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## About us

The UNCAC Coalition is a global network of more than 350 civil society organisations in over 100 countries, committed to promoting the ratification, implementation and monitoring of the United Nations Convention against Corruption.

For this purpose, we mobilise civil society action at international, regional and national levels.

## Comments? Submissions?

We want to hear what you have to say and to receive your contributions for the newsletter.

Email us at [info@uncaccoalition.org](mailto:info@uncaccoalition.org)

## Too big to fail – a concerted push for a stronger UNCAC



### Vincent Lazatin, Chair, UNCAC Coalition

Ten years after the adoption of the landmark UN Convention against Corruption (UNCAC), we take stock of what has been accomplished and look forward to what has yet to be achieved. A decade ago, the convention held out a great promise, that under a common legal framework, and with governments working with citizens, we could actually defeat the scourge of corruption. Indeed, around the world, using the UNCAC as the framework, countries have increased their anti-corruption efforts. We have seen steady, albeit slow, progress in many areas. We have seen the convention's translation into national legislation and institutional change.

Like a super-typhoon, corruption can affect whole populations, and leave them devastated and destitute in its wake. For those people whose lives are being destroyed or diminished by large- and small-scale corruption, progress is too slow and momentum too small. With the urgency and sense of purpose that attends relief efforts to survivors of natural disasters, we, too, must move with speed to protect citizens from the debilitating effects of the man-made calamity of corruption.

The UNCAC and efforts to counter corruption should be given the highest priority by States Parties. Unlike natural disasters, man-made ones like corruption can be averted. The convention provides all the necessary tools and preventive measures to cut down a storm before it begins. If we fail to contain corruption, all our other efforts to ensure a sustainable and equitable world will fail.

That is why the Coalition is calling on the 5<sup>th</sup> Conference of States Parties (COSP) to demonstrate the strong political resolve that is needed more than ever to fight corruption, and to adopt robust resolutions that advance international anti-corruption efforts. As they have in the last four COSPs, Coalition representatives will be attending the 5th conference in

Panama City to show their commitment to being part of the solution. We are partners in the fight. We want the conference to succeed.

Happy birthday, UNCAC!

## Access to information needs more legal protection

### Lydia Medland, Access Info Europe

Access to information is a key component of the UN Convention against Corruption (UNCAC) and a logical precondition for ensuring accountability in decision-making. The right of access to information consists of two basic elements: the obligation of governments to publish information and the right of citizens to make requests for information. Both of these make government more open.

So what does it really mean in the context of the fight against corruption?

When the public and civil society have access to information about government activities, there are fewer chances for corruption and mismanagement. Such transparency may also sometimes enable the public to detect corruption and call on authorities to address malpractice and other offences.



Spreading the word in Papua New Guinea's forests.  
Alice Harrison/FOIANet photo competition

More than 90 countries have access to information or freedom of information laws. There has been great progress in the last 10 years, and it is time for this trend to become universal. The UNCAC States Parties should encourage states that do not have such laws to take the transparency requirements in the convention seriously. States with such laws should also ensure they are implemented.

To properly implement the articles in the convention that reference access to information (e.g., Articles 5,

7, 9, 10, 12 and 13), we are asking the Conference of States Parties in Panama in November to move the issue of access to information up the agenda in three ways:

- A COSP resolution should reaffirm the importance of comprehensive access to information legislation and its application.
- For the 2015 review cycle on Chapter II (corruption prevention), the UN Office on Drugs and Crime (UNODC) should clarify that states need to report on whether they have a comprehensive and functioning access to information law or equivalent when they respond to the self-assessment questionnaire.
- The Working Group on Prevention should include the issue of “ensuring that the public have effective access to information” (per Article 13), in its work plan.

## Beneficial ownership transparency in the UNCAC

### Christine Clough, Global Financial Integrity

A lack of information on the true owners of financial accounts plays a pivotal role in facilitating corruption and blocking investigations and asset recovery efforts. The UN Convention against Corruption (UNCAC) calls on States Parties to collect and record beneficial ownership information on corporate entities for anti-money laundering purposes. States are also supposed to require financial institutions to verify such information, particularly for high-value accounts and transactions.

Bankers and financial intermediaries channel ill-gotten gains to accounts that list anonymous shell companies as the “owners.” The paperwork on these entities, if a record exists, lists nominee directors or shareholders, masking the name of the ultimate controller of the company. Anonymous trusts provide similar hideouts, and money launderers frequently use both to multiply the layers of secrecy. Those engaging in corruption can then launder their money and reinvest it or go on luxury spending sprees.

