

**CIVIL SOCIETY PARTICIPATION,
PUBLIC ACCOUNTABILITY
AND THE UN CONVENTION AGAINST
CORRUPTION
DECEMBER 2015**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
A. IMPROVE THE ENABLING ENVIRONMENT FOR ANTI-CORRUPTION CSOS	2
B. STRENGTHEN UNCAC AND ANTI-CORRUPTION PROGRAMME IMPLEMENTATION	2
C. IMPROVE UNCAC REVIEW AND OVERSIGHT PROCESSES	3
INTRODUCTION.....	5
PART 1: RECOGNISING THE VALUE OF CIVIL SOCIETY PARTICIPATION.....	7
A. CIVIL SOCIETY'S ADDED VALUE IN THE FIGHT AGAINST CORRUPTION	7
B. PROTECTING CSOS WORKING TO ADDRESS CORRUPTION	8
Relevant standards.....	8
Good practice, challenges and lessons learned	13
C. EMERGING INTERNATIONAL NORMS MANDATING "PUBLIC PARTICIPATION"	16
PART 2: CSO PARTICIPATION IN NATIONAL ANTI-CORRUPTION EFFORTS	19
A. ACCESSING, CREATING AND USING INFORMATION FOR ACCOUNTABILITY	19
Relevant standards.....	19
Good practices, challenges and lessons learned	20
B. ADVOCACY, EDUCATION AND AWARENESS-RAISING	24
Relevant standards.....	24
Good practices, challenges and lessons learned	25
C. SUPPORTING DEVELOPMENT OF ANTI-CORRUPTION LAWS, POLICIES AND PROGRAMMES.....	29
Relevant standards.....	29
Good practices, challenges and lessons learned	30
D. CONTRIBUTING TO ANTI-CORRUPTION ENFORCEMENT	32
Relevant standards.....	32
Good practices, challenges and lessons learned	34
PART 3: CSO PARTICIPATION IN FORMAL UNCAC PROCESSES	39
A. ENGAGEMENT WITH UNCAC COSP SUBSIDIARY BODIES	39
Relevant standards and practice	39
Good practice, challenges and lessons learned	41
B. UNCAC COUNTRY REVIEW PROCESS.....	44
Relevant standards and practice	44
Good practices, challenges and lessons learned	45
ANNEX 1	52
UNCAC REVIEW TRANSPARENCY PLEDGE	52
Six principles	52
ANNEX 2	53

EXECUTIVE SUMMARY

If leaders do not listen to their people, they will hear from them – in the streets, the squares, or, as we see far too often, on the battlefield. There is a better way. More participation. More democracy. More engagement and openness. That means maximum space for civil society.

UN Secretary-General Ban Ki-moon's remarks at the
High-level Event on Supporting Civil Society
23 September 2013¹

As the world prepares for the implementation of the new Sustainable Development Goals (SDGs) for 2015-30, it is significant that Goal 16 specifically recognises the core importance of accountable and transparent processes and institutions, both nationally and globally, as well as the SDGs prioritising anti-corruption efforts across sectors more broadly, in order to maximise the impact of scarce funding. This recognition of the need to ensure efficient use of public funding is also recognised in the 2015 Addis Ababa Action Agenda on Financing for Development and is at the heart of the United Nations Convention against Corruption's (UNCAC's) drive to prevent, expose and prosecute corruption. In its most simple form, UNCAC represents the commitments of States Parties to ensure that the public, private and community sectors collaborate to ensure that ordinary people have access to efficient public services and facilities, free from the threat of bribery and extortion.

In progressing with implementation of UNCAC, and the broader goals of ensuring public accountability and transparency, over the course of many decades, local, national and global civil society organisations (CSOs)² have repeatedly demonstrated their ability to make a valuable and unique contribution to the fight against corruption. While governments are responsible for leading anti-corruption efforts through their law-making, budgetary and programmatic functions, civil society has been very effective in acting in ensuring 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.

Significantly, UNCAC Article 13 explicitly recognises the role that civil society can play in tackling corruption. That said, since the establishment of the UNCAC Review Mechanism, there has been debate amongst States Parties regarding the extent and methods by which civil society should be involved in UNCAC review and implementation efforts. The most notable manifestation of this debate is the exclusion of CSOs from the UNCAC Implementation Review Group responsible for overseeing the review mechanism. As this report demonstrates, over the first cycle of the UNCAC Review Mechanism, from 2010-15, the value of civil society participation has been demonstrated in practice, with CSOs involved in 85 per cent of the 114 in-country visits undertaken during this period,³ and many contributing their inputs via detailed UNCAC Civil Society Review Reports⁴ and other helpful technical commentary.

This report reflects upon 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 recommendations below that were addressed to the 6th UNCAC Conference of States Parties in November 2015⁵ and aim to assist UNCAC States Parties in identifying areas where they can take concrete action.

¹ www.un.org/apps/news/infocus/speeches/statments_full.asp?statID=1981#.VeACH_nzMno

² This report uses the term civil society organisation (CSO) interchangeably with non-governmental organisation (NGO).

³ As above, para 22.

⁴ See for example http://uncaccoalition.org/en_US/uncac-review/cso-review-reports/

⁵ <https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1507501e.pdf>

A. IMPROVE THE ENABLING ENVIRONMENT FOR ANTI-CORRUPTION CSOS

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 mere non-interference, they should also 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 the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on Human Rights Defenders, and many national constitutions, and as implied in UNCAC Article 13 on public participation, governments need to ensure that, *de jure* and *de facto*, CSOs have the funding and 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.** Passing these key laws – and funding the processes and entities required for their enforcement – will directly facilitate civil society efforts to tackle corruption, as well as entrenching public accountability and transparency.

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 UNCAC Article 13 (participation of society) in support of the upcoming second cycle review of Chapter II. There is already considerable information available regarding civil society engagement in prevention activities that could be collated to help States Parties better complete their self-assessment exercises during the second cycle, as well as improving implementation more generally. This could be complemented with guidance on the implementation of key civil society enabling provisions, namely Articles 8(4) and 33 (protection of whistleblowers) and Article 10 (access to information), drawing on the results of first cycle of the Review Mechanism process (Article 33) and in support of the upcoming second cycle review of Chapter II (Articles 8 and 10).

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 a UNCAC plenary discussion on corruption and human rights, including identifying opportunities for information sharing and collaboration.

B. STRENGTHEN UNCAC AND ANTI-CORRUPTION PROGRAMME IMPLEMENTATION

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.** Core ministries responsible for anti-corruption efforts (such as the Ministry of Justice, attorney general), line ministries implementing accountability programmes (such as Ministries of Health, Education and Finance), and independent accountability bodies (such as supreme audit institutions, anti-corruption agencies, public service commissions) should all develop civil society partnership strategies and public participation and outreach activities so as to cooperate with CSOs in prevention, monitoring, education and awareness-raising activities.

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 to the media (and the public at large) in order to enable dissemination of information on anti-corruption efforts and issues. States Parties should also deliberately build reciprocal relationships of trust and integrity to ensure high-quality and reliable reporting and should ensure that the media are legally protected and free of government control and censorship.

C. IMPROVE UNCAC REVIEW AND OVERSIGHT PROCESSES

Re-commit to systematic inclusion of representatives of CSOs in CoSP subsidiary bodies. The report of the 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.

- In accordance with the advice provided by the UN Office of Legal Affairs in its opinion of August 2010, **the CoSP should instruct the UNCAC Implementation Review Group (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 call for that working group to proactively solicit civil society views on implementation of Chapter II: Prevention, including Articles 10 and 13;
- **The CoSP should include a standing agenda item on civil society participation** at every CoSP session until such time as CSOs are admitted as observers into CoSP subsidiary bodies. Subsidiary bodies should be tasked with ensuring the routine collection, reporting and consideration of civil society good practice, lessons learned and recommendations.

Building on the existing Terms of Reference and CoSP Rules of Procedure, explicitly require transparency and the inclusion of civil society (CSOs, academics, grassroots networks, etc.), parliamentarians and private sector representatives in the UNCAC review process, including by requiring that:

- UNODC publish online the list of UNCAC government focal points and all information relating to the review schedule, including whether countries have authorised a country visit, the schedule of such visits and the members of the Peer Review Team;
- Reviewed countries and/or UNODC promptly publish online the country responses to the self-assessment checklist;
- 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 produced during each review cycle are required to include a section on civil society involvement in the review process and in national implementation. This could be included as part of an introductory section on the process that was undertaken to compile the information (i.e. a short summary of what steps were taken, by whom, when and who else was

- consulted), as the current summaries offer very limited context within which to understand the findings;
- There should be automatic publication of the full country review reports on UNODC's website to facilitate collaborative efforts to work towards implementation of the recommendations;
 - Any civil society UNCAC country review reports should be published on the UNODC country reports webpage;
 - UNODC's periodic status reports on progress with the review process and its thematic reports should reference civil society review reports in addition to official review reports;
 - There should be a process of follow-up to country review recommendations to ensure that the recommendations resulting from the country review are reflected upon and actioned. The country review reports should be followed up with the participatory development of national action plans setting out how the country will take forward the recommendations resulting from the review process. The national action plans should be published on the UNODC website.
 - In general, UNODC as the UNCAC Secretariat should be mandated to more systematically facilitate the inclusion of civil society views in UNCAC review and implementation. T

The CoSP should also instruct UNODC to: **convene a conference of UNCAC stakeholders every two years** six months before the CoSP, to bring together civil society and other stakeholders (for example, States Parties, donors, private sector) to share experiences with respect to UNCAC implementation.

Mandate the creation of an UNCAC communication and reporting procedure for serious non-compliance and lack of effective enforcement of UNCAC obligations. This complaint mechanism would enable individuals and legal entities (civil society, private sector bodies, statutory authorities, etc.) to safely share information with the UN on corruption issues covered by UNCAC, especially grand corruption. Such a mechanism should build on the good practice approaches developed by the UN human rights treaty bodies, which are designed to facilitate the safe submission of complaints by individuals and groups.⁶

⁶ See www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx for more information.

INTRODUCTION

UNCAC has become the second fastest ratified UN convention in history, coming into force within only two years of its agreement and amassing 177 States Parties to date. This is testimony to the fact that tackling corruption is now recognised as a crucial priority for governments around the world, as has most recently been recognised in Goal 16 of the newly endorsed SDGs. Target 16.5 calls for governments to “[s]ubstantially reduce corruption and bribery in all their forms”, while Target 16.6 complements this overarching milestone by calling for the development of “effective, accountable and transparent institutions at all levels”. In the broader context of corruption and crime, Target 16.4 also calls on governments to “significantly reduce illicit financial...flows [and] strengthen the recovery and return of stolen assets...”

UNCAC explicitly recognises the role of civil society in tackling corruption, including prevention activities (UNCAC Chapter II) as well as enforcement efforts (UNCAC Chapter III). Article 13 of UNCAC explicitly recognises the key role that civil society can play in addressing corruption, requiring each State Party to “take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to *promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations*, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption...” [emphasis added]. The UNCAC Technical Guide elaborates on this obligation, advising that “States Parties should take a broad view of what comprises society and representative associations with whom they should engage. There should be a broad view and understanding of the society, comprising NGOs, trade unions, mass media, faith-based organizations etc. and should include also those with whom the government may not have a close relationship.”⁷

The Convention also recognises the vital role that partnerships can play in tackling corruption. These include partnerships between the government and civil society, as well as between civil society and accountability institutions, such as anti-corruption agencies and supreme audit institutions. They also include partnerships among civil society, the media and the private sector.⁸ In fact, national and international civil society has long been active in the fight against corruption, undertaking a range of advocacy, awareness-raising, education and implementation activities that have made an important contribution to building national accountability capacities. It is imperative that the UNCAC regime harness this capacity rather than resist it.

Despite the valuable contribution that civil society can play and has played in the fight against corruption, since UNCAC came into force there has been variable engagement with civil society by governments and UNCAC implementation bodies. There are encouraging examples of countries that have embraced civil society engagement in the UNCAC review process and/or development of national anti-corruption strategies and laws. However, in an increasing number of countries, civil society and the media have been targeted and faced constraints as a result of their efforts to address state and private sector corruption.⁹ There are also reports of national UNCAC review

⁷ UNODC and UNICRI, “Technical Guide to the United Nations Convention Against Corruption” (Vienna: UNODC, 2009), www.unodc.org/unodc/en/treaties/CAC/technical-guide.html

⁸ See Articles 5, 6, 10, 11 and 13.

⁹ See for example CIVICUS, State of Civil Society Report 2015: <http://civicus.org/images/StateOfCivilSocietyFullReport2015.pdf>

processes that have been exclusively government-driven and closed. It is also problematic that the IRG and the Working Groups on Prevention and on Asset Recovery continue to exclude civil society observers. This is despite other similar regional treaty review processes being more open to civil society participation.

The recommendations in this report were submitted to the sixth CoSP, held in November 2015 and presented in a side event at that conference. It was, however, understood to be impossible to amend the Terms of Reference for the UNCAC Review Mechanism to increase transparency and participation requirements. Consequently, the UNCAC Coalition, with Transparency as its secretariat, initiated discussions with country delegations inviting them to sign up to a new UNCAC Review Transparency Pledge and commit to transparency and participation principles in the review process.¹⁰

The report aims to contribute to the understanding of the role of civil society in anti-corruption efforts and UNCAC implementation. It is hoped that by providing concrete examples of positive relationships between governments and civil society, the next CoSP and States Parties that have not done so yet will more systematically integrate civil society engagement in all facets of UNCAC review and implementation. This report was based primarily on desk research, and supplemented by feedback from the field via a questionnaire sent to a wide range of national civil society partners. Information about the questionnaire and some aggregated responses are included in Annex 2.

¹⁰ Details of the UNCAC Review Transparency Pledge can be found in Annex 1.

PART 1: RECOGNISING THE VALUE OF CIVIL SOCIETY PARTICIPATION

The impact of corruption is greater than just the diversion of resources – significant as this is. Corruption is also corrosive of societies and contributes to a justified lack of trust and confidence in governance... Taking back what was lost to corrupt practices is everyone's responsibility – governments and civil society organizations, the private sector and the media, the general public, and youth who will play a pivotal role in seeing this agenda through so that their future is built on solid and honest foundations.

Helen Clark, UNDP Administrator
10 December 2012¹¹

1. UNCAC's recognition in Article 13 of the importance of civil society engagement in tackling corruption reflects the growing global consensus that participatory and inclusive decision-making, policy development and programme implementation are essential to ensuring effective and efficient governance. In this context, civil society is defined broadly, to cover associations of citizens who voluntarily collaborate to advance their interests, ideas and ideologies, including public interest NGOs, as well as trade unions, professional associations, social movements, academia and mass organisations (such as organisations of peasants, women or youth). For decades there have been clear international minimum standards to protect citizens who mobilise and act collectively to address concerns, such as corruption and accountability. In recent years, these standards have been broadened and developed as governments and the multilateral organisations that they have founded have more explicitly recognised the value of civil society input and participation in support of their activities. This part of the report seeks to encourage States Parties to recognise that there are numerous global and regional precedents that demonstrate that civil society participation has become the norm in intergovernmental processes.

A. CIVIL SOCIETY'S ADDED VALUE IN THE FIGHT AGAINST CORRUPTION

2. UNCAC language on the role of civil society reflects the fact that civil society has long been an active participant in the fight against corruption – as an advocate for action, an implementer of anti-corruption programmes, and an intermediary and partner between the public and governments to support efforts to raise awareness of, expose and address corruption.
3. While governments are responsible for leading efforts to stamp out corruption in the public and private sectors, over the course of many decades, local, national and global CSOs have

¹¹ www.undp.org/content/undp/en/home/presscenter/speeches/2012/12/09/helen-clark-international-anti-corruption-day-.html

repeatedly demonstrated their ability to make a valuable and unique contribution to the fight against corruption. While governments may drive forward anti-corruption efforts through their law-making, budgetary and programmatic functions, civil society has been very effective in acting to ensure that such government interventions have impact. The trust that CSOs often engender amongst communities, the breadth of their networks and the depth of their local knowledge have proven to be valuable assets that can be harnessed to enhance the effectiveness of government efforts. For example, civil society is often a particularly useful partner in sector-wide accountability approaches (such as in the health and education sectors), where it has better capacities to work with communities to expose community-level leakages and work with local officials on redress.

4. CSOs have also proven very useful partners to accountability institutions (such as anti-corruption agencies and supreme audit institutions), which often operate with limited funding and can benefit from approaches that maximise their outreach and impact. In that regard, CSOs with specific anti-corruption expertise, community-based networks and the media have all been important partners to such institutions. The diversity within civil society groups has also been a key element of its usefulness in the fight against corruption. Corruption is often most harmful to those who are most vulnerable within society, for example, indigenous groups, women, low-income workers and the rural poor. The capacity of civil society groups to build trust within such communities and champion their issues has given voice and power to such groups to ensure that corruption around issues such as land rights, resource extraction, public service access and labour entitlements has been exposed and addressed.

