



# TRANSPARENCY INTERNATIONAL CANADA INC. NEWSLETTER

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## Creating a level playing field in a corrupt world?

On June 1, TI-Canada will hold a Symposium, "Creating a level playing field in a corrupt world?" Beginning with the OECD Anti-Bribery Convention, which came into effect in February 1999, and continuing through the Inter-American Convention against Corruption and the new UN Convention against Corruption, Canadian businesses have come face-to-face with stiff anti-bribery regulations affecting their international operations.

The *Corruption of Foreign Public Officials' Act*, enacted by Parliament to implement the OECD Convention, now seems only the first of many global standards that Canadian businesses are expected to meet. In a global business environment, where corruption is endemic in public and private sectors, the increasingly complex web of laws and conventions regarding corruption are meant to both promote sustainable development in developing nations and create a level playing field for international enterprises, contracting for projects in these countries. But are these deeply cherished goals possible? Take the opportunity to attend the Symposium and discuss this issue with Tim Martin, Vice President and General Counsel, International, Nexen Inc., and representatives of key industries.

Following the Symposium will be TI-Canada's Eighth Annual General Meeting.

## SYMPOSIUM

**"CREATING A LEVEL PLAYING FIELD  
IN A CORRUPT WORLD?"**

and

**TRANSPARENCY INTERNATIONAL  
CANADA, INC.,  
EIGHTH ANNUAL GENERAL MEETING**

**Wednesday, June 1, 2005**

*more details forthcoming*

Both events will take place in Toronto. Stay tuned for more information.

## **Crack-down on Foreign Bribery Underway in Major Exporting Countries**

*TI Report Finds Fifteen OECD Countries Making a "Promising Start" in Enforcing Anti-Bribery Laws But Calls for Accelerated Enforcement*

**Berlin, 7 March 2005** --- A positive start has been made to enforcement of the OECD Anti-Bribery Convention, with prosecutions or investigations underway in 15 of 24 countries surveyed in a report prepared by Transparency International (TI), the leading global non-governmental organization devoted to combating corruption. But governments need to do more to enforce the laws criminalizing bribery of foreign public officials that came into

*To access TI Q, visit Publications at:  
www.transparency.org*

force in most signatory countries in 1999 and 2000.

These are some of the key findings of the TI Progress Report on Enforcement of the OECD Convention, which was released today. The report is based on information provided by TI national chapters in 24 of the 35 OECD signatory states. These 24 countries account for 95 per cent of OECD exports. It [was] delivered [on March 7] to the OECD and the 35 signatory countries of the Convention.

TI Chairman Peter Eigen commented: “Effective enforcement of the OECD Convention is a critical step in the fight against international corruption. Because most major multinational companies have their headquarters in OECD countries, effective enforcement would substantially reduce the supply side of international corruption.” Speaking...from the OECD/ NEPAD/ TI Investment Initiative conference in Addis Ababa, Eigen stated, “The dividends of effective enforcement are very real. Reducing the supply side of foreign bribery will make it much easier for African governments to improve the investment climate in their countries.”

*[Significant ]conclusions of the TI Progress Report .....*

- Enforcement is now underway in fifteen of the twenty-four countries covered, including most of the major exporting countries. Prosecutions have been brought in eleven countries: Belgium, Canada, France, Germany, Italy, Norway, South Korea, Spain, Sweden, Switzerland and the USA.

In four countries, Denmark, Finland, Mexico and the UK, there have been investigations into foreign bribery, but no cases have yet come before the courts.

- There has been no enforcement in nine countries: Argentina, Australia, the Czech

Republic, Greece, Japan, the Netherlands, New Zealand, Poland, and the Slovak Republic.

- Enforcement efforts must be stepped up substantially to achieve widespread recognition in the business community that foreign bribery does not pay. Currently only four countries have seen more than one foreign bribery prosecution.

