

# Report on the UK's Compliance with the UN Convention Against Corruption

**bond**  
FOR INTERNATIONAL DEVELOPMENT



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### Disclaimers

All reasonable efforts been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 2011. Nevertheless, the members of the Bond Anti-Corruption Group cannot accept responsibility for the consequences of its use for other purposes or in other contexts. Policy recommendations reflect the collective opinion of the Bond Anti-Corruption Group but may not reflect the opinion of each member organisation. This report has been produced for information only and should not be relied on for legal purposes. Legal advice should always be sought before taking action based on the information provided.

## About Bond

Bond is a broad network of 360 UK-based international development organisations united by a common goal to eradicate global poverty. To achieve this we influence governments and policy-makers, build organisational capacity and effectiveness develop the skills of people, and provide opportunities to exchange information, knowledge and expertise.

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## Bond Anti-Corruption Group

The Bond Anti-Corruption Group, a working group of Bond, has the following core members: CAFOD, Christian Aid, The Corner House, Corruption Watch, Global Witness, Tearfund, Transparency International UK and TIRI. For this review, the Anti-Corruption Group coordinated with Public Concern at Work.

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**“The review finds the UK to have a sound legal framework in place that complies with most of the relevant provisions of the UNCAC and that UK authorities have been transparent and inclusive in their review process. However, our overall conclusion is that compliance is incomplete.”**

# Executive Summary

**The United Nations Convention Against Corruption (UNCAC) is the most comprehensive global anti-corruption legal instrument for tackling corruption.**

**The UK signed UNCAC in December 2003 and subsequently ratified it in February 2006.**

**This report by the Bond Anti-Corruption Group highlights key aspects of the UK's compliance, noting the particular areas where the UK falls short of its international commitments and where more needs to be done in order for the UK to play its part in tackling international corruption.**

In 2011 and 2012, the UK has undergone a peer review procedure under the United Nations Convention Against Corruption (UNCAC). As part of this procedure, the UK government has produced a document that outlines the extent to which, in the government's view, the UK is compliant with UNCAC.

This document presented here, written by a coalition of civil society organisations under the auspices of the Bond Anti-Corruption Group, provides an independent, parallel review of the UK's compliance with two chapters (3 and 4) of the UNCAC.

The review finds the UK to have a sound legal framework in place that complies with most of the relevant provisions of the UNCAC and that UK authorities have been transparent and inclusive in their review process. However, our overall conclusion is that compliance is incomplete, because:

- Although we welcome the introduction of far-reaching anti-bribery legislation, the Ministry of Justice's Guidance, while not legally-binding, risk weakening the legislation in certain areas and creates unnecessary confusion for companies.
- Embezzlement and misappropriation are crimes in the UK. But monitoring and auditing will be weakened by the impending abolition of the Audit Commission, and arrangements for its replacement are unsatisfactory. The UK's legal framework to criminalise the laundering of proceeds of corruption is largely sound. However, there has not been enough action against the facilitators of corruption, for example the lawyers, bankers and accountants that handle corrupt transactions. There is also a serious problem with the implementation and enforcement of the customer due diligence requirements, as shown by a recent report by the UK financial regulator, which found systemic weaknesses in banks' anti-money laundering systems.
- The UK provides strong and comprehensive protection for workplace whistleblowing. However, three out of every four adults do not know anything about the legislation on whistleblowing.
- The UK has systems in place to enable and support international cooperation in the investigation and prosecution of corruption offences. However, there is limited information in the public domain on Mutual Legal Assistance casework.

Our key concern therefore is around enforcement. We believe the drivers of enforcement are:

- institutional will to pursue corruption-related cases as a priority
- adequate resources
- availability of specialist teams
- a single agency responsible for investigation and prosecution

Institutional will to pursue corruption as a priority appears to have been eroded by the Ministry of Justice Bribery Act Guidance that created potential loopholes. It is not clear whether the Serious Fraud Office, which is principally in charge of enforcing the Bribery Act 2010, will be adequately resourced, and it is not clear how well the Crown Prosecution Service will liaise with the City of London Police or other police forces for prosecutions under the new Bribery Act.

Cases brought against commercial organisations have increased in recent years but many have been settled short of criminal conviction, with civil recovery orders being made. Only two cases have resulted in corporate convictions for corruption offences. The most high-profile case, the Serious Fraud Office investigation into the BAE Systems activities in Saudi Arabia, was dropped in circumstances which generated criticism both at home and abroad.

Furthermore, we are concerned that the UK is not improving standards in some areas.

- The UK does not collect information on the ultimate or beneficial owners of UK companies, nor does it exert pressure on crown dependencies and overseas territories to publish their company registries.
- The 'revolving door' between public and private sector remains a problem, eroding standards in public life.
- Under English criminal law, the burden of proof for embezzlement still rests with the prosecution.

Overall, we wish to emphasise that it has been difficult to understand the nature and extent of corruption in the UK, and therefore also to monitor the UK's compliance with international anti-corruption standards. This is because the government has no mechanism for tracking or categorising corruption cases and so data are either non-existent or very hard to obtain.

#### **In light of these findings, we recommend that:**

- 1** The final UK UNCAC Self-Assessment Report be published and debated in parliament.
- 2** The government should ensure UNCAC is extended to all crown dependencies and overseas territories.
- 3** Sufficient dedicated resources to pursue prosecutions under the Bribery Act must be a priority in order for the Bribery Act 2010 to remain credible. Resource constraints should not undermine the capacity of law enforcement.
- 4** Plans for the abolition of the Audit Commission should be put on hold until there has been proper consultation and a thorough assessment of alternative options.
- 5** Stronger regulations be enforced on private consultancies and lobbying of government and parliament. Legislation to require mandatory registration of lobbyists should be given a higher priority in parliament's legislative programme.
- 6** Legislation around regulation of the revolving door between government and the private sector needs to be considered and introduced.
- 7** More diligence be pursued in enforcing know-your-customers rules, and expanded to other professional services like accounting, law, and other service providers.
- 8** Protection for whistleblowing be better publicised.
- 9** The government should collate and publish corruption-related data on a regular basis.

# Introduction

## Corruption has devastating effects on developing economies and their citizens' quality of life. Its cost in Africa alone has been estimated at US \$148 billion a year, representing 25% of the continent's GDP.

Corruption undermines economic growth rates and cripples public services, as money which should be destined for re-investment and public expenditure finds its way into private bank accounts, often abroad.<sup>1</sup> It is for this reason, that the Bond Anti-Corruption Group believes that corruption must be tackled – and now.

The Bond Anti-Corruption Group is made up of like-minded British NGOs who, through their work, witness the devastating effects of corruption on developing countries every day. Our experience has taught us that corruption continues to be one of the biggest obstacles to development, poverty alleviation and good governance. Our aim is to draw attention to the impact of corruption on developing countries and provide a platform for the voices of our partners and southern civil society organisations to be heard in the UK. We intend to use our joint influence to campaign for changes in policy to help bring an end to corruption around the world.

The United Nations Convention Against Corruption (UNCAC) is the most comprehensive global anti-corruption legal instrument for tackling corruption. It is to be applauded for its strengths in addressing issues of corruption both between states and within them.

The UK signed the Convention in December 2003 and subsequently ratified it in February 2006. The Bond Anti-Corruption Group regards the UK's review of its compliance with chapters 3 and 4 of the UNCAC (beginning in summer 2011) as an excellent opportunity for the UK to look at the comprehensive nature of its anti-corruption efforts, particularly analysing them in line with international conventions. This parallel report therefore seeks to analyse the transparency of the review process and highlights key aspects of the UK's compliance, noting the particular areas where the UK falls short of its international commitments and where more needs to be done in order for the

UK to play its part in tackling international corruption.

Furthermore, the Bond Anti-Corruption Group hopes that this report will feed into wider global debates in order that a broader analysis of the implementation of the Convention can be done. This global analysis will help to identify key aspects of UNCAC chapters 3 and 4 that need greater attention and action on the global stage.

# Key Findings



## 2.1 Conduct of process

At the time of writing, the UK UNCAC Review Process was conducted in a transparent and inclusive manner. The lead agency and focal point, the Department for International Development (DFID), consulted with the Bond Anti-Corruption Group before the review process started and made a formal announcement seeking input into the review from civil society, the private sector and interested members of society. DFID invited civil society organisations to comment on the self-assessment during a consultation phase and has agreed to allow civil society to meet with the peer review teams during the forthcoming country visit. We hope that the final UK UNCAC report will be published in full and debated in parliament. Any weaknesses identified in the UK's compliance should be addressed urgently.

## 2.2 Availability of information

Lack of information and data on corruption is a matter of concern, and a challenge for the research behind this report. Data availability is extremely poor and information appears to be made selectively available by the Serious Fraud Office. Details of settlements, in particular, are sketchy and opaque. Data on domestic corruption cases is almost non-existent and given that there is limited data in the public domain it is unclear how, or whether the relevant authorities collect and collate their information.

Apart from making the prevalence and scale of corruption difficult to assess, the lack of data is also an indication that corruption is not considered to be a problem.

As noted in Transparency International's recent 'Corruption in the UK' report the 'problem is that potentially hundreds, if not thousands, of corruption cases go unreported because they are prosecuted as different offences. In 2009 alone, there were 10,090 prosecutions under the 2006 Fraud Act, with no indication as to how many may have included some elements of corruption'.<sup>2</sup>

**“Lack of information and data on corruption is a matter of concern, and a challenge for the research behind this report.”**

## 2. Key Findings cont.

### 2.3 Implementation into Law and Enforcement

Note: The below information was compiled in the summer of 2011. The cut off date for the data collection was 1 September and so the information given below reflects this.

UNCAC article	Status of implementation (Is the article Fully/Partially/ Not implemented?)	How are these provisions enforced in practice? (Good/Moderate/Poor)
<b>Art 15</b> (bribery of national public officials)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The coming into force of the Bribery Act on 1 July 2011 means that the UK has fully implemented Art. 15 into domestic criminal law, without any of the weaknesses referred to in the guidelines of this review.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> It took one year and three months for the Act to come into force after it was passed in parliament. This in itself cannot be considered a good start to enforcement. However, it is too early to assess enforcement in practice.
<b>Art 16</b> (bribery of foreign public officials)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> Section 6 of the Bribery Act implements Article 16 and also finally makes the UK fully compliant with the OECD Anti-Bribery Convention.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> It is still too early to assess enforcement in practice and it remains to be seen whether weaknesses in the Ministry of Justice Guidance have the effect of weakening enforcement in this area. There are also concerns around the resourcing for the prevention, investigation and prosecution of complex international cases of bribery.
<b>Art 17</b> (embezzlement, misappropriation or other diversion of property by a public official)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The issues encompassed by UNCAC Article 17 are dealt with under English law by the general criminalisation of embezzlement, misappropriation or diversion of property by an individual and is not specific to public officials.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> Civil society is concerned that whilst at present the legislative framework allows for this to be implemented in practice, the future abolition of the Audit Commission may have the effect of weakening enforcement in this area.
<b>Art 20</b> (illicit enrichment)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The issues encompassed by Article 20 are dealt with under English law by a variety of legislation. It should also be noted that members of the UK parliament are required to register business interests, gifts and hospitality received in their position above a certain value.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> The series of scandals over alleged trading in influence suggest there are problems in this area.



