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Justice Reform
Ministry of Justice
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Mr. Joel Salas
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Suggested priority issues for new G20 Anti-Corruption Action Plan for 2013 – 2014

Dear Mr. Kett and Mr. Salas,

Current banking scandals have exposed an extensive disregard of vital standards of transparency, a neglect of fundamental accountability and a profound lack of integrity at the highest levels. To regain public trust bankers have to comply with their social responsibility to stand for integrity as they deal with publicly entrusted money. It is therefore especially welcome that the G20 acknowledged the importance of anti-corruption work by extending the mandate of the Anti-Corruption Working Group. This will be crucial as the G20 addresses the current Eurozone crisis, its damaging impact on global growth and the risks this poses for increased poverty and trade protectionism.

As the Anti-Corruption Working Group is initiating its planning for the next two years, we would like to submit our recommendations for priority areas of the new G20 Anti-Corruption Action Plan for 2013 - 2014. These include recommendations on areas of the previously agreed Action Plan that have not yet been implemented as well as suggestions for new areas to tackle. First and foremost we would like to recommend that the Anti-Corruption Working Group addresses the corruption issue which is closest to the G20 leaders' agenda: the integration of anti-corruption and accountability mechanisms in global financial reform efforts.

The most recent banking scandals highlight in their diversity the different forms corruption can take. They underscore extensive misuse of entrusted power for private short-term gain in leading financial services firms and the profound failures of regulatory and supervisory authorities to detect malfeasance in a timely manner. For example, Barclays agreed to a fine for alleged massive manipulation of interest rates; HSBC publicly acknowledged the veracity of the major money-laundering allegations detailed in a US Senate report; JP Morgan Chase acknowledged failings in risk management and adequate reporting on the prospect of substantial losses. In combination, these events are undermining public confidence not only in the financial services firms, but also in the governments, central banks and other financial regulatory authorities mandated to keep our financial system safe and sound. The G20 has a crucial challenge to correct this situation. What is needed is a coherent programme of anti-corruption reform that is addressed at the very highest level.

1) Accountability of national and international financial sector regulatory authorities

The G20 should improve the accountability and independence of both national and international financial sector regulatory authorities to ensure vigorous regulation and oversight of financial institutions. In this regard, we will additionally call on the G20 Finance Ministers to mandate a high-level FSB Working Group to develop standards for bank regulatory and supervisory authorities that engender public trust through greater transparency, accountability and integrity. The G20 should:

- Ensure that regulators and supervisory bodies have all necessary resources and expert training to fully perform their roles in view of the intense complexity of the operations of many global financial services firms today.

- Manage the risks of conflicts of interest by strengthening rules on “revolving doors” to ensure adequate ‘cooling off’ periods for individuals who move between public office and the private sector, and vice-versa and by implementing effective lobbying rules.¹
- Pass whistleblower protection legislation without loopholes and establishing comprehensive procedures to protect whistleblowers from all forms of reprisals and ensuring prompt, effective and independent follow-up of disclosures as committed to in the 2010 G20 Anti-Corruption Action Plan. Legislation and procedures should be subject to consultation with relevant experts and civil society to ensure they meet the standards of best practice.
- Encourage the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision (BCBS) to adopt higher levels of information transparency.

2) Anti-money laundering

Illicit financial flows made up of the proceeds of corruption, tax evasion and organised crime drain a vast amount of resources from public budgets for private benefit which could be invested in social services and economic development.² We are encouraged by the Anti-Corruption Group’s efforts to facilitate mutual legal assistance procedures by publishing guidance on requisite procedures in G20 countries, including the identification of allegedly stolen assets and the High-Level Principles for Asset Declaration by Public Officials. In addition, to combat money laundering the G20 should:

