

# **Multi-National Corporations and Political Corruptions**

- **Analysis on Similarities and Differences**
- **Impacts on Human Rights and Environment**
- **Challenges faced by forensic investigation on global corporation anti-fraud program in different political and economic environment**

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## **1.0 EXECUTIVE SUMMARY**

Corruptions are not new and are happening globally, but can be very different in forms and results depending on where the corruption happens. Forensic Accountants and Investigators can face very different challenges although the goals are the same.

Different challenges can come from economic, political, legal framework and cultural variations. As a result, the investigative tools and mindset can be totally unlike in nature.

Internationally multi-national corporations' and political corruptions can start with different reasons, progress in different ways and end in different outcomes depending on the country and culture the corruption happens. These corruptions can also intentionally or unknowingly affect the citizen's standards of life, and living environment in certain degree. There are more cases on international political and corporation corruptions that are affecting not only global economy, but also human food safety and health issues in recent years. There is also more public awareness on the environmental issues these corruptions cause. This eventually become a greater area of forensic accountants involvement by making progress in both contributing in catching the corruption and improving the basic human rights in some countries of heavy bribery due to political reasons.

There are also some political scandal patterns and similarity in the countries sharing similar backgrounds and history. The corruption is not happening as an accident, it is normally a well-thought plan according to the mindset, opportunity, and actions. Because of the political background, culture setting and specific legal framework, a demand of

bribe exists and an offering is given. Therefore different aspects of societies can result in very different corruptions and bribery.

Global transparency is the main goal to achieve from many countries' effort, but is it possible? International anti-corruption effort is moving forward but how far can it reach? As long as there are different economic forms and government political systems based on different ideological principles, corruption can occur if the opportunity exists with demand for satisfaction in certain needs. It is interesting to research on personal motives involved in the scandals based on different culture and politics and if the anti-fraud program in global corporation actually works in different countries.

## 2.0 INTRODUCTION

Multi-national corporations have certain degree of power globally. With its power, it can affect the standard of living and sometimes even change the political power in certain countries because of large amount of political donations.

Every country has its own set of Laws and Regulations to fight anti-corruption, but the completeness and practice of the Law can be very different. The global corporations operating in different part of the world have very different Laws to follow; as a result, accounting treatments of certain transactions can be legal in one country and illegal in another. For example, historically, China Law did not offer a clear distinction between a “bribe” and a lawful “gift”. Gifting is a culture among Chinese businesses, while in Canada; there is a clear definition of gifting limit in Income Tax Act and bribery definition on anti-corruption regulations.

This paper provides analysis on three major corruption cases in the recent history including China GlaxoSmithKline (GSK) bribery case, United States Monsanto wheat scandal and bribery case and Brazil Petrobras scandal case. It provides a brief history of the three cases and analysis on the following matters:

- Influences on the industry level;
- Similarity and differences among the three cases based on economy system, political environment, legal framework and cultural aspects;
- Influences on the human rights, environment and living standards

This paper also discusses the international regulations on anti-corruption efforts and if these regulations and organizations have been effective on the three corruption cases.

In Canada, we have Canadian Criminal Code and Corruption of Foreign Public Officials Act that address bribery and corruption, but are they effective? At the end of this paper, it will discuss briefly on what we learn from the three analyzed cases and if similar cases can happen in Canada.

Although globally we are fighting hard for anti-corruption and trying our best to make the globe transparency; however, there are still many problems we face because it is very time consuming and expensive. Trying to find a balance in between is another course.

## **2.1 Scope of Review**

Several sources were reviewed in preparation of this research paper. Given the topic nature of this subject, primary sources of information were online articles to ensure the most current information was analyzed. In addition, other research papers and journals were reviewed for historical information. They are all listed in the Bibliography

## **2.2 Restrictions**

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### **3.0 A BRIEF HISTORY OF THE RESEARCHED CORRUPTION CASES**

#### **3.1 China GlaxoSmithKline (GSK) case analysis**

##### **Background/Facts of the case**

On June 28, 2013, the police department of Changsha City made an announcement that they are in the progress of investigating certain GSK (China) executives for potential economic crimes.

On July 11, 2013, the Chinese Ministry of Public Security confirmed that it had led police departments in various cities to investigate GSK China's executives for "serious economic crimes, including commercial bribery and embezzlement."<sup>1</sup> GSK shortly after on July 15, 2013, pledged to fully cooperate with the authorities and the general manager of GSK China, a British citizen, would return to China for the investigation. GSK also indicated that the bribery actions seriously corrupted the companies' globally regulations, operating policies and standards.

On May 14, 2014, the investigation was completed and the case had been transferred to prosecutors for official charges. Based on the investigation report, there were briberies to travel agencies, hospitals, doctors, healthcare institutions and associations in order to boost sales. The bribery was nearly Rmb500 Million. Based on the sales through bribes, GSK China's annual revenue increased from Rmb3.9 billion (US\$626 million) in 2009 to Rmb6.9 billion (US\$1.11 billion) in 2012.<sup>1</sup>

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<sup>1</sup> Martin Rogers, Bernard Chen Zhu and Jianwei (Jerry) Fang, "GSK: A case study", *China Law & Practice*, July/August 2014 issue dated July 8, 2014



GSK is one of the largest global pharmaceutical companies operating in China. China, in recent years, had been very aggressive in catching bribery and enforcing its anti-corruption laws, which has resulted in arrests of few high-level officials and prominent executives of government-owned entities as well as multinational companies.

### **China Laws/Regulations**

Chinese anti-bribery regulation is a combination of two major Laws, PRC Criminal Law and PRC Anti-Unfair Competition Law.

**PRC Criminal Law** - enacted in 1979, with eight subsequent amendments. It strictly prohibits bribery for the purpose of securing illegitimate benefits. Since China is a communist country, historically, the Act limited bribery to a state official or state functionary. However with the emerging global market that China has entered, the law extended to cover bribery to a non-state official because China realized that it was and is going to be a big widespread problem.

**PRC Anti-Unfair Competition Law** - enacted in 1993.<sup>2</sup> The purpose of the law is to prohibit unfair competition including commercial bribery. Article 8 indicated that “managers shall not use money or properties or the other methods to bribe to others in order to sell or purchase commodities. It shall be guilty of giving bribe if managers give a secret commission to the other organisations or individuals without the normal

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<sup>2</sup> The National People’s Congress of the People’s Republic of China  
[http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content\\_4600.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4600.htm)

accounting records. It shall be guilty of taking bribe, if the organizations or individuals accept the secret discount without normal accounting records”.<sup>3</sup>

### **Other Laws/Regulations**

**UK Bribery Act** – enacted in 2010. It prohibits bribery, being bribed, bribery of foreign public officials and the failure of a commercial organization to prevent bribery on its behalf. GSK is a UK based organization and it falls into the investigation criteria under *UK Bribery Act*.

**US Foreign Corrupt Practice Act (“FCPA”)** – enacted in 1977 to regulate payments of money or anything of value to a foreign official for the purpose of obtaining business. This includes all the companies that have securities registered and with shares listed, in the US stock market.

### **Bribery/Corruption involvement**

The bribery scheme started with a Shanghai travel agency, which helped GSK officials to transfer funds. The travel agency was serving as a front operation to create fake bookings of trips, conferences and training sessions for the doctors. The bribery was targeting doctors and hospital officials with cash payments, free trips and visits to prostitutes, in order to sell GSK’s products at price premiums. The major offenders are 5 major officials and managers in GSK, including Mark Reilly, its former top China executive,

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<sup>3</sup> The Supreme People’s Court of The People’s Republic of China, <http://en.chinacourt.org/public/detail.php?id=3306>

were convicted of bribery-related charges and received suspended prison sentences up to four years.

Although GSK reported that the employees involved were outside of GSK's systems of controls, meaning that the bribery involved only a few Chinese-born employees.

However, the case escalated in May 2014, when Chinese police accused Mr. Reilly of operating a massive bribery network. The involved employees are Mark Reilly himself and 4 Chinese-born executives of the company. They had even bribed government officials in Beijing and Shanghai.

At the same time, GSK has been investigating claims that its employees bribed doctors in Iraq, Jordan, Lebanon and Syria.

### **Influences in the Industry**

“It is very hard to do business in the Chinese health care and pharmaceutical sectors without doing payoffs,” said Davie Zweig, the director of the Centre on China's Transnational Relations at the Hong Kong University of Science and Technology.

“Everyone else pays bribes. Glaxo just got caught.”