B. PROTECTING CSOS WORKING TO ADDRESS CORRUPTION

5. Although civil society has a clear role to play in anti-corruption efforts, for civil society to be empowered to effectively engage, it is essential that there is an enabling environment conducive to such work. In this context, it is imperative that legislative and regulatory frameworks that apply to CSOs are supportive rather than restrictive or coercive. Unfortunately however, almost inversely to the uptake of UNCAC, in recent years there has been a concomitant tendency in some countries to see civil society as a threat and to attack civil society's efforts accordingly.¹² Only last year, UN Human Rights Deputy Flavia Pansieri commented, "Civil society actors around the world face risks ranging from threats and intimidation to horrible reprisals, even killings... From the NGO who is prohibited from receiving funding to the whistle-blower who is imprisoned for revealing corruption... we must work to protect civil society from such practices."¹³

Relevant standards

6. Since the founding of the United Nations, the community of states has formally recognised the importance of protecting a set of minimum rights that are necessary to enable citizens to express their views. First through the Universal Declaration of Human Rights, subsequently through the ICCPR, and complementarily through regional human rights charters and national bills of rights, states have committed to protect key rights of participation and expression. Specifically:
 - *Right to freedom of expression:* Article 19(1) and (2) of the ICCPR together give every person the right to hold and express their opinions. This right is important for civil society advocates who need protection when identifying, critiquing and/or publishing reports of

¹² See for example Annex 2, which compiles questionnaire responses from CSOs engaged in anti-corruption work regarding the enabling environment within which they work.

¹³ "Protecting civil society space to guarantee human rights", OHCHR press release, 26 March 2014, www.ohchr.org/EN/NewsEvents/Pages/Protectingcivilsocietyspacetoguaranteehumanrights.aspx

corruption. It is one foundation of the right of whistleblowers to share information about corruption and be protected from unfair reprisals;

- *Right to freedom of the media:* Article 19(2) of the ICCPR explicitly protects the right of people and organisations to express their opinions in writing and other forms of media. This right is important for ensuring that civil society advocates and journalists have the freedom to publish allegations of corruption without the threat of being attacked, sued or jailed;
- *Right to freedom of information:* Article 19 as a whole is recognised as the basis for the right to information (RTI), which is an underlying pre-condition for people being able to effectively exercise their right to expression and opinion. The right to information is important for ensuring that civil society and the public can access source information from the government regarding public decision-making and public expenditures to identify corruption and hold the government to account;
- *Right to freedom of assembly and association:* Articles 21 and 22 of the ICCPR and Article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (specifically protecting trade unions) form the basis for the rights to form groups and come together for action. This right is important for enabling civil society to protest corrupt activities and to work together on campaigns to raise awareness and/or address corruption;
- *Right to participate in public life:* Article 25 of the ICCPR requires that every citizen has the right and opportunity, without any unreasonable restrictions, to take part in the conduct of public affairs, whether directly or through freely chosen representatives. This right strengthens the right of citizens to actively participate in government policy development and programme implementation and to demand greater transparency and accountability.

UN HUMAN RIGHTS COUNCIL AND CIVIL SOCIETY SPACE

The United Nations Human Rights Council (UNHRC) has taken measures to explicitly affirm the value of protecting and expanding the operating space for civil society. During its 24th Session in September 2013, the UNHRC passed a resolution, “Civil Society Space,” stipulating a number of steps governments should take to foster an enabling operating environment for civil society at the national level. Specifically, the resolution urges “States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity.” The resolution further calls on “States to acknowledge publicly the important and legitimate role of civil society in the promotion of human rights, democracy and the rule of law, and to engage with civil society to enable it to participate in the public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law and of any other relevant decisions.”¹⁴ More recently, at the 27th UNHRC Session in September 2014, the UNHRC passed a further resolution urging “States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity”¹⁵ and emphasising:

the essential role of civil society in sub-regional, regional and international organizations, including in support of the organizations’ work, and in sharing experience and expertise through effective participation in meetings in accordance with relevant rules and modalities, and in this regard reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with sub-regional, regional and international bodies, in particular the United Nations, its representatives and mechanisms.¹⁶

7. Recognising the importance of civil society participation, UNCAC itself is very clear that civil society and the public more broadly are important partners in the fight against corruption, and that States Parties need to take positive action to promote and protect their capacity to discuss, identify and address corruption:
 - Article 13(1) requires State Parties to take appropriate measures “to *promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations*, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption...” [emphasis added];
 - Article 5(1) requires State Parties to “develop and implement or maintain *effective, coordinated anti-corruption policies that promote the participation of society* and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability” [emphasis added];
 - Article 7(2)-(4) (candidate financing disclosures), Article 9 (public procurement and management of public finances) and Article 10 (public reporting) require States Parties to promote transparency, to facilitate the public’s capacity to promote public accountability;

¹⁴ Tor Hodenfield and Ciana-Marie Pegus, “Global Trends on Civil Society Restrictions” (CIVICUS, 2013), www.civicus.org/images/GlobalTrendsonCivilSocietyRestrictions2013.pdf

¹⁵ Human Rights Council Agenda Item 3: “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development” (UNHRC, 2014), A/HRC/27/L.24, para 3, www.ishr.ch/sites/default/files/article/files/a-hrc-l24-as-adopted.pdf

¹⁶ UNHRC, 2014, para 12.

- Articles 8(4), 13(2) and 33 require States Parties to protect both public officials and ordinary members of the public who act as whistleblowers;
- Article 35 reinforces the idea that corruption directly affects the public/civil society by requiring States Parties to enable people to claim damages/compensation where they have been adversely affected by corruption;
- UNCAC Article 63(6) makes it clear that civil society should be involved in UNCAC review processes, expressly stating, “*Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered*” [emphasis added].¹⁷

¹⁷ The UNHRC, in General Comment 25, has also specifically recognised the right to participate in public affairs. The committee noted,

Citizens...take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association... In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the [ICCPR], including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas...The right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25.

Human Rights Committee (1996), General Comment 25 (57), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1510th meeting, UN Doc. CCPR/C/21/Rev.1/Add.7, <https://www1.umn.edu/humanrts/gencomm/hrcom25.htm>

EXISTING GOOD PRACTICE GOVERNMENT-CIVIL SOCIETY PARTNERSHIPS UNDER THE OPEN GOVERNMENT PARTNERSHIP¹⁸

Since UNCAC came into force, other complementary accountability initiatives have continued to develop, including the Open Government Partnership (OGP), which specifically aims to secure practical commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance, in collaboration with civil society.¹⁹ The OGP was formally launched on 20 September 2011, when the eight founding governments (Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, United Kingdom and the United States) endorsed the Open Government Declaration and presented their country action plans. Since September 2011, OGP has welcomed the commitment of a total of 66 governments to join the partnership, approximately 1/3 of the membership of UNCAC. OGP countries commit to developing a country action plan through a multi-stakeholder process, with the active engagement of citizens and CSOs. Involving civil society in the development of the national action plan is a critical step in improving the dialogue among civil society and government. This in turn is one of the primary aims of OGP. Governments are required to report on the quality of their dialogue with civil society in their OGP self-assessment report, and the OGP Independent Reporting Mechanism also assesses performance in this area. The OGP Articles of Governance outline seven “Guidelines for Public Consultation on Country Commitments”, as follows:

1. Availability of process and timeline: Countries are to make the details of their public consultation process and timeline available (at least online) prior to the consultation.
2. Adequate notice: Countries are to consult the population with sufficient forewarning to ensure the accessibility of opportunities for citizens to engage.
3. Awareness-raising: Countries are to undertake OGP awareness-raising activities to enhance public participation in the consultation.
4. Multiple channels: Countries are to consult through a variety of mechanisms—including online and in-person meetings—to ensure the accessibility of opportunities for citizens to engage.
5. Breadth of consultation: Countries are to consult widely with the national community, including civil society and the private sector, and to seek out a diverse range of views.
6. Documentation and feedback: Countries are to produce a summary of the public consultation and all individual written comment submissions are to be made available online.
7. Consultation during implementation: Countries are to identify a forum to enable regular multi-stakeholder consultation on OGP implementation—this can be an existing entity or a new one. This document offers best practice recommendations on each of these seven guidelines, based on OGP experience. The last page of this document provides a set of helpful resources (OGP-specific and beyond).

¹⁸ Excerpts from the “OGP Article of Governance (2012)”, www.opengovpartnership.org/node/1329 and “Guidance for OGP National Dialogue”, www.opengovpartnership.org/sites/default/files/attachments/OGP_consultation%20FINAL.pdf

¹⁹ The Open Government Declaration, <http://www.opengovpartnership.org/about/open-government-declaration>

Good practice, challenges and lessons learned

8. Although CSOs have long been active in exposing, publicising and tackling corruption, in recent years, there has been a troubling rise in the number of countries in which civil society and the media have seen their space for action narrowed. Worryingly, the most recent 2015 State of Civil Society Report produced by CIVICUS reported,

In 2014, we documented significant attacks on the fundamental civil society rights of free association, free assembly and free expression in 96 countries. Attacks take a range of forms, including: restriction on CSOs' ability to receive funds; onerous regulation and reporting requirements; the misuse of laws and regulations, such as those on public order; judicial harassment and imprisonment of activists; the demonisation of civil society in political discourse; and verbal and physical attacks of an extreme nature... Wherever civil society activists are threatened, so are journalists: in many countries, the media faces attack merely for trying to report the truth.²⁰

9. Anti-corruption CSOs have had a particular challenge in many countries because governments have an increasing tendency to distinguish service-providing CSOs (good) from CSOs that they see as undertaking "political" advocacy or lobbying (bad). This is often one of the grounds upon which the latter group of CSOs are more tightly regulated and/or have their funding limited. In this context, it is worth noting a recent observation of the Special Rapporteur on Freedom of Peaceful Assembly and of Association:

He has observed that Governments often treat businesses and civil society differently, even where no reasonable justification in accordance with international norms exists. For example, registration requirements for businesses are considerably less cumbersome and faster in [some countries] than requirements for registration of NGOs. Similarly, no special financial regulations at the global level exist to regulate the private sector as a whole, other than guidance for financial institutions in detecting terrorist financing. Yet recommendation 8 of the Financial Action Task Force on Money Laundering requires that laws and regulations of member States on non-profit organizations be reviewed so as to prevent abuse of such organizations for the financing of terrorism. There is no evidence that the civil society sector is more prone than the private sector to money-laundering activities or terrorism-related financial activity or even that any such activity in the civil society sector justifies the sector-wide approach that the Task Force has adopted. Furthermore, States do not generally object to corporations investing capital from foreign sources in their jurisdictions in the same way they do if civil society organizations receive foreign funding."²¹

In this regard, it should be acknowledged that civil society has been responding to the constant demand for greater accountability by unilaterally taking action to encourage greater self-regulation. For example, global civil society have come together to endorse the INGO Accountability Charter, which operates as a voluntary code of conduct for international NGOs and their national chapters.²²

10. Recognising the challenges that civil society has been facing globally, as human rights and anti-corruption campaigners face increased restrictions on their activities, it is worth recalling that for more than 20 years, Member States have endorsed the UN Declaration on Human Rights Defenders, which enshrines the overarching commitments of states to protect such individuals

²⁰ CIVICUS, "State of Civil Society Report: Executive Summary" (2015), pp.6-7, www.civicus.org/images/SOCS2015ExecutiveSummary.pdf

²¹ UN-OHCHR (2014) "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", para 11, A/69/365, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/523/22/PDF/N1452322.pdf?OpenElement>; see also Special Rapporteur (2015) "Comparing States' Treatment Of Business And Associations", A/70/266, <http://freeassembly.net/rapporteurreports/sectoral-equity/>.

²² See www.ingoaccountabilitycharter.org/

and groups from harassment and violence due to their activities. Article 5 reaffirms the right of everyone, individually and in association with others, whether at a national or international level, to meet or assemble peacefully; to form, join and participate in NGOs, associations or groups; and to communicate with non-governmental or intergovernmental organisations. To this end, Article 2 underlines the “prime responsibility and duty” of each state “to protect, promote and implement all human rights” and to take “such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”²³

ANTI-CORRUPTION CSOS FACING INCREASING PERSECUTION DURING THEIR WORK

UNCAC expressly recognises the valuable role that civil society and the media can play in working with governments to address corruption, such that the CoSP should be extremely concerned that many CSOs are facing serious challenges in undertaking their anti-corruption activities. In the most recent 2015 report of the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur included a specific section focused specifically on “Defenders combating corruption and impunity”, observing:

Defenders working on governance issues, promoting transparency and accountability on the part of States, and combating corruption are among the most at-risk groups of defenders, subject to relentless harassment and multiple types of threats and attacks... Their work is often hampered by the lack of legal provisions for access to information or failure to implement such laws. These defenders reported governments’ reluctance to protect them, due to the numerous political and economic interests at stake. Finally, defenders working on matters that involve combating impunity are often the targets of attacks or campaigns to intimidate them, and witnesses often receive threats designed to deter them from appearing in court during certain trials.²⁴

The following collection of stories serves to highlight the various ways resistance to CSO anti-corruption efforts are manifesting around the world:

- On 7 May 2015, the elected Board of Directors of the Transparency International Kuwait chapter, Kuwait Transparency Society (KTS), was dissolved by the Kuwait government and replaced with government appointees. Existing staff at KTS were informed that their contracts would be terminated by the end of June 2015 and their landlord was informed of KTS’ intention to vacate its office by the same date. These developments marked a severe low point, following government allegations of political bias, “illegal” affiliation to an international organisation and defamation of the image of the state of Kuwait as a result of KTS anti-corruption activities. Since then, the chapter has been suspended by the Transparency International Board as a result of this government interference.
- In Cambodia, in mid-2015 the government expedited the passage of a Law on Association and Non-Governmental Organisations, without proper public consultations. Criticism of the law was based on leaked drafts, as the government kept the law’s contents secret until it was sent to the National Assembly. According to CSO analysis, the law can be used to stop NGOs from freely criticising government

²³ UN, “Report of the Secretary-General: Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (2000), www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx

²⁴ Special Rapporteur, “Situation of human rights defenders” (2015), A/70/217, paras 69-70, www.un.org/ga/search/view_doc.asp?symbol=A/70/217.

policies or public officials. It creates mandatory registration requirements for NGOs and gives the government the ability to disallow registration based on unclear criteria. For example it requires all NGOs to be “neutral toward all political parties” without defining “neutral”, which may mean that the law will stop groups from criticising government policies because it could be considered criticism of the ruling party. Hundreds of Cambodian NGOs campaigned against the law, and several foreign embassies and the United Nations have criticised the law and process.²⁵

- In early 2015, Russian prosecutors warned the Russian chapter of Transparency International, which has been active for more than 15 years, that it may be compelled to register as a “foreign agent”. The state’s justification for that demand comes from Transparency International’s Russian operations getting some funding from the group’s international secretariat in Berlin, Germany. The NGO said the government warning accuses it of “actual activity [that] includes interfering with the government’s policy in the fight against corruption by lobbying [for] its own proposals to change it.” A similar warning about foreign agent registration was made to Transparency International Russia in 2013.²⁶ Despite the chilling effect this approach has on civil society, in April 2014 the Constitutional Court ruled that the law on “foreign agents” does not contradict the Russian Constitution and that labelling NGOs as foreign agents is aimed at “important public interests”.²⁷
- For the last eight years, Paul Eric Kingue has been targeted for persecution in Cameroon as a result of blowing the whistle on corruption. In 2007, Kingue accused the Cameroon-based branch of a French company of tax fraud. After demonstrations in the district in West Cameroon where he was elected mayor, Kingue was arrested in February 2008 and charged with orchestrating the protests. It is widely believed the charges against Kingue of “aiding and abetting gang looting and inciting rebellion” and “forgery and misappropriation of public property” were in retaliation for his initial accusations. He was given a life sentence in February 2012 following criminal proceedings conducted in serious violation of his rights. In August 2014, the UN Working Group on Arbitrary Detention published an opinion stating that a number of procedural guarantees were not applied in Kingue’s case, questioning the independence of the judiciary and demanding that the government ensure the release and compensation of Kingue. As a result of this, the public prosecutor dropped the charges against him in early 2015.²⁸
- Over the last decade in Venezuela, the government has increased its accusations that NGOs are being funded by international enemies of the Bolivarian Revolution, or even that their activists are foreign spies, as NGOs have become more critical of the government’s human rights record and raised allegations of government corruption. In 2012, for example, the National Assembly threatened to investigate the funding of anti-corruption NGO Transparency Venezuela when it released a report criticising the National Assembly for irregularities in the importation of medicines from Cuba. Foreign funding of NGOs has also been under fire, with a Law on International

²⁵ “Transparency International condemns proposed restrictions on civil society in Cambodia”, Transparency International Secretariat press release, 2 July 2015, www.transparency.org/news/pressrelease/transparency_international_condemns_proposed_restrictions_on_civil_society

²⁶ Jeffrey Young, “Russia Pressures Anti-Corruption Group”, VOA, 23 February 2015, www.voanews.com/content/russia-pressures-anti-corruption-group/2654840.html

²⁷ www.icnl.org/research/monitor/russia.html

²⁸ “Transparency International demands immediate release of Paul Eric Kingue of Cameroon”, Transparency International Secretariat press release, 1 July 2015, www.transparency.org/news/pressrelease/transparency_international_demands_immediate_release_of_paul_eric_kingue_of

Cooperation proposed that would regulate the foreign funding of local NGOs. The law stagnated in 2006, but in December 2010 the National Assembly did approve the Law for the Defense of National Political Sovereignty and Self-determination. This law is narrower in scope but regulates NGOs' funding and restricts them from working on issues of political participation.²⁹

C. EMERGING INTERNATIONAL NORMS MANDATING “PUBLIC PARTICIPATION”

11. More than a decade ago, the UN High-Level Panel on UN-Civil Society Relations issued a report specifically on civil society engagement in multilateral processes. It stated clearly, “The growing participation and influence of non-State actors is enhancing democracy and reshaping multilateralism... [We] see this opening up of the United Nations to a plurality of constituencies and actors not as a threat to Governments, but as a powerful way to reinvigorate the intergovernmental process itself.”³⁰ This analysis has resonance for UNCAC’s review and implementation processes, highlighting again the fact that recent years have seen public participation become the norm rather than the exception in UN and regional intergovernmental processes. More recently, in September 2014 the UNHRC reaffirmed “the obligation of States to take all appropriate measures to ensure that every citizen has an effective right and opportunity to equal participation in public affairs” and concretely requested OHCHR to prepare a study on best practices, experiences and challenges and ways to overcome them with regard to the promotion, protection and implementation of the right to participate in public affairs.³¹ Where civil society participation sometimes used to be seen as an optional extra, there is increasing global recognition that it has become *de rigueur* and should therefore be meaningfully protected and promoted by states.

