TRANSPARENCY INTERNATIONAL
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UNCAC Coalition
CIVIL SOCIETY

UN CONVENTION AGAINST CORRUPTION CIVIL SOCIETY REVIEW: LITHUANIA 2011

Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June–July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption."* Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4) (c) requires the conference of the States Parties to agree on procedures and methods of work, including co-operation with relevant non-governmental organisations.

In accordance with resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the conference secretariat on their compliance with the convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group. The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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Introduction

Lithuania signed the United Nations Convention against Corruption (UNCAC) 10 December 2003 and ratified it on 21 December 2006.

Scope. This report reviews Lithuania's implementation and enforcement of selected articles in Chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the UNCAC. The report is intended as a contribution to the UNCAC peer review process currently under way covering those two chapters. The selection of States Parties to be reviewed is carried out pursuant to section 2 of conference resolution 3/1 and section 14 of the terms of reference of the review mechanism. Lithuania was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. An earlier draft of this report was provided to the government of Lithuania.

The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), statute of limitations (Article 29), freezing, seizure and confiscation (Article 31), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damage (Article 35), bank secrecy (Article 40), jurisdiction (Article 42) and mutual legal assistance (Article 46).

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information; and about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Lithuania as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

Methodology. The report was prepared by Transparency International Lithuania with funding from the UN Democracy Fund (UNDEF). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them.

The report was prepared using a questionnaire and report template designed by Transparency International for the use of civil society organisations (CSOs). These tools reflected but simplified the UN Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self- assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b)&(c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert selected by Transparency International.

The draft report was shared with the government for comments prior to being finalised. A final draft of the report was sent to the government prior to publication with the aim of continuing the dialogue beyond the first-round country review process.

In preparing this report the author also took into consideration Lithuania's participation in the review processes of the Group of States against Corruption (GRECO). The most recent review report on relevant topics was prepared in May 2011.[1]

[1] GRECO, in its report on Lithuania of May 2011, had already recommended to extend the concept of bribe in the incriminations of bribery and trading in influence so as to cover clearly any form of benefit (whether material or immaterial and whether such benefits have an identifiable market value or not); see: Third Evaluation Round Compliance Report on

I. Executive summary

In general, implementation of the UNCAC in Lithuania has been successful, and many recent legislative amendments have been introduced to ensure an even higher level of national legal system compatibility with the UNCAC. However, deficiencies still need to be addressed.

Assessment of the review process

Conduct of process

Lithuania's focal point for the UNCAC implementation review is the Ministry of Justice. The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Lithuania.

Table 1 Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	No
Has the government committed to publishing the full country report?	Yes, but it is yet to be confirmed

Availability of information

Although TI–Lithuania did not need to file any official requests to the government during the preparation of this report, the availability of information in general deserves specific attention, as it directly correlates to transparency. In general, freedom of information (FOI) legislation seems to be adequate in Lithuania. TI–Lithuania recently carried out a legal analysis of the national legal framework that revealed no legal obstacles for citizens to file FOI requests.

Accessing information about criminal law enforcement in the country is not difficult for citizens or civil society organisations in Lithuania. A variety of statistics are provided by the Lithuanian Department of Statistics, databases of the Ministry of the Interior and the National Courts Administration. All case material is publicly accessible via the public search engine LITEKO, and judgments of the Supreme Court and Constitutional Court are also published on their websites (www.lat.lt; www.lrkt.lt). All of these sources also provide some information on corruption-related crimes.

When it comes to corruption-related crimes, however, there is no separate emphasis on these in any of these sources. Hence, statistics for these crimes sometimes lack detail (see Table 2: Statistics on cases) and there is a lack of systematic public data on corruption-related cases. As a result, it is difficult to systematically analyse the situation and measure the effectiveness of anti-corruption programmes.

Lithuania "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding", Greco RC-III (2011) 7E, 27 May 2011 p. 4, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)7_Lithuania_EN.pdf.

Implementation and enforcement of the UNCAC

All mandatory provisions of the UNCAC have largely been implemented in the national legislation of Lithuania. The review revealed, however, some deficiencies in the legal framework, including with respect to UNCAC Articles 15, 16, 23, 32 and 33.