- Implement greater domestic and international inter-agency cooperation to overcome existing legal, operational and political barriers to legal assistance. 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. Furthermore, based on their 2009 commitment to tackle bank secrecy, the G20 should not tolerate recent bilateral initiatives by several member states as these undermine an effective exchange of information.³
- Step up enforcement of Know Your Customer policies to prevent financial institutions from becoming a safe haven for illicitly acquired funds.⁴ With regard to non-cooperative jurisdictions we welcome the work of the Financial Action Task Force (FATF) on singling out high-risk jurisdictions. We are also supportive of efforts to better integrate anti-corruption in FATF work. We look forward to the focus on implementation of standards in the upcoming FATF review round.
- 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 look forward to contributing to the Financial Stability Board’s Legal Entity Identifier (LEI) Private Sector Preparatory Group (PSPG)
- Actively support and facilitate stolen asset recovery building on the recommendations in the Stolen Asset Recovery Initiative’s (StAR) ‘Barriers to Asset Recovery’ paper.⁵ In this regard, we welcome the comprehensive G8 Asset Recovery Action Plan. The G20 should adopt its provisions and facilitate the prosecution’s burden of proof by creating legal presumptions that assets have been acquired 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. 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.

¹ Only 6 out of 25 countries assessed have regulated lobbying and in many cases the implementation of lobbyist registers is severely lacking according to TI’s 2012 EU National Integrity System report, *Money, Politics, Power: Corruption Risks in Europe*.

² http://files.transparency.org/content/download/328/1324/file/2012_CorruptionRisksInEurope_EN.pdf

³ UNODC estimates that criminal proceeds from all illicit activities represent around 3.6% of global GDP or US\$2.1 trillion, with the

⁴ The bilateral tax agreements between Germany (September 2011) and the UK (October 2011) signed respectively with Switzerland provide for the establishment of an anonymous taxing system on clients from these nationalities. The flat rate tax on behalf of foreign governments is compensated for by the account remaining anonymous, thus preserving full bank secrecy, and the provision that the client is no longer obliged to declare the account on his or her tax return. Austria and Switzerland have now also signed a [similar agreement](#) as of April 2012.

⁵ See the UK Financial Services Authority report on how banks handle corruption risk:

http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf

⁶ *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*, Published 2011.

http://www1.worldbank.org/finance/star_site/documents/barriers/barriers_to_asset_recovery.pdf

3) Corporate transparency and accountability

In view of the upcoming publication of the new reporting rules for companies in the extractive sector listed on the US Stock Exchange and the proposed EU Accounting and Transparency Directives we want to reiterate that there is a need for a robust global standard for mandatory country-by-country reporting by multinational companies in all sectors that establishes a meaningful level of disclosure. In some sectors, such as extractives and forestry, meaningful reporting will require additional project-level disclosures.

Furthermore, the G20 should improve the integrity of the financial sector by demanding greater corporate transparency and accountability through the following measures:

- Require greater transparency of financial institutions to enable stakeholders including investors, shareholders, regulators and consumers to assess the nature and the size of the risks to which they are exposed. Transparency International's *Transparency in Corporate Reporting* report reveals that half of the world's 105 top listed companies do not publish information on their anti-corruption programmes and organisational transparency and that the average score in country-by-country reporting is very low. Results for multinationals from the financial industry underperformed the sample average in each of these three dimensions.⁶ Going beyond the requirements of pillar 3 of Basel II this information should include:
 - Reporting on anti-corruption programmes covering bribery, facilitation payments, whistleblower protection and political contributions.
 - Information on organisational structures including the names, percentage holdings and country of operations for both fully consolidated and non-fully consolidated company holdings-
 - Country-by-country financial reporting of revenues, capital expenditure, income before tax, income tax, concession fees, royalties and community contributions.
- Mandate greater transparency in financial institutions' governance and decision-making, including the selection, composition and performance of board members, incentive structures and remuneration packages.
- Devise a single set of international standards for valuation of assets to enable a clear, consistent and relative picture of the financial position of an institution for all stakeholders.
- Require financial institutions who are recipients of public loans and bail-out funds to report on the use of these funds and to have anti-corruption programmes in place to prevent an enormous mismanagement of funds entrusted by the public to financial institutions.⁷
- Implement robust sanctions against malfeasance, including market manipulation and vigorously and consistently prosecute financial crime.