²⁹ Hugo Pérez Hernáiz and David Smilde, “Venezuela’s Human Rights NGOs Under Fire Again”, Venezuelan Politics and Human Rights, 2015, <http://venezuelablog.tumblr.com/post/121586515824/venezuelas-human-rights-ngos-under-fire-again>

³⁰ UN, “Report of the Panel of Eminent Persons on United Nations–Civil Society Relations” (2004), www.un-ngls.org/orf/Final%20report%20-%20HLP.doc

³¹ UNHRC, “Equal participation in political and public affairs” (2014), A/HRC/RES/27/24, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/179/73/PDF/G1417973.pdf?OpenElement>

NATIONAL RECOGNITION OF THE RIGHT TO PUBLIC PARTICIPATION

A number of countries around the world have actually entrenched the right to public participation in their constitutions and/or in legislation. A 2011 study of public participation obligations undertaken for the Indian National Campaign for the People's Right to Information highlighted a range of good practices. For example, in South Africa, Sections 59(1)(a), 72(1)(a) and 118(1)(a) of the Constitution impose identical obligations on the National Assembly, National Council of Provinces and provincial legislatures to "facilitate public involvement in the legislative and other processes of the [body] and its Committees". These provisions have been implemented via parliamentary Rules of Procedure and other regulations. In Indonesia, the Public Information Disclosure Act 2010 specifically encourages civil society's participation during the policy-making process. The Act aims at: (i) securing the right of the citizens to know about plans to make public policies and programmes, and the process to make public decisions, as well as the reasons for decisions; (ii) encouraging the participation of the society in the process of making a public policy; (iii) increasing the active role of the people in making public policies; and (iv) knowing the rationale for public policies that affect the lives of the people.³² In Canada, the Department of Justice's Policy Statement and Guidelines for Public Participation outlines a commitment by the Department to "involve Canadians in the development of legislation, policies and programmes...through adequately resources processes that are transparent, accessible and accountable".

12. The developing norm of public participation in government policy development, decision-making and activity implementation has been reflected in a number of recent UN agendas and agreements. In 2011, the Busan Partnership for Development – a major milestone in the development effectiveness discourse – set forth a number of conditions to ensure the advancement of inclusive and robust development practices. Key among these conditions is the recognition that CSOs

play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation...Recognising this, [governments agreed to] implement fully [their] respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, consistent with agreed international rights, that maximises the contributions of CSOs to development.³³

13. The post-2015 development agenda clearly recognises that progress in promoting sustainable development – which is accountable, transparent and responds to the needs of the public – requires strong partnerships across society. The draft outcomes statement on the new 2030 Agenda for Sustainable Development, which was endorsed by UN Member States at the September 2015 Global Summit, states

The scale and ambition of the new Agenda requires a revitalized Global Partnership to ensure its implementation. We fully commit to this. This Partnership will work in a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable

³² OECD, "Civil society empowerment" (2013), CleanGovBiz, www.oecd.org/cleangovbiz/CivilSocietyEmpowermentDraft.pdf

³³ www.oecd.org/development/effectiveness/49650173.pdf

situations. It will facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, the private sector, civil society, the United Nations system and other actors and mobilizing all available resources.³⁴

INTERNATIONAL PUBLIC PARTICIPATION NORMS ARE ALREADY RECOGNISED BY MANY STATES

More than 15 years ago, the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“Aarhus Convention”) came into force, representing a ground-breaking commitment by governments to establish minimum global standards for transparency and public participation in relation to the environment. As at January 2015, there are 47 parties to the Convention (more than 25% of the States Parties to UNCAC).³⁵ The Convention represents global good practice that should also be reflected in UNCAC processes. Under the Aarhus Convention, transparency and participation are enshrined as minimum requirements, specifically:

- The right of everyone to receive environmental information that is held by public authorities (“**access to environmental information**”). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;
- The right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental NGOs to comment on proposals, plans or programmes relating to the environment, with a specific requirement for early public participation, when all options are open and effective public participation can meaningfully inform decision-making. Comments from such processes are to be taken into due account in decision-making, and information is to be provided on the final decisions and the reasons for them (“**public participation in decision-making**”);
- The right to review procedures to challenge public decisions that have been made without respecting the two rights above or environmental law in general (“**access to justice**”).³⁶

³⁴ UN, “Draft outcome document of the United Nations summit for the adoption of the post-2015 development agenda”, A/69/L.85, 12 August 2015, www.un.org/pga/wp-content/uploads/sites/3/2015/08/120815_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf

³⁵ www.unece.org/env/pp/ratification.html

³⁶ <http://ec.europa.eu/environment/aarhus/>

PART 2: CSO PARTICIPATION IN NATIONAL ANTI-CORRUPTION EFFORTS

None of us on our own, Governments included, have all the facts, best ideas, or know all the reasons underlying the problems we are trying to solve. We can only benefit from collective wisdom. And so it's important for us to hear from all constituencies, especially marginalized voices, before making a decision.

Professor Sir Nigel Rodley, Chairperson,
UNHRC, October 2014

14. UNCAC neatly captures a regime of anti-corruption measures into a single agreed text, but while the consensus on its content signifies an important global commitment to minimum standards, and it is essential that the review mechanism effectively monitors whether those standards are being met, it is the actual implementation of UNCAC's provisions that will make the difference to the lives of ordinary people seeking to ensure that their taxes and other public funds are utilised effectively to deliver services and infrastructure in the public interest. Governments are responsible under UNCAC for implementing its provisions, but the Preamble of the Convention makes it clear that "the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, *such as civil society, non-governmental organizations and community-based organizations*, if their efforts in this area are to be effective" [emphasis added].³⁷ This part of the report seeks to showcase good practice and lessons learned regarding civil society anti-corruption activities, to assist States Parties to identify and embrace opportunities to partner with civil society in support of UNCAC implementation.

A. ACCESSING, CREATING AND USING INFORMATION FOR ACCOUNTABILITY

15. The ability to access and use government information and information related to government activities and expenditures is central to anti-corruption activities, which rely on transparency and the ability to hold governments to account on the basis of reliable facts and evidence. Without data, it is virtually impossible to take informed action, whether in terms of advocating for change, raising public awareness, implementing effective anti-corruption programmes or pursuing litigation.

Relevant standards

16. The right to access information has been recognised by the UN since its inception, enshrined in the Universal Declaration of Human Rights and entrenched in international law as part of Article

³⁷ United Nations Convention Against Corruption, Preamble (2010), www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

19 of the ICCPR. Since that time, the RTI has been enshrined in numerous regional human rights treaties³⁸ and more explicitly in regional anti-corruption conventions, as well in many national constitutions. The RTI has been recognised as a human right by the UNHRC,³⁹ a move supported by a number of decisions of the Inter-American Court of Human Rights and the European Court of Human Rights. There is also a fast-developing movement for more open government data reflected in initiatives such as the OGP,⁴⁰ the Extractive Industries Transparency Initiative⁴¹ and the International Aid Transparency Initiative.⁴²

17. UNCAC Article 13 reflected developing international good practice by recognising the importance of access to information. Article 13 reflects global norms by calling on States Parties to provide effective access to information upon request, as well as by encouraging more proactive disclosure of information by governments. UNCAC Articles 5 (national anti-corruption policies), 7 (public sector and election and political party financing disclosures), 9 (public procurement and management of public finance) and 10 (public reporting) also include explicit disclosure requirements. In terms of facilitating implementation of the RTI, the United Nations Educational, Social and Cultural Organization (UNESCO) has produced a range of guidance on good practices in RTI regimes.⁴³ And the NGO Article 19 has produced a Model Freedom of Information Law,⁴⁴ which entrenches principles of access that have been endorsed globally.⁴⁵

Good practices, challenges and lessons learned

18. Until the 1980s, only around 10 countries had passed freedom of information legislation, but following the end of the Cold War, a wave of legislation was passed as part of a package of democratic accountability laws. At the time of writing, there are now 103 national RTI laws in place, plus seven national RTI regulations. In terms of good practice, it is widely recognised that the South African Promotion of Access to Information Law 2000 is one of the best-drafted laws in the world, alongside the Indian Right to Information Act 2005 and the Mexico Access to Information 2002 (Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental). These laws are very strong on proactive disclosure, and the South African law in particular permits access to both government-held information and information held by private bodies where that information may be necessary for the protection of a right. That said, the Global Right to Information Rating Map,⁴⁶ which was created by two CSOs to rate and track the efficacy of RTI legislation, indicates that only 23 of the 103 existing RTI laws meaningfully meet agreed benchmarks. It is noteworthy that, at a panel organised by the UNHRC on the promotion and protection of civil society space, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association acknowledged that “while there were more laws adopted on access to information, there were also more limitations imposed under the pretext of national security.”⁴⁷
19. One of the most notable developments in implementing the RTI has been the increased support by civil society and governments, for example within the framework of OGP to proactively disclose information to the public. This approach responds to the mantra that “sunlight is the greatest disinfectant”, and recognises that CSOs and the media can usefully assist governments to disseminate information once it is put into the public domain, and in so doing, to enable citizens to undertake their own oversight of government activities and expenditures. This approach draws heavily on the globally famous examples from India, where the “jan sunwai”

³⁸ See www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=59&Itemid=80

³⁹ See <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁴⁰ See www.opengovpartnership.org/

⁴¹ See www.eiti.org

⁴² See www.aidtransparency.net/

⁴³ See www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/

⁴⁴ See www.article19.org/data/files/medialibrary/1796/model-freedom-of-information-law.pdf

⁴⁵ www.article19.org/data/files/pdfs/standards/modelfoiaw.pdf

⁴⁶ www.rtirating.org/

⁴⁷ A/HRC/27/33, p.7

model of public hearings has had huge success. In Rajasthan, the NGO Mazdoor Kisan Shakti Sangathan (MKSS)⁴⁸ developed the approach whereby MKSS accessed government records in relation to village development activities and/or employment rolls, and then worked with local communities to verify the records. MKSS then convened public hearings that brought together communities with their government officials, to discuss the discrepancies and call for action. The model has been hugely successful in holding local officials to account and has been replicated in the Indian government's National Employment Guarantee Scheme, which requires proactive disclosure of information in order to enable citizens to undertake their own "public audits" of work said to be done under the scheme.⁴⁹ Similar public disclosure approaches have been undertaken across the developing world, with the Brasil Transparency Portal (www.portaltransparencia.gov.br/) and the Mexico Transparency Portal (<http://portal.transparencia.gob.mx/>) are considered good practice models.

20. In terms of the first cycle of the UNCAC review process specifically, it is notable that in many countries there is only limited access to information to data on law enforcement statistics in relation to corruption cases and mutual legal assistance applications.⁵⁰ Some of this is likely related to general capacity limitations in the rule of law sector regarding capturing of investigation, prosecution and judgement statistics, but there are also more general challenges in terms of promoting transparency around the police, prosecutorial services and courts in many countries. Additionally, under-resourced anti-corruption agencies often do not direct funding towards monitoring of their own efforts, with the result that they also do not necessarily collect and release statistics. In Zambia, for example, data is partially available, but takes time to be released to the public through the quarterly media briefs from the anti-corruption commission (rather than the Ministry of Justice or courts), describing complaints received, complaints pursued as cases, cases taken to courts and convictions.⁵¹ However, the data is often inaccurate and inconsistent, and data is still restricted as many corruption cases are classified.
21. In an effort to address challenges of data collection and collation, UNODC itself has programmes in place to support countries to more effectively collect statistics on corruption, including in relation to criminal law enforcement of corruption,⁵² and UNODC also collects a range of data itself in relation to national criminal justice systems.⁵³ However, while the UNODC Statistics Database systematically collects information relevant to crime trends and the operations of criminal justice systems (such as homicide, burglary, sexual violence, prosecutions, convictions), it has not yet revised its system to collect information regarding corruption. In any case, as part of the implementation of the new SDGs, data will need to be collected on a range of corruption and accountability issues in relation to Goal 16 amongst others.

⁴⁸ See www.mkssindia.org/

⁴⁹ See www.tnrd.gov.in/schemes/nrega.html and www.mgnrega.co.in/

⁵⁰ State of implementation of the United Nations Convention against Corruption - Criminalization, Law Enforcement and International Cooperation, (CAC/COSP/2015/5), pp. 219-220 at

http://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03457_ebook.pdf

⁵¹ U4 Expert Answer, 2014:08, "Zambia: Overview of corruption and anti-corruption", at <http://www.u4.no/publications/zambia-overview-of-corruption-and-anti-corruption/>

⁵² See www.unodc.org/documents/data-and-analysis/statistics/corruption/Proactive-project_brief.pdf

⁵³ See the UNODC Statistics Database, <https://data.unodc.org/?lf=1&lng=en>.

SUPREME AUDIT INSTITUTIONS PROMOTE ACCESS TO INFORMATION TO ENHANCE INTERNAL AND EXTERNAL ACCOUNTABILITY

Supreme audit institutions are among the most prolific accountability institutions to be found throughout the world. While their work is often considered highly technical and somewhat complex SAIs have been at pains to promote the principle of transparency within their own operations. Their approach could provide a good precedent for UNCAC States Parties. For example:⁵⁴

- In **Argentina**, the Union of Audit Personnel (APOC) created a website to disseminate summarised versions of the reports generated by the National Auditor's Office (Auditoría General de la Nación, AGN), which use plain language. Through this service, the population can access the site to download reports or can request daily news related to the reports developed by the national or provincial oversight agencies. The portal also contains academic papers on external auditing systems and assessments of their functioning. Through its press department, the AGN itself also proactively sends journalists, ombudsmen, CSOs and subscribers a bulletin explaining briefly, and in non-technical language, the findings of the most important reports produced by the agency. This information contains a description of the objective of the corresponding audit, the period audited, the context in which it was carried out and the conclusions drawn from it. The Asociación Civil por la Igualdad y la Justicia, an NGO, assisted the AGN to develop and implement a dissemination strategy for the bulletins.
- In **Korea**, the full text of audit reports was not disclosed to the public and only a summary report was issued. However, a number of citizens, civic groups, and politicians called for full disclosure of audit results. In response, the Korean supreme audit institution finally agreed to issue the full text of audit reports to the public, only withholding information that would, if disclosed, have a serious, adverse impact on public safety and security. **The Korean supreme audit institution went further in terms of promoting** citizen cooperation and participation. An Advance Notice Audit System was introduced to notify citizens in advance of the scope and timing of planned audits and to enable the supreme audit institution to receive citizen complaints or information on poor practices of government bodies that could be reflected in its audits.

22. While there are many examples of RTI laws being used to promote accountability and uncover corruption, the success of such laws has led to a backlash, as governments with vulnerabilities have then sought to dilute the remit or the implementation efficiency of their laws. In India, for example, the government attempted to amend the Right to Information Act 2005 to exempt a larger number of institutions from its remit, but was forced to abandon its plans after a major campaign by anti-corruption activists across the country. In Azerbaijan, in June 2015 the parliament voted to considerably restrict access to corporate information, adopting amendments that will curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. The amendments to

⁵⁴ Ezequiel Nino, "Access to Public Information and Citizen Participation in Supreme Audit Institutions" (World Bank Institute, 2010), http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Citizen_Participation_SAI.pdf

a 2005 law on commercial information will bar government officials from distributing information about companies if doing so “contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defense of public order, the health and moral values of the people, or harms the commercial or other interests of individuals.” The reforms also would make release contingent on permission of all individuals named in the records. Data on corporate ownership and shareholders has been available on the website of the Tax Ministry and upon request, but such information will now only be accessible only to law enforcement bodies.⁵⁵ In Australia, for example, after the previous government implemented an election campaign promise to strengthen its freedom of information (FOI) regime and create the Office of an Information Commissioner, the current government withdrew funding for the new Commissioner from the National Budget, leading him to work out of his family home.⁵⁶

FOI ACT IN HUNGARY A VICTIM OF ITS OWN SUCCESS⁵⁷

In Hungary, following elections that gave the government a huge parliamentary majority, the FOI Act was amended in 2013, which resulted in serious restrictions on access to information. The amendment introduced the concept of an “abusive information requestor”, which in reality gives public organs broad rights to arbitrarily refuse public interest information requests. A more recent amendment to the FOI Act, adopted in an extraordinarily expeditious procedure in July 2015, lacking in any prior consultations, imposes further restrictions by enabling state bodies controlling public information to charge those requesting information for “the labor input costs associated with completing the information request.” The government has effectively imposed a “tax on transparency” by making the payment of charges a prerequisite for servicing requests. These amendments have been adopted at breakneck speed and without any prior professional consultations or political debates.