Furthermore, regarding Article 21 legislation criminalising corruption in the private sector seems to be vague. There is no autonomous definition of corruption in the private sector. Although national officials claim that bribery in the private sector is criminalised by the same provisions as bribery of public officials, acts of bribery of those who have entrusted powers but no equivalent status and, in particular, bribery among two private entities would not fall under the scope of current legislation. It remains unclear whether effective sanctioning of legal persons is sufficiently ensured. Most importantly, neither existing legal regulation nor safeguards offered by established channels of reporting provide sufficient protection for reporting persons.

Regarding UNCAC Article 26, existing legislation establishes liability of legal persons, but case law analysis reveals that in practice, sanctions for legal persons are often inadequate. Available evidence suggests that fines are the most common sanctions and are usually rather low, as courts tend to take into account many factors that potentially reduce the final fine imposed (such as the share of the authorised capital of the natural person, the potential aggravation of the situation of employees of a legal person or the benefit obtained from a criminal act).

On the enforcement side, the co-ordination of investigating corruption-related offences seems to be adequate; special departments in the police, Public Prosecutor's Office and the Financial Crime Investigation Service (FCIS) ensure that institutions normally do not experience major obstacles while sharing operational information. However, some experts have raised concerns that the judicial system may be vulnerable due to inadequate financing and a lack of human resources, as well as a lack of training for enforcement institutions.

Recommendations for priority actions

This report provides several recommendations for future reforms:

1. A detailed analysis of the case law on liability of legal persons could help detect potential problems and address this issue.

2. It is essential to establish adequate protection for reporting persons. Despite attempted reforms since 2003, there has been no visible success. As this report reveals, there is a need to strengthen the framework – both legal and institutional – for the reporting of alleged corruption cases. Currently, there are no laws in Lithuania explicitly covering the issue of whistleblower protection, no relevant terminology and no special guarantees for whistleblowers in the national regulation. TI–Lithuania strongly believes that without a specific legal framework for whistleblower protection and with only scattered, general norms in place, potential whistleblowers are not yet offered substantial protection from harassment and reprisals. Moreover, it was revealed during the preparation of this report that although the legal framework for the protection of witnesses, experts and victims in corruption-related cases seems to be sufficient, problems may arise when applying protection in practice due to rather strict application of criteria. There are no special provisions related to protecting witnesses, experts and victims in corruption-related cases; the protection system is analogous to the general system in criminal law.

3. Existing regulations that criminalise corruption in the private sector are insufficient as they do not cover all forms of corruption. More regulation in this area is necessary. There is no autonomous definition of corruption in the private sector. Although national officials claim that bribery in the private sector is criminalised by provisions for bribery of public officials (the Criminal Code provides a definition of "a public servant or a person of equivalent status"), bribing those who have entrusted powers but no "equivalent status", in particular, bribery among two private entities, would not fall under the scope of current legislation.

4. Finally, the current enforcement mechanism needs to be strengthened by ensuring adequate material and human resources and by providing effective training for enforcement officers. For example, amendments of the Criminal Code (CC) criminalising illicit enrichment and establishing extended confiscation are completely novel to the Lithuanian legal system, but they were not followed up by proper training for law enforcement officers.

II. Assessment of the review process

A. Report on the review process

Contact details for the focal point and the experts assigned to the process were made public online, but the Ministry of Justice has not made any of the material of the implementation review process public.

Although it appears that the final report may be published, the official decision has not yet been made and the report has not been released. The reasons for this reluctance remain unknown. A country visit from Russia and Egypt took place in the third week of September 2011. Table 1, above, summarises the current situation and the process of preparing the official country report.

To date, the Ministry of Justice has not published any additional official information about the review process and there was no publicity of the process.

B. Access to information

TI–Lithuania did not need to file any FOI requests during the process of the parallel review. This report reflects the results of an independent analysis of laws, regulations, research articles and other materials by TI–Lithuania. Moreover, TI–Lithuania consulted a number of experts, and their insights and comments have been incorporated into the final version of the review.

The review is also based on information obtained from the mentioned sources that provide general statistics on the criminal situation in Lithuania. All of these sources are available online.

III. Implementation and enforcement of the UNCAC

The UNCAC was officially ratified by the parliament (Seimas) by law (5 December 2006, no. X-943), with a reservation providing that although the convention becomes a legal basis for mutual legal assistance on extradition, it shall not in any case be a legal basis for extraditing citizens of the Republic of Lithuania, as provided in the Constitution.

