

Joel Salas  
Head of the Unit for Transparency Policies and International Cooperation  
Ministry of Public Function  
Mexico

Paul Kett  
Director  
Justice Reform  
Ministry of Justice  
United Kingdom

8 February 2012

### **Civil Society Submission to the G20 Anti-Corruption Working Group**

Dear Mr. Joel Salas and Mr. Paul Kett,

Corruption is an obstacle to the G20 objective of a sustainable, just and stable global economy. Bad governance distorts markets and destabilises societies, exacerbating poverty and social injustice. Governments, businesses and citizens across the globe have to join efforts to fight this common scourge by promoting more open governments and transparent and effective development cooperation.<sup>1</sup> As these agendas are intrinsically linked, the G20 is best placed to lead this fight and, in so doing, to set an example for other countries to follow. The Working Group has already made commendable headway on a number of key issues.

Drawing on our expertise, we, the undersigned organisations, would like to suggest the following priority issues for the next year based on the First Monitoring Report:

#### **Implementation of international legislative framework**

##### **1) UNCAC Ratification and Enforcement**

To demonstrate their leadership in anti-corruption all G20 countries should ratify and actively implement the Convention by the end of 2012. Part of making the Convention effective is having a transparent and inclusive review process. This would include that governments publish the focal points, review schedules, self-assessment checklists as well as full country reports and seek comments and input from civil society. We welcome the Working Group's commitment to lead by example by considering these voluntary options. States can maintain credibility by reporting annually to their parliament/congress and the public on their progress in this regard.

##### **2) Enforcement of Foreign Bribery Legislation**

We welcome new legislation criminalising foreign bribery in a number of G20 member states, including China, which is in line with the commitment to adopt and enforce laws and other measures against international bribery by 2012. We urge all G20 countries to make it happen by joining the OECD Anti-Bribery Convention and taking part in its peer review process as well as the UNCAC review process. Furthermore, the G20 should provide regular reports on the enforcement of their anti-bribery laws. The OECD's peer review process and TI's OECD Convention Progress Report<sup>2</sup> have demonstrated that most countries do not sufficiently prosecute foreign bribery related cases. If no effective action is taken, we are concerned that there may be some backsliding.

Where prosecutions do take place it is important to ensure perpetrators are required to adequately compensate victim countries, including as part of any settlement process or international arbitration.<sup>3</sup>

---

<sup>1</sup> As committed in the Busan Partnership for Effective Development Cooperation, Paragraph 33b on efforts to combat illicit financial flows.

<sup>2</sup> [www.transparency.org/global\\_priorities/international\\_conventions/projects\\_conventions/oecd\\_convention](http://www.transparency.org/global_priorities/international_conventions/projects_conventions/oecd_convention)

<sup>3</sup> See for example the concept of social damage: <http://14iacc.org/wp-content/uploads/SocialDamagePaper20.01.2011.pdf>

## National measures to prevent and combat corruption

### 3) Enforcement of Anti-Money Laundering Regulation

We are encouraged that new international anti-money laundering standards from the Financial Action Task Force (FATF) will be presented to the G20 at the Mexican summit and that there is an effort to integrate the UNCAC standards into them. Given that the enforcement of the current anti-money laundering standards has in many cases been found to be poor,<sup>4</sup> the G20 should push member states to properly enforce the revised FATF recommendations. This is in line with the asset recovery resolution passed at the UNCAC Conference of State Parties in Marrakesh that called for “robust regulation” to enforce anti-money laundering provisions.<sup>5</sup>

To implement the FATF standards G20 members should create mandatory national level registers or any other structure that discloses the beneficial ownership of companies and the beneficiary of trusts. This information should be shared with the competent investigative and judicial authorities both domestically and internationally taking into account legitimate individual and privacy rights. In addition, violations of tax law should be made a predicate offense for money laundering.

Furthermore, we welcome the G20 commitment to the Multilateral Convention on Tax Information Exchange and look forward to monitoring the number of mutual legal assistance requests made under this framework. For this Convention to become an effective framework for tracing the proceeds of corruption, tax evasion and organised crime, it will be essential that it is signed by developing countries and offshore financial centres.

### 4) Whistleblower Protection

We welcome the G20 commitment to implement whistleblower protection legislation by the end of this year. The compendium prepared by the OECD<sup>6</sup> sets a solid basis for such legislation, even though it still falls short of best practice as recommended by experts and civil society<sup>7</sup>. It is now critical to ensure that these high-level commitments are put into practice.

G20 countries should set an example by protecting whistleblowers from reprisals and ensuring effective and independent follow-up from disclosures. Legislative proposals should be consulted with relevant experts and civil society to ensure compliance with best practice.