This regression is part of a more systematic dilution of the FOI regime over time. In 2011/2012, the previous FOI oversight institution headed by a Parliamentary Ombudsman (Commissioner) was dismantled and replaced by an office in the executive branch, the president of which is nominated by the prime minister. In January 2012, this saw the country’s former Data Protection and Freedom of Information Parliamentary Ombudsman’s tasks transferred to a newly established National Authority for Data Protection and Freedom of Information, which is an administrative body and does not comply with the requirement of full independence, as enshrined in the European Union’s 95/46/EC directive on data protection. In April 2012, the European Commission referred an infringement procedure against Hungary to the Court of Justice of the European Union for failure to correct the early termination of the former Commissioner’s term. And in April 2014 the Court of Justice of the European Union ruled that Hungary’s early termination of the former Commissioner’s term was a violation of the *acquis communautaire*.⁵⁸ Parallel to this, the acting FOI ombudsman’s term of office was terminated early by law.

⁵⁵ Based on information provided through Transparency International’s August 2015 UNCAC Questionnaire.

⁵⁶ Paul Farrell, “Freedom of information laws upheld by two men working from home”, The Guardian, 11 December 2014, www.theguardian.com/australia-news/2014/dec/11/freedom-of-information-laws-upheld-by-one-man-working-from-home

⁵⁷ Based on information provided through Transparency International’s August 2015 UNCAC Questionnaire.

⁵⁸ See case C-288/12, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=125053&pageIndex=0&doclang=HU&mode=req&dir=&occ=first&part=1&cid=880384>

23. While access to existing government information is a key element in civil society efforts to expose corruption and hold governments to account, it should also be noted that civil society has been very effective in collecting primary data and creating new knowledge in order to inform the development of anti-corruption policies and programmes. Often, such research and analysis activities have been undertaken in partnership with government agencies, which have recognised they do not have the necessary time or expertise for such work. Reporting under the Istanbul Anti-Corruption Action Plan, for example, showed that anti-corruption research varied across countries; in most cases, national surveys and studies were conducted by NGOs and international partners, but some were commissioned by governments in order to inform their activities. For example, in Azerbaijan the Azerbaijan Information and Cooperation Network of Anti-Corruption NGOs conducted a survey on corruption that was taken into account by the government in the development of the 2007-11 anti-corruption strategy and action plan. And in Ukraine, in 2009 the Ministry of Justice commissioned several NGOs and academic institutions to prepare a series of surveys on public opinion on corruption that were reportedly used in the development of the 2011-15 national anti-corruption strategy.⁵⁹ That said, in both of these countries, civil society-government relations have deteriorated significantly and it has been difficult for anti-corruption CSOs to operate.
24. Despite the capacity of civil society to undertake valuable anti-corruption research, in some countries governments are quite severely restricting civil society's ability to undertake such work. In Namibia, for example, it has been reported that the Research, Science and Technology Act of 2004 and its regulations, both of which only came into force in 2011, make it "unlawful to do research without a permit, whether such research is privately funded or government funded. The definitions of a 'research institute' or a person doing research are extremely broad and would affect a wide variety of persons, from doctors, academics, reporters, even a child doing a school project."⁶⁰ Civil society has attempted to have the law constitutionally overturned, but in the meantime, it has had a chilling effect on such activities. Likewise, in 2015 the Tanzanian parliament passed a Statistics Act that has potentially very significant implications for anyone working with statistics in Tanzania, such as those in research institutions, the media and civil society. A local NGO, Twaweza, reported that the bill introduces uncertainty in terms of who is allowed to generate statistics and what authorisations are required, appears to be inconsistent with principles of open government and open data, and introduces obstacles to whistleblowing without any public interest protections.⁶¹

B. ADVOCACY, EDUCATION AND AWARENESS-RAISING

25. One of the most visible and successful activities undertaken by civil society to achieve progress with UNCAC implementation is the work that CSOs do in terms of advocacy, education and awareness-raising activities. As UNCAC recognises, addressing corruption is a multi-sectoral task requiring support across society, and in this regard it is essential that the public is proactively engaged in the fight against corruption. Even prior to the advent of the UNCAC regime, CSOs had a long track record of success in this area. As a result of that, they have both trust and reach into the population, which should be harnessed by governments for the benefit of UNCAC implementation.

Relevant standards

26. The Universal Declaration of Human Rights and ICCPR have long enshrined the rights to freedom of expression and the media (Article 19) and these rights have been incorporated into

⁵⁹ Based on information provided through Transparency International's August 2015 UNCAC Questionnaire.

⁵³ Charmaine Ngatjiheue, "Research law under scrutiny", *The Villager*, 7 October 2014, www.thevillager.com.na/articles/7444/Research-law-under-scrutiny/

⁶¹ "Rapid Analysis and Key Questions on Tanzania's Statistics Act", *Twaweza*, 15 April 2015, www.twaweza.org/go/stats-act-analysis

most national constitutions. Notably, these protections cover both CSOs (see Part 1, Section B above for more) and the media, which are often a key partner in efforts to publicise reform issues and expose corruption. It is significant in this regard that the UNCAC Technical Guide notes:

States Parties should review their licensing and other arrangements for various forms of media to ensure that these are not used for political or partisan purposes *to restrain the investigation and publication of stories on corruption*. At the same time, while those subject to allegations may have recourse to the courts against malicious or inaccurate stories, States Parties should ensure that their legislative or constitutional framework positively supports the freedom to collect, publish and distribute information and that the laws on defamation, State security and libel are not so onerous, costly or restrictive as to favour one party over another. [emphasis added]⁶²

27. UNCAC Article 13(1)(c) also specifically recognises:

Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and *to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption*. This participation should be strengthened by such measures as: ... (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula... [emphasis added]

The UNCAC Technical Guide adds to this guidance and notes that anti-corruption bodies “designated under article 6 should work with public sector institutions to ensure information on anti-corruption measures is disseminated to appropriate agencies and the public, *as well as with NGOs, local think tanks and educational institutions* to promote the preventive work and the integration of anti-corruption awareness into school or university curricula” [emphasis added].⁶³

Good practices, challenges and lessons learned

28. Civil society has been extremely effective in undertaking advocacy activities designed to strengthen the anti-corruption legislative and policy regime. Following the signing of UNCAC in 2003, many CSOs were very active in lobbying their governments to ratify the treaty and have since progressed to advocacy campaigns in support of implementation. For example, Transparence Maroc was very active in urging the government to ratify UNCAC (achieved in May 2007). It has since proactively contributed to the formulation of a national action plan in line with the UNCAC framework, and advocated for the successful creation of a national anti-corruption commission. Transparence Maroc also established a National Corruption Observatory and a network against corruption, which has brought together 46 CSOs and government officials to discuss reform and implementation issues.⁶⁴

⁶² UNODC and UNICRI., UNCAC Technical Guide (2009), p. 63

⁶³ UNODC and UNICRI., UNCAC Technical Guide (2009), p. 63

⁶⁴ www.u4.no/helpdesk/helpdesk/queries/query73.cfm

PROTESTING CORRUPTION – YOU WIN SOME, YOU LOSE SOME

In recent months [as at November 2015], civil society in Guatemala has run one of the most successful anti-corruption campaigns in recent history, leading to the resignation of both the president and vice-president and the indictment of both on corruption charges. Numerous ministers are also under investigation and it is anticipated that further charges will be laid, in a scandal alleging official corruption in waiving customs duties for business cronies. Wide-scale public protests began in April 2015 when CICIG, a UN commission formed to help Guatemala prosecute high impact crimes, uncovered allegations of bribery at the highest levels of government. This led to months of protests, culminating in hundreds of thousands of people demonstrating in the streets and a nationwide strike in August 2015. Backed by prosecutors determined to take action, the government has stepped down and new elections will soon be held.⁶⁵

Conversely, despite the right to freedom of expression and freedom of the media being long-entrenched customary international law norms, in Malaysia, anti-corruption journalists and citizens have been under fire in recent months. A major corruption scandal has plagued the prime minister, and reporters seeking to cover the story have come under heavy pressure. In July 2015, for example, a whistleblowing website (“The Sarawak Report”) was blocked and two local papers in Malaysia were suspended for three months after publishing investigative reports about the financial scandal involving the prime minister.⁶⁶ In response, Malaysian media groups and activists attempted to organise a major rally in August, protesting the government’s actions. The Coalition for Press Freedom was initiated by five media groups, which adopted the campaign hashtag [#AtTheEdge](#) to highlight the rise of media censorship in the country and call on the public to resist such official actions. One activist commented: “...a democracy must have vibrant mass media and independent press which dare to conduct investigative journalism like what The Edge and Sarawak Report have done. They must make available information to the rakyat [people]...”⁶⁷ The government also went further and attempted to censor all websites promoting the rally, arguing that the protests were a threat to national security.

29. While advocacy is a core part of civil society’s work to tackle corruption, as noted in Part 1: Section B of this report, the increase in restrictive legislation being passed by governments has also had a problematic impact on the civil society advocacy capacity. In 2014, the Special Rapporteur on Freedom of Peaceful Assembly and of Association observed:

In the last decade, the securitization of civil society “whereby civil society becomes viewed on the one hand as potentially functional to achieving global and national security goals, and on the other hand, as potentially threatening to the security of liberal democratic states” predominates. The Special Rapporteur is concerned that the growing preoccupation of

⁶⁵ Patricia Davis, “Guatemala’s Civil Society Just Did the Impossible”, *The Nation*, 11 September 2015, www.thenation.com/article/guatemalas-civil-society-just-did-the-impossible/

⁶⁶ “Malaysia blocks news website and suspends two local papers for reporting government corruption”, *Global Voices Advocacy*, 28 July 2015 <https://advocacy.globalvoicesonline.org/2015/07/28/malaysia-blocks-news-website-and-suspends-two-local-papers-for-reporting-on-government-corruption-2/>

⁶⁷ Mong Palatino, “Malaysia at-the-edge campaign challenges censorship”, *Hong Kong Free Press*, 2 August 2015, www.hongkongfp.com/2015/08/02/malysias-attheedge-campaign-challenges-media-censorship/

States with terrorism and security following the attacks of 11 September 2001 has discouraged the participative model of civil society.⁶⁸

For example, Australia, according to the International Service for Human Rights, demonstrates that

the problem [of government restrictions on NGOs] is not limited to the Global South [...] new guidelines were announced in New South Wales, Australia which effectively prohibit community legal centres from undertaking “political advocacy or political activism” [...] The NSW Legal Assistance Services Funding Principles state that this includes, but is not limited to, ‘lobbying governments and elected officials on law reform and policy issues’ and also includes ‘public campaigning and advocacy... seeking changes to government policies or laws’.⁶⁹

30. There are numerous examples of CSOs working in-country to support government to raise awareness of anti-corruption strategies and to build the capacity of the public to assist in the fight against corruption. In Kenya, for example, Transparency International Kenya undertakes a range of activities to target stakeholders across the country in collaboration with government bodies:⁷⁰ anti-corruption lessons are given through “Integrity Clubs”, which are run in primary and secondary schools to encourage students to become more active citizens; mobile anti-corruption legal advice clinics travel across the remote rural areas of the country and hold public forums to make villagers aware of how to fight corruption, receiving around 3,900 complaints in the last 12 months; and the “Uwajibikaji Pamoja” complaints service⁷¹ helps the public report complaints about aid and service delivery complaints online, through a toll-free SMS number or by visiting their nearest office, through an initiative bringing together numerous aid and service delivery institutions, including the county government of Turkana, the Kenya National Commission on Human Rights, Oxfam and World Vision Kenya.
31. A number of innovative CSO activities have been undertaken to educate the next generation of leaders on anti-corruption issues. For example, the Transparency International School on Integrity brings together young anti-corruption activists from around the world each year to engage in intensive seminars and trainings with leading anti-corruption and accountability professionals. Since 2010, the school has welcomed more than 350 students, graduates and young professionals from over 60 countries. By linking theory to practice and emphasising peer-to-peer learning, these young leaders acquire the necessary skills to stand against corruption in their countries.⁷² In April 2014, Kazakhstan launched the first nationwide Anti-Corruption School for students, civil society representatives, journalists and citizens who wish to learn how to counteract corruption in daily life. Transparency International Kazakhstan partnered with the national Agency for Fighting against Economic and Corruption Crimes, the Financial Police Academy, Turan University, the Kazakhstan Association of Higher Education, and the Republican State Enterprise “Kazakhstan Temir Zholy”, to develop and run a curriculum that provides students with anti-corruption instruments and tools.⁷³ In Palestine, in 2006 the Coalition for Accountability and Integrity - AMAN and CHF International implemented an anti-corruption training programme for Palestinian youth in the West Bank and Gaza. This aimed to provide

⁶⁸ Report on Multilateral Institutions and their Effect on Assembly and Association Rights, A/69/365 (October 2014) p. 7. <http://freeassembly.net/reports/report-multilaterals/>

⁶⁹ “End restrictions on NGO access to funds for human rights advocacy”, International Service for Human Rights, 29 May 2013, www.ishr.ch/news/end-restrictions-ngo-access-funds-human-rights-advocacy#sthash.DpFlj348.dpuf

⁷⁰ “5 ways Kenyans are fighting corruption”, Transparency International, 22 June 2015, www.transparency.org/news/feature/5_ways_kenyans_are_fighting_corruption

⁷¹ <http://haipcrm.com/>

⁷² <http://transparencyschool.org/summer-school/>

⁷³ “Anti-corruption school opens its doors in Almaty, Kazakhstan”, Transparency Kazakhstan press release, 23 April 2014, www.transparency.org/news/pressrelease/anti_corruption_school_opens_its_doors_in_almaty_kazakhstan

Palestinian youth with an understanding of corruption and how to combat it through transparency, accountability, and integrity.⁷⁴

NATIONAL ANTI-CORRUPTION MEDIA AWARDS REWARD EFFORT TO EXPOSE WRONGDOING

Transparency International, globally, regionally and nationally, has been active in encouraging the media to report on corruption. In 2014, Transparency International launched a global Corruption Reporting Award as part of the 2014 One World Media Awards, in order to highlight and encourage the coverage of corruption around the world. At that point, Transparency International was already a co-sponsor of the Latin American Investigative Journalism Award with Instituto Prensa y Sociedad (Press and Society Institute, IPYS). That award receives more than 150 entries annually.

In 2007, the Kosovo Anti-Corruption Award was inaugurated to recognise the effort of journalists to publicly expose corruption issues. The award was a partnership of the Association of Journalists of Kosovo, the Kosovo anti-corruption agency and UNDP, and recognised the best media reports for journalists who, through their stories, address corruption and influence transparent and honest behaviour. The award has become a traditional annual event that brings together actors to commemorate International Anti-Corruption Day.⁷⁵

In 2011, the inaugural Papua New Guinea Excellence in Anti-Corruption Reporting Media Awards were launched. The awards were a partnership of Transparency International PNG, the PNG Business Against Corruption Alliance, UNDP, the British High Commission and the ABC-NBC Media Development Initiative. At the launch of the awards the UN Resident Coordinator stated:

Journalists have an incredible power – as well as a responsibility – to use their voices, and their pens, to raise the consciousness of governments and societies through their stories. They need to relentlessly pursue the path of truth, and hold firm in exposing corruption. Many journalists have navigated through murky waters and investigated powerful forces to penetrate secret webs of misappropriation and misdeeds.

Notably, the prize winner was given a study tour of the Australian Broadcasting Corporation, intended to facilitate an exchange of skills and knowledge.⁷⁶

⁷⁴ "Anti-Corruption Training Act Program Launch", AMAN press release, 9 January 2007,

www.transparency.org/news/pressrelease/20070109_anti_corruption_training_act_program_launch

⁷⁵ www.ks.undp.org/content/kosovo/en/home/presscenter/articles/2014/11/05/anti-corruption-journalism-award-2014.html

⁷⁶ www.pg.undp.org/content/papua_new_guinea/en/home/presscenter/speeches/2012/12/10/excellence-in-anti-corruption-reporting-media-awards-2012-speech-by-mr-david-mclachlan-karr-undp.htm

C. SUPPORTING DEVELOPMENT OF ANTI-CORRUPTION LAWS, POLICIES AND PROGRAMMES

32. Whereas for many decades, the making of laws and policies and the development of government programmes were often obscure and closed to non-governmental participation, in the last two decades, great strides have been made in opening up these processes to inputs from civil society and the public. With increasing democratic development, national parliaments have become considerably more open, with an increasing number of parliamentary committees holding open public hearings, to which civil society can contribute. Likewise, in an increasing number of countries the executive branch is becoming more open to early and broad consultation and public-private partnerships. In the field of anti-corruption, civil society has been particularly active in engaging in legislative reform and policy development, recognising, as does UNCAC Chapters II and III, that the policy/regulatory environment is crucial to tackling corruption. Civil society has also been very active in supporting anti-corruption programming, in particular in partnership with anti-corruption bodies tasked with achieving progress in the national anti-corruption agenda.

Relevant standards

33. As noted in Part 1, Article 25 of the ICCPR has long required that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives...”⁷⁷ Similar provisions are found in the African Charter on Human and Peoples’ Rights, the American Convention on Human Right and the Inter-American Democratic Charter, as well as non-binding instruments such as the Harare Commonwealth Declaration.⁷⁸ UNCAC Article 13(a) reinforces these obligations, recognising:

Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as: (a) Enhancing the transparency of and *promoting the contribution of the public to decision-making processes...* [emphasis added]

The UNCAC Technical Guide supplements this requirement by advising that “States Parties may wish to consider means to review existing regulations, and the impact of new legislation, with the inclusion of means to consult civil society and legal entities, such as professional associations.”⁷⁹

34. UNCAC Article 5(1) also requires every State Party to, “in accordance with the fundamental principles of its legal system, develop and implement or maintain *effective, coordinated anti-corruption policies that promote the participation of society* and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability” [emphasis added]. The UNCAC Technical Guide supplements this requirement by stressing the importance of civil society participation on a number of fronts, advising:

⁷⁷ <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

⁷⁸ University of Oxford, “A comparative survey of procedures for public participation in the law-making process – report for the National Campaign on the People’s Right to Information” (2011), pp.5-6, www3.law.ox.ac.uk/denning-archive/news/events_files/A_Comparative_Survey_of_Public_Participation_in_the_Legislative_Process.pdf

⁷⁹ UNODC and UNICRI (2009), p.43.