“TI considers the results from most countries encouraging, but more needs to be done,” said Fritz Heimann, co-author of this Report and a member TI’s International Advisory Council and Chairman of TI-USA. “It is essential,” he continued, “that governments step up enforcement efforts to ensure that companies in OECD countries are left in no doubt that foreign bribery will be prosecuted.”

*[Significant] recommendations of the TI Progress Report.....:*

- Establish a national office responsible for foreign bribery enforcement and increase resources for enforcement. (TI notes that thirteen countries have already centralized foreign bribery enforcement)
- Improve access to enforcement systems through enhanced complaint procedures and whistleblower protection.
- Increase awareness that foreign bribery of public officials is a crime.
- Continue the OECD intergovernmental monitoring program beyond 2007.

*(TI Recommendations are spelled out more fully in the report.)*

The TI Progress Report on Enforcement of the OECD Convention is the first in a TI program of annual assessments of the enforcement of the OECD Convention and will provide a benchmark for measuring progress made in future years. It will complement the country evaluation reports prepared by the OECD Working Group on Bribery, which reviews 5-7 countries each year with respect to their enforcement of the OECD Convention.

For more information and the full report please see:

[http://www.transparency.org/building\\_coalitions/oecd/oecd.html](http://www.transparency.org/building_coalitions/oecd/oecd.html)

### **Hot off the press! – “Measuring Transparency”**

TI-Canada is a signatory to the Publish What You Pay (PWYP) campaign, which was launched in June 2002. PWYP's goal is to help citizens of resource-rich developing countries be able to hold their governments to account for the management of revenues from the mining, oil and gas industries. On behalf of PWYP, Save the Children UK has managed a study, “Measuring Transparency,” that examined the steps taken by several governments and oil and gas companies to increase revenue transparency in the extractive industry.

Released on March 17, the report presents a tool to measure corporate performance, as well as frameworks to measure the progress and performance of host governments and of home government support for transparency. The objectives of the report are to provide NGOs with a lobbying tool in order to pressure governments to introduce requirements on companies to disclose, through various financial reporting mechanisms, such as insurance, accounting, securities and stock exchange listing standards, and to generate information with which to lobby G8 and EU governments on their respective commitments to transparency.

*To see how Canada ranks among home governments and PetroCanada and Talisman Energy Inc. rank among corporate performers, visit:*

[www.savethechildren.org/measuringtransparency](http://www.savethechildren.org/measuringtransparency) For further information on PWYP, visit: [www.publishwhatyoupay.org](http://www.publishwhatyoupay.org)

### **Corruption in construction bankrupts countries and costs lives, says TI report**

Transparency International's *Global Corruption Report 2005* shows how corruption in the construction sector undermines economic development, and threatens to hamstring post-conflict reconstruction in Iraq and beyond.

TI publishes Minimum Standards for Public Contracting

**London, 16 March 2005** --- “Corruption in large-scale public projects is a daunting obstacle to sustainable development,” said Peter Eigen, Chairman of Transparency International (TI), launching the TI *Global Corruption Report 2005*... “Corruption in procurement plagues both developed and developing countries,” Eigen added. “When the size of a bribe takes precedence over value for money,” he said, “the results are shoddy construction and poor infrastructure management. Corruption wastes money, bankrupts countries, and costs lives....”

“Funds being poured into rebuilding countries such as Iraq must be safeguarded against corruption,” Eigen said.... “Transparency must also be the watchword as donors pledge massive sums for reconstruction in the countries affected by the Asian tsunami,” he added. The *Global Corruption Report 2005*, with a foreword by Francis Fukuyama, includes a special focus on construction and post-conflict reconstruction, and highlights the urgent need for governments to ensure transparency in public spending and for multinational companies to stop bribing at home and abroad.

