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Turkey: Civil Society Report by Transparency International Turkey
An input to the UNCAC Implementation Review Mechanism:
Fourth year of review of UNCAC chapters III and IV

Executive summary

This is the executive summary of Transparency International Turkey's October 2015 report,¹ which reviews Turkey's implementation and enforcement of selected articles in the United Nations Convention against Corruption (UNCAC). It is a contribution to the first cycle of the UNCAC implementation review process (2010-2015), covering chapters III and IV. However, selected articles in chapter II are also covered due to their importance and relevance to the examined articles in chapters II and IV.. A draft of this report was provided to the government of Turkey.

In recent years Turkey has become a party to all major anti-corruption conventions and instruments, to demonstrate its willingness to bring its policy on anti-corruption up to European and international standards. In addition to the UNCAC, Turkey is a party to the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.² However, the OECD Working Group on Bribery has raised serious concerns about its implementation in Turkey.³ In its progress reports, the EU Commission has also expressed concerns in the *anti-corruption policy* and *fight against organized crime* sections associated with UNCAC articles.⁴ It should be noted that Turkey has made amendments based on the recommendations of the OECD and EU progress reports, but there are still areas in which further clarification and modification of existing legislation is necessary. This report indicates that Turkey's legal regime generally fulfils UNCAC requirements.

Turkey has not made public its self-assessment checklist, or consulted with civil society organisations (CSOs) during the review process. Moreover it did not respond to Transparency International Turkey's information requests. Therefore, this report presents the overall picture of the legal regime and highlights both good practice and areas of deficiency in Turkish law in chapters II (preventive measures), III (criminalization and law enforcement) and IV (international cooperation) of the UNCAC.

Assessment of the review process

Conduct of the process

¹ The full report is available at: www.uncaccoalition.org/en/uncac-review/cso-review-reports.html. Its authors are Özlem Zingil and Pelin Erdoğan (Transparency International Turkey). The full report will be used to continue dialogue and engagement with stakeholders, including the government, beyond the first cycle of the country review process.

² Ratification of this Convention by Turkey was authorised by Law No. 4518 of 1 February 2000 (see Turkish Official Gazette (*Resmi Gazete*) of 6.2.2000, No. 23956). In accordance with this Law, it was approved by Council of Ministers Decree No. 2000/385 of 9 March 2000, see Turkish Official Gazette of 10 May 2000.

³ In particular, the latest (Phase 3) report called on Turkey to meet the convention standards regarding corporate liability, recommended that Turkey safeguard the independence of its judiciary and prosecution authorities and ensure adequate protection to whistleblowers (see: <http://www.oecd.org/daf/anti-bribery/turkey-oecdanti-briberyconvention.htm>).

⁴ In particular, the reports see issues with respect to (1) the institutional capacity and functional independence of the Prime Ministry Inspection Board, (2) the Council of Ethics for Public Servants' lack of power to enforce its decisions, (3) insufficient control over and verification of assets declared by the elected public officials, appointed public officials and political figures, and (4) financing of political parties and election campaigns and immunity for MPs (see http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm).

Table 1: Transparency and CSO participation in the review process

| | |
|--|-----|
| Did the government make public the contact details of the country focal point? | No |
| Was civil society consulted in the preparation of the self-assessment? | No |
| Was the self-assessment published online or provided to CSOs? | No |
| Did the government agree to a country visit? | Yes |
| Was a country visit undertaken? | Yes |
| Was civil society invited to provide input to the official reviewers? | Yes |
| Has the government committed to publishing the full country report? | No |

Availability of information

Transparency International Turkey made requests to obtain information from government offices, and to engage in dialogue with government officials during the self-assessment period. Relevant public institutions did not provide the information that was requested. Therefore, information on cases was collected from several media channels, as the Turkish Criminal Law restricts disclosure of information about the details of on-going investigations.

Implementation into law and enforcement

Turkish law generally addresses the requirements of the UNCAC. There are elaborate domestic laws intended to combat corruption, but in practice there are shortcomings, especially regarding judicial enforcement for violations of the laws. These shortcomings can be exemplified by the Deniz Feneri case (described in the full report).