China is a communist country. In China, gift giving among business is nature and one of the culture expectations. The line is blurred between proper and improper business dealings because so many Chinese companies that foreign multinational conduct business with are state-owned, which makes their employees government officials. Similarly, the healthcare industries and other medical professionals are typically government employees and, as such, poorly compensated, thus prone to accept cash or gifts. A typical doctor at a large tertiary level hospital in Beijing officially earns about \$46000 yuan (US\$7500) per

year.<sup>4</sup> But in reality, doctors earn more than three times of this amount, totalling of bonuses, commissions (from prescribed drugs and ordering tests), red envelopes, and moonlighting (doing “outside clinic” at weekends).

Because of this traditional cultural expectation, despite that it is illegal, pharmaceutical companies make under-table commissions to meet the expectation in order for them to survive and make profit in Chinese competitive market. GSK case changed or at least made the industry leading companies to think of strategies to survive in Chinese market without breaking the law. Due to the fact that Chinese government is emphasizing on catching political corruptions in recent years, and now extended the power to catching global company businesses giving secret commissions, the industry is shaking by GSK case. The global businesses operating in China now face increasing risk of being caught up in the country’s anticorruption campaigns and rising economic nationalism.

### **Influences on human living**

While all the news are concentrating on this large corruption in China, another aspect and influences should be mentioned and paid attention to. It is the impact on human living. Human living ages are going up consistently, thanks to the new improving prescribed medicine. While this brings the betterment to human life, it is also creates damages to human living. The concerns are:

- If the doctors and health professionals are receiving kickbacks from a certain prescribed medicine or health examination, what is the clear line between drugs

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<sup>4</sup> Michael Woodhead, “How much does the average Chinese doctor earn?”, *China Medical News*, March 31, 2014 issue

are necessary and the added non-necessary drugs for any kind of diagnosed disease or health condition?

- There is a question of whether a particular drug is the most accurate treatment for a certain health condition since the doctor has the most defined power and knowledge to prescribe drugs.
- Doctors' ethics could be questionable by any patient

Details of the effects and influences on human livings are discussed in Section 6.1.

### **3.2 United States Monsanto Wheat scandal and bribery cases analysis**

#### **Background/Facts of the cases**

Monsanto Company is a publicly traded American multinational agrochemical and agricultural biotechnology corporation. It is a leading producer of genetically engineered seed and of the herbicide glyphosate, which it markets under the Roundup brand.<sup>5</sup>

Monsanto was also one of the first companies to apply the biotechnology industry business model to agriculture.

Monsanto has been involved in several high-profile lawsuits, as both plaintiff and defendant. In this study, we will be concentrating on the 2014 wheat scandal and a limited analysis on the India bribery back on 2005.

#### **2014 wheat scandal**

In June 2013, several lawsuits filed against Monsanto over the release of the experimental wheat. Kansas farmer Ernest Brown individually sued the company, and a lawsuit

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<sup>5</sup> Wikipedia, "Monsanto", <http://en.wikipedia.org/wiki/Monsanto>

seeking class-action status was filed in Washington on behalf of growers of soft white wheat.

In the lawsuits, it discovered that Monsanto's "Roundup Ready" wheat, which was not approved by U.S. regulators, was found growing in an Oregon farmer's field in 2013.

On November 2014, Monsanto reached a settlement with soft wheat farmers and agreed to pay \$250,000 to wheat growers' association and \$2.125M into a settlement fund for farmers in Washington, Oregon and Idaho who sold soft white wheat between May 30, 2013 and November 30, 2013.

Despite several lawsuits have been settled, Monsanto still faced scrutiny over its biotech wheat after the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. It indicated that Monsanto secretly grew unapproved wheat in its Montana research facility between 2000 and 2003.

### **2005 India bribery**

In 2005, the United States Department of Justice filed a Deferred Prosecution Agreement in which Monsanto admitted to violations of the Foreign Corrupt Practices Act (15 U.S.C. § 78dd-1) and making false entries into its books and records (15 U.S.C § 78m(b)(2) & (5)). Monsanto also agreed to pay a \$1.5 million fine. The case involved bribes paid to an Indonesian official. Monsanto admitted a senior manager at Monsanto directed an Indonesian consulting firm to give a \$50,000 bribe to a high-level official in Indonesia's environment ministry in 2002 related to the agency's assessment on its genetically modified cotton. Monsanto told the company to disguise an invoice for the bribe as

"consulting fees". Monsanto also has admitted to paying bribes to a number of other high-ranking Indonesian officials between 1997 and 2002.<sup>6</sup>

### **Laws/Regulations**

There are several Regulations and Laws that govern the industry, including

**Animal and Plant Health Inspection Service (APHIS)** – is an agency of the United States Department of Agriculture responsible for protecting animal health, animal welfare and plant health. Monsanto's genetically engineered (GE) wheat field should pass APHIS' regulatory approval in order for them to grow GE wheat. Since Monsanto is growing the wheat that has been approved, this is a serious breach of compliance.

**Food and Drug Administration (FDA)** – is a federal agency of the United States Department of Health and Human Services, responsible for protecting and promoting public health through regulations and supervision of food safety. Back in 2004, FDA has completed a consultation on the safety of food and feed derived from this GE wheat variety and it was determined that there is no threat or concern of the safety issue of any food derived from GE wheat. However, since the breakout news of Monsanto's unapproved growing field, FDA is monitoring closely on whether its initial consultation report result can be extended to the case and if any further investigation should be done.

**Plant Protection Act (PPA)** – is a U.S. statute relating to plant pests and noxious weeds introduced in Year 2000. It prevents the introduction of plant pests into the United States

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<sup>6</sup> Wikipedia, "Monsanto legal cases", [https://en.wikipedia.org/wiki/Monsanto\\_legal\\_cases](https://en.wikipedia.org/wiki/Monsanto_legal_cases)

or the dissemination of plant pest within the United States. If Monsanto violates PPA, APHIS has the authority to seek penalties and possible criminal prosecution, if appropriate.

### **Other Law/Regulations**

Internationally there are other regulations that protect the same value in different countries. Japan and South Korea suspended some imports of American wheat after the discovery of Monsanto's wheat scandal. The European Union also urged its 27 nations to increase testing to avoid the same issue.

### **Bribery/Corruption involvement**

In the Monsanto wheat scandal case, there is no bribery to be found. The main concentration on this case was for us to understand the GM products can bring very fat profit while large corporations like Monsanto, taking the risk of violating the regulations to grow unapproved food source. Being said that, Monsanto records show more than US\$700,000 of "questionable or illegal" payments from 1997-2005 to former Indonesian government officials and their family members. Monsanto also had to pay fines of US\$1.5M to US government regulators and agree to close monitoring of its business practices by US authorities.

Bribes, corruptions and relatively insignificant fines are small change for Monsanto compared to the huge prize of monopoly position in countries with large agricultural sectors.



## **Influences in the Industry**

Monsanto's crisis shows a challenge that faces every large corporation. It is not enough to be continually improving social and environmental performance. With internet and information easily accessible to everyone, the corporation is expected to be no less than perfect.

Being said that, there is almost impossible to stop the evolution on food industry. Instead, it is going to grow further. Although most Americans are unaware of it, more than 60% of the food that consumers eat is genetically modified. These agro-biotech giants, including Monsanto, will grow bigger despite of the wheat scandal. The reason is that human needs food to survive due to the growing population demand. These companies have governments and even help from World Bank, because more sustainable agriculture means more productivity and less hunger.

Currently there are no strong regulations that govern GM crops. It is clearly in the short term, the bio-tech industry is still booming.

## **Influences on human living**

The wheat is eating directly by human, not animals. Whether it poses any threat to human life is still questionable. The corporation's target is, on one hand, making profit, but the greater social responsibility exists in consumer advocacy. The ethical issue is debatable and the influences on human living are raising due to the follow reasons:

- Potential risks to the environment and wildlife
- Potential risks to human health

- Potential socio-economic effects
- Potential risk to public trust generated in part by industry refusal to label GM foods as such

However, the benefits are the same as the above and it might improve all the potential benefits if we think of it reversely. Details to be discussed in Section 6.2.

