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Opening Words

Message from the UNCAC Coalition Chair

by Manzoor Hasan, 25 October 2015

In November 2015 we will meet in St. Petersburg for the 6th UNCAC Conference of States Parties (COSP). This is a timely opportunity to celebrate the UNCAC's many achievements since 2003. In particular, the UNCAC Review Mechanism has succeeded beyond expectations, with an encouragingly high level of state and civil society collaboration in the country reviews.



The 6th COSP also provides an opportunity for consolidation and evaluation. We have a decade to learn from and we need to use our experience to build on and improve the anti-corruption structures we have helped to create. The St Petersburg COSP will be significant for a number of reasons, but most notably it provides an opportunity to examine the experience of the first cycle of reviews of the Review Mechanism (the great accomplishment of 2009) in preparation for the second cycle due to begin in 2016.

The first cycle produced impressively detailed and comprehensive [country reports](#) with useful findings and recommendations, judging by the nearly 50 full reports that we can access so far and the 107 executive summaries. Follow-up on these reports is crucial; otherwise great effort will have been wasted.

COSP Secretary Dimitri Vlassis rightly [noted in a recent interview](#) with the UNCAC Coalition that: *“One of the most impressive aspects of the IRM [Implementation Review Mechanism], which is difficult to capture in formal documents and reports, is the peer learning aspect. We have often seen how reviewers and officials of States under review freely exchange experiences and ideas and even continue to do so well past the conclusion of the country review.”*

We agree with Mr. Vlassis, and strongly feel that such learning could be better utilised through greater openness.

The second cycle should further exploit opportunities to advance the Mechanism's good work. An examination of its Terms of Reference is in order to create arrangements in country reviews more in line with international commitments on transparency and participation. This is relevant in light of the level of comfort that a wide spectrum of countries have shown with respect to these obligations so far. In the second cycle countries should be presumed to be following an open, inclusive approach and encouraged to follow best practice examples of this. They could also indicate their decision to opt out. The approach adopted by each country should be reported in appropriate detail in the executive summaries and full reports of the country reviews. This will enable better exchange of experiences and mutual learning.

A commitment to transparency and participation should also guide the approach to meetings of the Mechanism's Implementation Review Group, as well as meetings of other UNCAC subsidiary bodies, such as the working groups. Those meetings should be presumed to be open, but upon a proposal of a group of countries, the body could consider whether there were grounds for closing the meeting and a decision could be made to that effect.

There are reasons for optimism in St Petersburg. For the first time the COSP agenda will include an item on the relationship between the COSP and civil society, inter-governmental organisations and regional organisations. This will provide a welcome opportunity for an open exchange of views.

The UNCAC Coalition urges the COSP to be forthright, constructive and forward-looking in its discussions and resolutions, with due respect paid to international commitments on transparency and participation. Such an approach can only bolster the Sustainable Development Goals (SDGs) newly adopted by the world community. I draw attention to the critical **Goal 16**, which calls for **effective, accountable and inclusive institutions at all levels**. The related targets include: substantial **reduction of corruption** and bribery (16.5); **transparent** institutions at all levels (16.6); responsive, inclusive, **participatory** and representative decision-making at all levels (16.7) and **public access to information** (16.10). The COSP's resolutions and the design of future UNCAC processes will be a test of commitment to Goal 16 and its targets.

To advance on this issue, the UNCAC Coalition has launched a [Transparency Pledge](#). We urge States Parties to publicly demonstrate, in COSP discussions and beyond, their unequivocal support for the Pledge and the principles of transparency and participation.

What we know now – more than ever – is that transparency and participation of civil society is essential in ensuring that UNCAC processes are accountable and effective at combatting corruption. The UNCAC Coalition stands ready to play its part and calls on the COSP to do the same.

We look forward to the hospitality of the Government of Russia and UNODC in St Petersburg at the upcoming 6th session of the UNCAC COSP and to discussing proposals and ideas with country delegations and other participants.

About the author

Manzoor Hasan is Chair of the UNCAC Coalition. In 2006, Mr Hasan became the Founding Director of the Institute of Governance Studies, BRAC University, and since 2011 IGS' Advisor.

Interview with Dimitri Vlassis, Secretary of the UNCAC COSP, UNODC



What positive things have come out of sessions of the Conference of the State Parties (COSP) in the past and what more can we expect?

In its short history, the COSP has built the infrastructure for the full and effective implementation of the Convention. At its third session, it established the Implementation Review Mechanism (Resolution 3/1). At its fourth session it instituted the briefings for NGOs during the Implementation Review Group meetings (Resolution 4/6). In other actions, the COSP adopted resolutions focussing on the prevention of corruption and support for asset recovery. All this work has significantly advanced the implementation of the Convention, as we have been able to confirm through more than 110 completed executive summaries, more than 140 forms of direct dialogue

(either country visits or joint meetings), and more than 160 self-assessment checklists (SACL) received

– with yet more to come!

At the upcoming sixth session, the Conference is expected to launch the 2nd cycle of the Implementation Review Mechanism. The Conference is also expected to make key decisions on prevention, asset recovery and public-private partnerships to prevent and combat corruption.

Furthermore, a key thematic publication, [The State of Implementation of UNCAC](#), with an in-depth analysis of some 70 completed country reviews, will be launched (document symbol CAC/COSP/2015/5).

The UNCAC review mechanism will be a central topic at the upcoming COSP. In what ways has the review process worked or failed? What would you change? What are the most difficult issues to resolve at the upcoming COSP regarding the 2nd cycle?

Through the UNCAC Implementation Review Mechanism (IRM) States parties have been able to demonstrate their commitment towards fighting corruption and implementing the necessary legal and institutional reforms to align their systems with the requirements of the Convention. The country reviews have also helped States parties identify areas where national capacities are lacking and plan for future action. One of the most impressive aspects of the IRM, which is difficult to capture in formal documents and reports, is the peer learning aspect. We have often seen how reviewers and officials of States under review freely exchange experiences and ideas and even continue to do so well past the conclusion of the country review. The fact that all States parties, including least developed countries, participate on an equal footing has been critical in this respect. Of the 125 reviews that we plan to have concluded by the time of the sixth session of the COSP, every single one contains recommendations for improvement, regardless of the state of development of the country concerned. In line with the spirit of the Mechanism, all the reviews also highlight good practices, injecting optimism and encouragement towards the achievement of the common goal of fighting corruption.

Another important aspect is the increased involvement and participation of civil society and non-governmental organizations (NGOs), academia and the private sector during and after the reviews.

We are aware of the perception that the reviews only touch upon legal compliance, and that many countries would like to see more information on actual implementation of the individual provisions. However, this perception does not reflect reality. The Mechanism has sought to enhance the focus on effective implementation of the UNCAC provisions that are currently under review by looking at case law and statistics.

What we would like to change during the second review cycle would be to ensure a better response to the needs for technical assistance identified by countries, especially developing countries, through the reviews. The challenges ahead for the Mechanism include, most prominently ensuring continued active engagement by all States parties and securing adequate funding in line with the Terms of Reference and Conference Resolution 3/1 to maintain the high quality of the reviews and full respect for the Terms of Reference.

How can the COSP ensure that UNCAC review recommendations are followed up on?

Subsequent to Decision 5/1 of the COSP in November 2013, we started gathering information on follow-up actions taken by countries to their respective reviews. We look forward to guidance of the Implementation Review Group and the COSP for more systematic collection of information in accordance with the Terms of Reference of the Review Mechanism.

How can the COSP measure the impact of UNCAC, whether it's making a real difference (as opposed to e.g. amendments to laws that are not implemented)?

We have started documenting the true impact of the Convention through the impact of the IRM and started analysing this in 2013, when we presented the note "[Translating commitment into results:](#)

impact of the Mechanism of Implementation Review of the Convention Against Corruption” to COSP 5. We have continued to gather information on real change through actions taken by States in relation to their reviews. Another area of impact is how the Convention has helped de-sensitize the issue of corruption and bring it to the centre of attention and discussion in various international fora. This impact can be seen through the inclusion of action against corruption in the recently adopted Sustainable Development Goals (under Goal 16). Substantially reducing corruption and bribery, as well as the building of effective, accountable and inclusive institutions is proof thereof and are now part of the 2030 Agenda. The achievement of this Goal can only truly be accomplished through the full implementation of the Convention.

The 6th COSP is advertised as having a focus on the private sector and on public-private partnerships against corruption. What is the result hoped for on this subject at the 6th COSP?

