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CONFERENCE**

**MOBILISING PEOPLE:
CONNECTING AGENTS OF CHANGE**

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Short Session Report: Global Solutions

Session Title: How to increase the effectiveness of anti-corruption agencies

Date & Time: 10th November 2012, 14:00 – 16:00hrs

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Experts:

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Moderated by:

Mr. Phil Matsheza, Global Advisor on Anti-Corruption, UNDP Bureau for Development Policy

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Main Issues Covered (500 words or more, narrative form)

Anti-corruption agencies have multiplied over the last 20 years. There is always an outcry that we do not have the right institutions. When the UNCAC was adopted, Article 5 called upon member states to have an institutional body dedicated to the fight against corruption. There have been discussions that anti-corruption agencies are not working, that they should be disbanded, low capacity and that they cannot do what all other institutions combined have failed to do. Thus discussions are ongoing on the need to strengthen principles that constitute good practices in anti-corruption agencies.

There has been scepticism on the effectiveness of anti-corruption agencies. The first anti-corruption agency was established in 1952 and there was a marked increase in the 1990s. There are now almost 150 anti-corruption agencies across the world. UNDP has been working to build capacities in anti-corruption agencies. However capacity building is not sufficient and not effective without political will. Political will equates to operational independence. They then have a good chance of being successful and effective.

While some anti-corruption agencies have done fairly well, others have failed and this is dependent on the interference of government in the affairs and operations of the anti-corruption agency. Evidence has shown that where there is operational independence, there is increased effectiveness and efficiency of the anti-corruption agencies and vice versa.

In the Arab region there has been a number of changes in the last 10 years. Ten years ago, there were no anti-corruption agencies but there were agencies that were to handle corruption issues, audit bureaus etc. Then there was not much discussion about corruption both among governments and civil society but this has changed in the last 10 years mainly as a result of: Arab reform movement after the invasion of Iraq (2004) and the movement towards western democracy; the entry into force of the UNCAC ; establishment of the Arab integrity network and the Arab Spring which was very powerful. In general the agencies in the Arab region have not done much other than awareness raising and bringing the issue of corruption into the public domain. There has been some good work in Morocco which has been able to criticise government and provide inputs into governmental reform. Challenges that anti-corruption agencies face in the Arab region:

1. Independence versus isolation – they misunderstood independence as meaning not working with others and went into self-imposed isolation which was a big challenge
2. Prevention versus investigation – prevention was neglected and more focus was on investigation which is difficult.
3. There have been problems with engagement with civil society.
4. Coordination of the national anti-corruption strategies., instead of national ones that involve national stakeholders, they developed institutional strategies that others had not stake in
5. Challenge of reporting and performance measurement systems
6. Donor relations are fragmenting the efforts of the agencies and leads to unhealthy competition.

In Pakistan, the anti-corruption agency, the National Accountability Bureau (NAB) has been perceived as working against and not for or with the people. Pakistan has very fragile democratic institutions and terrorism is an issue which makes it difficult for the anti-corruption agencies to meet the expectations of the people.

Main Outcomes/Outputs

- Principles of independence of anti-corruption agencies are as follows: a broad mandate which includes investigation and prosecution powers; strong legal basis – established by constitution/law and not by decree; appointment of the agency should be by consensus between ruling party and opposition; dismissal procedure should ensure that 2/3 majority in parliament are in support; immunity from prosecution, which should be lifted only in special circumstances by 2/3 in parliament; delegation of power in place in the absence of the ACA head to prevent paralysis when head is unavailable; remuneration determined by the ACA; control over human resources; adequate resources (\$1 per capita for ACAs). Those ACAs that have over \$1 per capita for ACAs rank higher on the CPI; the budget should be guaranteed, i.e. not possible for executive to downscale; annual reporting to the public; and there should be public support
- Fighting corruption is fighting a malignant tumour – fighting power, money and influence with a limited mandate. Anti-corruption agencies cannot work without political will which involves the three tiers of government – executive, legislature and the judiciary

