Good Governance for Development (GfD) in Arab Countries Initiative
(Jointly supported by UNDP and OECD)

Regional Conference on

Supporting UNCAC Implementation in Arab Countries

Under the Patronage of H.E the Prime Minister Nader DAHABI

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Draft Background Paper

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1. Introduction

Over the past few years, an international consensus on anti-corruption has emerged as a global priority due to an increased awareness of correlations and linkages between corruption and development. Corruption consumes public wealth, impedes investment, and reduces the quality of public services, such as health and education. Furthermore, it undermines democracy, weakens the rule of law, and threatens the stability and security of societies.

As a result of the growing international consensus on the importance of coordinating efforts to confront this transnational phenomenon, developed and developing nations launched a number of initiatives to increase their capacity to combat corruption through legislative and regulatory reform, capacity building, strengthening international cooperation, and raising public awareness. The United Nations (the "UN") played an important role in supporting international efforts to fight corruption. The General Assembly adopted a large number of anti-corruption resolutions, such as Resolution 191/51 (16 December 1996), which instituted the international code of conduct for public officials. The General Assembly also published a draft guide on anti-corruption policy and called upon governments to consider action plans aimed at implementing the Vienna Declaration on Crime and Justice (2000), by virtue of its Resolution 261/56 (31 January 2002).

Most importantly, the United Nations led international efforts to develop an international anti-corruption instrument. In 2003, the United Nations Convention against Corruption (the "UNCAC" or the "Convention") was adopted by the General Assembly on 31 October 2003[2], and entered into force on 14 December 2005. The Convention establishes a comprehensive framework that allows the development of a global, comprehensive and unified approach against corruption and sets out a number of strategies to prevent and combat its numerous manifestations. To date, 140 countries have signed the Convention, with 103 ratifications. 16 Arab countries have signed Convention, while 11 (Jordan, United Arab Emirates, Algeria, Djibouti, Qatar, Kuwait, Libya, Egypt, Morocco, Mauritania, and Yemen) having ratified it. .

In addition to the UNCAC, a number of regional conventions on corruption have recently been adopted. These additional efforts illustrate the extent to which the fight against corruption has become one of the international community's leading priorities. These regional conventions include, but are not limited to, the following:

- The **Inter-American Convention against Corruption (OAS Convention)** was adopted on 29 March 1996 and implemented on 6 March 1997. 34 countries have

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[1] Original Text in Arabic

[2] UN General Assembly Resolution 58/4, issued on 31 October 2003.

signed the OAS Convention and 33 have ratified it. In addition, a mechanism to monitor its implementation was created in 2001.

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions** (the "OECD Convention") was adopted on 21 November 1997 and implemented on 15 February 1999. 36 countries have signed and ratified this convention, including all 30 Member Countries of the Organization for Economic Cooperation and Development ("OECD") as well as seven other states, including Argentina, Estonia, Brazil, Bulgaria, Chile, South Africa and Slovenia. The OECD Convention focuses exclusively on the supply side of the bribery of foreign public officials and establishes a number of sanctions in that regard. Furthermore, the OECD Convention encourages members states to coordinate their efforts in order to criminalize acts of corruption. The OECD Convention is characterized by its endorsement of an effective mechanism to monitor implementation.

- The **Council of Europe Criminal Law Convention on Corruption** and the **Council of Europe Civil Law Convention on Corruption** were adopted respectively on 4 November 1998 and 4 November 1999 and were implemented on 1 July 2002 and 1 November 2003. 48 countries have signed the first of these two conventions of which 35 have ratified it. The second convention was signed by 41 countries, of which 27 have ratified it. The two conventions share the same monitoring mechanism, which is the Group of States against Corruption (GRECO).

- The African continent has recently followed these initiatives by adopting the **African Union Convention on Preventing and Combating Corruption** (the "African Convention") on 11 July 2003 and implemented on 4 August 2006. 41 countries have signed this convention among which 24 have ratified it. This convention resembles the UNCAC, with some substantive differences. The African Convention is characterized by its mechanism to monitor implementation, noting that the lack of resources holds back the implementation of this mechanism.

Developing an effective anti-corruption framework requires serious action to implement all the provisions of these conventions, each in its own region, since they represent the common denominator for the involved in the fight against corruption. In the Arab region, a number of efforts have recently been made to strengthen the fight against corruption. The League of Arab States ('LoAS') has recently launched a broad consultative process for the purpose of developing an Arab anti-corruption agreement. At the same time, the UNCAC complements regional conventions and is the only multilateral document that can offer similar minimum requirements for all countries, including countries in the Arab region, in order for them to develop a comprehensive approach to confront corruption and build appropriate strategies to prevent and fight its numerous manifestations.

