



**TRANSPARENCY
INTERNATIONAL**
the global coalition against corruption

2008 G8 PROGRESS REPORT

An Assessment of G8 Action
on Anti-Corruption Commitments

Time for Accountability

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ABOUT TRANSPARENCY INTERNATIONAL

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business, the private sector and civil society to develop and implement effective measures to tackle it. TI national chapters are active in every G8 country and contributed to this report.

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Authored and compiled by Transparency International's
G8 National Chapters

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INTRODUCTION

“The moral authority of developed countries in the battle against corruption is weakened when these countries condone corruption in their own countries, and yet expect developing countries to tackle corruption more severely” – **Dr. Ngozi Okonjo-Iweala**

The Group of Eight (G8) Summit provides an important opportunity for some of the world’s most powerful industrialised nations to draw attention to and make progress on many of the world’s most critical economic, political and social challenges. G8 political leadership can have a profound impact on issues with transnational and global implications and on the engagement of other countries and international institutions, such as the World Bank, International Monetary Fund and United Nations, in a consistent, sustained approach to addressing those issues.

But, this impact, and indeed the relevance and credibility of the G8, depend in the first instance, on their demonstrating respect for the rule of law, the integrity of their public institutions, the independence of their judiciaries, and providing broad opportunities for civic participation. It also depends on the accountability of the G8 leaders to their own electorates and to the broader global community for implementation of commitments made at the annual G8 Summit. This is particularly timely given the growing concern of a G8 retreat from prior commitments.

Civil society has an important role to play in helping to shape the agenda and in holding leaders to account. Therefore, TI national chapters in the G8 countries reviewed the Leaders’ commitments since 2002 with respect to reducing corruption, assessed progress implementing those commitments and concluded that performance falls short with profound adverse consequences for progress on broader G8 goals: alleviating poverty, protecting the environment, addressing climate change, accelerating economic development, achieving the Millennium Development Goals, increasing transparency and stability of financial markets and fostering fair competition in trade and investment.

Implementation of the anti-corruption commitments is critical to achieving these objectives. The most critical anti-corruption commitments undertaken by the G8 leaders since 2002 are to:

- Strengthen enforcement of anti-bribery laws enacted pursuant to the OECD Convention on Combating Bribery of Foreign Public Officials (OECD Convention);
- Ratify and implement the United Nations Convention Against Corruption (UNCAC) and promote the development of an effective review mechanism;
- Ensure greater transparency of revenue flows from the extractive sector through support of the Extractive Industries Transparency Initiative (EITI);
- Prevent misuse of financial institutions and markets and fight money laundering by increasing transparency and strengthening oversight of capital flows and markets;
- Deny safe haven to individuals found guilty of corruption, return illicitly-acquired assets with high priority, and develop additional measures to prevent such individuals from gaining access to the fruits of their criminal activities in our financial systems.

The Report takes each commitment in turn and makes the following findings and recommendations:

- The adoption of the landmark OECD Convention promised to stem foreign bribery as a factor in international business and development. There has been significant enforcement in France, Germany and the United States. However, Canada, Japan and the United Kingdom have done little to enforce their foreign bribery laws. Moreover, the UK has not enacted a law in compliance with the Convention. There must be a credible and consistent threat of enforcement across all OECD countries. G8 countries that are not doing so should immediately bring foreign bribery cases and all G8 countries should urge other OECD members to enforce their foreign bribery laws.
- The UNCAC established a global framework for the prevention, detection and prosecution of bribery and extortion and for the legal and technical cooperation necessary to prosecute cases and recover stolen assets. It has been ratified by more than 100 countries, including Canada, France, Russia, the UK and the US but not by Germany, Italy and Japan. Progress from ratification to meaningful implementation depends on parties establishing and participating in a vigorous review mechanism combining technical support with peer review and pressure for reform. However, this is far from assured. Germany, Italy and Japan should immediately ratify the UNCAC and all G8 countries should support an effective monitoring mechanism with civil society participation.

- The EITI promised progress toward revenue transparency and accountable management of resources from the oil, gas and mining sectors in resource rich countries historically plagued by corruption. Although good progress has been made in establishing a sound methodology and multi-stakeholder participation, host and home country implementation is lagging and many significant governments and companies have yet to join. Resource rich G8 countries should join and implement the EITI and all G8 countries should encourage other major extractive producing countries to do the same.
- The G8 pledged to adopt stronger rules for the global financial markets and financial centres and institutions to prevent their abuse for corrupt purposes. Yet, there is abundant evidence that kleptocrats and unscrupulous companies engaged in international commerce can still readily collect and disburse hundreds of millions of dollars through major and offshore financial centres into covertly owned bank accounts for personal enrichment or for corrupt business purposes. The G8 should adopt stronger transparency rules for the global financial markets to prevent fraud, abuse, money-laundering and other financial crimes.

Urgent action is needed on these anti-corruption agenda priorities and the more detailed recommendations set forward in the body of this report.

Moreover, leaders should report on the progress they are making. TI renews its call from the Heiligendamm Summit for the G8 Leaders to report this year – and annually thereafter – on actions taken to implement commitments and on the benchmarks and timetables to complete outstanding commitments by 2009.

–ADDRESSING CORPORATE COMPLICITY IN CORRUPTION – THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS

“The ten years of the Anti-Bribery Convention offer no reason for complacency. Much more needs to be done.” **Angel Gurría**, OECD Secretary General

WHAT HAVE THE G8 COMMITTED TO DO?

