

EMBARGO 5:30 P.M. THURSDAY 24TH MAY 2012

**ADDRESS BY KARL T. HUDSON-PHILLIPS, Q.C.
TO
THE ANNUAL GENERAL MEETING
OF
THE TRINIDAD AND TOBAGO TRANSPARENCY
INSTITUTE
(TRINIDAD AND TOBAGO CHAPTER
OF TRANSPARENCY INTERNATIONAL)
ON
THURSDAY 24TH MAY 2012**

Some two (2) weeks ago when I was approached to deliver this address, I was grappling with the question of how I should respond to a call made by some of my colleagues to accept nomination once more for the Presidency of the Law Association. As most of you must be aware, there have been accounting problems in that organisation which attracted the attention of the legal profession and the public and, I would expect, the interest of those who subscribe to the vision of Transparency International.

Transparency International defines its mission as stopping corruption and promoting transparency, accountability and integrity at all levels and across all sectors of society. In Trinidad and Tobago, your Chapter is generally thought of as a body especially concerned with Government corruption and maladministration particularly in the area of procurement processes. Its focus appears to be examining and pointing out lapses in the integrity of governmental decisions and actions in relation to projects having a significant money content. I do not

have the impression that it is as concerned with corruption in the non-state sector or at the level of the individual. However, I am sure you will agree that there are wider aspects of corruption that affect the daily lives of citizens especially where the corruption is permitted to flourish because of the failure of state agencies to regulate and supervise.

Increasingly in Trinidad and Tobago, there is the perception that corruption has become systemic. It is so pervasive that we appear to be undergoing a process of being desensitised as to what corruption is. The population is now being assaulted by the revelations of unprecedented corporate greed and institutional incompetence. The idea of fiduciary responsibility appears non-existent. Persons with no legitimate or known sources of income are held up as astute businessmen who grab the social columns. The fact that there appears to be no disapproval of questionable conduct seems to make it acceptable or at least not offensive. We are being inoculated against being offended by the offensive.

This process has had the effect of muting our protests and opposition to corruption. It has almost come to a resignation that nothing can be done about it. Some say that corruption cannot be avoided; that it is a cultural matter and may be perceived differently by one group rather than the other. Yet others say that corruption in an inefficient system is a catalyst to development and necessary in harnessing a process of modernisation. On the flip side there is the argument that corruption is at the heart of the present global financial crisis and that a lack of corporate integrity is the basic underlying cause of the crisis. Kisan Anna Hazare, the social activist in India, considers corruption a scourge to be eradicated. He has campaigned for greater government transparency and for the punishment of official corruption. His

well publicised hunger strikes have exerted pressure on the Government of India to pass stringent anti-corruption laws.

To whichever view one subscribes, it is clear that corruption exists at the domestic and international levels. It is the violation of an ethical standard. As ethical standards are culture based, it may be tolerated at varying levels by different groups and societies and even groups within societies. Disapproval is usually measured by the level of reaction to the corrupt practice. The consistent failure of any system to prosecute and punish corrupt practices has a direct bearing on the level of public tolerance of corruption. Low levels of disapproval have a demonstration effect - making corruption acceptable to the man in the street. Laws - any rules or regulations - do not get their force only from the penalty attached. There must first of all be an acceptance of the particular law as being beneficial and just. This acceptance has to be continually reinforced by a predictable application of sanctions when the law is broken. Failure to enforce the law results in non observance of the law and will lead eventually to acceptance of the unlawful conduct as normative. A simple example of this is the way drivers insist on a right of way at a controlled intersection to turn across oncoming traffic when the lights change. It is wrong but it seems to have become acceptable practice - except when a collision takes place - "you did not see my indicator on to turn (followed by a few words from the dictionary)"

All of the above thoughts were occupying my mind as I considered the task that would be involved in taking on the Presidency of the Law Association at this point in time. The problem with the funds of the Association showed at least a breach of a fiduciary duty by someone. There was a seeming lack

of appreciation of the principle that resignation, when errors happen within one's area of responsibility, is required if even one is not personally guilty of actually causing the problem. The Law Association is only one, albeit a very important one, of the institutions in the country. The way in which it appeared to have dealt or not to have dealt with a problem of internal corruption concerned me deeply. It seemed to suggest a surprising level of tolerance and lack of decisiveness apart from the absence of the ethical imperatives referred to above. This set me thinking. Your invitation to me to deliver this address has assisted in crystallising some of my thoughts. My concern is whether it is possible to successfully tackle the problem in one institution alone without an aggressive effort involving all national institutions.