These opaque identities nullify regulations that require banks and other financial institutions to apply due diligence to transactions that may involve the proceeds of corruption, such as those for politically exposed persons (PEPs). Financial institutions cannot apply these rules or adequately flag suspicious transactions if they lack accurate information on the

true controller of the funds. The missing documentation can also prevent investigators from proving corruption charges and returning stolen assets.

Article 12 (2) (c) of the UNCAC calls on states to “promot[e] transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.”

Article 14 (1) (a) extends this requirement to include keeping a record of beneficial ownership information and applying these rules to service providers. Article 52 (1) states that governments should require financial institutions to verify the beneficial ownership information for high-risk accounts, including PEPs and their close associates and family members and high-value accounts.

Follow-through on these articles has been lacking. The British government is establishing public registries of beneficial owners for corporations; other G8 members have committed to create their own registries. Delegates at the 5th COSP should agree to promote compliance with the UNCAC articles.

### **Making sure settlements deter corruption**

**Gillian Dell, Transparency International Secretariat**

Settlements in corruption cases that involve bribe-paying companies and individuals are convenient avenues for prosecutors and accused parties, since court proceedings can be expensive, long and unpredictable and involve a reputational risk for companies. United States settlements in foreign bribery cases have attracted attention due to the substantial penalties imposed in recent years. Settlement arrangements have also been used in other countries, such as Denmark, Italy and Nigeria, and a number of countries have recently introduced relevant legislation — these include Belgium, Luxembourg and the United Kingdom. But there are potential pitfalls in settlements. If the terms are not subject to court approval and are unpublished, doubts can arise about the standards applied. If the penalty is low and the accused does not admit guilt, the criminal behaviour will not be deterred.

The UNCAC requires that companies be subject to effective, proportionate and dissuasive sanctions for corruption offences. More generally, it says sanctions should be proportionate to the gravity of the offence. Settlements should fulfil these requirements.



More countries are using or are proposing to use settlements. Given the uncertainties in this area, the UNCAC Coalition believes that guidelines should be prepared by UNODC to assist those countries. The Coalition believes that settlements should, inter alia:

- (i) generally be reached only where guilt is admitted;
- (ii) include publication of the agreements, with their justification as well as publication of the details on the actual performance of the agreement;
- (iii) be subject to a judicial hearing and court approval;
- (iv) provide for effective, proportionate and dissuasive sanctions that exceed estimated profit from the wrongdoing;
- (v) provide for compensation to those harmed by the offense, including victims in other countries;
- (vi) make available evidence to enforcement authorities in other relevant jurisdictions; and
- (vii) if reached with companies, should leave open the possibility of prosecution of individuals, with no employer contribution to their fines.

Such guidance can help ensure that settlements are not an acceptable cost of corrupt business dealings. The 5th Conference of States Parties should give UNODC the mandate for this work.

### **Immunity: does it protect the corrupt?**

**Anne-Claire Blok, UNCAC Coalition**

It is a fundamental principle that all persons are equal before the law. However, immunity or jurisdictional privileges can be used to shield public officials from accountability for corruption by protecting them from legal consequences.

The UN Convention against Corruption (UNCAC) includes a specific provision on immunities and privileges. Article 30 (2) requires States Parties to appropriately balance the immunities enjoyed by their public officials with their ability to investigate and prosecute corruption offences properly.

Yet countries can struggle with this balancing act. In a report from March 2013, the UN Office on Drugs and Crime (UNODC) identified the appropriate balance of immunities and jurisdictional privileges as one of the most common challenges of the convention.



*The Senate Chambers of the Greek Parliament/Wikimedia Commons*

The Commonwealth Working Group on the Recovery and Repatriation of Assets of Illicit Origin recommended that Heads of State/Government, ministers and other public officials should not have immunity from prosecution for alleged criminal activity. Heads of Government accepted this recommendation for implementation during the 2005 Commonwealth Heads of Government Meeting in Malta. One of the twenty guiding principles adopted by the Council of Europe's Committee of Ministers aims at limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.

The upcoming 5th UNCAC Conference of States Parties (COSP) is the right forum to address these difficulties in a resolution. Paragraph 9 of the UNCAC Coalition statement calls on States Parties to ensure that immunities for public officials are strictly limited. It also asks that transparent and effective procedures be put in place for suspending these immunities as well as ensuring they are not used to protect individuals from being held accountable for corruption offences. The resolution should also request the UNCAC Implementation Review Group (IRG) to build on the UNODC report and, in consultation with an expert group, to develop standards on this subject for approval at the 6th COSP.

## The missing link

### Akere T. Muna, Transparency International

As the global discourse about stolen assets rages on, the code words are the same: the discussions are about dictators and kleptocrats from the South and about facilitating the repatriation of stolen assets, profiling of politically exposed persons (PEPs) and the beneficial ownership of offshore companies and trusts.

