

THE FIRST YEAR OF
THE UN CONVENTION
AGAINST CORRUPTION
REVIEW PROCESS:
A CIVIL SOCIETY PERSPECTIVE

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 Cooperation), 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 cooperation with relevant non-governmental organizations.

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 finalize 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, organized 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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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2011. Nevertheless, Transparency International and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

Table of contents

| | |
|--|----------|
| Introduction | 1 |
| Summary recommendations | 2 |
| I. Implementation Review Group | 2 |
| II. Country level UNCAC review process | 3 |
| III. Country implementation and enforcement | 5 |
| IV. Conclusions | 7 |

Introduction

This report has been prepared as a contribution to discussions about the UNCAC review process and about UNCAC implementation at the Fourth session of the UNCAC Conference of States Parties meeting in Marrakesh, 24 – 28 October 2011. It is based on a survey of the review process in 25 of 26 countries in the first year of review and on country reports prepared by civil society organisations in eleven first year countries under review and two second year countries.¹ The current five-year round of reviews covers implementation of selected articles in chapters III on Criminalisation and enforcement and IV on International cooperation.

The aim of this overview report and of the CSO country reports is to provide complementary information to assist the review process that started up in July 2010. These reports supplement the official country Executive Summaries resulting from the UNCAC review process as well as UNODC reports, including two Thematic reports, that have been submitted to the Conference of States Parties.²

This report makes findings, conclusions and recommendations about the UNCAC review mechanism and the first year of the review process.³ In particular it stresses the importance of civil society participation and transparency in the review process at all levels, including in the Implementation Review Group (IRG), the body that oversees the review process. It also surveys selected implementation issues under UNCAC Chapters III and IV identified in the thirteen CSO country reports prepared as inputs to the first and second years of the review process.

The UNCAC review process is highly demanding in terms of the requirements of expertise and coordination. It is to the great credit of the United Nations Office on Drugs and Crime (UNODC) and participating countries that, as we find in the report, the process is proceeding well. The process has so far produced and published six very informative Executive Summaries, analysing country implementation and making recommendations for improvements. There are also encouraging signals about the conduct of the process in many countries. While there is room for improvement, the first year of the process—naturally the most difficult—is promising in terms of establishing the basis for an effective process.

At the same time, UNCAC implementation is demanding on States Parties, in terms of human and material resources. A good start has been made in implementation in the areas covered by the UNCAC review process.

While recognising the achievements to date, Transparency International and the UNCAC Coalition (TI/ UNCAC Coalition) in this report identify essential areas for improvement in the operation of the Implementation Review Group, in the country level review process and in areas of implementation requiring closer CoSP attention. Areas where improvements can be made include publication of contact information for focal points and of review schedules. Publication of self-assessments and full reports should also be the norm.

¹ Civil society reports have so far been prepared for reviews of Argentina, Bangladesh, Brazil, Bulgaria, Chile, Lithuania, Morocco, Mongolia, Peru, Ukraine and USA in the first year of the review process and Papua New Guinea and Vietnam in the second year. Summaries of these reports have been submitted to the 4th session of the Conference of States Parties and the full reports can be found on the website of the UNCAC Coalition: <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>

² Implementation of chapter III (criminalization and law enforcement) of the United Nations Convention against Corruption: Thematic report prepared by the secretariat, 25 August 2011, <http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1185288e.pdf> ; Implementation of chapter III (criminalization and law enforcement) of the United Nations Convention against Corruption: Thematic report prepared by the secretariat, 25 August 2011 <http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1185378e.pdf>

³ At its third session, held in Doha from 9 to 13 November 2009, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 3/1, entitled "Review mechanism". <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

Summary recommendations:

