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United Nations Convention Against Corruption: Progress since 2003

In 2005 the required ratification by 30 member states was achieved and the United Nations Convention against Corruption (UNCAC) came into force. The Convention came about as a result of increasing recognition of the need for an effective international legal instrument against corruption.

At present there are 140 signatories to UNCAC, including New Zealand who became a signatory in 2003. However, New Zealand is one of the few signatories that is yet to ratify the convention.

Currently, New Zealand is unable to ratify the Convention because our domestic legislation does not currently meet UNCAC requirements. According to the Ministry of Justice webpage "New Zealand is compliant with most of the provisions of the Convention due in part to our full compliance with the OECD Anti-Bribery Convention. However, there are parts of the Convention which need to be made part of our law."

To achieve full compliance New Zealand will have to amend the following parts of its legislation:

1. defining "business" as including "international aid"
2. creating a new criminal offence of the acceptance or solicitation of a bribe by a foreign public official
3. creating a new criminal offence where a person solicits or accepts a bribe to use his or her real or supposed influence to influence an official
4. increasing the penalty for committing an offence under the Secret Commissions Act 1910
5. listing the Convention in the Mutual Assistance in Criminal Matters Act 1992.

Progress in ratifying UNCAC appears to have slowed down. The Convention was referred to Select Committee in August of last year to undergo the treaty examination process. However, Transparency International New Zealand (TINZ) has been advised that the examination process has been deferred to allow resources to be allocated to other Government priorities.

TINZ has been in regular touch with appropriate government agencies to ensure work on the Convention continues to be seen as an issue of importance to New Zealand.

NZ To Step Up It's Fight Against Bribery: New 2010 OECD Anti-Bribery Measures

As of this month New Zealand will be involved in monitoring both its own progress and the progress of 37 other countries that have ratified the OECD Anti-Bribery Convention progress in encouraging companies to implement the OECD 2009 "Good Practice Guidance on Internal Controls, Ethics and Compliance."

The OECD Convention requires companies to put in place internal controls and establish ethics and compliance programmes to combat bribery on the international business world stage as stipulated in the Convention.

The "Good Practice Guidance on Internal Controls, Ethics and Compliance" outlines four specific actions and policies that companies should implement which includes:

1. Adopting a **clear and visible anti-bribery policy** that is strongly supported by senior management;
2. Instilling a sense of **responsibility for compliance** with the policy at all levels of the company, as well as independent compliance structures;
3. Keeping up regular **communication and training** on foreign bribery for all employees, 4. **Encouraging observance** of anti-bribery com-

pliance measures, and **disciplinary procedures** to address their violations.

This newest effort to encourage the international business community to take anti-bribery efforts seriously is what the OECD Secretary-General Angel Gurrá calls "the most comprehensive guidance ever provided to companies and business organisations by an international organisation on this issue and marks another step forward in the fight against bribery." Although the guidelines do not carry any formal legal implications in cases of non-compliance, they do mark an important step in integrating anti-corruption and bribery issues globally.

The OECD Working Group will monitor each member country's progress in encouraging companies to implement the guidance.

TINZ recently published a report, *As good as we are perceived?*, which expands on recent research by an independent Australian research organisation, CAER, to demonstrate that few New Zealand companies take adequate steps address issues of bribery and corruption.

The OECD guidelines can be downloaded at: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>.



Transparency International is a not-for-profit, non-government organisation, which aims to counter corruption in international and national business transactions and government decision making.

Transparency International is politically non-partisan and does not undertake direct investigation of alleged corruption or expose individual cases.

There are over 90 National Chapters of TI worldwide. Each chapter is an autonomous body supported by a global Secretariat based in Berlin

TI(NZ) Members' Page



The TI(NZ) Members' Update page invites one of our members to share their thoughts on corruption and on the role of TI(NZ).



Hon John Luxton

John has been a member of TI(NZ) since 2009. He is a former Minister and is the current chair of DairyNZ. He is also the founder and director of the Kaimai Cheese Company and also a director of the Tatua dairy cooperative.

1) *How do you think corruption effects New Zealand?*

[Hon John Luxton] New Zealand is fortunate in having less corruption than most societies. Corruption erodes confidence in organisations, be they public or private, by allowing favours or licences to be purchased. People with authority who accept bribes or payment outside of the normal rules of business engagement, increase the costs of doing business and destroy the reputation of their organisation and themselves. Often persons who have roles of providing authority or permits may delay those permits, or seek unreasonable conditions, which may be avoiding risk in public positions but can also be seen as a form of corruption where they overstep their authority. This type of abuse is a more common form of corruption than blatant bribes or demands for payment in New Zealand. Corruption has two sides, one the person who is prepared to pay extra to get action and the person who is prepared to accept such payment for taking an action.