UNCAC article	Status of implementation (Is the article Fully / Partially / Not implemented?)	How are these provisions enforced in practice? (Good/ Moderate/ Poor)
<b>Art 23</b> (laundering of proceeds of crime)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The UK's Proceeds of Crime Act (POCA) 2002 criminalises money laundering.	<input type="checkbox"/> Good <input checked="" type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> There have been a few successful cases of individuals being prosecuted and there continue to be weaknesses in the UK's money laundering regulations (MLR 2007),
<b>Art 26</b> (Liability of legal persons)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> UK law does recognise and provide that legal persons may be liable for bribery and corruption offences.	<input type="checkbox"/> Good <input type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> The Bribery Act 2010 s.7 (became law on 1 July 2011) creates a specific corporate offence, but there have been no prosecutions yet.
<b>Art 33</b> (protection of witnesses, reporting persons)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The UK's Public Interest Disclosure Act (PIDA) 1998 goes further than witness protection and offers a strong comprehensive protection for workplace whistleblowing.	<input type="checkbox"/> Good <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Poor <i>Comment:</i> Outside of the health service, Public Interest Disclosure Act has not been actively promoted by the UK government. Hence, enforcement is weak and more needs to be done to promote whistleblowing in the public sector.
<b>Art 46(9)(b) &amp;(c)</b> (Mutual Legal Assistance)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> In part <input type="checkbox"/> No <i>Comment:</i> The UK has approximately 37 bilateral agreements currently in place with a broad range of countries. In recent years, steps have been taken to strengthen the UK Central Authority in the Home Office.	<input checked="" type="checkbox"/> Good <input type="checkbox"/> Moderate <input type="checkbox"/> Poor <i>Comment:</i> The UK authorities receive approximately 40 – 50 new requests for Mutual Legal Assistance a year from all over the world. It is not known how many requests the UK makes itself.

# Evaluation of the Review Process

# 3

## Transparency of the government's undertaking of the review process

Did the government make public the contact information for the country focal point?	Yes	The UK's focal point, the Department for International Development (DFID) agreed to announce the UNCAC review, the name and contact details of the focal point and outline the schedule. This announcement was made on 15 July and included an email notification to all those involved in the Bribery Act consultation.
Was civil society* consulted in the preparation of the self-assessment?	Yes If yes, who? <input type="checkbox"/> Women's groups <input type="checkbox"/> Access to information groups <input type="checkbox"/> Trade unions <input type="checkbox"/> Academic networks <input checked="" type="checkbox"/> Anti-corruption groups <input type="checkbox"/> Other (please list)	DFID has consulted with the Bond Anti-Corruption Group and other stakeholders. In the announcement it requested that those seeking to input into the review process contact the focal point offering their comments.
Was the self-assessment published on line or provided to the expert assessing? If so, by whom?	Yes	The UK published the draft self-assessment online and invited comments. It also invited various stakeholders to attend a meeting to comment on the self-assessment before it was finalised.
Did the government agree to a country visit?	Yes	Planned for early 2012
Was a country visit undertaken?	Planned for early 2012	Planned for early 2012
Was civil society invited to provide input to the official reviewers? Please enter the form of input invited.	Yes	Civil society was invited to submit a parallel report at the time of the self-assessment so that DFID could use and input the data. They were also invited to comment on the self-assessment during a two week consultation phase before the assessment was sent to the peer reviewers. DFID has agreed for civil society to meet with the peer review team in early 2012
Has the government committed to publishing the full country report (Please indicate if published by UNODC and/ or country)	Yes	Yes – the UK published the final pilot report, although it took a while to be published.

\*Civil society organisations (CSOs) are defined as not-for-profit organisations including non-governmental organisations (NGOs), community groups, trade unions, indigenous groups, charitable organisations, faith-based organisations, academic institutions and foundations.

# Access to Information

# 4

<b>4.1</b>	<b>Is there access to information legislation in your country?</b>
response	Yes
explanation	The UK Freedom of Information Act 2000 creates a public 'right of access' to information held by public authorities.
<b>4.2</b>	<b>Did you try to make a formal access to information request based on legislation? If so, please specify the relevant legislation.</b>
response	No
explanation	n/a
<b>4.3</b>	<b>Which government bodies or institutions were contacted in order to obtain information necessary to fill in this questionnaire?</b>
response	This questionnaire drew upon a variety of data, evidence and continued contact with government, including the Department for Business, Innovation and Skills and the City of London Police.
explanation	n/a

<b>4.4</b>	<b>What obstacles did you encounter in obtaining the necessary information?</b>
response	The government has no mechanism for tracking or categorising corruption cases and so data are either non-existent or very hard to obtain.
explanation	n/a
<b>4.5</b>	<b>Is information on numbers of cases accessible?</b>
response	No
explanation	Data on domestic corruption cases are almost non-existent and no data is made publicly-available or, apparently, collected or collated by the relevant authorities. Information on foreign bribery cases can be obtained through requests to Department for Business, Innovation and Skills, the Serious Fraud Office and the City of London Police.
<b>4.6</b>	<b>Is information on case details accessible?</b>
response	No
explanation	Data availability for UK corruption cases is extremely poor. General information on foreign bribery cases is available from the Serious Fraud Office. However, details of negotiated settlements of foreign bribery cases are sketchy and opaque.

# Implementation into law of key articles

## 5.1 Article 15 Bribery of national public officials

5.1.1	<b>Has the article been implemented into domestic criminal law?</b>
response	Yes
explanation	The UK Bribery Act has come into force on 1 July 2011 and to our knowledge means that the UK has fully implemented Art. 15 into domestic criminal law, without any of the weaknesses referred to in the guidelines of this review.
5.1.2	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	With the very recent commencement of implementation of the Bribery Act, it is essential that enforcement is monitored and evaluated carefully.
explanation	n/a

## 5.2 Article 16 Bribery of foreign public officials

5.2.1	<b>Has the article been implemented into law?</b>
response	Yes
explanation	<p>We believe the UK Bribery Act, which came into force on 1 July 2011, to be one of the strongest anti-bribery laws worldwide, with appropriate reference to the bribery of foreign public officials.</p> <p>However, we have doubts as to whether the UK is fully compliant with Article 16, because of the following weaknesses in the non-statutory guidance of the Ministry of Justice on adequate bribery-prevention procedures:</p> <ul style="list-style-type: none"> <li>• <i>Bribes for the benefit of third parties or coursed through certain intermediaries are not included.</i></li> </ul> <p>Clause 42 of the Ministry of Justice Guidance asks for the prosecutor to demonstrate that there is a causal link between a bribe paid and a direct business advantage or benefit to the parent company. In other words, the Secretary of State suggests that a business advantage to the parent company by virtue of its corporate relationship with the subsidiary or as a result of the payments of dividends by the subsidiary, does not constitute a direct business advantage or benefit for the purposes of the Act. We are concerned such interpretation could open up a loophole allowing companies to “outsource” bribery to subsidiary partners.</p> <p>The December 2010 OECD Anti-Bribery Working Group Report<sup>3</sup> noted that, “the [Bribery Act] Section 7 offence of failure to prevent bribery . . . does not apply to unincorporated bodies such as trusts, unincorporated associations or unincorporated charitable organisations. Also, there may be issues where an agent bribes a foreign official on the company’s behalf but performs no other services, and where a company fails to prevent bribery committed on its behalf by a second company (including a subsidiary).” In our experience, the complex operations of extractives companies in the developing world often include subsidiary arrangements and charitable organisations that might potentially be used to avoid liability under the Act.</p>

## 5

<p>5.2.1 explanation <i>cont.</i></p>	<ul style="list-style-type: none"> <li>• <i>A high standard of evidence is required to prove a corruption agreement and to establish intent.</i></li> </ul> <p>Clause 42 of the Ministry of Justice Guidance suggests that a prosecutor will need to establish an intention on the part of a subsidiary to obtain a business advantage for the parent rather than for itself. Again, this seems to potentially open a loophole that parent companies could use to “outsource” bribery of a foreign public official to a subsidiary.</p> <ul style="list-style-type: none"> <li>• <i>Uncertainty is created with definitions of jurisdictional limitations (see also Article 42), for example, restrictions on application of nationality or territoriality jurisdiction.</i></li> </ul> <p>Parts of the Ministry of Justice Guidance on adequate procedures have created uncertainty about the extra-territorial reach of Section 7 of the Bribery Act 2010. Although the Guidance is non-statutory we are concerned that clause 36<sup>4</sup> contradicts the spirit of Section 7 of the Act which in our view needs to be broadly interpreted in order to prevent an unfair playing field for UK companies. This means including all companies listed on UK stock exchanges and foreign companies that operate subsidiaries in the UK.</p> <p>Also, the OECD Anti-Bribery Working Group has noted that “companies incorporated in the crown dependencies, but which do not carry on a business in the UK, can be used to commit foreign bribery without fear of prosecution under the Bribery Act”.<sup>5</sup> This could potentially be very significant considering that 802,850 companies were incorporated in the British Virgin Islands alone as of 2007.<sup>6</sup> And in 2008 and 2009, the figures for FDI to the British Virgin Islands were almost the same as for the whole of Brazil.<sup>7</sup> Considering the UK can and has directly legislated in overseas territories in certain cases, the government should ensure that UNCAC is also extended to all crown dependencies and overseas territories.</p>
<p>5.2.2</p>	<p><b>What priority steps need to be taken to ensure compliance with the UNCAC?</b></p>
<p>response</p>	<p>In addition to resolving the points raised in the preceding section above, the following issues should be taken into account with regard to the implementation of the Bribery Act:</p> <ul style="list-style-type: none"> <li>• <i>Adequate resources:</i> resource constraints should not undermine the capacity of law enforcement authorities to enforce the Bribery Act. Sufficient dedicated resources to pursue prosecutions under the Bribery Act must be a priority in order for the Act to remain credible.</li> <li>• <i>Governmental capacity:</i> there must be ample capacity, awareness, political backing and will in overseas diplomatic posts to assist UK companies in dealing with corruption risks. This will mean dedicated anti-corruption training and continued governmental support for those staff who work with UK businesses overseas.</li> <li>• <i>Penalties:</i> penalties for offences under the Act must be substantial enough to ensure that the law acts as a strong deterrent against bribery. High penalties would also encourage companies to self-report and strengthen the hands of prosecutors in negotiating settlements.</li> </ul>
<p>explanation</p>	<p>n/a</p>

## 5. Implementation into law of key articles cont.

### 5.3 ARTICLE 17

#### Embezzlement, misappropriation or other diversion of property by a public official

5.3.1a	<b>Has the article been implemented into law?</b>
response	Yes
explanation	<p>The issues encompassed by UNCAC Article 17 are dealt with under English law by the general criminalisation of embezzlement, misappropriation or diversion of property by any individual and is not specific to public officials. Relevant legislation includes:</p> <ul style="list-style-type: none"> <li>• <i>Fraud Act 2006</i> – s.2 – the offence of ‘fraud by making a false representation’, s.3 – the offence of ‘fraud by failing to disclose information’, and s.4 – the offence of ‘fraud by abuse of position’ is committed by a person who occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and dishonestly abuses that position. For all three offences the offender must intend by means of the false representation, the failure to disclose information or the abuse of that position to make a gain for himself or another or to cause loss to another or to expose another to a risk of loss. A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act. “Gain” or “loss” may relate to money or any other property and may be permanent or temporary.</li> <li>• <i>Theft Act 1968</i> – s.1 – a person is guilty of the basic offence of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.</li> <li>• <i>Proceeds of Crime Act 2002</i> – this Act covers a range of offences that apply to activities of diversion of criminal property, including concealing, disguising, converting or transferring criminal property. Once again, this offence concerns any individual and is not specific to public officials.</li> </ul>
5.3.1b	<b>If so, does the burden of proof shift to the defendant to prove that the funds in question were legally obtained?</b>
response	No
explanation	The burden of proof under English criminal law proceedings rests with the prosecution to prove, beyond reasonable doubt, the elements of the offence in question.