- The fourth Conference of States Parties (CoSP) should instruct the Implementation Review Group (IRG) to apply Rule 17 of the CoSP Rules of Procedure. This would be in line with the UN Office of Legal Affairs' explanation of the rules. It would also be in keeping with the spirit of UNCAC, notably with its many provisions that recognise the value of civil society contributions to anti-corruption work and of transparency as a basis for serious government engagement in this area (See Annex 1). The IRG is an open-ended intergovernmental group tasked with keeping an overview of the review process so as to identify challenges and good practices and consider technical assistance requirements. Civil society organisations knowledgeable about anticorruption work can make useful contributions.
- The CoSP should call on States Parties to apply in their review processes standards of inclusiveness and transparency as called for in the Terms of Reference for the Review Mechanism⁴ and as required in the UNCAC itself. Specific measures are recalled in this paper.
- The CoSP should agree concrete follow-up measures to assist States Parties in addressing inadequacies in implementation into the national legal framework, including as to the foreign bribery offence, whistleblower protection and liability of legal persons...
- The CoSP should agree measures to strengthen collection and publication of enforcement data in States Parties.
- Enforcement issues should be given special attention by the CoSP and concrete follow-up measures agreed to improve performance in this area, especially regarding insufficient independence and resources. Many of the CSO reports found insufficient independence of investigation or prosecution services and/or judiciary; and a lack of adequate resources and training for anti-corruption enforcement.

I. Implementation Review Group

The Implementation Review Group (IRG) is an open-ended intergovernmental group, a subsidiary body of the CoSP that plays an important role in the operation of the UNCAC Implementation Review Mechanism. It is tasked with assessing the results of the review process to identify challenges and good practices and technical assistance requirements and make recommendations to the CoSP. CSOs⁵ can provide important inputs to the IRG. While IRG decisions are made by government representatives, such decisions will be better informed if they can take into account the views of CSOs. Civil society organizations knowledgeable about anticorruption work under can make useful contributions. CSO involvement will also enhance the public credibility of the IRG.

Since its formation in June 2010, the Implementation Review Group has failed at four successive meetings to admit CSOs as observers. This contravenes the procedural rules that apply to the IRG, as clarified by the UN Office of Legal Affairs in its opinion of August 2010.⁶ (See Annex II) It is a matter of great concern that the IRG is not applying the appropriate procedures called for under its own legal framework.

The exclusion also contravenes the Terms of Reference of the Review Mechanism, which call for transparency and inclusiveness, and the letter and spirit of UNCAC's many provisions recognising the value of civil society contributions to anti-corruption work and transparency as a basis for serious government engagement in this area (See Annex 1).

⁴ Terms of Reference of the Review of Implementation of the United Nations Convention against Corruption, http://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf

⁵ Including civil society, private sector organizations and trade unions,

⁶ Office of the Legal Counsel, UN Office of Legal Affairs, Interoffice Memorandum of 5 August 2010, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/29Nov-1Dec2010/V1056031e.pdf>

Participation of CSOs as observers in the IRG would give effect to the letter and spirit of the Convention, to the Review Mechanism's Terms of Reference and to the applicable procedural rule. Civil society participation is key to ensuring an effective review mechanism at both national and international levels. It would be a step in the wrong direction to rescind the application of Rule 17 to the IRG.

Recommendations

- The Fourth Conference of States Parties should call for the IRG to abide by CoSP procedural Rule 17, the applicable rule for its meetings, allowing CSOs to participate as observers.
- In particular, CSOs should have the opportunity to submit written comments to the IRG for consideration.
- CSO participation in IRG plenary meetings should also be permitted, with opportunities for give- and-take exchanges between IRG members and CSO representatives. This would greatly enhance the benefit of CSO inputs.
- Holding meetings with CSOs separate from regular IRG meetings ("side meetings" or "briefings" or "dialogue sessions") would be an unsatisfactory alternative. Such meetings are likely to have more limited attendance of IRG members than regular IRG sessions. As a result the communication between CSOs and IRG members would be less useful. These concerns would be increased if side meetings with CSOs were held at the same time as regular IRG meetings.
- It is recognized that the IRG may deal with some matters in closed sessions. However, time should be provided for CSO participation at plenary sessions both on the opening day and the closing day of IRG meetings.
- Practical arrangements should be worked out, consistent with Rule 17, for limiting the number of CSO representatives. For example, the UNCAC Coalition is a global network of more than 310 organizations with a small Coordination Committee.

II. Country level UNCAC review process

These following findings are based on a survey of 25 of the 26 countries under review in the first year of the UNCAC review process. (See Annex 2).