“The unfolding scandal surrounding the UN sponsored oil-for-food programme in Iraq highlights the urgent need for strict conflict-of-interest rules and transparent and open bidding processes,” said Eigen. As Reinoud Leenders and Justin Alexander write in the *GCR 2005*, much of the anticipated expenditure on building and procurement in Iraq has not yet been spent. “If

urgent steps are not taken,” they write, Iraq “will become the biggest corruption scandal in history”.

To mark the publication of the *Global Corruption Report 2005*, on March 16, TI launched its Minimum Standards for Public Contracting, setting out a blueprint for transparent public procurement. According to Juanita Olaya, TI Programme Manager for Public Contracting, “[I]nternational donors and host governments must do more to ensure transparency in public procurement by introducing effective anti-corruption procedures into all projects. Tough sanctions are needed against companies caught bribing, including forfeiture of the contract and blacklisting from future bidding.”

The TI Standards call on public contracting authorities to ensure that contracts are subject to open, competitive bidding. Other measures include maintaining a blacklist of companies caught bribing; providing public disclosure of the entire process; and ensuring monitoring by independent oversight agencies and civil society. The TI Standards also advocate the use of a TI Integrity Pact, which commits the authority and bidding companies to refrain from bribery. The Integrity Pact is a tool that has already been successful in reducing corruption and cutting the costs of dozens of procurement procedures around the world, and most recently has been agreed to be deployed in the EUR 2 billion development of the Berlin-Brandenburg International Airport in Germany.

TI also urged the private sector to do more to curb bribery. “Companies from OECD countries must fulfil their obligations under the OECD Anti-Bribery Convention and stop paying bribes at home and abroad,” said Eigen. “With the spread of anti-bribery legislation, corporate governance and anti-corruption compliance codes, managers have no excuse for paying bribes,” he said. A promising sign, he said, was the addition of a tenth anti-corruption principle to the UN Global Compact, signed by close to 2,000 international companies, and the endorsement of a public anti-corruption

pledge by 63 companies from the energy, metals and mining, and engineering and construction sectors at the World Economic Forum in Davos in January 2005. The challenge now for companies is to enforce tough anti-bribery policies.

#### *The costs of corruption*

The scale of corruption is magnified by the size and scope of the construction sector, estimated globally at some US \$3,200 billion per year. The *Global Corruption Report 2005* presents detailed case studies of large-scale infrastructure projects that have been plagued by corruption – including international bribes paid to secure contracts for the Lesotho Dam, and the implication of politicians in corruption concerning the purchase of a waste incinerator in Cologne, Germany.

The *Global Corruption Report 2005* finds that a lack of transparency in large-scale projects can have a devastating impact on economic development. “Corrupt contracting processes leave developing countries saddled with sub-standard infrastructure and excessive debt,” said Eigen today. Corruption raises the cost and lowers the quality of infrastructure. But the cost of corruption is also felt in lost lives. The damage caused by natural disasters such as earthquakes is magnified in places where inspectors have been bribed to ignore building and planning regulations. Corruption steers money away from health and education programmes towards large capital-intensive infrastructure projects. Corruption can also have disastrous environmental consequences – the Yacyretá dam in Argentina, the Bataan nuclear power plant in the Philippines and the Bujagali dam in Uganda have all been subject to allegations of the improper diversion of money.

#### *Taking action to prevent corruption*

To coincide with the publication of the *Global Corruption Report 2005*, Transparency International is launching an international initiative aimed at preventing corruption in construction projects. Neill Stansbury, Project

Director for Construction & Engineering at TI-UK, who is leading the initiative, said that “corruption in construction projects can be avoided if all parties put into place the necessary preventive measures. This requires coordinated international action by governments, banks, export credit agencies, project owners, contractors and other relevant parties.” TI has produced a series of risk assessments, action plans and anti-corruption tools for this sector, and it will use these to lobby relevant organisations to take action to prevent bribery.

The Global Corruption Report 2005 also includes detailed assessments of the state of corruption in 40 country reports written by Transparency International's national chapters and other experts. The book contains the findings of the latest research into corruption and ways to combat it, including studies on the links between corruption and issues such as pollution, gender and foreign investment.

