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Global Witness Submission to the Joint Committee on the Draft Constitutional Renewal Bill

Global Witness would like to take this opportunity to express our serious concerns with respect to the *Draft Constitutional Renewal Bill* ("Bill") Part 2 "Ground Rules for Attorney's Superintendence of Directors."

Global Witness is a London-based non-governmental organisation which exposes the corrupt exploitation of natural resources and international trade systems. We obtain evidence which we use to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. Global Witness was co-nominated for the 2003 Nobel Peace Prize for its work on "conflict diamonds".

Global Witness strongly takes the position that a system of accountability, government checks and balances, and independence of the judiciary, is essential to end the impunity of those who engage in corrupt and other illegal activities. And it is because of this position that we feel obligated to respond to the Joint Committee's call for evidence on the Bill.

Global Witness' concerns regarding Part 2 of the Bill:

Global Witness expressly endorses The Corner House's submission to the Joint Committee.¹ In addition we submit the following:

Section 2 Ban on directions in individual cases

Global Witness believes that there should be no exception to this principle.

Section 3 Protocol for running of prosecution services

Global Witness believes that the protocol should be subject to parliamentary debate and regular monitoring by the Parliamentary Select Committee. We also take the view that the circumstances in which the Attorney General is to be consulted or provided with information should be limited.

In addition, Global Witness believes that a timeframe should be established for the review and revision process of the protocol and that Parliament should be able to amend the protocol after debate.

¹ *Submission to the Joint Committee on the Draft Constitutional Renewal Bill* submitted by The Corner House is attached as Annex "A"

Section 4 to 6 New provisions about tenure of office of Directors

Global Witness thinks that it is inappropriate for the Directors to be appointed by the Attorney General as long as s/he remains a member of the Executive. We agree that the selection criteria for Directors should be fully transparent and that the decision to remove the Directors should be subject to an independent and impartial review.

Sections 12 – 15 Safeguarding of national security

Global Witness would like to express our serious concerns regarding the Attorney General's power to intervene and issue directions to stop *any* prosecution and Serious Fraud Office ("SFO") investigation on the grounds of national security. This power is too discretionary and without sufficient parliamentary and judicial oversight, and is presented as a statutory right without checks and balances.

The following sections are of specific concern:

- 12(1) - There are no limits with respect to the types of prosecutions that can be stopped since this power of direction can apply to *any* prosecution and SFO investigation.
- 12 - There is no regular review of the Attorney General's directions to stop any prosecutions and SFO investigation.
- 12(2) - The terms upon which the Attorney General can withdraw a direction are not stated and therefore cannot be scrutinised.
- 13(3) - There is no provision for the Directors or any prosecutor to oppose a direction once issued by the Attorney General; furthermore that individual can be subjected to criminal prosecution if s/he refuses to provide requested information.
- 13(4) - The role of the court is unclear with respect to situations where a prosecutor fails to comply with a direction issued by the Attorney General.
- 13(5) – The terms regarding the certificate are weak and insufficient, particularly as there is no built-in peer review mechanism of the basis on which the chosen Minister of the Crown issues it. This is especially disconcerting given that the certificate serves as conclusive evidence as to whether or not the direction was necessary for the purpose of safeguarding national security in the first place. For these reasons, Global Witness believes that the use of certificates should be withdrawn or revised.
- 14 - There is no specified timeframe or limit for the Attorney General to provide a report to Parliament. There are also no requirements to include in the report the nature of the information that caused the direction to be brought in the first place; in fact, the relevant information can be omitted. Without this information the report would in essence be a statement of fact advising Parliament that the Attorney General had issued a direction.
- 15 - The power of the Attorney General to request information is absolute and any person refusing to do so "without reasonable excuse" would be subject to criminal prosecution.

Section 16 Annual reports on exercise of Attorney General's function

Global Witness is concerned that there would be no effective parliamentary oversight of the exercise of the Attorney General's functions due to the opacity of the annual reporting requirements.

Section 17 Interpretation

Global Witness is concerned that the wording "relations" in (a) and "interests" in (c) are too vague and open to misapplication and, therefore, should be removed.

Global Witness' concerns relating to repercussions of the Bill

Global Witness believes that the introduction of this Bill would have a seriously negative effect on the UK's ability to investigate and prosecute a large variety of crimes. The power of the Attorney General to

halt any prosecution and SFO investigation without clearly defined limits, oversight and accountability is a dangerous precedent that we believe the UK Government would object to in other jurisdictions.

We think that the sections of the Bill, highlighted above, could have a disastrous effect on the good reputation the UK Government has internationally. This reputation is as a result of its active and positive contribution to the fight against international crimes, especially in the area of corruption, for example:

- The efforts to both launch and operationalise the now international effort to create transparency for revenue streams from the extractive sector: The Extractive Industries Transparency Initiative (“EITI”). Though the EITI Secretariat has now moved from its London DFID base to Oslo, the UK has continued to play a very constructive role in this process.
- The establishment of: i) the City of London Police’s Overseas Anti-Corruption Unit to investigate allegations of bribery offences committed by UK companies in foreign jurisdictions; and ii) the Metropolitan Police’s unit that investigates and uncovers the proceeds of corruption in London in cooperation with anti-corruption commissions in the country of origin.

Unfortunately, Global Witness has experienced first-hand how the UK’s reputation has been tarnished by the Government’s intervention to stop the SFO’s investigations into the Saudi Arabia component of its wider BAE corruption investigation. It is hard to overstate the extent of the damage this has caused. Global Witness plays a significant role in a number of multi-stakeholder initiatives, such as the EITI and Kimberley Process, and also attends numerous high-level anti-corruption meetings. We have lost count of the number of occasions when within debate, we have been presented with the hypocrisy and contradiction of the UK’s actions and rhetoric.

A further concern is that this Bill, with its use of a vague and open-ended definition of international relations and a lack of clarity on national security, could be used to avoid any scrutiny and debate about a decision made by the Executive. We feel the unintended consequences of the Bill combined with the UK Government’s recent actions have further reduced its capacity to comment or prevent other countries from attempting a similar approach to block high-level legal cases.

In order to illustrate our concerns, the following are two of many potential examples related to our work that could be faced if the current version of the Bill passes:

- It is possible that the Attorney General could block an investigation into bribery by UK oil companies for new oil concessions, out of concern about security of oil supply as a matter of national security. Global Witness can already point to some examples where such investigations should have been conducted. If this Bill passes, would it undermine the possibility for any prosecution and SFO investigation?
- What position would the Attorney General take regarding the potential for money laundering investigations into key well-connected brokers, currently residing in the UK? Here we are referring to individuals we have identified in our investigations as playing key roles in the brokering of illegal arms deals and the asset-stripping of foreign countries. Very often such individuals also play a brokering role for access to concessions in corrupt countries for UK (and others) companies – could such matters be defined by the Attorney General as matters of national security because of their commercial “interests” and the importance of the “relations” with the said country?

Global Witness hopes that the members of the Joint Committee on the Draft Constitutional Renewal Bill will carefully consider the national and international implications of the Bill in its current form. We appreciate the opportunity to make this submission.