But the banks seem to remain under the radar. The entities they partner with that take money out of many desperately poor countries are named and, at times, shamed. In some cases, they are even the subject of lawsuits. But the banks? Nothing happens to them!

The banks that handle looted assets and proceeds or corruption get off with a bonus: The right to hang on to the frozen funds. They can do so until ownership is determined or a decision is made by courts ordering the return of the frozen assets. There is no explanation as to why a handler, who is as culpable as the thief, should be allowed to hold on to stolen funds.

A recent report by British authorities says that 70 percent of the banks in the United Kingdom should have known that the funds they were dealing with were tainted. Swiss authorities have come up with similar reports. The dubious practices of banks over the past several years have been continually denounced and fines have been imposed in the billions. From manipulating Libor (London Interbank Offered Rate) and facilitating movement of tainted funds to helping to hide earnings in tax havens and other offshore corporate accounts, banks are in a win-win situation. They win when they rake in the tainted funds and win again when the funds are frozen.

What is the solution? If the funds that are frozen are removed from the reach of the suspected individual or corporate entity, then the bank that is an accomplice in that should be prevented from benefitting from holding the funds. When funds are frozen and it can be that the bank should have known that the money came from a dubious source, the funds should be transferred to an escrow account opened at a multilateral development bank, depending on the region from which the funds originate.

Until we stop banks from benefitting from a crime they facilitated, they remain the missing link in any credible push against stolen assets.

## Asset recovery must become a reality



### Maud Perdriel-Vaissière, UNCAC Coalition

Of the hundreds of billions of dollars illicitly acquired by corrupt officials in the last 15 years, no more than US\$5 billion has been recovered and even less returned to the countries from which they were taken, according to World Bank estimates. This is not an acceptable state of affairs. The UNCAC Coalition therefore calls on States Parties to adopt these four actions during the November conference in Panama:

#### Proactive enforcement

Why did countries that had been receiving stolen assets freeze and investigate them only when the governments — such as in Egypt, Tunisia or Libya — began to collapse? It is an important question, since it is well known that the longer one waits to take action, the harder it is to recover stolen assets. The Coalition believes that countries receiving illicit assets should have the necessary legal tools to take enforcement action when they have credible information that such property could be proceeds of corrupt activities.

#### Compensation to harmed countries

Victim states are rarely compensated for the harm caused to them by corruption. And yet, the UN Convention against Corruption (UNCAC) does not differentiate between damages and stolen or embezzled property: both are assets that ought to be returned to harmed countries. The Coalition asks States Parties to recognise the damage caused by corruption and ensure compensation to states harmed.

#### Information exchange

Information about cases in other countries is crucial for states to be able to take action to recover property. However, this information is not always easily accessible to enforcement authorities in other countries. The Coalition calls for this situation to be corrected through extensive implementation of UNCAC Article 56.

#### Transparency and accountability

States Parties should ensure that these principles — critical to the credibility of the whole recovery process — are strictly applied regarding the return of assets.

## Strengthening the UNCAC review mechanism

### Fritz Heimann, Transparency International

After three years of operation, the UNCAC Implementation Review Mechanism is off to a promising but uneven start. Transparency International has prepared a progress report on the review process and has prepared recommendations for strengthening reviews, including the following:

#### Ratification

It is impressive that 168 governments have ratified the UNCAC. However, the failure of two crucial G20 government — Germany and Japan — to ratify the convention is deplorable and should be overcome promptly.

#### Follow-up action on country reports

No follow-up process has been established to address governments' implementation of recommendations in the country reviews. The 5th COSP should call on governments to prepare action plans to respond to these recommendations. Such action plans should be circulated within six months after the completion of country reviews and submitted to the UN Office on Drugs and Crime (UNODC). Unless the need for prompt follow-up action is addressed, the implementation review process will lose momentum. The action plans should include information on technical assistance required.

#### Overcoming delays

The review process is far behind schedule. The UNODC staff that manage the process are highly competent, but to overcome the delays they need more people to work with governments that are

conducting country reviews as well as with governments that are being reviewed.

### Increasing transparency

Fifty-one executive summaries have been published, as of mid-November 2013, but only 19 country review reports. The executive summaries published by UNODC are informative, but the full country reviews contain much more information. In the interest of transparency they should also be published.