[The Global Corruption Report 2005 is published in London by Pluto Press (ISBN 0 7453 2396 0). The book can be ordered (£19.99 / \$29.95 plus postage and packing) through online booksellers, local bookshops or the publisher ([www.plutobooks.com](http://www.plutobooks.com)). The report is published in French by Economica (ISBN 2-7178-5025-2).]

### ***<sup>1</sup>Transparency International's Minimum Standards for Public Contracting***

*Public procurement authorities should:*

1. Implement a code of conduct that commits the contracting authority and its employees to a strict anti-corruption

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<sup>1</sup> *This is an edited version of the Standards. The complete text can be found in the Global Corruption Report 2005, pp 4-6.*

- policy. The policy should take into account possible conflicts of interest, provide mechanisms for reporting corruption and protect whistleblowers.
2. Allow a company to tender only if it has implemented a code of conduct that commits the company and its employees to a strict anti-corruption policy.
3. Maintain a blacklist of companies for which there is sufficient evidence of their involvement in corrupt activities. Debar blacklisted companies from tendering for the authority's projects for a specified period of time.
4. Ensure that all contracts between the authority and its contractors, suppliers and service providers require the parties to comply with strict anti-corruption policies. This may best be achieved by requiring the use of a project integrity pact committing the authority and bidding companies to refrain from bribery.
5. Ensure that public contracts above a low threshold are subject to open competitive bidding.
6. Provide all bidders, and preferably also the general public, with easy access to information about all phases of the contracting process, including the selection and evaluation processes and the terms and conditions of the contract and any amendments.
7. Ensure that no bidder is given access to privileged information at any stage of the contracting process, especially information relating to the selection process.
8. Allow bidders sufficient time for bid preparation and for pre-qualification requirements when these apply.
9. Ensure that contract 'change' orders that alter the price or description of work beyond a cumulative threshold are monitored at a high level, preferably by

- the decision-making body that awarded the contract.
10. Ensure that internal and external control and auditing bodies are independent and functioning effectively, and that their reports are accessible to the public. Any unreasonable delays in project execution should trigger additional control activities.
  11. Separate key functions to ensure that responsibility for demand assessment, preparation, selection, contracting, supervision and control of a project is assigned to separate bodies.
  12. Apply standard office safeguards, such as the use of committees at decision-making points and rotation of staff in sensitive positions. Staff responsible for procurement processes should be well trained and adequately remunerated.
  13. Promote the participation of civil society organisations as independent monitors of both the tender and execution of projects.

### **Corruption Issues in the Tsunami Relief Effort and Post-tsunami Reconstruction**

Along with the tragic loss of lives and property in South and Southeast Asia, due to the tsunami of 26 December 2004, another potential risk occurred, that of the dangers of corruption and/or the lack of transparency in the humanitarian efforts to assist those affected by the tsunami.

As the leading anti-corruption NGO, TI, through the National Chapters in the affected areas and the Secretariat in Berlin, is addressing the main corruption risks that result from:

- sudden flows of large amounts of money, goods and services;
- pressure to deliver aid quickly in order to save lives;

- the need for flexibility to provide effective relief;
- the substantial economic opportunities that arise from large-scale reconstruction.

It is essential to have in place a tracking mechanism, and it must be backed up by the commitment of both donors and recipients, public and private, to exercise the utmost transparency in the budgetary and expenditure processes. On 9 January 2005, the UN announced it is working with international financial experts, including PricewaterhouseCoopers, all on a *pro bono* basis, on creating a public tracking system for most of the relief funds.

