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# BAE: The People's Jury

## About this document

This document contains all of the original content of the website [baepeoplesjury.caat.org.uk](http://baepeoplesjury.caat.org.uk)

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# BAE: The People's Jury

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## Join the people's jury

BAE, arms supplier to some of the world's most despicable regimes, has once again escaped real sanctions for corruption in its deadly deals.

In 2006, BAE escaped the process of justice when Tony Blair quashed the investigation by the Serious Fraud Office into BAE's multi-billion pound – and corruption-riddled – deals with Saudi Arabia, one of the world's most authoritarian regimes. This year, the Serious Fraud Office allowed BAE to buy its way out of trouble. In return for pleading guilty to “accounting irregularities” in its deals with Tanzania, it would end its investigations into BAE's activities in South Africa, Romania and the Czech Republic.

BAE's Chairman, Dick Olver, has dismissed criticism, claiming the deals are “historical. Almost archaeological.” We disagree. The repercussions of BAE's behaviour are felt by civilians across the world – those whose lives are devastated by conflict, those who live under corrupt and repressive regimes, and those who see money needed for health, education and infrastructure diverted to arms. Here in the UK, we find ourselves subsidising an international company that is seemingly above the law.

We may not be able to see BAE held to account in a courtroom, but we're not letting them off the hook. At their AGM on 5 May, BAE did not escape justice in the court of public opinion. The People's Jury unanimously found a 12 foot BAE Chair guilty while the real Dick Olver was held to account inside the AGM.

## About BAE

### What BAE does

BAE Systems is the world's second largest arms producer. It makes fighter aircraft, warships, tanks, armoured vehicles, artillery systems, missiles, munitions and much more. In 2008, company sales exceeded £18.5 billion, with about 95 per cent of these being military.

### Corruption Investigations

BAE has been under investigation in numerous countries. In December 2006, the Serious Fraud Office (SFO) dropped its corruption investigation into BAE's Saudi arms deals following pressure from BAE and the Saudi regime. However, investigations into the Saudi deals continued in both the US and Switzerland. In addition, the SFO and agencies in other countries continued to investigate many other BAE deals, including sales to Austria, the Czech Republic, Hungary, South Africa and Tanzania.

On 1 October 2009, the [SFO stated](#) that it intended "to seek the Attorney General's consent to prosecute BAE Systems for offences relating to overseas corruption", and on 29 January 2010 the [SFO charged](#) a former BAE agent with making illegal payments.

However, just a week later the [SFO settled](#) with BAE Systems. CAAT and The Corner House were shocked and angered by the plea bargain relating to only the smallest deal and began a legal challenge over the decision. On 2 March they were granted an injunction prohibiting the Director of the SFO from taking any further steps in its plea bargain settlement with BAE Systems.

### Global sales

BAE's arms are sold indiscriminately around the world. It has military customers in over 100 countries. Its recent focus has been on increasing sales to the US, specifically targeting equipment for the conflicts in Afghanistan and Iraq, and supplying Eurofighters to the Saudi Arabia regime. Other export deals include sub-systems for Israeli F-16 fighter aircraft and sales to both India and Pakistan.

### A 'UK' company?

BAE is now an international company with six "home markets":

- the US, with 46,900 employees
- the UK, with 32,800
- Australia, with 6,100
- Saudi Arabia, with 4,400
- Sweden, with 1,600
- South Africa, with 800

and India likely to become a seventh. BAE is unlikely to prioritise UK interests. As its Annual Report states, its strategy is “to deliver sustainable growth in shareholder value”.

## BAE & the government

### How the Government supports BAE's dodgy deals

BAE's dodgy deals couldn't have happened without the help provided over recent decades by both Conservative and Labour governments.

The UK government provides astonishing levels of political and financial support to the arms industry in general, and BAE in particular. Perhaps most importantly, the company had a loyal servant in Tony Blair. In his autobiography, former Foreign Secretary Robin Cook observed "I never once knew number 10 come up with any decision that would be incommensurate to British Aerospace". Tony Blair went out of his way to promote arms deals for the company (in Saudi Arabia, South Africa, India) and overruled cabinet colleagues to approve controversial arms export licences (to Tanzania, Zimbabwe).