According to the Constitution of the Republic of Lithuania, international treaties after ratification become a constituent part of the country's legal system (Art. 138, sec. 3). Although the issues in self-execution of international treaties remain rather controversial[2] in Lithuania, it is in any case necessary to ensure that its national legislation complies with obligations in international treaties that the country has ratified. Therefore, Lithuania has adopted certain amendments to meet these new obligations since the convention was ratified.

[2] Lithuania's Constitutional Court has ruled that international treaties are not applied directly to criminal law, except in cases where criminal and criminal procedure laws are to the contrary. However, since the context of this conclusion was rather general, academics argue that the question remains open for discussion (Constitutional Court Conclusion of 24 January 1995). See also: Dr. A. Cepas, "Issues in Self-Execution of International Criminal Law Treaties", Institute of Law, 2007.

A. Key issues related to the legal framework

The analysis revealed that the domestic legal framework implementing the UNCAC in Lithuania is adequate, although there are concerns about some issues. The main issues raising particular concern are discussed below.[3]

UNCAC Article 15: Bribery of national public officials. Generally, this provision is adequately covered by several provisions of Lithuania's Criminal Code (CC). UNCAC Article 15 is covered in several provisions of the CC. The CC criminalises passive and active bribery in Articles 225 and 227. Amendments to the CC entered into force on 21 June 2011, which added sec. 4 to Article 230 of the CC, defining the nature of a bribe and providing that bribery comprises all types of pecuniary and non-pecuniary forms of undue advantage (no. XI-1472, 21 June 2011).

UNCAC Article 16: Bribery of foreign public officials and officials of public international organisations. Article 230 sec. 2 of the CC provides that "a person holding appropriate powers in an institution of another state … as well as official candidates to such positions shall be held to have the status equivalent to that of a public servant". Accordingly, the elements of the office and the applicable sanctions detailed under bribery of domestic public officials also apply to bribery of foreign public officials. To date there has been no court case regarding bribery of foreign public officials, so it is difficult to determine whether the regulation is problematic or law enforcement capacity is lacking. It remains unclear how the term "appropriate powers" established in CC regulations covering this article would be interpreted and applied in practice – for example, what type of positions and capacities it would entail.

UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official. The CC provides that misappropriation and embezzlement of another's property or interests entrusted to or held at a public official's disposal are criminal offences under two different articles (Article 183 "misappropriation of property" and Article 184 "squandering of property". For both of these acts legal persons can be held liable, too. The regulations seem to be in full compliance with the UNCAC.

UNCAC Article 20: Illicit enrichment. Illicit enrichment was made a criminal offence by Art. 189 of the CC on 2 December 2010. Due to its novelty, it is impossible to describe the problems that the implementation of this article could present in practice, since it has only been applied once. However, the analysis revealed a number of potential risks. The wording of the article grants very wide discretion to law enforcement officials, which increases the risk of abuse of office. The criminalisation of illicit enrichment is much broader than that suggested by the UNCAC. While the UNCAC only covers "public officials", Lithuania's CC formally covers everyone.

UNCAC Article 21: Bribery in the private sector. There is no autonomous definition of corruption in the private sector. Although national officials claim that bribery in the private sector is made a crime by the same provisions as bribery of public officials, bribery among two private entities does not fall under the scope of current legislation. While this is non-mandatory under UNCAC, it is still recommended. In addition, GRECO recommended that it is made clear for everyone that instances in which the advantage is not intended for the bribe-taker personally but for a third party are covered by the provisions on active bribery under Article 227 of the CC.[4]

UNCAC Article 23: Laundering of proceeds of crime. The broad definition of money laundering in Lithuanian law ensures that conversion, transfers and concealment of the nature, source, location, disposition, movement or ownership of proceeds of crime are crimes, as required by the UNCAC. This wide scope is also reflected in practice. Case law provides numerous examples. A question could be raised, however, regarding indirect income derived from a criminal act. Therefore,

[3]The report entitled "UNCAC Implementation Parallel Review: Lithuania 2011", provides an in-depth analysis of the national legislation covering UNCAC provisions, www.transparency.lt

