



*Empowered lives.
Resilient nations.*



ROYAUME DU MAROC
CHEF DU GOUVERNEMENT
Ministère Délégué auprès du Chef du Gouvernement
Chargé des Affaires Générales et de la Gouvernance



الإتحاد العام للمساومات المغرب
الجمعية العامة للمساومات المغربية
Confédération Générale des Entreprises du Maroc

Regional Workshop
**Integrity in the Interface between
the Public and the Private Sectors in the Arab
Countries**

Casablanca, Kingdom of Morocco
24-25 September 2013

Speech by the Acting General Counsel of the US Department of Commerce

Ms. Barbara FREDERICKS

I want to thank the organizers of the conference for giving me an opportunity to participate in this interesting and timely program. I am thrilled to be here for number of reasons; First, I always learn so much from this kind of dialogue. All of us have big challenges and it is comforting to know many of us are facing the same issues. Second, I always get ideas. Someone I meet or listen to is always doing something better than I am so I learn how to improve my program. Finally, I am a government lawyer and spend much of my time telling other government employees, my clients, some at very high levels, what the law says and what they can do and not do. But the challenge in speaking to you today is that in discussing my work I had to consider not only the substance of the laws we interpret and how we implement our programs but whether what we do is successful. I had to think about each part and decide whether it was useful, cost effective and worth recommending to others. This proves to be a more difficult challenge than telling fellow employees what to do and how do it.

I have been in this anti-corruption business about twenty-five years. Early on I think we strived to only ensure the best laws were enacted, and it was thought if we did that corruption would at least be reduced. For example, some of the earliest international efforts were the attempts to have strong domestic anti-bribery laws in every nation. That effort continues today, and it is certainly a key component in any program to eliminate corruption. However, I believe that criminal statutes and other laws regulating conduct cannot be effective without a system of transparency in government operations and a strong bureaucracy composed of civil servants who obtained their employment through merit based systems.

Although I do not pretend to have the answers, I want to state one affirmative proposition- acts of corruption are not victimless crimes justified because “everybody does it” and “nobody gets hurt”. The argument that in fact we do not have to worry about crimes like bribery because there is no direct victim was an approach that was taken seriously by some in the academic community some years ago. But I would strongly urge that, in all crime, there are real victims and real harm. As we have seen in recent years, poor decisions by those in the government and in the private sector in any one country can have devastating economic consequences, not only locally but in other countries as well. As we wake up and realize that our small planet has fewer and fewer resources that all need to share, the siphoning off of public funds for the private benefit of a few as opposed to the needs of the general public cannot be tolerated.

We can all recognize corruption when the failure is a visible one. The bridge built with inferior materials that collapses, or the one that takes twice as long to build because materials are siphoned off for improper uses, is an obvious misuse of resources. But the public revelation of the bridge project that was compromised through corrupt practices is only the surface manifestation of the problem. Equally destructive, but harder to see, is the longer-term cynicism and destruction of public trust that such corrupt practices can create. This has many negative effects. They include the eventual increase in the cost of goods and services, the decline in the quality of goods and services provided, and the unwillingness of those in the corporate sector who want to follow the rules to work with corrupt institutions. Such an atmosphere also discourages the best and the brightest people from entering public service.

There are two basic groups of consumers for good governance. One is the public, both private citizens and private institutions that conduct business with the government, and which are regulated by it. The other group is the civil servants that deliver government services to the public. Both groups have to accept the view that the systems they implement and work under not only are, but also appear to be rational, understandable, reasonable and fair. Appearances are important: if the rules we live under are too complicated, unintelligible or perceived to be unfair, then there is little foundation for “good governance”.

I think the common thread in enlisting public support for setting up effective means to resist both internal government corruption and external crimes is the need to nurture a culture that promotes honest and fair dealings and the common good. I believe that human nature is universal, so this is not a question of differences in cultures and societies, but finding systems that will promote good values and reward those who abide by them.

One of the biggest problems with corruption- bribes, self-dealing, and favoritism- is the uncertainty such activities create. In fact, one of the key reasons my Department is involved in global anti-corruption efforts is because of the adverse effect such corruption has on international trade. Our trade and investment policy is based on free trade- the easy and fluid transfer of goods and services. However, businesses do not want to operate in places where there is uncertainty - where rampant bribery makes the cost of doing business unknowable or favoritism and person biases create arbitrariness regarding the rules businesses are expected to follow. Therefore, we all have an interest, not only in our own country, but in countries with which we have trade and other relations, to further the universal values involved with anti-corruption efforts. Scandal is sometimes easy to allege and difficult to prove. However, business is not going to take the time to evaluate laws or judicial decisions on corruption. If corruption exists, the legitimate corporate world will find out and will go elsewhere.

One of my responsibilities as the Assistant General Counsel for Administration, along with my staff, is to conceive and implement a sophisticated ethics program for the Department and its 38,000 employees stationed throughout the United States and the world. Thus, in many ways, we must act like any major corporate entity, by trying to provide our services to our customers in the most-effective manner. In administering a high-quality ethics program for the Commerce Department, we have a heavy responsibility (like all corporations) to enhance the morale and job satisfaction of our employees. However, as a Government ministry charged with helping American businesses, we have a special responsibility to be a role model for American businesses, both in the U.S. and abroad, in the areas of ethics.