My mind went back to 1973, almost forty (40) years ago, when many of you might still have been at school. At that time, I gave thought to this very question of corruption. Even then it was a matter of concern to me. I was on the verge of being elected Political Leader of the then ruling party, the PNM. This would have resulted in my being Prime Minister of this country at the tender age of forty (40). I was saved from myself by divine intervention and the return of Dr. Eric Williams who had previously submitted his resignation.

I was to be "enthroned", as it were, at the reconvened Annual Convention of the PNM on Sunday 2nd December 1973. In advance of that occasion, I prepared an acceptance speech which, as it transpired, I was never to deliver. That speech has remained bound and tucked away on a corner of a bookshelf at my home until the invitation to address you today. It was my good friend, Reggie Dumas, I do not know from where he gets his prodigious memory, it was he who reminded me that the speech, which I had

shown him some decades ago, contained some interesting material.

So there I was pondering the state of the Legal Profession in the light of the recent disclosures of financial improprieties and missing funds when I was reminded of what I had written forty (40) years ago and almost twenty (20) years before your Organisation was founded in Germany in May 1993. It has occurred to me that it is entirely appropriate that I share with you the thoughts which I had then on the question of corruption and my present concerns with what is going on both in the country and in a profession which is dear to me.

I now quote from the speech that never was on Sunday 2nd December 1973:-

“The question of corruption in the society is not only larger than any single individual but goes well beyond the mere publication of assets by any individual, be he/she Prime Minister, Priest, or Publican. By themselves, bald declarations of assets may well be met with scepticism, derision and disbelief. What is needed, first of all, is a wider definition of what is corruption in a society such as Trinidad and Tobago. To me, corruption means more than merely putting one’s hand into the till. That in itself is reprehensible enough.

To me corruption means several other things. I will name a few:

(1) *Corruption is the use of one's position, whether public or private, to secure unfair advantage for one's self, friends or family which is not available to the ordinary honest citizen.*

(2) *Corruption is the use of position or influence on a Statutory Board for instance, so to manipulate the affairs of the people's corporations as to enrich oneself unjustly and immorally, if not strictly illegally, to the tune of hundreds or thousands or millions of dollars.*

(3) *Corruption is the drawing of salaries without hard and honest work whether as road worker or as University lecturer or as diplomat.*

(4) *Corruption is the defilement, sexual, moral, physical and otherwise of our young men and women in the rampant blackmail for employment and jobs.*

(5) *Corruption is the use of bankrupt political ideas to attempt to hoodwink our people.*

(6) *Corruption is the enslavement of our people by foreign and local sources which wish to entrap our young people into the new so-called drug culture in order to dominate them and the rest of the society economically, spiritually and politically – the new drug imperialism.*

(7) *Corruption is the misuse of power – the use of brutality, physical as well as*

mental, which alienates our people, young and old, from our nation.

(8) Corruption is the hoarding of goods for exorbitant profit.

(9) It is even unfair not to do one's homework and lessons at schools or universities supported by our people's money. Freeness creates even higher responsibilities than services for which one has to pay.

(10) Indiscipline is corruption.

(11) It is corrupt even to "hands" the ball deliberately to prevent a sure goal – picking the bails is corruption – short runs, beating the starter's pistol.

What is needed, in my view, is a system which respects the privacy of the truly honest yet which exposes and penalises brutally and harshly the corruption of the dishonest. A system under which the corrupt cannot hide – the dishonest cannot flourish. This system must apply not only to Cabinet and to Parliament. It must also apply to all businesses and institutions in which the taxpayers' and people's monies have been invested – Statutory Boards, Banks, Co-operative Societies, Village Councils, Trade Unions, Agricultural Credit Societies, County Councils, Government Ministers and Departments and so on. (In 1973 CLICO was an example for all to follow)

It goes further than this; it must extend to those who for instance enjoy pioneer status and pay starvation wages to our scrunting brothers and sisters, and who yet plead poverty and bankruptcy from the lavish verandahs of their million dollar mansions in Trinidad and Tobago and abroad. It is also a corrupt practice in my view to give excuses for or to attempt to justify inefficiency, indolence, and downright worthlessness. It is as corrupt for an employer to underpay his worker as it is for the worker not to produce.

From my own personal point of view, it will be recalled that on being appointed Attorney General, I resigned Directorships in several companies. Both prudence and morality must dictate that a man should not be or place himself in a position in which he may use the influence or position entrusted to him by the people for his own personal advancement or that of his friends and family. While holding the office of Attorney General, I personally reported incidents either of attempts at corruption or gross imprudence.