[4] GRECO also recommended criminalising trading in influence in line with Article 12 of the Council of Europe Criminal Law Convention on Corruption, reviewing the sanctions applicable to bribery and trading in influence in order to increase their consistency as well as the level of penalties applicable. See Third Evaluation Round Compliance Report on Lithuania "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding", GRECO RC-III (2011) 7E, 27 May 2011, pp. 4–5. The amendments to the Criminal Code of 21 June 2011 introduced the criminal offence of trading in influence.

amendments to the CC have been prepared to address this issue (Project no. 10-3638-03). The Supreme Court, in its review of the Case Law on Confiscation (*Teismu praktika* no. 32, 2010), clarified that although the courts usually confiscate only income derived directly from a criminal act, indirectly acquired assets of economic value, money or other property may also be subject to confiscation. Implementing these legal provisions may be complicated in practice, because the offence established in Article 189 sec. 1, (one of the articles covering UNCAC Article 23) of the CC is a minor offence. Therefore, some of the possible undercover measures cannot be applied during an investigation. Also, according to the CC, only the preparation to commit a serious or very serious crime is punishable. Thus, only a person who is preparing to commit an offence established in Article 216 (covering only part of UNCAC Article 12) of the CC might be held liable (not Article189 of the CC).

UNCAC Article 26: Liability of legal persons. Although liability of legal persons is regulated by national law, fines appear to be most common sanction for legal persons and are usually rather low, as the courts tend to take into account many factors that could reduce the amount of the final imposed fine (such as the share of the authorised capital of the natural person, the potential aggravation of the situation of the employees of the legal person, and the benefit attained from the criminal act)..

UNCAC Article 29: Statute of limitations. Short statute of limitations periods provided by the CC until 29 June 2010 constituted substantial obstacles to prosecutions. After debates in parliament, a compromise amendment to Art. 95 CC regulating statutes of limitations was passed on 15 June 2010. The current regulation is no longer considered to be problematic for the effective enforcement of anti-corruption laws.

***UNCAC Article 31: Freezing, seizure and confiscation*.** This article is covered by the CC and the Criminal Procedure Code (CPC). The CC establishes regulations on confiscation: in December 2010 a new amendment to the CC came into force and Article 72 (Extended Confiscation of Property) was added. Article 72 provides that extended confiscation is confiscation of the perpetrator‘s property or part of the property that comprises a disproportionate share of the legal income. This means that the burden of proof to show that the alleged proceeds of a crime were actually acquired through legitimate means shifts to the defendant (an optional provision of the UNCAC). The CPC provides that in cases in which confiscation or extended confiscation is a possible option, temporary restriction of property rights might be applied as a “freezing” provision. Although legal regulations seem to be sufficient, the analysis of practical situations prior to the amendments revealed that in 2010 confiscation was only applied to 1 per cent of all convictions. As general legal provisions regulating confiscation have existed for a long period of time, but have been invoked so infrequently, it remains unclear whether this will change after new norms are introduced.

UNCAC Article 32: Protection of witnesses, experts and victims. There are no special provisions related to the protection of witnesses, experts and victims in corruption-related cases. The protection system is analogous to the general system in criminal law. There seems to be an adequate system of protection for witnesses, experts (including specialists) and victims in Lithuania’s legal system. In practice, however, potential risks arise in relation to granting protection. According to the CPC, witnesses have a right to ask for protection following legal procedures. Anonymity can be granted by the prosecutor or pretrial investigation officers if legal grounds for applying anonymity exist, such as imminent danger to the life, health, freedom, property, office, business or other legal interests of the victim, witness or their family members or close relatives; if the testimony is important for the criminal procedure; and if the criminal process involving the victim or witness regards a very serious, serious or moderate crime. It should be emphasised that all three grounds must exist in order for anonymity to be applied.

Informal discussions with criminal law practitioners indicated that it is extremely complicated to prove all three grounds, especially the imminent danger criterion. Apart from this, it can be difficult to identify certain information as being important for the criminal procedure; the question of granting the status of witness and applying anonymity measures is usually raised during the pretrial stage of the investigation. It should be noted that anonymity can only be granted to victims and witnesses in cases of very serious (grave), serious or moderate crimes. In cases of bribery of an intermediary or graft, it is not possible to apply anonymity. In September 2010 Lithuania’s president proposed

amendments with the specific goal to apply anonymity to those who report cases of corruption, and in December 2010, Article 199 was added to the CPC to introduce the concept of partial anonymity. Apart from anonymity, Lithuania's legal system provides for a number of other protective measures.