5.3.2	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	<p>Though there is general provision under English law for offences of embezzlement, there is no specific offence of what is encapsulated by UNCAC Article 17. That said, the existing legislation provides avenues for the prosecution of offences envisaged by UNCAC Article 17.</p> <p>However, civil society has a very strong concern that the monitoring and auditing arrangements with regard to public officials in the UK are being significantly weakened by the abolition of the Audit Commission and unsatisfactory arrangements for its replacement. There are concerns that local authorities will now face conflicts of interest in being able to choose their auditors, and that private audit firms may not be suitable for the task. Plans for the abolition of the Audit Commission should therefore be put on hold until there has been proper consultation and a thorough assessment of alternative options for auditing local government and the NHS.</p>
explanation	n/a

## 5.4 ARTICLE 18

### Trading in Influence

5.4.1	<b>Has the article been implemented into law?</b>
response	No
explanation	<p>The UK does not criminalise the offering, promising or giving advantages in relation to the exercise of influence generally, as this would catch legitimate lobbying and marketing.</p> <p>However, this creates a 'revolving door' in which public officials join the private sector, exemplified by a series of scandals. This potentially allows trading in influence involving former public officials, parliamentarians and government ministers.<sup>8</sup> Also, the conflict of interest arrangements for members of parliament and peers with regard to consultancies and paid advisory services are poorly regulated, increasing the potential risk of trading in influence or even corrupt enrichment.</p>

## 5. Implementation into law of key articles cont.

### 5.4 ARTICLE 18

#### Trading in Influence cont.

5.4.2	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	<p>The absence of legislation in this area means that standards in public life are vulnerable to erosion, as evidenced by the scandals related to the 'revolving door' between government and the private sector. In a number of cases, questions have been raised about whether there may have been illegitimate trading in influence. Rules and procedures for regulating the revolving door continue to be very weak and are in urgent need of reform.</p> <p>The Independent Parliamentary Standards Authority should draw up post-public employment rules for MPs, taking into account differences in the incidence of conflict-of-interest risk between various roles, and being sensitive to the job insecurity that elected MPs face. Consideration of this issue should be linked to an examination of the remuneration of MPs.</p> <p>The Committee on Standards in Public Life should undertake a review in 2012 of the effectiveness of parliament's key accountability and integrity mechanisms.<sup>9</sup></p>
explanation	n/a

### 5.5 ARTICLE 20

#### Illicit enrichment

5.5.1a	<b>Has the article been implemented into law?</b>
response	Yes
explanation	<p>Legislation and issues discussed in respect of UNCAC Article 17 similarly applies to UNCAC Article 20.</p> <p>It should also be noted that members of the UK parliament are required to register business interests, gifts and hospitality received in their position that are above a certain monetary value. This register has been established with a view to improving transparency and minimising opportunities for illicit enrichment. There is a similar requirement for local government officials (mayors, county councillors, borough councillors and parish councillors). There have been long-standing civil society concerns about the consultancy and lobbying activity undertaken by members of both houses of parliament, as well as the 'revolving door' between public and private sector. Both of these areas are poorly regulated, and the regulation is poorly enforced.</p> <p><i>Note: for the purposes of this article illicit enrichment refers to a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.</i></p>



<b>5.5.1b</b>	<b>Does the burden of proof shift to the defendant to prove that the enrichment in question was legally obtained?</b>
response	No
explanation	The burden of proof under English criminal law proceedings rests with the prosecution to prove, beyond reasonable doubt, the elements of the offence in question.
<b>5.5.2</b>	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	Civil society has a very strong concern that the monitoring and auditing arrangements with regard to public officials in the UK are being significantly weakened by the abolition of the Audit Commission and unsatisfactory arrangements for its replacement. <sup>10</sup> Consequently, plans for the abolition of the Audit Commission should therefore be put on hold until there has been proper consultation and a thorough assessment of alternative options for auditing local government and the NHS.
explanation	n/a

## 5.6 ARTICLE 23 Laundering of proceeds of crime

<b>5.6.1a</b>	<b>Is money laundering defined as a crime under criminal law?</b>
response	Yes
explanation	The UK's Proceeds of Crime Act 2002 criminalises money laundering.
<b>5.6.1b</b>	<b>Does the list of predicate offences for money laundering include corruption offences?</b>
response	Yes
explanation	The Proceeds of Crime Act takes an all crimes approach. Therefore, although corruption is not explicitly listed as a predicate offence, it is covered by the law.
<b>5.6.2</b>	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	<ul style="list-style-type: none"> <li>• Bring more actions, including prosecutions, against the facilitators of the laundering of the proceeds of corruption, for example the lawyers, bankers and accountants that handle the transactions.</li> <li>• Strengthen the 2007 money laundering regulations (Arts. 14 and 52 of UNCAC), particularly in relation to Customer Due Diligence regarding politically exposed persons, and improve their enforcement.</li> </ul>

## 5. Implementation into law of key articles cont.

### 5.6 ARTICLE 23

#### Laundering of proceeds of crime cont.

##### 5.6.2 explanation

The UK's legal and regulatory framework to criminalise laundering of the proceeds of corruption is generally sound and there have been a few successful cases of individuals being prosecuted. For example, a former Nigerian governor is currently on trial for money laundering. His lawyer, wife, sister and mistress have already been convicted. The Metropolitan Police's Proceeds of Corruption Unit should be commended for its work on these cases, as should DFID for funding this unit's work. Sadly, these cases are still rare.

However, there appear to have been few attempts to prosecute the facilitators of corruption. Even those few civil corruption-related cases which have occurred suggest a reluctance to recognise the role that can be played by professional service providers and bankers. In 2008 a London-based lawyer called Iqbal Meer was cleared by the Court of Appeal of civil liability in facilitating the theft of Zambian state funds by former President Chiluba through use of a client account held by his law firm. The appeal judge said that: 'the more probable explanation for Mr Meer's conduct is that he was honest, albeit foolish, sometimes very foolish, and far from competent in his understanding, as well as in his application and observance, of relevant professional duties, above all the need to comply with the warnings about money-laundering.' (Attorney General of Zambia v Meer Care & Desai (A Firm) & Ors [2008])

In 2007 the High Court ruled in a civil case brought by the Federal Government of Nigeria that corrupt funds brought to the UK by two former Nigerian state governors, Diepreye Alamiyeseigha and Joshua Dariye should be returned to Nigeria. The ruling made it clear that these funds, some of which consisted of bribes from state contractors, had been accepted by banks in London including HSBC, Barclays, Natwest, been convicted. The Metropolitan Police's Proceeds of Corruption Unit should be commended for its work on these cases, as should DFID for funding this unit's work. Sadly, these cases are still rare.

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(The Federal Republic of Nigeria vs Santolina Investment Corp & others, [2007] and The Federal Republic of Nigeria vs Joshua Chibi Dariye & others [2007]).

There has been no attempt made to investigate or prosecute the role played by these banks in handling corrupt funds.

5.6.2  
explanation *cont.*

Articles 14 and 52 of UNCAC – ‘Prevention and Detection of transfers of proceeds of crime’ – are implemented in the UK through the 2007 money laundering regulations, which implement the Third EU Anti-Money Laundering Directive, which is binding on all EU member states.

The problem in the UK is that, despite improvements in recent years, there continue to be significant weaknesses in the AML regime, which means that in practice, some financial institutions are failing to carry out adequate customer due diligence on their customers, particularly politically exposed persons.

A major weakness in the AML regime is that the guidance provided by the Joint Money Laundering Steering Group does not make it an absolute requirement for reporting institutions to determine if a person is a politically exposed person, and thus fails to meet the terms of Financial Action Taskforce Recommendation 6, which requires enhanced due diligence on this. The money laundering regulations and the Joint Money Laundering Steering Group guidance should make it unambiguous that a reporting institution should always have systems in place to detect and identify politically exposed persons. Money laundering regulation 14 should require politically exposed persons identification as part of risk management and it should be normal practice to have specified measures defined in an institution's AML policy for establishing whether or not any customer is a politically exposed person.<sup>11</sup>

A June 2011 report from the British financial regulator, the Financial Services Authority, belatedly recognised these weaknesses and described how three-quarters of Britain's banks are not doing enough to identify corrupt money from abroad and that it is ‘likely that some banks are handling the proceeds of corruption’. As the Financial Services Authority acknowledged, these findings are very similar to those of a previous report in 2001 after former Nigerian President Sani Abacha's funds, stolen from Nigeria, passed through London. This shows that the Financial Services Authority, and its successor body the Financial Conduct Authority, need to be much tougher on banks that are failing to properly implement CDD procedures in relation to politically exposed persons. This needs to be done proactively on an on-going basis, rather than waiting for 10 years and performing another review. Tough action needs to include naming and shaming banks with inadequate systems and imposing stiff financial penalties.

To our knowledge there have been no equivalent reviews of how other regulated sectors – eg. accountants, lawyers or trust and company service providers – carry out customer due diligence in relation to politically exposed persons. Regulators of these sectors should be required to do so.