One major area of focus for the potential for corruption is the reconstruction process. Although government expenditures and procurement can be normally well controlled through financial, budgetary and procurement/purchasing controls, where compliance is ensured through oversight mechanisms and accountability, often, in emergency situations, such rules can be circumvented or even broken. Special waivers are often explicitly placed in the procurement processes to this end. In order to circumvent corruption, these arrangements and waivers should be discouraged and replaced with simple accounting and inventory controls for goods and tight controls on expenditures and distribution of cash.

TI has prepared some initial recommendations, both for the corruption risks in the immediate emergency phase as well as the longer-term reconstruction phase, for all players, governments, donors, civil society organisations, businesses and the media, involved in the relief efforts:

**Governments receiving aid should:**

- Proactively publish information detailing the aid they have received and how it is being used.
- Ensure sound financial management of the funds donated to them, irrespective of the form of aid.
- Seriously consider establishment of a special trust fund through which all funds received for disaster relief are to be channelled.
- Strive to create broad political support for aid and reconstruction strategies by engaging with parliament.
- Involve local communities and national stakeholders (including NGOs and companies) in decisions about how aid is spent. Citizens should be involved at every stage of the relief and reconstruction process, from planning, through implementation to evaluation.
- Ensure that aid and reconstruction efforts help build capacity among public officials.
- Implement appropriate mechanisms to protect whistleblowers and establish channels to facilitate the inflow of information relating to corruption (i.e. a telephone hotline or website).
- Denounce corrupt behaviour publicly and to the appropriate authorities, irrespective of the nationality of the initiator.

**Donors giving aid should:**

- Ensure sound financial management of aid given, including the establishment of mechanisms to track aid flows from source to destination and, where appropriate, the financing of external audits.
- Proactively publish information detailing aid given and its final destination, irrespective of the form of aid.

- Prioritise forms of aid that promote local skills and capacities (e.g. when implementing reconstruction projects). Minimise aid that is tied to the procurement of goods and services from the donor country only.
- Seek to reduce the burden of foreign debt owed by recipient countries where this is an appropriate way to support emergency relief and reconstruction efforts. The cancellation or suspension of foreign debt should be accompanied by appropriate governance reforms to ensure transparent management of released resources.
- Coordinate with other donors as well as with aid recipients at international, national and local level to ensure the efficacy of aid and reconstruction efforts. In particular, donors should seek to harmonise procurement standards to increase the efficacy of project implementation.
- Conduct appropriate risk assessments of implementing partners, including the partners' record, control and implementation arrangements, the amount of aid devoted to each activity, level of staff experience and degree of management support for financial controls.
- Encourage companies and other organisations at home and abroad to behave with high ethical standards, particularly with regard to contracting opportunities resulting from the disaster.
- Actively support local and international civil society efforts to introduce transparency and prevent corruption in countries receiving aid.

**Civil society organisations should:**

- Mobilise public support for transparency in aid and reconstruction



efforts both in donor and recipient countries.

- Encourage and facilitate the involvement of local communities in decisions about how aid is spent.
- Advocate sound financial management, transparent procurement, detailed aid tracking and the publishing of aid allocations vis-à-vis both donors and recipient countries.
- Undertake selective monitoring activities in relation to aid flows, processes to establish reconstruction priorities, contracting procedures and the delivery of goods and services.
- Where practical, provide training to and exchange information with other stakeholders, empowering them to play a role in enhancing transparency in aid and reconstruction efforts.
- If executing aid and reconstruction projects, remain accountable to donors and to the public in both donor and recipient countries. Publish information on the resources allocated and how they are used.
- Behave with the same high ethical standards expected of others and refuse to participate in activities that require bribery or embezzlement.
- Report to the relevant authorities and to the public instances of fraud and corruption during the aid and reconstruction effort, regardless of the initiator.

#### **Businesses operating in the disaster area should:**

- Behave with high ethical standards, particularly with regard to contracting opportunities resulting from the disaster. Business should refuse to participate in deals that require bribery or embezzlement.
- Report to the relevant authorities and to the public instances of fraud and

corruption during the reconstruction effort, regardless of the initiator.