The G8 have committed to vigorous enforcement of the OECD Convention. Specifically, they have committed to:

- Strengthen and assist the implementation and monitoring of the OECD Convention (Kananaskis 2002; Gleneagles 2005; St. Petersburg 2006; Heiligendamm 2007);
- Strengthen enforcement of anti-bribery laws, accelerate peer reviews, complete a first cycle of reviews by 2007, and ensure stable, long-term financing for these reviews (Evian 2003);
- Adhere rigorously to the updated 2004-2007 enforcement review schedule (Sea Island 2004);
- Continue support for peer review (Gleneagles 2005; St. Petersburg 2006);
- Encourage the private sector to develop, implement and enforce anti-bribery compliance programs (Evian 2003, Sea Island 2004, Gleneagles 2005); and support voluntary private sector anti-corruption initiatives (Kananaskis 2002);
- Implement a permanent peer review mechanism (Heiligendamm 2007);
- Engage with non-party emerging economies (Heiligendamm 2007).

WHY IS THE OECD CONVENTION IMPORTANT?

The adoption ten years ago of the landmark OECD Convention by the leading exporting nations promised to stem foreign bribery as a factor in international business and development. It was widely hailed and remains the most promising development to date in the fight against international corruption as its parties now account for more than 75% of global export trade.

The Convention's strength is the fact that it imposes consistent foreign bribery prohibitions on most competitors simultaneously. In a highly competitive global economy, companies must not be allowed to use bribes to secure business opportunities or access to energy supplies or other natural resources. Vigorous and consistent Convention enforcement will help ensure that companies compete on a level playing field. Weak enforcement will distort competition in favor of unscrupulous companies and contribute to negative outcomes in countries that can least afford it.

If the OECD Convention is not fully enforced, transnational bribery will continue to undermine fair competition, the effective use of resources, investment and economic development, the rule of law and democracy, energy security and national security. The credibility of the G8 to promote good governance in emerging markets or in Africa will be undermined if they are unwilling to police themselves.

WHAT ACTIONS HAVE THE G8 TAKEN TO DATE?

Since the Convention's entry into force in 1999, all 37 parties have enacted laws making it a criminal offence to bribe foreign officials. However, according to the 2008 OECD report, *Consultation on the Review of the OECD Anti-Bribery Instruments*, there are still significant variations and deficiencies among countries in how they have implemented those laws.¹ These include restructuring definitions of "foreign bribery" and "foreign public officials"; failure to adopt nationality jurisdiction to permit prosecution of citizens even when bribery occurs wholly in another country; overly

¹ Additional information on the OECD consultation, including the OECD Working Group on Bribery consultation paper, can be found at:
http://www.oecd.org/document/13/0,3343,en_2649_37447_39884109_1_1_1_37447,00.html.

broad prosecutorial discretion not to prosecute; and failure to adequately protect whistleblowers who report acts of corruption in good faith.

According to the *2008 TI Progress Report on Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (TI OECD Convention Progress Report)* enforcement is improving in France, Germany and the US.² France has brought 19 prosecutions, Germany more than 43, and the US 103. Many of these cases involve major multinational companies. While few in number, Italy's 2 cases are significant because they are both against major multinationals with the potential to have a profound and broad impact.

The performance of Canada, Japan, and the UK, on the other hand, remains inadequate. Canada and Japan each have brought only one minor case. The UK has brought none and its recent decision to terminate a bribery investigation on the basis of national security casts doubt on its underlying commitment to the Convention. The Convention expressly prohibits consideration of national economic interest or the potential effect on relations with another state to influence decisions whether to investigate or prosecute (Article 5). The UK action threatens to create a dangerous precedent for others seeking to avoid their commitments.

RUSSIA'S FOREIGN BRIBERY COMMITMENTS UNDER UNCAC

The United Nations Convention against Corruption requires parties to criminalise bribery, as well as solicitation, and to end tax deductibility of bribes. Parties are also to establish books and records rules to prohibit off-the-book accounts or false entries. Russia has ratified the UNCAC and thus falls under foreign bribery prohibitions and books and records requirements consistent with the OECD Convention. To date, promised anti-corruption commitments have not materialised, but the new president has indicated that a national anti-corruption plan is forthcoming.

² The *TI OECD Convention Progress Report* is based on assessments by independent, international experts engaged by TI national chapters that are vetting with government officials and other knowledgeable persons in their country.

OECD CONVENTION IMPLEMENTATION AND ENFORCEMENT ³

COUNTRY REPORTS⁴:

CANADA:

There has been only one minor case against a company for a small payment allegedly made to a US immigration official to secure preferential treatment in gaining access into the United States for business purposes.

Canada has not yet remedied several significant deficiencies in Convention implementation.

Nationality Jurisdiction. Canada is the only OECD country not to have adopted nationality jurisdiction in its legislation – the Corruption of Foreign Public Officials Act or CFPOA. Canadian courts apply “territorial” jurisdiction in almost all criminal matters and do not interpret it broadly. A significant portion of the activities constituting the offence must take place in Canada and there must be a “real and substantial link” between the offence and Canada.

Where specifically provided by statute, Canadian courts have jurisdiction to prosecute Canadian nationals for offences committed outside of Canada, but this jurisdiction has been applied only to criminal offences universally recognised (and confirmed by treaty or international consensus) as subject to prosecution on the basis of nationality, *e.g.*, war crimes, hi-jacking and terrorism.

A multi-stakeholder group has recommended that the Government of Canada amend the CFPOA to clarify that it applies extraterritorially to Canadian nationals. While the

³ Key findings of deficiencies are based on the 2008 TI OECD Convention Progress Report, OECD Working Group Country Reports and assessments by TI national chapters. OECD Working Group Country Reports can be found at:
http://www.oecd.org/document/24/0,3343,en_2649_37447_1933144_1_1_1_37447,00.html.

⁴ Russia is not a party to the OECD Convention and so no country report is included.