UNCAC Article 33: Protection of reporting persons. Currently there are no laws in Lithuania explicitly covering the issue of whistleblower protection: there is neither relevant terminology, nor special guarantees for whistleblowers in national regulation. Thus, neither the existing legal regulations nor safeguards offered by established channels of reporting provide for sufficient protection of reporting persons.

UNCAC Article 35: Compensation for damage. This article is covered through the legal provisions of the Criminal Code, the Criminal Procedure Code, the Civil Code and the Civil Procedure Code. The civil system enables annulment of contracts and compensation for damages, including in cases of corruption. National legal regulations for compensation for damage seem to be sufficient, and the UNCAC's legal provisions seem to be adequately covered by domestic laws.

UNCAC Article 40: Bank secrecy. Bank secrecy in Lithuania does not present major obstacles to domestic investigations of criminal offences. The definition of the secret of a bank is provided in Article 55 of the Law on Banks. Domestic law includes an effective mechanism that allows competent institutions to access relevant information in certain circumstances, even if such information is considered secret by banks.

UNCAC Article 42: Jurisdiction. The principle of universal jurisdiction is established in Article 7 of the Criminal Code. This principle is applied to certain crimes established in international treaties. Non-nationals outside Lithuania can in principle only be prosecuted for a closed list of crimes against the interest of the state. Bribery, trading in influence and graft were added to the list provided in Article 7 of the CC, thus establishing that these crimes can now be punished following the universal principle of jurisdiction.

UNCAC Article 46: Mutual legal assistance. Article 66 sec. 1 of the Criminal Procedure Code (CPC) provides that questions related to mutual legal assistance in criminal cases are regulated by the CPC and international agreements. Lithuania has ratified the most important international and regional conventions on mutual legal assistance, including the European Convention on Mutual Assistance in Criminal Matters and its two protocols, and the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union. The compliance of national legal provisions with UNCAC Article 46 does not seem to raise any problems insofar as international co-operation in the field of gathering evidence through special investigative means, joint investigation teams, identification and seizure of proceeds from crime and liability of legal persons is concerned.

B. Key issues related to enforcement

As required by UNCAC Article 36, specialised agencies to combat corruption have been established in Lithuania. The Special Investigation Service (SIS) is an anti-corruption agency accountable to the president and the Seimas, with a mission to reduce corruption (Statute of SIS, 1 April 2003, no. IX-1409). The SIS's activity lines are: law enforcement, corruption prevention, anti-corruption education and raising public awareness (Law on SIS, 2 May 2000, no. VIII-1649, Art. 7–8).

According to the Annual SIS Report of 2010, 920 corruption-related offences were registered in Lithuania in 2010. There were 615 criminal offences identified during pretrial investigations (424 in 2009). However, other figures in the report may raise concerns – for example, 44–49 per cent of the Lithuanian population claim they do not trust the SIS.[5] This is a serious concern and may become a systemic problem.

Territorial police departments can receive reports of alleged corruption-related crimes (Law on Police Activities, 17 October 2000, no. VIII-2048). Whether the police immediately refers investigations to the SIS/General Prosecutor's Office or whether it performs a pretrial investigation

[5] Annual SIS Report 2010; www.stt.lt/documents/planavimo_dokumenatai/STT_2010_m__veiklos_ataskaita__03-07.pdf

itself depends on the gravity, nature and circumstances of the offence. The Lithuanian Criminal Police Bureau is a specialised police agency established on a non-territorial basis operating all over the country to prevent serious crimes, and co-ordinating investigations. The Corruption Control Board, a division of the Criminal Police Bureau, is responsible for preventing and investigating corruption in the police system and coordinating investigations of corruption-related offences.

The Prosecutor's Office is comprised of territorial prosecutor's offices and the Prosecutor General's Office. They can receive reports of corruption-related cases and refer investigations to the SIS or perform them internally. Among other functions, the Prosecutor's Office is responsible for co-ordinating actions of pretrial investigation agencies in investigating criminal acts, which is also significant for corruption-related offences (Law on the Public Prosecutor's Office, 13 October 1994, no. I-599).