In 2001 BAE sold a £28 million Watchman air traffic control system to Tanzania, one of the world's poorest countries. The deal was pushed through by Prime Minister Tony Blair, despite opposition by his International Development Secretary Clare Short, who, said she did not think the contract "could have been made cleanly". In 2002 the International Civil Aviation Organisation said the system used dated technology and was not adequate for civil aviation. Norman Lamb MP, who compiled a dossier on the deal, said a modern system could have been provided for 10% of the cost.

The Serious Fraud Office's investigations into BAE's corrupt multi-billion pound deals with Saudi Arabia were stopped after personal intervention by Tony Blair.

### The support systems that promoted these sales remain in place today.

The Government is still working on behalf of BAE, and other arms companies, to promote weapons sales to unstable and repressive regimes and countries with urgent development needs. The government unit that supports these sales is UKTI DSO\* which exists solely to help arms companies make deals.

CAAT is campaigning to end the unquestioning and unjustifiable support the Government gives to arms companies today.

[Read more about UKTI DSO](#), and ask your parliamentary candidates to support our call for the closure of the government's arms sales unit.

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\* The UK Trade & Investment Defence & Security Organisation. It's a mouthful, isn't it? It would be much easier if they called themselves Arms R Us...

## Report - The People's Jury @ BAE AGM

One 12 foot high puppet (literally armed to the teeth) + 30 judge/jurors in wigs and cloaks = a strange sight for civil servants, tourists and shareholders in the City of Westminster this morning. The giant puppet was Dick Olver, Chair of the world's largest arms company, and the thirty judge/jurors were Campaign Against Arms Trade activists. The scene was set for the People's Jury outside BAE's AGM.

Chanting "BAE can't you see: corruption is your legacy", the People's Jury pursued Giant Dick Olver from 66 Victoria Street (home to the [government arms sales department](#) from which he receives so much support) to justice outside the AGM. There evidence was heard from the crowd on charges including:

Corruption

Selling weapons to repressive regimes

Targeting students and influencing university research agendas

Undermining South Africa's democracy

Misleading the public about its commitment to British jobs

When asked for their decision, the People' Jury was unanimous: GUILTY!

Meanwhile, CAAT supporters pursued the shorter and more lifelike version of Dick Olver inside with relentless and detailed questions on corruption. Olver's response was comically shallow and scripted: repeating several times that BAE would "self-report" anything dodgy they found out about or knew. Andrew Feinstein (former ANC MP) called for him to resign on this issue.

Other comedy moments came when Olver described how BAE are "doing our bit" for the environment: limiting their number of corporate jets to one and profiting from a couple of small renewables spin-offs from their military work.

CAAT activists will continue to ensure that while BAE managed to escape justice in the courts, they will not achieve the same feat in the court of public opinion. If you want to add your judgement to the People's Jury, you can do so here.



## Clare Short on BAE's deal with Tanzania

*2010 APRIL 27*

Clare Short, Secretary of State for International Development at the time the UK government approved the sale of an expensive and out-dated military radar system to Tanzania, writes:

“The Tanzanian Air Traffic Control system was small money by BAE standards. But the lengths they went to to sell an outdated military system to a country with no military need shows what a deeply corrupt culture they were working in. After being rejected once, they came back a decade later with half the project. By this time, Tanzania had debt relief and could only take on loans that were concessional. They then got together with Barclays and pretended to offer a concessional loan, which is an impossibility. By this time, Tanzania also had the offer of a European Investment Bank loan for a modern civilian air traffic control system also covering two other neighbouring countries, which was newer technology and massively cheaper.

My knowledge of this contract demonstrated with great clarity what a corrupt and dishonourable culture was prevalent in the company at that time.”

## Undermining South Africa's Young Democracy, by Andrew Feinstein

2010 APRIL 13

Andrew Feinstein, former ANC MP, writes:

When the ANC came to power in 1994, we were committed to reducing military expenditure in favour of much needed socio-economic spending. But there was an acknowledgement, not uncontroversial, that there was a requirement for some modernisation of the South African Defence Force, and a Defence Review took place. It identified equipment for peacekeeping that would cost just under 8 billion rand. By the time the arms deal is concluded in 2018, when payments end, it will have cost South African in excess of 100 billion rand.