Convention does not require a country to adopt nationality jurisdiction,⁵ it is essential as bribery of a foreign official will normally take place outside the boundaries of a company's home country. Permitting nationals to pay foreign bribes as long as they do so outside Canada creates an easy loophole that should be closed immediately.

Definition of Foreign Bribery. The CFPOA defines business as “any business, profession, trade calling, manufacture or undertaking of any kind carried on in Canada or elsewhere *for profit*” therefore to constitute an offence, the purpose of the bribe must be for obtaining an advantage in the course of business “*for profit*.” The Convention does not draw a distinction between “for profit” and “not for profit” and the OECD Working Group recommended that Canada eliminate the “for profit” requirement. Canada has not done so apparently out of concern for potential instances in “not for profit” circumstances, particularly with regard to humanitarian assistance, when bribes may have to be paid.

Article 5. Canada is also the only country to have made a reservation to Article 5 of the Convention, which expressly prohibits consideration of national economic interest or the potential effect on relations with another state to influence decisions whether to investigate or prosecute. The reservation would allow prosecutors to take into account a wide range of considerations in the decision whether to prosecute and could allow significant cases of foreign bribery to escape investigation and prosecution, given the UK example.

Tax and other Governmental Authorities. Canada is also the only OECD country to prohibit its tax inspectors from reporting suspicions of foreign bribery to law enforcement officials. The prohibition is based on the confidentiality afforded to taxpayer information. Due to their engagement with companies involved in international business, tax officials are often well-placed to detect and report foreign bribery. Canada's prohibition restricts an important source of information, permitting bribes disguised as commissions to go unprosecuted.

Private Sector Initiatives. Experts have called on the Canadian government to do more to promote anti-bribery compliance programs among small and medium-sized businesses and to make greater efforts within those agencies engaged in other

⁵ Article 4.2 of the Convention states that “each Party which has jurisdiction to prosecute its nationals for offenses committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles.” The OECD Convention can be found at <http://www.oecd.org/dataoecd/4/18/38028044.pdf>.

countries and with foreign trade initiatives to report bribery allegations “up the line” and ultimately to enforcement authorities.

Recent Developments. In a positive development, following Canada’s ratification of the UNCAC in October 2007, the Royal Canadian Mounted Police established two seven-member International Anti-Corruption Teams, which focus on the detection, investigation and prevention of international corruption such as bribery, embezzlement and money laundering.

FRANCE:

France has brought 19 prosecutions, including several against major multinational companies such as Thales, Total and Alstom. Despite its excellent record on Convention enforcement, however, France has several deficiencies in Convention implementation.

Statute of Limitations. The OECD Working Group has identified France's relatively short three year statute of limitations as a significant obstacle to enforcement and has recommended lengthening it. Foreign bribery investigations are complex and long-running, often requiring sophisticated financial analysis and mutual legal assistance from other countries where witnesses or other evidence may be found. A short statute of limitations can effectively shut down a foreign bribery case.

A recent report Commissioned by the Minister of Justice recommends that the statute of limitations be lengthened to 7 years in cases of corruption or abuse of corporate assets. A reform bill is expected in October of this year.

Whistleblower protection. While whistleblower protection for the private sector is now adequate, it must be strengthened for public sector employees. Article 40 of the Criminal Procedure Code requires public officials to report suspected criminal activity to a prosecutor without delay, but it does not explicitly protect them from retaliation. Given the secretive nature of bribery, prosecution frequently depends on persons with knowledge coming forward with information. This is unlikely unless they are protected from retaliation.

Independence of and Resources for Enforcement Authorities. Some investigating judges warn that their power has been eroded because of increased fragmentation of related cases among multiple judges; increased political pressure on prosecutors to slow the pace of opening new corruption cases; and changes in criminal procedure such as limitations on judicial search warrants that have slowed the work of investigating judges. Some have called for an increase in the financial and human resources devoted to courts dedicated to prosecuting financial crimes. While staffing has increased in recent years, some at the Pole Financier, a unit of court with non-

exclusive jurisdiction over cross-border cases, have indicated they are not treated fairly in terms of promotion or support for their investigations.

Other Statutory Obstacles. Under the French foreign bribery law, only the prosecutor can trigger prosecution, while for most other criminal matters, the victim can do so. Experts have recommended reform in this regard.

Recent Developments. A 2007 reform act broadened the definition of foreign bribery by removing the condition that the purpose of the bribe be for “foreign trade.” The act also extended the scope of the foreign bribery law to reach the bribe recipient as well as the bribe payer, and gave new investigatory tools such as wiretapping and surveillance to prosecutors and judges.

GERMANY:

Since the Convention was adopted, there have been more than 43 prosecutions in Germany, including very high-profile prosecutions against the engineering giant, Siemens AG. In addition to an excellent enforcement record, Germany has made progress on remedying a number of deficiencies in Convention implementation, although some remain.

Centralised Enforcement Authority. In the past, the lack of a centralised office for foreign bribery enforcement and inadequate coordination among decentralised offices in the Länder have impeded Convention enforcement. Recently, there has been an increasing tendency in most Länder to concentrate the responsibility for the prosecution of foreign bribery cases in special prosecution units and an effort among the prosecution authorities of the Länder to exchange data, experience and best practice models.

Making Länder data accessible to the public in a timely fashion and increasing financial and personnel resources for enforcement authorities would also improve the system. Some Länder have established registers to deter corrupt companies from competing for additional public contracts, but there is no such register on the Federal level.

Whistleblower Protection. Whistleblower protection is unsatisfactory in both the public and private sectors. A bill to protect public sector employees is close to passage, but there is no specific whistleblower protection for private sector employees. Several large German companies have, on a voluntary basis, stepped up their efforts by strengthening their internal procedures and by establishing reporting and disclosure mechanisms such as anti-bribery ombudsmen or whistleblower hotlines. However comprehensive protection is still needed. A contact point or address to which a potential whistleblower could provide information would be helpful.