One of the draft resolutions to be considered by the Conference is “Partnership of state and business in the prevention of and fight against corruption”. It would encourage enhanced private-public cooperation in line with Article 12 of the Convention and, among others, aim to increase transparency of beneficial ownership of companies, enhance cooperation between the private sector and law enforcement in preventing and combating corruption as well as improving the protection of reporting persons. Should the Conference decide to proceed along the lines of this resolution, this would be in line with its long-standing commitment to encourage the private sector to become more engaged and play a stronger role in partnership with Governments to prevent and fight corruption.

How can the UNCAC and the COSP address the serious problems of grand corruption and state capture? Are additional mechanisms needed?

The Convention does not distinguish between ‘grand’ and ‘petty’ corruption. It considers any kind of corruption as dangerous. Assuming the distinction is useful, however, it is important to note that the Convention contains a large number of articles that can address grand corruption. Of particular relevance are the provisions criminalizing foreign bribery and money-laundering, on international cooperation as well as on the recovery and return of the proceeds of corruption. Reinforced by the almost universal application of the Convention – with 177 States parties to date – the Convention provides a formidable framework to tackle cases of grand corruption. The effective implementation of the Convention will ensure bringing the corrupt to justice in particular where cases involve high-level public officials and their associates.

For the first time, there is a CoSP agenda item referring to Article 63(4) (c) and covering COSP cooperation with NGOs as well as with regional and international organisations. What is the significance of this agenda item and how will it help resolve the controversy about civil society participation in UNCAC subsidiary bodies and in the review process?

We expect States parties to discuss the role of civil society in supporting the implementation of the Convention, including a more in-depth discussion on what its contribution may be in the context of the review of implementation. It is important to recall that the international framework for the implementation of the Convention, including the Conference of States Parties and its subsidiary bodies, is founded on consensus and mutual respect for all States parties. Hence, we hope that this sixth session of the CoSP will provide an important forum and opportunity to re-engage in a constructive dialogue on these matters.

There are always countries that block civil society inclusion, is there any way around this?

It is counterproductive and superficial to maintain that some countries block civil society institutions. We are witnessing a trend of an ever-increasing number of countries inviting and encouraging the contribution of civil society in the fight against corruption in general and the involvement of CSOs in the review process in particular. Overall, more than 80% of countries under review involved other stakeholders at some stage of their review.

At the same time, we need to acknowledge the fact that the Terms of Reference highlight the intergovernmental nature of the Mechanism and we ought to respect the position of States who believe that the IRG and other subsidiary bodies are and should remain inter-governmental in nature and who want to give more time to the implementation of Resolution 4/6 to allow for the building of confidence in the role of non - governmental organizations in the review process so as to create the basis for further constructive dialogue on the issue.

How would UNODC like to see the role of civil society and NGOs developing in the UNCAC context in the coming years? What advice would you give civil society groups so they can have the most impact in supporting UNCAC implementation and anti-corruption efforts?

The project of the UNCAC Coalition and UNODC through which stakeholders, focal points and CSOs actively engaged in the fight against corruption in their respective countries, and were jointly trained on the IRM and the Convention, has had a very positive impact on the work we see in preparation of, during and following the outcome of the country reviews. To date, 248 CSO representatives from 96 countries have been trained, the majority of these were trained jointly with their government representatives. This strengthening of the dialogue, and in some cases opening the lines of communication between these stakeholders, is an important aspect of the positive impact we attribute to the IRM. We would naturally hope to see this enhanced further during the next cycle, in particular as the role of civil society is included in Chapter II of the Convention, namely with regards to preventing corruption.

About the interviewee

Dimitri Vlassis is Secretary of the UNCAC COSP and Chief of the Corruption and Economic Crime Branch, UNODC

6th COSP written submissions by civil society organisations

Written statements submitted by the UNCAC Coalition:

- [UNCAC Coalition Statement](#)
- [UNCAC Review Transparency Pledge](#)
- [Implementation of UNCAC Chapter V Asset Recovery](#)
- [Addressing Corruption in an Era of Climate Change](#)

Written statements submitted by Transparency International:

- [Recommendations for Robust Action against Grand Corruption](#)
- [Executive Summary of Report on Civil Society Participation in Anti-Corruption Efforts](#)
- [Executive Summary of Parallel Review Report by Transparency International Turkey](#)
- [Transparency International Statement to the Sixth Session of the UNCAC Implementation Review Group](#)

Advocacy Focus

UNCAC Review Transparency Pledge



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The UNCAC Coalition calls on UNCAC States Parties to pledge support for transparency and public consultation in addressing corruption

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 Principles 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 UN language, together with the executive summary in local languages*
 - 5. We will organise 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*
-

We have developed a campaign site for our initiative on www.openupuncac.org. Here you can find the Pledge in four languages (English, French, Spanish and Russian). We will continuously update the site with petition results and country sign-ups.

We are convinced that it is impossible to fight corruption from behind closed doors. If you agree, please spread the word: #openupuncac and engage your government to sign the Pledge.

Civil society seeks stronger anti-corruption commitments from the countries gathered at the 6th UNCAC COSP

By Gillian Dell



What's on the civil society agenda at the 6th UNCAC Conference of States Parties (CoSP)? And what will be the UNCAC Coalition's focus in St Petersburg?

Although we expect fewer civil society participants in St Petersburg compared to previous CoSPs, we still plan a high level of engagement, as evidenced by the number of civil society written submissions and side-events.

To be sure, there will be plenty of meetings at the CoSP that representatives of civil society organisations (CSOs) cannot attend, unless they are part of a country delegation: the informal meetings to discuss the draft resolutions (none publicly available so far); the Committee of the Whole's review of draft resolutions;

the [Expert Meeting on International Cooperation](#) on 2-3 November; and the [resumed Implementation Review Group \(IRG\) meeting](#) on 3-4 November. All of these are closed to civil society representatives.

But there will also be opportunities for civil society to contribute to the discussions, in plenary sessions, in side events and in meetings with State Party delegations. Indeed, civil society already began significant engagement work ahead of the CoSP.

What's our focus for the 6th CoSP?

The UNCAC Coalition's statement [Making the UNCAC Work](#), submitted to the Implementation Review Group meeting in June 2015, contains its positions on key topics on the CoSP agenda, including on the Review Mechanism, the main subject of discussion at the 6th CoSP.

To help advance on transparency and participation issues, which have been controversial to date, the UNCAC Coalition has developed a voluntary [UNCAC Review Transparency Pledge](#) and is calling on States Parties to endorse its six principles, including in their CoSP plenary statements.

The UNCAC Coalition will emphasize the following six priority areas at the upcoming 6th CoSP:

- **Grand corruption:**

States Parties should recognise that the crime grand corruption causes grave harm to human rights and development and requires international attention and action. They should adopt and reinforce measures to check grand corruption, including the exercise of extraterritorial jurisdiction for the prosecution of this serious crime and increased recognition of victims' remedies. Transparency International has made a written submission to the CoSP on this subject and is co-organising with GOPAC a session on grand corruption during the Forum for Parliamentarians on Thursday 5 November 2015. The UNCAC Coalition is also organising a side event on victim's remedies on Thursday 5 November 2015.

- **Asset recovery:**

Progress with asset recovery efforts remains slow. The COSP should agree on steps to improve processes for the repatriation of the proceeds of corruption to the country from which they were taken or that suffered damage as a result of the commission of the underlying corruption offences. States Parties should also agree on steps to ensure transparency and accountability in the return of assets. The UNCAC Coalition has made a written submission to the CoSP on this topic.

- **Beneficial ownership transparency:**

Companies, trusts and foundations whose ownership and/or control were hidden or concealed were identified as vehicles for enabling laundering of corruption proceeds in more than 70% of over 200 cases of grand corruption surveyed by the World Bank. Secret ownership also enables collusion, self-dealing or other deception in procurement, licensing and other government processes. It further serves as an obstacle to detection and investigation of corrupt transactions. States Parties should take serious action against this abuse of secret ownership. They should introduce central registers containing beneficial ownership information and make that information public.

- **Civil society participation in anti-corruption efforts:**

In light of restrictions on civil society anti-corruption activities in an increasing number of countries, the COSP should give renewed recognition to the importance of civil society participation in anti-corruption efforts and the need to create and maintain a safe and enabling environment in which civil society can operate free from hindrance and insecurity. Transparency International has made a written submission to the CoSP on this subject and is lead organiser of a CoSP side event on civil society participation on Wednesday 4 November 2015.

- **Review Mechanism:**

The first cycle of reviews is very advanced, with 110 reviews already completed (as of 28 October 2015). The COSP should establish a process of follow-up to the first cycle of reviews to ensure that attention is paid to the review recommendations. States Parties should also agree to proceed with the second cycle of the UNCAC review process, including country visits, civil society participation and the publication of key review information, including timetables, self-assessments and full country reports (47 full reports have been published on the UNODC website to date.). Adequate funding should be provided for the review mechanism and for technical assistance requirements identified by the reviews. Transparency International's 2013 UNCAC Progress Report provides a detailed explanation of most of these points. The UNCAC Coalition is lead organiser of a CoSP side event on this topic on Monday 2 November 2015.