### **3.3 Brazil Petrobras scandal case analysis**

#### **Background/Facts of the case**

Petrobras is a semi-public Brazilian multinational energy corporation headquartered in Rio de Janeiro, Brazil. It is the largest company in the Southern Hemisphere by market capitalization and the largest in Latin America measured by 2011 revenue.<sup>7</sup> Here is a simple timeline of the corruption:

- Between 2003 and 2010, Dilma Rousseff (“Rousseff”) served as Petrobras chairman before becoming Brazilian president;
- On August 2009, Petrobras started a plan to raise capital as part of a deal that increases the government’s stake in the company;
- On January 2011, Rousseff was elected to be Brazil’s president;
- On January 2012, Maria das Gracas Foster (“Gracas Foster”) was appointed Petrobras chief executive;

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<sup>7</sup> Wikipedia, “Petrobras”, <http://en.wikipedia.org/wiki/Petrobras>

- On March 2014, Former Petrobras director Paulo Roberto Costa (“Costa”) was arrested in connection with an investigation into alleged corruption, which allegedly took place from 2004 to 2012;
- On April 2014, Brazil’s Supreme Court authorised a request for a congressional inquiry into alleged corruption at Petrobras;
- On September 2014, Costa named parliamentarians and other officials as being involved in the corruption taking bribery in the investigation;
- On October, 2014, Petrobras’ external auditor refused to sign off on the quarterly results;
- On November, 2014, Police in six states raid Petrobras offices and those of some contractors; Prosecutors have filed charges against 35 people including executives from some of the nation’s biggest construction firm;
- On January 28, 2015, Petrobras admitted that it is unable to calculate how much as stolen from it in the corruption scandal when it publishes its unaudited financial results. Some analysts had expected write-downs of up to \$20 billion;<sup>8</sup>
- On February 4, 2015, Gracas Foster and five other Petrobras executives resign;
- On March, 2015, the investigation is widening to include 57 politicians;  
investigation continues.

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<sup>8</sup> John Aglionby, “Petrobras: Timeline of a scandal”, *The Financial Times*, February 4, 2015 issue

## Laws/Regulations

**Brazilian Constitution** – established in 1988

- **Article 37** – is a key section of the legislative anti-corruption framework. The government entities and entities owned by the Government in any of the powers of the Union, the states, the Federal District and the Municipalities shall obey the principles of lawfulness, impersonality, morality, publicity, and efficiency, and also the following:<sup>9</sup>

**Paragraph 4** – Acts of administrative dishonesty shall result in the suspension of political rights, loss of public function, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading established by law, without prejudice to the applicable criminal action.<sup>10</sup>

**Criminal Code** – enacted in 1940, criminalized both passive and active corruption of domestic public official in Articles 317 and 333. It is also a crime to commit active corruption of foreign public official in international commercial transactions, according to Article 337-B.

**Money Laundering Act** – enacted in 1998, but did not criminalize the act of money laundering unless the money or assets in question were related to enumerate illegal activities, for example, arms and narcotics trafficking, terrorism, kidnapping and extortion among them. However, the new amendments in 2012 do add rules to govern

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<sup>9</sup> Wikipedia, “Constitution of Brazil”, [http://en.wikipedia.org/wiki/Constitution\\_of\\_Brazil](http://en.wikipedia.org/wiki/Constitution_of_Brazil)

<sup>10</sup> Wikipedia, “Constitution of Brazil”, [http://en.wikipedia.org/wiki/Constitution\\_of\\_Brazil](http://en.wikipedia.org/wiki/Constitution_of_Brazil)

underlying crimes, criminalizing the transfer of funds of which the nature of source is concealed.

### **Other Law/Regulations that may be applicable to Bribe/Corruption case in Brazil**

- Procurement Law (1993)
- Law of Crimes committed by Mayors (1967)
- Organized Crime Act (1995)

Also The Council for Financial Activities Control (COAF) is an agency attached to the Ministry of Finance of Brazil. The prosecutors and police receive suspicious transaction reports, which can lead to the initiation of criminal investigation.

### **Other Law/Regulations in other countries**

**U.S. Foreign Corrupt Practice Act (“FCPA”)** – is an anti-corruption statute that makes it illegal to bribe foreign officials to win or retain business. Specific transactions under the investigation could include the purchase of a refinery by Petrobras in the US and the construction of refineries in Brazil. Since Petrobras is a public traded company listed on the New York Stock Exchange, the U.S. Securities and Exchange Commission is carrying out a civil investigation into the scandal and also investigate for any violation of the FCPA.

## **Bribery/Corruption involvement**

This is known to be one of the biggest government and business corruption on the global market around the world. Authorities allege top officials from Petrobras operated the kickback scheme on contracts worth upward of \$4 billion, with money from the inflated contracts eventually being fed back to the governing Worker's party and other major parties for political campaigns.<sup>11</sup>

The charges include corruption, money laundering and the formation of a criminal organization. There are many high level government officials involved, as well as black market money dealer. Alberto Youssef ("Youssef"), among the charged, had indicated that he laundered hundreds of millions in the scheme and that the governing party benefited from it. He even said that Brazilian President Dilma Rousseff and her predecessor, Luiz Inacio Lula da Silva, knew about the kickbacks. However, both leaders deny the allegation. Youssef was talking to the Police in exchange for less jail time.

## **Influences in the Country and Industry/Business**

Petrobras, Brazil's biggest company, has a lot of influence over political and economic situation in Brazil. It is the business giant in the country and is in charge of tapping offshore oil field and creating wealth that leaders hope will propel the country to develop world status. However since the investigation started, the Brazilians started to feel the government is not trust worthy and the government is stealing the pride of Brazilians. Brazilians widely believe their government is corrupt. This case has only added to the suspicions, especially when it comes to big infrastructure works involving public funds.

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<sup>11</sup> *The Guardian*, December 12, 2014 issue

Petrobras, on the other hand, is also a major source of funding for cultural events, hospitals and schools. Whether the company can earn back People's trust is still questionable.

This case also hits hard at some of Brazil's biggest private firms, which consistently are among the top donors to political campaigns via legal contributions. Businesses in Brazil will hopefully to start to have better governance structure and lead to more transparency, more oversight and less corruption.

One thing worth of watching is that although there are some big construction companies being charged in the scandal, they are all needed to continue building venues for the 2016 Olympic Games in Rio de Janeiro. The industry is too big to fail, but the losers in the case are the thousands of laid-off oil workers protesting in vain outside the Petrobras headquarters in Rio due to the temporally shrinking market faced by Petrobras.

The question we should ask is why this kind of corruption exists in Brazil and no other countries. More analysis will be provided in Section 4.

### **Influences on human living**

In any developing country, the corruption and bribe situation is more serious than a developed country. Brazil is no exception. Brazil has been very successful in being able to sustain economic growth to lift around 40 million people out of poverty in just 10 years.<sup>12</sup> One of the main reasons for this rapid growth is the government investment in health, education, and direct poverty reduction. However, where is the money coming

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<sup>12</sup> The World Bank, "GDP growth (annual %)", <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?page=2>

from to support the government? The answer is political donations from large private businesses.

It is great to see the people having a better living but at the same time, the corruption existed and grew with the rich. Unfortunately, the corruption won't disappear as long as human is asking for a better life when the economic system has not reached a balance between the poor and the rich. This is what's happening behind Petrobras case. More analysis will be provided in Section 6.3.

#### **4.0 AN ANALYSIS AND STUDIES OF SIMILARITIES AND DIFFERENCES AMONG THE CASES**

After the brief explanation and description of the three corruption cases, it is worth to discuss and understand the similarity and differences among the 3 cases in both political and economic system.

##### **Similarity among the 3 cases**

Corruption perception index ("CPI) was created in 1995 by Transparency International. It is a general index that ranks countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. The CPI generally defines corruption as "the misuse of public power for private benefit."<sup>13</sup> It currently ranks 177 countries on a scale from 100 (very clean) to 0 (highly corrupt).

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<sup>13</sup> Wikipedia, "Corruption Perceptions Index", [http://en.wikipedia.org/wiki/Corruption\\_Perceptions\\_Index](http://en.wikipedia.org/wiki/Corruption_Perceptions_Index)



According to the Transparency International's 2014 CPI result<sup>14</sup>, China's score is 36 while Brazil is 43 when comparing the location of GSK case and Petrobras case. In the Monsanto case, although the wheat scandal happens in the United States (score 74), but historically, Monsanto has continuous problem is paying commission and bribery to India officials, while Indian's CPI score is 38. There is a similarity of the CPI where the bribery occurred because of the following conditions and reasons:

#### **4.1 Similarity in the Economic System**

According to the International Statistical Institute ("ISI"), China, Brazil, and India are all developing countries.<sup>15</sup> Developing countries are defined according to their Gross National Income (GNI) per capita per year. Countries with a GNI of US\$11,905 and less are defined as development (specified by the World Bank, 2013). There are some important structural features of developing countries related to chances of corruption including:

- General poverty

GPD and Per Capita Income are at low level. In these countries, general living standard is low. Poverty is visibly disturbing every aspect of life.

General health services for people are insignificant.

In GSK case, as mentioned in the previous outline, it is related to the health system, which the doctors and government officials are earning low level of income while the healthcare is insignificant. Therefore, in order

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<sup>14</sup> Transparency International, "Corruption Perceptions Index 2014: Results", <https://www.transparency.org/cpi2014/results>

<sup>15</sup> The International Statistical Institute, "List of Developing Countries", <http://www.isi-web.org/component/content/article/5-root/root/81-developing>

for the large pharmaceutical companies to earn profit and compete in this economic environment, the easiest way is to pay commission to the people who are holding higher level of power in the system. Due to the lower earnings made of the high authorities, the so-called “red envelope” culture in China is widely accepted.