HM Treasury is currently proposing to remove the criminal liability for failure to carry out customer due diligence under the money laundering regulations 2007. To our knowledge there have not been any examples of imposition of criminal penalties so far. The theory behind this proposed change is to encourage regulated firms to focus their attention on their high risk customers rather than focus resources on endless regulatory box-ticking in low risk situations. It would be undesirable to make this change, given the weaknesses we have referred to earlier. If this proposal were to be implemented, it will be even more important for regulators to impose the maximum civil penalties at their disposal in cases where financial institutions do not comply with the money laundering regulations by doing appropriate customer due diligence. (Criminal penalties for laundering money under the Proceeds from Crime Act will remain.) The majority of respondents to a HM Treasury on this proposal opposed this change on the basis that it would weaken the UK's anti-money laundering regime.<sup>12</sup>

## 5. Implementation into law of key articles cont.

### 5.6 ARTICLE 23

#### Laundering of proceeds of crime cont.

<p>5.6.2 explanation <i>cont.</i></p>	<p>Articles 14.1.a and 52 stress the importance for banks to identify the beneficial owner of funds managed by a financial institution. Money launderers, including corrupt politicians, frequently use British shell companies to hide their identity and their corruptly acquired assets. Banks and law enforcement can find it difficult to get behind the corporate veil and understand who actually controls a British company, whether for mandated customer due diligence purposes or for investigation purposes. The UK's companies' registry, Companies House, is at least open for view but does not currently collect information on the ultimate or beneficial owner of UK companies. In addition, the information it does collect, for example on shareholders, is unverified and often not up to date. In addition the UK chooses not to encourage the crown dependencies and overseas territories to publish their company registries as the UK does.</p>
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### 5.7 ARTICLE 26

#### Liability of legal persons

5.7.1a	<b>Has the article been implemented into law?</b>
response	<b>Yes:</b> UK law does recognise and provide that legal persons may be liable for bribery and corruption offences.
explanation	<p><i>Explanation of whether legal persons are liable under criminal, civil or administrative law.</i></p> <p>Prior to the implementation of the Bribery Act 2010, there was widespread criticism of the complexity and uncertainty of the UK's old bribery laws. The Act is intended to address those concerns. Prior to the Act, the UK's bribery laws were to be found in a combination of common law and various statutes. Under the old law, a company could only be convicted under corporate liability principles, where a senior officer representing the "controlling mind" of the company was responsible for key elements of the offence (under what is known as the "identification doctrine"). With large corporate organisations with complex management structures, it has often proved very difficult for UK prosecutors to establish the necessary elements of the bribery offence held by the "controlling mind" of the organisation. As a result, there have been very few corporate convictions for bribery offences under the old bribery laws.</p> <p>The Act came into force on 1 July 2011. It abolishes the UK's existing bribery laws and introduces a suite of bribery offences, two of which are new. Whilst it remains the case that to achieve a corporate conviction for bribery offences under the Act still requires the identification doctrine to be satisfied, Section 7 of the Act introduces a new offence whereby a relevant commercial organisation may be liable if it fails to prevent bribery by an "associated person" (a term which includes all those persons who provide services for or on behalf of the commercial organisation) who commits a bribery offence intending to obtain or retain business or a business advantage for that commercial organisation.</p>

5.7.1a explanation <i>cont.</i>	<p>This new offence creates corporate liability because, save as provided in the Act, the commercial organisation has no defence to this particular offence if a person associated with it commits a bribery offence with the requisite intention. The only defence provided by the Act is for the commercial organisation to establish that it had “adequate procedures” in place to prevent such bribery from occurring. Importantly, there is no requirement for UK prosecutors to establish that the controlling mind of the commercial organisation had any knowledge or intention in relation to the underlying bribery offence – that is not a requirement of the new section 7 offence and it is likely that corporate convictions for this offence will be easier as a result. On conviction for this new offence, a commercial organisation is subject to a sanction of an unlimited fine.</p> <p>This new offence under Section 7 of the Act only became law on 1 July 2011. There have been no prosecutions as yet.</p>
5.7.1b	<b>How many companies have received sanctions under criminal, civil and administrative law for corruption-related offences in the past three years?</b>
response	<p>Criminal law: 12  Civil law: 5  Administrative law: 2</p>
explanation	n/a
5.7.1c	<b>Are the sanctions for legal persons committing corruption-related offences effective, proportionate and dissuasive?</b>
response	<p><b>No:</b> The sanctions that have been carried out were under the old bribery laws. The new penalties under the Bribery Act are ten years imprisonment for individuals and unlimited fines for individuals and companies still remain to be seen. Companies are also subject to debarment upon conviction for bribery offences under an EU Directive. It is too early to say how sanctions will be applied under the new law.</p>
explanation	<p>It is unclear what penalties will be sought by prosecutors or imposed by the Courts under the new law. In terms of previous practice, there are concerns that the sanctions may have been insufficient in two areas. First, the Serious Fraud Office has made use of Civil Recovery Orders and sought to reach settlements, which in some cases have resulted in penalties that are unlikely to be a deterrent. Note that no company has yet faced debarment from public sector contracts or, for example, debarment from seeking export credit guarantees from the Export Credits Guarantee Department.</p>

## 5. Implementation into law of key articles cont.

### 5.7 ARTICLE 26

#### Liability of legal persons cont.

5.7.2	What priority steps need to be taken to ensure compliance with the UNCAC?
response	<p>The Bond Anti-Corruption Group contends that inadequacies in the legal framework in relation to bribery must be addressed. The 2010 Bribery Act came into force on 1 July 2011. However, parts of the 'Guidance' to companies on procedures to prevent bribery (in relation to Section 9 of the Act), which was published by the government on 30 March 2011, undermine key features of the Act as passed into law by parliament. Although the guidance is non-statutory and does not modify the provisions of the Act, UK courts will have to take account of its contents. Examples of loopholes that could be exploited by unscrupulous companies are as follows:</p> <ul style="list-style-type: none"> <li>• A non-UK company listed on the London Stock Exchange is not automatically caught by the Bribery Act. This means that a) it could use capital raised in the UK to pay bribes overseas; and b) a UK-based company that loses a contract to a non-UK company listed on the London Stock Exchange which paid a bribe to win the contract, may have no recourse in the UK courts. [Guidance para 36]</li> <li>• Subsidiaries: A non-UK parent company A with a large UK subsidiary B could pay bribes through subsidiary C based in a third country. If UK subsidiary B did not directly benefit from the bribes, the non-UK parent company A would not be caught by the Bribery Act – even if its other subsidiary C was competing unfairly with honest UK companies. [Guidance paras 36 &amp; 42]</li> <li>• Subcontractors: A UK company would be able to outsource bribery by building a chain of subcontractors sufficiently long to distance itself from bribe paying [Guidance para 39]</li> </ul> <p>Uncertainty is also created by jurisdictional issues. As highlighted in the UK Phase 1 Report of the OECD Working Group on Bribery (p20), the UK overseas territories of Anguilla, Turks and Caicos, Bermuda, Gibraltar and Monserrat are not compliant with the OECD Convention. The UK government has taken the position that it cannot impose legislation directly on overseas territories. However, it would be desirable for the government to agree with these overseas territories an urgent time-frame for their compliance, because inaction could limit the Bribery Act's effectiveness.</p> <p>Another deficiency, also highlighted by the OECD Working Group on Bribery, is that the Bribery Act does not provide the UK with jurisdiction to prosecute legal persons incorporated in the crown dependencies and overseas territories. It confers nationality jurisdiction to prosecute natural persons from the crown dependencies and overseas territories but not with respect to legal persons incorporated there.</p> <p>The Section 7 'failure to prevent bribery' offence would apply to a company incorporated in the crown dependencies and overseas territories only if the company carries on a business, or a part of a business, in the UK. Companies incorporated in crown dependencies and the Cayman Islands are subject to prosecution by the authorities in those dependencies. However, companies incorporated in other overseas territories which do not carry on a business in the UK could be used to commit foreign bribery. This is a significant loophole since some overseas territories are major financial centres where many companies are incorporated and/or operate. This underscores the urgency of encouraging the remaining overseas territories to become fully compliant with the Convention so that it can be extended to them.</p>
explanation	n/a

## 5.8 ARTICLE 33

### Protection of reporting persons

5.8.1	<b>Has the article on protection for reporting persons been implemented into law?</b>
response	Yes
explanation	<p>In terms of promoting whistleblowing and protecting whistleblowers as part of an effective anti-corruption strategy, it is not enough under the Convention for a signatory to implement witness protection measures as set out in Article 32<sup>14</sup>. Article 33 requires measures to protect those who report concerns whether or not they are required to testify in a court. The UK's Public Interest Disclosure Act, 1998 goes further than witness protection and offers strong and comprehensive protection for workplace whistleblowing.</p> <p>The Public Interest Disclosure Act covers most workers in the UK (apart from those working in the armed forces or intelligence services who are not protected by the Act). It is not limited by sector nor type of wrongdoing and, significantly, it protects external disclosures.</p> <p>However the Public Interest Disclosure Act can only act as an effective anti-corruption tool if employers and workers know that internal and, importantly, external disclosures are protected. Outside of the health service, the Public Interest Disclosure Act has not been actively promoted by the UK government.</p>
5.8.2	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	<ul style="list-style-type: none"> <li>• More public and consistent promotion of anti-corruption measures and whistleblowing across the public sector.</li> <li>• Although legislation is in place, the UK government should fully implement the recommendation from the OECD with respect to promoting Public Interest Disclosure Act more widely and raising public awareness.</li> <li>• The UK government should encourage employers to promote whistleblowing within their organisations ensuring staff know there are safe external routes to report a concern and that they can access independent advice.</li> </ul>
explanation	<p>The OECD clearly recommended the UK “pursue its efforts to make the measures of encouraging and protecting whistleblowers better known to the general public”<sup>15</sup> as part of an effective anti-foreign bribery strategy. Although the Council of Europe praised the Public Interest Disclosure Act in 2010<sup>16</sup> as an example of comprehensive whistleblower legislation, the vast majority of UK adults still know nothing about it. A YouGov survey (2011)<sup>17</sup> commissioned by Public Concern at Work, found that despite 85% of working adult respondents saying that they would raise a concern about possible corruption, danger or serious malpractice at work with their employer, 77% of all adult respondents did not know or thought that there was no law to protect whistleblowers.<sup>18</sup> The risk is that where a serious public interest concern is not properly addressed by the organisation itself, or the matter is so serious it needs to be raised externally, workers do not realise they have the power to raise it elsewhere nor who is best placed to handle their disclosure (ie. regulator, police, MP, media).</p>

## 5. Implementation into law of key articles cont.

### 5.8 ARTICLE 33

#### Protection of reporting persons cont.

5.8.2 explanation cont.	<p>Clearly the declaratory effect of a law that protects those who blow the whistle in the public interest is important and is another reason why promoting Public Interest Disclosure Act should be seen as a vital component in the fight against corruption in the UK. However, real protection for workers comes from employers encouraging their staff to speak up about a concern, reassuring them that it is safe to do so and that there are safe external routes, responding effectively and proportionately to the concern, and acting swiftly to protect the reasonable and honest whistleblower from any reprisals.</p> <p>It is worth noting that the Bribery Act 2010 provides a defence to the corporate offence of bribery (section 7) if the company can show it had 'adequate procedures' in place to prevent it. This has pushed whistleblowing back up the UK corporate agenda and it will help ensure that companies review their whistleblowing arrangements and consider how to sustain these over time – in particular through management training and ensuring staff have access to independent advice. The Ministry of Justice Guidance in this respect is helpful.</p>
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### 5.9 ARTICLE 46(9)(b)&(c)

#### Mutual Legal Assistance in the absence of dual criminality

5.9.1a	<b>Is there a legal provision in the legislation of the country allowing the provision of Mutual Legal Assistance in the absence of dual criminality?</b>
response	Yes
explanation	<p>The UK is party to a number of multilateral conventions, bilateral treaties and memoranda of understanding that provide for Mutual Legal Assistance arrangements. It has approximately 37 bilateral agreements currently in place with a broad range of countries.</p> <p>The UK authorities receive approximately between 40-50 new requests for Mutual Legal Assistance a year from all over the world.<sup>19</sup> It is not known how many requests the UK makes itself for Mutual Legal Assistance as these statistics are not in the public domain.</p>
5.9.1b	<b>Has your country confronted any obstacles in providing or obtaining Mutual Legal Assistance?</b>
response	No information publicly available
explanation	<p>There is limited information available as to the substance of requests for or provision of Mutual Legal Assistance by the UK. It is therefore not currently determinable whether there are any obstacles being confronted in this context but available statistics do show that approximately 55% of active requests get completed in a year [based on figures for 2006, 2007, and 2008]. Press comments have highlighted difficulties that have arisen (most notably: in relation to BAE Systems and specifically in relation to South Africa; and the Anglo Leasing case in Kenya) but no statistics on such matters are publicly available. There has also been press comment that in the settlement of the BAE Systems case there was less than optimal cooperation with the US Department of Justice.</p>
5.9.2	<b>What priority steps need to be taken to ensure compliance with the UNCAC?</b>
response	Nothing to report – no information available.
explanation	n/a