2. An overview of Project "Supporting UNCAC Implementation in Arab Countries"[3]

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[3] For further information please contact UNDP- POGAR at arkan.el-seblani@undp.org.

In the context of international and regional efforts to confront corruption, something which has come to be a global priority and the place of international consensus, representatives from different Arab states worked to develop a regional pilot project that seeks to support the implementation of the UNCAC in the Arab region. The **Project on Supporting UNCAC Implementation in Arab Countries** (the "UNCAC Project"), was developed with the assistance of UNDP's Programme on Governance in the Arab Region ("UNDP-POGAR")[4] in the context of the Good Governance for Development in Arab Countries Initiative (the "GfD Initiative").[5] The GfD Initiative is jointly supported by UNDP and OECD and was launched in February 2005 in the Dead Sea (Jordan) under the patronage of His Excellency King Abdullah II, at a ministerial meeting that was attended by Prime Ministers and Ministers from 18 Arab countries.

Building capacities of the countries and enhancing the co-operation mechanisms between them in order to implement the UNCAC is central so that the international anti-corruption efforts succeed. For this reason, Article 63(1) provides that "[a] *Conference of the State Parties to the Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation"*.

Accordingly, the UNCAC Project seeks to complement international anti-corruption efforts by encouraging Arab countries to carry out their obligations for the Conference of State Parties (the "CoSP") on the one hand, and to promote the Millennium Developments Goals on the other. This is being done in light of former UN Secretary General Kofi Annan's statement according to which "[g]*ood governance is perhaps the single-most important factor in eradicating poverty and achieving human development"*.[6]

UNDP-POGAR will support the implementation of the UNCAC project in partnership with the Arab countries, and in cooperation with the United Nations Office on Drugs and Crime ("UNODC") and OECD. This will be done within the framework of the second phase of the GfD Initiative in the Arab countries, which will be implemented from 2008 to 2010. The UNCAC Project seeks to increase awareness and to build the knowledge and capacity of policy makers and practitioners in the Arab region through a number of regional activities that will be executed according to a strategic line that is comprised of 4 four strategic blocks that have been developed in accordance with the priorities of the Arab countries:

- **Self assessment:** Supporting self assessment and gap analysis studies is important for building knowledge on the legal and institutional framework to fight corruption in the Arab countries. It will help countries identify gaps based on which they can better identify priorities and develop strategies and action plans for reform;

- **Understanding UNCAC requirements:** Understanding the technical requirements of UNCAC implementation and the way to conform to these requirements requires special attention. This can be best done through regional policy dialogue,

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[4] For more information on UNDP-POGAR's various activities in the Arab region, and to access its database of governance issues in the Arab region, please visit www.pogar.org.

[5] For more information on the GfD Initiative, please visit www.arabgov-initiative.org.

[6] The Report of the Secretary-General on the state of the organization for the year 1998.

knowledge and capacity building and peer learning activities with a view to explaining the technical requirements and presenting best practices in this field;

- **Offering technical assistance:** Providing coherent and effective technical assistance efforts. This may be achieved by matching Arab countries with technical assistance providers and supporting Arab stakeholders in developing their own technical assistance programs at the national level; and

- **Reviewing implementation efforts:** Reviewing implementation efforts is important to help Arab countries benefit from successful experiences and lessons learned. Encouraging a regular review of the efforts to implement the Convention will deepen policy dialogue, foster partnerships, enable the measurement of progress and anchor anti-corruption efforts into a regional framework of networks and institutions.

The Project identified a number of priorities in coordination with the Arab countries and based on the results of the policy dialogue that was conducted in the context of the first phase of the GfD Initiative:

- Preventive anti-corruption institutions (in accordance with Articles 5 and 6 of the Convention);

- Codes of conducts for public officials, judges and prosecutors (Articles 8 and 11);

- Criminalization and law enforcement (Chapter III), with a focus on the protection; and

- Asset recovery (Chapter V).

In the framework of these priorities areas, a group of activities will be organized on both the regional and national levels including specialized conferences, training workshops, field visits, and other activities. In addition, UNDP, with the assistance of other international organizations such as OECD and UNODC, will assist Arab countries to establish an Arab anti-corruption regional network with a view to facilitating the exchange of knowledge and experiences on a regular basis. Moreover, and within the same context, UNDP and its partners will work closely with the Arab countries to support them in the implementation of a self assessment process. The results of that process will inform the above mentioned activities and assist the Arab countries in their anti-corruption efforts.

