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Other matters

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The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* CAC/COSP/IRG/2017/1.

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MAKING UNCAC WORK: COALITION STATEMENT TO THE 8th SESSION OF THE UNCAC IMPLEMENTATION REVIEW GROUP MEETING

As the world's challenges increase, populations around the world are looking to their governments to deliver decisive action against corruption to reverse systems and trends of injustice and inequality.

Tackling corruption requires serious collaborative efforts among states and prosecution authorities and the involvement of all stakeholders. It requires linking UNCAC with other anti-corruption and transparency initiatives (e.g. SDGs, other anti-corruption conventions, OGP, EITI) and ensuring consistency and coherence across countries' commitments.

But it also requires robust monitoring of implementation of the UNCAC. It is a matter of great concern that there is currently inadequate resourcing for the conduct of the 2nd UNCAC review cycle.

The UNCAC Coalition submits this statement to renew and update its call on UNCAC States Parties to adopt resolutions at the next session of the UNCAC Conference of States Parties that achieve the following:

On civil society participation

1. Reaffirm the importance of civil society participation in anti-corruption efforts, call on States Parties to create and maintain a safe and enabling environment so civil society can operate free from hindrance and insecurity; and note regrettable instances where such participation is constrained in a way contrary to the letter and spirit of the Convention and inconsistent with international human rights standards. Also, mandate UNODC to develop, in consultation with civil society organizations, indicators to measure involvement of civil society in the implementation of UNCAC. (UNCAC Articles 5 and 13)
2. Following discussion of a CoSP agenda item on civil society participation, confirm that in line with CoSP rules of procedure 2 and 17, civil society organizations are entitled to participate as observers in all CoSP subsidiary bodies, including the Implementation Review Group and any UNCAC Working Groups. (UNCAC CoSP Rules of procedure 2 and 17)

On the UNCAC review process

3. Add to UNCAC reviews an agreed, official process to follow up on country review recommendations, including recommendations for technical assistance, and ensure civil society participation in that process. (UNCAC Article 63(4)(5)(6) and (7)) Pending adoption of such process, call on all States parties to voluntarily report on their progress in implementing recommendations from UNCAC reviews
4. Urge States Parties to conduct a transparent and inclusive 2nd cycle of the UNCAC review process covering chapters II and V and ensure adequate resources for this cycle. Request States Parties and UNODC to publish updated individual country review timetables, information about focal points and announcements of completion of country reviews. Also, provide necessary resources for country visits, civil society participation and publication of key review documents, including self-assessments and full country reports. (UNCAC Article 63)

On prevention

5. Remind States Parties that, as recognized in CoSP Resolution 5/4, effective public access to information is essential for corruption prevention and call on them to adopt and implement comprehensive access to information legislation. (UNCAC Chapter II, especially Articles 5(1), 9, 10 and 13))
6. Building on CoSP Resolution 4/4, call for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information. Also call for governments to collect and publish beneficial ownership information of all bidders for public procurement contracts. Further, call for customer due diligence obligations, including in relation to beneficial ownership, to be required or strengthened with respect to banks and other service

providers, including lawyers and trust and company formation providers, and actively enforced. (UNCAC Article 12(c))

7. Call on States Parties to publish information on people with prominent public functions (Politically Exposed Persons) through national-level public registers as well as requiring them to file comprehensive asset declarations and make them publicly available. (UNCAC Articles 8, 14 and 52)
8. Request UNODC to convene an expert meeting to develop guidelines for the prevention, detection and sanctioning of corruption in the award of loans, subsidies, and commercial licences. (UNCAC Article 12(d))

