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English only

Implementation Review Group**Sixth session**

Vienna, 1-5 June 2015

Briefing for non-governmental organizations in accordance with resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption entitled “Non-governmental organizations and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption”**Summary**

At its fourth session, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 4/6 entitled “Non-governmental organizations and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption”. In this resolution, the Conference decided that briefings for non-governmental organizations would be convened on the margins of the sessions of the Implementation Review Group (herein after Group) on the outcomes of the review process, including technical assistance needs identified. These briefings would be conducted by the secretariat in cooperation with a member of the bureau and would be based on the reports of the Group, thematic implementation reports and regional supplementary addenda.

The Conference requested States parties and signatories to use the briefings and to draw on the discussions and proposals of its fourth session to continue constructive dialogue on the contribution of non-governmental organizations to the Mechanism. The Conference also encouraged non-governmental organizations to report to it and/or the Group, as appropriate, individually or collectively, on their activities and contributions to the implementation of the recommendations and conclusions of the Group approved by the Conference, including those related to meeting technical assistance needs and advancing capacity to effectively implement the Convention. The briefings would serve to further promote constructive dialogue with non-governmental organizations dealing with anti-corruption issues, while recognizing the continuing deliberations to build confidence in the role of non-governmental organizations in the review process. The first briefing for



non-governmental organizations in accordance with Conference resolution 4/6 was held on the margins of the third session of the Group on 20 June 2012, the second briefing was held on the margins of the fourth session of the Group on 30 May 2013, and the third briefing was held on the margins of the fifth session of the Group on 5 June 2014.

The fourth briefing for non-governmental organizations was held on the margins of the sixth session of the Group on 4 June 2015 and was chaired by the Vice-President of the Conference, Paulus K. Noa (Namibia). The Chair delivered introductory remarks, welcoming the decision taken by the Conference to involve non-governmental organizations in the work of the Mechanism.

At the start of the briefing, the secretariat recalled resolution 4/6 and reminded participants to respect its terms. The invitations to the relevant non-governmental organizations contained specific language on expectations and the contributions to be made. A copy of resolution 4/6 was attached to the invitation, in order to fully ensure compliance with its terms. The briefing was to be structured in such a way as to allow participants from non-governmental organizations to make their contributions at the outset. Several non-governmental organizations confirmed their attendance by the deadline and written comments from non-governmental organizations were received in accordance with resolution 4/6 and made available for the briefing. The programme for the briefing was contained in document CAC/COSP/IRG/2015/CRP.3. Three panel discussions were organised in order to facilitate contributions.

The secretariat provided an introduction to the work of the Group based on the following documents: the progress report available to the Group (CAC/COSP/IRG/2015/2); the assessment of performance of the Mechanism (CAC/COSP/IRG/2015/3), and the oral updates on the thematic reports and regional addenda on the implementation of Chapters III (Criminalization and law enforcement) and IV (International cooperation) and an analysis of technical assistance needs identified in the review process.

Noting that the briefing should provide an opportunity for non-governmental organizations to make contributions on their activities, the Chair opened the floor for interventions.

Speakers affirmed the role of civil society in the fight against corruption and the potential for greater contributions that they could make as partners in the Implementation Review Mechanism and the subsequent development of action plans. Some speakers noted the productive cooperation with focal points and experts engaged in the reviews. Based on this experience, they urged Governments to consider ways to increase genuine civil society participation in the Implementation Review Mechanism. One speaker regretted that his country had not yet completed its review and volunteered to assist his Government in fulfilling its obligations under the Review Mechanism. Several speakers noted the usefulness of having access to the full country review reports and urged States, which had not yet done so, to post their reports online as this would benefit all domestic stakeholders as well as other States seeking to learn more about good practices and technical assistance needs. Several speakers also expressed support for further funding of the mechanism through the regular budget as well as continued support for activities facilitating civil society's role in implementing the Convention. Several speakers

pointed out their hope that non-governmental organizations would be granted observer status in the subsidiary bodies of the Conference of States Parties, in particular the Open-ended Inter-governmental Working Group on Prevention.