*Anti-corruption policy has to envisage specific ways in which representatives of society will be included in all processes of its design, content, development, endorsement, implementation, and review...[It] is advisable that the planning and implementation of the strategy benefit from the participation of a broad range of stakeholders, including civil society organizations and the private sector...The processes of drafting, adoption, implementation and monitoring and assessment of the strategy should be planned, led and coordinated among all relevant stakeholders (public and private sectors, civil society) and cover the full range of sectors or areas where corruption might occur...The strategy might designate responsibilities across the public sector, the private sector, the voluntary or NGO sector, and civil society. [emphasis added]*⁸⁰

35. Articles 6 and 36 require that States Parties have independent, specialized anti-corruption bodies in place that are capable of discharging prevention and enforcement obligations. This could be one dedicated anti-corruption agency or more bodies working cooperatively. The UNCAC Technical Guide, when discussing such bodies, stresses that in “addressing [their] independence, consideration would need to be given to [...] *arrangements to determine the involvement of civil society and the media*” [emphasis added]. Noting that such anti-corruption bodies are often also given lead responsibility for spearheading implementation of the national anti-corruption policy, and that the Technical Guide emphasises the need for civil society implementation partnerships, by implication national anti-corruption bodies are further encouraged to work closely with civil society groups.

Good practices, challenges and lessons learned

36. Civil society around the world has been keenly active in engaging in legislative reform. Following the first review cycle, which was intended to identify legislative gaps requiring attention, it is to be expected that civil society could be ever more useful to governments in assisting with participatory law reform processes to strengthen anti-corruption laws. For example, in Bangladesh and India, civil society spearheaded the campaigns to enact RTI legislation, whistleblower legislation and anti-corruption commission legislation, with considerable success. In the United Kingdom, civil society was very active in lobbying the government to take action to embed the 1997 Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention through domestic legislation, and since the Bribery Act’s passage in 2010 civil society has continued to actively work to promote implementation of the legislation and resist attempts to water it down through amendments.⁸¹ In Georgia, CSOs long advocated the establishment of a verification system for the asset declarations of public officials, and the government finally submitted relevant legislative amendments to parliament in mid-2015. In the United States, at federal and state levels, civil society campaigners have repeatedly been active in advocating for stronger corruption controls, particularly in support of stronger whistleblower protection and foreign bribery enforcement.
37. At the same time, civil society has also been responsive to requests by government bodies to assist them with their law-making functions. In New Zealand, for example, the Transparency International chapter responded to an invitation by parliament to make a submission for the Organised Crimes and Anti-Corruption Legislation Bill by the Law and Order Select Committee.⁸² In Kosovo, in 2011, a coalition of 10 CSOs with the support of the ombudsperson challenged the Law on Duties and Benefits of MPs in the Constitutional Court, in relation to specific articles relating to MP privileges, which led to the Court ruling that “articles in question

⁸⁰ UNODC and UNICRI (2009) pp.2, 4 and 9.

⁸¹ David Connett, “Anti-corruption campaigners furious as Governments considers softening Bribery Act”, *The Independent*, 29 July 2015, www.independent.co.uk/news/uk/politics/anticorruption-campaigners-furious-as-government-considers-softening-bribery-act-10425362.html

⁸² Information provided through Transparency International’s August 2015 UNCAC Questionnaire.

were unconstitutional.⁸³ The value of CSOs to such law reform was formally recognised in April 2014, when the Kosovo Legislative Assembly approved a “Declaration” that committed the Assembly to being more open, cooperative and supportive of civil society.⁸⁴

38. Civil society has also been very proactive in working with governments in the development of national anti-corruption strategies (NACS). In Sierra Leone, for example, the NACS itself recognises that it is “the compilation of many hands and minds [and] was created through a participatory process that involved a plethora of consultations and contributions from a wide variety of stakeholders”. The document itself was written by a small team under the auspices of the anti-corruption commission, and was advised by a high-level Steering Committee that includes representatives from civil society; the NACS acknowledgements specifically thank six NGOs for their substantive inputs.⁸⁵ In Zambia, development of the national corruption prevention strategy was initiated by the anti-corruption commission, which established a national consultancy team, consisting of renowned CSOs and individuals, such as those from the Integrity Foundation, Transparency International Zambia and lecturers from the University of Zambia, who were supported by a DFID advisor to the anti-corruption commission. This team produced a discussion draft of the National Anti-Corruption Policy and Strategy. The draft policy was then submitted for consultation to a broad range of stakeholders from civil society, business, public agencies and the House of Chiefs as traditional local authorities. For this purpose, workshops of between 70 and 80 people were organised in the country’s nine provinces. The final step saw these inputs integrated and presented at a final stakeholder workshop before being submitted to the Cabinet Office for official approval.⁸⁶ Sometimes, NGOs can even initiate or draft national anti-corruption plans. In Azerbaijan, the Centre for Economic and Social Development submitted a draft National Anti-corruption Strategy to the parliament in March 2011.⁸⁷ The earliest example of CSOs providing far-reaching input is probably Bulgaria, where a coalition of CSOs drafted an anti-corruption action plan that was endorsed by a policy forum in November 1998, attended by over 150 government officials, business leaders, NGOs and international organisations. The eventually adopted National Anti-corruption Strategy was largely based on the NGO’s draft action plan.⁸⁸
39. Civil society has also been a key partner to national anti-corruption bodies, whether specialised agencies, government anti-corruption committees or individual enforcement agencies. For example, in Georgia, Transparency International Georgia is one of nine CSO members of the Anti-Corruption Coordination Council set up in 2009 by the Ministry of Justice.⁸⁹ In South Africa, since 2001 the National Anti-Corruption Forum of South Africa has comprised 10 members each from civil society, business and government. It was established to help coordinate sector strategies; and it advises the government on national corruption, shares good practice and advises sectors on their anti-corruption strategies.⁹⁰ In other countries, civil society is even given a role in overseeing the anti-corruption agency. In Kosovo, while the anti-corruption agency is directly accountable to parliament, it is also supervised by a council composed of representatives from the Assembly, central and local governments, the Supreme Court, the Prosecutor’s Office and civil society. The Latvian Bureau for the Prevention of Corruption also has a Public Consultative Council, which includes 15 NGOs, and the nomination process involves a council which includes one CSO representative.⁹¹ In Hong Kong, a Citizens Advisory Committee on Community Relations ensures input of civil society to the work of the Independent

⁸³ USAID, “2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia” (2013), 16th Edition, p. 105 as referenced in the information provided through Transparency International’s August 2015 UNCAC Questionnaire and https://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf

⁸⁴ “Declaration”, Kosovo Assembly, 3 April 2014, p.1.

⁸⁵ www.u4.no/recommended-reading/national-anti-corruption-strategy/

⁸⁶ www.cmi.no/publications/file/2914-anti-corruption-policy-making-in-practice.pdf

⁸⁷ Tilman Hoppe, “The relationship between anti-corruption agencies and civil society actors”, p.2, Transparency International Regional Roundtable Series in the MENA Region, Tunisia, 30 May 2013.

⁸⁸ Hoppe, “The relationship”, 2013, p.3.

⁸⁹ Hoppe, “The relationship”, 2013, p.3.

⁹⁰ Hoppe, “The relationship”, 2013, p.3.

⁹¹ Hoppe, “The relationship”, 2013, p.3.

Commission against Corruption.⁹² There are also instances where governments have asked CSOs for their advice on anti-corruption policies and programming. For example, in Zambia, public and state institutions entrusted with the fight against corruption reportedly have little research capacity themselves, but systematic information about corruption has become available through surveys and analytical work mainly produced through CSOs and research institutes, including the University of Zambia.⁹³ In Georgia, Transparency International was heavily involved in designing the 2015 Anti-Corruption Strategy, including compiling and publishing the advice of NGOs to the Anti-Corruption Council on relevant issues.⁹⁴

D. CONTRIBUTING TO ANTI-CORRUPTION ENFORCEMENT

40. While civil society is often thought to be most active in engaging in activities supportive of UNCAC Chapter II on prevention, it is important to recognise the role of many specialized CSOs in supporting enforcement efforts in line with UNCAC Chapter III. As noted above, CSOs often engage in legislative lobbying to reform corruption legislation, but there is also growing evidence that they have been impactful in gathering evidence on corruption crimes, blowing the whistle (and supporting others to do so) and spearheading public interest litigation designed to ensure enforcement of corruption laws. Particularly in countries whose law enforcement bodies have overwhelming caseloads, the contribution of CSOs to improving enforcement should be embraced – and facilitated where possible.

Relevant standards

41. UNCAC Article 8(4) and Article 33 call on States Parties to ensure whistleblower protection that protects both public officials and ordinary citizens who attempt to report allegations of corruption. Article 32 also calls for the protection of witnesses, experts and victims in relation to alleged cases of corruption, a clear attempt to establish protection regimes that will facilitate the exposure and successful prosecution of corruption offences. In the European Union, the European Commission has also elaborated internal whistleblowing procedures, via its 2012 Whistleblowing Guidelines.⁹⁵ At the 2011 G20 Summit in Cannes, G20 leaders endorsed a compendium of best practices and guiding principles for whistleblower protection legislation, prepared by the OECD, as a reference for enacting and reviewing, as necessary, whistleblower protection rules by the end of 2012. Although these rules are not yet in place, the principles provide useful guidance for UNCAC States Parties.⁹⁶ The G20 whistleblower compendium additionally notes that several international soft law instruments also provide for the protection of whistleblowers.⁹⁷

⁹² Tilman Hoppe, “Making anti-corruption agencies accountable”, Transparency International Regional Roundtable Series in the MENA Region, Tunisia, 30 May 2013, p.5.

⁹³ Hoppe, “The relationship”, 2013, p.4.

⁹⁴ Hoppe, “The relationship”, 2013, p.4.

⁹⁵ S. Wolfe, M. Worth, S. Dreyfus and A.J. Brown, “Whistleblower Protection Laws in G20 Countries: Priorities for Action”, Transparency International Australia, September 2014, Appendix 2, www.transparency.de/fileadmin/pdfs/Themen/Hinweisgebersysteme/Whistleblower-Protection-Laws-in-G20-Countries-Priorities-for-Action.pdf. These build on their Staff Regulations, providing more detail on the sort of information that qualifies as whistleblowing, and what does not.

⁹⁶ OECD, “G20 Anti-Corruption Action Plan: Protection of Whistleblowers – Study on whistleblower protection frameworks, compendium of best practices and guiding principles for legislation” (2010), www.oecd.org/g20/topics/anti-corruption/48972967.pdf

⁹⁷ For example, the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service, including the Principles for Managing Ethics in the Public Service, and the 2003 OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service. The OECD 2009 Anti-bribery Recommendation provides for the protection of whistleblowers in the public and private sectors.

42. To assist governments to develop good practice whistleblower protection legislation, Transparency International produced “International Principles for Whistleblower Legislation”,⁹⁸ which make 30 specific recommendations on what works best to protect whistleblowers. A consensus is being developed in the international community regarding what constitutes basic best practices and principles in whistleblower legislation. Emerging principles include:

a broad definition of whistleblower that protects public and private sectors as well as volunteers, contractors and trainees; and protection from all forms of retaliation and discrimination against whistleblowers. Clearly communicated internal and external disclosure channels, including anonymous reporting, should also be made available to all employees. Whistleblowers should be granted the right to confidentiality, to receive advice on their rights, to receive appropriate compensation from damages resulting from retaliation, including interim remedy, as well as to a fair review of retaliation cases against them.⁹⁹

43. UNCAC Article 35 complements criminal law enforcement by requiring measures to allow those who have suffered damage from corruption to initiate civil proceedings for compensation. Along similar lines, the right to an effective remedy is stipulated in Article 13 of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention says that every citizen has the right to an effective remedy before a national authority, irrespective of whether the violation has been committed by persons acting in an official capacity.¹⁰⁰ The right to an effective remedy of persons who suffered damage through unlawful administrative decisions allows citizens to seek compensation from the authorities concerned or issue legal proceedings against public officials in their personal capacity.¹⁰¹ The Council of Europe Civil Law Convention against Corruption provides similar protections; it has been ratified by 35 countries already and signed by seven more.
44. Every EU citizen also has the right to file a complaint to the European ombudsman in cases of maladministration in the activities of the institutions, bodies, offices or agencies of the EU. In addition, the European Commission communication on updating the handling of relations with the complainant in respect of the application of EU law prescribes that anyone may file a complaint with the Commission free of charge against a member state about any measure (law, regulation or administrative action), absence of measure or practice by a member state that they consider incompatible with Union law.¹⁰² Under Article 227 of the Treaty on the Functioning of the EU, every citizen (acting individually or jointly with others) also has the right to petition the European Parliament on issues within the competence of the EU, including on matters of public interest, like human rights. Notably, because the Charter has an exemplary function, the right to petition principle has been adopted in all Member States, and national ombudsman institutions have been established to deal with cases of maladministration of national authorities.¹⁰³

⁹⁸ http://files.transparency.org/content/download/696/2991/file/2013_WhistleblowerPrinciples_EN.pdf

⁹⁹ Transparency International, “Recent trends in best practices in whistleblower protection legislation” (2013), www.transparency.org/files/content/corruptionqas/Trends_in_whistleblower_protection_legislation.pdf

¹⁰⁰ Transparency International, “Integrity of public officials in EU countries: International norms and standards” (2015), www.transparency.org/whatwedo/publication/integrity_of_public_officials_in_eu_countries_international_norms_and_st_and

¹⁰¹ Notably, the right to bring an action against public authorities is not preconditioned by the obligation to act first against the responsible public official. Every citizen who has suffered damage from a failure of the public authority to conduct itself in a lawful way can initiate action and request remedies from the respective authority.

¹⁰² Transparency International, “Integrity of public officials in EU countries”, Chapter 7.3

¹⁰³ Transparency International, “Integrity of public officials in EU countries”, Chapter 7.3

FACILITATING CITIZEN ANTI-CORRUPTION AND MALADMINISTRATION COMPLAINTS¹⁰⁴

Although dedicated anti-corruption agencies are becoming more common with the advent of UNCAC Articles 6 and 36, many other accountability institutions are also instrumental in tackling corruption. In that context, supreme audit institutions are the most common such bodies; many have developed good practice partnerships with civil society, developed over many years:

- In Peru, in 2003 the Office of the Comptroller General passed a resolution (No. 443/2003) establishing a mechanism that can be used by citizens (individually or through organisations), officials and civil servants to exercise the right to file complaints before the comptroller. Pursuant to the resolution, the targets of the complaints can be “actions or operations that are suspected as a result of acts or omission related to the undue, illegal, or inefficient management and/or use of State assets or resources”. The office is banned from disclosing data or information that could endanger the complainant. Once the admissibility of the complaint has been determined, the agency is obliged to process it and verify the facts. The comptroller is required to communicate to the complainant the results of the process;
- In Argentina, in 2005 the President of the National Audit Office (Auditoría General de la Nación, AGN) informally implemented an initiative through which the CSOs that had maintained some kind of relationship with the agency were called to become part of a process whereby they could petition for the inclusion of programmes or agencies in the annual audit plan. CSOs met with the AGN and presented proposals they had prepared for consideration. AGN officials made an assessment of each and explained whether, based on technical reasons, the initiative was feasible, whether it was already included in the next year’s plan, whether the agency had already been audited, or whether the proposal needed to be redrafted. After these observations, the proposals were presented to the Board of Auditors, which decided on their inclusion in the future plan. The only criticism of the scheme was that the AGN did not produce a report explaining the reasons for the decisions that were made;
- In Korea, in 2001 the supreme audit institution introduced the Citizens’ Audit Request System, which enabled citizens to request audits related to public sector organisations whose violation of laws or corruption could seriously undermine the public interest. To address civil petitions that citizens lodge against executive government agencies, the supreme audit institution also established a Civil Petitions Reception function, which enables civil petitions to be filed with the institution by letter, fax, email, or telephone. The supreme audit institution has in place a 24-hour, toll-free 188 hotline to receive all allegations of fraud, complaints, and civil petitions.

Good practices, challenges and lessons learned

45. In the “Analysis of technical assistance needs emerging from the country reviews” undertaken in 2013 for the CoSP, the summary of technical assistance requests arising from the country reviews indicated that of the 44 States Parties covered by the report, 25% requested assistance with whistleblower protection, and over 40% requested assistance with protecting witnesses and

¹⁰⁴ These case studies are all drawn from Ezequiel Nino, “Access to Public Information and Citizen Participation in Supreme Audit Institutions” 2010.

victims.¹⁰⁵ The thematic report on implementation prepared for the CoSP at the same time observed: “A number of States parties had not established comprehensive whistle-blower protections, although legislation was pending in several jurisdictions. Common challenges related to specificities in national legal systems, limited capacity and the absence of specific regulations or systems for the protection of whistle-blowers, which were noted as a concern in several case”.¹⁰⁶ Significantly, CSOs have contributed to the development of whistleblower protection legislation in several countries. For example, Transparency International in Liberia, the Citizens’ Coalition for Anti-Corruption Legislation in South Korea, the Open Democracy Advice Centre in South Africa, Public Concern at Work (PCaW) in the UK, and the Government Accountability Project in the US have each contributed substantially to whistleblower protection legislation in their home countries.¹⁰⁷ Civil society groups in Australia, Canada, Ireland, India, Morocco, Nigeria and Serbia, to name just a few, are contributing to efforts to improve legislation in those countries by offering drafting recommendations and advice on good practice principles to inform whistleblower provisions and practice. Transparency International has also developed International Principles for Whistleblower Legislation.¹⁰⁸ CSOs also contributed to the G20 whistleblower principles and the emerging Council of Europe principles.