- **Civil society observer status in COSP subsidiary bodies:**

Representatives of civil society organizations have been excluded from participating as observers in COSP subsidiary bodies such as the Implementation Review Group and the Working Groups on Prevention and Asset Recovery. A separate briefing for NGOs was provided as a substitute. The COSP should recognise that this practice of meeting in secrecy is counterproductive in terms of the objectives of the UNCAC and it should take steps to open up UNCAC meetings. This subject is covered in Transparency International's written submission to the CoSP on civil society participation.

In addition, Coalition members will be conducting advocacy on other topics, such as on public procurement and climate change, both of which are the subjects of side events at the CoSP.

Corruption threatens to block achievement of the Sustainable Development Goals. Globalisation has created new challenges in tackling it. This is why it is so important that States Parties make significant advances in anti-corruption efforts at the upcoming CosP. Civil society will be contributing.

About the author

Gillian Dell is Head of the Conventions Unit at the Transparency International Secretariat

6th COSP Workshops organised by CSO groups

- **Making UNCAC review more effective**

Monday 2 November 2015, 12-noon to 2 p.m.,
Room D, Pavilion 7, Lenexpo Exhibition Complex

- **Making public procurement public**

Monday 2 November 2015, 3.30 p.m.,
Conference Room B, Pavilion 7, Lenexpo Exhibition Complex

- **UNCAC and civil society participation in anti-corruption efforts**

Wednesday 4 November 2015, 3.30 p.m.,
Conference Room C, Pavilion 7, Lenexpo Exhibition Complex

- **Prosecuting grand corruption**

Thursday 5 November 2015, c. 11.30 a.m.,
Conference Room B, Pavilion 7, Lenexpo Exhibition Complex

- **Compensating the social damage caused by corruption: an overview of best practices & challenges in implementing UNCAC Article 35**

Thursday 5 November 2015, 3 p.m.
Conference Room D, Pavilion 7, Lenexpo Exhibition Complex

- **Addressing corruption challenges in an era of climate change**

Thursday 5 November 2015, 3 p.m.
Conference Room B, Pavilion 7, Lenexpo Exhibition Complex

In search of remedies for victims of grand corruption

By Kolawole Olaniyan

Corruption, especially grand corruption, is anathema to the effective enjoyment of human rights, but it is often considered an 'ordinary and victim-less crime'. It isn't.

Yet, the myth that corruption is a victimless crime has prevailed for many years; in part because of the narrowed conception of corruption, and the perceived legal and practical challenges to identifying victims such as causation, legal standing, and evidence-gathering.

What I have in mind as grand corruption is the deliberate, intentional mass stealing of public wealth and resources by senior state officials entrusted with its fair and honest management for the common good and achievement of human rights. This is whether carried out individually or collectively, but with the support, encouragement,



or acquiescence of the state and combined with a refusal to genuinely, thoroughly and transparently investigate and/or prosecute the mass stealing and recover stolen assets.

Grand corruption fundamentally contrasts with even a minimal notion of the rule of law, and the ideal of government as a public trust. It is especially devastating to the rules of a law-based society, and leads to a loss of confidence by citizens. Grand corruption undermines the ability of states to carry out their good-faith human rights obligations and commitments, as it diverts critical resources needed to achieve the full enjoyment of human rights.

It's not that those who characterize corruption as victimless completely disagree that it causes harm, especially to the economically and socially vulnerable (that is, any individual or determinate class of persons, who by reason of poverty, or disability or socially or economically disadvantaged and vulnerable position, suffer most the immediate effects of violations of human rights caused by corruption). On the contrary, the argument often put forward is that since no one victim suffers more harm than others and that there may be no direct victim, it is probably pointless to labour in search of 'invisible victims'.

This line of reasoning would appear weak and difficult to sustain for several reasons. Apart from causing both direct and indirect economic and other harms to citizens and the public in the form of the loss of the common wealth and public revenue, corruption also causes non-monetary loss in the form of widespread and consistent denial of the impartial application of the rule of law and access to justice.

While it may be difficult to quantify the harms that corruption causes, this doesn't make the harms less real, less destructive, or less corrosive. As former UN Secretary General Kofi Annan stated during the 2003 adoption by the General Assembly of the United Nations Convention against Corruption (UNCAC), corruption:

"... has a wide range of corrosive effects on societies ... undermines democracy and the rule of law ... leads to violations of human rights ... erodes the quality of life ... hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services."

Although there are attempts to prosecute corrupt acts as crimes, criminal prosecutions of corrupt officials have not been very effective up until now. Similarly, the legal frameworks against corruption in several countries don't reflect elements of the accountability of the government for the human rights violations faced by victims of grand corruption. The victims are largely neutralised (and virtually anonymous) in the criminal process, with no access to human rights remedies.

The inevitable result of lack of accountability is for example the sporadic and lax prosecution and punishment of officials responsible for grand corruption, while, conversely, the imposition of severe sanctions for petty corruption, so as to give the impression of justice.

While criminal law in developed can provide some short-term enforcement benefits, human rights law establishes both significant accountability mechanisms and normative standards for implementing long-term, durable, sustainable, and broad legal and institutional reforms against corruption.

It is true that human rights law continues to face implementation and enforcement challenges across the globe, and there remain some differences of opinion in terms of its conceptual interpretation, scope or philosophical foundation. But to use these grounds as justifications to minimise the potential role for human rights law to combat corruption is to fail to recognise the significant improvements that have taken place in this field over the years, and the law's remarkable achievements.

Human rights law on its own may not provide the whole solution to the corruption problem. Nonetheless, it can ensure a measure of justice, fairness and effective remedy to victims of corruption and can serve as a strong deterrent, and incentive for action.

The UNCAC Conference of States Parties (COSP) should pay more attention to the effects of corruption on human rights. We need a protocol to the UNCAC to agree a universal definition of grand corruption in the form that recognizes it as a human rights issue, and a breach of national trust, and therefore grants victims the legal standing to seek effective remedies against states and corporations. The COSP can lead this process and make it a reality. It can also support the proposal being championed by Transparency International and others to establish a UN Special Rapporteur on Corruption and Human Rights.

About the author

Kolawole Olaniyan is Legal Adviser at Amnesty International's International Secretariat, London, and author of 'Corruption and Human Rights Law in Africa.'

6th COSP in St. Petersburg: We must make progress on asset recovery

By Maud Perdriel-Vaissiere

The last Conference of States Parties to the UN Convention against Corruption (UNCAC) in Panama adopted a resolution on asset recovery ([Resolution 5/3](#)). It included concrete measures aimed to enhance the implementation of Chapter V and ultimately to make further progress on asset recovery.



Two years have passed since then and so one may well ask whether there has actually been any progress: What volume of assets has been recovered? How much has been returned to victim countries?

How has it been used? Has it benefited the victim populations?

The answers to these questions are difficult to find, as most States Parties do not collect or publish data relating to asset recovery, and many have yet to recognise the importance of the principles of transparency and accountability with regards to the use of returned assets.

Lack of information also prevents the effective implementation of the UNCAC Article 53 on measures for direct recovery of property. In fact, the right to bring civil claims with a view to recovering assets (as provided by this article) is of no use if countries are not aware of the existence of legal proceedings and settlements abroad and, as a consequence, are not in a position to claim ownership of property or compensation. What's more, it appears that in a blatant violation of UNCAC provisions, some jurisdictions do not even recognise a foreign state's right to sue.

Given all this, how are countries supposed to make use of the asset recovery remedies provided for under Article 53?

The low level of recoveries under Article 53 is further explained by governance failures. While Article 53 lays out a comprehensive legal framework to support countries in their asset recovery efforts, these provisions become almost toothless whenever they are run (or otherwise controlled) by those engaged in large-scale corruption. Indeed, under this scenario government claims as envisioned by Article 53 are either rendered unlikely or unlikely to succeed. In particular, given that under Article 53 once ownership or damage is established no further step is required to repatriate the ill-gotten gains

to the defrauded state, many jurisdictions prefer not to comply with this provision rather than return assets to corrupt regimes. These are legitimate concerns, but lead to the unfortunate situation where the citizens of these countries – the true victims – are doubly penalised for the corrupt behaviour of their public officials.