So let me talk about practical tools that I think work. The first is a set of rules for behavior by employees that as I indicated earlier are understandable and acceptable to both employees and the public. This means the rules must be clear. They must be as comprehensive as possible- addressing those matters of greatest concern – and be applicable to the realities of the work place. Should they be very detailed and precise or in the form of general principles? Very detailed rules have the advantage of giving the clear notice to employees and the public of what is expected of the workforce. They help ensure uniformity in their application and thus there is the perception of fairness. However, detailed rules have the disadvantage of being very complicated and less likely teachable to all employees. They also can lack flexibility. Each

organization must try to choose the appropriate level of detail to secure compliance for its own culture.

Second, the rules must be reasonable. If the rules are so strict it is impossible for anyone to follow them, it will be impossible to compel compliance. For example, if in the US we prohibited the acceptance of a free cup of coffee by a government employee; most employees would ignore the rules as they would see it unreasonable. However, if we allowed our officials to accept expensive gifts with no limitations, the public would assume that public employees were susceptible to bribes and would not accept decisions from these officials.

Bottom line, we think the best rules of conduct are those that reflect the culture, appear reasonable and are clear and easy to understand. They are most likely to lead voluntary compliance and are easily enforceable. The public accepts them and employees can perform their jobs without fear of arbitrary enforcement. We spend many hours and circulate lots of materials reminding employees of the rules and are available to help them if they do not understand the rules.

A second part in increasing public trust of government is transparency, a means for the public to meaningfully review the work of government. Transparency is in fact a principle on which the United States was founded. One of the leaders of the American Revolution, Patrick Henry, said in 1776 “the liberties of the people never were, nor ever will be secure when transaction of their rulers may be concealed from them.” Transparency can take many forms. The center of our government transparency system is our Freedom of Information Act (FOIA), which has two aspects. First it requires government officials to proactively release as much information as possible on government operations as well as the results of governmental research and activities. The law also requires release of other government information requested as long as doing so does not harm the government, unnecessarily invade the privacy of those who work for the government or harm those who have given the government sensitive information that is not to be shared, such as proprietary business information. In the US, the reason this works is that we have a vigilant press who are the major users of the FOIA. It is only with a free press that such a law can be effective, as citizens individually cannot easily acquire and absorb vast amounts of information, even if the government does a proper job of release.

Transparency means not only having access by the public to government information, but also providing mechanism for the public to give input into government decision-making. So in the United States there are many committees of citizens whose role is to advise various government entities on decisions. The seats on these “advisory committees” are for the most part highly coveted by citizens. And, there is open competition to be a member of one of these boards. Once they are constituted they meet openly and their advice to government officials is a matter of public record. In addition, many of the boards and regulatory bodies that actually have the power to issue rules and regulations debate their decisions in a public forum. The law that dictates these open sessions is called the “Sunshine Act”. Again, although segments of the public may not agree on the final decisions, they can view the process, and this takes the suspicion that comes from secrecy out of equation.

There are two other measures that I believe enhance the effort to make government transparent to its citizens, in the United States. There is a body of laws that protects those

employees and others who have information about fraud, waste and abuse or who report violations of the law. These are the so called Whistleblower Protection Laws. They operate in two different ways; there are laws that protect whistleblowers by making it illegal to take an action against an employee who comes forward with information concerning corruption. There are other laws, some fairly new, that actually reward citizens for reporting “waste fraud and abuse”. The aim in both is to ensure that there are avenues for the public to become aware of corruption and other forms of waste of government resources.

Finally, there is a component of transparency that focuses on the decision maker in government. Again, more often than not government decisions are highly complex and difficult to understand. That is why it is extremely important for the public to feel confident about the honesty and integrity of those making the decisions. As a citizen I may not understand the complexities of a decision to regulate a commodity, for example, but if I believe in the honesty of the official making the decision, I will feel more secure and more supportive of the institution government. That is the primary reason we have a public asset reporting system for the most senior officials in government. Every senior manager in government is required to file a yearly report which includes information on his or her financial resources, (including family members) as well as any outside organizations in which he or she serves in a leadership capacity. The system helps the employee to understand what he can and cannot do as a government employee given his financial holdings, and it gives the public reassurance that the official is making decisions based solely on the merits of the issue, not on the fact that the decision may increase his or her wealth or affect other personal interests.

The final step in establishing a system based on integrity is ensuring we have a merit-based civil service. No matter how good the program or the rules, if we do not treat the employees who enforce the rules professionally, including paying them a decent wage, then we risk attracting to public service those who may be less willing to behave ethically and within the law. Unprofessional conduct by civil servants hurts the institutions as well as the community which it serves. To that end, employees must feel that they are protected from unfair and arbitrary treatment. It must be clear that no one is getting a special deal or an unfair advantage in hiring, advancement, compensation or any other employment benefit. And, as discussed above, civil servants and citizens should feel they are protected when they reveal wrong-doing. A civil servant who is secure that, if they do the right thing or strive to do so, they will not be threatened arbitrarily, has a greater commitment to making the organization prosper, and is in a good position to make hard decisions based solely on the public good. Such conduct should again engender respect for citizens who will in turn support those decisions.

Finally, I just want to say, I am biased but I think public service is a truly noble calling. Doing public good is truly satisfying and it is possible to gather tremendous personal pride in doing a job well in the public sector. But it is not always easy- we have learned that we do not live in a world with unlimited resources. Good governance is a culture where the focus always is on the public good. And that focus can only be maintained when it is free of the enormous drain on resources and distraction that comes from dealing with allegations of scandal and corruption. Thus, we must constantly be vigilant about maintaining a culture where corruption is not tolerated.