# Status of Enforcement

# 6

<b>6.1</b>	<b>Organisation of enforcement (Article 36)</b>
response	Yes, in part
explanation	<p>Enforcement of the Bribery Act rests principally with the Serious Fraud Office, along with Overseas Anti-Corruption Unit of the City of London Police. This is a satisfactory arrangement as long as:</p> <ul style="list-style-type: none"> <li>a) there is institutional will to pursue corruption-related cases as a priority</li> <li>b) there are adequate resources</li> <li>c) there are specialist teams in corruption-related cases</li> <li>d) investigation and prosecution functions are within the same agency</li> </ul> <p>At present, conditions a) and d) exist. Condition c) is subject to the Serious Fraud Office and Overseas Anti-Corruption Unit being adequately resourced, and it is notable that the Serious Fraud Office's budget has been considerably reduced. Moreover, the Director of the Serious Fraud Office is due to retire in 2012 and it is unknown what priority his successor will accord to bribery given that the Serious Fraud Office has a dual remit and the director can choose how to allocate resources between fraud and bribery.</p>
<b>6.2</b>	<b>Coordination between investigation and prosecution</b>
response	Yes, in part
explanation	This exists within the Serious Fraud Office. It is not yet apparent how well the Crown Prosecution Service will liaise with the City of London Police or other police forces for prosecutions under the new Bribery Act.
<b>6.3</b>	<b>Specialised units among the Prosecutors Offices (Article 36)</b>
response	Yes, in part
explanation	Both the Serious Fraud Office and City of London Police have specialist teams.
<b>6.4</b>	<b>Independence of public prosecutors and other enforcement agencies (Articles 11 and 36)</b>
response	Yes
explanation	Under previous legislation, the Serious Fraud Office required the consent of a political official (the Attorney General) to prosecute bribery cases. This is no longer the case under the Bribery Act as there is no requirement to obtain the Attorney General's consent to bring a case, although theoretically the Attorney General still has discretion to intervene in cases in certain circumstances.

## 6. Status of Enforcement cont.

<b>6.5</b>	<b>Adequate resources (Article 36)</b>
response	No. The Serious Fraud Office has taken budget cuts and more cuts to police agencies' budgets are expected.
explanation	Although the UK's enforcement record (in relation to foreign bribery) has improved considerably in recent years, there are serious doubts about whether adequate resources are available to enforce the Bribery Act. The Serious Fraud Office budget has been severely cut and may be reduced even further in future years.
<b>6.6</b>	<b>Capacity of enforcement authorities (Article 36)</b>
response	No.
explanation	As noted earlier, resources for enforcement are inadequate and this is bound to affect capacity adversely. Furthermore, there continues to be some uncertainty about the long term future of the Serious Fraud Office and the organisation of law enforcement machinery.
<b>6.7</b>	<b>In your view, have any investigations or cases been hindered or dropped for improper reasons?</b>
response	Yes
explanation	The Serious Fraud Office investigation into BAE Systems' activities in Saudi Arabia is a well-documented case in which the investigation was dropped in circumstances which generated criticism both at home and abroad. Further information is available from Transparency International UK <sup>20</sup> and The Corner House.

## 6.8 Status of cases

The number of corruption cases against companies has increased over recent years.

There have been cases brought against commercial organisations for bribery and corruption related offences under pre-Bribery Act law but a number of these have been settled short of conviction with civil recovery orders being made; only two cases have

resulted in corporate convictions for corruption offences (Mabey & Johnson and Innospec) both of which followed guilty pleas. More recently a case involving BAE Systems was settled by the company pleading guilty to a charge of false accounting – the prosecution did not pursue a charge for the more significant corruption offences, a decision which drew strong criticism from the sentencing judge.

<b>6.8.1a</b>	<b>Is the information for each case publicly accessible? Is information on case details accessible?</b>
response	Yes, partly
explanation	The information on foreign bribery cases was available from press releases and court notices.
<b>6.8.1b</b>	<b>If not or in part, please indicate the official or other reasons why it is not.</b>
response	Data are available but not easy to access and collate. Information is made available on some cases by the Serious Fraud Office and City of London Police. However, details of settlements, in particular, are sketchy and opaque. Details on domestic corruption cases are almost non-existent and no data are made publicly-available or, apparently, collected or collated by the relevant authorities.
explanation	n/a

## 6. Status of Enforcement cont.

### 6.8.2 Statistics on cases cont.

Number of cases brought in the last three years under each category.

	<b>Prosecutions</b> (under way and concluded)  <i>Please provide a breakdown into civil and administrative actions if possible.</i>	<b>Settlements</b>	<b>Convictions</b>	<b>Acquittals</b>	<b>Dismissals</b>	<b>Pending</b>
<b>Bribery of national public officials (active) (Article 15(a))</b> (Note: Public Bodies Corrupt Practices Act 1889, s1(2).)	<b>5</b> (R v. Ghafar, R v. Webster and Pearce (x4 counts))		<b>1</b> (one count under R v. Webster and Pearce)			
<b>Bribery of national public officials (passive) (Article 15(b))</b> (Note: Public Bodies Corrupt Practices Act 1889, s1(1).)	<b>1</b> (R v Webster and Pearce – other counts)		<b>1</b> Pacific Consolidated Industries			
<b>Bribery of foreign public officials (Article 16)</b> (eg, conspiracy to corrupt)		<b>4</b> (Dougall and BAe Systems; Aon and Willis were not criminal convictions but rather FSA regulatory enforcement)	<b>10</b> (Mabey & Johnson; Mabey & Johnson executives; Innospec; Messent; Jessop; CBRN executive and Ugandan FPO; Weir Group; Al-Hassan; El-Taher; Heath)			
<b>Embezzlement, misappropriation or other diversion by a public official (Article 17)</b>						
<b>Illicit enrichment (Article 20)</b>						
<b>Money laundering, corruption –related (Article 23)</b> (Note: Proceeds of Crime Act 2002)	Approx 500 cases potentially involve POCA issues		<b>5</b> Balfour Beatty, Amec, Kellogg, Macmillan, DePuy			

## 6.8.3 Recent cases

### 6.8.3.1 Criminal convictions

- CBRN Team Limited (9/08) – an employee of CBRN and a Ugandan government Official pleaded guilty to bribery offences – first UK conviction for bribery of a foreign public official
- Heath (10/08) – convicted in the UK of conspiring to corrupt the US Attorney-General.
- Mabey & Johnson Limited (07/09) – pleaded guilty to corruption offences – £4.6m imposed by way of fines and disgorgement, £1.5m of which was required to be paid in reparations to the affected countries. This was the first prosecution by the Serious Fraud Office of a UK corporate for overseas corruption.
- Innospec Limited (3/10) – resulted from information passed to the Serious Fraud Office by the Department of Justice following the UN Inquiry into the Oil for Food Programme – Innospec pleaded guilty to corruption offences and a financial penalty of US\$12.7m (or £ equivalent) was agreed – concluded as part of a global settlement involving Innospec, the Serious Fraud Office, Department of Justice, the SEC and OFAC
- Dougall (4/10) – former executive of a UK subsidiary of Johnson & Johnson pleaded guilty to involvement in overseas corruption offences – co-operated fully with the Serious Fraud Office and, following an appeal, received a 12 month suspended sentence.
- Messent (10/10) – former CEO of PWS International Ltd pleaded guilty to overseas bribery offences – 21 month jail sentence and ordered to pay £100,000 compensation to the country affected (Costa Rica) within 28 days or serve an additional 12 months in prison – disqualified from acting as a company director for five years.
- BAE Systems Plc (12/10) – following a settlement agreement with the Serious Fraud Office, in which BAE Systems agreed to plead guilty to accounting offences under s221 Companies Act 1985 and to pay £30m as a fine and an ex gratia payment for the benefit of the people of Tanzania (the largest fine ever levied in the UK). The company was ordered to pay £500,000 of that settlement as a fine. The settlement was strongly criticised by the Judge, as was the decision to prosecute a 'books and records' offence rather than corruption.
- Weir Group (12/10) – Weir Group, in Scotland, pleaded guilty to paying kickbacks to Saddam Hussein's government to secure lucrative business contracts. A fine of £3m was imposed.
- David Mabey, Richard Forsyth and Richard Gledhill of Mabey & Johnson Limited (02/11) – after Mabey & Johnson's conviction in 2009, two of its directors and its sales manager were prosecuted for providing kickbacks to the Iraqi government of Saddam Hussein. The individuals were ordered to pay fines of between £75-£125k and were sentenced to between eight months – two years imprisonment as well as being disqualified as directors.
- Aftab Noor Al-Hassan (2/11) – criminal conviction over an Iraq Oil For Food case; received a 16-month suspended prison sentence.
- Riad El-Taher (2/11) – criminal conviction over an Iraq Oil For Food case; received a 10-month prison sentence.
- Mark Jessop (04/11) – Between 1996 and 2003 he sold medical goods to the Iraqi market through various companies. Sentenced in April 2011 to 24 weeks' imprisonment after he admitted kickbacks to Saddam Hussein's government and other arrangements involving illegal payments in return for receiving information on tenders. Also ordered to pay £150k compensation to the Development Fund for Iraq plus prosecution costs.

## 6. Status of Enforcement cont.

### 6.8.3 Recent cases cont.

#### 6.8.3.2 Civil Recovery Orders

- Balfour Beatty Plc (10/08) – self reported following an internal investigation – in a Civil Recovery Order, Balfour Beatty agreed to repay £2.25m, make a contribution towards the Serious Fraud Office's costs, to introduce new compliance processes and to appoint an external monitor
- Amec Plc (10/09) – self reported following an internal investigation – Civil Recovery Order of £4.9m agreed
- MW Kellogg Limited (02/11) – just over £7 million ordered to be paid by a Civil Recovery Order.
- DePuy International Limited (04/11) – DePuy International is part of the Johnson & Johnson group of companies. Following an internal investigation in 2006, Johnson & Johnson reported its findings to the US Department of Justice and the SEC. In 2007, following a referral from the Department of Justice, the Serious Fraud Office launched its investigation into the English company. In April 2011, DePuy International was ordered to pay £4.829m (plus prosecution costs) in a Civil Recovery Order in recognition of unlawful conduct relating to the sale of orthopaedic products in Greece between 1998 and 2006. Criminal and civil sanctions also imposed on the parent company in the US and the Greek authorities froze assets located in Greece.
- Macmillan Publishers Limited (07/11) – ordered to pay in excess of £11 million in recognition of sums it received which were generated through unlawful conduct related to its Education Division in East and West Africa.

#### 6.8.3.3 Administrative

*Note: it is debatable whether regulatory fines fall within this definition, but two recent fines by the Financial Services Authority are included here for the sake of completeness.*

In these cases, fines were imposed for the 'failure to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals', rather than acts of bribery or corruption themselves:

- Aon (1/09) – fined £5.25 million by the Financial Services Authority
- Willis (7/11) – fined £6.9 million by the Financial Services Authority

# Noteworthy recent developments

Recent developments in the areas covered in this questionnaire and any other areas that are relevant to the implementation of Chapters III and IV of the UNCAC, for example new legislation, institutional changes in the last three years.