UNCAC Article 53.b poses additional challenges. This article – which provides for the direct recovery of property through compensation claims – was established as a concrete remedy to states harmed by corruption in situations, such as bribery or trading in influence, where the proceeds of corruption involve funds of private origin, over which states cannot establish prior ownership. However, many States Parties have yet to acknowledge that the award of damages constitutes a way of recovering the proceeds of corruption under the UNCAC. According to a [recent report produced by StAR](#), in the majority of foreign bribery cases settled abroad, victim countries are left out of the bargain. This is all the more unfortunate given the heavy and increasing reliance on negotiated settlements in both common law and civil law jurisdictions. Regrettably, those findings are believed to be equally true when it comes to ordinary court proceedings.

More generally, for far too long there has been a global misreading of what precisely asset recovery entails under the UNCAC. It is not only about recovering stolen or embezzled public funds stashed away by corrupt agents, or confiscating the lavish properties they have illicitly acquired abroad. Instead, the process involves any proceeds of corruption transferred abroad, including those of private origin such as the illicit profits, benefits or advantages of monetary value gained by companies as a result of paying a bribe to a foreign official. In that regard, much also remains to be done to confiscate the proceeds of active bribery – the benefits derived by the *payer* of the bribe. While some countries still lack the legislation required to address the confiscation of the proceeds of active bribery, considering such calculations too complicated, others may have legislation in place that has never been implemented in practice.

That being said, a lot still needs to be done to recover the assets stolen or embezzled by corrupt officials. The Resolution that was adopted in Panama stressed “the need to hold corrupt officials accountable by depriving them of their stolen assets” (preamble; Resolution 5/3), and in various parts of the Resolution urged States Parties to actively and robustly pursue domestic investigations and prosecutions of those engaged in acts of corruption (preamble, op. clauses n° 2 & 28; Resolution 5/3). All these language items are welcome, but the Resolution has failed to address key issues, such as political interference in the criminal justice system or immunity, which prevent proactive enforcement action from taking place.

Since the 2013 Resolution on asset recovery, many more millions of dollars in much needed state funds – including money destined for health, education and poverty alleviation – have been stolen and deposited abroad by corrupt individuals. The few have enriched themselves at the expense of the many for too long and it is essential that States Parties address these failures to adequately prosecute and punish the corrupt and recover the proceeds of their crime.

The UNCAC Coalition has developed concrete proposals to ensure that a 2015 resolution is both strong and comprehensive, and will actively promote them at the 6th Conference of States Parties in St Petersburg this November.

About the author

Maud Perdriel-Vaissiere is an Asset Recovery Advisor, UNCAC Coalition

UNCAC Coalition calls for States Parties to move on beneficial ownership transparency at 6th COSP

By Christine Clough



When the States Parties to the UN Convention against Corruption (UNCAC) and official observers gather in St Petersburg next week for the [6th Conference of States Parties](#) (COSP), the UNCAC Coalition will be advocating for enhanced language on [beneficial ownership](#) to strengthen corruption prevention and asset recovery. The transparency of beneficial ownership information – knowing the identity of the real person who ultimately controls a company or account – was a hot topic at the 5th COSP in Panama and has been progressing in some jurisdictions and other

international bodies.

Public access to the names of the ultimate beneficial owners of companies would significantly curtail the abuse of anonymous corporations for engaging in corruption and laundering the proceeds of this and other crimes. No longer could corrupt politicians easily set up fake companies to hide their control or that of their relatives and then receive lucrative procurement contracts. No longer could terrorist groups easily purchase weapons and equipment through seemingly legitimate (and peaceful) phantom firms. No longer could smugglers easily sneak into the legitimate financial system to wire their spoils around the globe.

Right now, not even law enforcement or other government investigators know who is really behind the companies doing business in their jurisdictions. UK Detective Constable Mark Lugton put it well in a [previous newsletter article](#):

“Clearly not being able to trace the real owner of a company is open to abuse, not only for bribery and corruption but also for other fraud offences. The idea that in this global market individuals can hide behind companies is no longer acceptable.”

Following money trails leads to dead ends, and stolen assets cannot all be retraced, because company registration information is faked or walled off. It pays to be a criminal when there is so much financial secrecy!

Some countries are finally working on updating their disclosure rules to get at this critical information. The UK Parliament passed legislation requiring public registries of beneficial ownership in March 2015 under the [Small Business, Enterprise and Employment Act 2015](#). Prime Minister David Cameron’s government is now working on implementing that law, which will have a significant effect given Britain’s role in the global financial system. In June 2015 the Norwegian Parliament followed the UK, [voting unanimously](#) in favour of setting up their own public beneficial ownership registries. One month earlier the EU passed a new [anti-money laundering directive](#) that will require all EU Member States to create central registries of beneficial ownership information for companies established in their countries. [Denmark](#) was another early adopter of beneficial ownership requirements. The G20 also recognised the importance of this issue at its [Brisbane Summit](#) in November of 2014, but did not emphasise that the information should be *public*.

The UNCAC already includes language on beneficial ownership in the prevention and asset recovery chapters – both of which are expected to be part of the next review cycle – and resolutions at past COSPs have tried to emphasise the importance of this issue. UNCAC Articles 12 and 14 call on States Parties to enact measures to identify the legal and natural persons behind companies, especially as a tool for prevention of money laundering. [Resolution 4/4](#) and [Resolution 5/4](#) of the COSP have helped

draw more attention to beneficial ownership, but they haven't spurred national-level action. Similarly, Article 52 and [Resolution 5/3](#) "urge" States Parties to collect and share information on the natural owners for law enforcement for investigating corruption and money laundering.

The 5th COSP in Panama marked the first time beneficial ownership language was included in two resolutions, and the UNCAC Coalition would like to keep that momentum going in Russia. We *urge* States Parties to join us in promoting the importance of establishing and enforcing public registries of beneficial ownership, and we *encourage* our fellow civil society organisations and other observer supporters to join us in this on-going effort to foster much greater transparency in support of the fight against corruption and other financial abuses.

About the author

Christine Clough is a senior program officer for Global Financial Integrity.

Repairing the damage caused by corruption

By Juanita Olaya

After years of working in the field of governance and anti-corruption I am convinced that fighting corruption should not be a goal in itself, and is of little help if it doesn't translate into better services or better life conditions for citizens – in other words, it should benefit the public good.

The damage done by corruption to the public good is real and tangible and should be repaired. This is not only a basic principle of law; it is also a way for societies to recognise the value of the public good and to act upon it. This is particularly pertinent in grand corruption cases, where funds are stolen directly from the public purse; often these are funds destined for health, education or other social services.



Image: Pixabay / gerald

The good news is that there are judges, prosecutors, lawyers and activists doing this good work: seeking channels, ways and options to repair the damage caused by corruption and ensure compensation and redress for the public (corruption's real victim).

To cite only a few examples, In Nigeria, the NGO [SERAP](#) has been pursuing public interest litigation before the Economic Community of West African States (ECOWAS) and the Nigerian courts to seek recognition of the impact corruption has on education, the environment and other public goods.

In [Costa Rica](#) prosecutors have made good use of the authority given to them by the law to claim compensation for the damages caused by corruption in cases involving high ranking officials.

At the 6th Conference of States Parties (COSP) in St Petersburg, the Costa Rican delegation and the UNCAC Coalition have joined efforts to host a side event on this topic. The event will take place on Thursday 5 November 2015, under the heading "Compensating the costs of corruption: The concept of social damage and other experiences and best practices in implementing UNCAC's Article 35". This event is welcome and timely, as it will facilitate an exchange of experiences among States Parties, raising some interesting questions and the opportunity to learn from each other.

As efforts in this field begin there are also challenges. An earlier entry to this blog by [Kolawole Olaniyan](#) gives a good overview of some of them: limited access to judicial mechanisms for victims, measurement dilemmas, evidence management, and the conception, use and correct implementation of compensation. I have researched those dilemmas and presented a paper to be included in an upcoming publication of the Open Society Justice Initiative, surveying the field of legal remedies for high-level corruption from the standpoint of the role of civil society. You will find the [draft here](#) and I would be happy and grateful to hear back from you with your experience, reactions and comments.

As we search for solutions to these challenges we need to take enabling steps. The UNCAC Coalition in its [statement to the 6th COSP](#) calls on States Parties “to take effective measures to address the consequences of corruption and ensure compensation for victims”. It also “welcomes the legal concept of social damage presented by the Government of Costa Rica during the 4th COSP”. Transparency International’s statement to the 6th COSP on grand corruption makes a sharp point when it recommends increased prosecution of grand corruption cases and at the same time for State Parties to: “Allow victims of grand corruption greater recourse to the courts, in both criminal and civil proceedings”. It also asks the “UNODC to prepare an in-depth study of implementation of UNCAC Article 35 and to provide more guidance on private prosecutions”.

We look forward to seeing positive steps in this regard.

About the author

Dr. Juanita Olaya is a Governance, Sustainability and Anti-Corruption expert, and Legal Adviser to UNCAC Coalition.

