



### ***Message from Laurence Cockcroft (Chairman)***

A serious anti corruption strategy, embracing the UK's international responsibilities, may be falling into place at last. The report on Corruption and Money Laundering by the Africa All Party Parliamentary Group (AAPPG) – in whose processes TI(UK) played a very active part – was itself hard hitting and generated 38 specific suggestions for action. Many of these were in line with the recommendations TI(UK) has been making for more than ten years. The Government's response – issued from Downing Street on June 22nd – addressed these in detail and identified a series of measures which would follow, most of which were constructive. The appointment of Hilary Benn as Cabinet level co-ordinator of anti corruption strategy throughout the Government was probably the most important of these.

A more specific touchstone in UK Government anti corruption policy is whether a substantive case has reached the courts involving a bribe paid overseas. Amongst the announced new measures is the establishment of a 'dedicated unit' to be jointly staffed by the City of London and the Metropolitan police which is designed to focus on just such cases. The apparent intention behind this is welcome. However it remains unclear as to why the unit is to be funded by DFID, or why it is not an integral part of the newly established SOCA with its remit to fight organised crime. Until proved otherwise the suspicion will linger that the Government still considers offshore bribery to be something which is best castigated but still untouched, and not to be dealt with by the mainstream criminal justice system.

The AAPPG report was also strong on an issue of increasing concern to TI(UK) – the lack of any regulation of those who form shell companies and trusts, in contrast to much improved regimes in offshore centres such as Jersey. There is no doubt that these entities are key vehicles for money laundering purposes, as John Githongo's evidence from Kenya confirmed, and Government action is crucial in this area. In principle the Treasury is committed to this through the EU Third Money Laundering Directive, to be in place by late 2007. It will be important to ensure that these measures are indeed effective.

While they are being put in place the 'cash for honours' row continues to unfold on the domestic front – confusingly referred to almost universally in the media as 'sleaze' rather than corruption. All over the world TI has found party political funding to be a prime cause of corruption. In this case we have submitted to the Metropolitan Police an analysis of the criminal offences that may have been committed.

The necessity for a party funding regime which minimises the scope for corruption is critical, and it is unfortunate that the Political Parties, Elections and Referendum Act of 2000, excellent in many respects, did not adequately cover the issue of loans. TI(UK) will shortly be issuing a background paper on party political funding which explores the way forward from an anti corruption perspective.

Thank you for your continuing support, never more important than now.

## **Enforcing the OECD Anti-Bribery Convention**

**By Gillian Dell**

(Gillian Dell is Programme Manager for International Conventions Against Corruption in Transparency International's Secretariat in Berlin.)

On 26 June 2006, Transparency International released its second Progress Report on Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials. The report reviewed the enforcement performance of 31 of the 36 countries that have ratified the OECD Convention, drawing on reports by TI national experts. The conclusion: 7 years after entry into force of the convention there is little enforcement in two-thirds of the signatories surveyed. By contrast, in a handful of countries there is striking progress since TI's first Progress Report in 2005.

Notable among the non-performers are Japan, the Netherlands and the United Kingdom. Neither of them has brought a single prosecution for foreign bribery, which is surprising given their substantial trade in high-risk sectors and countries. Each of them has been roundly criticised in the OECD Working Group on Bribery. Two

other countries with significant exposure in high-risk areas also made a poor showing: Canada has only brought one minor prosecution; and Italy has brought only one prosecution, albeit a major case.

On the positive side, in the United States, between 2005 and 2006 there was a major jump in the number of prosecutions from 35 to 50—Sarbanes-Oxley legislation probably played a role there. In France the number of prosecutions also increased significantly. In these two countries and six others (Belgium, Denmark, Germany, Italy, Norway and Spain) law enforcement authorities have been willing to bring cases against major multinationals. In five additional countries (Bulgaria, Canada, Korea, Sweden and Switzerland) relatively minor cases have been brought. In one further country, Hungary, the authorities report 22 prosecutions but no information is available on the nature of the cases. There has also been an increase in investigations in a few countries.