Though the Financial Crime Investigation Service (FCIS) is not a specialised authority that combats corruption, it is worth mentioning. The FCIS's mission is to elaborate methods of combating criminal activity against the state financial system. The agency is active in implementing the national programme of crime prevention and control, and the national programme of combating corruption.

Since the entire system is closely intertwined, there are normally no institutional obstacles to investigating corruption-related crimes in terms of co-operation.

Lithuanian legislation also provides for the independence of prosecutors, judges and investigators, as required under UNCAC Articles 11 and 36. This is established in Lithuania's Constitution.

As the SIS is Lithuania's specialised anti-corruption agency, it is worth mentioning that the Law on SIS (Articles 16–17) provides specific clauses on impartiality and independence. For example, while discharging their official duties and carrying out assignments of their superiors, SIS officers are guided by laws, regulations and other legal acts. State institutions and agencies, as well as their employees, political parties, public organisations and movements, the mass media, other natural or legal persons, are prohibited from interfering with operational and other activities carried out in the line of duty by SIS officers. Moreover, meetings, pickets and other actions on SIS premises and within 25 metres of SIS buildings are prohibited. In terms of the activities of SIS officers, regulations provide that a criminal action against an SIS officer may only be instituted by the Prosecutor General or his deputy in the course of their official duties. SIS officers may not be taken to the police or detained. Body searches and searches of their personal effects and means of transportation are prohibited unless approved by the head of the SIS unit or an authorised person, with the exception of cases in which the officer is detained *in flagrante delicto*. Information about SIS officers who carry out or who have carried out special assignments shall be a state secret and may be used and declassified only in cases and the manner set forth by national legislation.

Adequate provisions ensuring the independence of the courts are included in the Constitution as well as the Law on the Courts (31 May 1994, no. I-408). The importance of the independence and immunity of the courts has been repeatedly underlined in a number of rulings of the Constitutional Court (for example, rulings of 6 December 1995, 21 December 1995, 28 March 2006 and 20 December 2007).

To conclude, the legal basis for enforcing UNCAC standards seems to be sufficient. The co-ordination of investigations of corruption-related offences seems to be adequate; special departments in the police, Public Prosecutor's Office and the FCIS ensure that institutions normally do not experience major obstacles while sharing operational information. However, some experts have raised concerns that the judicial system may be vulnerable due to inadequate financing and a lack of human resources. A detailed analysis of the system will be provided by additional TI–Lithuania research. National Integrity System research, which includes insights from academia, practitioners and legal experts, is scheduled to be published by the end of 2011.

There are also instances of enforcement officials involved in practices of concern. In summer 2010, the General Prosecutor's Office stated that a prosecutor had been arrested for allegedly demanding a bribe. The arrest, which attracted public attention, was a result of close co-operation between the SIS and General Prosecutor's Office. The Kaunas District Court sentenced the prosecutor to 18

months in prison. However, the prosecutor and the General Prosecutor's Office both filed nearly identical complaints regarding the sentence. The Court of Appeal partially upheld these complaints and ruled that the prosecutor's sentence should be suspended for one year. Additionally, the appellate court ruled that the prosecutor should pay a deposit of 15 MSL (minimum subsistence levels) to the Victims of Crime Fund (about US$ 740). This was the official position of the General Prosecutor's Office at the time. However, in August 2011, the General Prosecutor's Office appealed to the Supreme Court, asking that the Court of Appeal's ruling to suspend the imprisonment be nullified.[6]

The table below illustrates the general situation of corruption-related offences in the country. There are some unclarities in the statistics..

Table 2: Statistics on cases[7]