Immunities from prosecution: Let’s burst the bubble

By Tilman Hoppe

A few months ago, [US\\$1 billion \(!\) went missing in Moldova](#). The prime suspect put himself up for local elections, so he enjoyed immunity from prosecution. He is one of many examples of how corrupt public officials all over the world abuse immunities.

Also EU-countries like [Germany](#) still grant their parliamentarians unconditional prosecutorial immunity. Without lifting this immunity, a prosecutor cannot investigate a parliamentarian for corruption or other crimes. This concept could not be more out-dated. It stems from the middle ages and was used to protect early “parliaments” from the King’s whim. Is Germany still living in the middle ages? Would Chancellor Angela Merkel arrest members of the opposition faction, if not for their immunities?



Certainly, there are countries such as [Uzbekistan](#) where not all parliamentarians might feel safe. However, placing parliamentarians (and other public officials) in an “immunity bubble” is not a smart response. There are better solutions.

For example, in 2012 Albania dared to break free from the endless repetition of copy-pasting the medieval immunity model. The government submitted the following [draft proposal](#) for constitutional change to parliament: parliamentarians have per se no immunity; however, parliament could at anytime invoke immunity on its members, if needed. This could even be done by minority vote, to protect the opposition.

So, instead of parliamentarians walking around in a constant “immunity bubble,” they would get protection only if needed, and only temporarily. This “reverse” model of immunity has been [working well in two German regional parliaments](#). It makes parliamentarians touchable; but still protects the functioning of parliament as an institution.

Unfortunately, this version of reform in [Albania never got through parliament](#). Apparently, the medieval immunities model was too hypnotising to too many stakeholders. Indeed, why would parliamentarians in any country be so “stupid” as to give up the comfort and privilege of being untouchable?

During discussions on immunity reforms, people often refer to Western countries: if a safe country like Germany sees a need to put all its parliamentarians into an “immunity bubble,” why should a country like Albania not do so?

We need more examples like the [Netherlands or the United Kingdom](#), where only the head of state enjoys immunity from prosecution. And we need to be honest about countries still putting parliamentarians, judges and other public officials into an “immunity bubble.” They are not examples of good practice.

About the author

Dr. Tilman Hoppe is an anti-corruption expert based in Berlin

Special Focus

Civil society participation: An essential element in anti-corruption efforts

By Vanja Škorić, ECNL

The fight against corruption is a long-term process, requiring deep structural changes to a country’s institutions, its legal framework and its culture. Therefore, actors outside government – especially in civil society – are an essential component to anti-corruption success.

Civil society organisations’ (CSOs) contributions range from awareness-raising and prevention campaigns to participation in policy formation and monitoring of the implementation of anti-corruption strategies and legislation. CSOs are especially engaged in empowering citizens and exerting pressure on governments to address their international commitments. All these activities are crucial for building national anti-corruption capacity and supporting institutional reform.



While there are encouraging examples of governments proactively embracing civil society in anti-corruption work, in an increasing number of countries CSOs have been undermined and targeted by governments; sometimes precisely because of their anti-corruption engagement.

CSOs cannot perform their vital role where they are subject to constraints that negate their rights to participate, associate, assemble and express freely. In response to restrictions on civic space in

recent years, there have been calls for strengthening the framework for participation.

In 2014, the Human Rights Council adopted [Resolution 27/24](#) addressing this issue,¹ and tasked the United Nations High Commissioner for Human Rights (OHCHR) to develop a study to highlight best practice and recommendations for further action. The study ([A/HRC/30/26](#)) states that public participation includes the right to be consulted at each phase of legislative drafting and policy-making; to voice opinions and criticism; and to submit proposals aimed at improving the functioning and inclusivity of all state bodies.

This right to civil society participation in policy-making processes is recognised internationally, although commitments are not always specific enough to ensure implementation. For example, participation in public affairs is integrated into Article 25 of the [International Covenant on Civil and Political Rights](#),² but the specific right to participate in policy- and law-making needs to be further elaborated. It should be a concrete right that countries must respect and that can be monitored through treaty bodies, resolutions and reports. The implementation guidance for countries, issued by the OHCHR, would be helpful to bridge this gap.

At a regional level, the Council of Europe's 2009 [Code of Good Practice for Civil Participation in the Decision-making Process](#) defines general principles, guidelines, tools and mechanisms for the active participation of CSOs, but again it is non-binding and not monitored. However, the Code has proven helpful for supporting the development of participatory decision-making at the national level.

Finally, the new [2030 Agenda for Sustainable Development](#) also recognises that progress in promoting sustainable development requires strong partnerships across society. It is no coincidence that the reduction of corruption and bribery (Goal 16.5) and the development of effective, accountable and transparent institutions (Goal 16.6) have been bundled with ensuring responsive, inclusive, participatory and representative decision-making (Goal 16.7) – anti-corruption efforts cannot be successful without meaningful participation.

But of course, this all supports what we know already. The UN Convention against Corruption (UNCAC) has long recognised the role of civil society in combating corruption by calling on governments to increase transparency, improve public access to information, and promote public contributions to government decision-making processes. In the words of Peter Eigen, co-founder of Transparency International:

“... only an effective coalition of state, business and civil society can bring transparency and accountability to governance – not only to fight corruption, but other ills of globalization too, including injustice and inequity, poverty, violence, conflict, environmental destruction and climate change.”

At a time when trust in governments' commitments to fight corruption is declining, it is imperative to encourage and enable civil society to participate. CSOs will work to encourage participation at the upcoming Conference of States Parties to the UNCAC. The mechanisms for the full participation of CSOs in the UNCAC's implementation will be discussed for the first time at plenary session, and there will also be a side event on civil society participation in anti-corruption efforts.

We have the evidence to support meaningful civil society participation for good governance and anti-corruption success. What we need now is the full commitment of governments to enable participation and to pledge to consult civil society across all areas of corruption policy development, implementation and monitoring.

¹ Resolution: “*Reaffirms* 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”. It also requested the Office of the United Nations High Commissioner for Human Rights 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 in the context of the existing human rights law, with a view to identifying possible elements of principles guiding the implementation of that right. [A/HRC/27/24](#).

² Article 25 includes the right to take part in the conduct of public affairs, which is the basis for public participation in policy and decision-making.

About the author

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Civil society participation in the UNCAC review mechanism

By Mirella Dummar Frahi



Participants at the UNCAC workshop, February 2015, Addis Ababa, Ethiopia

Following the adoption of the [UNCAC Review Mechanism](#) in 2010, it became immediately apparent that government representatives would require training to support its implementation.

In addition, UNODC and other stakeholders recognised that a successful Review Mechanism would also require effective civil society participation. So, in 2011 UNODC in partnership with the UNCAC Coalition (with Transparency International acting as the Secretariat) developed a project to provide training to non - governmental organisations (NGOs), aiming to promote an inclusive UNCAC process in line with Article 13.

To date, we organised 10 UNCAC training sessions and have equipped 248 NGO representatives from 96 countries with the technical knowledge and advocacy tools to work constructively with their respective governments and the private sector to combat corruption and implement the UNCAC.

The training has enabled NGOs to effectively understand the provisions of the Conventions and its Review Mechanism. In turn, they have developed their own training and best practices and shared these with other NGOs and stakeholders in their countries. An important outcome of this training has been the opportunity for some NGOs – as in the case of *Contas Abertas* in Brazil – to establish initial contacts with government focal points for the Review Mechanism, facilitating joint work on the reviews and follow-up.

In 2014, following a recommendation by a mid-term [independent evaluation](#), the project initiated multi-stakeholder workshops for joint sessions with NGOs and government focal points. The new format of the training increased trust between governments and NGOs, often translated into invitations for NGOs to participate in the country visit as was the case with Ethiopia.

There were also cases where longer-term collaboration was established. In one example, representatives from the Gabonese NGOs *Réseau des organisations libres de la société civile pour la bonne gouvernance* (ROLBG) and *Brainforest* built excellent working relations with their government counterparts, thanks to their knowledge and expertise on the UNCAC. This collaboration resulted in

their involvement in a number of consultations at country level and in the development of a national anti-corruption strategy, along with other stakeholders such as the UNDP and the private sector.

A second example came as a direct result of the multi-stakeholder workshop held in South-East Asia in February 2014. During the workshop the government and NGO participants drafted an action plan that became a catalyst in the government's adoption of the inter-agency approach later that year. As a result, in September 2014 the Philippine government created the Presidential UNCAC Inter-Agency Committee, composed of high-level officials and multi-stakeholder participants (NGOs, private sector and academia). The aim was to oversee the implementation, coordination, monitoring and review of Philippine compliance with the UNCAC.