46. There are many good examples in the area of whistleblower protection of cooperation between authorities and civil society yielding good results. For example, CSOs have participated in awareness-raising campaigns on the rights of whistleblowers, as well as providing for alternative legal advice to whistleblowers, as happened in South Korea after the adoption of the Whistleblowing Act of 2011, and in the UK with PCaW. PCaW runs a hotline service for whistleblowers that provides independent and confidential advice to workers with a public interest case.¹⁰⁹ Transparency International chapters, such as in Morocco, Liberia, Ireland and the UK, as well as through numerous Advocacy and Legal Advice Centres (ALACs), have also supported and promoted the work of whistleblowers worldwide.¹¹⁰ The Transparency International Advocacy and Legal Advice Centers (ALACs) have also been responsible for numerous corruption investigations and cases, in response to complaints from ordinary members of the public, supporting workers to expose and pursue accountability in numerous cases.

¹⁰⁵ www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1386701e.pdf

¹⁰⁶ www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1386487e.pdf

¹⁰⁷ Transparency International, “Whistleblower protection and the United Nations Convention against Corruption” (2013),

www.transparency.org/whatwedo/publication/whistleblower_protection_and_the_un_convention_against_corruption

¹⁰⁸ www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation

¹⁰⁹ www.pcaw.org.uk/case-studies

¹¹⁰ Transparency International, “Recent trends in best practices in whistleblower protection legislation” (2013), www.transparency.org/files/content/corruptionqas/Trends_in_whistleblower_protection_legislation.pdf

EXPOSING CORRUPTION AND CALLING FOR ACTION: TACKLING CORRUPTION IN YOUTH AFFAIRS IN ZAMBIA¹¹¹

In mid-2014, Transparency International Zambia received a complaint through its ALAC programme, from an anonymous complainant who alleged that the board chairperson of the National Youth Development Council (NYDC)¹¹² was abusing his office and stealing public funds. It was alleged that he did this by calling for numerous board meetings to facilitate payment of huge sitting allowances, contrary to the approved budgets. The ALAC undertook an analysis of the various allowances and other expenses incurred by the NYDC Board, which amounted to over K281, 000 (around US\$43,900). The ALAC also identified that over 32% of the NYDC's funding for the period of January to July 2014 had been spent on the board chairperson (out of total funding of K875,000 (around US\$136,700); a total of K281,084.83 (around US\$43,900) was alleged to have been spent on the board chairperson's expenses. On the basis of this analysis, the ALAC wrote to the Ministry of Youth and Sports in August 2014 asking for clarity on whether it was the corporate policy of the NYDC and the ministry to spend public funds in that manner. The ministry responded by asking for more time to respond because the auditor general was conducting a statutory audit of the NYDC.

After nine months passed, no response had been provided to Transparency International Zambia's allegations. As such, in June 2015, the ALAC met with the permanent secretary of the ministry and other government officials to follow up. The ALAC urged the permanent secretary to take action and use her mandate in correcting the alleged mismanagement of funds under her ministry, advising that the ALAC would otherwise embark on a vigorous campaign to have her dismissed for failing to protect public funds meant for youth development activities. Transparency International Zambia also alerted the media through a press release to increase public pressure. At the same time, a consortium of CSOs issued a statement in support of Transparency International Zambia's case. Responding to this pressure, on 2 July 2015 the Minister of Sports dissolved the NYDC Board with immediate effect to pave way for further investigations into the allegations raised by Transparency International Zambia. The Minister for Youth and Sport acknowledged the contribution of Transparency International Zambia, stating, "We are grateful to TI- Zambia for not holding back on this matter, a lot of resources meant for youth activities have gone to waste. My Ministry is open to further investigations if at all people feel that there are bad apples there."

47. In addition to supporting anti-corruption enforcement authorities in their efforts to uncover, investigate and prosecute corruption, there are good practice examples of CSOs themselves undertaking litigation to tackle corrupt practices. This is most common in countries that permit public interest litigation, or where the constitutional bill of rights allows enables citizens to initiate cases. Recognising that corruption is by definition a human rights violation in that it diverts

¹¹¹ This case study is based on the response to Transparency International's Questionnaire. More information can be found at www.qfmzambia.com/2015/06/26/tiz-maintains-ultimatum-on-musunga/, www.tizambia.org.zm/?p=1154, www.lusakatimes.com/2015/07/02/government-dissolves-nydc-board-following-corruption-allegations/, <http://zambiadailynation.com/2015/07/08/tiz-welcomes-nydc-board-dissolution/>, www.znbc.co.zm/?p=15787, www.times.co.zm/?p=62755

¹¹² The NYDC is a statutory body established by Act of Parliament No. 7 of 1986, to register youth organisations, co-ordinate and regulate youth activities, and mobilise resources for youth development.

public resources to non-public purposes, the courts have been willing in some jurisdictions to permit CSOs to pursue anti-corruption cases against government departments. In India, for example, public interest litigation is often initiated by anti-corruption activists. For instance, the Bombay High Court heard a public interest litigation case alleging corruption in the allotment of parking lots in the city, on the basis that 'someone' close to the chief minister was taking money for clearing proposals for allotment of public parking lots,¹¹³. Activists demanded a probe into the assets of the Maharashtra Assembly Deputy Speaker after claiming to have procured documents showing that he and his wife were improperly granted two flats under the Maharashtra Chief Minister's special quota.¹¹⁴

48. While civil society has been increasingly active in engaging in public interest litigation, there has been less action so far in actually litigating to obtain compensation for damage caused by corrupt acts in accordance with Article 35 of UNCAC. Partly, this is because existing national frameworks are often not conducive to such actions, as it is not clear who has sufficient legal standing to sue for said compensation. That said, back in 2007 an interesting public interest litigation case was pursued at the ECOWAS Court of Justice in the case of *Socio-Economic Rights and Accountability Project (SERAP) vs Nigeria* in relation to lost education opportunities to the children of Nigeria as a result of corruption.¹¹⁵ In 2007, SERAP received information from whistleblowers alleging massive corruption by Nigeria's Universal Basic Education Commission. SERAP then undertook its own investigations, after which it submitted a petition to Nigeria's Corrupt Practices and Other Related Offences Commission (CPOROC) in 2007. The CPOROC investigation concluded that 3.3 billion Nigerian naira (US\$21 million) had been lost in 2005/6 through illegal and unauthorised utilisation of funds. SERAP estimated that as a result over five million Nigeria children lacked access to primary education. On the basis of the commission's findings, SERAP filed a right to education case before the ECOWAS Court, arguing that the corruption in Nigeria amounted to a denial of the right to education for Nigeria's children. In a landmark judgement delivered in 2010, the ECOWAS Court upheld SERAP's submission and declared that the Nigerian government has a legal responsibility to provide free, high-quality and compulsory basic education to every Nigerian child. However, implementation remains a challenge following the ruling because financial compensation was not part of the judgement and there are no clear provisions on who is to effect or execute the decisions of the court. Nevertheless, the judgement provided SERAP with a clear framework to work with anti-corruption agencies in order to ensure effective prosecution of those responsible and recovery of stolen funds.

¹¹³ http://zeenews.india.com/news/maharashtra/hc-to-hear-pil-on-corruption-in-allotment-of-parking-lots_941326.html

¹¹⁴ http://zeenews.india.com/news/maharashtra/activist-demands-cbi-probe-against-maharashtra-deputy-speaker_897023.html

¹¹⁵ Samira Lindner, "U4 Expert Answer: Anti-Corruption Instruments of the African Union and Regional Economic Communities" (U4, 2013), www.u4.no/publications/anti-corruption-instruments-of-the-african-union-and-regional-economic-communities/, summarising A. Mumuni and G. Sweeney, "Public interest litigation for the right to education: the SERAP v. Nigeria case", in *Global Corruption Report: Education* (Transparency International, 2013).

FRIENDS OF THE COURT: CIVIL SOCIETY GROUPS LITIGATING WHEN NO ONE ELSE WILL

While anti-corruption agencies are often at the frontline of taking cases of corruption to court to seek redress, civil society often plays watchdog to the watchdog – even going so far as to litigate cases of corruption themselves. In the United Kingdom, two British CSOs, Corner House and Campaign Against Arms Trade (CAAT) famously took a national anti-corruption agency—the Serious Fraud Office (SFO)—to court in an attempt to force it to take more serious action to deal with substantial corruption allegations regarding a high-value arms deals between UK’s largest arms manufacturer BAE Systems and Saudi Arabia. In 2004 the Serious Fraud Office (SFO) started an investigation into BAE Systems’ deals with respect to [Chile](#), [the Czech Republic](#), [Hungary and Austria](#), [Qatar](#), [Romania](#), [Saudi Arabia](#), [South Africa](#) and [Tanzania](#).¹¹⁶ In November and December 2006, it was widely reported that Saudi Arabia had threatened to cancel a further proposed order for 72 Eurofighter Typhoon aircraft if the SFO investigation was not halted. On 14 December 2006, the SFO announced that it was ending its investigation into the bribery allegations because Saudi Arabia might withdraw diplomatic cooperation with the UK on security and intelligence if it continued. The Corner House and CAAT challenged this decision in the UK courts by asking for judicial review on the grounds that the UK had contravened its obligations under the OECD’s Anti-bribery Convention and that the SFO Director had not upheld ‘the rule of law’. On 10 April 2008, the High Court ruled that the decision was unlawful. On 30 July 2008, on appeal, the House of Lords, the UK’s highest court at the time, overturned the High Court ruling, stating that the SFO Director was exercising his legal discretion.¹¹⁷

On 5 February 2010 the SFO announced that it had accepted a plea bargain by BAE and that all its other investigations were at an end. CAAT and Corner House again took the SFO to court to challenge the plea bargain, on the grounds that the SFO failed properly to apply prosecution guidance. After refusal of judicial review, they appealed but in April 2010 they withdrew their appeal.¹¹⁸

More recently, in 2014, France indicted the eldest son of the president of Equatorial Guinea on money-laundering charges, as a result of the *biens mal acquis* (ill-gotten gains) investigation. The investigation was prompted by a legal complaint filed in 2008 by Transparency International France, against three African heads of state (of Equatorial Guinea, Gabon and Congo) seeking an inquiry into how luxury assets and bank accounts were acquired in France by the leaders and their relatives. The TI France complaint was based on an earlier complaint filed by the CSO SHERPA in 2007. In November 2010, in a landmark decision, France’s highest court recognised the standing of Transparency International France as an anti-corruption NGO to file a criminal complaint itself, triggering the investigation and charges.¹¹⁹

¹¹⁶ CAAT, Corruption investigations and plea bargains, <https://www.caat.org.uk/resources/companies/bae-systems/country-overviews>

¹¹⁷ Corner House, BAE-Saudi Arabia-corruption judicial review, <http://www.thecornerhouse.org.uk/background/bae-saudi-arabia-corruption-judicial-review>

¹¹⁸ CAAT, Judicial Review of BAE settlement, <https://www.caat.org.uk/resources/companies/bae-systems/judicial-review>

¹¹⁹ www.transparency.org/news/pressrelease/20101109_biens_mal_acquis_case_french_supreme_court_overrules_court_of_appeal www.hrw.org/news/2014/03/20/equatorial-guinea-indictment-presidents-son-france

PART 3: CSO PARTICIPATION IN FORMAL UNCAC PROCESSES

With the increased interconnectedness in domestic and international affairs, and with decision-making at the international level having a significant impact in national policies and practices, it is essential that such decisions are made in a transparent, accountable and participatory manner. The Special Rapporteur wishes to emphasize the legitimacy of civic action at the international level and underscores the need for States to listen to the views and voices of their constituents, whether they are expressed at the domestic or the international level.

Maina Kiai, Special Rapporteur on Freedom of Peaceful Assembly and Association, 1 September 2014¹²⁰

49. As discussed earlier, Article 13 of UNCAC makes it explicit that civil society and the public should be involved in national anti-corruption efforts, while Article 63 clearly envisages a place for civil society in UNCAC review processes. However, to date, ability of civil society to engage in these processes has been very limited, particularly in terms of the subsidiary bodies and processes established by the Conference of States Parties (CoSP). That said, good practice under other international treaty mechanisms demonstrate the value of civil society inputs and experience in other sectors, most notably in relation to comparable human rights processes, demonstrates that there is precedent for States Parties to empower civil society entities to engage with them in multilateral review processes. This part of the report aims to capture the developing practice around UNCAC's formal monitoring processes, with a view to encouraging States Parties to more proactively engage with civil society for the benefit of the UNCAC review process and implementation more broadly.

A. ENGAGEMENT WITH UNCAC COSP SUBSIDIARY BODIES

50. UNCAC entered into force on 14 December 2005 and a CoSP was then established to review implementation and facilitate activities required by the Convention. The CoSP meets every two years in intergovernmental sessions which CSOs can attend as observers. Between meetings, subsidiary bodies established by the CoSP are tasked with focusing on different aspects of UNCAC implementation, including the review mechanism. Although Rules 2 and 17 of the CoSP Rules of Procedure indicate that civil society (and other non-governmental entities) is able to act as observers not only at the CoSP but also at its subsidiary bodies, actual participation in these subsidiary bodies has been blocked.

Relevant standards and practice

51. At the first session of the CoSP, held in Amman in December 2006, the CoSP adopted Resolution 1/4 entitled "Establishment of an intergovernmental working group on asset

¹²⁰ Special Rapporteur, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association", Report A/69/365 (2014), <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/69/365&Lang=E>

recovery". In that resolution, the CoSP established an interim open-ended intergovernmental working group to advise and assist it in the implementation of its mandate on the return of proceeds of corruption. At its third session, in Doha in November 2009, the CoSP adopted Resolution 3/2 entitled "Preventive measures". In that resolution, the CoSP decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in the implementation of its mandate on the prevention of corruption. At its next session, in Marrakech in October 2011, the CoSP adopted Resolution 4/2, calling for the "Convening of open-ended intergovernmental expert meetings to enhance international cooperation" to advise and assist it with respect to extradition and mutual legal assistance. The mandate for the working groups and expert meetings was continued at subsequent CoSPs.

52. In keeping with developing international practice, UNCAC included provisions that would require a regular review of country implementation of the treaty. This review process would be overseen by the CoSP, the plenary body that would be supported by more operational-level working bodies. UNCAC Article 63(6) made it clear that civil society should be involved in such processes, expressly stating:

Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties... *Inputs received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.* [emphasis added]

Also at the 2009 Doha CoSP, the CoSP adopted Resolution 3/1, which endorsed the terms of reference for an Article 63 Mechanism for the Review of Implementation of the UNCAC. In accordance with Article 42 of those terms of reference, the IRG was established as an open-ended intergovernmental group of States Parties, operating under the authority of and reporting to the Conference. In Resolution 4/1 the CoSP also mandated the IRG with following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance.¹²¹

53. Rule 17 of the Rules of Procedure of the CoSP reflect the common practice of treaty body review mechanisms, recognising that CSOs can attend sessions of the CoSP as observers, unless otherwise decided by the CoSP. Observer status entitles CSOs to attend plenary meetings, submit reports or make presentations (with the approval of CoSP) and receive documents of the CoSP. Importantly, Rule 2 of the CoSP Rules of Procedure made it clear that "[t]hese rules shall apply, *mutatis mutandis*, to any mechanism or body that the Conference may establish in accordance with article 63 of the Convention, unless it decides otherwise." As such, the openness of the CoSP to civil society observers should translate to subsidiary bodies such as the IRG and the working groups. . This was the practice prior to the establishment of the IRG in 2010, but this practice has been undermined since the IRG took up its work in June 2010.(see below for more).
54. Despite the clear expectation in Article 63 of UNCAC and in the CoSP Rules of Procedure that civil society could engage with the UNCAC review processes once they were elaborated, there has been considerable confusion and problematic resistance to participation since the Convention came into force. While civil society is able to participate as observers at the biennial CoSP meetings, CSOs continue to be excluded from meetings of the IRG. Civil society has also been excluded from the working groups set up under the CoSP (on prevention, asset recovery and international cooperation), despite the fact that they were originally included in such working groups prior to the establishment of the IRG.