In Petrobras case, Brazil is facing the same situation. Petrobras is one of the biggest oil organizations in the market, and it can bring Brazil to a high respected level in the world from a developing country. At the same time, the government is in need of money to improve its overall economy, including public works, housing, education and health system. As a result, government corruption easily exists with rapid growing economy.

- High dependence on agriculture

Agriculture is the main occupation in developing countries. More than 70 percent of active labour force is engaged in their primary sector.<sup>16</sup>

Population increases rapidly to result in increases of demands for the need of agriculture products. This is easily seen in the case of GSK and Monsanto cases, especially in the bribery paid to Indian officials by Monsanto. Indian needs agriculture products surge due to the increase in population. Monsanto’s GE products can easily serve the function of helping to achieve this goal. Though dependent on agriculture, only a small part of national income will be contributed by agriculture. The main reason for this is the lack of opportunities for employment and lack of

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<sup>16</sup> The World Bank, “Data for Agriculture & Rural Development”, <http://data.worldbank.org/topic/agriculture-and-rural-development>

development in industrial sectors. To say this, Petrobras is the biggest industry leader in Brazil and the largest political contributor.

#### **4.2 Similarity in the Political Aspect**

The level of corruption and the form it takes is also varying rather systematically with the political setting. By studying the CPI level, we found under general assumption, the level of corruption corresponds with increasing levels of democracy. That is, the more the power is legitimate, the less corruption.

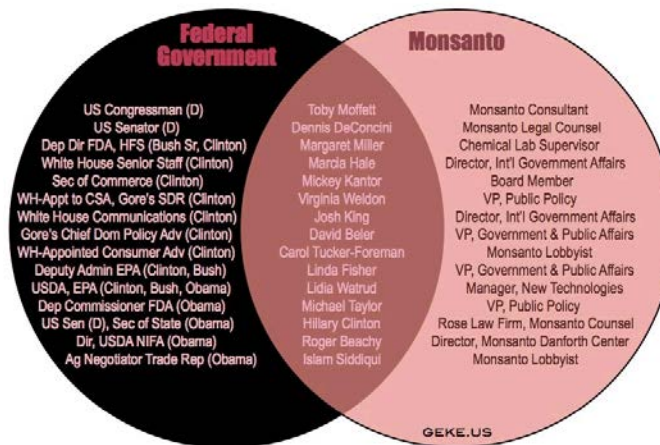
High levels of corruption have been found in countries in rapid economic and political transformation. It can easily be seen in China and Brazil. Although China is a known communist country while Brazil has a more liberal political setting, both countries develop a high level of economic and political transformation to bring them to stand among world leaders. Same as India, where Monsanto's most bribery occurs, and rapid growth of political liberalism is happening. However, differences exist as well because they are different political backgrounds. It is discussed in the next section 4.3.

Another similarity worth of noticing and analyzing is that all of the corporations involved in these cases are world known large multi-national corporations. These large corporations have extension of opportunities for earning higher incomes in these developing and third world countries as well as the these countries are in need for consumption of improved quality of goods and services.

Many of these large multi-national corporations originated in the industrialized countries and they have been viewed as instruments for the imposition of Western cultural values on developing countries. The corporations value and ethics are being challenged when

they have to adapt the local culture of doing businesses, including accepting bribery. Since the Laws to fight corruptions in these developing countries are still at the early stage and not mature, the fines these corporations paid for illegal bribery is so insignificant to the profit they have earned. They might have lost corporation image to a degree, but the needs for the products they produced are way more significant than the corporation image. GSK has the prescribed medicine, Monsanto has the ability to develop more agriculture products, and Petrobras has the needed oil.

Lastly, Monsanto and Petrobras are corporations with lots of government supports. Monsanto is a very large business and has control over a significant amount of the agrobusiness and genetically modified organism market. Both the agricultural and GMO markets involve large public safety concerns, thus Monsanto is heavily affected up federal regulations on its business – the largest of which come from the United States Department of Agriculture and the Food and Drug Administration.<sup>17</sup>



<sup>17</sup> Josh Sager, “Monsanto controls both the White House and the US Congress”, *Global Research*, March 24, 2014 issue

On the other hand Petrobras is a state-controlled oil giant. Heavy government involvement is highly expected.

### **Differences among the 3 cases**

#### **4.3 Differences in the Political/Legal Aspect**

As China being a communist country, United States and Brazil are known to be democratic countries. The activities that constitute illegal corruption also differ depending on the country or jurisdiction.

In China, the government is still currently controlling and hands on major economic activities although it is now an emerging global market. It is difficult for forensic accountant and lawyer to get proper information. The government's privacy regime lacks a clear definition of what information is considered public. Lawyers, accountants and fraud investigators might get very different data given by government departments in different regions and also depending on who asks for it and when. You may be able to get a criminal record of a suspect from a police, without the person's consent, by giving the police something as a gift as a known culture problem.<sup>18</sup>

Although the regulations and laws have been tighten up in terms of personal privacy and anti-corruption cases, the Laws and Forensic regulations to follow by forensic accountants still have a lot of rooms for improvement.

In Brazil, it is a democratic society; the anti-corruption compliance programs are in need to be in placed in order to meet global enforcement standards. Brazil's capacity to sail

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<sup>18</sup> Peter Humphrey, "How fraud investigation just got harder in China", *Association of Certified Fraud Examiners*, March 2013

through the latest world financial crisis relatively unscathed, together with twenty years of steady economic growth and solid political restructuring, have made Brazil a hot business climate.<sup>19</sup> Brazil's government is doing its best to comply with international standards and regulations on anti-corruption; however, being a developing country, it is also in need for money to improve citizen's living standards and environment. The citizens of Brazil is experiencing huge gap between the Rich and the Poor. The political corruption is on the watch.

On the other hand, public companies and companies in highly-regulated industries in the U.S. are quite familiar with the obligation to self-report to local regulators when they discover incidents of non-compliance with regulations. In Brazil; however, the corporate self-reporting culture is not well-developed. Under Brazilian law, there is no such thing as a "duty to report a crime." Brazilian criminal law incorporates and respects the principle of "non-self-incrimination." No one in Brazil can be held liable for not reporting the existence of a crime, if the occurrence of such crime is known to a specific individual.<sup>20</sup>

In United States, established laws and regulations are expected to follow for forensic accountants and fraud examiners. Politically wise, it is a well-matured democratic society. Standards and exams are also expected to be passed by investigators. Therefore, as we can see in the Monsanto case, major bribery happened outside of the United States. Although Monsanto is a U.S. based Multi-national Corporation, its bribery activities are mostly

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<sup>19</sup> Kelly T. Currie, Gabriel Alves da Costa, and Carlo de Lima Verona, "Anti-Corruption Compliance in Brazil: Top Ten Considerations", *Association of Corporate Counsel*, December 16, 2011 article, <http://www.acc.com/legalresources/publications/topten/ipehfb.cfm>

<sup>20</sup> Kelly T. Currie, Gabriel Alves da Costa, and Carlo de Lima Verona "Anti-Corruption Compliance in Brazil: Top Ten Consideration", *Association of Corporate Counsel, Legal Resources*, December 16, 2011

under investigation following other countries' legislation. However being said that, it still has to follow some U.S. law and SEC screening back home in the United States as discussed in the above section.

#### **4.4 Differences in the Culture Aspect**

Thanks to communication and technology, we often say that the world is shrinking with no distance among people, but the cultures remain worlds apart, as do its ethical norms. Bribery and kickbacks seem to be more prevalent in some parts of the world, and one of the reasons is because of the differences in ethical system and regards these behaviours as acceptable or not.

It does not really matter as to how the anti-corruption laws are well regulated; the reality is a different story. Corruption is best understood as behavior that corrupts and it undermines the cultural system in which it occurs. Because cultures can operate in very different ways, very different kinds of behavior can corrupt.

In China, we have already discussed about the “gifting” culture. This is a culture that is relationship based, not rule based. A rule based culture is when the business deals are done, it is formed by drawing up contracts and agreements enforced by a legal system. But in a relationship based culture, people tend to believe friends and families more than a stranger setting up the agreement. A “gifting” culture started when people feel closer and nicer to each other when gift is giving as appreciation and showing as a warm welcome. On the other hand, China is a Confucian culture, which believes primarily on loyalty to superiors, family and friends, rather than on a system of laws and rules. In

China, employees tend to work for a long time for one employer because of relationship culture.