In sum, the multi-stakeholder workshops have proved to be instrumental in initiating dialogue and building trust between governments and NGOs. The exchange of best practices and knowledge-sharing has triggered a more inclusive Review Mechanism. In light of the [agenda item on civil society participation](#) at the sixth session of the Conference of the States Parties, it will be important for civil society to build on this positive experience of dialogue and partnership with governments in the first cycle of the Review Mechanism and to provide constructive recommendations for the second cycle.

About the author

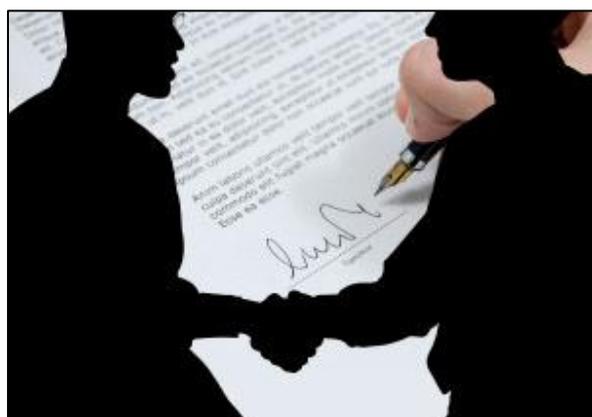
Mirella Dummar Frahi is a Civil Society Team Leader at the United Nations Office on Drugs and Crime (UNODC).

Special Topics

Promoting integrity and transparency in public procurement

By Katja Bechtel and Susan Côté-Freeman

Image: Pixabay / gerald



It is estimated that some [US\\$9.5 trillion of public money](#) is spent each year by governments procuring goods and services on behalf of their citizens. With such vast sums of money at stake, few government activities create greater temptation or opportunity for corruption. Indeed, the [OECD estimates](#) that 20 to 25 per cent of national procurement budgets is lost to corruption.

However, the past few months have seen promising developments that aim to advance integrity and transparency in public procurement. In July, the World Bank approved a new [Framework](#) to shape how it will contract and oversee projects that it will fund in the future. Most notably, it contains provisions for the collection and disclosure of information on the [beneficial ownership](#) of bidders. It also acknowledges the importance of independent monitoring, including by civil society, to improve the integrity of procurement processes. Given that the World Bank spends billions of dollars every year on procurement contracts in 172 countries, these developments will no doubt have impact on a global scale. Transparency International welcomes these developments and urges the Bank to follow through with strict implementation of these and other provisions included in the new framework.

In addition, international business is reinforcing the case for clean procurement. Last month, the Anti-Corruption Task Force of the B20 Coalition, an outreach group of the G20 representing the international business community, issued [policy paper](#) that contains five main recommendations on corruption.

Significantly, one of the recommendations calls on governments to promote integrity in public procurement. It also calls on G20 countries to commit to enforcing major international anti-bribery conventions, including the UN Convention against Corruption (UNCAC). These recommendations should be influential, as they come from a group that includes significant representation from multinationals and business groups. Together with the new World Bank framework, they add weight to UNCAC provisions on procurement. Indeed, the B20 policy paper emphasises that influential business actors believe that more attention should be given to the procurement issue.

The upcoming Conference of States Parties (CoSP) on the UNCAC will address the role of the private sector in tackling corruption. Transparency International strongly believes that businesses can play a key role in keeping the procurement process clean. They can do so by ensuring that their own anti-corruption policies and systems are stringent and that their effectiveness is monitored. In addition, companies participating in procurement processes should proactively disclose their beneficial ownership and disclose contracts once they are awarded. Beyond these individual steps, businesses can and should work with governments and civil society to ensure the integrity and transparency of public procurement.

To examine how this can be achieved, Transparency International, in cooperation with the United Nations Global Compact, will host a workshop as part of a side event to the CoSP. The workshop is entitled, Making Public Procurement Public: Public-Private Cooperation to Promote Integrity and Transparency in the Public Procurement System. It will explore ways to reduce corruption in public procurement through the joint efforts of governments, businesses and civil society, and will identify the prerequisites for such models of cooperation to ensure that each party to a procurement process endeavours to keep procurement clean.

Businesses, governments and citizens all stand to win from smart, efficient and corruption-free procurement.

About the authors

Katya Bechtel is a Programme Coordinator in the Private Sector Team of the Transparency International Secretariat. Susan Côté-Freeman is a Programme Manager in the Private Sector Team of the Transparency International Secretariat



Corruption in an era of climate change: Stakeholders to discuss at high level UN anti-corruption meeting

By Lisa Ann Elges and Juliet S. Sorensen



As global leaders settle on new directions for [sustainable development](#) and [climate change avoidance](#), they are also faced with a number of corruption hurdles, which could create road-blocks to progress and effectiveness.

[Corruption and fraud](#) can and will undermine long-term goals to protect people and the planet today and in the future. If left unchecked and unaccompanied by important governance reforms, corruption will compromise the ability of governments and companies to materially and financial address short- and long-term environmental and social needs.

Tackling corruption and strengthening governance in all countries will create greater assurances that the billions invested in adaptation, mitigation and

disaster recovery efforts (loss and damage due to extreme weather events) achieve meaningful impact. [Stopping financial mismanagement, embezzlement, illicit financial flows, money laundering and tax fraud](#) can make available even greater public resources for sustainable development.

At the [Conference of States Parties of the UN Convention against Corruption](#) (COSP) to be held in St. Petersburg, Russia from 2–6 November 2015, Transparency International, Northwestern Law School's Center for International Human Rights, GIZ, the OECD and the UNCAC Coalition will hold a side event to call on government anti-corruption leaders to commit to and take decisive action to address these pressing global demands.

In reviewing the links between corruption risks and climate change demands, participants will discuss how the UNCAC can provide a useful framework for addressing such risks. Thus the event goes squarely to heart of the COSP in discussing key components of the UNCAC: prevention, enforcement, technical training and mutual legal assistance. Ultimately, the meeting will seek to urge commitments for enhanced law enforcement and international cooperation amongst governments, and for increased capacity-building and technical assistance to match sustainable development and anti-corruption targets.

It will further seek to engender support for the establishment of a working group to consider the role, responsibilities (accountability) and impact (best practices/lessons learned) of multilateral organisations and funds in driving transformational change in the context of sustainable development and climate change.

About Lisa Ann Elges and Juliet S. Sorensen

Lisa Ann Elges is a Head of Climate Policy at Transparency International Secretariat. Juliet S. Sorensen is a Clinical Associate Professor of Law with the Law School's Center for International Human Rights.

Practicing open data: Publishing court decisions in Germany

By Angela Reitmaier

In order to hold government to account, people need to know what it is doing. That is why it is so important for civil society to be able to have access to information on all types of government actions. Advocating for what we call “open data” is at the heart of the anti-corruption movement.

In Germany, we have been pushing for the publication of court decisions that include the names of the guilty parties particularly when it comes to naming those involved in foreign bribery.



A [1993 study](#) found that only 0.5 per cent of all court decisions are published. Even at the level of federal courts, the publication rate ranges only between 2 per cent (Federal Patent Court) and 44 per cent (Federal Tax Court).

While results will have improved since then, Germany is far from publishing all court decisions at all levels. A [decision of the Federal Administrative Court](#) (Bundesverwaltungsgericht) of 1997 held that publication of court decisions is a constitutionally mandated task of the judiciary and therefore of every court.

All decisions, whose publication the general public could have an interest in, have to be published. With this qualification, not *all* decisions have to be published, but with a rising public interest in court decisions and open data, more and more decisions will. In addition, decisions “are to be prepared for delivery to the public by anonymization”. This is apparently because naming and shaming is frowned upon in Germany.

Anonymisation means that the name of the offender is omitted, and only the initial of the name of the company, of the foreign country and of other locations or actors are published. Under German constitutional law, the right to privacy of the offender, which is affected when a criminal verdict would be published with names, has to be balanced against the principle of open criminal trials and the right of the public in a democracy to control the judiciary.

Right to know v. data protection

In my opinion, the right of the public to know should prevail in cases of foreign bribery, especially as far as the name of the foreign country and the company is concerned, but also the name of the offender. For the related offense of money-laundering, the [4th EU Anti-Money Laundering Directive](#) requires member states to name people not complying with the requirements of the Directive in a public statement. This shows that constitutional balancing can come out in favor of naming offenders.

Moreover, foreign bribery may amount to a violation of the human rights of the foreign country’s people. By taking out the names in the decisions, the courts keep information from victims who may want to seek remedy for the violation of their human rights or to recover stolen assets.

In the [2015 Exporting Corruption Report](#), Transparency International criticises the fact that collection and access to enforcement information continues to be a challenge in many countries, citing Germany for its practice of not disclosing the names of defendants and countries.