Corporate Criminal Liability. German law does not provide for criminal liability for corporations. Rather, corporate misconduct is treated as a regulatory offence and fines levied under the Administrative Offences Act. If corporate criminal liability were introduced, the deterrent function of the law would likely be higher.

Adequacy of Sanctions. The OECD Working Group has recommended that Germany strengthen its sanctions so they meet the Convention requirement of being “effective, proportionate and dissuasive.” The current maximum sanction on a corporation is 1 million euro unless the benefits gained from the corrupt acts are higher. This option is rarely used, and even when it has been, the total fine has not outweighed the benefit to the company. For example, Siemens was fined 1 million euro plus 200 million euro disgorgement. Most experts estimate that the benefits Siemens received were much higher.

Recent Developments. In recent years, Germany has seen an increase in mutual legal assistance with other countries, particularly the US. The Federal Government last year submitted a bill to implement several international anti-corruption provisions. Among other things, the draft law seeks to extend the scope of the offense of foreign bribery.

ITALY:

Italy's enforcement record is improving, with two cases against major multinationals, including a 2004 case involving Enelpower, Siemens and Alstom. Three additional cases have emerged in 2008 involving pharmaceutical companies and the Oil-For-Food program. Despite this progress, Italy continues to have several deficiencies in Convention implementation.

Definition of Foreign Bribery. The OECD Working Group noted a number of statutory and legal difficulties in the Italian foreign bribery law, including a complicated definition of the foreign bribery offence that includes a chain of cross-references to various domestic bribery offences, which may hamper enforcement.

Statute of Limitations. The OECD Working Group has identified Italy's relatively short, statute of limitations periods for investigating and prosecuting foreign bribery as a significant obstacle to enforcement because of the lengthy delays in the Italian criminal justice system, and has recommended lengthening it.

Other Obstacles to Enforcement. Experts have called on Italy to centralise enforcement, strengthen complaint procedures, and increase available resources for enforcement.

Whistleblower Protection. The Working Group has recommended improved whistleblower protection for both the public and private sector. There is little protection for public employees who report suspicions of foreign bribery. For the private sector, Italian law provides for the possibility of applying special witness protection measures but citizens would prefer to deal with an independent body such as the High Commissioner. In response, the High Commissioner had recently set up a hotline for whistleblowers and was actively cooperating with civil society and other institutions to improve its framework and actions. However, on June 25th, the Italian government abolished the Office of High Commissioner, casting doubt on future protections. Experts also encourage the government to do more to raise awareness among the public that foreign bribery is a crime.

Recent Developments. In June, Prime Minister Berlusconi introduced a controversial amendment to an anti-crime package mandating a 1-year suspension of all trials for crimes committed before mid-2002, except for crimes punishable by more than 10 years imprisonment and those that involve violence, the Mafia and workplace accidents. The amendment has been approved by the Italian Senate and will be sent to the lower chamber for action. The package also includes reintroduction of another controversial immunity bill to protect those holding high positions of public office from prosecution.

A recent initiative to incorporate the office of the High Commissioner into a broader government body is viewed as compromising its independence and its ability to effectively operate a whistleblower hotline.

JAPAN:

There has been only one minor foreign bribery case, against a Philippines subsidiary of Kyudenko Needs Creator IT Corp. Japan has also failed to address deficiencies in its implementation of the Convention even after three OECD Working Group reviews.

Foreign Bribery Offence. Implementation of the offence of foreign bribery in the Unfair Competition Prevention Law rather than in the Penal Code is viewed as having reduced its priority and contributed to the absence of formal investigations and prosecutions. The OECD Working Group has recommended moving the foreign bribery offence to the Penal Code to give it greater priority and enhance its visibility. Some commentators have claimed that would be impractical because corporations are not subject to the Penal Code. TI Japan has recommended enactment of a stand-alone legislation regulating the foreign bribery offence. The government has rejected the recommendation.

Centralised Enforcement Authority. Japan has no centralised office or unit for foreign bribery enforcement. In response to the OECD Working Group Phase 2 bis review, there seems to be better coordination among the Foreign Affairs, Justice, and Trade and Industries Ministries and other authorities such as police and tax. The OECD Working Group has also recommended that Japan establish a special intelligence unit within the National Police Agency or the Public Prosecutors Office to pro-actively collect investigative leads and other information concerning the offence of foreign bribery.

Recent Developments. In March 2008, a new act entered into force requiring financial institutions, leasing and real estate businesses to ensure client identification and to secure records of transactions. These entities (except legal and accounting professionals) are also required to report suspicious transactions to financial authorities.

UNITED KINGDOM:

The UK has not only failed to bring any foreign bribery cases, but its termination in 2006 of an investigation into foreign bribery allegations against BAE Systems Plc. in connection with an arms deal between the UK and Saudi Arabia, has cast serious doubt on the UK's underlying commitment to the Convention. That decision, made ostensibly on national security grounds, has since been held unlawful by the UK High Court. The Serious Fraud Office has appealed to the House of Lords and a decision is anticipated later this year.

In addition, even after three reviews by the OECD Working Group, the UK has failed to address significant deficiencies in its implementation of the Convention.