	Prosecutions (underway and concluded). *Liet. Užregistruota nusikalstamų veikų*	**Pending** *Liet. Tebesitęsiančios bylos*
Bribery of foreign public officials (UNCAC Article 16) **(covered by Criminal Code Art. 225, 227)**	In 2008 the number of registered criminal acts under Art. 225 (Criminal Code [CC] of the Republic of Lithuania) was 65 In 2009 – 106 In 2010 – 100. In 2008 the number of registered criminal acts under Art. 227 (CC of the Republic of Lithuania) was 303 In 2009 – 384 In 2010 – 449 Total number of registered criminal acts over the last three years: 1,407	By the end of 2008 the number of pending cases under Art. 225 (CC of the Republic of Lithuania) was 19 2009 – 22 2010 – 25 By the end of 2008 the number of pending cases under Art. 227 (CC of the Republic of Lithuania) was 37 2009 – 36 2010 – 45 Total number of pending cases by the end of 2008- 56 2009 – 58 2010 – 70
Bribery of national public officials (passive) (UNCAC Article 15(b)) **Criminal Code Art. 225**	In 2008 the number of registered criminal acts under Art. 225 (CC of the Republic of Lithuania) was 65 2009 – 106 2010 – 100 Total number of registered criminal acts over the last three years: 271	By the end of 2008 the number of pending cases under Art. 225 (CC of the Republic of Lithuania) was 19 2009 – 22 2010 – 25
Bribery of national public officials (active) (UNCAC Article 15(a)) **Criminal Code Art. 227**	In 2008 the number of registered criminal acts under Art. 227 (CC of the Republic of Lithuania) was 303 2009 – 384 2010 – 449 Total number of registered criminal acts over the last three years:1,136	By the end of 2008 the number of pending cases under Art. 227 (CC of the Republic of Lithuania) was 37, 2009 – 36, 2010 – 45.

[6] Controversial articles on the case were published, for example: Dainius Sinkevicius, "The Prosecutors Changed their Minds and Are Asking to Imprison Erikas Vaitiekunas", www.delfi.lt; http://verslas.delfi.lt/law/prokurorai-persigalvojo-jau-praso-pasodinti-30-tukst-lt-kysi-paemusi-evaitekuna.d?id=48482905

[7] Databases are publicly accessible on the National Courts Administration website: www.teismai.lt/lt/teismai/teismai-statistika/. All case materials are public via the public search engine LITEKO; http://liteko.teismai.lt/viesasprendimupaieska_sena/?item=help

Embezzlement, misappropriation or other diversion by a public official (UNCAC Article 17) **Criminal Code Art. 183, 184**	In 2008 the number of registered criminal acts under Art. 183 (CC of the Republic of Lithuania) was 751 2009 – 821 2010 – 811 In 2008 the number of registered criminal acts under Art. 184 (CC of the Republic of Lithuania) was 99 2009 – 220 2010 – 236 Total number of registered criminal acts over the last three years: 2938	By the end of 2008 the number of pending cases under Art. 183 (CC of the Republic of Lithuania) was 95 2009 – 106 2010 – 127 By the end of 2008 the number of pending cases under Art. 184 (CC of the Republic of Lithuania) was 29 2009 – 31 2010 – 56
Illicit enrichment (UNCAC Article 20) **Criminal Code Art. 189 (1) – adopted in December 2010**	-	-
Money laundering, corruption-related (UNCAC Article 23) *Lithuanian legislation does not differentiate between corruption-related money laundering and money laundering not related to corruption* **Criminal Code Art. 216**	In 2008 the number of registered criminal acts under Art. 216 (CC of the Republic of Lithuania) was 10 In 2009 - 13 In 2010 - 37	By the end of 2008 the number of pending cases under Art. 216 (CC of the Republic of Lithuania) was 4 2009 – 3 2010 – 13

NOTE: No data was reported on settlements (*Liet. Susitarimu pasibaige*), convictions (*Liet. Apkaltinamieji teismo nuosprendžiai*), acquittals (*Liet. Išteisinta*) or dismissals *(Liet. Nutraukta bylų*)

In an infamous case of prosecution of alleged political corruption, charges were filed against A. Zuokas (then a member of the Vilnius City Council), D. Lescinskas and A. Janukonis in the 1st Vilnius District Court on 4 February 2005. The major charge and the essence of the case concerned allegations that in 2003 Zuokas told Janukonis to contact Lescinskas and ask him to bribe V. Drema (then a Vilnius City Council member), offering him LTL 20,000 (approx. US$ 7,900) so that Drema would vote for Zuokas in Vilnius's mayoral election. Drema allegedly refused to take the bribe. After 3 years of appeals and trials, on 20 March 2008, the Vilnius County Court found Zuokas guilty and fined him MSL 100 (approx. US$ 5,000) for attempting to bribe. On 10 February 2009 the Supreme Court issued a final judgment (case no. 2K-7-48/2009) and partially upheld the complaints of the General Prosecutor's Office in terms of reclassifying the offences of Lescinksas and Janukonis.[8] The offences of Zuokas were not reclassified, and no stricter sanctions have been imposed on him based on the legal immunity that he had (he had been elected a member of the parliament).
In November 2009, the 3rd Vilnius District Court ruled that the criminal record for Zuokas must be expunged. In 2011 Zuokas was re-elected and is currently the mayor of Vilnius.