In Brazil, same degree of relationship basis is formed. Cronyism is a foundation for trust, where in the U.S., a conflict of interest occurs when a business is formed in favor of closed personal family or friend.

Even with Monsanto case, where gaining political power is in United States, one of the biggest bribery happened in India. This is because India is like China, a relationship culture based economy. The primary mechanism for getting things done in India is a highly developed skill for working through social networks, often based on extended family relationships.

There is a huge gap between the rule-based culture and relationship-based culture. When the bribery and corruption occurs, nature of the fraud is tightening closely to the culture. This is what we see among these 3 corporation corruption cases.

#### **4.5 Differences in the Economic Aspect**

The economic differences are closely related to the above political and culture differences. Although most of studies suggested that corruption has negative impact on economic growth, corruption can also push the economy to move forward. This is one of the indicators that we see in the 3 cases. In China and Brazil, being developing countries, poverty is the known problem. When corruption happens, the government will pay attention to the lack of anti-corruption laws. At the same time, the citizens will understand the importance of fighting corruption to improve standard of living and environment.



In conclusion, although there is a huge gap of economic performance in different countries that have corruption issues, a long –term sustainable development, economic growth and equality can be achieved if the government is putting effort in anti-corruption.

## **5.0 INTERNATIONAL REGULATIONS AND INFLUENCES AND EFFECTS**

### **International Regulations (Global transparency)**

Transparency is one of the key themes of the international anti-corruption movement. Achieving transparency by enabling information about government actions, its citizens can better monitor government officials and enforce electoral accountability. At the same time, transparency also means to provide citizens with information on what they are entitle to. Reinikka and Svensson (2005) study how an information campaign to monitor local officials can reduce corruption and increase educational outputs.

There are few global regulations and instruments that govern the transparency issues:

### **Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention**

It is a convention of the OECD aimed at reducing corruption in developing countries by encouraging sanctions against bribery in international business transactions carried out by companies based in the Convention member countries. Its goal is to create a truly level playing field in today's international business environment. Countries are responsible for implementing laws and regulations that conform to the convention and therefore provide for enforcement. The OECD performs its monitoring function in a two-phased examination process. Phase I consists of a review of legislation implementing the

conventions in the member country with the goal of evaluating the adequacy of the laws. Phase II assesses the effectiveness with which the legislation is applied.<sup>21</sup>

As for GSK case, although China is not a member of the OECD Anti-Bribery Convention, it has been participating in the Working Group activities and attending meeting as an ad hoc observer. As for Petrobras case, Brazil signed and ratified the convention as of August 2000 and entered into force in October 2000. Legislation was implemented to comply with the Convention in June 11, 2002. While Petrobras is under investigation for bribery, on October 2014, the OECD Working Group on Bribery has just completed its report on Brazil's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and related instruments.

India is also not a country signing the Convention; India is one of the largest trading countries globally. All major economic players should be part of the effort against corruption. When the Anti-Bribery Convention was launched, its signatories represented 80 percent of world trade and investment flows. Currently, it only represents about 60 percent.

By joining the global effort fighting corruption, it is the best interest for developing countries to join. On one hand, it promotes global business; on the other hand, the effort of fighting corruption can bring the economy to a healthier competition stage.

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<sup>21</sup> Wikipedia, "OECD Anti-Bribery Convention", [http://en.wikipedia.org/wiki/OECD\\_Anti-Bribery\\_Convention](http://en.wikipedia.org/wiki/OECD_Anti-Bribery_Convention)

## **United Nations Convention against Corruption (UNCAC)**<sup>22</sup>

This is the first global legally binding international anti-corruption instrument. It has 71 Articles dividing into 8 chapters. UNCAC was adopted by the United Nations General Assembly on October 31, 2003 by Resolution 58/4. It was signed by 140 countries. As of April 2015, there are 175 parties which include 172 UN member states, the Cook Islands, the State of Palestine and the European Union. Among the three cases that we are discussing here, all China, Brazil, United States and India are members signed and ratified the UNCAC. International action against corruption has progressed from general consideration and declarative statements to legally binding agreements.

**United Nations Office on Drugs and Crime (UNODC)** – a United Nations office that was established in 1997 as the Office for drug control and crime prevention by combining the United Nations International Drug Control Program (UNDCP) and the Crime Prevention and Criminal Justice Division. It was established to assist UN in better addressing a coordinated, comprehensive response to the interrelated issues of illicit trafficking in and abuse of drugs, crime prevention and criminal justice, international terrorism and political corruption.

## **United Nations Global Compact**

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.<sup>23</sup> This is to aim on

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<sup>22</sup> United Nation Office on Drugs and Crime, “United Nations Convention against Corruption”, [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>23</sup> United Nations Global Compact website, <https://www.unglobalcompact.org/AboutTheGC/index.html>

making sure the businesses, as a primary driver of globalization, can help to ensure that markets, commerce, technology and finance advance in ways that benefit economies and societies everywhere.

There are ten principles for over 12,000 corporate participants to follow. It is the largest voluntary corporate responsibility initiative in the world.

Principle 10: “Businesses should work against corruption in all its forms, including extortion and bribery.” Not only corruption has a great impact on the country that is happening, it also has a huge influence on the private sector. It impedes economic growth, distorts competition and represents serious legal and reputational risks.

Referred back to our case studies, GSK, Monsanto and Petrobras are all members of the UN Global Compact. They all issue statements on an annual basis to continue making sure of their alignment with the 10 Principles. Ironically, they all made the headline news in corruption to contradict Principle 10.

Among the other 9 Principles, Principles 7 to 9 are concentrating on efforts on environment. The corporations should undertake initiatives to promote greater environmental responsibility and encourage environmentally friendly technologies. This is a big question mark for Monsanto’s GM products although the corporation is a member. It is to human’s benefit that there are so many corporations are the members of UN Global Compact, but exactly how many of them are actually doing the right thing and making the correct move. We will continue to examine in the next decade.

## **6.0 INFLUENCES OF THESE STUDIED CASES ON HUMAN RIGHTS, ENVIRONMENT AND LIVING STANDARDS**

It is worth noting the corruption influences on our living environment since we are talking about UN Global Compact. We keep on doing analysis on how corruptions are happening, who is involved and what to do to solve the issue, but sometimes we forget the fundamental question that we should ask ourselves – What the influences are to our living rights, standards and environment we are living in.

### **6.1 China GlaxoSmithKline (GSK) case**

Over 700 travel agencies and consultancies received bribery from GSK over six years under investigation. According to studies, the ubiquity of such malfeasance exists in China's healthcare system. In China, hospitals that are government-funded are so cash-strapped, they must rely on drug sales to remain afloat and the doctors often overprescribe medicines to supplement their meagre incomes. Patients, then at risk, end of paying inflated price for drugs they often don't even need for the treatment of their health conditions.

The corporations, like GSK, have to hold themselves to international standards of quality. Their bribery situation in China was already considered much better than local manufacturers. In other words, for local Chinese manufacturers, their behaviour is much worse in bribery, kickbacks and commission paid to doctors, hospitals and government officials.

So the question to ask is “why don’t local manufacturers get punished?” One reason could be that local government is covering these Chinese manufacturers, simply because they need the political donations, tax revenue, and their investment.

Since these situations widely exist in China, “what happens with the health system?”, “can the people there really receive good and correct treatment for the sickness?” and more seriously, “are the medical treatment correct and necessary?” Punishing one foreign drug company will hardly solve corruption in the Chinese health care system, which has eroded public trust in doctors and the objectivity of their treatment choices.<sup>24</sup>

Doctors in China are making very minimum income and living a lifestyle commensurate with being a medical professional. Therefore, with whatever the risk is, receiving “gift” is the social culture in the industry.

Hence, health system in China is ill. Residents receiving the treatment are separated into poor and rich categories. Rich people gifting money can receive better treatments while the Poor will have to wait to hope to receive the necessary treatments. Even within the Rich, they still have to worry if the treatment received is necessary because not only the doctors are receiving “gifts” from the patients; they are also receiving kickbacks from the manufacturers on the other side of the picture.

Chinese Government hopes to ease the pressures on the public system by doubling the share of private hospitals to 20 per cent by 2015 and private investors are eager to jump on that bandwagon. Private investment in the mainland healthcare sector rose to an all-time high, with deals worth \$10 billion in 2013, and increasing, nearly five times the

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<sup>24</sup> Patti Waldmeir, “Doing business in China”, *The Financial Times*, November 3, 2014 issue

2006 figure, according to statistics from Dealogic.<sup>25</sup> However, privatisation will not solve the problems of corruption, overwork, low salaries and conflict in the state hospital system – where most of China will continue to receive its medical treatment. The bottom line is China, being a communist country; is hard to fix the problem from foundation. If the overall doctors' salaries and government health care funding cannot be increased to a balanced level, this “gifting” culture and the corruption in this sector will continue to exist.