This practice was recently criticised in a case of tax evasion of a prominent former soccer player, Ulrich Hoernes, who is also the former head of Bayern Munich football club. The press discovered

that Hoeness' lawyers were involved in the preparation of the verdict for publication. In light of this criticism, the state of Bavaria is [reviewing its policy of publication](#) and so is the state of Rhineland-Palatinate after a similar incident, albeit unrelated to anonymisation.

The general practice of publication of decisions of federal courts will change in January 2016. Currently, federal courts publish decisions on their websites, but provide them exclusively to one particular commercial database (Juris) after further legal preparation.

A competitor of Juris complained, won in the first instance and entered into an [extrajudicial settlement](#) with the Federal Constitutional Court (Bundesverfassungsgericht). So, starting in 2016, all decisions of federal courts will be uploaded to a free website of the Federal Ministry of Justice, and also provided free of charge to commercial databases.

This is an important first step, paving the way for this kind of service to be extended to all court decisions of the States (Länder) in the spirit of open data.

For the upcoming [G20 Summit mid-November in Turkey](#), civil society is calling on G20 leaders to release key data crucial to tackling corruption in open data formats. This includes, *inter alia*, all court decisions, as well as allowing identification of individuals, companies and countries by name. It's not just in Germany where we have these problems.

About the author

Angela Reitmaier is a Head of International Agreements Department at Transparency International Germany

Rich and poor: Different dynamics, different problems for the UNCAC

by Adam Graycar



As the UNCAC review process is expected in the next year or two to start to focus on preventive measures (Chapter 2 of the UNCAC), it is more important than ever to emphasise that corruption takes different forms in different contexts.

Rich and poor countries alike face corruption, but the dynamics are different, the effects are diverse and significantly our responses should be appropriate. What works in one setting may be irrelevant or unworkable in another.

Corruption morphs and adapts according to its environment. At a basic level, however, corruption interferes either in the **creation** of public policy or in its **implementation**.

In recent years, corruption in the implementation of policy has been the focus of much work, including that of the UNCAC. This makes sense, as in many poorer countries, where local administrative governance may be less well developed and incentives and opportunities for petty corruption may be higher, corruption can have a profound impact on lives and communities, compromising health, education, water and other social services.

On the other hand, in richer countries where administrative systems have been historically more robust corruption affecting the implementation of policy is demonstrably rare. In a recent [Australian survey](#), less than one per cent of the respondents reported ever having been asked for a bribe. Similar findings were also revealed in Norway, where respondents reported very little personal experience of corruption.

However, this does not mean that corruption does not exist. In both the Australian and Norwegian studies, there are perceptions that corruption was high and increasing: in the Australian study **43 per cent of respondents** thought corruption was increasing. Perceptions of increasing corruption are therefore linked to awareness of corruption beyond the every-day, such as scandals revealed in the media, including those related to political corruption in the *creation* of policy.

The focus of the UNCAC has quite properly been on the public sector, and reducing the incentives and opportunities for corruption in the *implementation* of policy, while also putting in place punitive measures, ranging from the criminalisation of corruption, to cooperation in law enforcement and prosecution, and the recovery of assets.

The UNCAC includes some useful provisions that can be applied to both rich and poor countries, which aim at:

- Reducing the inclination to engage in corruption: highlighting civil service hiring and retention practices, promotion and retirement processes, good governance and prevention of conflicts of interest.
- Reducing the opportunity to engage in corruption: promoting system redesign, streamlining processes, reporting, and frameworks for internal and external supervision measures.
- Removing excuses for corrupt behaviour: encouraging cultural change, a public service ethos, civil society and media scrutiny and citizen participation, and transparency in the declaration of assets to identify unexplained wealth.

These approaches are useful in contexts where governance systems need strengthening, but they are not sufficient in themselves. We need broader strategies related to the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Corruption prevention must focus on wider factors and must be integrated into public life, and not be seen as something that comes into play only after a problem has been identified.

The question is, can the UNCAC do this important work?

The more insidious forms of corruption are much more difficult to legislate for and much more difficult to capture in an international convention such as the UNCAC.

For example, in both rich and poor countries powerful interests game the system. They lobby, supply data, run information campaigns and assist in developing legislation, and they do so within the legal framework of functioning democracies.

Different patterns can be seen throughout the world, but in a climate where national politics screams for tax cuts, and public sector numbers are static or declining, where once a neutral civil service provided policy advice it is now being replaced by vested corporate interests. Couple this with inconsistent rules around election financing and we have a fraught situation in which it is very difficult to identify where information is coming from, and who is making decisions in the interests of whom.

The UNCAC Review Mechanism may not be able to deal with all these problems, but by focusing on transparency and opening up the functioning of the public sector to public scrutiny progress can be made. It is this big picture – how the policy landscape is shaped – that is a cause for concern. If the UNCAC and the international community continue to address corruption in *policy implementation* at the expense of *policy creation*, not only do we risk placing an undue focus on the corruption problems in poorer countries, but we are in danger of missing the big picture where lobbying, revolving doors and powerful “experts” trade in influence and promote policy that may not be in the public interest.

About Adam Graycar

Adam Graycar is a Professor at the School of Social and Policy Studies with the Flinders University, Adelaide, South Australia

Interviews

Interview with Madame Le Thi Thuy, Vietnam Government Deputy Inspector General



Does Vietnam already have plans for follow-up on the recommendations from the first cycle of the UNCAC review process?

The Government of Vietnam enacted Resolution No. 82/NQ-CP on 6 December 2012 with a view to implementing the recommendations from the first cycle of the UNCAC Review Process. Also, those recommendations have been taken into account when developing plans to revise some significant laws in Vietnam, such as the Penal Code, the Criminal Procedure Code and the Law on Anti-corruption.

How is Vietnam preparing for the second cycle of reviews?

As recognised in the first cycle, Vietnam has always been very serious and proactive in the Review Mechanism, and we are now ready for the second cycle. In the first cycle, being among the states parties that finished the country review process early, participated effectively in the review of other states parties (Austria and China), as well as being involved actively in the discussions on the second review cycle, Vietnam believes that our implementation of the second review cycle will also run smoothly.

What are your expectations for the second cycle of UNCAC reviews and the outcome on this subject in St. Petersburg?

Like other states parties, Vietnam believes that with the careful preparations of the host, the Russian Federation, in all aspects, as well as the exhaustive efforts of the Secretariat of the Conference of States Parties (COSP), the permanent missions of the States Parties in Vienna and all other stakeholders, the 6th Session of the COSP will be a great success. We hope that the states parties will come to a consensus on the second review cycle, heading towards effectiveness, objectivity and positivity, in the spirit of mutual understanding, sharing of good practice and providing assistance for capacity-building among the states parties.

What are your overall expectations for the Conference of States Parties in St. Petersburg?

We expect the states parties to look forward to and reach a basic consensus on the issues relating to the UNCAC, especially on the second review cycle. However, the most important thing is the *sharing of viewpoints, agreed commitments and united actions* in order to effectively control corruption, to curb the damage it causes and maximise the remedies for society, especially for the disadvantaged groups.

What is Vietnam's position regarding civil society participation in UNCAC processes, global and national? What has been your experience in working with civil society groups in connection with the UNCAC review process?

Vietnam recognises and appreciates the positive and constructive contributions of social organisations in the process of UNCAC implementation and the UNCAC implementation review. In the first cycle, Vietnam effectively mobilised the participation of social organisations in such

activities as compiling information, and giving feedback and comments on the outcomes of the self-assessment report in all related aspects. The active and constructive involvement of those organisations contributed to the development of a good-quality, comprehensive and objective country report from Vietnam, which was recognised by the Secretariat and international community. This can be a good practice for Vietnam to share with other states parties.

What are Vietnam's views on the Transparency Pledge?

Vietnam welcomes all initiatives by all entities and organisations in general for a better society, especially initiatives on transparency and anti-corruption which are built on the ground of respect and in compliance with the domestic laws of the States Parties.

About the interviewee

Madame Le Thi Thuy is Vietnam Government Deputy Inspector General and Head of Vietnam Delegation to the 6th Session of the COSP.

Interview with Mr. Abdesselam Abouddrar, Chair, Central Authority for Corruption Prevention, Kingdom of Morocco



What is the current situation in Morocco regarding anti-corruption efforts?

The citizens are more and more demanding. As a result of our efforts, the government is about to adopt an anti-corruption strategy. It's been a 20-year fight by civil society and our own institution.

What has also been achieved is the adoption of some laws and regulations. For example, the asset declaration law; the law on the protection of victims and experts; new regulations on public procurement; and reform of the judiciary were introduced in the last 4-6 years. Now this legal framework has to be implemented and enforced and reviewed. Some things don't work in practice.