[8] Saulius Chadasevičius. "The Eternal Case of Vilnius' Mayoral Election Closed: Zuokas Found Guilty!", 2009-02-10, 15min.lt, www.15min.lt/naujiena/aktualu/amzinoji-vilniaus-mero-rinkimu-byla-baigta-zuokas-kaltas-atnaujinta-15.25-val-55-27646.

IV. Recent developments

In June 2011, law no. XI-1472 amending the Criminal Code (CC) of the Republic of Lithuania was passed. Its major amendments criminalised trading in influence (by definition), defined "bribe", and redefined the articles criminalising bribery and graft. TI–Lithuania views these amendments as a positive initiative that will close a substantial portion of legal gaps.

Also worth noting are amendments implemented in December 2010. Most importantly, law no. XI-1199 amending the CC (2 December 2010) introduced the crime of illicit enrichment and instituted extended confiscation. TI–Lithuania is convinced that since these regulations are completely novel to the Lithuanian legal system, they must be followed up by proper training of enforcement officers. Furthermore, as already mentioned, the article criminalising illicit enrichment is far broader than that provided by the UNCAC.

In terms of combating corruption, amendments to the Criminal Procedure Code (CPC) are also worth mentioning. Most importantly, the law amending the CPC no. XI-1200 (2 December 2010) introduced the concept of partial anonymity.

Finally, the reform that amended the regulations of statutes of limitations is significant. As mentioned, short statute of limitations periods provided by the CC until 29 June 2010 constituted a substantial obstacle for prosecutions. Following debates in parliament, a compromise amendment of Art. 95 CC regulating the statute of limitations was passed on 15 June 2010, and the statute of limitations is no longer considered to be a problematic issue for the effective enforcement of anti-corruption laws.

V. Recommendations for priority actions

In order of importance, the needed priority actions are:

1. It is essential to create coherent protection for persons who report corruption. Despite attempts to regulate this since 2003, there has been no visible success. There is a need to strengthen the framework – both legal and institutional – for reporting alleged corruption cases. TI–Lithuania strongly believes that without a specific legal framework for whistleblower protection, and with only scattered norms in place that are general in nature, a major problem remains: potential whistleblowers are not offered any substantial guarantee of protection from harassment and reprisals. Currently, no laws in Lithuania explicitly cover the issue of whistleblower protection; there is no relevant terminology and no special guarantees for whistleblowers in national regulation. Moreover, it was revealed that although the legal protection of witnesses, experts and victims in corruption-related cases seems to be sufficient, problems may arise when it comes to applying protection in practice, due to rather strict criteria: there are no special provisions related to the protection of witnesses, experts and victims in corruption-related cases, and the protection system is analogous to the general system in criminal law.

2. Although existing legislation establishes liability of legal persons, case law analysis reveals that in practice, sanctions for legal persons are often inadequate. A detailed analysis of this case law could help detect potential problems and address the issue.

3. It is necessary to strengthen the current enforcement mechanism by ensuring adequate material and human resources, and providing effective training for enforcement officers. For example, amendments to the CC criminalising illicit enrichment and establishing extended confiscation are completely novel to the Lithuanian legal system, but they were not followed up by proper training of law enforcement officers.

4. Moreover, existing regulations criminalising corruption in the private sector do not ensure that all forms of corruption are prosecuted. There is a need to create sufficient legal regulation in this sphere.

Acknowledgments

This report has been prepared with a grant from the United Nations Democracy Fund (UNDEF) and the support of the Transparency International – Secretariat (TI-S). The authors of this report wish to express their appreciation for the advice and input from the Sorainen Law Firm, which provided pro bono support, and Skirmantas Bikelis, PhD, who provided legal advice, as did TI-S. The authors would like to thank TrustLaw, the global service for free legal assistance run by the Thomson Reuters Foundation, and the global law firm Mayer Brown for their pro bono assistance in the preparation of the report.