The largest contract was for fighter and fighter trainer aircraft, a controversial requirement in and of itself given that the Air Force had at least 15 jets that had never been used. There were nine bidders for the contract and from these the Air Force Technical Committee drew up a shortlist of two. A bid by BAE/Saab was not on it: it didn't meet technical requirements in some areas and exceeded others in a way that would be problematic for South African pilots; and it was two and a half times more expensive than the aircraft the committee wanted.

However, the then Defence Minister Joe Modise was determined that BAE/Saab should gain the contract. He first demanded that their bid be added to the short-list. It was, as third. He then, in a "visionary" moment, instructed cost to be excluded from the decision on this the largest single contract entered into by the new democracy. But even taking this extraordinary step, the BAE/Saab bid was not first. So the final machination was to increase the weighting of the dubious offset criteria and to ask BAE to increase the level of industrial participation in its bid. It did so, and the contract was awarded, despite the SA Air force saying publicly they would only accept this jet if forced to do so by the politicians.

What was the motivation for such enthusiasm for the BAE/Saab plane? I would suggest the most compelling reason was the £116 million in bribes that were paid on that one contract. They were paid to Joe Modise, to his advisor Fana Hlongwane, to the ANC, and to middlemen and agents to "financially incentivise" decision makers.

I led the ANC group on the Public Accounts Committee at the time and, following a report from the Auditor-General, we began looking into the arms deals. Shortly afterwards I was being asked by a senior meeting of the party what I thought I was doing questioning the integrity of the cabinet and the leadership of the ANC. I was then summoned to see the Presidency, and told the matter would be dealt with internally in the party, not in public. I refused. Six weeks later I was removed from the committee, as were others who felt the deal should be investigated.

Before being removed from the Committee, we had set up a large multi-agency team to investigate the allegations of corruption. It was impossible for the ANC to simply end the investigation so instead they excluded the country's main anti-corruption body and Thabo Mbeki called in the heads of the four other bodies and told them who and what they could and could not investigate. This was unconstitutional.

Prosecutorial and investigative bodies were destroyed by this intervention. The main anti-corruption body, the Scorpions, ceased to exist at the beginning of 2009. The Public Accounts Committee has never been able to investigate an allegation of corruption against a senior member of the ANC. The

events signaled the start of a number of corruption scandals that used the same modus operandi to enrich senior party members and the party itself.

The ANC and the Government were prepared to undermine and destroy Parliament, a key institution that so many of them had fought so hard to achieve. It went from being an accountable vibrant forum where the executive and cabinet were held to account, to becoming nothing more than a rubber stamp for the wishes of the ANC leadership.

In the meantime, while we were spending what will amount to over £8 billion on arms and weapons that we didn't need and barely use, Thabo Mbeki told the five and a half million South Africans who were living with HIV and AIDS that we could not afford the anti-retroviral medication that they needed to stay alive.

South Africa's politics remains deeply scarred by the scandal and its cover-up, with current President Jacob Zuma initially charged with over 700 counts of corruption before a politically-charged decision resulted in the charges being dropped 10 days before his election. The investigative and prosecutorial authorities lurch from crisis to crisis while corruption becomes pervasive in this once so hopeful democracy.

The UK's failure to take any action against BAE suggests, according to a leading anti-corruption opposition MP in South Africa, that the UK has lost the moral authority to talk about good governance and fighting corruption to other world leaders. "They are no better than any of the rogue leaders in Africa who have used funds from bribes in arms deal to stay in power," she said.

## BAE: a view from the US - Professor Koehler

2010 APRIL 13

Mike Koehler is an Assistant Professor of Business Law at Butler University in the United States, and writes on the Foreign Corrupt Practices Act (FCPA) – a US federal law dealing with the bribery of foreign officials. This an edited extract from FCPA Professor, BAE, 5 February 2010.

In a joint enforcement action that is sure to generate much discussion and controversy, the U.K. Serious Fraud Office (SFO) and the U.S. DOJ announced today resolution of an enforcement action against BAE Systems.

The SFO [announced](#) that it has “reached an agreement with BAE systems that the company will plead guilty” to the offense of “failing to keep reasonably accurate accounting records in relation to its activities in Tanzania.”