Inadequate Implementing Legislation. Inadequacies in the UK foreign bribery law were first identified by the OECD Working Group in its initial monitoring review in 1999, and again in a follow-up review in 2005. An extraordinary review conducted in March 2008 was specifically designed to address the UK's continuing failure to enact a law compliant with the Convention. Authorities have promised repeatedly to rectify the problem. The Government referred the matter to the Law Commission for study and recommendations. In December 2007, the Law Commission published a "consultation paper" seeking public comment. A final report and recommendations for a draft bill are not expected until October 2008. TI-UK has called for the Government to fast-track enactment of a new corruption law in the 2008/09 Parliamentary session that is (1) consistent with the UK's OECD Convention commitments; (2) comprehensible to a wide audience; and (3) effective and easily enforceable in a modern legal context. It has also recommended that the law also provides for corporate criminal liability and that the government should operate an advisory service for companies seeking guidance drawing on the US Department of Justice advisory opinion mechanism.

Prosecutorial Independence. Political influence over enforcement actions and the independence of prosecutors are issues of deep and growing concern. The recently introduced draft Constitutional Review Bill proposes important changes in the relationship between law officers, the Government, Parliament and the prosecution services. While removing the requirement for the Attorney General's consent for

prosecution of corruption offences, the bill would vest new power in the Attorney General to stop a criminal investigation or prosecution on the grounds of national security with very limited oversight by Parliament and no review by the courts. TI-UK has called on the Government to withdraw this provision from the bill.

UNITED STATES:

The OECD Working Group has noted that the United States has implemented the Convention's foreign bribery prohibitions in a 'detailed and comprehensive manner.' The US has by far the strongest enforcement record with 103 prosecutions, a broad scope of coverage and severe penalties.

Facilitation Payments. The Working Group noted the potential for misuse of the "facilitation payments" exception from the Foreign Corrupt Practices Act (FCPA). According to the Convention Commentary, "small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are not an offence. However, such payments are generally illegal in the country where paid and there is growing pressure on and support in the private sector to eliminate the use of facilitation payments.

Deferred Prosecution. Some commentators have raised questions about the use of deferred prosecution agreements. Many recent FCPA enforcement actions have arisen because companies voluntarily disclosed potential violations to the government. The US Government has emphasised that voluntary disclosures, when combined with other forms of cooperation, may mitigate penalties that would be imposed if the FCPA violations were uncovered by the government in the first instance. Cooperation includes (1) an admission of wrongdoing; (2) cooperation in any ongoing investigation (which can lead to criminal prosecution of individuals), (3) waiver of relevant statutes of limitation and the right to a speedy trial; (4) payment of significant fines -- often in the tens of millions of dollars; (5) implementation of compliance program to address the underlying criminal conduct and prevent future problems, and (6) engagement of an independent compliance monitor for as much as three years to review implementation of programs and controls and to report back to the government on its findings.

Many have called on the Department of Justice to encourage voluntary disclosure by protecting the attorney-client privilege and providing greater clarity of the benefits of such disclosure. Compliance guidelines for companies would also promote adherence to the FCPA.

Resources for Enforcement Authorities. An OECD Working Group recommendation to increase budget and staffing has been implemented by the Department of Justice and, in 2007, the Federal Bureau of Investigation created a five-member team to investigate FCPA violations. However, a surge in US enforcement activity continues to strain the resources of the Department of Justice and the Securities and Exchange Commission. Further increases are needed to continue vigorous enforcement, including prosecution of non-US-based offenders. Experts also recommend continued collaboration with counterpart authorities in other countries.

WHAT MUST THE G8 DO NOW?

OECD Secretary General, Angel Gurría has noted that “without credible action across a broad front, pressures will build on governments – even those who are currently strong performers – to go the other way. . . The only way to prevent this is to ensure that everyone plays by the same rules.”⁶ Foreign bribery will only abate if there is a credible threat of enforcement with attendant dissuasive sanctions. All G8 countries should:

- Vigorously enforce their foreign bribery laws and urge others to do the same;
- Promptly correct deficiencies in Convention implementation;
- Call for an OECD annual report listing all foreign bribery prosecutions, including convictions and other dispositions and reflecting failures to correct deficiencies identified in the country reviews;
- Insist on high-level technical participation by all member governments in the OECD Working Group with continued rigorous on-site visits and candid assessments of countries’ enforcement efforts;
- Support accession by China and India, including participation in the follow-up process to promote consistent enforcement;
- Increase outreach to the private sector to encourage implementation of effective anti-bribery programs and compliance cultures; and
- Increase outreach by diplomatic missions engaged in advocacy on behalf of companies to promote anti-bribery compliance.

⁶ Secretary General Opening remarks to the Convention’s 10th anniversary celebration in Rome, November, 2007 at http://www.oecd.org/document/37/0,3343,en_21571361_39316778_39656933_1_1_1_1,00.html.

-GLOBALISING THE FIGHT AGAINST CORRUPTION- THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

“The adoption of the United Nations Convention against Corruption sends a clear message that the international community is determined to prevent and control corruption ... If fully implemented, this new instrument can make a real difference to the quality of life of millions of people around the world.”
Kofi Annan, former United Nations Secretary-General

WHAT HAVE THE G8 COMMITTED TO DO?

Since 2002, the G8 have committed to promoting the adoption and implementation of the United Nations Convention against Corruption (UNCAC), the global anti-corruption convention. Specifically, they have committed to:

- Contribute to the completion of the UNCAC with effective preventive measures, mechanisms for international cooperation, follow-up mechanism; and technical assistance (Evian 2003);
- Become parties to the UNCAC (Sea Island 2004);
- Work for early ratification; establish effective mechanisms for the recovery and return of assets and encourage rules to deny entry and safe haven to officials and individuals guilty of public corruption and their assets (Gleneagles 2005);
- Support global ratification and implementation; target assistance to prevent corruption through transparency and accountability while enhancing capacity to detect, prosecute, and recover the proceeds of corruption. Promote effective implementation of commitments; vigorously enforce laws against foreign bribery (St. Petersburg 2006);

- Support the ratification of the UNCAC by all countries; coordinate closely to promote effective implementation of the UNCAC, particularly related to developing effective review mechanisms, strengthening international measures on asset recovery, and encouraging provision of technical assistance. Supporting the work of UNODC, Interpol, the OECD and other international bodies to coordinate implementation of the UNCAC (Heiligendamm 2007).