2) *How do you think we minimise corruption in New Zealand?*

[Hon John Luxton] Transparency is the best way to minimise or avoid corruption. Publicity or the fear of publicity helps prevent corruption. Having good governance will help prevent corruption both public and private. Proper accountability and traceability and regular auditing all help. A good strong democracy which allows Governments to change is also a key to minimising corruption in New Zealand.

3) *Why do you feel that Transparency International is an important organisation?*

[Hon John Luxton] Transparency International, as an international organisation, gives credibility to the need to take action across all countries in reducing the level of corruption. It can provide support for those brave people around the world who work to allow democracy and reduce corruption in their own countries. This is not easy in many countries where corruption is power and power corrupts and democracy does not exist.

4) *What do you think the focus of Transparency International New Zealand should be in New Zealand?*

[Hon John Luxton] New Zealand has a unique role in reminding people of the need to be vigilant against corruption. It also has a role in supporting democracy. It can also work across the Pacific to provide support and advice against corruption given our standing in the region. I believe we can also influence other countries further afield by ensuring we maintain very high standards in our dealings here and internationally.

5) *How does corruption in other countries impact on New Zealand?*

[Hon John Luxton] Many times New Zealand companies have missed out on international trade opportunities because our companies have been reluctant to become involved in corrupt practices in other countries. However over time playing the 'honest broker' role wins out and opportunities expand accordingly. New Zealanders abroad have often maintained their opposition to corruption to their advantage in that over time they are never approached for bribes and they are trusted as a result.

TI(NZ) Strategic Planning 2010-2015

Transparency International (New Zealand) was started in 1999 to promote transparency, good governance and ethical practices in the private and public sectors in New Zealand; to promote ethical business practices by New Zealand business offshore, and transparency and good governance in our region; and to contribute to the international effort to reduce corruption and promote good governance.

Over the past ten years, the organisation has grown considerably in size and influence. Work has been undertaken in relation to promoting transparency and good gov-

ernance practices in New Zealand. In the Pacific, TI(NZ) provides support to four Pacific Chapters of Transparency International under the NZAID funded Pacific Support Programme.

The time has come to review TI(NZ)'s strategic direction. In May 2010 the Board will undertake a strategic planning exercise to set the organisation's path for the next ten years.

Members are invited to contribute to the planning process and their views on the key

transparency, corruption and good governance issues the New Zealand Chapter could be addressing over next 5 years to executive@transparencynz.org.nz before 30 April 2010. Alternatively, you are invited to send your views in writing to the Executive Officer, Transparency International New Zealand, P.O.Box Box5248, Wellington 6145.



TI Fiji's Advocacy and Legal Advice Centre (ALAC): Success of a Grassroots Anti-Corruption Programme

For the past 8 months, the ALAC Team of TI Fiji has been taking the anti-corruption message to the front steps of communities Fiji-wide. After ALAC was launched in April 2009, ALAC officers began visiting communities around the country, talking about corruption and providing legal assistance. According to ALAC Legal Officer Marama Tuisawau, members of the public have responded well to these visits and as a result, many have sought advice and assistance from TI Fiji for their corruption-related problems.

"The response has been over-whelming. It has enabled the people of Fiji to ask questions they have been harbouring for too long and also empowered people to complain on corrupt activities in their communities," Mrs. Tuisawau said.

The community visits have taken place in areas including Burebasaga in Rewa, Korolevu on the Coral Coast, Nanukuloa in Ra, Waiqele and Batinikama in Labasa, as

well as places in Suva and Nadi. The ALAC Team has even visited the Naboro Maximum Security Prison outside Suva to conduct anti-corruption awareness and answered inmates' questions about corruption. Villages, settlements and neighbourhoods have been visited, with ALAC staff providing information and answering questions from members of the community.

"The types of assistance are on-the-spot legal advice, following up with organizations on allegations of corrupt activities, drafting of letters for walk-in clients and referring clients to the relevant organizations suitable and available to deal with their queries," Mrs. Tuisawau added.

The visits have been made possible through networking with various community leaders, as well as through requests from community groups and their leaders.

"People are encouraged to write in and request for our visits, also to call in. We encourage those living in communities to see the approval and assistance of community

leaders to inform people in advance and organize a meeting place," added Mrs. Tuisawau.

"For those in villages, it's only proper that they seek the permission of the village headman or „Turaga ni Koro“, who can inform villagers in advance and organize for the use of the village hall."

TI Fiji's ALAC Team continues to visit communities and has received many invitations over the past few months. Mrs. Tuisawau emphasized the importance of such visits, saying they have been very effective in raising the profile of TI Fiji and empowering the public to know their rights and take a stand against corruption.