Since it is difficult to solve the fundamental issues in a short period of time, the living standards and rights will remain low. The corruption in this health care system is hurting the people living within the system. Once people are not satisfied with the current political, economic and health system, the residents will want to search for better opportunities for better living. The result is that in China, people living in rural (poor) area want to move to big city to fight for a better opportunity for better living quality. People living in the big city have Western dream of living in a free country like Canada and United States. Migration problem started to be seen. In Canada, immigrants from China has been places the number one immigration country for a few years. In 2013, 13.1% of immigrants are from China.<sup>26</sup>

The GSK corruption exists and it is a direct result of basic political and economic structure. Although China is enforcing anti-corruption in recent years and there are international instruments to govern the industry and the Government, it is not possible to

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<sup>25</sup> Patti Waldmeir, “Doing business in China”, *The Financial Times*, November 3, 2014 issue

<sup>26</sup> Citizenship and Immigration Canada, Government of Canada, “2014 Annual Report to Parliament on Immigration” 2014. <http://www.cic.gc.ca/english/resources/publications/annual-report-2014/index.asp>

change the corruption situation dramatically unless the fundamental causes have been eliminated.

## **6.2 United States Monsanto Wheat scandal and bribery case**

*“The December/January 2010 issue of The Organic & Non-GMO Report featured an interview with Robert Kremer, an adjunct professor in the Division of Plant Sciences at the University of Missouri, whose research showed negative environmental impacts caused by glyphosate, the main ingredient in Monsanto’s Roundup herbicide, which is used extensively with Roundup Ready genetically modified crops.”*

Monsanto’s mission – Our vision for sustainable agriculture strives to meet the needs of a growing population, to protect and preserve this planet we all call home, and to help improve lives everywhere. In 2008 Monsanto made a commitment to sustainable agriculture – pledging to produce more, conserve more, and improve farmers’ lives by 2030.<sup>27</sup>

However, are genetically modified crops really good for human and our agriculture environment? This is the raised question by a lot of groups. There are a lot of serious questions about the impacts of glyphosate that we need answers for in order to continue using this technology.

In the bribery to Indonesia government officials, Monsanto employees use bribery to try to buy the company out of the need for an environmental impact statement. Monsanto was fined US \$1.5 million for bribing government officials to avoid a decree that

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<sup>27</sup> Monsanto website, “Our Commitment to Sustainable Agriculture”, <http://www.monsanto.com/whoweare/pages/our-commitment-to-sustainable-agriculture.aspx>



demanded an environmental risk assessment for the BT cotton Bollgard. Bribery and corruption might be a common feature in many developing countries, discussed in the previous sections, to ensure that normal procedures are undertaken, but Monsanto's case is different. The reason behind it is because for decades Monsanto has been claiming that their GM crops are tested and safe. To make matters worse, the BT cotton, in question, had to be taken off US market because of the environmental differences between the US and Indonesia.

The question goes beyond Indonesia. If Monsanto finds it necessary to bribe at least 140 officials and family members for half a decade in a country that only makes less than 1% of its over revenue – What is there to expect in other places where there's more at stake? All safety data for Monsanto's GM crops – in terms of human health – are provided to regulators in countries around the world by Monsanto themselves.<sup>28</sup>

Another famous dangerous impact is Monsanto's Agent Orange. The dioxin in Monsanto's Agent Orange is known as one of the most toxic chemicals on the planet. Studies have linked dioxin to birth defects, neurological disorders, cancer and even death. Monsanto was able to manufacture 72 million liters of dioxin that was dumped and sprayed on more than 4.8 million Vietnamese civilians during the Vietnam War. As a result of Agent Orange, more than 400,000 Vietnamese died or suffered from disabilities and more than half a million children were left with birth defects.<sup>29</sup>

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<sup>28</sup> NW Resistance Against Genetic Engineering, "Extensive Article: Monsanto Bribes in Indonesia", <http://nwrage.org/content/extensive-article-monsanto-bribes-indonesia>

<sup>29</sup> Seattle Organic Restaurant, "10 Reasons why Monsanto is corrupt from its core", <http://www.seattleorganicrestaurants.com/vegan-whole-food/Monsanto-corruption-gmo.php>

Monsanto's government and political power cannot be eliminated. Government needs Monsanto's support in many aspects as well including food to third world, agriculture products needs and political donations.

So how are we being affected?

Even if there is no formal study to prove 100% on whether GM products actually bring harm to our health, there are independent research shows GM food and ingredients cause "serious health conditions such as the development of cancer tumors, infertility and birth defects." Currently, we all know organic foods are healthier, but they are more expensive because organic and small farmers suffer losses while Monsanto continues to forge its monopoly over the world's food supply.

Political power also made public health and environmental sanity ignored. Business officials are running FDA, DHS, and Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and other government agencies.

There is a conflict between making profit and human living rights in this case.

Again what we learn from this case is that the corruption by Monsanto and similar corporations are not going to end if the fundamental question is not solved. The fundamental problem in this case is that increasing world population, political corruption in many third world and developing countries and political power and demand for profit and personal gains.

The group that's suffering from the corruption and paying for the damage are the people living within the system, which is largely scaled in the area that demand high agriculture products, eventually the whole human race. However, at the same time, we cannot deny

the benefit we are getting from Monsanto as well, that is less hungry people and more food supply.

### **6.3 Brazil Petrobras scandal case**

A study conducted by the Getulio Vargas Foundation's Environmental Solutions and Infrastructure Group in March 2015 showed that in Brazil the country is expected to have been lost R\$87 billion (\$27.1 billion) in GDP this year because of Petrobras' corruption. The study based its estimates on Petrobras planned reduction in investments this year, which will hit oil and gas service firm, construction, engineering and consumer spending.<sup>30</sup>

As mentioned in the previous chapters, Petrobras is a state-invested oil company and the largest corporation in Brazil. It carried a lot of people's job expectations and dependency and the citizen's hope. The study showed that only layoffs in construction will likely take at least R\$13.6 billion from federal coffers this year. Two construction companies that colluded with Petrobras in the scandal, OAS and Galvao, have both filed for bankruptcy. On top of this loss, massive job market shrink will continue.

Petrobras scandal case is not finished yet. There are other lawsuits filed against the giant, including at least three law firms filings class action suits.

"Brazil's problems are all domestic and you can trace it to Petrobras," says economist Alex Wolf at Standard Life Investments. Consumer sentiment is down, unemployment is

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<sup>30</sup> Kenneth Rapoza, "How much of Brazil's economy got lost in Petrobras scandal?", *Forbes*, April 4, 2015 article

up slightly and investment is still down. We think Brazil is one of the most vulnerable emerging markets around.”

So what does this mean in general to human living standards, environment and human rights?

Government of Brazil uses Petrobras’ revenue and profits to aid in the country’s social development. Because of the scandal, Brazilian citizens are angry over the fact that public funds are being used to enrich the political and economic elite. This is a problem that we see time and time again in developing countries indicated in the previous sections, which operate under an extractive economic system. Although Brazil has become democratized in the 1970s and while conditions in Brazil have improved since, the problems with income inequality and corruption persist.

When the citizens are complaining, the problem continues. Injuries, fears and psychological health problems have profound impact on individuals’ quality of life.

Wider societal costs, including expenditure on healthcare and public and private security, can be expressed as a percentage of gross domestic products (GDP).<sup>31</sup> Income inequality has also contributed to the question of living standards. From this case, you can see how a well-developing country with higher GDP every year suddenly corrupted to have consistent social problems. If Brazil government does not allow Petrobras to operate more as a private business, it is hard to eliminate the corruption chances. When the corruption continues, it is nearly impossible to get the social status and satisfaction fulfilled among its citizens.

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<sup>31</sup> Joseph Murray, Daniel Ricardo de Castro Cerqueira and Tulio Kahn, “Crime and violence in Brazil: Systematic review of time trends, prevalence rates and risk factors”, *US National Library of Medicine, National Institutes of Health*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3763365/>

## **7.0 FORENSIC ACCOUNTING AND INVESTIGATION IN DIFFERENT SOCIETY, CULTURE, LEGAL FRAMEWORK AND POLITICAL ENVIRONMENT**

With the current global economic trend, there is an increased demand for forensic accounting services worldwide especially in developing countries; where the fraud and corruptions are mostly happening with rapid economic growth. To discuss more in detail, the following analysis are broken down by analyzing special culture, society and political environment of where the three cases where happening.

