

Co-Chairs, G20 Anti-Corruption Working Group
Government of the Russian Federation
Government of Canada

Civil society recommendations in reaction to new G20 Anti-Corruption Action Plan 2013 - 2014

10 December 2012

Dear Co-Chairs of the G20 Anti-Corruption Working Group,

We are encouraged by your commitment to “closing the implementation and enforcement gap” – as stated in the new G20 Anti-Corruption Action Plan 2013 - 2014. We firmly believe that the fight against corruption calls not only for new laws and official regulations, but crucially for enforcement actions, for enhanced transparency in day-by-day government activities and, a firm commitment against impunity for those who abuse entrusted power.

Implementation and enforcement challenges grow by the day. Since the first G20 Anti-Corruption Action Plan was agreed in Seoul in 2010 more examples have come to light:

- Despite efforts by the G20, the Organisation for Economic Cooperation and Development (OECD) and the Financial Action Task Force (FATF), many financial institutions remain safe havens for illicitly acquired money. A US Senate report claimed that HSBC had a ‘pervasively polluted’ culture that allowed money launderers, drug dealers and suspected terrorists to move their money through the US financial system.¹ The UK financial regulator reported in June 2011 on the failure of many British banks to properly deal with the risk of handling the proceeds of corruption.
- Those who launder money need secretive shell companies to hide their identities. These secretive shell companies are often registered in G20 countries. In one case of suspected money laundering a UK company was found to be owned by a dead man whose identity was used to hide the real beneficial owners.²
- There is a trend in some countries for foreign bribery cases to be settled out of court, in some cases without transparency and judicial oversight. Furthermore, a forthcoming study of 366 settled bribery cases by the Stolen Asset Recovery Initiative shows that less than 3% of these payments found their way back to the countries where the bribery took place.³

We now look to effective monitoring and public reporting on your pledges to share among the world’s leading economies best practices on enforcement of anti-bribery and anti-money laundering legislation, asset recovery and international cooperation in these areas. We also look forward to obstacles identified being tackled with urgency. Without more action in this area, we risk a global race to the bottom that will create uncertainty, harm businesses and undermine markets.

Furthermore, we underscore our support for the enhanced focus on corruption in the public sector, including enhanced fiscal and budget transparency, financial and asset disclosure systems for public officials as well as transparent and fair public procurement processes. Here, too, we call on governments to actively monitor progress and report publicly on it.

¹ <http://www.hsgac.senate.gov/download/?id=2a76c00f-7c3a-44c8-902e-3d9b5dbd0083>

² *Grave Secrecy* <http://www.globalwitness.org/library/global-witness-calls-action-end-hidden-company-ownership-light-money-laundering-accusations>

³ These facts are based on a forthcoming study of 366 settled cases by the Stolen Asset Recovery Initiative of the World Bank and the UN Office on Drugs and Crime (UNODC) conducted with a view to analysing the practice of settlements in transnational bribery cases and their implications for the recovery and return of assets which was presented at the International Anti-Corruption Conference in Brasilia, Brazil on 7 – 10 November 2012.

Below are our recommendations for effective implementation of the 2013 – 2014 Anti-Corruption Action Plan, which emphasize the following priorities:

1) Ratification, Review and Enforcement of the UN Convention against Corruption (UNCAC)

- To demonstrate their commitment to global anti-corruption efforts, G20 members Germany, Japan and Saudi Arabia should ratify the UNCAC. Furthermore, G20 countries should actively apply and enforce the relevant national laws implementing UNCAC. In compliance with their pledge to lead by example they should support increased transparency and inclusiveness in the UNCAC review process, including participation of civil society and other stakeholders such as the private sector in national reviews; country visits by review teams; as well as publication of the full review reports. In the third year of the four year UNCAC review cycle the results in this area are mixed and civil society is looking forward to more actively contribute in upcoming reviews. The full involvement of civil society in this process is essential to ensure that work of G20 governments in this area is publicly viewed as credible.