"These visits are vitally important in terms of creating an awareness of the very existence of ALAC and TI Fiji. They also empower people to come forward and report or complain on corrupt activities occurring in their society," she said.

PNG: PNG SLAMS PARLIAMENT DECISIONS ON LEADERSHIP CODE & CONSTITUTION

TRANSPARENCY INTERNATIONAL
(PNG)- 12/03/2010

Transparency International PNG today slams recent decisions by Parliament to vote in favour of amendments to the Organic Law on the Duties & Responsibilities of Leadership (OLDRL - the Leadership Code) and the Constitution.

The anti-corruption organisation says the amendments, if endorsed by Parliament again in two months, will seriously weaken the Ombudsman Commission, make it harder for the Commission to do its job, and erode the standards of integrity that MPs and public service heads must adhere to.

TIPNG Chairman Mr Peter Aitsi says "the fact that these amendments have been passed points to the selfishness of the country's political elites. They are shocking decisions that certainly are not in the best interests of Papua New Guinea."

The decision to revoke the Ombudsman Commission's powers to issue directives to public service leaders is a huge step in the wrong direction, TIPNG says. These pow-

ers were previously used to stop abuse of public funds and have saved the nation millions of kina.

Taking away this power will allow more scams and scandals like those identified by the Commission of Inquiry into the Finance Department. More public money will be misappropriated if this amendment is passed.

Mr Aitsi says "The Commission's directive powers have been used effectively in the past, preventing public funds being spent on election campaigns and politicians' unnecessary overseas travel. They were used to freeze the education infrastructure (RESI) funds when they were being mispent. If these powers are removed then public money will be wasted or embezzled."

TIPNG is also disgusted that MPs approved amendments easing required disclosure of share trading. The excuse that MPs need more relaxed rules to take advantage of market developments on the other side of the world ignores the real question - why are MPs concerned with trading shares when they should be more interested in

their work as people's representatives?

TIPNG also says that the work of the Ombudsman Commission will be made harder by the time limits imposed by the amendments, and it will therefore be harder to hold MPs and public service heads to account. TIPNG agrees that the Ombudsman Commission should work hard. However if the government wants the Commission to work harder, they need to provide more resources and support, not the kind of short-sighted solutions proposed.

TIPNG is also very worried that proper consultation was not carried out in the community regarding these amendments. It says that if the constitution is to be amended then the community must be widely consulted - including business, NGO's, and the grassroots community. So far the government has produced no evidence of consultation and therefore has no real mandate to meddle with the constitution.



BAE - U.K Defense Company Settlement Highlights Issues with Corruption Prosecutions.

In June 2007 the US Department of Justice (DoJ) announced that it would be launching an investigation into probable non compliance to its anti-corruption laws by the British defense company, BAE Systems. On the 6th of February 2010, BAE Systems agreed to admit to two criminal charges and pay a (US) \$400 million fine. In return all investigations into its conduct would be halted both in the U.S and the U.K.

However, across the Atlantic, in the U.K the company has not been penalised so harshly. Instead they have been fined by the U.K Serious Fraud Office (SFO) the comparatively small sum of £30m for breach of duty to keep accounting records relating to payments made to a former marketing adviser in Tanzania.

The company, which is one of Britain's largest manufacturers, has refused to admit to any corruption or bribery charges in either the U.K or the U.S. This is in contrast to a statement made by the U.S DoJ in which said that BAE Systems had admitted responsibility to "intentionally failing to put appropriate, anti-bribery preventative measures in place" and then went on to say that the company had gone on and "made hundreds of millions of dollars in payments to third parties, while knowing of a high probability that money would be passed on to foreign government decision-makers to favour BAE in the award of defence contracts".¹

Despite the fine being one of the largest in history for a corporation, it appears that governments are either struggling or are reluctant to bring actual bribery or corruption charges against large corporations. The case has angered many who say that the company has been allowed to get off far too lightly and that the punishment has in

no way met the crime. Dissatisfaction with the results of the investigation led two British public interest groups to file papers in the UK court in February requesting a judicial review into the SFO's decision and seeking an injunction to delay the settlement between the company and the SFO.

The two public interest groups, Corner House and Campaign Against Arms Trade (CAAT), claimed that the decision by the U.K SFO was unlawful because it did not adhere to correct prosecution guidance on plea bargains and the settlement did not reflect the seriousness of the alleged crimes. On the 1st March the UK High Court granted the injunction while it made a decision regarding a judicial review. On the 24th of March an English High Court ruled against a Judicial review. Corner House and CAAT are still considering whether or not to appeal the ruling.