Speakers encouraged States parties to continue efforts to improve their legislation, measures and mechanisms for whistle-blower protection and noted with appreciation UNODC's work to develop guidance materials in this area. Speakers underscored the importance of effective technical assistance and one speaker commended a new training model implemented by UNODC involving civil society, the private sector and focal points. They urged Governments to increase efforts to stem money-laundering and enhance transparency and accountability, in particular in public procurement as well as in the criminal justice system. One speaker noted the central role of human rights in the fight against corruption and welcomed the prominent role that had been given to the fight against corruption within the context of the proposed Sustainable Development Goals of the United Nations.

A panel discussion on tackling corruption-related money-laundering was held and moderated by Kevin Donegan of Transparency International.

The first panellist, Nick Maxwell of Transparency International UK, outlined the vulnerability of some financial centres to the laundering of corruption proceeds. He described in particular the attractiveness of the real estate sector since anti-money laundering controls were often less stringent and buying such properties allowed for the laundering of considerable amounts of money. The speaker noted that properties were often registered to offshore companies, not allowing for the identification of the true beneficial owners. He recommended establishing the same enhanced due diligence standards applicable in the banking sector to both domestic and foreign companies.

The second panellist, Rose Gill Hearn, from Bloomberg Associates, also presented on money-laundering risks in the real estate and other luxury goods sector. She described several money-laundering schemes involving shell companies, in particular limited liability companies (LLCs), used to disguise beneficial ownership of real estate, including by foreign public officials and business people who have been accused of corruption. She called for stronger "know your customer" rules applying to real estate agents as well as the establishment of a public registry of beneficial owners for all types of anonymous holding companies.

Christine Clough from Global Financial Integrity focused further on the challenges posed by the lack of transparency of beneficial ownership of accounts, trusts, foundations or companies. She explained how several types of corporate structures were presently used in many jurisdictions to hide beneficial ownership and facilitate the laundering of corruption proceeds and tax evasion as well as to undermine asset declaration regimes. As regards policies and best practices the panellist stressed the importance of enhancing the transparency of beneficial ownership globally and referred in this context to various international initiatives such as by the EU, the G8 and the G20. The speaker also called for the effective implementation of articles 12, 14 and 52 of United Nations Convention against Corruption as well as relevant resolutions adopted by the Conference of States Parties. More specifically, she urged States parties to establish systems to collect, verify and publish beneficial ownership information, inter alia, through national public registers of companies, trusts as well as bidders for large public procurement contracts. In conclusion, she

called for the strengthening of customer due diligence obligations, with respect to lawyers as well as trust and company formation service providers.

The fourth panellist, Gladwell Otieno, from AfriCOG, delivered a presentation on combating money-laundering while preserving democratic freedoms. She argued that, given the scale and significance of money-laundering and terrorist financing, it was important to actively engage civil society in combatting these phenomena. At the same time, she highlighted that measures aimed at addressing these threats could have unintended consequences affecting negatively the freedom of association and the work of non-governmental organizations. She expressed the view that in some cases such counter-measures had been used by Governments to restrict the activities of non-governmental organizations. She recalled that civil society organizations were stakeholders and valuable partners in fighting corruption and money-laundering and thus called for genuine outreach to and early involvement of civil society in the development of measures to counter money-laundering and terrorist financing.

During the ensuing discussion, several speakers noted that compliance with the provisions of the Convention should be prioritized. Furthermore, the private sector in general, and banks in particular, should enhance the implementation of their due diligence policies. Also, Governments needed to establish transparent procurement processes and a register for beneficial ownership information in order to avoid fictitious contracts and potential conflicts of interest. In relation to the investigation and prosecution of money-laundering and illicit enrichment cases, some speakers shared their experiences in using non-conviction-based forfeiture laws.

Speakers also referred to the role of the financial intelligence units in receiving and investigating suspicious transaction reports and highlighted this as a critical element in detecting possible cases of corruption and money-laundering. To this end, one speaker noted that the spontaneous sharing of information stemming from an investigation could further boost anti-money laundering efforts in other jurisdictions. The chair referred to the High Level Panel on Illicit Financial Flows from Africa chaired by former President Thabo Mbeki, which had been presented to the Assembly of the African Union.

A second panel on special measures against grand corruption was moderated by Juanita Olaya from the UNCAC Coalition. The moderator outlined the difficulties countries faced in prosecuting grand corruption cases and stressed the importance of international cooperation as well as working actively with non-governmental organizations in this context.