BAE’s [press release](#) notes that “[i]n connection with the sale of a radar system by the Company to Tanzania in 1999, the Company made commission payments to a marketing adviser and failed to accurately record such payments in its accounting records. The Company failed to scrutinise these records adequately to ensure that they were reasonably accurate and permitted them to remain uncorrected. The Company very much regrets and accepts full responsibility for these past shortcomings.”

The SFO and company release note that BAE will pay a £30 million penalty “comprising a fine to be determined by the Court with the balance paid as a charitable payment for the benefit of Tanzania.”

In a strange turn of events, the SFO also [announced](#) that it has withdrawn [charges filed last week](#) against a former agent charged with “conspiracy to corrupt” and for “conspiring with others to give or agree to give corrupt payments [...] to unknown officials and other agents of certain Eastern and Central European governments, including the Czech Republic, Hungary and Austria as inducements to secure, or as rewards for having secured, contracts from those governments for the supply of goods to them, namely SAAB/Gripen fighter jets, by BAE Systems Plc.”

The SFO release notes that “[t]his decision brings to an end the SFO’s investigations into BAE’s defence contracts.”

So what happened to the charges and allegations involving certain Eastern and Central European governments, including the Czech Republic, Hungary, and Austria?

Good question.

Much like the wave of magician’s wand, they have simply disappeared.

Closer to home, the DOJ announced that it: “filed a criminal charge (here) in the U.S. District Court for the District of Columbia against BAE Systems plc charging that the multinational defense contractor conspired to impede the lawful functions of the Departments of Defense and State, made false statements to the Departments of Defense and Justice about establishing an effective anti-corruption compliance program to ensure conformance with the Foreign Corrupt Practices Act and paid hundreds of millions of dollars in undisclosed commission payments in violation of U.S. export control laws.”

The DOJ and BAE release note that the company “will pay a fine of \$400 million and make additional commitments concerning its ongoing compliance.”

According to the DOJ release (which is available through the DOJ Office of Public Affairs, but not yet publicly posted on DOJ’s website) “BAE Systems is charged with intentionally failing to put appropriate, anti-bribery preventative measures in place, contrary to the representations it made to the United States government, and then making hundreds of millions of dollars in payments to third parties, while knowing of a high probability that money would be passed on to foreign government decision makers to favor BAE in the award of defense contracts. BAE Systems allegedly failed to disclose these payments to the State Department, as it was required to do so under U.S. laws and regulations in order to get necessary export licenses.”

The bold language above would expose most companies to an FCPA enforcement action, but BAE is no ordinary company. It is a major defense contractor on both sides of the Atlantic (as noted in the criminal information “in 2008, BAE was the largest defense contractor in Europe and the fifth largest in the U.S. as measured by sales”).

You can bet that these charges were the subject of much negotiation so as to not upset current or future government contracts as well as foreign policy issues and concerns.

Can the enforcement agencies on both sides of the Atlantic say with a straight face that this case was merely about improper record keeping, making false statements to the government, and export licenses?

Transparency, corporate accountability, and indeed a criminal justice system all suffered setbacks today.

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Mike Koehler, Assistant Professor of Business Law, Butler University, FCPA Professor Blog, BAE 5 February 2010. You can read more of Professor Koehler’s reflections on BAE, and many other issues at <http://fcpaprofessor.blogspot.com/>

## About us

This site has been set up by [Campaign Against Arms Trade](#) to hold BAE to account at its annual AGM and beyond.

CAAT works for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.

CAAT is a network of people based in the UK who recognise that the arms trade severely undermines human rights, security and economic development at global, regional, national and local levels. CAAT also understands that government decisions are unduly influenced by arms companies. In seeking to end this trade, CAAT's priorities are to:

end all government political and financial support for arms exports;

end exports to oppressive regimes, countries involved in armed conflict or in regions of tension and countries whose social welfare is threatened by military spending;

promote policies to fully orientate the UK economy towards civil production.

CAAT supports the promotion of peace, justice and democratic values, and the prevention and resolution of conflicts by peaceful means. CAAT considers that high military spending is unacceptable and only reinforces a militaristic approach to problems. CAAT is committed to nonviolence in all its work.


If you'd like to contribute a guest post, or have any questions or comments, you can contact us by emailing [sarah@caat.org.uk](mailto:sarah@caat.org.uk).





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