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Ad Hoc Committee for the Negotiation of a Convention against Corruption

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Agenda item 3

Consideration of the draft United Nations Convention against Corruption, with particular emphasis on articles 40-50 and chapters IV-VIII

Proposals and contributions received from Governments

Norway: amendments to article 68, as submitted in the proposal by Austria and the Netherlands (A/AC.261/L.69)

Article 68

It is proposed to amend the title and content of article 68 so that it reads as follows:

“Article 68

“Evaluation of the implementation of the Convention by States Parties

“Organization of the evaluation process

“1. The evaluation process shall be carried out regionally, in Africa, America, Asia, Europe and Oceania.

“2. The States Parties of each region shall appoint a Bureau, which shall assist the subsidiary body of the Conference of States Parties in the evaluation process.

“3. Each State Party shall appoint a delegation to their regional Bureau, consisting of not more than two persons.

“4. The [subsidiary body of the] Conference of States Parties shall determine appropriate guidelines for the work of the Bureaux, including the number of sessions to be held each year.

“5. The subsidiary body of the Conference of States Parties shall coordinate the work of the five Bureaux and ensure that procedures and the



level of monitoring are uniform in the different regions. The subsidiary body of the Conference of States Parties shall always be present and participate in the evaluation of a State Party by each Bureau.

“6. The evaluation of a State Party shall be led by two representatives of two other States Parties, in addition to the representative of the subsidiary body of the Conference of States Parties and at least two representatives of the respective regional Bureau.

“7. The representatives shall, during their visit to a State Party for the purpose of performing an evaluation, enjoy privileges and immunities as diplomatic staff in accordance with the Vienna Convention on Diplomatic Relations of 18 April 1961.

“8. The evaluation process shall be divided into two phases.

“9. To the extent possible and appropriate, reports made by other international and extensive monitoring mechanisms shall be utilized in the evaluation process in order to avoid any unnecessary duplication of effort.

“Phase 1 of the evaluation process

“10. The first phase of the evaluation process shall have as its primary objective to evaluate whether the legal texts through which the States Parties implement the Convention fulfil the requirements of the Convention.

“11. The subsidiary body of the Conference of States Parties shall produce a questionnaire for the purpose of gathering information on the implementation of the Convention. The subsidiary body shall also, in cooperation with the regional Bureaux, outline a set of procedural rules for the first phase of the evaluation, taking into account the provisions outlined in paragraphs 12-14 below.

“12. Each State Party shall reply to the questionnaire in a precise manner and ensure that its reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the degree of compliance of that State Party. The replies should be provided in one of the official languages of the United Nations and shall be circulated to all the participants in the Bureau and the subsidiary body of the Conference of States Parties.

“13. The subsidiary body of the Conference of States Parties and the Bureau may, if necessary, require the State Party to provide additional information.

“14. The Bureau shall, on the basis of the reply, draft a preliminary report of a maximum of six pages in length. This preliminary report shall be the basis for the examination of the State Party. The preliminary report shall, as appropriate, contain both a list of requirements and a list of recommendations.

“Phase 2 of the evaluation process

“15. The second phase of the evaluation process shall have as its primary objective to study the structures put in place to enforce the laws implementing the Convention and to assess their application. The phase 2

process may commence, if necessary, before the phase 1 examinations of all States Parties have been completed.

“16. The subsidiary body of the Conference of States Parties shall, in cooperation with the Bureaux, produce a questionnaire for phase 2. The subsidiary body of the Conference of States Parties shall also, in cooperation with the Bureaux, outline a set of procedural rules for the second phase of the evaluation, to include terms of reference for on-site visits, taking into account the provisions of paragraphs 17-22 below.

“17. The phase 2 questionnaire sent to each State Party shall take account of the results of the evaluation carried out in phase 1 in order to follow up on issues identified in that review. Each State Party shall reply to the questionnaire in a precise manner and ensure that their reply provides sufficient detail to enable those evaluating the implementation of the Convention to assess the replies of the State Party. The time limit for the State Party to be examined shall be fixed by the Bureau, in consultation with the country concerned.

“18. The replies should be provided in one of the official languages of the United Nations and shall be circulated to all participants in the regional Bureau and the subsidiary body of the Conference of States Parties. The subsidiary body of the Conference of States Parties and the regional Bureau may, if necessary, require the State Party to provide additional information.

“19. Unless sufficient material is deemed to be available through other international and extensive monitoring mechanisms, the Bureau shall make on site visits to the States Parties. The duration of each visit should be approximately 3-5 days, and shall be carried out in accordance with the predetermined terms of reference.

“20. During such visits, participants in the Bureau shall meet with such government and other agencies as they deem appropriate. These may include the police, magistrates, tax authorities, ministries, national auditors, civil society representatives and representatives of the private sector.

“21. The State Party shall facilitate such visits.

“22. The Bureau shall make a preliminary report based on the information provided both in the questionnaire and during the visit. The Bureau shall examine the preliminary report and make a final report after the concerned State Party has provided its comments. The final report shall, as appropriate, consist of both requirements and recommendations.

“Summary reports and measures

“23. The provisions of paragraphs 24-26 shall pertain equally to both phases of the evaluation process.

“24. The Conference of States Parties shall make a summary report of the evaluations carried out in each year and submit the summary report to the General Assembly.

“25. If a State Party does not meet the requirements of the Bureau within a time limit determined by the subsidiary body of the Conference of States

Parties, the Bureau shall propose appropriate measures to the Conference of States Parties, which shall make a decision on the matter. These measures may be positive, such as targeted technical assistance, or negative, such as suspension of the State Party from the Convention. The State Party may request an extension to the time limit, provided that a reasonable explanation for the request is given.

“26. The subsidiary body of the Conference of States Parties shall establish procedural rules for such measures, taking into account the fair and equal treatment of all States Parties. These procedural rules shall be subject to the approval of the Conference of States Parties.

“27. The reports on each State Party and the summary report described in paragraph 24 shall be made available to the public.”
