



**Press release**

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for immediate release

## **Legal challenge to blanket immunity given to BAE Systems**

Campaign Against Arms Trade and The Corner House are challenging the blanket immunity from prosecution given by the Serious Fraud Office (SFO) to BAE Systems as part of its February 2010 plea bargain settlement with the company.

The immunity clause states that:

*"There shall be no further investigations or prosecutions of any member of the BAE Systems Plc group for any conduct preceding 5 February 2010."*

Solicitors Leigh Day & Co (acting for the two groups) have written to the SFO Director arguing that this clause should be quashed.

The immunity covers *any* criminal conduct, including that unrelated to bribery, corruption and serious fraud and including that not disclosed by BAE to the SFO. It is not limited to the alleged bribery that the SFO had been investigating.

This clause became public only when the terms of the SFO's BAE settlement agreement were read out in open court on 21 December 2010 by Mr Justice Bean. In his highly critical judgment of the "loosely and perhaps hastily drafted agreement", Justice Bean stated:

*"I am surprised to find a prosecutor granting a blanket indemnity for all offences committed in the past, whether disclosed or otherwise."*

In exchange for securing this immunity, BAE pleaded guilty to a relatively minor accounting offence in its complex scheme of offshore companies used to pass and make payments relating to its supply of a radar system to Tanzania.

The legal letter states that "*no public prosecutor . . . could properly enter into a settlement agreement guaranteeing immunity in respect of serious criminal offences of which it was entirely unaware.*"

If BAE has disclosed all relevant conduct to the SFO, however, there is no reason for the immunity clause. "*The inference must be that BAE still has something to hide, of which the SFO is currently unaware,*" says the letter.

In these circumstances, the two groups state that "*it is impossible to understand how the public interest is served*" by the "*exceptional, unusual and entirely unnecessary*" immunity clause.

## ENDS

## NOTES

1. Campaign Against Arms Trade (CAAT) works for the reduction and ultimate abolition of the international arms trade.  
[www.caat.org.uk](http://www.caat.org.uk)

The Corner House aims to support democratic and community movements for environmental and social justice through analysis, research and advocacy.  
[www.thecornerhouse.org.uk](http://www.thecornerhouse.org.uk).

The Serious Fraud Office is a UK government department that investigates and prosecutes complex fraud. It aims to contribute to "the delivery of justice and the rule of law." It had been investigating alleged bribery and corruption in BAE's deals in at least six countries since 2004.  
[www.sfo.gov.uk](http://www.sfo.gov.uk).

BAE Systems is one of the world's largest arms producers. It makes fighter aircraft, warships, tanks, armoured vehicles, artillery systems, missiles and munitions. Its foremost markets are Saudi Arabia and the United States. It has consistently denied any wrong-doing.

2. On 5 February 2010, the Serious Fraud Office announced its plea bargain settlement with BAE Systems. Details became public, however, only on 21 December 2010, when Mr Justice Bean sentenced the company at London's Southwark Crown court after it had pleaded guilty to not accounting accurately for \$12.4 million of payments made between 1999 and 2005 to a Tanzania-based businessman, Shailesh Vithlani, for his work as a marketing agent in helping to secure a £28 million radar contract from the Government of Tanzania in 1999.
3. In addition to the blanket immunity clause, the plea bargain settlement agreement included the following:
  - 6) *The SFO shall not prosecute any person in relation to conduct other than conduct connected with the Czech Republic or Hungary.*
  - 7) *The SFO shall forthwith terminate all its investigations into the BAE Systems Group.*

9) *There shall be no civil proceedings against any member of the BAE Systems Group in relation to any matters investigated by the SFO.*

10) *No member of the BAE Systems Group shall be named as, or alleged to be, an unindicted co-conspirator or in any other capacity in any prosecution the SFO may bring against any other party.*

In sentencing BAE, Mr Justice Bean said (paragraph 5):

*The Settlement Agreement is, with respect, loosely and perhaps hastily drafted. In paragraph 6 "any person" is not defined, and paragraph 10 is not, at least expressly, confined to conduct preceding the agreement. But the heart of the matter is paragraph 8, whereby the SFO agreed that there would be "no further investigation or prosecutions of any member of the BAE Systems Group for any conduct preceding 5 February 2010." It is relatively common for a prosecuting authority to agree not to prosecute a defendant in respect of specified crimes which are admitted and listed in the agreement: this is done, for example, where the defendant is an informer who will give important evidence against co-defendants. But I am surprised to find a prosecutor granting a blanket indemnity for all offences committed in the past, whether disclosed or otherwise. The US Department of Justice did not do so in this case: it agreed not to prosecute further for past offences which had been disclosed to it.*

4. For further information, see

<http://www.thecornerhouse.org.uk/resources/results/taxonomy:114>