3. An overview of the Convention's provisions related to the Project's priorities and to each of the State Parties' obligations

The UNCAC represents the minimum standards that each state has to adopt in order to contribute to the effectiveness of anti-corruption efforts both within and outside their borders. The Convention deals with different aspects of corruption at the level of prevention and at the level of criminalization and enforcement. The Convention also sets out a number of provisions that deal specifically with international cooperation and asset recovery. These provisions are spread across the Convention's 8 Chapters and 71 Articles. Those specific provisions that relate to the priority areas identified by Arab states (see above) are discussed in more detail below.

Preventive anti-corruption institutions: Chapter II of the UNCAC Convention focuses on preventive measures, standards, and procedures. Article 6 provides for the establishment of *"a body or bodies"* that should be financially and administratively independent to prevent corruption through (a) designing and implementing preventive policies referred to in Article 5, and (b) increasing and disseminating knowledge about the prevention of corruption. Article 5 requires preventive measures and does not require that particular laws be passed. Article 6 does not require that a particular type of institution be established at a particular level. What is needed is to enable the capacity to perform the preventive functions instituted by the Convention.

Codes of conduct in the public sector and the judicial and the public prosecutor's office systems: Articles 8 and 11 deal with the issues of the codes of conduct in the public sector, the judicial system and the public prosecutor's office. They also require the State Parties to apply measures and procedures and establish legislations as needed. Articles 8 and 9 specifically require State Parties to implement codes and standards of conduct and establish measures and systems to promote transparency for public officials and disciplinary or other kinds of procedures for their violation. It also requires them to set up procedures to endorse integrity and prevent corruption in the judicial system and the public prosecutor's office including principles relating to conduct and appropriate legislation.

Criminalization and law enforcement: Chapter III requires each State Party to take several legislative and administrative steps with a view to (i) reforming criminal law and (ii) establishing appropriate measures and procedures to establish an effective enforcement mechanism. Chapter III requires State Parties to criminalize a specific number of acts[7] and to consider the criminalization of other acts.[8] It requires them to establish systems that enable the criminal, civil or administrative liability of legal persons for participation in and commitment of UNCAC crimes and sanctions that are effective, proportionate and dissuasive. It also requires State Parties to institutionalize measures to secure effective law enforcement according to specific standards;[9] and consider or seek to institutionalize such measures.[10] Furthermore, the Convention requires them to take such measures as may be necessary to enable *"freezing, seizure and confiscation"*. On protection of witnesses and reporting persons, the UNCAC requires the establishment of effective witness protection programs within the available means; the establishment of evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons; and the provision of protection against any unjustified treatment for any person who reports in good faith any facts concerning offences. This is in addition to other measures to enable effective enforcement.

Asset recovery: Chapter V requires that each State Party take a number of administrative and legislative steps to guarantee the existence of an effective legal and institutional framework to recover assets. Chapter V requires State Parties to compel financial institutions to set up a number of preventive procedures and to benefit from related international and regional initiatives in this regard. It also requires them to implement

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[7]　See Articles 15, 16(1), 17, 23, and 25 of the UNCAC Convention.
[8]　See Articles 16(2), 18, 19, 20, 21, 22, and 24 of the UNCAC Convention.
[9]　See Articles 28, 29, and 30(1), (2), (4), and (5) of the Convention.
[10]　See Articles 30 (3), (6), (7), and (10) of the Convention.

measures to ensure that financial institutions maintain adequate records of accounts and transactions and to prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Furthermore, it requires State Parties to consider establishing financial intelligence units as well as effective disclosure systems for appropriate officials and adequate sanctions for non compliance. Articles 53, 54 and 55 also impose an obligation to establish a framework for the direct recovery of property and recovery mechanisms through international co-operation, as well as other mechanisms that are needed to establish an effective asset recovery system, including the return and disposal of assets.

4. The objective and expected results of the regional conference

Based on this quick overview, it is obvious that UNCAC implementation will necessarily benefit countries that are aiming to develop their legal and institutional frameworks and strengthen their capacity to plan and implement anti-corruption policies. However, it is also clear that the Convention imposes a number of important obligations on State Parties, requiring support and the strengthening of efforts to improve state-to-state cooperation and cooperation with international and regional organizations. Accordingly, it is possible to categorize the state's need in this area as follows (i) legal and regulatory reform; (ii) institution-building; (iii) training; and (iv) supporting international cooperation.