On criminalization and enforcement

9. Call on States Parties to recognize and take effective action against the serious crime of grand corruption and to exercise extraterritorial jurisdiction for the prosecution of the same. (UNCAC Article 16(2))
10. Recognize the importance of whistle-blower protection in the public and private sectors. (UNCAC Article 33)
11. Mandate UNODC to work with States Parties to develop common guidelines for settlements in corruption cases that ensure enough transparency, accountability, reparation, and redress to the victims of corruption and sustains a dissuasive effect on other potential perpetrators. The UNCAC Coalition has issued detailed criteria in this regard (COSP 2016 UNCAC Coalition Statement).
12. Call on States Parties to ensure that domestic immunities for public officials are strictly limited with transparent and effective procedures for suspending them. (UNCAC Article 30(2)) Also call for States Parties to ensure that immunities and other privileges enjoyed by public officials — domestic, foreign and international — are not abused or used to shield individuals from accountability for corruption offences. Further, call for the CoSP to promote these standards to the International Law Commission which is drafting articles on “Immunity of State officials from foreign criminal jurisdiction”.
13. Call on States Parties to have the necessary safeguards to ensure that there is no undue influence, including political influence, on enforcement decisions. Also, call on States Parties to ensure the operational independence and resourcing of both specialized law enforcement bodies and the judiciary. (UNCAC Articles 11, 30(3) and 36)

On remedies for corruption

14. Remind States Parties that they must take effective measures to address the consequences of corruption and to ensure compensation for victims individual and collective. Encourage States Parties to adopt similar approaches to the legal concept of social damage presented by the Government of Costa Rica during the 4th CoSP. (Corrupción y daño social, CAC/COSP/2011/CRP.6). Further, mandate UNODC to continue its efforts to gather information on good practices in relation to the identification and compensation of victims of corruption, as well as to develop a set of guiding principles based on best practice examples. (UNCAC Articles 34 and 35)

On asset recovery

15. Taking into account the Secretariat’s Note on Settlements of 18 July 2016 (CAC/COSP/WG.2/2016), call on States Parties to ensure that any corruption-related court or out of court proceedings involving the proceeds of corruption be conducted in line with chapter V which provides for the repatriation of such proceeds to the country from which it was taken or that suffered damage as a result of the commission of the underlying corruption offence’s. (UNCAC Article 3 and Chapter V)
16. Call on States Parties to enact and implement comprehensive laws providing for the confiscation of any asset obtained through or derived from the commission of an offence established by the Convention — including the proceeds of active bribery, and to allow for quick freezing of assets suspected to be derived from the commission of such offences. (UNCAC Article 3)

17. Urge States Parties to take immediate steps towards fulfilling the commitment in Sustainable Development Goal 16 to significantly improve asset recovery and return by 2030, in particular by proactive and timely information sharing and by creating adequate laws on standing. (UNCAC Articles 53 and 56)
18. Call for States Parties to ensure that assets returned pursuant to the Convention are used and managed according to principles of transparency and accountability and in a manner conducive to their contributing to sustainable development and to the reparation of damage caused to victims and society, as outlined in the UNCAC Coalition's letter to the international experts meeting on asset return in Ethiopia in February 2017. (UNCAC Article 9)
19. Urge States Parties to reach agreement on guidelines for best practices on asset management and return which encompasses the principles of transparency, accountability, and social re-use of returned assets to repair harm and further sustainable development and the building of accountable institutions.
20. Call on States Parties in line with Resolution 6/3 of the COSP to collect and make public data on a national-level and on an annual basis about the volume of assets seized, confiscated, or returned, as well as providing StAR with up-to-date information about any court or out of court proceedings involving cross-border proceeds of corruption. (UNCAC Article 9)

On supplementary procedures and measures

20. Request the IRG to prepare for the 7th COSP (1) terms of reference for a communication and reporting procedure for serious non-compliance and lack of effective enforcement of UNCAC obligations; (2) a report on the advisability and feasibility of establishing a single international mechanism for resolving transnational and grand-corruption offences, prepared in consultation with relevant intergovernmental organizations; and, (3) a report on options for improving coordination with the review processes of other anti-corruption conventions. (UNCAC Article 63(7))

States Parties should demonstrate their commitment in practice. As recognized by delegates at the 13th United Nations Congress on Crime Prevention and Criminal Justice in Doha in April 2015, paper promises are not enough to successfully combat corruption.

8 June 2017