## 7.1 Recent developments

The most noteworthy recent developments include:

- The Bribery Act 2010, which was implemented in July 2011. For more information see Article 15.
- A June 2011 report from the British financial regulator, the Financial Services Authority, belatedly recognised that three quarters of UK banks it surveyed are not doing enough to identify corrupt money from abroad and that it is 'likely that some banks are handling the proceeds of corruption'. As the Financial Services Authority acknowledged, these findings are very similar to those of a previous report in 2001 after Sani Abacha's funds, stolen from Nigeria, passed through London. This shows that the Financial Services Authority, and its successor body the Financial Conduct Authority, need to be much tougher on banks that are failing to properly implement the politically exposed persons obligations.

- Another recent development is the UK's government support for Europe to introduce mandatory financial reporting rules for extractive companies. Delivering a speech in Lagos in July 2011, Prime Minister David Cameron expressed that "mineral wealth should be a blessing and not a curse." The European Commission proposals have recently been published and Bond therefore calls on the EU to enact this legislation in order that there is improved transparency, increased accountability and for corruption to continue to be tackled.

## 7.2 Areas which show good practice

We believe the UK Bribery Act to be one of the strongest anti-bribery laws worldwide and the area which shows best practice.

The Act creates a new offence – the failure to prevent bribery by commercial organisations. This makes it imperative for all public and private commercial bodies to take appropriate measures to prevent bribery – including:

- demonstrating top-level commitment
- conducting thorough risk assessments
- knowing who clients, suppliers and partners are
- training staff and personnel in the relevant areas and skills
- communicating anti-bribery policies effectively.

However, it remains to be seen whether Section 7 can be effectively enforced. Other countries, notably the US, have strict corporate liability but without an adequate procedures defence, and have done much better in terms of enforcement.

## 7. Noteworthy recent developments cont.

### 7.3 Areas where there are deficiencies

The Bond Anti-Corruption Group contends that the main deficiencies surround:

- **The implementation of Article 17 and 20.**

These crimes are covered in such laws as the Fraud Act of 2006, the Theft Act of 1968, the Proceeds of Crime Act of 2002 and also the Bribery Act of 2010. There are concerns that the monitoring and auditing arrangements will be weakened by the abolition of the Audit Commission, and the arrangements for its replacement are unsatisfactory. Conflicts of interests also appear imminent as for example, local authorities will be able to choose their own auditors. Furthermore, there have been long-standing concerns about the private consultancy and lobbying by MPs, as well as on the 'revolving door' between public and private sector. Both these areas are poorly regulated, and whatever regulation exists is poorly enforced.

- **The reluctance to recognise the roles of professional intermediaries, particularly banks, in facilitating money laundering – Article 23, 14 and 52 of UNCAC.**

The UK's legal framework to criminalise laundering of the proceeds of corruption is generally sound and robust – money laundering is a criminal act under the Proceeds of Crime Act 2002. However, certain cases suggest a reluctance to recognise the roles of professional intermediaries, particularly banks, in facilitating money laundering, and no attempts have been made to investigate and prosecute the role played by these banks in handling corrupt funds.

A June 2011 report from the British financial regulator, the Financial Services Authority, has belatedly recognised that three quarters of Britain's banks are not doing enough to identify corrupt money from abroad. It concludes that it "is likely that some banks are handling the proceeds of corruption".

Furthermore, while the FSA reviews the banks' compliance with due diligence rules, there appears to be no equivalent reviews of how other regulated sectors – eg, accountants, lawyers or trust and company service providers – carry out 'know you customer' checks in relation to politically exposed persons.

**“Certain cases suggest a reluctance to recognise the roles of professional intermediaries, particularly banks, in facilitating money laundering.”**



# Summary of priority actions needed in the UK



## Suggestions and recommendations for the most important actions the government should take to promote enforcement and compliance with the UNCAC.

- 1** The final UK UNCAC Self-Assessment Report be published and debated in parliament.
- 2** The government should ensure UNCAC is extended to all crown dependencies and overseas territories.
- 3** Sufficient dedicated resources to pursue prosecutions under the Bribery Act must be a priority in order for the Bribery Act 2010 to remain credible. Resource constraints should not undermine the capacity of law enforcement.
- 4** Plans for the abolition of the Audit Commission should be put on hold until there has been proper consultation and a thorough assessment of alternative options.
- 5** Stronger regulations be enforced on private consultancies and lobbying of government and parliament. Legislation to require mandatory registration of lobbyists should be given a higher priority in parliament's legislative programme.
- 6** Legislation around regulation of the revolving door between government and the private sector needs to be considered and introduced.
- 7** More diligence be pursued in enforcing know-your-customers rules, and expanded to other professional services like accounting, law, and other service providers.
- 8** Protection for whistleblowing be better publicised.
- 9** The government should collate and publish corruption-related data on a regular basis.

# Annex

## Bond Anti-Corruption Paper

### Bond Governance Group

The Bond<sup>21</sup> Governance Group is made up of likeminded British NGOs who, through their work, witness the devastating effects of corruption on developing countries every day. Our experience has taught us that corruption continues to be one of the biggest obstacles to development, poverty alleviation and good governance. Our aim is to draw attention to the impact of corruption on developing countries and provide a platform for the voices of our partners and southern civil society organizations to be heard in the UK. We intend to use our joint influence to campaign for changes in policy which will help bring an end to corruption around the world. This paper was prepared by the Anti-Corruption Sub Group.<sup>22</sup>

#### Anti-Corruption Sub Group

CAFOD, Christian Aid, The Cornerhouse, Corruption Watch, Global Witness, Tearfund, Transparency International UK.

#### Bond Governance Group Steering Committee

Care International UK, Christian Aid, Global Witness, One World Action, Oxfam GB, Plan International UK, Practical Action, Progressio, Save the Children, Tearfund, WaterAid, World Vision UK

(Published September 2010)

### Introduction: About corruption

Corruption has devastating effects on developing economies and their citizens' quality of life. Its cost in Africa alone has been estimated at US\$148 billion a year, representing 25% of the continent's GDP.<sup>23</sup> Corruption undermines economic growth rates and cripples public services, as money which should be destined for re-investment and public expenditure finds its way into private bank accounts, often abroad.

The size of financial flows from developing countries into the rich world that deprive poor countries of revenue has been estimated at up to \$1 trillion each year.<sup>24</sup> These flows, which include state looting, tax evasion and abusive tax avoidance, rob developing countries of much needed revenue and therefore seriously undermine the impact of development assistance from the developed world.<sup>25</sup> Tackling these flows will require measures which provide greater transparency.

Corruption seriously damages attainment of the Millennium Development Goals.<sup>26</sup> It undermines good governance and tends to permeate all levels of society precluding the poorest from access to basic services and creating barriers to business. Corruption remains one of the major impediments to poverty alleviation, development, good governance and stability, and is a proven source of conflict and insecurity.

Corruption is often thought of as just a developing world problem. But it is driven and facilitated by external actors, many of them in the developed world:

- Companies (including British companies) can actively fuel corruption by paying bribes, or passively fuel it by failing to disclose the legitimate payments they make to governments.
- Banks (including British banks) can sustain corruption by doing business with corrupt officials and accepting looted funds or bribes.
- Financial secrecy jurisdictions (including the UK's overseas territories) and the financial and legal service providers who operate in them can help the corrupt to hide their ill-gotten assets, and facilitate large-scale tax avoidance that denies revenues to developing countries.
- Donors (including the Department for International Development - DFID) have made steps forward in tackling corruption. Donor aid provides vital assistance but does not always adequately tackle corruption, promote state accountability to citizens and transparency in highly corrupt aid-recipient countries.

In this context, the activities of British financial institutions and companies, along with failures in the regulatory frameworks, can seriously undermine development and the effectiveness of aid provided by the UK and other donors.

There is also a compelling business case for tackling corruption, which includes:



- Creating a level playing field for business, in which sales and contracts are won through an open market rather than through bribery.
- Creating greater security for contracts.
- Reducing the cost of doing business through eliminating the 'bribery premium' in contracts.
- Downgrading corporate risk in key markets, reducing the cost of capital, insurance premiums and other operational costs.
- Increasing value for money in aid and development spending.
- Creating a more politically stable and secure environment in which British companies and investors can operate.

This paper sets out to raise awareness of the numerous different ways in which corruption is fuelled and facilitated by external actors, and points towards actions the UK government needs to take to curb it. So far the UK government has largely focused on the new Bribery Act, which is certainly necessary and which Bond welcomes. But corruption goes way beyond bribery and the remit of the Ministry of Justice and DFID. To make any real inroads into overseas corruption the government must develop a cross-Whitehall anti-corruption framework. This document sets out the main external drivers of corruption over which the UK has control and outlines the policy responses needed to effectively address the problem.

### **A cross-Whitehall anti-corruption framework**

There is pressing need for a cross-Whitehall framework on corruption, including increased parliamentary scrutiny and civil society participation. The policy processes and institutional mechanisms required in the UK for tackling corruption are highly complex. Complexity in itself is not necessarily the problem; in fact the multi-faceted nature of corruption demands a plurality of responses. However, a lack of coordination and clear channels of accountability threatens the effectiveness of the UK's anti-corruption efforts.

Action must be taken to ensure that there is a comprehensive cross-Whitehall anti-corruption framework. Dealing with corruption is inherently difficult. There are no quick fixes or one size fits all solutions. It requires cross-party political commitment that extends across successive governmental cycles and coordinated policy interventions across government departments.

### **General recommendations for a cross-Whitehall anti-corruption framework and the role of the Anti-Corruption Champion**

1. Formally commit the government to a 'zero tolerance' policy on corruption in all aspects of its work around the world.
2. Set specific targets, based on the recommendations in this paper, against which progress should be reported on a biannual basis to Parliament.

3. Create mechanisms for a structured and regular dialogue, and coordination, between UK government departments and Ministers.
4. Involve civil society and other stakeholders in a regular, open and transparent dialogue that allows on-going input to, and comments on, the framework's implementation.
5. Work with G8 and G20 partner countries to keep anti-corruption high on the global agenda and report annually on the UK's implementation of G8 and G20 anti-corruption commitments.
6. Implement all commitments in the United Nations Convention Against Corruption (UNCAC), to which the UK is a signatory, including cooperation between Member States to prevent and detect corruption and to return the proceeds of corruption to the country from which it came.

## A. Annex cont.

### The external drivers of corruption

#### Policy responses for a cross-Whitehall anti-corruption framework

##### 1. Illegitimate payments: Bribery of foreign public officials

Bribery is the most obvious and best recognised form of corruption. Bribery is not a victimless crime nor a regrettable but unavoidable cost of doing business abroad. Bribery undermines the rule of law and the principle of fair competition and entrenches bad governance. Bribery of public officials results in government revenue, which could be used for development, being wasted on unnecessary and poor quality procurement projects, posing a risk to health and even life where essential services are affected.

While many British firms are not involved in corrupt practices, we know that some UK companies have used bribery to win business overseas.<sup>27</sup> The 2008 OECD phase 2 bis Report on the UK's bribery record showed that the government needs to do more to tackle bribery.<sup>28</sup> As such, we welcome the UK Bribery Act, which greatly improves UK law. We very much hope that the cross party support for strong legislation will continue during the implementation process.