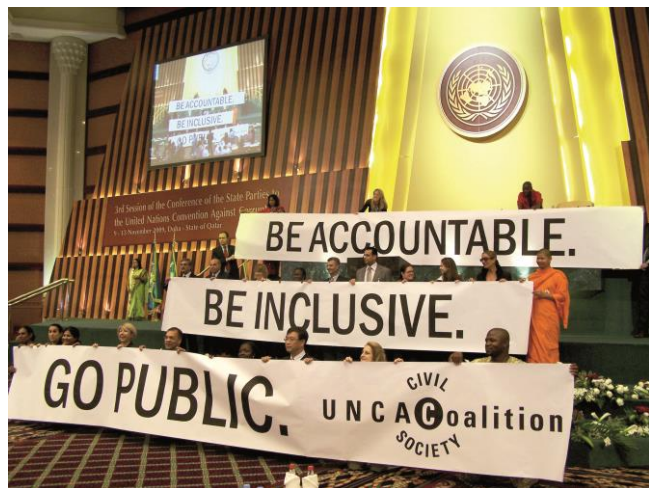
### Country visits

It is encouraging that most governments have agreed to country visits by reviewers. Such reviews must become standard practice. The alternative of desk reviews conducted in Vienna is unsatisfactory, particularly for civil society participation.

## Follow the rules on NGO observer status in COSP subsidiary bodies

### Gillian Dell, Transparency International Secretariat

Transparency and civil society participation are essential for anti-corruption efforts, as recognised in many articles of the UN Convention against Corruption (UNCAC). Non-governmental organisations (NGOs) can offer valuable expertise and advice for government initiatives, and support of the wider public is crucial.



Yet at the UN in Vienna, where the UN Office on Drugs and Crime provides the UNCAC secretariat, NGOs have been excluded since 2010 from participating as observers in the meetings of UNCAC subsidiary bodies. This violates the applicable rules of procedure, which are very clear. According to Rule 2, the COSP rules of procedure must be applied *mutatis*

*mutandis*<sup>1</sup> to subsidiary bodies created under UNCAC Article 63. These bodies include the Implementation Review Group (IRG), the Working Group on Prevention and the Working Group on Asset Recovery.

So what are the relevant COSP rules to apply *mutatis mutandis*? Rule 17 says that NGOs can participate as observers in COSP plenaries. Rule 40 says that COSP plenaries should be public unless the COSP decides otherwise. A few States Parties that wish to exclude NGO observers say that Rule 17 does not apply to subsidiary bodies because of the reference to “plenaries.” That interpretation is incorrect. It fails to give meaning to the term “*mutatis mutandis*.” It ignores that subsidiary bodies take decisions in plenary sessions. It overlooks that under Rule 40 their sessions should be public. It runs counter to UN practice in Geneva and New York, where a working group is public and open to NGO observers unless the working group decides otherwise. Most importantly, it is inconsistent with the ideals of transparency and multi-stakeholder collaboration embodied in the UNCAC.

According to the rules, the States Parties seeking to exclude NGOs could propose to hold some meetings of subsidiary bodies in closed session or could try to convince their fellow States Parties to reject NGO applications for observer status. Instead, they have used their political clout to turn the tables. In response to their pressure, the UN Office on Drugs and Crime has barred NGOs from meetings of the subsidiary bodies without putting the question to the members of those bodies as required by the rules of procedure. This sorry state of affairs damages the reputation and credibility of the UN and the UNCAC and should be addressed promptly.

### Pending TI application for observer status

In early November, Transparency International applied to the UNCAC bureau for observer status in the IRG session taking place in Panama on 26 - 27 November. According to Rule 17 (1) of the COSP rules of procedure, which applies *mutatis mutandis*, this application “should be accorded *unless otherwise decided by the [IRG].*” (emphasis added) If there is no IRG decision to the contrary, Transparency International representatives must be allowed to observe the IRG session.

<sup>1</sup> *Mutatis mutandis* means changing [only] those things which need to be changed.

## Why is an UNCAC reporting procedure essential?

### **Gabor Bathory, Transparency International Secretariat**

A reporting procedure would be a valuable addition to the Review Mechanism for the UN Convention against Corruption (UNCAC) because it would provide useful information for follow-up efforts on serious issues of noncompliance with the UNCAC.

Reporting procedures established in connection with other international instruments, such as human rights treaties, allow communications regarding non-compliance with convention provisions to be submitted by individuals, groups, non-governmental organizations, states or the private sector. In certain cases, they may enable a claim to be brought on behalf of someone else.

How would such a procedure help strengthen UNCAC implementation? It would offer a channel to submit reports about corruption cases and issues not being addressed adequately at national level. 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 reporting procedure would enhance efforts by the UNCAC Conference of States Parties (COSP) to tackle corruption in the following important ways:

- Institutional weaknesses would be highlighted and could be discussed with the country to provide technical assistance;
- 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 Article 63 or through a joint initiative between the UN Human Rights Council and the COSP. In the latter case, a designated person or body could receive reports on UNCAC noncompliance and corruption-related violations of human rights.

The UNCAC Coalition recommends that the 5th COSP adopt a resolution mandating the UNCAC Implementation Review Group 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.