With regard to popular demand, if it is just negative, the forces that benefit are the bad ones. When there is an effort to seek positive ways of change, then the results can be positive.

What is the impact of the UNCAC review in Morocco?

The [UNCAC review of Morocco](#) pointed out certain failures, certain deficiencies in the regulations in Morocco. Some of these failures are being addressed in the draft penal code, currently discussed by the government. However, due to a lack of coordination in the process of following up, we were behind setting up a permanent working group, consisting of the main departments related to UNCAC. This initiative will allow a higher level of coordination between national stakeholders, and support government's anti-corruption measures to comply with UNCAC's provisions.

What is your opinion on transparency and CSO participation in the UNCAC Review Mechanism?

Morocco supports bigger CSO's participation in all the points related to prevention and fight against corruption.

What are Morocco's expectations for the 6th session of the UNCAC Conference of States Parties (COSP)?

It's a UN process. All UN processes are slow because you need consensus and you cannot force governments to agree to anything. Still it's worth noting that more and more countries accept evaluation, country visits, publication of full review reports. It's less and less comfortable for the countries that oppose transparency. Morocco will work to help to make progress in the review process at the next COSP session, although I remain sceptical about reaching quick achievements.

What is Morocco's position on holding a discussion of grand corruption at the UNCAC Conference of States Parties (COSP)?

I think the UNCAC COSP can discuss grand corruption. Transparency International should elaborate instruments for this. The Corruption Perceptions Index is biased towards petty corruption—it does not point out grand corruption or institutionalised corruption.

Coalition updates

New UNCAC review reports

Since August 2015, the following UNCAC review reports have been released:

Executive summaries: Algeria, Bosnia and Herzegovina, Brazil, Canada, Kenya, Kazakhstan, Liberia, Macedonia, Maldives, Malta, Mexico, Singapore

Full country reports: Algeria, Bosnia and Herzegovina, Canada, Kenya

New CSO reports

TI Turkey and TI Russia have both produced 2015 UNCAC parallel reports on their countries.

Official country reports are available on both the UNODC website [here](#) and on the UNCAC Coalition website [here](#). Civil society reports can be [viewed on the UNCAC Coalition website here](#).



16th IACC Declaration: Zero Tolerance for Impunity

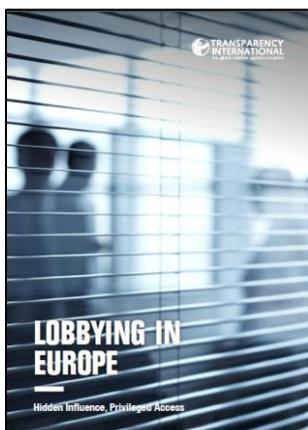
Nearly 1,200 people from 130 countries gathered in Putrajaya, Malaysia to discuss one of the world's biggest challenges: how impunity enables the spread of corruption. Delegates came together to find the most effective strategies to stop impunity and hold to account those who benefit from the abuse of power, secret deals and bribery. [Read the Putrajaya Declaration from 16th IACC 2015.](#)

Gold Rush: Investment Visas and Corrupt Capital Flows into the UK

In this report "Gold rush: Investment visas and corrupt capital flows into the UK" Transparency International UK highlights how the UK's Tier 1 Investor scheme can be vulnerable as a tool to launder the proceeds of corruption from around the world. Laundering the proceeds of grand corruption is not unique to the UK, nor is the UK alone in hosting a 'golden visa' scheme. A number of other major global financial and real estate investment centres are also both vulnerable and attractive to the corrupt. However, the UK is well-placed to lead international efforts to recover the proceeds of grand corruption. [Read the full report online.](#)



Lobbying in Europe



Our report is the first-ever comprehensive assessment of lobbying across Europe, looking at the quality of responses by both governments and EU institutions to the risks and realities of undue influence in public decision-making.

The report ranks 19 countries and three EU institutions in terms of their overall performance in safeguarding against undue influence and in promoting open and ethical lobbying. It also ranks their performance in three critical and inter-related areas of effective lobbying regulation. [Read the Lobbying in Europe report.](#)

Calendar

Important upcoming dates for UNCAC and other international anti-corruption meetings

9 December 2015	International Anti-Corruption Day
2–6 November, 2015	Sixth session of the Conference of the States Parties to the United Nations Convention against Corruption, St Petersburg, Russia
2–3 November, 2015	4 th session of the Open-ended Intergovernmental Expert Meeting on International Cooperation, St Petersburg, Russia
3–4 November, 2015	Resumed 6 th session of the Implementation Review Group, St. Petersburg, Russia
30 October – 1 November, 2015	The 8th Annual Conference and The General Meeting of the IAACA, St. Petersburg, Russia

Member in the Spotlight

Transparency International Russia, Center for Anti-Corruption Research and Initiatives



Membership Type: National

Website: transparency.org.ru

Email: office@transparency.org.ru

Address: Moscow, bul. Rozdevstvensky 10/7

Region: Europe-Central Asia

Organisation Contact Name: Anton Pominov (General Director), Denis Primakov (Chief Lawyer)

What is Transparency International Russia's mission?

Transparency International Russia (TI Russia) is an autonomous non-profit and non-partisan organisation. It was founded in December 1999 as part of a global coalition against corruption. It aims at increasing awareness of corruption and promoting anti-corruption activities in Russia, through fieldwork, anti-corruption research and assessment of laws as well as providing legal assistance to citizens.

How is TI Russia involved in the UNCAC Coalition?

Among others, TI Russia has taken part in the joint UNCAC Coalition and TI research programme

assessing the implementation of the UN Convention against Corruption (UNCAC). It has shared information with Coalition members about its work, distributed relevant documents and research, worked and partnered with other members, and participated in the meetings and conferences sponsored or supported by the Coalition.

TI Russia has promoted full implementation of UNCAC commitments in Russia; focusing in particular on illicit enrichment, whistleblower protection and asset recovery. It has called on Russia to end the impunity of high-ranking public officials who abuse their positions and to provide for effective, proportionate and dissuasive sanctions for corruption crimes.

What do you find most exciting about UNCAC work?

It is exciting to know that together we are enhancing the international accountability of states on corruption. Our work provides an important glimpse into how countries contribute to and make efforts towards combatting corruption.

What, if any, UNCAC related activities have you been involved in?

TI Russia submitted a civil society report on [Russian implementation of the UNCAC](#) in 2013. As part of the UNCAC peer review process it reviewed selected articles in chapters III (criminalization and law enforcement) and IV (international cooperation). In 2015, TI Russia has been preparing its second report on chapters III (criminalization and law enforcement) and V (asset recovery).

Public accountability requirements in Russia are still very weak, making it easy for public officials to hide illicit assets. To help counter this problem, TI Russia works with existing freedom of information legislation to foster greater transparency. It is also working to develop legislation on Income and Assets Declarations (IADs) and Declarations of Conflicts of Interest (DCIs).

As part of a TI project, TI Russia has used the G20 High Level Principles on Beneficial Ownership Transparency to conduct an assessment of how well Russia is currently implementing its commitments. The ten G20 High Level Principles cover a range of provisions to combat money laundering, which include national level risk assessments, the collection and sharing of beneficial ownership information, cooperation between national and international authorities and the responsibilities of financial institutions and other business or professions.

In order to raise awareness of corruption and the possibilities for combatting it, TI Russia is conducting a two-pronged public awareness campaign. The first element of this is its “No Impunity” campaign, which focuses on informing the public, in particular young people, about opportunities to combat corruption. It includes public lectures on anti-corruption work in regions throughout Russia, roundtable discussions on public impunity, the development and dissemination of information material, and an anti-corruption civic forum bringing together activists from Russia and representatives of 15 TI national chapters. The second element is to continue developing the [Laboratory for Anti-corruption Policy](#), which was established in 2009 at the Moscow School of Higher Economics in cooperation with Transparency International.

What UNCAC related activities/work are you most looking forward to?

- Reforming anticorruption institutions and agencies.
- Enhancing cross border cooperation in tracing ill-gotten assets and their recovery
- Promoting asset recovery, including repatriation of stolen assets and promoting the transparent and accountable use of recovered assets.
- Ending impunity for large-scale corruption, and especially encouraging the Russian

government to prosecute outstanding cases of corruption.

- Strengthening efforts against corruption in the private sector, especially that involving multinational corporations.
- Providing effective remedies for victims of corruption.

Social Link

- [Facebook](#)

This UNCAC Coalition Newsletter was produced by Gillian Dell and Anastasia Sudzilovskaya of the Transparency International Secretariat Conventions Unit, which acts as secretariat to the UNCAC Coalition. It was produced with the assistance of consultants Rebecca Dobson (text editor) and Kai Chan (web developer).

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