The first panellist, Judge Mark L. Wolf, a Senior United States District Judge, explained how, in his view, grand corruption called for the establishment of an international anti-corruption court with jurisdiction in cases where the domestic authorities were unable or unwilling to prosecute and adjudicate effectively. He presented a number of proposals which he deemed important to enhance the effectiveness of the Review Mechanism, such as publishing the full country review reports, introducing mandatory country visits and not allowing States parties under review to block the finalization of the country report.

The second panellist, Akaash Maharaj of the Global Organisation of Parliamentarians Against Corruption (GOPAC), outlined how the amount of money lost to corruption annually could have paid for the full realization of the Millennium

Development Goals twelve times every year. He then reported on the decision taken at the Global Parliamentary Summit, in February 2013, to make grand corruption an international crime. He outlined different avenues to this end, including: universal jurisdiction; special regional or international courts; corruption as a crime against humanity; or the use of civil remedies. The panellist concluded that these options needed to be pursued in tandem.

The third panellist, Adetokundbo Mumuni of Socio-Economic Right Accountability Project (SERAP), Nigeria, appreciated the role of non-governmental organizations in initiating legal action against corruption. Public interest litigation could be used by an interested party which did not need to be directly affected. He described the experience of his own organization in this regard and expressed his support for the establishment of an international anti-corruption court as it would help erode the culture of impunity.

The final panellist, Maude Perdriel-Vaissière, former executive director of SHERPA and member of the UNCAC Coalition, highlighted how the Convention provided an important framework to address corruption globally and referred to the prosecution of predicate offences of money-laundering, in accordance with Article 23 (2) of the Convention, as a useful tool. She noted that the rules on immunity often prevented the effective prosecution of grand corruption. She called on the Implementation Review Group to recommend to the Conference of States Parties that immunities and other privileges enjoyed by foreign public officials should not be allowed to shield individuals from accountability for corruption offences.

Several speakers noted that the use of civil proceedings in asset recovery cases targeted the ill-gotten gains and as such did not allow the individuals concerned to invoke any kind of immunity. While many speakers expressed their support for the establishment of an international anti-corruption court, others highlighted the challenges and pitfalls surrounding such a long-term endeavour.

The third and final panel was moderated by Manzoor Hasan, chair of the UNCAC Coalition. He introduced the panel by noting that, ten years after the Convention had entered into force, the Implementation Review Mechanism was entering a period of transition.

The first panellist, Gillian Dell, of Transparency International (TI), explained how her organization had sought to encourage the highest standards of transparency during the first cycle of the Review Mechanism, and for the second cycle, recommended the mandatory publication of country reports as well as obligatory consultation with civil society in the country reviews. She also underscored the importance of introducing follow-up procedures to the first cycle reviews in order to ensure that the investments made were not lost. Technical assistance needed to be provided to countries seeking to implement the recommendations stemming from the review. She noted that a global progress report on the implementation of the Convention would be a useful tool to showcase how the Convention had impacted the fight against corruption.

The second panellist, Martin Matter of the Permanent Mission of Switzerland referred to the strengths of the Implementation Review Mechanism, including civil society and private sector involvement during country reviews, as well as its shortcomings, such as insufficient visibility of the reviews. The panellist considered different methods of follow-up to the outcomes of the reviews at the national level

as well as at the level of the Implementation Review Group. Many issues relating to the conclusion of the first and the launch of the second cycle remained unresolved and there was a proposal to conduct informal consultations amongst States parties with a view to preparing for a possible resolution of the Conference of States Parties at its sixth session.

In the subsequent discussion, one speaker raised the issue of corruption as a human rights abuse. He expressed his concern regarding the lack of mechanisms aimed at preventing institutions and laws established in line with the Convention from contributing to the violation of human rights. This concern was echoed by other speakers who referenced the earlier discussion on how money-laundering and countering the financing of terrorism could negatively impact organizations, both non-profit and non-governmental, in their operations in conflict areas in particular. In relation to discussions on the self-assessment checklist for the second cycle, speakers underscored that there was the need for a balance to be struck by retaining the level of quality achieved during the first cycle, while preferably simplifying and streamlining the checklist.

The moderator and chair ended the briefing by stating that a strong relationship between States parties and civil society remained crucial, as was the need to have realistic expectations on what the Mechanism could achieve. All agreed that the continued engagement in forums, such as the present one, provided important opportunities to learn from and work with each other in support of the effective implementation of the Convention.