The TI Progress Report looked not only at prosecutions and investigations but also at strengths and weaknesses in enforcement systems in the following eight areas: organisation of enforcement; available

resources; complaint procedure; whistleblower protection; public awareness; accounting and auditing requirements; private sector efforts; and statutory and other legal inadequacies. The comments by experts in some countries were especially revealing. The Austrian TI expert noted that "the right of the Minister of Justice to give directives directly to prosecutors is a very powerful legal instrument by which the Minister can stop prosecution of specific cases." The Czech TI expert reported that "no one in Czech Republic knows that foreign bribery has become a crime, except for some lawyers and experts." In Portugal, the TI expert noted that companies can still create slush funds legally constituted as "Confidential Expenses". In Turkey, the TI expert indicated that there is still a widespread belief among government officials that Turkish companies "should use every possible means to be competitive in a global business world".

Why such a poor performance in so many OECD Convention signatory countries? Government officials may give low priority to enforcement of the prohibition on foreign bribery because the harm is done abroad; the prohibited acts may even be seen to be in the service of their

country's economic interests. At the same time, international bribery cases are complex, demanding and consume law enforcement resources. Prosecutors may prefer to focus on less difficult cases if human and financial resources are lacking.

International corruption needs to be collectively addressed, as the OECD Convention recognises. TI and other civil society organisations will have to make the case again and again and keep up the pressure for action. In the UK there are some signs of receptivity on this issue now. Hilary Benn has been appointed as Ministerial champion for addressing international corruption and a new dedicated team has been established to deal with foreign bribery and money laundering. This is very welcome news.

Less encouraging is that serious concerns have been raised recently about the future of the OECD Convention monitoring process currently conducted by the OECD Working Group on Bribery. Given the evidence of lack of enforcement, the continuation of a rigorous monitoring process is essential after the current Phase 2 monitoring ends in 2007. TI and other groups will need to be active in communicating this to signatory governments.

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## IN THE NEWS

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### **Export Credit Guarantees Department (ECGD)**

In March 2006, after a year long public consultation, the ECGD published its revised anti-bribery and corruption procedures (Procedures). Following further consultations with some consultees who had expressed concerns about the handling of information about the identities of agents, on 9 June 2006, the ECGD published its Concluding Response. The ECGD's new Procedures came into effect on 1 July 2006. The ECGD has provided for 'Special Handling Arrangements' (SHA) for information on agents identities'. If an applicant chooses to invoke the SHA, only a few senior ECGD staff would be provided with the name and address of the applicant's agents.

TI(UK) has taken the view that, while the ECGD's new Procedures remove some of the weaknesses in the December 2004 procedures, they are still fundamentally flawed and there is still a significant risk that the ECGD may support transactions tainted by bribery. For example, exporters are only required to disclose the names of their own agents and not those of their consortium partners and group companies.

On 30 March 2006, a sub-committee of the House of Commons Trade and Industry Committee began an inquiry into the new Procedures of the ECGD. TI(UK) provided written and oral evidence to the sub-committee.

### **"Loans for Peerages" Scandal**

TI(UK) welcomed the criminal investigation by Scotland Yard into the "Loans for Peerages" scandal. (The scandal centred on allegations that certain UK businessmen, who had made loans or donations to political parties, had subsequently been nominated for peerages in the House of Lords.) On 3 April, TI(UK) sent to Scotland Yard an analysis of the possible crimes that may have been committed on the basis of specified assumed facts, and the questions that might need to be answered in order to determine whether such crimes had been committed. TI(UK)'s analysis focused on crimes relating to the law of bribery, fraud and deception.

### **OECD Export Credit Group**

On 11 May 2006, the OECD's Export Credit Group agreed a new Action Statement on Bribery and Officially Supported Export Credits, which was a material improvement on

the OECD's 2000 Action Statement. For example, the new Statement requires ECAs to encourage applicants to develop, apply and document appropriate management control systems to combat bribery; and to verify whether applicants are included on the debarment lists of the multilateral development banks. The 2000 Statement did not contain such requirements. However, the 2006 Statement does not include many of the measures that TI had recommended in its presentation to the OECD Group on ECAs in October 2005. For example, although it states that ECAs should require applicants to disclose the identity of any person acting on the applicant's behalf, this obligation does not extend to disclosure in relation to agents appointed by the applicant's affiliated entities, joint venture or consortium partners, or major sub-contractors.