WHY IS THE UN CONVENTION IMPORTANT?

The UNCAC represents a significant achievement for the anti-corruption agenda. With 140 signatories and 117 ratifications to date, it represents a comprehensive, universal framework for combating the global threat of corruption. The UNCAC's more than 70 articles provide common criteria for national anti-corruption policies and practices and require the broadest possible cooperation among parties to address transnational crime. Because its provisions were negotiated by countries from every region of the globe – developed and developing world alike – its norms are commonly accepted. If implemented, the UNCAC will help promote rule of law, good governance and accountability worldwide.

Its most significant provisions include the following:

Prevention: Parties are to implement codes of conduct and conflict of interest rules for public officials; a regime for public access to information, and transparent procurement and public finances. The private sector is urged to implement internal controls and enhanced accounting and auditing provisions to prevent and detect corruption.

Criminalisation: Parties are required to criminalise foreign bribery and solicitation.

Mutual legal assistance: Parties are to extend the broadest possible mutual legal assistance to each another, thereby addressing the most significant impediment to

investigating and prosecuting transnational corruption cases. Parties are not to decline mutual legal assistance on the grounds of bank secrecy.

Asset Recovery: For the first time, Parties are required to provide procedures to trace, freeze, seize and return stolen assets, which will help prevent “kleptocrats” from hiding and retaining illicitly-acquired assets and help prosecutors reduce obstacles to recovering assets.

WHAT ACTIONS HAVE THE G8 TAKEN TO DATE?

Canada, France, Russia, the UK and the US have ratified the UNCAC. Germany, Italy and Japan still have not.

The extent of implementation is difficult to assess as many Parties have not published reports on implementation and no formal review mechanism exists to provide information. Experience with other conventions demonstrates that a mechanism is helpful in promoting implementation, making progress and deficiencies public, creating peer support and peer pressure for reform and enabling civil society to provide meaningful oversight.

This is particularly true in light of the ambitious scope of the UNCAC. An effective review process is essential to ensure that countries at different levels of development with differing levels of capacity and varying degrees of political will, enact and enforce consistent laws and regulations that comply with the UNCAC’s terms. While the text of the UNCAC provides for follow up, it leaves it to the Parties to develop the mechanism. In 2006, the Conference of States Parties or “CoSP” agreed that a mechanism is urgently needed, but after two years and two meetings, the Parties have made little progress on a formal mechanism.

As of January 2008, 65 governments, including all G8 countries except Japan, had completed a self-assessment questionnaire regarding status of implementation of the UNCAC, which was circulated by the UN Office of Drugs and Crime (UNODC), the

UNCAC Secretariat.⁷ France, the UK and the US have agreed to submit their questionnaire responses to peer review and consultation, in a “pilot monitoring” program. The UK and the US have made their responses available to the general public. Germany provided its response to TI Germany. A summary of responses published by UNODC is available on its website.⁸

These are useful initiatives but still far short of the more comprehensive mechanism that experienced observers maintain is needed to secure broad-based meaningful implementation. With respect to such a formal peer review mechanism, Parties put forward widely divergent proposals on the form, mandate and role civil society should play. Action was deterred until the next meeting of the CoSP in late 2009, 6 years after the UNCAC was adopted.

WHAT MUST THE G8 DO NOW?

Germany, Italy and Japan should ratify the UNCAC immediately. In addition, all G8 governments should:

- Fully implement the UNCAC and participate in the current pilot review process;
- Exert their full political leadership in creating and funding a robust monitoring mechanism with opportunities for civil society participation by the 2009 CoSP;
- Encourage multilateral development institutions to fully support country efforts to ratify and implement the UNCAC; and
- Cooperate on asset tracing and recovery, and encourage all countries to adopt and enforce rules to deny entry and safe haven to officials and individuals guilty of public corruption with similar prohibitions on their assets.

⁷ Germany and Italy responded to the questionnaire without having ratified the Convention. A summary of the responses to the the self-assessment questionnaire can be found at the following addresses:
<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850425e.pdf>
<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850425e.pdf>.

⁸ Id.

-ENSURING TRANSPARENCY OF REVENUE FLOWS- THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

“Oil and gas wealth, if properly managed, should support better services and infrastructure. It should lead to a better quality of life for all citizens. It is the duty of civil society to work with companies and governments to unlock this potential.” **Huguette Labelle**, Chair of Transparency International

WHAT HAVE THE G8 COMMITTED TO DO?

Since the 2003 Evian Summit, the G8 have committed to promoting transparency of financial flows -- both company payments and corresponding government revenues -- from the oil, gas and mining sectors. Since the creation of the Extractive Industries Transparency Initiative (EITI) in 2002, they have committed to providing financial and technical support to the EITI and the countries implementing it. Specifically, they have committed to:

- Encourage governments and companies to disclose, to the International Monetary Fund (IMF) or another agreed independent third party such as the World Bank, revenue flows and payments from extractive sectors; work with participating governments to develop and implement agreed action plans for establishing high standards of transparency with respect to all budget flows (revenues and expenditures) and with respect to the awarding of government contracts and concessions; encourage IMF and World Bank to give technical assistance (Evian 2003);
- Increase support to EITI and countries implementing EITI through financial and technical measures (Gleneagles 2005);
- Promote governance and greater fiscal transparency by supporting the implementation of EITI (St. Petersburg 2006);

- Continue to support good governance and anti-corruption initiatives, such as the EITI; commit to provide continuous assistance to strengthen EITI, as appropriate, through financial, technical and political means; invite all stakeholders to provide support for the implementation of the EITI; call on implementing countries and companies participating in EITI to implement the Initiative and comply with disclosure commitments; encourage further countries to participate in EITI as appropriate; welcome independent validation process and encourage prompt application and further development of the validation methodology; and initiate dialogue with major emerging economy governments and state-owned companies as participant in EITI (Heiligendamm 2007).