The regional conference that will be held from 21 till 23 January 2008 in the Dead Sea (Jordan) is an important milestone for the region. It will bring together Arab countries that are interested in achieving growth, modernization, development, and reform with a view to supporting anti-corruption efforts in the region, especially the implementation of the UNCAC. The GfD Programme on the Rule of Law (Anti-Corruption and Judicial Reform), which was developed during the first phase of the GfD initiative (2005-2007) and which will be implemented within the framework of the second phase of the GfD (2008 – 2010),[11] will provide the needed support to these efforts.The GfD Programme on the Rule of Law (Anti-Corruption and Judicial Reform) addresses more than one reform area and focuses on anti-corruption and judicial reform as the two main pillars for the second phase of the GfD. It is the result of the policy dialogue and knowledge and technical exchange that were carried out within the framework of the first phase of the GfD. The program is the result of the efforts of the regional working group on the *"judiciary and enforcement of judgments"* that was chaired by Jordan and co-chaired by France and the USA. The Programme is composed of four main projects: (i) the project to support UNCAC Implementation in Arab Countries, (ii) a project to build the capacity of the judicial system in the field of economic disputes, (iii) a project on the enforcement of judgments, and (iv) a project on judicial independency and integrity. Its overall objective is to deepen regional policy dialogue and support regional knowledge and capacity building, while fostering peer-learning and partnerships at the national level.

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[11] The second phase (2008 – 2010) of the GfD initiative in the Arab countries is based on 2 programs. The first program deals with the governance and modernization of the public sector and will be implemented with the support of OECD. The second program deals with promoting good governance with the focus on the anti-corruption and judicial reform issues and will be implemented with the support of the UNDP-POGAR.

The regional conference on 21-23 January 2008 at the Dead Sea (Jordan) is the first link in a long chain of activities aimed at supporting the mentioned Programme. Through focusing on UNCAC implementation, the Programme seeks to launch a series of coordinated activities aimed at building capacity and knowledge in the Arab region to support the development and implementation of anti-corruption policies and civil, administrative and criminal measures in accordance with the UNCAC. The opening session will be dedicated to reviewing the achievements of the first phase of the GfD and the strategic directions of the second phase and to present the strategic design of the GfD Programme on the Rule of Law (Anti-Corruption and Judicial Reform).

The first session will focus on the subject of corruption and development. A number of experts will discuss the latest studies and findings that deal with the linkages and correlations between corruption and the loss of investment, the increase of poverty levels, the decrease of the quality of public services and the undermining of the legitimacy of governments and the people's trust in them. Following that, experts will present and discuss regional and international anti-corruption standards and principles as embodied in the UNCAC and regional anti-corruption conventions. Speakers will also present the LoAS's efforts to develop an Arab anti-corruption convention and compare the present draft to the UNCAC.

The second session will be dedicated to discussing key UNCAC obligations and implementation efforts in the Arab region through reviewing the results of the UNCAC Self Assessment (national review) process that was carried out by a number of Arab countries with the support of UNDP and UNODC. This will contribute to building a solid body of knowledge that will support implementation efforts across the region

The third session will present best global anti-corruption experiences with a focus on the project's priorities: (i) establishing a preventive anti-corruption institution; (ii) promoting ethics and conducts in the public sector and the judicial and the public prosecutor's office systems; (iii) criminalization and the endorsement of law enforcement, with an emphasis on witness and whistleblower protection systems; and (iv) asset recovery. This will contribute to knowledge building and facilitate the exchange of expertise and lessons learned within the Arab region on the one hand and between Arab countries and countries that have made more progress in the fight against corruption on the other.

The fourth session will focus on presenting legal and institutional requirements for establishing an effective asset recovery system as per Chapter V of the UNCAC. Speakers will present specific legislative experiences to establish an asset recovery system as well as institutional reforms that were undertaken to enhance effectiveness of this system. Speakers from the region will also make presentations on related reforms and obstacles in their countries with a view to bringing their national laws and institutions closer to the requirement of the UNCAC.

The fifth and sixth sessions will discuss the role of parliamentarians, civil society and the private sector in the fight against corruption and in supporting UNCAC implementation. Speakers will present related initiatives and papers on the role of the parliament in Iraq, Jordan and Lebanon in the fight against corruption as well as a study mapping civil society organizations and a paper discussing their potential role in supporting UNCAC implementation. These two sessions will also discuss possibility of developing a

cooperation mechanism between the non-governmental parties to support the efforts of the implementation of the Convention in the region.

The seventh session will be dedicated to follow up the preparation process to establish an Arab regional anti-corruption network aiming to provide a regional forum for judicial and governmental institutions with a view to promoting a continuous and active exchange of knowledge and expertise to support the implementation of the UNCAC. Participants will also discuss the benefits of and the practical steps that should be taken to establish the network as well as cooperation mechanisms with non-governmental actors, technical assistance providers, and donors.

In conclusion, the recommendations of the conference will form a starting point for this prominent regional effort led by the Arab countries in the framework of the GfD initiative and with the support of the UNDP in co-operation with the OECD and the UNODC.

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