

Gerechtshof Amsterdam
T.a.v. rekestenkamer art. 12 Sv
Ijdok 20, 1013 MM Amsterdam

15 May 2023

To the Amsterdam Court of Appeals,

Bribery of foreign public officials by multinational corporations is a major threat around the globe that allows undue influence for such companies at the expense of public resources, free and fair markets, democracy, and the rule of law. We call on the government of the Netherlands, as a signatory to the OECD Anti-Bribery Convention, to take up a significant case investigating oil multinationals Eni and the formerly Dutch-based Shell for alleged bribe-paying in Nigeria.

The case revolves around a 2011 deal by which Eni and Shell acquired rights to the OPL 245 offshore oilfield, one of Nigeria's richest oil blocks. Experts have alleged that about US\$1.1 billion of the US\$1.3 billion deal was transferred through government accounts to bribe members of then-President Goodluck Jonathan's administration.

The Netherlands already began investigating Shell's role in the deal. In 2019, the Dutch Prosecutors' Office (DPO) informed the company that there were grounds for prosecution, but it closed the case in 2021 due to double jeopardy following the acquittal of Shell, Eni and other defendants in Italy in 2021 and 2022. The Italian acquittal shocked the international community given the substantial evidence against the companies. Yet this is part of a pattern in Italy, as the 2022 Phase 4 review by the OECD Working Group on Bribery¹ found that the country is no longer in compliance with its international law obligations under the Convention, specifically citing this oil prospecting Nigeria case.

It therefore falls to the Netherlands to enforce the OECD Anti-Bribery Convention and reopen the investigation.

Transparency International's *Exporting Corruption 2022* report² found enforcement against foreign bribery to have hit its lowest point in over a decade. While the Netherlands was once categorised as a "moderate enforcer" in 2012, in the last decade it has failed to sufficiently meet commitments and is now considered to have just "limited enforcement". The Working Group on Bribery also noted concern about the dropping of this case and the Netherlands'

¹ OECD Anti-Bribery Convention, *Italy's Phase 4 Monitoring Report* (18 October 2022). Available at: <https://www.oecd.org/corruption/italy-oecdanti-briberyconvention.htm>

² Transparency International, *Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention* (11 October 2022). Available at: <https://www.transparency.org/en/publications/exporting-corruption-2022>

generally low level of enforcement in its most recent Phase 4 review,³ especially given the size and risk profile of the Dutch economy. Going after foreign bribery cases protects the competitiveness of companies as well as the resources of countries around the world and opportunities for sustainable development. It is therefore critical for the Netherlands to step up actions against such egregious violations.

In October 2022, ReCommon, HEDA and Corner House made a submission to the Amsterdam Court of Appeals challenging the Dutch prosecutorial decision to terminate the investigation into Shell. Transparency International supports this submission and urges you to proceed with investigation concerning the alleged grand corruption of Eni and Shell. As you assess the case, we would be happy to provide expertise from our experts and partners. We remain available as a resource for these essential efforts.

Thank you for your attention,



Lousewies van der Laan

Director
Transparency International Netherlands



Daniel Eriksson

Chief Executive Officer
Transparency International

³ OECD Anti-Bribery Convention, *Netherlands Phase 4 Monitoring Report* (5 November 2020). Available at: <https://www.oecd.org/netherlands/netherlands-oecdanti-briberyconvention.htm>