the most authoritative and comprehensive assessments of global competitiveness in the world. To see this year's Global Competitiveness Report go to: <http://www.weforum.org/gcr>

³ Prof. Dr. Gertrud Moosmüller, Chair of Statistics, Faculty of Economics, University Passau, Germany

Cont'd from pg 5

PRIVATE SECTOR, PROCUREMENT AND FIGHTING CORRUPTION IN KENYA

nizations be left to get away with their "misplaced" attacks on how skewed the war on corruption is. Multinationals and Western governments, he says, stand accused, when they pass the buck on the war on graft.

Two big caveats, though. First, Nabutola insists that although, the tendering process in government may not be fool proof as to curb businessmen from cutting corners in their deals, the private sector has a role to play in reducing the extent of corruption. Second, he feels that developed countries and multinational corporations are blowing 'bur issue out of proportion, yet some years ago they were in our shoes! How? Two wrongs making a right?

"Yes, I remember many years ago, some multinationals and a number of governments in Europe would set aside some vote head to corrupt people or governments they trade with and especially those in Africa. We are trying to smart from the dupe in which they forced us"

"To want to portray developing countries as unwilling to

fight corruption, other than promote it, for me, is a misconception. Even developing countries, for instance Kenya, have a reputation, an image and standards to maintain. They like their developed counterparts, aspire to progress in their economic performance.

The will by several people in developing nations to fight graft, Nabutola says, cannot be gainsaid, especially given that some individuals have blown the whistle on graft even when their personal interests are on the line.

An example he passionately gives is that of the immediate former PS for Governance and Ethics, John Githongo who is currently exiled in the UK, after giving revelations on the multi-billion Anglo-Leasing scandal.

Nabutola admires Githongo's raw courage which played above all other interests and which "makes him a Saint. He partook where none attempts. What he did never happened before. He sacrificed comfort, opportunity and a job for the country. And there are many more Kenyans out there who could be like him"

Up coming launches

Corruption Perceptions Index (CPI) launch 6th November 2006

Ranks over 150 countries on the basis of perceived levels of domestic corruption.

Global Corruption Barometer launch 7th December 2006

Measures popular perceptions of corruption in domestic institutions such as the police, judiciary and the executive.

For more information on Corruption in Kenya, and previous issues of *Adili*,



Visit: <http://www.tikenya.org>

TI-Resource Centre:- you can now view our online catalogue on <http://www.tikenya.org/knowledge.asp?id=1&ID=7>
Our resource centre is also opened to the public

Our Radio program *Pasha Nikupashe* has gone on reassess, we will be back.

Adili is a fortnightly news service produced by TI-Kenya's Communications Programme. The views and opinions expressed in this issue are not necessarily those of TI-Kenya. The editor welcomes contributions, suggestions and feedback from readers. Transparency International, 3rd Floor, Wing D, ACK Garden House, 1st Ngong Avenue. PO Box 198-00200, City Square, Nairobi, Kenya. Tel.: 254-020-2727763/5, 0733-834659, 0722-296589; Fax: 254-020-2729530.