### 5) Public Sector Integrity

We welcome the G20 selection of three key areas for progress on public sector integrity: Promoting the integrity and accountability of public officials, adopting fair and transparent government procurement systems and fiscal and budgetary transparency.

To this end, G20 countries should adopt and urge all countries to promptly enact the standards for procurement and public financial management consistent with Article 9 of the UNCAC and the OECD Principles on Enhancing Integrity in Public Procurement<sup>8</sup>. Furthermore, they should develop and implement principles for asset disclosure by public officials. Asset disclosure regimes should guarantee public access to declarations and cover a wide range of income and benefits from different sources. Conflicts of interest need to be proactively disclosed.

---

<sup>4</sup> See the UK Financial Services Authority report on how banks handle corruption risk: [http://www.fsa.gov.uk/pubs/other/aml\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf). Also see the report by the Swiss financial regulation Finma into the due diligence that Swiss banks carried out on accounts connected to Libya, Egypt and Tunisia that were subsequently frozen: [http://www.finma.ch/e/aktuell/Documents/bericht\\_pep-abkl%C3%A4rung\\_20111110\\_e.pdf](http://www.finma.ch/e/aktuell/Documents/bericht_pep-abkl%C3%A4rung_20111110_e.pdf)

<sup>5</sup> UNCAC CoSP, ‘Resolution 4/4: International cooperation in asset recovery’, 24 to 28 October 2011. <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session4-resolutions.html>

<sup>6</sup> <http://www.oecd.org/dataoecd/42/43/48972967.pdf>

<sup>7</sup> [http://www.transparency.org/global\\_priorities/other\\_thematic\\_issues/towards\\_greater\\_protection\\_of\\_whistleblowers](http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers)

<sup>8</sup> [http://www.oecd.org/document/32/0,3746,en\\_2649\\_33735\\_41556768\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/document/32/0,3746,en_2649_33735_41556768_1_1_1_1.00.html)

## International cooperation

### 6) Facilitation of Stolen Asset Recovery

In light of the millions of citizens in Egypt, Libya and Tunisia looking forward to recovering their assets which have been looted by corrupt leaders, we welcome the G20's commitment to work on and implement an effective framework for asset recovery and to produce a step-by-step guide to mutual legal assistance in relation to corruption offences. This framework and accompanying guides should be in the public domain and formulated with input from civil society organisations that have particular expertise in asset recovery. We also suggest that the working group takes up the recommendations in the Stolen Asset Recovery Initiative's (StAR) 'Barriers to Asset Recovery' paper.<sup>9</sup>

In the longer term we believe that there are a number of measures that G20 members should implement to improve the speed and effectiveness with which stolen assets are recovered:

- Enact and implement a legal framework that makes it possible to
  - Freeze assets believed to be the proceeds of corruption on an emergency basis without waiting for a request from the victim state. These measures should also be applied in cases where assets are hidden by nominees and in opaque legal structures, a principle already recognised by the G20.
  - Initiate and conduct asset recovery procedures in a transparent manner, including in cases where there is limited capacity in the country from where the assets were stolen and in situations where it is difficult to bring prosecutions against corrupt officials. This should include assets owned by political leaders still in office.
  - Use the principles of non-conviction based asset recovery where it is difficult to bring a criminal case against the allegedly corrupt official.
  - Facilitate the prosecution's burden of proof by creating legal presumptions that assets have been required in an illicit way where there is a significant discrepancy between the wealth of a Politically Exposed Person (PEP) and his/her official sources of income.
- Put in place legal frameworks that would enable victims of corruption and civil society to take asset recovery cases to court, both in the countries from where the assets have been stolen and in the countries where the assets are deposited.
- Ensure transparency and accountability in the management of returned assets.

### 7) Denial of Visas to Corrupt Officials

The Working Group has stated that it intends to develop a set of principles in relation to denying safe haven to corrupt officials. We would suggest the following best practice:

- Governments should have credible evidence of corruption before denying entry, for example, embassies and consulates should provide relevant information to a central authority which could also draw from open source information.
- Visas should be denied to corrupt officials still in office.
- Denial of entry should be on the basis of having credible evidence of corruption, even where the individual has not been convicted. This should be subject to a fair and credible appeals system for any individual denied entry on the grounds of corruption.
- Those who knowingly facilitate corruption should also be denied visas. For example, this should include individuals who pay bribes, as well as lawyers, agents and financial experts who knowingly facilitate the movement of corrupt funds.
- Effective communication systems and sufficient resourcing should be in place within governments to enable the timely sharing of information on corrupt officials and those that corrupt them.

