

COMMISSION FOR AFRICA - NOVEMBER 2004 CONSULTATION DOCUMENT

NOTE BY TRANSPARENCY INTERNATIONAL (UK)

Introduction

1. TI(UK) welcomes the desire of the Commission to consult widely on the November 2004 Consultation Document, 'Action for a strong and prosperous Africa'.
2. Much has already been said and written on what African governments should do to improve governance and reduce corruption. The Continent's commitments in this regard are enshrined in NEPAD. TI(UK) sees a need, that is informed by its own ongoing work, to focus on areas where the developed world has a role to play in curbing corruption on the 'supply-side'. Our comments and suggestions, relevant to section 2 of the document, 'Increase transparency and reduce corruption', are set out below.

A Role for the Corporate Sector

3. Generally speaking, both the international and domestic private sectors have adopted a passive position in combating corruption. Since the critical issue in corruption in Africa is the private/public sector interface, including corruption in international business transactions with African countries, the corporate sector could play a proactive role in fighting corruption, especially in those countries where reform-minded governments are adopting a strong stance against corruption despite huge opposition from vested interests.
4. A group of perhaps the largest twenty companies (both international and domestic and particularly those involved in defence/security, construction and engineering¹) operating in a given country could take the lead by adopting a decisive position against bribery. This would involve:
 - i. an explicit adoption and publication of a Code of Conduct by each company which specifically excludes bribery and extends to a commitment to conduct an annual review of the impact of this Code;
 - ii. a declaration that the solicitation of a bribe by any public servant or official, or their intermediary, will be reported to the national governmental or non-governmental anti-corruption agency or (if these do not exist or are ineffective) released to the media;
 - iii. an open commitment to establish a mechanism for 'whistleblowers' to report bribes and 'backhanders' paid or received from within the company;
 - iv. the adoption of an audit procedure which enables auditors to substantiate the service for which fees and commissions have been paid;
 - v. the publication of a list of agents accredited to the participating companies; and

¹ TI's 2002 Bribe Payers Index identified defence, construction and engineering as being among the most corrupt business sectors globally.

vi. the publication of some form of annual review of progress achieved.

5. Some degree of formalisation of the initiative would be desirable, particularly to achieve recognition both by governments and the public that this is intended to be a serious and measurable programme. The establishment of a 'Corporate Forum Against Corruption' would be a possible option, and the annual review could be distributed in its name.

6. In many countries the recent launch of 'Global Compact Networks' could provide a useful framework for such a forum. The UN Global Compact (UNGC) (currently comprising 1700 international and national companies) adopted the '10th Principle Against Corruption' in June 2004 and is now seeking to mainstream it through its networks at national levels. UNGC has agreed that the main tools for achieving this will be those developed by TI ('The Business Principles for Countering Bribery') and the ICC's Rules of Conduct. These provide an adequate basis for companies to compare their anti-corruption principles/policies as well as to strengthen their capacity to achieve compliance with them. Where the UNGC network is not so strong, a stand-alone forum would be more effective.

Corruption in public procurement

7. As in other regions of the world, corruption in public procurement processes and projects in Africa exacts a huge toll - hugely inflated costs and a diversion of scarce resources from areas of more pressing need. The following measures would help to address this problem, particularly in the defence, construction and engineering sectors:

- i. A requirement that in all public procurement and projects, each key participant has implemented an internal code of conduct and management programme which commits the participant and its employees, as well as its associated and subsidiary companies, to a strict anti-corruption policy.
- ii. A requirement that all procurement and public sector projects should be subject to competitive tender and full transparency.
- iii. The use of integrity pacts, that can be monitored independently, during both tender and project execution phases.² If an integrity pact is not in place, or if it does not provide for an effective independent monitoring arrangement, an independent assessor should be appointed to monitor the pre-qualification, tender and execution phase of projects to ensure that they are operated in an environment free from corruption.
- iv. International Financial Institutions, banks and national Export Credit Agencies (ECAs) should only provide finance and/or guarantees for projects where requirements (i)-(iii) have been met. Furthermore, they should maintain a blacklist of companies and agents that have undertaken corrupt acts and have

² Put simply, the integrity pact is an agreement that commits all parties to a no-bribery policy, with a provision for enforceable sanctions against a party that breaks that commitment. TI and TI(UK) have developed generic and sector-specific integrity pacts for application as practical tools against corruption.

failed, within a reasonable period of time, to adopt and implement strict anti-corruption codes.

- v. ECAs in OECD countries should move to a common standard of requiring full disclosure of all payments to agents and other intermediaries in relation to projects for which they provide guarantees and/or export credits.

Arms Sales

8. Arms sales to meet the legitimate defence needs of African governments should be free from bribery and corruption. We recommend that all exporters of armaments to the Continent should, as a minimum standard, respect the EU Code of Conduct on arms exports, with the addition to the latter of a 9th criterion that explicitly prohibits bribery and corruption in arms sales.

Money Laundering

9. TI(UK)'s recently released report, "Corruption and Money Laundering in the UK – One Problem, Two Standards", has revealed that, while most trust and unlisted companies in the UK are entirely legitimate, a minority of unscrupulous providers of services to trusts and companies are abusing them to launder dirty money, including that originating from African countries, in the absence of an effective supervisory/regulatory regime covering this sector. We therefore recommend that the UK and other jurisdictions that have not yet done so, adopt an effective supervisory regime for the providers of services to trusts and companies.

Extractive Industries Transparency Initiative (EITI)

10. The EITI principles, which have been adopted by some African countries and are attracting growing interest in others, are proving to be a valuable tool for transparency because of the emphasis on disclosure by companies of payments of taxes and royalties to governments, and by governments of their revenues from extractive industries and payments received from companies. The wider adoption of EITI principles is important, in tandem with encouragement and assistance to governments to achieve full disclosure and effective examination of government finances, especially by parliamentary scrutiny, which also requires the strengthening of mechanisms such as parliamentary public accounts committees and national audit processes.

Conventions Against Corruption

11. Ratification and early entry into force of the AU's Anti-Corruption Convention is, of course, essential to realise NEPAD's goals. Ratification and early entry into force of the United Nations Convention Against Corruption is equally important. However, looking more to the 'supply' side of corruption in relation to Africa, it is vital that all OECD members should implement fully and effectively their obligations under the OECD Convention. This should include:

- i. increasing awareness of companies that do business in Africa of their obligations under the OECD Convention;

- ii. better co-ordination and information-sharing among government agencies/departments that are concerned with monitoring and enforcement; and
- iii. Commitment of greater financial and human resources to investigate cases of bribery in Africa involving companies within OECD jurisdictions, and to prosecute offenders.