### **Report of the Africa All Party Parliamentary Group (AAPPG)**

In March 2006, the AAPPG published its Report, "The Other Side of the Coin", which examined the responsibility of the UK to combat corruption and money laundering, with a particular focus on Africa. The Report made several recommendations. In particular, it urged the UK Government to:

1. Rigorously enforce existing laws and sanctions against international bribery, corruption and money laundering.
2. Bring to Parliament before the end of 2006 a new Corruption Bill, which addresses the concerns raised about the Government's 2003 draft Corruption Bill by a Joint Parliamentary Committee.
3. Fully implement the Third EU anti-Money Laundering Directive as soon as possible and well before the 2007 deadline.
4. Ensure that Crown Dependencies and Overseas Territories deal with corruption and money laundering as robustly as the UK.
5. Report to Parliament annually on international development spending with a particular focus on transparency, effectiveness and details of support for anti-corruption priorities and strategies.
6. Appoint an Anti-Corruption champion for a two-year period to coordinate policy coherence and implementation across Whitehall and to work with devolved executives, Crown Dependencies, Overseas Territories and international partners.

#### *Government's Response to the AAPPG*

On 22 June 2006, the Government issued its Response to the AAPPG's recommendations, stating that it agreed with the key areas highlighted by the

AAPPG for action. The Government's detailed response included several positive elements, including the following: the plan to establish a dedicated unit, jointly housed by the City of London and Metropolitan Police Forces, to investigate allegations of foreign bribery by UK businesses as well as money laundering; the assignment to the Secretary of State for International Development, of responsibility for tackling overseas corruption and the development of a cross-departmental action plan to deal with this area; the Government's recognition that the law of bribery is in need of reform; the Government's support for the establishment of effective mechanisms to monitor the implementation of the UN Convention Against Corruption; and the Government's elaboration of how it proposed to ensure that the effectiveness of its developmental assistance was not undermined by corruption and weak governance in recipient countries. In its response to the Government's Response, TI(UK) welcomed these positive elements but noted that it remained to be seen whether they would lead to the considerably greater effort that is needed to prosecute foreign bribery.

## **United Nations Convention Against Corruption**

The UK ratified the Convention on 15 February 2006. Among the G8, only two others (France and Russia) had ratified the Convention as at the end of June 2006.

## **OECD Anti-Bribery Convention**

TI's 2006 Report Progress Report on the Enforcement of the OECD Convention, released on 26 June 2006, concluded that two-thirds of the 31 signatory countries surveyed had achieved little or no enforcement since the Convention came into force in 1999. The Report singled out five countries – Canada, Italy, Japan, the Netherlands and the UK - where the lack of enforcement was a particular concern.

Twelve of the 31 countries surveyed had taken significant enforcement action, compared to eight of the 24 surveyed last year. Prosecutions had substantially increased in the US and France compared to 2005, and prosecutions were also underway in Belgium, Bulgaria, Denmark, Germany, Hungary, Korea, Norway, Spain, Sweden and Switzerland. The TI Report urged the OECD to maintain a strong and fully funded monitoring programme beyond 2007.

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## **MEETINGS**

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### **The UN Oil-for-Food Programme Inquiry: A Foundation for Enforcement?**

This was the theme of a meeting jointly organised by Chatham House and TI(UK) on 27 February. It was chaired by Lord Hannay and the speakers were Professor Mark Pieth (Chair of the OECD Working Group on Bribery and a member of the UN Independent Inquiry Committee (IIC) on the Oil-for-Food Programme) and Jeremy Carver (member of TI(UK)'s Board of Trustees and Consultant Head of International Law, Clifford Chance). The IIC, *inter alia*, identified more than 2000 companies who may have breached the UN sanctions by paying kickbacks to the Iraqi Government. Mark Pieth provided insights into the work of the IIC and its findings and Jeremy Carver focused on key factors and issues that had influenced the work of the IIC.

