SESSION SUMMARY

RESTORING TRUST AND STRENGTHENING GOVERNANCE

Wednesday 25 May 2011

Moderator: **Jean-Marc Vittori**, Editorial Writer, Les Echos, France

Keynote speaker: **Mo Ibrahim**, Founder and Chairman, Mo Ibrahim Foundation

Panel 1: Anti-Bribery Convention and Tax Havens

Panelists: **Mo Ibrahim**, Founder and Chairman, Mo Ibrahim Foundation
Elena A. Panfilova, Director-General, Center for Anti-Corruption Research and Initiative, Transparency International Russia / **Huguette Labelle**, Chair of the Board, Transparency International
Mark Pieth, Chairman, OECD Working Group on Bribery in International Business Transactions

Discussants: **Chris Chukwu**, Director, Financial Policy and Regulation, Central Bank of Nigeria
Massimo Mantovani, Director of Legal Affairs (General Counsel), Eni SpA, Italy

"We have wasted 50 years with poor governance. Enough is enough." **Mo Ibrahim** said in his opening remarks, referring to Africa. We must make governments and leaders accountable. In order to have this we need transparency. He stated that governance is also needed in the private sector, citing figures from a recent UNDP-commissioned report which estimated that US$198 billion of illicit capital flowed out of the 48 poorest countries due to corruption and poor governance, with 69% of that money coming out of Africa. He admonished developed countries, saying: "Shame on you". He accused Europe of lagging behind in adopting measures and legislation to fight corruption. "Europe talks," he lamented, "but unfortunately we see no action." He reminded participants that "corruption is a crime which involves a few partners", some of which are in OECD countries.

Mr. Ibrahim blamed much of the problem on what he said was "the intense focus placed on governance in the public sector," while the private sector was virtually ignored. "Follow the money," he told participants and it will lead you to the source of corruption. He said that it was time to "switch on the light in the private sector" in terms of governance.

He said he struggled to convince other African firms of the truth that corruption does not pay. "Once you pay that first bribe," Mr. Ibrahim warned "you will never stop paying". After paying a bribe, what is left for shareholders? he asked. His own experience of doing business in Africa demolished the argument that bribery was inescapable if a business were to earn money in Africa. In truth, it is exactly the opposite, he said.

Elena Panfilova said "I find it hard to speak of systemic corruption in diplomatic terms, but I will try." Although she agreed with Mr. Ibrahim on the need for stronger governance in the private sector, she pointed out that in many cases, such as Russia's, the line between the public and private sectors is blurred. Anti-corruption tools alone are not enough to bring change. Without political will, instruments such as the OECD Anti-Bribery Convention and Guidelines are like an idle scalpel: of no use – even potentially harmful – until placed in the hands of a competent surgeon. What the OECD can do is not only to forge the tools, but also to ask governments uncomfortable questions they might not otherwise address. The nature of bribery has also changed. Extortion has become the rule; bribes today are rarely "offered", she said.

Mark Pieth felt that Mr. Ibrahim was being too harsh in his criticism of European efforts to combat corruption. As an example he used Germany, which is currently investigating some 60 cases of corruption and bribery. He also responded to a question raised by session moderator **Jean-Marc Vittori**, who asked why anti-corruption work was not more successful, and whether the "naming and shaming" method of the OECD was really effective. Mr. Pieth countered by saying that his group was investigating 350 cases of bribery and corruption. Admittedly, work in this area is an "uphill battle and not fun" he added. The most pressing issue was to establish an appropriate monitoring mechanism to encourage people to follow the rules. "It's a matter of self-respect for a state to enforce their laws."

Huguette Labelle came to Mr. Pieth's defence and congratulated the working group. She called the OECD Anti-Bribery Convention "a landmark", noting that its monitoring process had become the standard. However, it was important, she said, that countries "give themselves the legislation they need and to make sure they have the proper enforcement". But even with laws in place, there must be the will to enforce them. Attitude counts for a great deal in combating corruption.