WHY IS REVENUE TRANSPARENCY IMPORTANT?

Experts estimate that two thirds of the world's poorest live in resource rich countries. In 2006 oil exports worldwide were estimated at US\$866 billion,⁹ more than half of the combined gross domestic product of the 53 lowest-income nations.¹⁰

If revenues from natural resource extraction were managed properly for the benefit of the citizens, they could generate economic growth and reduce poverty. Revenue transparency is key to ensuring this outcome. Providing citizens and civil society with information on revenues from natural resource extraction and how those funds are expended will enable them to hold public officials accountable. Too often, however, a pervasive lack of transparency and accountability has led to embezzlement, corruption and even conflict, turning a 'resource blessing' into a 'resource curse.'

⁹ See Transparency International's Promoting Revenue Transparency Project, citing US Energy Information Agency (EIA):

http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency#ftn1

¹⁰ See Transparency International's Promoting Revenue Transparency Project, citing World Development Indicators 2006, World Bank. According to the Indicators, Current World GDP in billions of dollars for 2006 is \$48.245 and for Low Income Countries is \$1.612:

http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency#ftn1,

EITI Candidate Countries

Rank Low on CPI

All 23 EITI candidate countries score lower than 4.0 and 19 score a 3.0 or lower on the TI Corruptions Perceptions Index (CPI), which ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. A score of 0 indicates that a country is perceived to be “highly corrupt;” a score of 10 indicates that it is “highly clean.”

Azerbaijan	2.1
Cameroon	2.4
Côte d’Ivoire	2.1
DR Congo	1.9
Equatorial Guinea	1.9
Gabon	3.3
Ghana	3.7
Guinea	1.9
Kazakhstan	2.1
Kyrgyzstan	2.1
Liberia	2.1
Madagascar	3.2
Mali	2.7
Mauritania	2.6
Mongolia	3.0
Niger	2.6
Nigeria	2.2
Peru	3.5
Republic of the Congo	2.1
Sao Tome And Principe	2.7
Sierra Leone	2.1
Timor-Leste	2.6
Yemen	2.5

Heightened competition for limited resources and new discoveries of extractive resources in countries where the rule of law is weak underscore the urgent need for action. Moreover, similar problems afflict those countries rich in other natural resources, including timber and fisheries.

WHAT ACTIONS HAVE THE G8 TAKEN TO DATE?

The EITI is one of the most important initiatives aimed at addressing the resource curse through a multi-stakeholder coalition of governments, companies, civil society organisations, investors and international organisations aimed at improving transparency and accountability in the oil, gas and mining sectors. The EITI calls for full publication of company payments and government revenues and has a robust validation methodology that will ensure a global standard is maintained across countries with oversight by an international board on which all stakeholder groups are represented. Implementation, however, is the responsibility of individual countries.¹¹

¹¹ For a summary of this and additional information about the EITI see: <http://www.eitransparency.org/eiti/summary>.

The success of the EITI depends, in part, on securing political, financial and technical support for the EITI Secretariat, which maintains its day to day operations and ensures that countries comply with the validation methodology, the Multi-Donor Trust Fund, which funds country activities, and civil society organisations which monitor implementation.

Extractive Industries Transparency Initiative Plus Plus (EITI++).

In 2008, the World Bank launched a new initiative – the Extractive Industries Transparency Initiative Plus Plus (EITI++) – to provide governments with technical assistance and capacity building for improving the management of resource-related wealth. The Bank’s stated goal is to develop national capability to handle the boom in commodity prices, and channel the growing revenue streams into fighting poverty, hunger, malnutrition, illiteracy, and disease.

While EITI focuses on transparency of payment and revenue streams, EITI++ is intended to focus on all aspects of the natural resource extraction and utilisation process across the value chain. “Through technical assistance,” according to the World Bank press release, “EITI++ aims to improve the quality of contracts for countries, monitoring operations and the collection of taxes and royalties. It will also improve economic decisions on resource extraction, managing price volatility, and investing revenues effectively for national development.”¹ The initial focus is on Sub-Saharan Africa, but over time, EITI++ intends to expand to all developing countries. Guinea and Mauritania have already requested support in implementing the EITI++. Its activities will be funded by a multi-donor trust fund.”

Canada, France, Germany, the UK and the US provide financial support to the EITI Secretariat and, in some cases, to some participating countries.¹² France, the UK and the US are currently serving on the EITI board.¹³ Germany has also served as a board member.

Italy has recently signed on to EITI, but Japan and Russia still have done little to support the EITI despite their commitments to do so.

¹² See <http://www.eitransparency.org/supporters/countries>

¹³ See <http://www.eitransparency.org/about/board>.

CIVIL SOCIETY INITIATIVES IN THE OIL AND GAS SECTOR

The Promoting Revenue Transparency Project

In 2008, Transparency International and Revenue Watch launched the Promoting Revenue Transparency Project (PRT), an independent civil society initiative that is intended to complement the EITI and other efforts to achieve transparency of oil, gas and mining revenues. It is broader in scope than the EITI, focusing on EITI and non-EITI host and home countries and companies. In its first of three planned reports, the *2008 Report on Revenue Transparency of Oil and Gas Companies*, it evaluated 42 companies on their current policies, management systems and performance in areas relevant to revenue transparency in their upstream operations. Future reports will analyze information published by home and host countries.