### **Extracting Transparency in the Extractive Industries**

A TI(UK) meeting on 8 March 2006 focused on this theme. David Murray (Senior Adviser to the Chair of the Extractive Industries Transparency Initiative's (EITI) International Advisory Group), Richard Murphy (FCA of Tax Research LLP), and Henry Parham

(International Coordinator of the PWYP coalition), were the speakers. They commented on different aspects of the challenge of increasing transparency in the reporting of company payments and corresponding government revenues in natural resource rich developing countries, with particular reference to the experience being gained through EITI.

### **Extraordinary General Meeting (EGM)**

TI(UK) held an EGM on 16 May 2006, in order to elect its Board of Trustees, following the amendment of the organisation's Memorandum and Articles of Association in January 2006. The following were elected as Trustees: Jeremy Carver, Laurence Cockcroft, John Drysdale, Neil Holt, Lady Moody-Stuart, Anne Moore-Williams, Monty Raphael, Ian Trumper, Kate Wilson and Karl Ziegler.

Following the EGM, TI(UK) members and other guests were addressed by Sir Edward Clay, former UK High Commissioner to Kenya, on the theme, "Confronting Grand Corruption: The Donors' Dilemma". Sir Edward focused on the challenges of providing developmental assistance to countries where grand corruption and weak public financial accountability undermined the effectiveness of such assistance.

## **TI (UK) Corporate Supporters Forum (CSF)**

At the CSF's meeting on 18 May 2006, Francois Vincke, Chair of the International Chamber of Commerce's (ICC) Commission on Anti-Corruption, led a discussion on the significance and implications of the ICC Rules on Combating Extortion and Bribery. This was followed by a presentation of the main findings of PwC's 2005 Global Economic Crimes Survey by John Tracey, Partner, Forensic Services, PwC. Peter Wilkinson, Adviser to TI on corporate issues, briefed the CSF on TI's analysis of the effectiveness of UK corporate reporting on bribery and corruption.

## **Regional Meeting of TI National Chapters (NCs) in Europe and Central Asia, Brijuni, Croatia, 26-28 May 2006**

TI(UK) was one of the 30 NCs that participated in the meeting, which was organised jointly by TI Croatia and the TI Secretariat. The meeting focused on the following areas: enhancing cooperation among NCs in areas such as public contracting, implementation of anti-corruption conventions, private sector corruption and political corruption; the renewal of TI's Strategic Framework (TI 2010); and improving communications within the TI movement.

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## **TI(UK) PROJECTS**

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### **Corruption Bill**

On 23 May 2006, a Corruption Bill developed by TI(UK) was introduced in the House of Commons under the 10-Minute Rule by a high-powered cross party group of MPs, including the Chairmen of the Home Affairs, Foreign Affairs and International Development Select Committees. The following day, a briefing on the Bill, by an all-party panel chaired by Hugh Bayley MP, was held in the House of Commons.

The TI(UK) Bill responds to the public concern that the UK's anti-corruption legislation is out-of-date, obscure and inadequately enforced. The Government's draft corruption bill, which was presented in 2003, was roundly criticised by an all party committee of both Houses. The current law of corruption rests on a confused mix of common law and statutes, principally those enacted in 1889, 1906 and 1916. It is hoped that the Government will present a new corruption bill to Parliament that draws on the content of TI(UK)'s Corruption Bill.

### **Corruption in the Official Arms Trade (COAT)**

TI(UK) has continued its dialogue on anti-corruption issues with the major North American and Western

European defence companies. A meeting of these companies and TI(UK) on 23 May 2006, chaired by Lord Robertson (former NATO Secretary-General), exchanged information on ethics-related initiatives that are being considered by different groups within the industry. A further meeting of the companies is scheduled for November 2006.

The COAT team, with the assistance of the concerned TI National Chapters, have met the National Armaments Directors (NADs) of the governments of Italy, UK, Germany and France with a view to encouraging them to put the issue of anti-corruption in the defence sector on the agenda of the NATO NADs meeting later in 2006.