---

<sup>9</sup> [http://www1.worldbank.org/finance/star\\_site/publications/barriers.html](http://www1.worldbank.org/finance/star_site/publications/barriers.html)

## **Public-private partnerships**

### **8) Enhanced Corporate Transparency**

To ensure that governments can be held accountable for the use of related revenues we welcome the G20 encouragement of disclosure of extractive industry payments to governments. However, with the Dodd-Frank legislation in the USA, recent changes in Hong Kong and the proposed EU Accounting and Transparency Directives, there is a need for a robust global standard for mandatory country-by-country reporting that establishes a meaningful level of disclosure for companies. We support the mandatory reporting of all payments to governments on the basis of each project a company operates, as well as reporting the main elements of a company's profit and loss sheet for every country in which it operates.

We would also encourage the Working Group to support the recommendations of the Natural Resource Charter and work of the Extractive Industries Transparency Initiative in exploring whether the concept of revenue transparency can be expanded beyond extractive revenue to cover other areas, such as how access to resources are granted. It could do this by commissioning a report into expanding the existing sectoral initiatives to cover the whole value chain from concession allocation to revenue management – not just revenues. The Extractives Industry Transparency Initiative (EITI) is already considering this proposal. In addition this review could explore including natural resources beyond the extractives sector (for example, fisheries, land and forestry) in such transparency measures. These measures would sit alongside the work of the G20 Development Working Group on promoting domestic resource mobilisation and alternative sources of financing for development aside from international aid.

### **Making Anti-Corruption Safeguards in Climate Finance and Governance a Priority for the Working Group**

The Mexican Presidency's decision to prioritise sustainable development and green growth is one that we strongly endorse. To reflect this, we call on the Anti-Corruption Working Group to widen the scope of its agenda to include issues of climate finance and governance.

In 2012, as large volumes of climate finance will be released into sectors and institutions that are highly vulnerable to corruption, proactive measures must be taken to ensure that this money gets to where it is needed most. The design of the new Green Climate Fund, the governance structures and operational modalities of which will be decided this year, offers an ideal opportunity for proofing climate investment against corruption risks, whilst ensuring that decision-making is representative, democratic, and tailored to the needs of the world's poorest people.

To this end, G20 governments should introduce robust, comprehensive and clear fiduciary standards and rules on reporting regarding climate expenditures. Mutual transparency should be ensured across financial flows, together with stronger coordination across bilateral and multilateral streams. The role of public auditors should be strengthened to ensure public accountability for climate finance decision-making and expenditures. Relevant oversight bodies must be staffed by salaried professionals, with technical expertise, who have proven to be free from conflicts of interest stemming from personal stakes in carbon markets, offset or adaptation projects or additional representative roles in climate negotiations. In addition, the independence of experts evaluating measures to prevent climate change as under the clean development mechanism must be ensured and free of conflicts of interest. G20 governments may endeavour to encourage the development of an independent fund which is financed by project operators and is used to finance the work of auditors. Legal and administrative mechanisms must be in place to ensure due processes to determine accountability or liability and respective penalties in cases of corruption and fraud.

Governments should also endeavour to develop robust accountability systems which provide assurances that private sector actors benefiting from public subsidies to achieve climate change mitigation goals are actually achieving those goals in transparent, verifiable and measureable ways. As many G20 countries are in the process of implementing or expanding market mechanisms for emissions reduction, these fragmented trading schemes will circulate rapidly growing amounts of capital. It is crucial that this Presidency works to safeguard these new markets against potential risks of corruption and mismanagement of climate change resources.

### Transparency and Civil Society Engagement

The G20 have committed "to consistently engage non-members (...) and to contribute to [their] work" in the Cannes Communiqué. We believe that G20 governments should ensure that they are doing as much to understand and incorporate the views of civil society as they are in engaging with businesses. As one route to balancing civil society representation with ongoing dialogue with the business community, the Working Group should institute a formal process for meaningful civil society engagement. Furthermore, the Working Group should operate with the highest degree of transparency by publishing the schedule of its meetings and agendas and by making publicly accessible related recommendations and reports.

Finally, given the magnitude of the corruption challenge we recommend that the mandate of the Working Group be extended for an additional two years to include overseeing of the implementation of commitments.

We thank you for considering our recommendations and look forward to working with you. Should you have further questions, please do not hesitate to contact: Angela McClellan, Transparency International (+49-30 343 820 673 or amcclellan@transparency.org) or Robert Palmer, Global Witness (+44-20 7492 5860 or rpalmer@globalwitness.org).

Signed by:

Transparency International (on behalf of more than 90 National Chapters)	International
Global Witness	International
Publish What You Pay (represents over 650 member organisations)	International
Revenue Watch Institute	International
Tax Justice Network	International
UNCAC Coalition (represents 316 member organisations)	International

Uniting World, Uniting Church in Australia	Australia
Centre National de Cooperation au Développement (CNCD) -11.11.11	Belgium
National Council of YMCA's in Korea	Korea
Association for Accountancy and Business Affairs	United Kingdom