- Immunity for the heads of the agencies and guaranteed tenure of office are crucial.
- Investigation and prosecution are challenges for grand corruption cases. Even with the evidence the case can get thrown out by the agencies that anti-corruption agencies need to go through. Attorney generals are members of the executive and tend to protect the ruling class.
- Cross-border investigation and prosecution – funds are stashed away and access is sometimes not provided to information towards asset recovery. The UNCAC can be used to access information across countries. Mutual Legal Assistance Agreements (MLA) are often not effective and are riddled with problems and bottlenecks, particularly in Africa.
- Experiences can be learned from National Human Rights Commissions. Most countries have them and they perform based on their level of independence from Government. They came together, developed the Paris principle and sought to gain independence from government. ACAs can learn from this and organize a ranking and evaluation amongst themselves. This could lead to an international benchmarking of ACAs. This could change the game and be a powerful tool for securing political will.

Recommendations, follow-up Actions (200 words narrative form)

- The UNCAC can be used to access information across countries, Mutual Legal Assistance Agreements (MLA) are often not effective particularly in Africa.
- Sufficient budget and remunerations to the staff of anti-corruption agencies. Fighting corruption is a risky job.
- It is difficult to mobilize 2/3 of parliament to vote on something on a whim, especially in countries where there is a robust civil society and media, thus it is the safest route to protect anti-corruption agencies if parliament is the appointing and removing authority.
- There is the need to manage the perception of the public on the mandates and performance of the anti-corruption agencies. They need the cooperation of the people to succeed.

Highlights (200 words please include interesting quotes)

- Independence versus isolation – the anti-corruption agencies are often isolated politically which often leads to lack of cooperation when it comes to the passage of laws that they need to function efficiently.
- Political will- is based on people’s mindset which puts the family or tribe ahead of the nation. Is it possible to change the mindset of the leadership? Can it be changed now or should the focus be on the younger generation.
- The broader the mandate the better? When an agency is newly created an over-ambitious mandate leads to spreading too thinly or focusing on one aspect to the neglect of the others.
- Prevention can be undermined by investigation and thus a tension between both mandates when they exist within the same institution.
- Is the mandate the problem or the resources? If they have a broad mandate and the resources to match, perhaps that could be more effective. However, some agencies have a big budget but realities on ground can prevent them from spending the budgets.
- The scope of the mandates of anti-corruption agencies is dependent on context. What is important is that the anti-corruption agencies have all the requirements that they need to deliver on their mandates whatever the scope.
- Accountability of anti-corruption agencies is very essential and this involves reporting to the public and in some cases having oversight bodies – there are several accountability mechanisms.
- The movement in the Arab region is to encourage the anti-corruption agencies to build coalitions and linkages with institutions that are essential for them to deliver on their mandates.
- Political will is a problem and perhaps the political elite could be convinced that fighting corruption is in their interest.

Key Insights Recommended to be included in the IACC Declaration

- Although anti-corruption agencies have been plagued with problems and some have been more successful than others, they play a key role in the fight against corruption and they are a requirement based on Article 5 of the UNCAC.
- Across the world studies of anti-corruption agencies have revealed that political interference and the independence of the anti-corruption agencies play a crucial role in how effective the anti-

corruption agencies are in the fight against corruption.

- There is the need for accountability frameworks for anti-corruption agencies which is essential in view of the crucial need that they have for independence.
- While politicians are often perceived to be most guilty of corruption, the worst democracy is better than the best dictatorship. The politicians in a number of countries cannot control resources without the help and alliance of a corresponding bureaucrat in the ministry. However, the abuse of influence is an issue. Bureaucrats have a choice in the matter even though it is a tough call.
- In the fight against corruption, the political level will always remain crucial and should not be neglected.

Rapporteur's name and date submitted

Ms. Folake Oluokun, 14th November 2012
