

Transparency International Submission on Civil Society Participation in Anti-Corruption Efforts

Executive Summary

This submission is an executive summary of Transparency International's report on 'Civil Society Participation, Public Accountability and the UN Convention against Corruption'. It is intended to contribute to the Sixth UNCAC Conference of the States Parties' discussions about cooperation with relevant non-governmental organizations as well as about civil society participation in national-level anti-corruption efforts.

Introduction

The UN Convention against Corruption (UNCAC) is the second fastest ratified UN convention in history, with 177 States Parties to date. This testifies to the fact that tackling corruption is now recognised as a crucial priority for governments around the world, as most recently recognised in Goal 16 of the newly endorsed Sustainable Development Goals.

UNCAC acknowledges the key role of civil society in tackling corruption, in prevention activities and enforcement efforts. UNCAC Article 13 explicitly recognises that role.

Civil society organisations (CSOs) have repeatedly demonstrated their ability to make a valuable contribution to the fight against corruption over a period of decades. While state institutions are responsible for leading anti-corruption efforts through their law making, budgetary, programmatic and enforcement functions, civil society has been very effective in helping ensure that such government interventions have impact and in supplementing those efforts. The trust that communities often have in CSOs, the breadth of CSO networks and the depth of CSO local knowledge have proven to be valuable assets that can be harnessed to enhance the effectiveness of government efforts.

Over the first cycle of reviews of the UNCAC Implementation Review Mechanism (IRM), the value of civil society participation has been demonstrated in practice, with CSOs involved in 85% of the 114 in-country visits undertaken, and many contributing their inputs via detailed analytical reports and other helpful technical commentary.¹

Despite the valuable contribution of civil society in countering corruption, in an increasing number of countries, civil society and the media have faced constraints hindering their efforts.² In the UNCAC context, the review process in some countries has reportedly been closed to civil society inputs; in others the process has lacked transparency. In global UNCAC processes, it is problematic that the Implementation Review Group (IRG) and the Working Groups on Prevention and on Asset Recovery have excluded civil society observers.

Recommendations

Transparency International's report reflects on civil society's strong capacities to contribute to anti-corruption efforts, highlighting good practices, lessons learned and opportunities for improved government-civil society collaboration. These reflections have led to the following

¹ See eg. http://uncaccoalition.org/en_US/uncac-review/cso-review-reports/

² See eg. CIVICUS, State of Civil Society Report 2015:

<http://civicus.org/images/StateOfCivilSocietyFullReport2015.pdf>

recommendations to assist UNCAC States Parties in identifying areas where they can take concrete action to:

Improve the enabling environment for anti-corruption CSOs

1. **Create safe and effective conditions for the involvement of civil society.** Civil society anti-corruption organisations cannot carry out their role effectively when they are subject to constraints that negate the rights to freedom of expression, information, association and assembly. Governments should provide effective protections for civil society space. Beyond refraining from interference, they should actively consult and engage civil society across all areas of corruption policy development, implementation and monitoring. UNCAC States Parties should:
 - **Ensure that non-governmental organisation (NGO) registration legislation does not restrict the capacity for CSOs to undertake advocacy.** In accordance with the rights enshrined in international human rights instruments, and many national constitutions, and as implied in UNCAC Article 13 on public participation, governments should ensure that, *de jure* and *de facto*, CSOs have operational and physical freedom to undertake their work, including carrying out public advocacy and awareness-raising, initiating litigation and exposing allegations of corruption;
 - **Prioritise the passage of right to information (RTI) and whistleblower protection legislation** and its effective implementation so as to facilitate civil society efforts to tackle corruption, as well as entrenching public accountability and transparency.
2. **Direct the United Nations Office on Drugs and Crime (UNODC) to prepare guidance for governments and civil society** on good practice and lessons learned in the implementation of Article 13 in support of the upcoming review of UNCAC Chapter II.
3. **Engage with the Office of the High Commissioner for Human Rights (OHCHR) and representatives from relevant Human Rights Council special procedures** who can share good practices and lessons learned on civil society engagement in review mechanisms, reporting and complaint procedures. Task UNODC with collaborating with these bodies, other UN agencies, States Parties and civil society to co-host an UNCAC Conference of States Parties (CoSP) plenary discussion on corruption and human rights.