### **7.1 China GlaxoSmithKline (GSK) case**

In China, forensic accounting has not got its due recognition in this country after alarming increase in the political and corporation corruption. The accountants are lack of properly training on investigative and forensic issues and how to report on the complex financial crime.

Being a communist country, economic activities where mostly traded with strict control. Since all of the goods were unified arranged by the nation and were not freely traded, the forensic accounting was not seem necessary. However, with the global economic trend and necessary trading with countries outside of government control, economic business becomes more complicated. As a result, forensic accounting is much more demanded.

On the other hand, the anti-corruption law was not well-established under Government's strict control. Although Chinese government, in recent years, concentrated and spent a lot of man power in punishing corruption cases, the Law is still to be implemented completely. In many fraud cases of Chinese listed companies, the court has not be able to

identify the responsibility of the false financial statements and determine the economic loss of the investors due to the lack of a specific interpretation of the law. At present, Chinese forensic accounting practices cannot meet the needs of the justice system in order to protect the rights and interests of investors and maintain a healthy development of the securities market. It is an urgent matter for China to improve the legal environment related to forensic accounting.

Back to the actual corruption case, we can understand that in China, gift giving amount business partners and friends is ingrained in the country's social fabric and is still a strong cultural expectation. There are many Chinese companies, that foreign multi-national corporations conduct business with, are state owned, so the line is blurred between proper and improper business since the employees are government officials. The big question mark is then laid on the line of if the gift giving is a friendly cultural activity, bribery, or a political corruption. Since all the doctors are expecting a commission, and kickback, how can a foreign business compete in such a society without doing the same thing?

Despite the fact that China is the fastest emerging growth market in the world, Chinese firms are being scrutinized by global regulators for their financial reporting transparency and quality. For example, on December 3, 2012, the Security Exchange Commission (SEC) initiated fraud investigation against China-based companies and their auditors by formally accusing the Big Four affiliated auditing firms in China of withholding important documents from US regulators.<sup>32</sup> The SEC fraud enforcement action puts Chinese auditors on the spotlight for violating their objectivity and independence rules.

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<sup>32</sup> Securities and Exchange Commission (SEC) (2012) Accounting and Auditing Enforcement Release No. 34261, December 3, 2012. File No.3-15116.

The SEC formally charged the auditors with violating SEC rules by withholding documents pertaining to China-based companies listed on U.S. exchanges subject to the SEC investigations for potential fraud against U.S. investors. The U.S. regulators have also struggled to obtain sufficient documents because auditors of these firms have declined to cooperate by citing China laws.

The conclusion is that China needs forensic accounting specialist with proper education. The education needs to be updated to meet international standards. The existence and persistence of financial scandals, fraud and related financial crisis have galvanized more interest in and demand for forensic accounting practices including fraud examination. The Accountants in China, mainly forensic accountants, need to have more strict rules and regulations to follow. There is a lack of legal and forensic accounting framework to follow and work with. The qualification certification system for forensic accountant is not standardized. In China, the auditing standards and forensic accounting standards system are in need to be independent and the forensic accounting standards should be established in the form of practice advisories and practice guidelines.

## **7.2 United States Monsanto Wheat scandal and bribery case**

For many years, the U.S. was the only country actively seeking to use its laws to fight corruption. United States has one of the most effective enforcement against corruption.

The country is a very stable, well established democratic country with high GDP ranked number ten in the world according to 2014 World Bank GDP per capita report. This indicator often considered an indicator of a country's standard of living. The anti-corruption regulation has been in place for a long period of time. A huge corporation,

like Monsanto, is prompt for maintaining and passing a series regulations, laws, by-laws and policies.

In Monsanto's case, despite the company's bribery activities in other countries like India, it's main source of gaining power in United States, not by bribery, but by political power. As discussed before, there are overlapping of government officials and Monsanto decision power house. Unless China and Brazil, money is not the main source of corruption because poverty is not an issue. Behind poverty, holding political power and high social status become the next level of satisfactory. A famous online campaign back in 2012 spoke for this issue. An online campaign to remove Michael Taylor, a former executive and lobbyist for agribusiness giant Monsanto, as senior advisor at FDA, is exceeding all expectations. With an original goal of 75,000, the petition had over 220,000 signatures.

As a stated party to the UNCAC, the United States has agreed to take measurement to prevent conflicts of interest and corruption in both the public and private sphere. In UNCAC's preventive measures Chapter II, Article 12, it stated that "preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure." United States needs to follow the international standard and get on the track.



As a forensic accountant in the United States, the learning process and examination to hold the license are very clear. Forensic accountants are expected to follow a set of strict rulings when conducting the investigation. Legal framework is clear and the society also imposes a high expectation for forensic accounting work performed by a licensed fraud examiner.

The other problem we see with Monsanto case is the bribery happened outside of United States, like Indian, where the anti-corruption law is not mature. As a result, Monsanto has paid fines of \$1.5 million to US government regulators, but is this enough?

Monsanto's profit was surpassed the bribery amount and the fines. The fine is hard to justify when the corporation is doing business in a culture that takes bribery as a normal cost of business. When a huge multi-national corporation is doing business globally, it is prompt to different culture and laws to follow. It is also in the radar zone to satisfy citizens and politics in different environment. The forensic accountant's role is the same in the similar way. The forensic team and investigators are also prompt to understand all the rules and regulations associated to the case. This at the same time opened up more risks for the investigators to take when doing the investigation. The forensic accountant should also understand that there will be more consultants that are needed in the case to have a greater coverage in areas where the investigating concentration is on, for example, people involved and laws applicable to.

### **7.3 Brazil Petrobras scandal case**

The Petrobras corruption scandal is one of the biggest to come out of the oil and gas industry to date. There are other known corruption cases happened in Brazil recent

history. Corruption can play an important role in the building up of criminal organizations. Criminal entrepreneurs may expand their illegal activities by bribing local officials. An example can be found in Brazil, where the Rabelo brothers built up their criminal enterprise by corruption a reliable network of alliances. The Rabelo enterprise is in the cocaine business, and they have built up reliable relationships within political elites. When studying the Rabelo enterprise, Filho (2008) found that organized crime in Brazil could grow quickly because of the absence of an effective judicial system, the lack of social service delivery by the government as well as cultural factors.<sup>33</sup>

In Brazil, organized crime is a social problem. The social and economic costs of crime and violence in Brazil are large. Organized crime can be local, state or multi-national. The victims of the bribery and corruption in the organized crime cases are not specific and can involve quite a large number of people. It also can affect both the victims and the insurance company. The scale can be huge for the investigation.

As mentioned before, another problem in Brazil is poverty. The richest 10% of the people in Brazil have access to over 40% of the country's income. On the other hand, the poorest 10% receive about 1% of the income. This problem prompted corruption chances as well. People are eager to make money to survive. In addition to the crime within the community, there is also a problem within the law enforcement divisions, with corruption and violence being inflicted by the police themselves. Police's salary is generally low in Brazil as we can see when the Police force taking a strike back in 2012. Civil police officers are very frustrated because they believe the monetary compensation they received for their jobs as police officers does not justify the risks they take in doing their

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<sup>33</sup> Peter Gottschalk, "Investigative and Prevention of Financial Crime"

jobs. Police corruption and violence within the Force discourages the community to report incidents of violence, as they have little fear of or respect for the police.

Due to the above known problems, it is a challenge for investigators and forensic accountant to perform investigation on such a large scale of organized crime. It takes a lot of personnel, specialists, lawyers, consultants and related individuals to perform the task. It consumes tremendous time as well.

Being said that, Brazil anti-corruption law is changing. Before February 2014, the law only imposed prosecution for corruption individuals, but the Anti-Corruption Law has been amended and effective on January 29, 2014 to make companies for the first time liable for corruption and punishable by heavy fines. The Law applies to offenses against the Brazilian or foreign public administration, including acts committed outside of Brazilian territory. Therefore, the Law will directly impact foreign companies doing business in Brazil, as well as Brazilian companies doing business abroad.<sup>34</sup>

One important element of the new Law worth of noting is that there are important differences between Brazilian's Anti-Corruption Law and the U.S. Foreign Corrupt Practices Act (FCPA). Unlike the FCPA, Brazil's Anti-Corruption Law is not limited to acts involving foreign officials; it prohibits bribery of both local and foreign government officials. Another key difference concerns the element of intent. The FCPA requires the government to prove that the defendants intended to engage in illegal conduct. The Anti-Corruption Law, in contrast, imposes strict liability for offenders. As a result, Brazilian

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<sup>34</sup> Latham&Watkins, "Brazilian Anti-Corruption Law: 7 Implications and Challenges for Companies Doing Business in Brazil", *Latham & Watkins White Collar Defense & Investigative Practice*, January 6, 2014 article

authorities do not need to show that a person or company intended to violate the law—the fact that a bribe was paid to a public official is sufficient to establish liability.<sup>35</sup>

As a result, forensic investigators have better trends and clear regulations to follow when conducting investigation. Although this area has been short of staff in the past, but with the citizens waking up to find for corruption in the country and a much more completed regulations, more demand of financial investigator and accountants are in demand. On the other hand, in order to compile with the new legislation, there is the huge amount of work generated for internal and external lawyers, accountants and for compliance staff. With heavy penalties and fines, the forensic accountants are facing a great number of cases for companies that are trying to reach a settlement with the regulators and enforcement authorities as well as the shareholder litigation as well.

