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## PRESS RELEASE

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### **Court rules Government's termination of BAE-Saudi investigation unlawful**

The High Court this morning ruled that the Director of the Serious Fraud Office (SFO) acted unlawfully when he stopped a corruption investigation into BAE Systems' arms deals with Saudi Arabia.

The judgment was handed down by Lord Justice Moses and Mr Justice Sullivan in response to a judicial review brought by Campaign Against Arms Trade (CAAT) and The Corner House.

In the light of this judgment, the Serious Fraud Office must reopen the BAE-Saudi corruption investigation immediately. Both groups are calling upon the SFO to work jointly with US and Swiss investigators in doing so.

The judges detailed how BAE lobbied the Government by suggesting that the company would lose a large Saudi arms sale if the investigation was not dropped.

When the SFO was about to obtain access to Swiss bank accounts, Saudi Arabia threatened not only to cancel the arms deal but also to withdraw diplomatic and intelligence co-operation. This threat was made by Prince Bandar, who was allegedly complicit in the corruption under investigation.

The judges described the SFO Director's subsequent termination of the investigation on 14th December 2006 as a "successful attempt by a foreign government to pervert the course of justice in the United Kingdom".

They ruled that:

"No-one, whether within this country or outside, is entitled to interfere with the course of our justice. It is the failure of Government and the

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defendant [the Director of the Serious Fraud Office] to bear that essential principle in mind that justifies the intervention of this court."

In explaining their reasons for ruling in favour of The Corner House and CAAT, the judges found that:

- i) The Director of the Serious Fraud Office had failed to exercise his independent judgment in halting the investigation.
- ii) The Director had failed to convince the court that he had done all in his power to resist the threat in order to uphold the rule of law.

They stated:

"The Director failed to appreciate that protection of the rule of law demanded that he should not yield to the threat . . . We are driven to the conclusion that the Director's submission to the threat was unlawful."

The judges were scathing about the Government's arguments for ending the investigation

"It is obvious . . . that the decision to halt the investigation suited the objectives of the executive. Stopping the investigation avoided uncomfortable consequences, both commercial and diplomatic."

As to whether the SFO Director's action had broken the OECD's Anti-Bribery Convention, the judges concluded that the SFO Director should answer to the OECD's Working Group on Bribery.

Susan Hawley of The Corner House, said:

"This is a great day for British justice. The judges have stood up for the right of independent prosecutors not to be subjected to political pressure. And they have made sure that the Government cannot use national security arguments just because a prosecution is not in their interests."

Symon Hill, spokesperson for Campaign Against Arms Trade (CAAT), said:

"We are delighted. This judgment brings Britain a step closer to the day when BAE is no longer calling the shots. It has been clear from the start that the dropping of the investigation was about neither national security nor jobs. It was due to the influence of BAE and Saudi princes over the UK Government. As we have pursued this case, we have been overwhelmed by the support we have received from people in all walks of life, who do not want BAE to be above the law that the rest of us have to follow."

The judgment comes just weeks after Gordon Brown's Government announced that it is planning to give the Attorney General the power to stop criminal investigations and prosecutions by citing "national security" without the decision being subjected to judicial consideration or meaningful

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Parliamentary oversight. In the light of today's judgment, The Corner House and CAAT insist that this proposed legislation, contained in the Constitutional Renewal Bill, must be abandoned.

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**Editor's Notes:**

**1. Campaign Against Arms Trade (CAAT)** works for the reduction and ultimate abolition of the international arms trade. **The Corner House** is an environmental and social justice NGO. They have been represented throughout the proceedings by **Leigh Day & Co**, along with counsel from **Blackstone Chambers**.

**2.** Lord Justice Moses and Mr Justice Sullivan heard the judicial review brought by Campaign Against Arms Trade (CAAT) and The Corner House on 14-15 February 2008.

For a time line of the judicial review, go to:  
<http://www.controlbae.org/background/review.php>

For arguments and evidence presented, go to:  
<http://www.thecornerhouse.org.uk/subject/corruption/>

**3.** The Corner House and CAAT challenged the SFO Director's decision to terminate the BAE-Saudi investigation on six grounds, on which the judges ruled as follows:

- i) It was unlawful and against the constitutional principle of the rule of law for the Director to give in to the threat made by Prince Bandar of Saudi Arabia;
- ii) The Director failed to take into account the threat posed to the UK's national security, the integrity of its criminal justice system, and the rule of law by giving into the threat;
- iii) The Director mis-interpreted Article 5 of the OECD Convention and took into account irrelevant considerations;
- iv) The Director failed to take into account the fact that Saudi Arabia would be breaching its international obligations on terrorism if it carried out the threat;
- v) The advice given by ministers was tainted by irrelevant considerations under Article 5 of the OECD Convention;
- vi) The Shawcross exercise was improperly conducted as ministers expressed opinion as to what the Director's decision should be.

**4.** The Government published the draft Constitutional Renewal Bill on Tuesday 25 March 2008.

–Clause 12 empowers the Attorney General to direct a prosecutor to discontinue an investigation or prosecution if satisfied it is necessary to do so to safeguard 'national security', which is not defined.

–Clause 13 makes such a direction binding on prosecuting authorities. If the direction's necessity is questioned, a certificate signed by a Government Minister

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certifying that the direction was necessary would be considered as conclusive evidence of that fact.

–Clause 14 obliges the Attorney General to report to Parliament on the giving or withdrawal of a direction, but allows the Attorney General to exclude information that could prejudice national security or international relations.

–Clause 17 defines 'prejudice to international relations' widely as including:

- relations between the UK and another other state, or international organization or court;
- the interests of the UK abroad;
- the promotion or protection by the UK of its interests abroad.

'The interests of the UK' are not defined.

<http://www.justice.gov.uk/docs/draft-constitutional-renewal-bill.pdf>