I do not consider it a breach of confidence in all the circumstances to mention that on this very subject I wrote to my Prime Minister on the 15th October, 1970 – that is more than three years ago. (I wrote the Prime Minister about the

unlawful activities of John O'Halloran)

That letter is on record. Further, I then prepared a draft bill which during the past few weeks I have updated and modified in the light of more recent international incidents and legislation in other countries. I feel that there should be an independent Commission of men and women of integrity to which persons holding the people's trust should be made to report. This Commission should have the power to investigate, require, enquire and receive information from all sources under oath of secrecy. Its dealings and enquiries should be searching but secret and confidential. However, the Commission should have the power, as is now vested in Coroners, for instance, to prefer charges against persons. In such cases, the onus should be on such persons to prove by what lawful means either he personally or through members of his family or through trustees or through foreign bank accounts – by what lawful means such a person or his family holds the beneficial interest in any property. (At the time there was no provision in the Constitution for an Integrity Commission)

One thing I pledge myself to you is the eradication, the banishment, the removal of Corruption from our Society. In any society corruption is a cancer. It encourages a life

The letter I wrote to the Prime Minister Williams in 1970, pointed out the paradox inherent in the Attorney General prosecuting young protestors in 1970 for various summary offences while a Minister of Government openly violated the law against cock fighting. It was not only his flaunting it but the fact that he did so without public disapproval by the Prime Minister while others were being prosecuted for summary offences. Was it by

sense of the term. How have we dealt with them? by the nation since then have been corruption-based in the wider definition of corruption I had in mind in 1973, all the crises faced with or failed to deal with those crises. On the level of the challenges. What is significant is the manner in which it has dealt Over the last forty (40) years, this country has experienced several

Those were my thoughts then. Can anything I wrote then be of assistance today? Would it have made any difference had I been called upon to deliver that speech in 1973?

Corruption once it takes hold smears all - even the honest are called dishonest - the hardworking called anti worker - the scrupulous called stupid. Corruption is a luxury which we cannot permit at any level".

style based on dishonest and backward forms of thought. It encourages the weakening of initiative and drive - it promotes the avoidance of honest labour - it encourages the youth to foster feelings of hatred for their leader when they see glaring hypocrisies, suddenly acquired wealth with no believable explanation.

coincidence that allegations were leveled against the same Minister some years after in connection with illegal payments made by a firm called Sam P Wallace which was contracted to construct a racing complex at Caroni? For whatever reason, it was left to a successor administration to take active steps to prosecute that matter and regain some of the ill-gotten gains of the Minister. That was the first introduction of my good friend Bob Lindquist to Trinidad and Tobago in 1987. Is it significant that the case to recover the millions was heard not in our courts in Trinidad and Tobago but abroad in the US and Canada? Is it significant that two (2) days after it was to be announced in the Parliament that the Government was successful in recovering millions of dollars from the Tesoro scandal, that the Parliament was invaded, the Prime Minister shot, a Member of Parliament fatally and with considerable loss of life on the 27th July 1990? Is it significant that corruption appears to be exposed not by incumbent but only by successor governments?

In my broader definition of corruption, what took place on the 27th July 1990 was a corrupt act. Over the years have we been able to deal with corruption to demonstrate that consequences flow from corrupt action? Will anything come out of the revelations of present and recent Commissions of Enquiry? You may think that I only pick the glaring examples. Have we for example been able to deal with the problems associated with the construction of the airport at Piarco in order to demonstrate to the population that there is a system of accountability and that retributive justice applies across the board to all regardless of connections?

How has Trinidad and Tobago treated some of those in public life who have spoken out against corrupt practices? In my own case, the public reaction was ribald and demonising – “Ah ’fraid Karl”.

Ramesh Maharaj is condemned as traitor and a neemakaram that made his party lose the government. As for Rowley - he is a vicious Rottweiler for exposing the Piarco airport irregularities and UDECOTT. How many have been promoted for going along and keeping their mouths shut? How many were rewarded for signing the undated letter of resignation? Has corruption ever really been an issue in this country? Can any of the stones that the builder rejected hope that things will be any different in Trinidad and Tobago in 2012?

A problem seems to exist at two (2) main levels. The most glaring appears to be a misapplication or distortion of standards in the procurement process. The other seems to be a failure to make violators responsible and applying sanctions to them.

Tensions naturally arise between the necessity to have a level playing field in the procurement process and the acknowledged desire of administrations to dispense patronage to supporters. Political scientists tell us that all political parties are concerned with the maintenance of power and as a result patronage may extend to appointments to political or semi political positions and in the allocation of jobs and the provision of services. However, there are ethical and practical considerations in a multi-party competitive system. Political or State power should never be used as an instrument to punish those who are perceived as being in opposition. That is a form of corruption. Even amongst one's own supporters a distribution system which is not fair and merit based will be counterproductive. If only for these reasons, procurement procedures need to be transparent and open. But procurement procedures are only an aid to transparency and fairness and no matter how well drafted these procedures are they are not infallible. In the final analysis it depends on the integrity of the persons operating the process. It will fail unless it

is operated by demonstrably fair and incorruptible people who are not ridiculed or even penalised for being honest. How often have we heard of bids being rigged or tenders being tampered with or tenderers having unfair advantages? And nothing happens to anybody except that some prosper.

