UNCAC Coalition Statement
Sixth Session of the Conference of the States Parties
to the United Nations Convention against Corruption
Plenary session on Asset Recovery
Wednesday 4 November 2015, St. Petersburg, Russia

Maud Perdriel-Vaissiere, Asset Recovery Adviser, UNCAC Coalition

Mr. President, Distinguished Delegates, Ladies and Gentlemen, I am most grateful for the opportunity to address the 6th Conference of States Parties to the UNCAC today.

I make this statement on behalf of the UNCAC Coalition, a global network of over 350 civil society organisations (CSOs) committed to promoting the ratification and implementation of the UNCAC.

***

Almost two years have passed since the last Conference of States Parties in Panama and the adoption of resolution 5/3 on asset recovery. So one may well ask whether there has actually been any progress: What volume of assets has been recovered? How much has been returned to victim countries? How has it been used? Has it benefited the victim populations?

The answers to these questions are difficult to find, as to date most States Parties do not collect nor publish data relating to asset recovery.

States Parties also have yet to recognise the importance of the principles of transparency and accountability with regards to the use of returned assets. These principles – which are in strict line with UNCAC Article 9.2 – are of critical importance; it was their absence that helped facilitate the diversion and theft of assets in the first place. In fact, justice cannot be served if only a half of the original abuses are addressed. And yet, the Resolution on asset recovery that was adopted during the last CoSP in Panama (just like the ones before) does not contain any language items regarding these principles. While the UNCAC Coalition welcomes the various on-going and upcoming initiatives regarding the disposal of returned assets, it believes that those should not preclude States Parties from recognising the importance of the principles of transparency and accountability.

The UNCAC Coalition is further concerned by the low level of implementation of UNCAC Article 53.b. This article – which provides for the direct recovery of property through compensation claims – was established to provide a concrete remedy to states harmed by corruption in situations, such as bribery or trading in influence, where the proceeds of corruption involve funds of private origin – that is to say assets over which states cannot establish prior ownership. However, many States Parties have yet to acknowledge that the award of damages constitutes a way of recovery under the UNCAC. According to a recent report produced by StAR, in the majority of foreign bribery cases settled abroad, victim countries are left out of the bargain. This is all the more unfortunate given the heavy and increasing reliance on negotiated settlements in both common law and civil law jurisdictions. Regrettably, those findings are believed to be equally true when it comes to ordinary court proceedings. The issue started to receive some attention during the last CoSP held in Panama;

the Resolution on asset recovery adopted on that occasion urged “States parties to consider the use of the tools set out in chapter V of the Convention when resolving cases involving offences outlined in the Convention, including transnational bribery". The inclusion of this operative clause was clearly a welcome move towards a comprehensive implementation of UNCAC Chapter V. However, the language remains unclear and misleading: in fact, Article 53.b) is mandatory; therefore, there should be no room for consideration and this provision ought to be applied whenever a cross-border corruption case involves proceeds of corruption. To that end, States Parties should be provided with a set of guiding principles to facilitate the implementation of UNCAC Article 53.b) including best practice examples with respect to the identification, quantification and reparation of the damage caused by corruption.

Last but not least, the UNCAC Coalition wishes to call on States Parties to do more to prosecute corrupt officials and recover their ill-gotten gains.
To date, whenever senior public officials are involved, asset recovery efforts most often occur after a regime change only when and if the new government is willing to conduct the appropriate legal proceedings – a strategy that does not work that well as illustrated by the low level of assets recovered so far.

There is no doubt that asset recovery is a complex and lengthy process; however, it is also clear that the longer enforcement authorities wait, the greater the chance that the assets will be moved beyond the reach of investigators and the smaller the chance that the assets will be ever be recovered. Indeed, as a result of the passage of time, statutes of limitation operate and reduce the possible avenues for prosecution, while supporting evidence may not be available anymore and potential witnesses may have passed away. As for the corrupt assets, they will have certainly been concealed and layered, likely in multiple jurisdictions, mixed up with legitimate income – making it even more difficult (if not impossible) to recover. Tunisia, Libya, Egypt and now Ukraine are most likely facing these challenges in their on-going asset recovery efforts.

The passage of time is definitively a key obstacle to effective asset recovery.
The resolutions on asset recovery that were adopted during the last three Conferences of States Parties to the UNCAC all noted, “the particular challenges posed in recovering the proceeds of corruption in cases involving individuals who are or have been entrusted with prominent public functions, as well as their family members and close associates”.

The Resolution adopted in Panama, like the one adopted in Marrakesh, expressed concern “that some persons accused of crimes of corruption have managed to escape justice and thus have eluded the legal consequences of their actions, and have been successful in hiding their assets”

Likewise, the Resolution that was adopted in Panama stressed “the need to hold corrupt officials accountable” and urged in various parts of the Resolution States Parties to actively and robustly pursue domestic investigations and prosecutions of those engaged in acts of corruption.
All these language items are welcome; however, the resolutions that have been adopted so far (including the last one in Panama) all failed to address the issue of immunity which in practice prevent such proactive enforcement action from taking place.
Immunities are indeed major obstacle to the effective prosecution of corruption offences. This was confirmed by the report produced by UNODC on the implementation of UNCAC Chapter III.

It is critical to limit as much as possible the scope of domestic immunities. It is also essential for democracy and the rule of law to have procedures in place in order to lift domestic immunities and to hold corrupt officials accountable. In that regard, the recent laudable decision of the Congress of

Guatemala to lift President Otto Perez's immunity amid a corruption scandal there shows how important such limits are.

Such limits ought to be extended to foreign and international immunities which are regularly abused.

Past cases have also shown how easy it is for public officials to abuse the other privileges attached to their functions to transfer illicit vast wealth abroad – through the illegal use of the diplomatic pouch – and/or to protect their ill-gotten gains by registering them as diplomatic assets (residences; cars…).

These are blatant violations of the international rules on immunity, which are not meant to benefit individuals, but to ensure the efficient performance of State functions.

The UNCAC Coalition believes that immunities of convenience – granted for the sole purpose of escaping legal proceedings or hiding stolen assets – should be ruled null and void.

It further believes that the time has to come for the international community to re-evaluate the international rules on immunity: personal immunity should be strictly limited and, in any case, should not apply where crimes of international concern, such as grand corruption, are involved.

In that regard, and while a recent study by the Institute for Economics and Peace, based in Sydney, found strong statistical evidence that high levels of corruption is a leading indicator for political instability and insecurity, the UNCAC Coalition believes that it is high time for States Parties to recognise the seriousness of the crime of grand corruption.

Since the 2013 Resolution on asset recovery, many more millions of dollars in much needed state funds – including money destined for health, education and poverty alleviation – have been stolen and deposited abroad by corrupt individuals. The few have enriched themselves at the expense of the many for too long and it is essential that States Parties address these failures to adequately prosecute and punish the corrupt and recover the proceeds of their crime.

Thank you very much for you attention.