Ms. Panfilova placed the onus on human capital. With proper training, people could be liberated from the cynical view that corruption was systemic to their governments. "If you train people with the wrong attitudes," she said "nothing will change".

◆ <u>*Panel 2:* Multinational Enterprises (MNEs)</u>

Panelists:	**Jean-Marc Duvoisin**, Deputy Executive Vice-President, Nestlé S.A.
	Roel Nieuwenkamp, Director, International Trade and Globalization, Ministry of Economic Affairs, Agriculture and Innovation, Netherlands
	Joris Oldenziel, Programme Manager, OECD Watch
	John G. Ruggie, Special Representative of the UN Secretary-General for Business and Human Rights, United Nations
Discussants:	**Artur Henrique Da Silva Santos**, President, Central Unica dos Trabalhadores (CUT), Brazil
	Richard Howitt, MEP, Rapporteur on Corporate Social Responsibility, European Parliament

Against a backdrop in which the revised OECD Guidelines on Multinational Enterprises were about to be approved by governments, **Jean-Marc Vittori** opened the next discussion by asking whether the private sector could set higher voluntary standards than those that existed within current legal frameworks.

Jean-Marc Duvoisin pointed out that "If you don't have a principle-based way of doing business you cannot sustain a long-term presence" in other countries. His company, Nestlé, owned 445 factories, half of which were in developing countries. And in some countries, such as Malaysia, it had been operating for nearly a century. A long-term vision has thus always been part of its corporate culture. Nestlé has published its own set of principles, touching on everything from human rights and the environment, to health and safety and supply chain issues. These principles have been translated into 50 languages and made available to some 280,000 employees. Abiding by principles is crucial if a firm is to gain a competitive advantage and guarantee long-term sustainability. Yes, voluntary efforts are valuable, but they require a push from governments, especially at the local level, he said.

Roel Nieuwenkamp praised the unique nature of the OECD's guidelines as the only inter-governmental code of conduct that provided a proper grievance mechanism.

Joris Oldenziel said the Guidelines were one of the main instruments used among the OECD Watch network of 80 civil society organisations. However, procedural issues surrounding many cases had yet to be resolved. He remarked that one should not expect businesses to do more than what is necessary. Some companies, for example, do not take mediation seriously in bribery cases. From what he had seen, companies "do the bare minimum" to comply with the law. "The question is should we want businesses to be setting the standards. No, governments should be setting the standards" for business to follow.

John G. Ruggie said that companies shared the view that maintaining their "social license" was vital to operations. Companies should not infringe on human rights or damage the environment. "The principle that companies should respect human rights is now almost universally enshrined in various international instruments." Voluntary initiatives (including the new OECD guidelines) apply similar standards of human rights. Furthermore, law firms are advising companies to support corporate responsibility with respect to human rights.

Another phenomenon is that communities are "pushing back". Surprisingly, most companies are unaware of the cost of community backlash. One company was astonished to learn when it went over its books that it had lost $6.5 billion over a two year period because of community actions (euphemistically called "stakeholder-related risk"). Generally these losses go unrecognised, being spread out across other costs. Once they are aggregated, senior leadership is likely to pay attention.
Clarity helps too. At one time, the OECD Guidelines were quite general; they are now becoming more specific. There are clear provisions about what it means to respect rights. There is a greater convergence of principles relating to governance and corruption, providing a tighter agenda for companies to follow.

Still, there is a "governance gap" in many countries according to Mr. Nieuwenkamp. Although these countries have laws criminalising corruption, labour problems often arise from the absence of any authority to scrutinise the activities of corporate and government officials. These gaps must be filled in.

One participant, a member of the European Investment Fund, suggested that companies be rated on the impeccability of their governance, echoing the wish expressed in the earlier panel by Mo Ibrahim. Mr. Ibrahim had hoped that that one day there would be a "Governance Index" for major companies, which, he reminded participants, are bigger than some of the countries in which they operate.

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