#### **The media should:**

- Facilitate the flow of information to the public in both donor and recipient countries with regard to aid and reconstruction efforts and goals.
- Report on instances of fraud and corruption during the aid and reconstruction effort and assist official investigations into corrupt practice.

TI, along with the ADB and the OECD, is planning to co-sponsor a workshop, to be held in Jakarta in early April, on approaches to curbing corruption in development aid with specific reference to the tsunami disaster. Results from this workshop will help to further refine the above recommendations and contribute to the ongoing activities of TI with regard to the tsunami crisis and the broader issue of corruption and humanitarian aid.

*For further information, visit:*  
[www.transparency.org](http://www.transparency.org)

#### **Zero-Tolerance Policy to Combat Corruption and Bribery**

At the end of January, in Davos, Switzerland, 62 companies, in the energy, mining and metals, engineering and construction sectors signed on to *Partnering Against Corruption Principles for Countering Bribery* (PACI Principles). These Principles use as their source TI's *Business Principles for Countering Bribery* and prescribe two fundamental actions:

- a zero-tolerance policy towards bribery, and
- the development of a practical and effective implementation programme.

Of the 62 companies, three are Canadian, including two TI-Canada members, Alcan Inc. and SCN-Lavalin Group Inc. As noted in the World Economic Forum's 28 January 2005



press release, "The companies' support means they will either implement anti-bribery and anti-corruption practices based on the PACI Principles or use them to benchmark and improve their existing programmes so they achieve the objectives of the PACI Principles. The widespread adoption of the PACI Principles will raise business standards across the world and contribute to the goals of good governance and economic development." The more companies that sign on, the more level will become the playing field for international competition.

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*For a copy of the full PACI Principles, visit:*  
[www.weforum.org/pdf/paci/principles.pdf](http://www.weforum.org/pdf/paci/principles.pdf)

### **Newfoundland passes Transparency and Accountability Act**

The Government of the Province of Newfoundland has a management system based upon the British style financial controls set up by Gladstone in the late 1800's. Newfoundland has always had stringent control over finances and expenditures and, since 1973, it has had relatively strong controls over government hiring and procurement. Of special interest is its "conflict of interest" regime that has included disclosure of assets for elected officials and senior public servants and their immediate family members. In addition, numerous institutional mechanisms have been introduced over time to provide for oversight of such matters as elections, energy rate setting - including control of gasoline prices at the pump, an advocacy office for children, an ombudsman, a mechanism for access to information and a privacy commissioner, police complaints, human rights and many joint decision-making bodies that provide significant citizen input.

Recently, the government of Premier Danny Williams reviewed and strengthened the integrity regime. This includes new legislation covering the registration of "lobbyists," a new access to information act, significant amendments to tendering and central purchasing law. A Transparency and Accountability Act, that sets performance standards for senior officials and for all government funded units in the Province, was enacted at this last session of the Newfoundland House of Assembly.

On December 16 at the closing of the 45th Assembly, the Premier said "With regard to the legislation that has gone through the House, I would have to say the corner piece of our own legislation, our own legislative agenda, was the *Transparency and Accountability Act*. We are hoping to be more open, more transparent, more accountable."

### **Journalism a dangerous profession**

According to the International Federation of Journalists, 2004 was a record year for deaths among journalists and media staff. Last year, 129 journalists and media staff were killed, making 2004 the worst yearly record in history. Many of the deaths were due to the stories on which the journalists were working, most often involving corruption. Most governments whitewash investigations into these deaths, and very few perpetrators are brought to justice.

*For the full report of the IFJ, visit:*  
[www.harlandco.com/download/kill\\_list\\_2004\\_1\\_ores.pdf](http://www.harlandco.com/download/kill_list_2004_1_ores.pdf)

We invite you to visit: [www.transparency.ca](http://www.transparency.ca)  
[www.transparency.org](http://www.transparency.org)