2) Enforcement of Foreign Bribery Legislation:

- G20 members China, India, Indonesia and Saudi Arabia should become parties to the OECD Anti-Bribery Convention and its peer review process. All G20 countries should criminalise foreign bribery. To shed light on how they are performing in the fight against impunity, all G20 members should also collect detailed information and provide regular public reports on the enforcement of all their anti-corruption laws, including those on foreign bribery. As stated in the Convention's Article 5, investigation and prosecution of the bribery of a foreign public official should not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved. Transparency International's 2012 'Exporting Corruption?' report⁴ found that only 7 of the 37 signatories surveyed actively enforce the Convention.
- To enable accountability, all G20 governments, and entities controlled by governments, should report on all payments received from companies.
- To recognize the costs of corruption, G20 governments should promote compensation to victims, including countries and companies, in the context of foreign bribery cases and set up robust legal mechanisms in this regard.

3) Public Sector Integrity

- G20 governments should adopt and urge all governments 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. Furthermore, to ensure their companies do not undermine public procurement processes in other countries, all G20 governments should ensure that export credit agencies enforce rules forbidding bribery, fraud or collusion. We welcome the recognition of important partner multilateral processes such as the Open Government Partnership and the Global Initiative on Fiscal Transparency.
- To prevent corruption of public officials, G20 governments should urgently implement the principles for asset disclosure by public officials agreed on at the Los Cabos Summit in 2012. 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 and adequate accountability mechanisms should be introduced.
- To ensure accountability for corruption offences, G20 governments should not allow elected public officials to enjoy immunity when charged with corruption offenses.
- To protect the independence of the judiciary, G20 countries should provide for such independence by law and in systems for hiring, assignment and promotion of judges and should prohibit political interference to pressure judges for rulings in favour of political or economic interests, including in corruption cases. In particular, there should be appropriate constitutional and legal mechanisms that shield judges from sudden dismissal or transfer without the benefit of an impartial inquiry. Furthermore, judicial work should be fully resourced to make judges and other court personnel less vulnerable to bribery.

⁴ *Exporting Corruption? Country Enforcement of the OECD Anti-Bribery Convention, Progress Report 2012:*
http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio

4) Enforcement of Anti-Money Laundering Legislation and Asset Recovery

- To prevent financial institutions from becoming a safe haven for illicitly acquired funds, we welcome the G20 plan to undertake horizontal thematic reviews of the treatment of high risk customers and business relationships. In this matter, as in several others noted below, we call on national authorities to set clear timelines for actions and establish credible public reporting on implementation.
- To avoid criminal misuse of legal entities, G20 countries should create registers that disclose the beneficial ownership of trusts and companies and are accessible to relevant investigative and judicial authorities both domestically and internationally. Such registers could also assist financial institutions with their customer due diligence processes. In this regard we support the work of the Financial Stability Board's Legal Entity Identifier (LEI) Private Sector Preparatory Group, of which TI is a member. Furthermore, we welcome the commitment to share best practices among G20 countries in this regard. Countries should also take measures to prevent the abuse of nominee directors and shareholders by implementing the FATF recommendation that nominees must declare that they are nominees and on whose behalf they are working.
- To enable more effective cross-border information-sharing on tax matters G20 countries should implement greater domestic and international inter-agency cooperation to overcome existing legal, operational and political barriers to legal assistance. In this regard, all G20 countries should sign the Convention on Mutual Administrative Assistance in Tax Matters, encourage other countries to join and support the provision for automatic exchange of tax information.
- To facilitate asset recovery processes we welcome the G20 commitment to continue their engagement with the UNODC and World Bank's Stolen Asset Recovery Initiative (StAR) and facilitate mutual legal assistance procedures, for example by designating contact people and by providing in-depth information on their respective legal systems and the relevant processes required. G20 countries should adopt the recommendations from StAR's 'Barriers to Asset Recovery' report.⁵ Furthermore, the G20 should 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.
- To restore public trust in global financial reforms we encourage the G20 Anti-Corruption Working Group to extend its collaboration with the G20 Finance Ministers on anti-corruption and governance issues in the financial sector. This includes issues such as improved risk management and risk governance through enhanced corporate transparency and accountability. It includes enforcement of 'know your customer' rules and actual and potential conflicts of interest between regulators and financial institutions.