¹²¹ See www.unodc.org/unodc/en/treaties/CAC/IRG.html and www.unodc.org/unodc/en/treaties/CAC/IRG-sessions.html

55. At the fourth CoSP in Marrakech, Morocco in 2011, Resolution 4/6 was adopted providing for briefings for NGOs “on the margins” of IRG sessions “[i]n order to further promote constructive dialogue with non-governmental organizations dealing with anti-corruption issues, and while recognizing the continuing deliberations to build confidence in the role of non-governmental organizations in the review process...”¹²²

Good practice, challenges and lessons learned

56. In 2014, the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association issued a report specifically focused on multilateral bodies’ engagement with civil society, highlighting both good and bad practices. After specifically noting the problems with the UNCAC IRG process, the Special Rapporteur noted, “Most multilateral institutions recognize that citizens must be given a seat at the decision-making table and encourage—or even require—engagement with civil society in their charters or policies.” Article 71 of the Charter of the United Nations, for example, states that the Economic and Social Council (ECOSOC) “may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”.¹²³

LEARNING LESSONS FROM REGIONAL ANTI-CORRUPTION REVIEW MECHANISMS

The many regional anti-corruption instruments that existed prior to UNCAC were unanimous in recognising the importance of participation, not only as a foundational element of anti-corruption activities, but usually also as part of their own treaty monitoring processes. For example:

- The **Istanbul Anti-Corruption Action Plan** is a sub-regional peer review programme launched in 2003 under the Anti-Corruption Network for Eastern Europe and Central Asia (ACN). It supports anti-corruption reforms by (i) reviewing the legal and institutional frameworks for fighting corruption and making recommendations and (ii) monitoring progress in implementing the recommendations. The ACN has specifically recognised that “[a] key way...civil society may contribute to the monitoring is by participating in a “shadow monitoring” through which non-governmental partners can present their views regarding the implementation of the IACP recommendations by the governments of their countries.” In 2014, the ACN Secretariat published an extensive guide to help civil society to ensure quality participation in the monitoring process and to help civil society groups to build their capacity for this work.¹²⁴ Civil society representatives may attend meetings at which draft country review reports are discussed.
- The Organisation of American States (OAS) has established a **Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption** (MESICIC). The MESICIC operates as an intergovernmental body that supports States Parties in the implementation of the provisions of the Convention through a process of reciprocal evaluation. The Rules of Procedure for the MEISIC Committee of Experts, which is responsible for reviewing progress of States

¹²² Resolution 4/6 Non-governmental organizations and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption

¹²³ Para 22. In fact, ECOSOC is responsible for the accreditation of CSOs for numerous UN inter-governmental processes.

¹²⁴ OECD, “Practical Guide: How to conduct monitoring by civil society” (2014), www.oecd.org/corruption/acn/ACN-Civil-Society-Monitoring-Practical-Guide-ENG.pdf

Parties, expressly allows civil society to submit reports to the Committee that may be of relevance and the Committee automatically invites them to present said report. The Committee may also approve a request from civil society to make presentations to it.¹²⁵ Civil society reports are published online on the MESICIC website together with official country reports, and civil society is also included in the agenda for country visits.

- Under the African Union Convention on Preventing and Combating Corruption, the **African Union Advisory Board on Corruption** was set up in 2009. The Advisory Board's mandate was included in Article 22 (5) of the Convention and specifically includes "build[ing] partnerships with the African Commission on Human and People's Rights, *African civil society*, governmental, intergovernmental and *non-governmental organizations* to facilitate dialogue in the fight against corruption and related offences" [emphasis added].¹²⁶ The Board engages with various partners, including civil society, and has included civil society partners in its meetings.
- The **Asian Development Bank (ADB)-OECD Anti-corruption Initiative for Asia and the Pacific** also built strong partnerships with the civil society (and the private sector). An advisory group provided a forum for coordinating efforts, setting priorities and exchanging information across the initiative, and it included CSOs in its membership. From May 2006, the ADB also intensified its efforts to strengthen the role of civil society in the fight against corruption through small technical assistance grants to CSOs in 26 countries that endorsed the ADB-OECD anti-corruption action plan.¹²⁷

57. A more obvious and common set of practices from which the CoSP can draw precedent comes from the human rights sector, where United Nations treaty review mechanisms have been in place for decades. The Economic, Social and Cultural Rights Committee, the Convention on the Elimination of All Forms of Discrimination Against Women Committee and the Committee on the Rights of the Child welcome written information from national and international NGOs, as well as from other civil society actors (in particular individual experts, academic institutions, professional associations and parliamentarians), at their pre-sessional working groups for the preparation of lists of issues. Civil society actors, including academic institutions and professional associations, can also submit written information to the country report task forces of the Committee against Torture and the UNHRC. States party reports are considered at public meetings, which civil society actors may attend as observers. While CSOs do not participate in the dialogue between the State Party and the relevant committee, they may make presentations to committee members on the issues contained in their written submissions. Most committees set aside time for oral submissions by civil society actors.¹²⁸

¹²⁵ OAS website information on civil society participation in the Inter-American Convention Against Corruption, www.oas.org/juridico/english/follow_civ.htm

¹²⁶ AUABC, "African Union Advisory Board on Corruption: In Brief" (Arusha: Executive Secretariat of AU Advisory Board on Corruption, 2013), www.auanticorruption.org/uploads/The_Board_in_Brief.pdf

¹²⁷ U4, "Expert answer: UNCAC and the participation of NGOs in the fight against corruption" (2008).

¹²⁸ OHCHR, "Working with the United Nations Human Rights Programme: A guide for civil society" (New York and Geneva: 2008), pp.49-57, www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

FOOD FOR THOUGHT: STRENGTHENING THE EFFECTIVENESS OF UNCAC OVERSIGHT BY CREATING A COMPLEMENTARY COMMUNICATIONS AND REPORTING PROCEDURE¹²⁹

As the first cycle of the UNCAC review process comes to a close, reflecting upon what has been learned leads to a conclusion that more could be done to enable States Parties to more effectively identify important implementation issues.

Adding a communications and reporting procedure to the review mechanism would be a useful means for collecting information to identify serious issues of non-compliance with the UNCAC and guide efforts to address them. Complaints procedures already exist for other international instruments, most notably the major human rights treaties, which allow direct communications to their relevant oversight committees regarding allegations of non-compliance with Convention provisions. These complaints can be submitted by individuals, groups, NGOs, states or the private sector. In certain cases, a claim may be brought on behalf of someone else.

How could such a procedure help strengthen UNCAC implementation? It would offer a channel to submit reports about important compliance failures at national level leading to corruption cases and issues not being adequately addressed. The body receiving the reports could hold discussions with governments about the issues raised, make recommendations and encourage better compliance with the Convention. It could also compile and publish useful statistical information about the reports received. A complaints procedure would enhance efforts of the CoSP because: institutional weaknesses would be highlighted and could be discussed with the country in order to better identify technical assistance needs; valuable information would be gathered about the nature and incidence of corruption worldwide; and injured parties could have an opportunity not available in their home countries to discuss issues with their governments at international level about how damages could be addressed.

The procedure could be instituted under UNCAC Article 63 or perhaps through a joint initiative between the UNHRC and the CoSP. In the latter case, a designated person or body could receive reports on UNCAC non-compliance and corruption-related violations of human rights. The UNCAC Coalition recommends that the 6th CoSP adopt a resolution mandating the IRG to draft terms of reference for a reporting procedure. More details could be worked out following consultation with relevant stakeholders; examples should be drawn from existing UN and other relevant international mechanisms.

58. The exclusion of civil society from UNCAC CoSP subsidiary bodies occurs despite Rule 2 of the CoSP Rules of Procedure and despite a legal opinion from the Office of Legal Affairs from 2010 that supports the position of CSOs that they should be included in these bodies. That legal opinion states, "Section V of [the CoSP] rules concerns the participation of observers in the Conference and deals with the participation of four separate groups of observers, i.e. signatories, non-signatories, intergovernmental organizations and *non-governmental*

¹²⁹ G. Bathory, "Why is an UNCAC Reporting Mechanism Necessary?", UNCAC Coalition Briefing Note, 30 October 2013, http://uncaccoalition.org/en_US/why-is-an-uncac-reporting-procedure-essential/

organizations. It would thus be advisable that the Implementation Review Group apply the provisions of section V to its activities, *mutatis mutandis*.” [emphasis added]¹³⁰

B. UNCAC COUNTRY REVIEW PROCESS

59. At the time of writing, there are 177 countries party to the UNCAC,¹³¹ and with the first review cycle most likely coming to an end in 2016, the majority of these (121 as of the time of writing) have completed reviews of their implementation of Chapters III and IV of the Convention. In June 2015, the IRG issued a “Progress report on the implementation of the mandates of the Implementation Review Group”, summarising progress to date. At that point, the IRG reported that out of 173 countries under review, 114 country visits were undertaken in the first four years of the review process and another 11 are scheduled.¹³² The IRG reported that out of all country visits conducted, 85 per cent included sessions with other stakeholders, including civil society.¹³³ UNODC’s website indicates that as at November 2015, executive summaries had been published for 121 Parties. Of these, 51 had agreed to have their full country review reports published on the UNODC website and 13 had agreed to publication of their self-assessment reports on that website. (A few additional countries have published the full review reports on national government websites.)
60. The UNCAC self-assessment process, coupled with the in-country visits that are becoming common practice, are key elements of the overall UNCAC review regime, as they present important opportunities for countries to seriously reflect on their current practice and contemplate both their progress and their entry points for improvement. In that context, it would seem obvious that broad stakeholder participation in both the UNCAC self-assessment process and the peer review of those findings (both the initial country report and any in-country visit) would be invaluable to ensuring that the review identifies all possible relevant issues; in this context it is troubling that experience so far has varied considerably. Experience in other sectors shows that effective reviews require inputs from a range of sources, not merely from the entity under review. Unlike many other technical multilateral review processes that perhaps are of less interest to the public, corruption affects all members of a society. For that reason, it is even more important that a broad cross-section of society is engaged through a nationally owned process that is understood by the public and can be used by citizens as an opportunity to engage with national anti-corruption efforts.

Relevant standards and practice

61. The UNCAC review process kicked off in 2010. The terms of reference for the review mechanism agreed at the 2009 Doha CoSP in Resolution 3/1, required a self-assessment process that would be government-led. Article 3 of the terms of reference states that the mechanism “shall (a) Be *transparent*, efficient, non-intrusive, *inclusive* and impartial” [emphasis added]. Significantly, Article 28 of the TORs goes on to state: “The State party under review shall endeavour to prepare its responses to the comprehensive self-assessment checklist through broad consultations at the national level with all relevant stakeholders, including the private sector, *individuals and groups outside the public sector*” [emphasis added]. In addition, Article 30 states that “States parties are encouraged to facilitate engagement with *all relevant national stakeholders* in the course of a country visit” [emphasis added].

¹³⁰ www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/29Nov-1Dec2010/V1056031e.pdf

¹³¹ www.unodc.org/unodc/en/treaties/CAC/signatories.html

¹³² UNCAC CoSP, “Progress report on the implementation of the mandates of the Implementation Review Group” (2015), CAC/COSP/IRG/2015/2, para 20, www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1502030e.pdf

¹³³ UNCAC CoSP, “Progress report on the implementation” (2015).

62. In the first cycle of the review process, to assist States Parties to develop good practice from the outset, UNODC and UNDP produced “Going Beyond the Minimum”, a practical guide to undertaking participatory self-assessments of implementation of UNCAC. The guidance note clearly recognised the value of civil society involvement in this process, encouraging the establishment of UNCAC advisory groups and/or steering committees comprising a cross-section of government and non-governmental stakeholders whose knowledge, expertise and networks could be drawn on for the benefit of the review process. The guidance note states, “It is critical to engage civil society throughout the UNCAC Self-Assessment process and in the resulting UNCAC implementation efforts...Civil society brings a different perspective to the table and can offer insights from outside the public sector on weaknesses in the system. This will enrich the UNCAC Self-Assessment process and its outcomes... Civil society is frequently well-placed to bring credibility to the UNCAC Self-Assessment process.”¹³⁴

Good practices, challenges and lessons learned

63. The UNCAC country review process kicks off with a self-assessment process. In the early days of the first cycle, rolling out the new Self-Assessment Checklist in-country was somewhat of a fluid, learn-as-you-go process. This meant that the process for its completion was very variable, with guidance being developed through experience. Consequently, it was relatively common practice in the first reviews for self-assessments and subsequent responses to peer review teams to be undertaken by a very tight, small group of government officials, with limited outreach to other stakeholders. While in some instances there was a clear reluctance to implement inclusive and participatory processes of self-assessment and responding to review teams, in some instances it appears that lack of understanding of the process by government officials may also have contributed to a poor process. There was considerable uncertainty amongst government stakeholders regarding the actual reporting process during the first cycle, with even government officials unclear on whether, when and how much information they could share with others, including civil society (but also parliament and even other UN agencies). While some self-assessments were shared and selected civil society representatives frequently met visiting peer review teams, draft country reports were only very rarely released beyond a small group of officials, with little opportunity for civil society to comment on the final results. And fewer than half of the full final review reports have been published on the UNODC website to date.
64. Anecdotal evidence indicates that in some cases, even within government there was only limited outreach, with the anti-corruption agency and/or attorney general’s office simply appointed to “fill out” the self-assessment software. These sort of “tick-the-box” assessments may simply be a result of the initial self-assessments being learning exercises for many government officials, but in that context, the involvement of CSOs – many of which already have deep experience in engaging with similar processes in relation to other international review mechanisms – could have been invaluable. That said, there were also examples of good practice. For example, although unable to ratify UNCAC at the time, the Palestinian National Authority, through the Palestinian Anti-Corruption Commission (PACC), expressed its readiness to conduct a voluntary UNCAC self-assessment in 2011. Subsequently, the government agreed to involve non-governmental practitioners in the process and in May 2012 established a national high-level committee led by the PACC president and a technical committee that comprised government experts and representatives of civil society and the private sector. By doing so, Palestine established the first model of an inclusive UNCAC self-assessment process in the Arab region.¹³⁵ More recently, in 2014 Jordan agreed to be the first Arab country to undertake a voluntary participatory self-assessment of UNCAC Chapter II (preventive measures), drawing

¹³⁴ www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/guidance-note---uncac-self-assessments-going-beyond-the-minimum.html, p.11.

¹³⁵ UNDP-ACIAC “Good practices on participatory UNCAC self-assessments” (2015), p.3, internal reporting paper produced by ACIAC Project. See also www.pogar.org/resources/ac/details.aspx?aid=340

on lessons learned from the first cycle. A national review team of 32 members was established, including members from civil society and the private sector. The team was divided into four sub-committees, which together finalised their self-assessment report in May 2015.¹³⁶

PARTNERS AGAINST CORRUPTION: GOVERNMENT AND CIVIL SOCIETY IN BANGLADESH COOPERATE TO REVIEW AND IMPLEMENT UNCAC¹³⁷

Transparency International Bangladesh (TIB) has been working closely with a range of government and statutory bodies to improve UNCAC implementation for many years. Bangladesh became a State Party in 2007 and was one of the first countries to complete an UNCAC gap analysis in 2009. In that same year, TIB worked with the government towards implementation of key commitments in Chapters II and III of UNCAC, with some success. For example, the Right to Information Act 2009, drafted and campaigned for by a number of CSOs, was adopted in the first session of the parliament after the new government was elected. TIB also worked with the government on the development of the Whistleblower Protection Act (adopted in 2011) and the National Integrity Strategy (published 2012). Although not always smooth sailing, these were good practice examples of government and civil society working together.

Bangladesh built on this foundation of partnership during the UNCAC review of Bangladesh which began in 2011. TIB undertook its own UNCAC assessment prior to the commencement of the official process in order to prepare useful inputs to inform the review. It was a challenging process, which met resistance from officials uncertain or unwilling regarding sharing key information, but TIB persevered and slowly developed good working relationships with a range of useful government/institutional stakeholders. Around the same time, the government undertook its self-assessment report and commendably made it publicly available (it can be consulted on the UNODC website). In April 2011, in response to the good working relationships already built with government, Bangladeshi CSOs were then invited by the government to make an introductory presentation to the visiting peer review team and were also invited to present the findings of their parallel review report to the review team and key government officials. It was a very fruitful and open exchange of views, leading to clarification of some key questions by the team. In addition, TIB was given the opportunity to host a dinner with the peer review team, where a useful informal exchange of views took place. At the end of the process, Bangladesh only published the Executive Summary and the Self-Assessment but not the complete Country Review Report, but its conduct of the process provides a good basis on which to build for the next UNCAC review cycle.

65. In order to help CSOs to be prepared to make sound contributions to the UNCAC review process, Transparency International and the UNCAC Coalition supported CSOs around the world to undertake their own form of “UNCAC Civil Society Report”.¹³⁸ This approach draws on similar practice in the human rights field, where NGOs often submit parallel reports to the treaty oversight bodies to help inform their questioning of country representatives. Executive

¹³⁶ UNDP-ACIAC, 2015, p.2. See also www.undp-aciic.org/resources/ac/details.aspx?aid=398

¹³⁷ Iftekhar Zaman, “Bangladesh: A satisfactory review process”, UNCAC Coalition Newsletter, September 2011, http://uncaccoalition.org/en_US/uncac-coalition-newsletter-september-2011/; Iftekhar Zaman, “Bangladesh: How UNCAC Review Helps Build Bridges With Government”, UNCAC Coalition, 16 May 2013, http://uncaccoalition.org/en_US/bangladesh-how-uncac-review-helps-build-bridges-with-government/

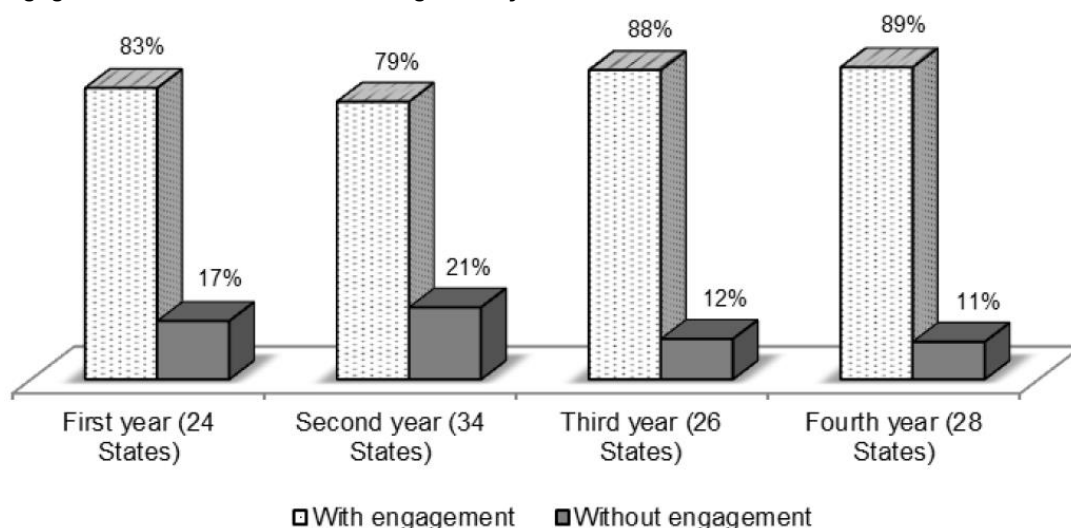
¹³⁸ See http://uncaccoalition.org/en_US/uncac-review/cso-review-reports

summaries of these reports have been submitted to the UNCAC CoSP under CoSP Rule 17, which allows CSOs with observer status to submit documents for consideration by the CoSP. Civil society is not, however, permitted to submit these same reports to the IRG. No written explanation has been provided for excluding these submissions to the IRG. It may be because the IRG does not consider individual country reports, but only thematic reports and reports on the status of the review process.¹³⁹ Even so, during the next cycle the IRG could draw on civil society country reports to inform its periodic status reports on progress with the review process and its thematic reports. Likewise, it is to be hoped that civil society reports will be more systematically drawn upon by States Parties during the next cycle, now that governments know they are likely to be produced and contain useful expert advice and information.