Brazil is changing due to Petrobras case, other important corruption cases and citizen's waking up against corruption. However, as long as poverty is an issue, it is still a long way to go.

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<sup>35</sup> Z Scott and Elizabeth Pozolo, "Brazil's new anti-corruption law: What you need to know", *Inside Counsel*, February 12, 2014 article

## **8.0 CORRUPTION IN CANADA – THOUGHTS AFTER ANALYSIS OF THE CASES AND WHAT WE LEARN FROM THE CASES**

### **8.1 Canada Law and Regulations**

There are two statutes in Canada that address bribery and corruption:

1. Corruption of Foreign Public Officials Act<sup>2</sup> (CFPOA), which criminalises corruption of foreign public officials; and
2. Canadian Criminal Code, which criminalises corruption of Canadian public officials and corrupt behaviour in certain transactions among private parties.

All relevant offences are criminal offences under both regulations. There are no civil, strict, or absolute liability corruption offences in Canada. Additionally, there are no non-criminal resolution options currently available for corruption-related matters (such as non-prosecution agreements or civil settlements), as are used to resolve similar matters in other jurisdictions such as the United States.<sup>36</sup>

### **8.2 Can these cases happen in Canada?**

The Corruption Perception Index ranks Canada in the top 10 least corrupt countries in the world. It is hard to say if these cases can happen in Canada but the chances are slimmer.

We have giant pharmaceutical company manufacturing and selling drugs in Canada; however, the economy and culture are different than China. Canadian doctors make good money to support the family and OHIP system makes this kind of bribery to happen.

Being said that, the drugs still need to pass Canada Food and Drugs Act and Regulations

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<sup>36</sup> Mark F Mendelsohn, “The Anti-bribery and Anti-Corruption Review”, second edition [http://www.blakesfiles.com/Articles/2013\\_Blakes\\_Law\\_Firm\\_Anti-Corruption\\_Review.pdf](http://www.blakesfiles.com/Articles/2013_Blakes_Law_Firm_Anti-Corruption_Review.pdf)

to be on the market for sale. In 2014, a new amendment, Protecting Canadian from Unsafe Drug Act (Vanessa's Law) was passed to go further on the tightness of the Act.

There are organizations against Monsanto all over the news in recent years including organizations in Canada. Their main focus is on the GM wheats and other related patents. Their belief is to adjust Monsanto for anything that's not good for human environment, but can Monsanto's power influence how Canada deals with their patents?

Canada is a highly developed country with no general poverty issue. The citizens are paying taxes to Government for funding our public works, including healthcare, education, and public services. Citizens are generally well-educated with higher ethical value against corruption.

### **8.3 Are Canadian Public Protected from Corruption?**

Canadian Generally Accepted Accounting Principles (GAAP) existed for corporation to follow the appropriate accounting treatments for record keeping. It obligated the corporations to report and compile with accounting standards.

The most famous corruption is Nortel Networks. During the period 2002 to 2003, its executives relied on income smoothing to help meet quarterly income targets. The executives feared that if the company came in below its target, the market would punish it with a lower stock price; therefore, the company used accounting tricks to transfer income from the next quarter to the present one to bring reported income up to par. In order to achieve the result, Nortel offered several of its customer's incentives to write letters requesting bill-and-hold transactions, including price discounts, interest deferments and extended billing terms. As a result, U.S. SEC filed civil charges and

some executives eventually paid fines in an out-of-court settlement. The Ontario Security Commission subsequently pressed fraud charges against three executives, who were arrested in June 2008 (Mathieu and Freeman, 2008). This case hurt Nortel's reputation at a time when its business was just starting to recover from the technology crash of 2000-2001 and lingered as a management distraction for years; the company filed for creditor protection during the 2009 recession and was liquidated. However, according to the court, "the burden of proof was not met"; the executives were found not guilty of fraud.

From the Nortel case, we understand that any corruption case in Canada can eventually bring the business down due to bad reputation and trustworthy issue. Investors are well educated to understand the influences of bribery and corruption.

Canada's GDP is amount the top 15 in the world and we have a well-established law to post fair justice in the court. Unlike China and India, except for smaller bribery and corruption cases, government's anti-corruption regulations has been pretty effective.

Back to Monsanto's case, since Monsanto is one of the biggest agriculture corporations, it needed entrance to the Canadian market as well. While Monsanto's tactics have been fairly effective in the United States, they have tried equally hard north of the border. In 1998, six Canadian government scientists testified that they were being pressured by superiors to approve rbGH. The six were employed by Health Canada — the Canadian equivalent of the US FDA. Their job was to determine if the milk from treated cows was safe to drink. They didn't think so. In fact, they had compiled a detailed critique of the FDA's evaluation of rbGH, showing that the US approval process was flawed and superficial. However, senior Canadian officials and Monsanto tried to force the

Canadians to approve it anyway. In response, a Monsanto official went on Canadian national television saying that the scientists had misunderstood an offer for research money.<sup>37</sup> Canadian generally follows and understands well about ethical issues and are more willing to co-operate when an actual corruption happens.

Business transparency is an important part of government anti-corruption program. Canadian companies are well-advised to take stock of recent developments in anti-corruption law and assess where they stand in terms of implementing appropriate internal controls and due diligence policies to ensure compliance with Canada's CFPAO.

On June 12, 2013, Prime Minister Stephen Harper announced the introduction of a new transparency initiative in Canada that will require Canadian companies in the extractive industries, including mining, oil and gas, to disclose their payments made to domestic and foreign governments. This disclosure initiative is closely linked to the CFPOA – in addition to imposing substantial compliance burdens, it is also expected to increase scrutiny and thereby significantly impact anti-corruption enforcement in Canada.<sup>38</sup>

In general, Canada is at its best effort for anti-corruption. By comparing with the other part of the world, we are better protected against corruption, although there are other areas to be concerns since there is there are civil corruption offenses in Canada.

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<sup>37</sup> Council for Responsible Genetics: CRG,  
<http://www.councilforresponsiblegenetics.org/ViewPage.aspx?pageId=125>

<sup>38</sup> Council for Responsible Genetics: CRG,  
<http://www.councilforresponsiblegenetics.org/ViewPage.aspx?pageId=125>



## **9.0 PROBLEMS FACING GLOBALLY BY THE ANTI-CORRUPTION ENFORCEMENT**

In conclusion, it does not matter where the corruption happens globally, either in China, Brazil, United States or in Canada, Governments are all putting their best effort in fighting with corruption. Although the cultures, societies, politics and economics are all different in every country, the Government in every country is trying to find its best way to eliminate and prevent bribery, kickbacks, and corruptions to happen.

As a human, we all care about our environment and earth that we live in. The corruption cases we studied here in general have certain degree of environmental damages to the earth, living quality and health concerns. It is our best interest to fight with the corruption happening around us. The ethics value should be placed at the highest standard when we look into any bribery case around us.

As a forensic accountant, we have to follow the highest ethical standards when dealing with forensic accounting cases, despite the culture and society we are in and around.

Although we maybe can do all of the above, currently problems still exist in the anti-corruption enforcement. While the enforcement of anti-corruption laws is to be applauded, at the same time, questions are being asked about whether in at least some cases things might have come too far, as the enforcement process has become astronomically expense and time-consuming.

A May 9, 2015 *Economist* article entitled “Corporate Bribery: The Anti-Bribery Business”, as well as a leader article in the same issue, refers to what the magazine describes as “a mounting body of evidence that the war on commercial bribery is being

waged with excessive vigor, forcing companies to be overcautious in policing themselves,” noting that “some under investigation are starting to fight back.”<sup>39</sup>

Not only have the costs increased, but the time required concluding a case has lengthened inordinately as well. There are a lot risks everyone is taking involving with the investigation, including all the rules and regulations all the experts have to follow. In an intensive large multi-national case, it could possibly last well over 10 years. How to justify the cost is the next question in everyone’s mind.

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<sup>39</sup> Kevin LaCroix, “The Anti-Corruption Enforcement Problem”, *The D&O Diary*, May 19, 2015 article

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