While the SFO in Britain had been investigating BAE in relation to a number of bribery and corruption allegations involving contracts in multiple countries including South Africa and the Czech Republic, this settlement is only in relation the sale of a radar system in Tanzania. As part of the settlement in this particular case, the SFO has agreed all other current investigations will be halted.

This is by no means the first time that BAE Systems has been investigated by the SFO. In 2006 an investigation into alleged bribes paid by BAE to a member of the Saudi royal family was dropped after the then Prime Minister Tony Blair intervened on grounds that any investigation could potentially pose a threat to British national security.²

Richard Dowden, the current director of the Royal African Society, vented his frustra-

tion regarding the case via a blog post, in which he pointed out that the biggest losers in this case are the Tanzanian people who remain in the dark in regards to which of their politicians and officials were involved in the investigations. He also mentions that it is the Tanzanian people who continue to battle against poverty while "corrupt and powerful Tanzanians are now more powerful and much richer."

Transparency International-UK has, on the one hand, expressed approval to the fact that the settlement has marked a "significant advance" in an investigation that at one stage looked as though no conviction would be gained.³ On the other hand, TI-UK has expressed serious concerns in regards to the transparency of the SFO settlement and also the fact that the British SFO has ruled out investigating individuals despite the U.S Department of Justice not doing so. TI-UK also voices its doubts about BAE's future dealings. The organisation asks if the current BAE senior management should continue in their positions and stresses the importance of appointing a credible compliance monitor to ensure that BAE Systems has improved its conduct as much as it claim to have done.

¹ <http://news.bbc.co.uk/2/hi/business/8500535.stm>

² http://www.rovalafricansociety.org/index.php?option=com_content&task=view&id=606

³ <http://www.transparency.org.uk/press-releases>

TI Sri Lanka Faces Personal Threats to Safety after Criticism of Elections.



Source: TI Regional News: Director Issue 16.

Author: Pascal Fabie (TI Regional Director for Asia Pacific)

In the past months TI Sri Lanka has issued reports revealing numerous abuses of public resources during the presidential election campaign period by the ruling party. This has contributed to a government crackdown on critical voices, including members of the opposition, journalists, and civil society, particularly TI Sri Lanka in

the aftermath of the elections. The chapter and its staff now faces serious threats to their continued operations and notably to the personal safety and security of J.C. Weliamuna, our colleague Executive Director of TI Sri Lanka. Additionally a media campaign to discredit TI Sri Lanka has intensified, with indications that high level public officials are involved. Furthermore their website and emails are being monitored and compromised, and the members of staff are under surveillance as 'supportive of the opposi-

tion'. Rumours of a possible arrest have been circulated, but not made official. The Chapter remains highly respected but his supported by the diplomatic community, international NGOs, and national partners. APD and the SAFE Committee have mobilised support from key Embassies, INGOs, EC, and multilaterals, and remain in daily contact with Weliamuna. Our thoughts are with them and we hope that the situation will soon improve.

Links & Papers of Interest



<http://www.giaccentre.org/>

The Global Infrastructure Anti Corruption Centre (GIACC), is an independent not for profit organisation which provides resources and services for the purpose of preventing corruption in the infrastructure, construction and engineering sectors.

The website contains a variety of free and detailed information including an online training module which helps users to understand corruption within the infrastructure sector. They also provide advice to organisations regarding legal aspects of corruption such as the preservation of evidence as well as how to deal with a suspected corrupt employee. Although targeted at the infrastructure sector the website offers a lot of information relevant to any sector and the quantity of information and tools available is genuinely impressive.



http://www.transparency.org/news_room/latest_news/press_releases/2010/2010_24_02_letter_g20

This is a link to a letter published on the Transparency International website to Korea President Lee Myung-bak and Canada PM Stephen Harper who are the current G20 co-chairs. The letter titled "Keeping transparency on the G20's agenda" includes seven recommendations from TI to enhance the G20's transparency and accountability.



<http://www.sunlightfoundation.com/campaign/>

The Sunlight foundation was founded in 2006 in the United States by a wealthy ex-lawyer and a not-for-profit entrepreneur. The foundations fundamental belief is that all public information should be available online and is a high-tech focused NGO. The foundation has three main priorities: 1/ digitising data, building tools and the sites for easy access to it, and developing communities to support and help carry on the foundations work. The foundation also has what it terms "Sunlight Labs" in which over 2000 software developers and designers work to build a cyber-infrastructure to support nationwide transparency. This organisation is surprising as it is not common to see a foundation that is purely dedicated to the logistics of transparency and is attempting to tackle one obstacle to the realization of a more transparent and accountable government within their country.