### Recommendations

- 1.1. Effectively enforce the Bribery Act, ensuring that the UK is fully compliant with the 1997 OECD Anti-Bribery Convention; fines and penalties should be large enough to both punish and deter, as is the case in the US.
- 1.2. Ensure that sufficient dedicated resources are available for the Act's effective implementation. This should include ensuring that UK diplomatic posts have the awareness, capacity, political backing and will to assist UK companies to deal with demands for bribes.
- 1.3. Introduce greater transparency and consistency in relation to the terms of negotiated settlements in bribery cases.
- 1.4. Ensure that guidance for business on the Bribery Act presents clear obligations and advice without providing a safe haven under the 'adequate procedures' defence under clause 7; 'Failure of Commercial organisations to prevent bribery.'
- 1.5. Ensure that the UK actively and effectively enforces article 45 of the EU Procurement Directive and works with the EU to ensure its successful enforcement across the Union.

Bribery is an important element of corruption but bribery should not be confused with, or treated as synonymous with, corruption. Corruption extends far beyond illicit payments and takes multiple forms.

##### 2. Lack of transparency in legitimate revenue payments by companies

A lack of transparency in payments by companies to foreign states, often for natural resources, allows corrupt leaders and officials to personally enrich themselves by siphoning off legitimate payments made for those resources by international companies. Without transparency over how much companies are paying to foreign governments, the people and parliaments of resource-rich countries are unable to hold their governments to account. The lack of payment disclosure by companies facilitates an opaque environment in which high level corruption can take place on a grand scale, robbing countries and citizens of much needed revenue. This opacity and associated corruption also exposes foreign companies to greater investment and operational risk that ultimately disadvantages shareholders.

The Extractive Industries Transparency Initiative (EITI), spearheaded by the UK in 2002, is an important tool in improving revenue transparency as well as providing space for civil society to monitor revenues in producer countries. But as a voluntary initiative it only reaches a limited number of countries and progress has been very slow. On its own, the EITI is not and never will be a panacea for corruption. It covers a crucial stage in the flow of resource revenues, i.e. the making and receipt of payments, but it does not cover the allocation of rights to companies to exploit oil, gas and minerals, nor the marketing of oil by state agencies (which can be a major source of revenue for the state in many oil-producing countries).

The US recently passed legislation as part of the Frank-Dodd Financial Reform Bill which will require every US SEC (Securities and Exchange Commission) registered company to disclose all payments made to foreign governments on a country by country basis as a condition of its stock exchange listing. This will include UK based companies listed on the US SEC. Such transparency will not only reduce opportunities for embezzlement but also help shelter companies from the costs of bribery and corruption creating a more level and transparent playing field in which to operate.

The Bond Anti-Corruption Sub Group believes that the UK should adopt similar legislation, covering all companies operating in the extractive industries in all their countries of operation. Failure to do this could result in a situation where some foreign oil and mining companies registered in the UK will be free from a requirement that British companies registered in the US will not.

The remit of the EITI will also need to be strengthened, improved and extended, over time to cover procurement contracts, allocation of concession rights and additional payments. This process should take place in consultation with its stakeholders in governments, the private sector and civil society. It is important that any extension learns from the lessons of the EITI process to date. This combination of regulatory reform and voluntary initiative, overlapping and reinforcing each other, is the best chance for addressing the problem of corruption in resource revenue payments.

## Recommendations

- 2.1. Create a legal requirement for UK companies, their subsidiaries and joint venture partners, to disclose all legitimate payments made to foreign governments for access to natural resources, and for the resources themselves.
- 2.2. Promote and support a strengthened model of EITI building on lessons learnt to date.

### 3. Illicit and harmful financial flows out of developing countries:

#### a) Money laundering laws are failing to prevent banks sustaining corruption by accepting dirty money

Just as a bribe cannot be taken without a company willing to pay it, large scale corruption cannot take place without a financial institution willing to accept or process the money. The scale of theft involved in state looting requires the involvement of the financial system.

For example payments are made from the bank account of a state oil company to that of a company owned by a government minister; from the account of a company's 'fixer' to that of a state official; from one of the accounts of a public official to another of his accounts in a different jurisdiction. It requires a bank to accept corrupt persons and their associates as their customers and then process the payments to divert bribes or stolen public money into the accounts of individuals, or the companies that they own.

Otherwise these illicit transactions could not take place. Combating the role of financial institutions in the flow of illicit money is therefore absolutely intrinsic to tackling corruption. So too is combating the role of those who set up and audit the corporate vehicles behind which individuals and legal persons hide, and which are still not properly regulated.

Banks and other institutions are required by anti-money laundering laws to identify their customer and the source of funds, and to file a suspicious activity report if they suspect the money is illegally earned. However, weaknesses in the anti-money laundering regulations, particularly in relation to due diligence on Politically Exposed Persons (PEPs),<sup>29</sup> combined with the deficiencies in regulation in many secrecy jurisdictions (including the UK's overseas territories), increases the risk of UK institutions continuing to do business with the corrupt.

## A. Annex cont.

### b) A lack of transparency in the ownership and operation of companies is facilitating corruption, tax evasion and avoidance

Increased transparency in company ownership and transactions is key to tackling corruption, since corrupt officials will often hide their looted money behind a shell company. However, it also has the knock-on effect of tackling the twin problems of tax evasion and avoidance which are estimated to cost the developing world US\$160 billion a year, more than one and a half times the total global aid budget to developing countries.<sup>30</sup>

Approximately 60% of global trade is conducted within multinational corporations (MNCs), between subsidiaries of a parent company.<sup>31</sup> This allows companies to use intra-group transactions to disguise profits in order to avoid tax liabilities. This is possible due to the current level of opacity afforded by the current regulatory structures and secrecy laws.

The International Accounting Standards Board is currently developing a new standard for the extractives sector. It is considering whether this should include a requirement for oil, gas and mining companies to publicly disclose tax and other payments to governments on a country by country basis. Such a policy would reinforce the aim of the EITI by ensuring that companies routinely disclose their tax and other revenue payments to countries where they operate. It would also help tackle tax evasion and abusive tax avoidance.

### Recommendations

- 3.1. Strengthen regulations to explicitly require institutions, including banks, to identify that the source of funds being deposited by Politically Exposed Persons (PEPs, e.g. senior foreign public officials) is legitimate. The Financial Services Authority (FSA, or any successor body) should proactively supervise these institutions to ensure that this happens.
- 3.2. The UK should use its influence within the Financial Action Task Force (FATF), the inter-governmental body that sets the global anti-money laundering standards to;
  - i. ensure that tackling the proceeds of corruption is a priority;
  - ii. that loopholes in the global standard are closed;
  - iii. and that the FATF's members are pressured sufficiently to ensure not only that they have regulations in place meeting FATF's standards, but that these regulations are implemented and enforced.
- 3.3. Corrupt politicians can hide behind a web of tax havens, corporate vehicles and trusts. The only way to ensure that these are not abused is transparency over ownership and control of corporate and legal entities. The UK should push for the FATF standard (recs 33 and 34)<sup>32</sup> to require that every jurisdiction should publish an online registry of the beneficial ownership and control of companies and trusts.

- 3.4. The UK should spearhead a multilateral agreement for information exchange between tax authorities including developing countries. This should be done with the ultimate aim of enshrining automatic exchange of beneficial ownership information as the international standard for information exchange.
- 3.5. The UK should push for international accounting standards to require all multinational corporations to publicly report sales, profits and taxes paid at country level in all the jurisdictions where they operate. This information should appear in their audited annual reports and tax returns. This UK should engage with the current debate on a new standard for the extractives sector.

### 4. Loans that fuel or subsidise corruption

There is a risk that in countries where corruption is prevalent, loans to governments or state agencies (including state owned companies) may be misappropriated or used to fill holes in the public finances that have been created by corruption. This can leave current and future generations of citizens to repay a debt from which they have derived no public benefit. There are examples where debt obligations currently crippling developing countries originate from loans that were corruptly used; greater transparency would help to curtail this source of corruption.<sup>33</sup>

## Recommendations

- 4.1. The UK should lead in the establishment of an international standard requiring commercial banks to publish key details of their loans to sovereign governments and state owned companies, including the amount, pricing and duration of the loan. This information should be provided with plenty of time to allow democratic scrutiny of the deal.
- 4.2. The UK should require lenders to governments and state owned companies to verify, and publicly confirm to their shareholders, that these funds are not being misappropriated or used to replace misappropriated public funds.

## 5. Export credit guarantees can legitimise corruption

The Bond Anti-Corruption Group is concerned that most of the British companies that have faced law enforcement investigations and penalties for overseas corruption have received backing from the Export Credits Guarantee Department (ECGD). This raises serious concerns about the adequacy of ECGD anti-bribery procedures for vetting projects. Furthermore, it is not clear what action the ECGD has taken to penalise those companies which have been subject to enforcement action, particularly where there have been allegations that companies have made false statements to the ECGD about use of agents and commission payments.

The UK government should initiate an independent review into the current ECGD anti-corruption regime to ensure that UK tax payer money does not support companies associated with corrupt deals abroad. Furthermore, UK companies that are convicted of corruption should be automatically precluded from working with the UK government and state procurement under the terms of Article 45 of the EU Procurement Directive as well as ECGD support for a set period of time.

## Recommendations

- 5.1. Apply strong anti-bribery rules to all transactions supported by the Export Credits Guarantee Department (ECGD).
- 5.2. Apply ECGD's anti-bribery rules to all business conducted through third parties, such as banks providing short-term credits and reinsurance.
- 5.3. Ensure that ECGD's anti-bribery rules are consistent with best practice in other export credit agencies in OECD countries.
- 5.4. Ban companies convicted of corruption from all ECGD support for a period of up to 5 years.

## 6. a) Donor aid provides vital assistance but does not always adequately tackle corruption and promote accountability and transparency in highly corrupt aid-recipient countries

Aid provides vital services to millions in the developing world. Unfortunately, in many aid-recipient countries, high level corruption and poor governance is undermining economic growth and preventing countries from harnessing their own resources for development. This can undermine the long-term impact of development aid.<sup>34</sup>

As part of a whole-of-government approach, DFID can play a vital frontline role in tackling corruption. It can do this by improving its own internal due diligence and anti-corruption procedures and by promoting good governance, natural resource and public financial management, transparency and respect for human rights, particularly in countries where corruption is endemic.

The Bond Anti-Corruption Sub Group welcomes DFID's efforts to place governance reforms at the heart of its programmes, its increasing focus on the causes and not just the symptoms of corruption, and its use of political economy analysis.

## A. Annex cont.

In Mozambique, bilateral donors funded a tribunal which audited 35% of the government budget – both aid and general public funds. The findings of these audits were acted on by both members of parliament and the national media.<sup>35</sup> Examples like this have shown that in the right circumstances donor assistance can lead to more accountable government.<sup>36</sup> Likewise, we welcome the coalition government's new Aid Transparency Guarantee which could be an important way to curtail mismanagement of donor funds.