Auditing is one of the most important components of anti-corruption. The Turkish Court of Accounts (TCA) plays a vital role in this area by detecting inefficient management in the public sector, and misuse and loss of public resources. However, the TCA faces serious challenges in carrying out its tasks. The role of the institution in auditing and improving the financial management of the public sector has been restrained by a narrow definition of performance audits, which was introduced in a new law adopted in 2010. The scope of performance auditing is limited to monitoring the realisation of performance targets, which are set by the public institution being audited, thereby restricting the authority of the TCA. There are also certain areas which do not fall within the scope of the TCA's authority, such as public services provided in the name of metropolitan municipalities. Moreover there are criticisms regarding censorship during the quality control processes of the audit team's reports.

Turkey adopted a national strategy for enhancing transparency and strengthening the fight against corruption, which included an action plan (2010-2014). Within the national strategy and action plan there are several items that are designed to meet the UNCAC principles. However, as of the end of 2014 no information had been provided to parliament or civil society about the results of the plan. CSOs had limited opportunity to contribute to the development of the action plan, and at present they and the public lack knowledge of the government's plans for the period after 2014.

In mid-January 2015, Prime Minister Ahmet Davutoğlu announced the "Program for Transparency in Public Administration" (known as the *Transparency Package*). It included compulsory asset declarations for a wide range of office-holders of political parties, executives of radio and television channels, and senior judges. However, only two weeks after the prime minister disclosed the content of the package at a press conference in Ankara, the ruling Justice and Development Party (AKP) postponed the implementation of the package until after the June 2015 general election.

Table 2: Implementation and enforcement summary table

| UNCAC ARTICLE ⁵ | STATUS OF IMPLEMENTATION (IS THE ARTICLE FULLY / PARTIALLY / NOT IMPLEMENTED?) | HOW ARE THESE PROVISIONS ENFORCED IN PRACTICE? (GOOD/ MODERATE/ POOR) |
|--|---|--|
| Art. 15 (bribery) | Fully implemented | Poor |
| Art. 16 (foreign bribery) | Fully implemented | Poor |
| Art. 17 (embezzlement) | Fully implemented | Poor |
| Art. 18 (trading in influence) | Fully implemented | Poor |
| Art. 19 (abuse of functions) | Fully implemented | Poor |
| Art. 20 (illicit enrichment) | Fully implemented | Poor |
| Art. 21 (bribery in the private sector) | Partially implemented | Poor |
| Art. 22 (embezzlement in private sector) | Partially implemented | Poor |
| Art. 23 (Money laundering) | Fully implemented | Moderate |
| Art. 26 (Liability of legal persons) | Partially implemented | Poor |
| Art. 32 and 33 (protection of witnesses, and whistleblowers) | Not implemented | Poor |
| Art. 36 (specialized authorities) | Partially implemented | Poor |
| Art. 44 (extradition) | Partially implemented | Poor |
| Art. 46(9)(b) & (c) (mutual legal assistance) | Partially implemented | Poor |

Recommendations for priority actions

1. A structured and continuous consultation and dialogue scheme with CSOs should be established and ensured by the government.
2. A system for data collection, analysis and open access for the public should be established.
3. A new anti-corruption action plan is needed. There should be a multi-stakeholder process for developing and implementing the action plan, and the effectiveness of the measures adopted for implementing the UNCAC must be periodically assessed.
4. Shortcomings in the legal framework related to *illicit enrichment, liability of legal persons, private sector, protection of witnesses, experts and victims* and *specialized authorities* should be addressed.

⁵ The table refers to the articles of the chapters in the first review cycle. The content of UNCAC's Article 17 and Article 23 is covered in Turkish Law. However, statistics and detailed information regarding the implementation are not available.



5. In cases where Turkish domestic laws are compatible with the UNCAC, effective enforcement is in need of improvement as it is indispensable for successfully curbing corruption. Thus, capacity-building initiatives should be undertaken to strengthen the investigation and prosecution capacity of the relevant authorities; also coordination among various law enforcement agencies should be strengthened.
6. Corruption must be punished and the law must be permitted to take its own course without any political or other form of influence or intervention. Key institutions of democratic governance – particularly the public service, law enforcement institutions and the judiciary – must be allowed to function independently and professionally with the highest standards of integrity, free from any influence. Measures should be taken to curtail political or other forms of interference in the due process.
7. Adopt laws to provide TCA with broader scope of authority to conduct its audits.