Work with TI Latvia to tailor a defence integrity pact (DIP) for Latvian law has been stalled because of the political situation in the country. It is proposed to organise a seminar jointly with TI Poland and the Polish Government to discuss DIPs and hopefully identify a suitable procurement project. Contacts continue with other TI chapters, including Zambia, Malaysia, and Indonesia, to explore whether they would be interested in implementing DIPs.

TI(UK) ran a joint seminar with the Swedish Ministry of

Defence for the Swedish defence industry in March 2006.

Security and corruption will be a major theme of the International Anti-Corruption Conference in November 2006 in Guatemala. TI(UK) proposes to run four sessions on the topic, and to bring together experts from around the world to participate in the discussions.

### **Preventing corruption in the infrastructure, construction and engineering sectors**

Work continues to be focused on strengthening the Anti-Corruption Forum; encouraging the establishment of similar forums in other countries; promoting the formation of a global infrastructure anti-corruption forum; the development of the Project Anti-Corruption System (PACS) for construction projects; and dialogue with the World Bank (which has expressed an interest in the PACS) on how it can contribute to reducing corruption in infrastructure and construction projects.

Before the TI ECA regional meeting in Brijuni, Croatia, in May, a detailed proposal by TI(UK) for the establishment of Anti-Corruption Forums in other countries was circulated to all the ECA NCs. The TI National Chapters of Switzerland, Denmark,

Norway, Sweden, Italy and France have indicated that they are interested in setting up Forums in their respective countries. TI(UK) continues to encourage NCs in developing countries to set up Forums.

TI(UK) has developed and circulated a detailed proposal for the establishment of a global infrastructure anti-corruption forum. Initial responses from various international and regional construction and engineering associations have been encouraging. The World Forum of Engineering Organisations has invited TI(UK) to join its anti-corruption task force.

TI(UK) is completing a report on corruption in the financing of infrastructure projects for DFID.

### **Anti-Money Laundering (AML)**

A TI(UK) Working Group has been set up to develop the next project in this area. At its first meeting on 15 May, it agreed that there should be two new reports. The first report would take stock of developments since the last two TI(UK) reports were released (in 2003 and 2004). It would aim to identify any remaining weaknesses in the UK's AML regime and issues related to the UK's implementation of the EU's 3<sup>rd</sup> AML Directive.

The second report would focus on new areas/issues of concern, including the challenges of bringing a successful prosecution of foreign bribery/money laundering when multiple jurisdictions are involved.

### **Extractive Industries Transparency Initiative (EITI)**

TI(UK) participated in PWYP consultations in London preparatory to the meetings of EITI's International Advisory Group (IAG) in February (Abuja, Nigeria), April (Baku, Azerbaijan) and June 2006 (London, UK). As a result of these meetings, the IAG has agreed proposals for the future of EITI, including a system for verifying the Initiative's implementation by countries and companies. These proposals will be put to the Third EITI International Conference, which will be held in Oslo, Norway, on 16-17 October 2006. An important issue that will need to be resolved in the run up to the Oslo meeting is the future location of, and funding for, EITI's Secretariat.

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## Other News

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### **“Corruption and Misuse of Public Office”**

Oxford University Press published in March the first legal practitioners book dedicated to this subject. TI(UK) member and long term supporter Tim Daniel (partner in Kendal Freeman solicitors) is one of the co-authors. Others are Colin Nicholls QC, Martin Polaine, Senior Crown Prosecutor currently seconded to the Commonwealth Secretariat and John Hatchard, Professor of Law at the Open University. The book sets out the law relating to corruption and misuse of public office and includes 34 appendices reproducing the full text of relevant conventions and legislation. It is available in hardback at the price of £125.00.

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### **Future TI(UK) Meetings**

**TI(UK)’s Annual General Meeting** will be held on 3 October 2006 at 6 pm at the Commonwealth Club. Ms Huguette Labelle, Chair of Transparency International’s Board of Directors and former President of the Canadian International Development Agency, will be the Guest Speaker at the AGM.

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