However, weak state structures, poor public financial management and inexperienced or ill-intentioned governments have meant that corruption remains endemic in many countries. This is often compounded by a lack of civil society participation and democratic oversight of government functions. In an age of tightening government budgets, we encourage DFID, and the Foreign and Commonwealth Office (FCO), to go further in leveraging their diplomatic and financial influence in-country to support calls for transparency and combating corruption. We believe that the following measures in aid programming will strengthen the existing approach.

### Recommendations

The UK should ensure that its in-country programmes improve governance and incentivise greater accountability. Specifically, it should:

- 6.1. Include specific, targeted and measurable anti-corruption benchmarks when negotiating jointly agreed performance assessment indicators. Such benchmarks should not include economic or fiscal conditionalities, as practiced in the past. Rather they should include basic transparency and anti-corruption requirements demanded by civil society in country, such as publishing incoming revenue and other measures to curtail high level corruption.
- 6.2. Continue and expand political economy analysis to ensure a full and nuanced understanding of country context which takes account of domestic incentives, drivers (both internal and external) and concerns.
- 6.3. Shift efforts to improve governance away from purely technical focus on laws and procedures, towards a broader agenda of promoting democratic oversight and impartiality. This approach should include encouraging the provision of space for civil society to enable it to monitor government revenue and expenditure, and securing protection for anti-corruption whistleblowers and investigators. The UK should avoid the promotion of the private sector at the expense of a strong, functioning state.
- 6.4. Work with change agents such as parliamentarians, civil society and non-formal structures of authority to strengthen democratic oversight of governments, and to provide support geared towards strengthening the ability of these agents to provide public interest information and advocacy and to ensure accountability.
- 6.5. DFID should continue to support the implementation of the UNCAC abroad and to resource and support the UNCAC review mechanism process.

### 6. b) Ensuring proper oversight and due diligence of Official Development Assistance (ODA) funding

Whilst DFID has made some strides forward in tackling corruption, the Bond Anti-Corruption Sub Group does have some specific concerns about the oversight mechanisms and due diligence for UK ODA funding, particularly where channelled through intermediaries.

Of particular concern is the Commonwealth Development Corporation, a UK government owned company, which has come under particular scrutiny in relation to its investments in Nigeria.<sup>37</sup>

### Recommendation

- 6.6. DFID should strengthen its oversight of the funds operated by intermediaries such as the CDC to ensure that they do not contribute to corruption.



## 7. Providing safe haven to corrupt officials

The developed world does not just provide a source of illegitimate money and a safe haven for looted assets to corrupt leaders, it is also the shopping destination and provider of educational and medical facilities of choice. The UK should take a firm stand against corrupt leaders who siphon off their national wealth. Action should be taken to stop corrupt leaders spending their stolen money with impunity in the UK and elsewhere. Such cases have a huge deterrent effect on the perception of the UK as a safe haven for corruptly acquired funds. For example, the Proceeds of Corruption Unit at the Metropolitan Police, has successfully brought to trial accomplices of a Nigerian state governor accused of corruption, and provided key support to successful asset recovery actions against two other state governors by the state of Nigeria.

While the UK has a procedure to deny visas to individuals if their presence is not deemed to be in UK interests, it is not made explicit that it will be used as an anti-corruption tool. The US has specific legislation requiring the State Department to maintain a list of corrupt foreign officials, and to deny visas to those on it; the UK (and EU) should do the same.

### Recommendations

7.1. Continue to support the Proceeds of Corruption Unit at the Metropolitan Police.

7.2. Strengthen and improve procedures to help developing countries to recover looted assets and the proceeds of corruption in line with UNCAC (The UN Convention Against Corruption) commitments and ensure that repatriated assets are not in turn lost through corruption.

7.3. Work with other states to freeze the assets of foreign officials against whom there is credible evidence to suggest they are involved in corruption and state looting.

7.4. Deny visas to foreign leaders, and their families, against whom there is credible evidence to suggest they are involved in corruption and state looting.

# References

<sup>1</sup>According to an often quoted African Union study on corruption in Africa that was prepared in 2002 and which fed into the development of the African Union's anti-corruption declaration approved in 2003 – see: Smith, Pieth and Jorge (February 2007). *The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention Against Corruption* Briefing Paper. Prepared for the Basel Institute on Governance, International Centre for Asset Recovery. Published by the U4 Anti-Corruption Resource Centre, Norway, <http://www.u4.no/themes/uncac/asset-recovery.cfm>

<sup>2</sup>June 2011, p13

<sup>3</sup>Point 83, UNITED KINGDOM: PHASE 1 Report, OECD Working Group on Bribery in International Business Transactions, 16 December 2010.

<sup>4</sup>Clause 36... “The Government would not expect, for example, the mere fact that a company's securities have been admitted to the UK Listing Authority's Official List and therefore admitted to trading on the London Stock Exchange, in itself, to qualify that company as carrying on a business or part of a business in the UK and therefore falling within the definition of a ‘relevant commercial organisation’ for the purposes of section 7. Likewise, having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act independently of its parent or other group companies.

<sup>5</sup>Points 86 and 88, UNITED KINGDOM: PHASE 1ter Report, OECD Working Group on Bribery in International Business Transactions, 16 December 2010.

<sup>6</sup>OECD, U.K.'s Phase 2bis Report (para. 268)

<sup>7</sup>World Investment Report 2010. In 2008 both Brazil and BVI received £45 billion dollars. In 2009 Brazil recorded FDI inflows of \$26 billion and BVI \$25 billion.

<sup>8</sup>For more information see ‘The Revolving Door called Cabs for Hire’ Transparency International, May 2011

<sup>9</sup>For more information see ‘Corruption in the UK’ Transparency International, June 2011

<sup>10</sup>For more information see ‘Corruption in the UK’ Transparency International UK, June 2011

<sup>11</sup>Combating Money Laundering and Recovering Looted Gains – Raising the UK's Game, Transparency International-UK, June 2009.

<sup>12</sup>HM Treasury, Consultation on proposed changes to the money laundering regulations 2007: summary of response, November 2011, para. 2.3

<sup>13</sup>Adopted by the Working Group on 16 December 2010.

<sup>14</sup>Article 32, UNCAC, deals with the protection of witnesses, experts and victims who give ‘testimony’ in a court of law and in particular, witness protection measures, evidentiary rules to protect court witnesses, and inter-state agreements to relocate such individuals where necessary.

<sup>15</sup>OECD (2005) United Kingdom: Phase 2 Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions, OECD Directorate for Financial and Enterprise Affairs, at 16. (<http://www.oecd.org/dataoecd/62/32/34599062.pdf>)

<sup>16</sup>Council of Europe Resolution 1729 (2010) Protection of “whistleblowers” (<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/tat10/ERES1729.htm>)

<sup>17</sup>For more details see [http://www.pcaw.org.uk/news\\_attachments/Results%20for%20PCAW-YouGov%20Survey.pdf](http://www.pcaw.org.uk/news_attachments/Results%20for%20PCAW-YouGov%20Survey.pdf).

<sup>18</sup>21% of respondents thought that there was no law to protect whistleblowers (Ibid, Note 5).

<sup>19</sup>SFO Annual Reports for 2006-2007 and 2007-2008, noting the trend for the preceding three years. Information for future years could not be identified in later Annual Reports.

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<sup>20</sup>See OECD Anti-Bribery Convention Progress Report 2009, Transparency International. Page 52

<sup>21</sup> Bond is the UK membership body for non-governmental organisations (NGOs) working in international development. Established in 1993, Bond now has 370 members. These range from large bodies with a world-wide presence to smaller, specialist organisations working in certain regions or with specific groups of people.

<sup>22</sup> The Anti-Corruption Sub-Group is a sub group of the Bond Governance Group, which is made up of 67 different UK development NGOs. For further information please contact Bond via their website <http://www.bond.org.uk/>

<sup>23</sup> According to an often quoted African Union study on corruption in Africa that was prepared in 2002 and which fed into the development of the African Union's anti-corruption declaration approved in 2003 – see: Smith, Pieth and Jorge (February 2007). "The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention Against Corruption", Briefing Paper. Prepared for the Basel Institute on Governance, International Centre for Asset Recovery. Published by the U4 Anti-Corruption Resource Centre, Norway, <http://www.u4.no/themes/uncac/asset-recovery.cfm#scope>

<sup>24</sup> Dev Kar and Devon Cartwright-Smith, *Illicit Financial Flows out of Developing Countries, 2002-2006*, Global Financial Integrity, December 2008, <http://www.gfip.org/storage/gfip/executive%20-%20final%20version%201-5-09.pdf>

<sup>25</sup> Tax Justice Network has collected a wealth of information on the impacts of tax evasion and avoidance see: [http://www.taxjustice.net/cms/front\\_content.php?idcat=2](http://www.taxjustice.net/cms/front_content.php?idcat=2)

<sup>26</sup> UNDP, Governance for the Millennium Development Goals: core issues and good practices, Jan 2007, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan025110.pdf>

<sup>27</sup> See Corruption Watch website <http://corruptionwatch-uk.org/about/>

<sup>28</sup> The Phase 2 bis Report on the United Kingdom evaluates certain aspects of the UK's track record of implementation of the OECD Anti-Bribery Convention that are of particular concern to the member states of the OECD Working Group on Bribery. See report here <http://www.oecd.org/dataoecd/23/20/41515077.pdf>

<sup>29</sup> PEPs can be defined as persons who perform important public functions for a state.

<sup>30</sup> Death and Taxes: the True Toll of Tax Dodging, Christian Aid, May 2008. <http://www.christianaid.org.uk/images/deathandtaxes.pdf>

<sup>31</sup> Ibid; J Neighbour, 'Transfer pricing: keeping it at arm's length', OECD Observer, January 2002, [www.oecdobserver.org/news/fullstory.php/aid/670/Transfer\\_p](http://www.oecdobserver.org/news/fullstory.php/aid/670/Transfer_p)

<sup>32</sup> The current recommendations do not go far enough in ensuring transparency over beneficial ownership of companies and trusts, see: [http://www.fatf-gafi.org/pages/0,3417,en\\_32250379\\_32236920\\_1\\_1\\_1\\_1\\_1\\_0.html](http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236920_1_1_1_1_1_0.html)

<sup>33</sup> Global Witness, A time for Transparency, March 2004, P.40, 41, [http://www.globalwitness.org/media\\_library\\_detail.php/115/en/time\\_for\\_transparency](http://www.globalwitness.org/media_library_detail.php/115/en/time_for_transparency)

<sup>34</sup> Carlos Santiso, John Hopkins University, Good Governance and Aid-effectiveness: The World Bank and Conditionality, The Georgetown Public Policy Review, Volume 7, Number 1, Fall 2001, pp.1-22 [http://www.sti.ch/fileadmin/user\\_upload/Pdfs/swap/swap108.pdf](http://www.sti.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf) ; See Paul Collier's work

<sup>35</sup> Oxfam International (2010) '21st Century Aid: Recognising success and tackling failure'. Oxfam Briefing Paper. 28th April 2010. pp30. <http://publications.oxfam.org.uk/display.asp?k=e2010052010265508>

<sup>36</sup> *ibid*

<sup>37</sup> The Cornerhouse, Memorandum to the Secretary of State for Development, Concerns over alleged corruption in CDC-backed companies in Nigeria, June 2010. [http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/CDC%20Memorandum\\_0.pdf](http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/CDC%20Memorandum_0.pdf)



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