The other problem seems to be that our institutions have not been dealing effectively with allegations of both minor and major corruption or what Transparency International calls “grand corruption”. Since for the most part the persons managing our institutions of social control are all highly qualified in their particular fields, the problem does not appear to be an imbalance in ability between them and the transgressors. These agencies are our judicial and legal system and the agencies charged with the detection and prosecution of crime. I include the legal profession as an important component.

What has happened is that there is a disconnect between the commission of corrupt acts and the applications of sanctions. The system appears not to be able to cope swiftly with infractions of the law. The simplest of matters takes years to try. The result is that corrupt acts are committed by those who consider the risk of punishment negligible or non-existent. Bandits do not even worry to cover their faces in broad daylight. Fraud is rampant. The organisation responsible for investigating white collar crime appears ill-equipped for the task. The private sector is haemorrhaging and merely passing the loss onto the customer. The public sector is also haemorrhaging in a massive way and passing on the loss to the taxpayer. It would appear that the taxpayer is now even being called upon to fund private sector fraud.

This is breeding an attitude of impunity which is affecting the national resolve against corrupt practices. A new definition of

what is acceptable conduct is gradually being imposed. For example, there does not appear to be an appreciation of the difference between permissible patronage and a corrupt practice. There is nothing derogatory *per se* in patronage once it is realised that the public interest is of paramount importance especially in maintaining a sense of fair play. Successive governments have erred in this area. But I venture to say that rabid patronage is also a corrupt practice. A combination of this and the perception of a failure or refusal to deal with corruption by an elite is a provocative and volatile mixture – particularly in a plural society such as ours.

It was the apparent refusal of those responsible to accept responsibility and the lack of urgency by the Council of the Law Association with which I was most concerned. The legal profession is one of the institutions on which the rule of law and the maintenance of our democratic way of life depends. Any sign of slippage should trigger alarm bells in the entire nation. The profession is too critical and important a body on which the public relies or should rely for the highest standards of conduct. It has to be aggressively fearless in dealing with lapses especially by its own members. In fact it has a higher responsibility in regulating the conduct of its members than any other body in the country.

So what is the connection between my thoughts concerning my own profession and your organisation? We both hold ourselves out as agents of social control for proper order and governance. We must not, however, underestimate the serious extent to which the society has become cynical. It is more than cynicism. It is a sense of frustration and mounting annoyance and anger at the impunity revealed by Commissions of Enquiry and the feeling that no concrete action will be taken against those responsible.

The United States has given us an example in the way it dealt with Madoff and Allan Stanford – swift and decisive.

Both Transparency International and the Law Association may be likened to yachts in a marina. In a sense ours are the longest and sleekest of the ships tied up to the wharf even though one of us may be showing signs of neglect. But there are other ships moored in the same dock and they are all tied to our yachts. These other ships are the various institutions of State which are critical to the functioning of a well run country. Those other institutions depend on us for guidance on how to function properly. Without their proper functioning the whole nation will continue to struggle. If our yachts start taking on water we will drag down all the other ships in the boat yard. A new skipper for the Law Association, if he is wise, will look to organisations like Transparency International for support in fulfilling its role to strengthen the moral and ethical standards in the society. A new skipper, will therefore have to try to fix not only his ship but with organisations like Transparency International have to help to repair the other ships tied up to it. If not all may sink with loss of life.

I may sound like a prophet of doom and gloom. It would not be the first time that I was so described. But I have always held the belief that those vested with important office have a responsibility to demonstrate the highest of standards if even it means denying oneself an advantage which the ordinary citizen can enjoy without adverse comment. Following the broader definition of corruption of which I wrote forty (40) years ago, it also means the fair, honest and conscientious performance of duties with which we are charged whether we be lawyers or judges, doctors or nurses, public servants or private sector workers, police officers or members of the military, teachers or students – or whatever

profession or calling to which you belong. It is in the final analysis a question of the moral and ethical tone of the society in which we live and the respect which we owe to one another. Ethical and moral standards are being sacrificed on the twin altars of patronage and greed.

I leave you with these thoughts. It is said that old men should dream dreams and leave it to young men and women to see visions. What is required is a new resolve – a moral rearmament of both old and young. We must insist on proper standards of conduct at all levels. I can only hope for the sake of Trinidad and Tobago that organisations like the Law Association and Transparency International point the way to a new direction.

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