4) Ratification and enforcement of the UN Convention Against Corruption (UNCAC)

As the legal basis of the G20 anti-corruption work the UNCAC should be ratified and enforced by all G20 members as a priority. For effective implementation of the Convention all G20 countries should promote a transparent and inclusive review process with participation from civil society and the private sector in national reviews.

5) Enforcement of Foreign Bribery Legislation

Free competition is hampered by bribe payments of multinational companies. The OECD's peer review process and TI's OECD Convention Progress Report have demonstrated that most OECD Convention member states do not sufficiently prosecute foreign bribery cases. We welcome G20 progress made on criminalisation of foreign bribery which is a necessary first step. Furthermore, the enforcement of related policies has to be stepped up without delay. The G20 should:

- Implement and enforce laws criminalising foreign bribery based on the OECD Anti-Bribery Convention and its peer review process as well as the UNCAC and its review process.
- Provide regular reports on the enforcement of their anti-bribery laws.

⁶ *Transparency in Corporate Reporting: Assessing the World's Largest Companies*, Published 10 July 2012.

http://files.transparency.org/content/download/459/1891/file/2012_TransparencyInCorporateReporting_EN.pdf

⁷ An example on mismanagement in the US TARP programme:

<http://www.thedailybeast.com/articles/2012/07/24/neil-barofsky-s-bailout-why-tarp-failed.html>

- Report on all payments received from companies.
- Ensure that export credit agencies enforce rules forbidding bribery, fraud or collusion.

6) Integrity in climate finance and governance

In 2011 corruption prevented 30 per cent of all development assistance from reaching its final destination.⁸ The same fate must not be allowed to befall climate finance. G20 efforts towards effective resource mobilisation for inclusive, sustainable green growth must therefore ensure that climate finance is safeguarded against waste and abuse. To this end, key actions G20 governments should take include the following:

- Agree on a methodology to monitor transparently the flow of climate-related funding through international and national channels in a coordinated, coherent, timely, accessible and comparable manner in line with the International Aid Transparency Initiative (IATI) standards. Furthermore, donor governments should harmonise their country assistance strategies under the leadership of the recipient country, and recipient governments need to report on the integration of climate finance into national policy, planning and budgetary systems.
- Subject climate-related expenditures to comprehensive, clear and ambitious fiduciary standards, similar to those espoused by the Global Environment Facility⁹, which define rules on reporting, monitoring and evaluation, auditing, procurement, hotlines, investigatory functions and whistleblower protection. Third-party oversight mechanisms must be in place to ensure compliance and strengthen public accountability.
- Implement robust accountability systems to ensure that private sector actors benefiting from climate related public subsidies are contributing to these goals in transparent, verifiable and measureable ways.
- Agree on a standardised system for the measuring, reporting and verification (MRV) of emissions and emissions reductions which is subject to the relevant transparency and oversight mechanisms. Gaps in reporting requirements and insufficiently robust verification still create opportunities for corruption despite the development of systems of greenhouse gas accounting.

Finally, the G20 have committed to further develop principles for outreach among non-members and international organisations and acknowledged “valuable input” received by civil society. To **enable civil society participation** the Working Group should operate with the highest degree of transparency by publishing the schedule and agendas of its meetings and related recommendations and reports. Furthermore, it should actively seek and take into account civil society input. In this regard the Working Group should also strongly encourage member governments to abide by these same standards.

As the G20 have stated in the Los Cabos Communiqué, “Closing the implementation and enforcement gap remains an important priority.” Therefore, while the G20’s renewed anti-corruption commitment demonstrates a commendable political will, an effective enforcement at national level is ultimately the only remedy to corrupt practices.

Yours sincerely,



Huguette Labelle
Chair

⁸ According to UN news article 9 July 2012 <http://www.un.org/apps/news/story.asp?NewsID=42430&Cr=ecosoc&Cr1>

⁹ Recommended Minimum Fiduciary Standards for GEF Implementing and Executing Agencies (GEF Policy Paper 2007) http://www.thegef.org/gef/sites/thegef.org/files/documents/document/Recommended_Minimum_Fiduciary_Standard.pdf