¹³⁹ Full country reports are only compulsorily provided to the two peer review countries involved and the State Party itself, which severely limits the utility of the findings of the report in terms of improving implementation through collaborative societal efforts.

66. Even where civil society was brought into the review process, its involvement was often ad hoc, limited and/or superficial. UNODC's June 2015 "Progress report on the implementation of the mandates of the Implementation Review Group" reported, "Out of all country visits conducted, 85 per cent included sessions with other stakeholders..., in accordance with paragraph 30 of the terms of reference. In some cases those sessions were organized in the form of panels that included representatives of civil society, the private sector, academia, trade associations and other national stakeholders. In other cases such stakeholders were represented by members of national coordinating committees."¹⁴⁰ However, Transparency International undertook an analysis of the review process after the first three years and found that often only limited information was shared regarding the launch of the process and the timing of in-country consultation missions and that it was not easy for stakeholders to identify the focal point to whom inquiries should be directed. Of 83 countries surveyed (out of 104 that had participated in the review by that stage), in only 34 per cent did CSOs known to Transparency International report that they were invited to contribute to the country self-assessments.¹⁴¹ In 39 per cent of surveyed countries, CSOs known to Transparency International reported difficulties accessing information about the review process (such as information about country focal points). Even where CSOs were invited to participate, feedback suggests that this was sometimes more of a "formality" than a meaningful effort to bring in alternate voices. In some cases where a national UNCAC Advisory Group or Stakeholder Committee was established which included CSO members, the group did not actually meet or met rarely in practice.

Engagement with stakeholders during country visits¹⁴²



67. A specific challenge faced during the first cycle was the fact that the review focused on Chapters III and IV, which meant that only a small number of civil society bodies had the technical capacity to provide inputs, for example, law societies, bar associations and specialised anti-corruption NGOs. Short time frames for civil society inputs exacerbated this problem, making it more difficult for national CSOs to harness useful international technical expertise for their benefit. There is also some anecdotal feedback that some governments are meeting a

¹⁴⁰ CAC/ /COSP/IRG/2015/2, Progress report on the implementation of the mandates of the Implementation Review Group (24 March 2015), para 22

¹⁴¹ Transparency International, "The First Three Years of the UNCAC Review Process: A Civil Society Perspective" (2014), p.2, <http://uncaccoalition.org/files/cso-review-reports/year3-overview-report.pdf>

¹⁴² CAC/ /COSP/IRG/2015/2, Progress report on the implementation of the mandates of the Implementation Review Group (24 March 2015), para 22, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1502030e.pdf>

minimum participation benchmark by inviting so-called “government NGOs” or “GONGOs” to participate in meetings with peer review teams. Such GONGOs give a veneer of participation to the process, but arguably bring little meaningful information to the process as they are in lock-step with the government’s own narrative regarding UNCAC implementation.

LEARNING LESSONS: WHY MEANINGFUL PARTICIPATION IS MORE IMPORTANT THAN FORMAL INCLUSION¹⁴³

The first review cycle has been a learning opportunity for all parties, with lessons learned in terms of participation and inclusion in both the self-assessment and in-country review processes. While some governments embraced participation and recognised the value that was offered by NGOs with field experience, in other countries, civil society participation was quite limited. For example:

- In Argentina, the peer review team did not carry out a country visit or meet with civil society representatives. Instead, the Anti-Corruption Office (ACO), which was the government focal point for the review, replaced the visit with teleconferences and a meeting at the premises of UNODC in Vienna. Some CSOs were invited by the ACO to a single meeting in August 2011, at the urging of an anti-corruption CSO, in order to inform them about the self-assessment exercise (timeline, meetings, procedures followed to obtain information, observations sent by experts, etc.). The meeting offered CSOs an opportunity to transmit their views and concerns, but subsequently there were no further consultations with citizens’ associations. One CSO, the Asociación Civil por la Igualdad y la Justicia, prepared a parallel civil society report;¹⁴⁴
- In Lithuania, the contact details of the government focal point, the Ministry of Justice, and the nominated experts were made public online. However, the ministry did not publish any additional official information about the review process and civil society was not officially consulted in the preparation of the self-assessment. The peer review team visited Lithuania in September 2011 but civil society was not invited to meet with the team. Reportedly, the review team only met with government officials. Transparency International Lithuania prepared a parallel civil society report, based on information obtained from consultations with experts, key sources, general statistics and case material drawn from key law enforcement databases;¹⁴⁵
- In Morocco, the Minister for the Modernization of the Public Sector, who was responsible for the official report on UNCAC implementation, commented that “a participatory approach involving government, state institutions and civil society is necessary to eradicate this phenomenon, which exceeds the government’s responsibility”. Thereafter, the minister appointed as focal point a ministry official (rather than a person from the independent Central Agency for the Prevention of Corruption, which had a track record of civil society engagement), who convened a national stakeholder group for the UNCAC review. This group included CSO representatives. During the country visit in July 2011, CSOs were not invited to

¹⁴³ UNCAC Coalition, “CSO experiences with the UNCAC review mechanism, Year 1”, UNCAC Coalition Newsletter, September 2011, http://uncaccoalition.org/en_US/uncac-coalition-newsletter-september-2011/. This set of case studies is taken from the UNCAC Coalition Newsletter, September 2011.

¹⁴⁴ UNCAC Coalition, 2011.

¹⁴⁵ UNCAC Coalition, 2011.

meet with the peer review team. It was reported anecdotally that the CSOs' involvement in the UNCAC stakeholders' group subverted their chance to meet with the country peer review team; they were not invited because it was claimed that they had already made their inputs to the self-assessment via the stakeholder group. Eventually, Transparency Maroc prepared a parallel civil society report on Morocco's UNCAC implementation;¹⁴⁶

- In Zambia, while some initial steps at inclusion were made, in the end the contribution of civil society was very limited. Transparency International Zambia (TIZ) was invited to contribute to the government's self-assessment and to that end participated in an initial week-long workshop in March 2011. TIZ was also nominated to sit on the National Technical UNCAC Committee, but the committee never actually met. Apart from the March 2011 workshop, information about the review process was confined to certain government officials, with the anti-corruption commission unofficially complaining that it had been kept in the dark as to who was the Government UNCAC focal point. That said, during the country visit in July 2011, the peer review team did meet with TIZ, though it was not clear whether any other CSOs were engaged and the draft country report was never circulated for feedback. TIZ prepared a parallel civil society report.¹⁴⁷

68. Disclosure of the information collected through the review process has been a contested issue since development of the terms of reference for the mechanism in 2009. Some States Parties suggest that the full country reports contain information that is too sensitive to be released, but voluntary publication of the full country reports on the UNODC website by 51 governments to date suggests that these States Parties believe there is an important public interest in disclosure, even if some specific information is excluded. Peru and Russia even took an early lead in publishing their country reports on their own national websites.¹⁴⁸ This is in line with practice in other sectors, most notably the UN human rights review mechanisms, where country reports are made public and there is an expectation that there will be a collaborative national effort to follow up on the recommendations made to each country.
69. It is commendable that 51 countries have agreed to release their full UNCAC reports on the UNODC website, and several more have done so on national websites. But the failure of the CoSP to entrench full publication as a minimum requirement of the review mechanism is in direct contradiction to the numerous provisions in UNCAC itself calling for increased transparency and disclosure of government information. At a practical level, withholding the details of the reports means that it is very difficult for non-governmental stakeholders to identify whether their feedback has been meaningfully considered and actioned by the peer review team and/or State Party. It also makes it difficult for supportive non-executive branch anti-corruption stakeholders to identify opportunities to support UNCAC implementation – not just civil society actors, but other institutions as well. For example, parliamentarians, who are key partners in implementing Chapter III in particular (in terms of legislative reform), could benefit from being able to access the details in the full report to inform their own efforts to close legal loopholes and oversee the effectiveness of the existing anti-corruption legislative regime.

¹⁴⁶ UNCAC Coalition, 2011.

¹⁴⁷ UNCAC Coalition, 2011.

¹⁴⁸ Peru: <http://can.pcm.gob.pe/wp-content/uploads/2013/06/Peru-Final-Report.pdf>; Russia: www.genproc.gov.ru/anticor/doks/document-82921/

CIVIL SOCIETY TECHNICAL EXPERTISE UTILISED BY VIETNAMESE GOVERNMENT TO TANGIBLY BENEFIT ANTI-CORRUPTION REVIEW PROCESS¹⁴⁹

Vietnam became a State Party to UNCAC in 2009 and was scheduled for review in 2011. The focal point for the UNCAC self-assessment was the Government Inspectorate, which presented its draft self-assessment questionnaire responses at a consultation workshop attended by civil society representatives in July 2011. A country visit then took place in February 2012. To complement the review process, the CSO Towards Transparency (TT) produced a parallel civil society review report in 2011. Using questionnaires, interviews and a consultation workshop, TT collected and analysed a wealth of information from experts from universities, research institutes and social organisations, including academics from the Ho Chi Minh National Academy of Politics and Public Administration, a number of Vietnamese law faculties and representatives from the Office of the Central Steering Committee for Anti-Corruption. The CSO-led consultation introduced UNCAC and its review process to a group of around 20 stakeholders, including CSOs, government representatives and development partners, and then invited their comments/inputs.

Following the development of its parallel UNCAC assessment report, TT shared its draft report with the government focal point and UNDP. TT's efforts and parallel report were very well received. The parallel report included a number of findings on UNCAC articles that were incorporated into the government's own country report, and the government's assessments of Vietnam's implementation status in relation to a number of UNCAC articles changed from "Yes" or "Yes in part" to "No". A representative from the government focal point noted that "the majority of [TT's] report recommendations were also taken on board" and the report was described by a UNDP official as "extremely informative and constructive, very helpful for the on-going discussion". For TT, the process of producing the civil society report enabled TT to improve the effectiveness and impact of its work in an environment where CSO participation and recognition of CSO contributions remain a challenge. The report opened up a valuable dialogue between civil society voices and the government, though the door is not yet fully open. Subsequently, in 2013 TT was directly asked by the government to input into the drafting process for the amendments to the Law on Anti-Corruption and the new Denunciation Law, which deals with, among other things, the protection of whistleblowers, an area identified as weak in TT's survey report. This case study demonstrates the value that civil society technical expertise can make to governments' own efforts.

¹⁴⁹ Stephanie Chow and Dow Nga, "Vietnam: how UNCAC review helps build bridges with government", UNCAC Coalition, 16 May 2013, http://uncaccoalition.org/en_US/vietnam-how-uncac-review-helps-build-bridges-with-government/

ANNEX 1

About the UNCAC Review Transparency Pledge

The United Nations Convention against Corruption (UNCAC) is at a critical turning point. While the UNCAC has contributed to significant progress in the last decade, changed the political discourse on corruption, and proved itself an important global instrument, corruption continues to be a serious problem that affects every country.

Given the scale of the challenge much more is needed. Without collaboration and trust between governments and civil society, anti-corruption efforts worldwide cannot succeed.

The UNCAC recognises that addressing corruption requires comprehensive measures, including public participation and transparency. Corruption cannot be addressed in an environment of secrecy or where civil society is excluded. In the context of the UNCAC review process, there have been encouraging results in terms of transparency and participation at the national level, though more could be done to align practices with Article 13 of the Convention. In view of the positive experiences in the first cycle, it is timely for States Parties to make transparency and consultation with civil society automatic in the second review cycle. Pending achievement of consensus on this issue, the UNCAC Coalition calls on States Parties to pledge support for transparency and public consultation in addressing corruption and to lead by example.

The UNCAC Coalition invites States Parties to sign a Pledge with six principles, as indicated below.

UNCAC REVIEW TRANSPARENCY PLEDGE

As UNCAC State Parties, we hereby reaffirm the importance of transparency and public consultation in addressing corruption. We believe civil society can play a crucial role to prevent and combat corruption in our country. We believe civil society can contribute to successful implementation of UNCAC provisions, therefore we commit ourselves to follow six of Transparency during the second cycle of the UNCAC review process.

Six principles

1. We will publish updated review schedules for our country review
2. We will share information about the review institution or the coordinator (focal point)
3. We will announce the completion of the country review indicating where the report can be found
4. We will promptly post online the self- assessment and the full country report in a United Nations language, together with the executive summary in local languages
5. We will organize civil society briefings and public debates about the findings of the report
6. We will publicly support participation of civil society observers in UNCAC subsidiary bodies

ANNEX 2

One source of inputs to this report were questionnaire responses collected from 35 UNCAC Coalition member groups, including Transparency International chapters.

The responses came from groups in the following countries: Algeria, Azerbaijan, Bangladesh, Cambodia, Cameroon, Central African Republic, Costa Rica, Czech Republic, Denmark, Finland, Georgia, Hungary, Iceland, India, Italy Lithuania, Madagascar, Malaysia, Maldives Morocco, Nepal, New Zealand, Nigeria, Papua New Guinea, Romania, Slovenia, Spain, Sweden, Turkey, Ukraine, Yemen, Zambia. In addition, questionnaire responses were received and included from Aruba, Kosovo and Palestine.

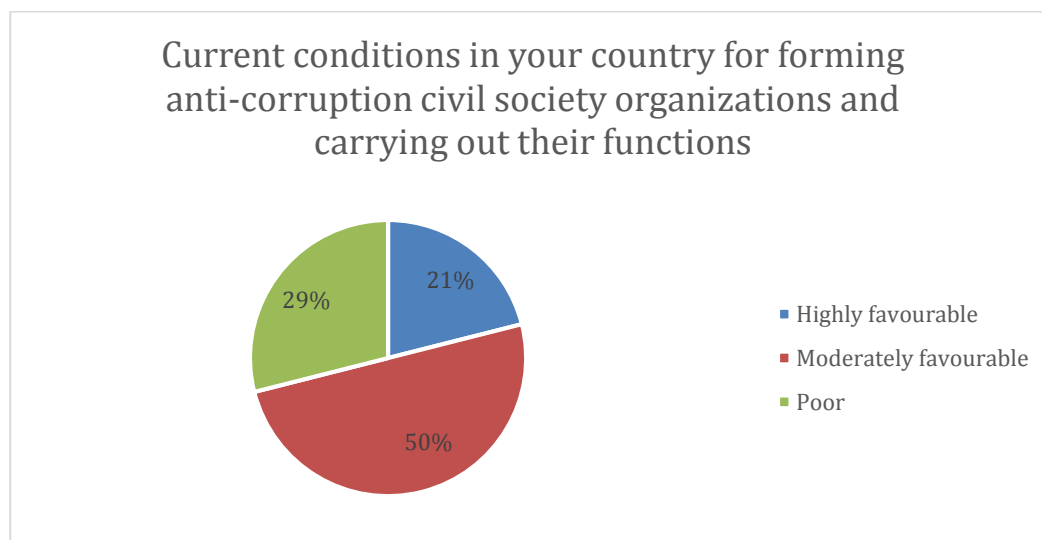
The questionnaire was divided into the following sections:

I. Enabling environment and opportunities for participation

- A. Ability to form anti-corruption civil society organizations and carry out functions
- B. Accessing information and conducting research
- C. Undertaking anti-corruption advocacy
- D. Contribution to enforcement and remedies
- E. Case studies and lessons learned

II. Civil society participation in the UNCAC review process at national level

Among the questions under these sub-headings was one that requested respondents to indicate whether the current conditions in their country for forming anti-corruption civil society organisations and carrying out their functions were highly favourable, moderately favourable or poor. The responses to that question can be visualized as indicated below.



Aggregated responses to some of the other questions include the following :

- **Whistleblower protection:** 77% of respondents said the situation in their country with respect to whistleblowers or reporting persons was poor, as opposed to moderate or very good. None considered that the situation was very good.
- **Media corruption:** 54% of respondents said they believed that the media in their country is corrupt.
- **Media freedom:** 46% of respondents said there were unnecessary limits on media freedom and freedom of expression in their country.
- **Freedom of anti-corruption activists:** 37% of respondents indicated that there was a threat of extra-legal harassment, intimidation and reprisals against anti-corruption activists in their country. 28% indicated that there were physical attacks on anti-corruption groups in their country.

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