

## Bond Anti-Corruption Paper

### **Bond Governance Group**

The Bond<sup>1</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>2</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, Water Aid, World Vision - UK*

### **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>3</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>4</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>5</sup> Tackling these flows will require measures which provide greater transparency.

<sup>1</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>2</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>3</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>4</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>5</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)

Corruption seriously damages attainment of the Millennium Development Goals.<sup>6</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.

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<sup>6</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>

## **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.

### **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>7</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>8</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

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<sup>7</sup> See Corruption Watch website <http://corruptionwatch-uk.org/about/>

<sup>8</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>

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>9</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.

**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>10</sup>

Approximately 60% of global trade is conducted within multinational corporations (MNCs), between subsidiaries of a parent company.<sup>11</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;

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<sup>9</sup> PEPs can be defined as persons who perform important public functions for a state.

<sup>10</sup> Death and Taxes: the True Toll of Tax Dodging, Christian Aid, May 2008.

<http://www.christianaid.org.uk/images/deathandtaxes.pdf>

<sup>11</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)





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>14</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.

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>15</sup> Examples

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<sup>14</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>15</sup> Oxfam International (2010) '21<sup>st</sup> Century Aid: Recognising success and tackling failure'. Oxfam Briefing Paper. 28<sup>th</sup> April 2010. pp30. <http://publications.oxfam.org.uk/display.asp?k=e2010052010265508>



like this have shown that in the right circumstances donor assistance can lead to more accountable government.<sup>16</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

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<sup>16</sup> *ibid*

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>17</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.

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<sup>17</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)