



Investigating grand corruption

Taler

Eva Joly

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Sted

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Omstendigheter

Høynivåkonferanse i forbindelse med undertegningen av FN-konvensjonen mot korrupsjon

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It is a great honour for me to be here on this historic day. The Marcos case in the late 1980s first highlighted the problems associated with retrieving assets stolen by corrupt political leaders and returning them to the people from whom they were stolen. During my years as an investigating magistrate, I saw people convicted of economic crimes in France who were able to find refuge in Latin America simply because there were no legal means to prevent their escape. Consequently, I am delighted that today marks the introduction of international measures that can address that kind of problem directly.

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Today, I would like to focus on the implications of just one of the provisions of the United Nations Convention against Corruption: article 52, which deals with politically exposed persons - that is, individuals who are or have been entrusted with prominent public functions. That provision, by acknowledging that the financial affairs of politically exposed persons may require special monitoring, makes it more difficult for us to deny responsibility for the corrupt activities of our leaders.

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We have heard the Minister of Justice of Kenya say today that it is one of the most corrupt countries in the world and that the State coffers have been pillaged of billions of dollars. And we have heard the Minister of Justice of Peru tell us that the Government of former President Alberto Fujimori damaged Peru's opportunities for economic development by looting public assets that have never been completely recovered. In that case, former intelligence chief Vladimiro Montesinos made for his own use thousands of secret video recordings of his meetings with members of every branch of government, opposition party members, business people, journalists, military officials and

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others. His intention was to preserve evidence of their corruption that he could
30 use to exact their cooperation. However, that evidence also implicated
Montesinos himself. In effect, those recordings - which eventually fell into the
hands of the authorities and are now publicly available - provide valuable
insights into how a corrupt State network functions and how a country can be
controlled through corruption.

35 Corruption is a fact of life that cannot be ignored. The Elf case - in which I was
involved as investigating magistrate - showed that countries can be
impoverished by their leaders, sometimes in situations where the leaders' actions
are not even prohibited by law. The Elf case also demonstrated that corruption
40 can be common business practice. We found that there were three techniques
that could be used for enrichment in countries where there is power to be
corrupted and oil.

The first of those techniques was the oil company practice of paying
45 extravagant "signature bonuses" for exploration rights and the additional
bonuses that fall due when the companies reach agreed levels of production.
Those bonuses have traditionally been regarded as common business practice;
they can be seen as a demonstration of the oil companies' commitment to
expensive, long-term projects. However, their diversion, with the collusion of
50 the oil companies, to the accounts of individuals rather than the State treasury,
is corruption.

The second technique involved the siphoning off of a portion of the purchase
price of every barrel of extracted oil, for diversion to offshore bank accounts,
55 slush funds and shell companies managed by individuals employed by Elf. That
money was used to make cash bribes to heads of State, oil ministers, finance
ministers and their associates in the producing countries, all of whom had their
own personal offshore accounts and shell companies. At that time, in the early
1990s, Elf was France's biggest company and controlled by the State. That was
60 not an isolated practice in a single country or region, or by a single company.
We discovered that oil companies were offering cash bribes to secure business
contracts in Africa, Latin America, Spain, Germany and the Russian
Federation.

65 The third technique is the practice of oil mortgaging, where future oil revenues
are mortgaged against immediate oil-backed loans to the Government. A

Government can use future oil production as collateral for loans when it is short on foreign exchange reserves or in arrears on debt service payments or in urgent need of ready cash for purchasing weapons. Not in itself illegal, that policy, nevertheless, can and does leech a country's future wealth and, in some cases, compromises its chances of achieving any form of sustainable development. However, we investigated oil mortgaging deals that were not transparent and that were not routed through the Ministry of Finance or the Central Bank, where interest rates were manipulated to produce money that was transferred into slush funds, and where oil company executives and politically exposed persons in the producer countries benefited directly and personally. Those practices were not the exception in many of the countries we investigated but practically the rule.

Article 52 of the United Nations Convention against Corruption establishes special measures to monitor the personal financial affairs of politically exposed persons. If such measures had been implemented in the early 1990s, the Elf case and the pillaging of State resources of Kenya and Peru may not have occurred. The bankers involved would have had the responsibility of applying those rules and of asking all the questions they should have asked but did not. The fight against corruption involves greater transparency and cooperation from the banks in the private sector. History tells us that education and conscience are important but not enough. Effective preventive rules, such as those in article 52, need to be established and implemented in good faith.

Article 52 provides that States parties shall require financial institutions within their jurisdictions to verify the identity of customers; take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

Recommendation 6 of the revised 40 Recommendations of the Financial Action Task Force (FATF) stipulates that, in addition to regular due diligence procedures, financial institutions should have appropriate risk management systems in place to determine whether a customer is a politically exposed person; obtain senior management approval for establishing business relationships with such customers; take reasonable measures to establish the source of wealth and source of funds; and conduct enhanced ongoing

monitoring of the business relationship.

110 Speaking personally, I would go further. In my view, an outright ban on the
movement of large sums of money into the accounts of individuals who occupy
important public posts or who have occupied such posts would not be a bad
idea. Indeed, I would also have no hesitation in applying that ban to the
directors of State-owned companies. Nevertheless, I believe that article 52 of the
Convention and Recommendation 6 have a great future and will substantially
115 contribute to greater transparency in business.

It is important not to lose sight of the fact that corruption does not simply line
the pockets of those with the capacity to acquire illegally State assets for their
own enrichment. It can have far more deadly consequences. In a unique
120 agreement between the United Nations and a Member State, the Special Court
for Sierra Leone was established to try those who bear the greatest responsibility
for serious violations of international humanitarian law and Sierra Leonean law
committed in the territory of Sierra Leone since 30 November 1996. The
Court's Chief Prosecutor, David Crane, has established that proceeds from the
125 illegal sales of "blood diamonds" are being used to fund civil war in Sierra
Leone. Mr. Crane, who also believes that Al Qaeda uses the diamond trade to
fund its international operations, intends to prosecute those who profit from
the trade. Conflict diamonds are estimated to account for around 4 per cent of
the \$7.8 billion of annual diamond trade.

130 With regard to the Democratic Republic of the Congo, the United Nations
Panel of Experts on the Illegal Exploitation of Natural Resources and Other
Forms of Wealth of the Democratic Republic of the Congo has recently issued
a report that established links between illicit trade and enrichment and the
135 persistence of the civil war that has caused between 2 million and 3 million
deaths since 1998.

That is why article 52 of the Convention has to be implemented quickly by all
Member States. I believe that is the most important work that lies ahead for our
140 individual countries. We have to identify those who should be monitored and
supervised and the information that should be communicated.

The hope is that people currently in a position to loot the State assets of their
country can be prevented from doing so in the future with the new provisions

established in the new Convention.

Kilde
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<https://www.virksommeord.no/tale/investigating-grand-corruption>

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