5) Whistleblower Protection

- To protect whistleblowers from reprisals, all G20 countries should pass whistleblower protection legislation for public and private sectors without loopholes and that establishes comprehensive protection procedures. Such legislation should ensure prompt, effective and independent follow-up of disclosures - as committed to in the 2010 and 2013 - 2014 G20 Anti-Corruption Action Plans. This legislation and procedures should be subject to consultation with relevant experts and civil society to ensure they meet best practice standards.⁶

6) Transparency in the Private Sector

- We welcome the G20's acknowledgement that, to tackle corruption effectively, not only the public sector, but also the private sector needs to be transparent. We also support the G20's intention to share expertise and develop skills on anti-corruption within both the public and private sectors and encourage the G20 countries to broaden participation to investors, independent legal professionals, civil society, trade unions, micro-entrepreneurs and small businesses.
- To empower citizens with information they need to hold companies and governments to account, all G20 countries should pass legislation obliging oil, gas and mining companies to publish the payments they make to governments of all the countries where they operate on a project-by-project basis. This is encouraged in the 2012 Monitoring Report and is complementary to support for the Extractives Industries Transparency Initiative.

⁵ World Bank and UNODC StAR initiative, 'An Analysis of the Key Barriers and Recommendations for Action', 2011. http://www1.worldbank.org/finance/star_site/documents/barriers/barriers_to_asset_recovery.pdf

⁶ Recommended Draft Principles for Whistleblowing Legislation, developed by Transparency International with the support of experts and practitioners: http://www.transparency.org/files/content/activity/2009_PrinciplesForWhistleblowingLegislation_EN.pdf

- To support small and medium-sized enterprises (SMEs) in their anti-corruption efforts, we welcome the G20 call on 'representatives from the business community to develop capacity building programmes tailored to small and medium-sized enterprises, including through supply chains and to report back on progress in early 2014'. Any initiatives in this regard should take into account learning from SMEs. Progress should be measured involving SMEs, and form part of the G20 monitoring reporting in 2014.

7) Public Private Partnerships

- We support the G20 plan to carry out a risk-mapping analysis, and suggest this should include an analysis of the benefits and costs for all stakeholders, including for targeted beneficiaries and directly affected communities. We would expect human rights due diligence in line with the UN Guiding Principles on Business and Human Rights.⁷

In conclusion, we welcome the G20's commitment to further develop principles for outreach among non-members and in this regard we commend the G20 Anti-Corruption Working Group for its productive cooperation with the Business 20 (B20) Anti-Corruption Task Force. We see the need for constructive dialogue and collaboration on anti-corruption issues between the public sector, the business sector and civil society. We encourage the G20 countries and in particular the G20 Anti-Corruption Working Group to lead by example in this regard.

We look forward to continuing our positive engagement with the G20 Anti-Corruption Working Group.

Signed by:

Transparency International (on behalf of more than 90 National Chapters)	International
Global Witness	International
UNCAC Coalition (represents over 350 member organisations)	International
CAFOD	International
ONE	International
Publish What You Pay (represents over 650 member organisations)	International
Task Force on Financial Integrity (Coordination Committee includes Global Financial Integrity, Christian Aid, Eurodad, Global Witness, Tax Justice Network, Transparency International)	International
Australian Council for International Development	Australia
GCAP Ghana	Ghana
Global South Initiative Nepal	Nepal

Should you have further questions, please do not hesitate to contact:
 Angela McClellan, Transparency International (+49- (0)30 343 820 673 or amcclellan@transparency.org)
 or Robert Palmer, Global Witness (+44-(0)20 7492 5860 or rpalmer@globalwitness.org).