Publish What You Pay

Publish What You Pay (PWYP) is a coalition of more than 300 human rights, development, and environmental organisations working in more than 45 countries to ensure transparency in the payment, receipt, and management of revenues from the extractive industries. PWYP calls for legislation mandating disclosure of the payments made by oil, gas and mining companies to all governments for the extraction of natural resources. The coalition also calls on resource-rich developing country governments to publish full details on revenues. For more information, see the Publish What You Pay website at: www.publishwhatyoupay.org.

WHAT MUST THE G8 DO NOW?

Defeating the resource curse requires broad action by all resource rich countries and companies engaged in resource extraction, including national oil companies. The EITI is gaining traction and merits full G8 support. Therefore, the G8 should:

- Encourage all major extractive producing countries worldwide, including Russia and others in the G8 and newly industrialised countries such as China, to join and implement the EITI;
- Provide financial and technical support for governments implementing the EITI;
- Strongly encourage companies headquartered or listed in G8 countries to be transparent and to work constructively with governments, companies and civil society to ensure its successful implementation;
- Provide financial support and work actively to safeguard civil society organisations engaged in monitoring progress in countries implementing the EITI so they can work effectively; and
- Work to ensure that the agreed validation mechanism for assessing compliance with the EITI principles and criteria is applied rigorously and effectively.

PREVENTING MISUSE OF FINANCIAL INSTITUTIONS AND MARKETS

WHAT HAVE THE G8 COMMITTED TO DO?

At past Summits, they have committed to:

- Require financial institutions to establish procedures for enhanced due diligence on Politically Exposed Persons (PEPS); support issuance of revised Financial Action Task Force (FATF) recommendations (Evian 2003);
- Implement the FATF revised recommendations; further enhance transparency and supervisory standards in financial markets in particular non-compliant off-shore centres; urge all financial centres to adopt high standards of transparency (Sea Island 2004);
- Encourage all countries to require enhanced due diligence for financial transactions involving PEPS and press all financial centres to obtain and implement the highest international standards of transparency and exchange of information (Gleneagles 2005);
- Take concrete steps to ensure that financial markets are protected from criminal abuse, including bribery and corruption, by pressing all financial centres to attain and implement the highest international standards of transparency; fight vigorously against money laundering, including by prosecuting money laundering offences and by implementing the revised recommendations of the FATF-related customer due diligence, transparency of legal persons and arrangements which are essential to tackling corruption (St. Petersburg 2006);

- Urge all financial centers to implement the highest international standards of transparency, exchange of information and the fight against money laundering; return illicitly-acquired assets with and develop additional measures to prevent individuals found guilty of corruption from gaining access to the fruits of their criminal activities in their financial systems (Heiligendamm 2007).

WHY IS TRANSPARENCY OF FINANCIAL INSTITUTIONS AND MARKETS IMPORTANT?

The global financial system and financial centres and institutions are still misused for corrupt purposes. Kleptocrats and unscrupulous companies engaged in international commerce still collect and disburse millions through the major financial centres and offshore centres into covertly owned bank accounts for personal enrichment or as bribes to obtain or retain business.

The scale of the illicit flows is estimated to be several times higher than the anti-poverty aid provided to developing nations. Despite the existence of new laws in most developed nations that expressly criminalise this conduct, enforcement efforts have been few and recoveries very rare despite substantial indications that corrupt commerce continues virtually unabated. Action is therefore urgently needed.

WHAT ACTIONS HAVE THE G8 TAKEN TO DATE?

The Financial Action Task Force has promulgated transparency and anti-money laundering standards and the International Monetary Fund has conducted reviews of compliance. However, not every country has been reviewed and not all reviews are public impeding an assessment.

WHAT MUST THE G8 DO NOW:

Promotion of greater transparency in cross border capital flows and better coordination of national controls are crucial to efforts to deter the payment of large bribes in connection with international commerce as well as to make efforts to detect and recover corrupt proceeds more effective. G8 governments are uniquely placed to lead the coordinated action necessary to ensure integrity and transparency in financial markets. G8 governments should accelerate implementation of their commitments to fighting financial crimes and money laundering and to ensure transparency in onshore and offshore centres by taking the following actions:

- Make tax evasion through offshore accounts a predicate criminal offence under relevant anti-money laundering law and make every effort to expose and prosecute such crimes;
- Promote international coordination to deter such crimes and to make the placement of illicitly obtained proceeds in offshore bank accounts as risky as possible;
- Call on the IMF, FATF and other international governmental organisations to publish information and assessments of countries' compliance with anti-money laundering and transparency standards and require financial institutions to take that information into account;
- Adopt stronger transparency rules for the global financial markets that effectively prevent the abuse of legal schemes (such as trusts, company services and foundations) for purposes of hiding illicit transfers of funds across borders while still protecting legitimate concerns about privacy;
- Coordinate regulations to ensure that international accounting standards require disclosure of special purpose vehicles and other off book entities and annual reports of multinationals identify and justify strategies for transactions involving offshore centres; and
- Require greater transparency of asset-backed securities to prevent fraud; adopt and fully apply FATF anti-money-laundering requirements; and increase transparency of entities or funds (including hedge funds).

CONCLUSION

As the world's leading economies, G8 countries have a special responsibility to promote accountability. It is vital that they move forward in 2008 with stronger and more concerted action, in partnership with civil society, in the key areas outlined in this Report. Taking action in these areas will support progress on the critical challenges facing the G8 and the world today.

G8 Leaders at the Hokkaido Toyako Summit should, as a matter of priority, each report on efforts to implement the anti-corruption commitments since 2002 and plans for future action, and should commit to report annually on progress.

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