Strengthen UNCAC and anti-corruption programme implementation

4. **Draw on CSO expertise when drafting and implementing anti-corruption laws and programmes.** Feedback indicates that many States Parties have engaged civil society in the development and implementation of anti-corruption activities, with positive results. In particular:
 - **Executive branch departments responsible for developing legislation should implement public consultation processes** that enable civil society to provide feedback on drafting and implementation of anti-corruption legislation;
 - **Legislatures should be encouraged to implement public consultation processes**, including: publishing the legislative agenda, laws tabled in parliament for public comment, reports of independent commissions tabled in parliament and final committee reports; inviting CSOs to provide written and/or oral comments to parliamentary committees; and ensuring committee hearings are public (in all but exceptional circumstances);

- **Executive branch agencies and independent statutory accountability bodies should develop and implement anti-corruption programmes in partnership with civil society.**
5. **Reach out to the media to collaborate on awareness-raising and education activities.** The media are a key intermediary between States Parties and the public and should be seen as a useful partner rather than a threat. States Parties should proactively release more information on anti-corruption efforts and issues to the media (and the public at large) and should ensure that the media are legally protected and free of government control and censorship.

Improve UNCAC review and oversight processes

6. **Re-commit to systematic inclusion of representatives of CSOs in CoSP subsidiary bodies.** The report of the UN Special Rapporteur on Freedom of Association and Assembly entitled “Multilateral Institutions and Their Effect On Assembly and Association Rights” (A/69/365) stresses that the right to freedom of association and assembly also applies at the multilateral level and that multilateral organisations have the responsibility to maintain an enabling environment for civil society.³
- In accordance with the opinion of the UN Office of Legal Affairs of August 2010 (CAC/COSP/IRG/2010/9)⁴, **the CoSP should instruct the IRG to allow CSO observers to attend its proceedings in line with Rules 2 and 17 of the CoSP Rules of Procedure;**
 - **The CoSP should clarify that civil society representatives are able to participate as observers in the Open-Ended Intergovernmental Working Groups** and, with regard to the Working Group on Prevention, should it continue to exist, should call for that working group to proactively solicit civil society views on implementation of Chapter II: Prevention, including Articles 10 and 13. In this connection it should be noted that the Working Groups do not form part of the Implementation Review Mechanism (IRM), not subject to any special IRM arrangements and that it is common UN practice for UN open ended working groups to hold open meetings with NGO observers, whether in Geneva or otherwise⁵;
 - **The CoSP should include a standing agenda item on civil society participation** at every CoSP session until CSOs are admitted as observers into CoSP subsidiary bodies. Subsidiary bodies should be tasked with the collection, reporting and consideration of civil society experience and recommendations.
7. **Building on the existing Terms of Reference, explicitly require transparency and the inclusion of civil society**, parliamentarians and private sector representatives in the UNCAC review process, including by requiring that:
- UNODC publish online the list of government focal points and all information relating to the review schedule;
 - Reviewed countries and/or UNODC promptly publish online the country responses to the self-assessment checklist;

³ See: <http://freeassembly.net/wp-content/uploads/2014/10/Multilaterals-report-ENG.pdf>

⁴ See: www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/29Nov-1Dec2010/V1056031e.pdf

⁵ See eg. Open-ended intergovernmental working group on a draft United Nations declaration on the right to peace <http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/thirdsession.aspx>; Open-ended working group for negotiation of an Arms Trade Treaty: http://www.idsa.in/backgroundunder/TheArmsTradeTreaty_170712; Open-ended working group on aging http://ngocoa-ny.org/news_2/open-ended-working-group-on.html;

- The guidelines for country visits explicitly require Peer Review Teams to invite CSOs for consultations during these visits, and UNODC is instructed to facilitate such interactions;
- All country review reports include a section on civil society involvement in the review process and in national implementation.
- Full country review reports are automatically published on UNODC's website, together with any civil society parallel review reports.
- UNODC's periodic status reports on progress with the review process and its thematic reports should reference civil society review reports;
- There should be a process of follow-up to country review recommendations in which national action plans are developed with the participation of CSOs and published on the UNODC website.

8. **Mandate the creation of an UNCAC communications and reporting procedure** for serious non-compliance and lack of effective enforcement of UNCAC obligations. Such a mechanism should build on good practice approaches developed by the UN human rights treaty bodies, which facilitate the safe submission of complaints by individuals and groups.