Overall review process

The findings are encouraging inasmuch as a majority of States Parties:

- agreed to country visits and the review teams actually made the visits. The country visits are extremely useful as they are the only way to collect the information needed for a balanced review.
- arranged for civil society organisations, albeit only one or two in some cases, to meet with the country review teams. This is in line with language in the terms of reference for the review mechanism saying that "States parties are encouraged to facilitate engagement with all relevant national stakeholders in the course of a country visit."

However, elements of transparency and participation are still missing that would enhance the accountability and effectiveness of the country level review process. (See Annex 2)

- Contact information for the country focal point and the timetable for the review process was generally not published by governments. It was often hard for national CSOs to obtain information about the process, contrary to the aims of transparency and inclusiveness in the UNCAC and in the Terms of Reference for the Review Mechanism. This is particularly problematic given that the review process in most countries has taken much longer than the six-month indicative time frame originally planned. The lack of a published timetable has hampered the ability of civil society

- In most countries CSOs were not invited to contribute to the country self-assessment despite language in the Terms of Reference of the Review Mechanism calling for “broad consultations” at the national level “with all relevant stakeholders, including the private sector, individuals and groups outside the public sector.” This ensures that a range of views feed into the review process.
- In most countries the completed self-assessment was not published. Only six of 26 countries in the first year of the review process have agreed for UNODC to publish their self-assessment responses online and a few others provided them on request. The self-assessment is key to enable CSOs to know how governments have portrayed themselves and what supplementary information might be beneficial to the process. In many countries these documents are subject to freedom of information requests and rightly so. Assuming any sensitive information were included, it could easily be removed prior to publication.
- In some countries only one or two CSOs were invited to contribute to the country review process rather than a wide range of stakeholders and there is at least one known instance where a group that asked the government for the opportunity to contribute its views during the review team visit was not contacted, although another CSO was contacted. It is contrary to the spirit of the relevant provisions of UNCAC on civil society participation (Articles 5, 13 and 63) if governments do not allow critical CSOs to contribute to the process.
- The full reports from the reviews have not been published, except in one case to date (Finland). It may however be too early to assess this situation. If the reports are not published, this means that the public is unable to access the full information about the country’s performance in line with the Terms of Reference of the Review Mechanism which call for a transparent process and also with UNCAC Articles 10 and 13.

Self-assessment checklist responses

Five first year countries to date have agreed to publication of their self-assessment checklist responses on the UNODC website, namely Bangladesh, Brazil, Finland, Rwanda and the United States. In addition, one second year country, Portugal, has done so. These countries are to be highly commended. The reports provide valuable information beyond that included in the Executive Summaries produced at the end of the review process. For example, they include statistics on enforcement.

In the case of Finland, the government completed the self-assessment for the entire Convention not just the chapters under review. In the case of Brazil, the government included not only of the self-assessment but also almost 60 attachments. The US self-assessment included six attachments, including useful statistics.

The information in these self-assessments is valuable and cannot be characterized as confidential in any way. They illustrate why the government self-assessment responses in the review process should be made public.

Country executive summaries

To date (20 October 2011) six Executive Summaries have been published on the UNODC website (Bulgaria, Finland, Jordan, Mongolia, Spain and Uganda). However, no full review reports have been published on the UNODC website thus far. As far as country experts were able to determine, only one country, Finland, has to date published its full report on their government’s website, translated into the Finnish language.

The summaries are very informative and include valuable and sometimes very extensive and wide-ranging recommendations about improvements needed. They are evidence of a successful start to the UNCAC review process.

We note however, the absence of certain information from the reports:

- One of the most important omissions from the Executive Summaries is data on enforcement, which would provide concrete information about how the system functions in practice.
- Since the summaries do not reference UNCAC articles throughout it cannot easily be determined if all UNCAC articles have been addressed in equal depth in both the analysis and recommendations.

In addition, the standards applied in assessing country implementation are not always clear.

Recommendations

- Countries in the UNCAC review process should ensure that the process is transparent and participatory. They should publish the name of the country focal point, the schedule for their country's review, their self-assessment and their full final report. At the same time, they should include civil society representatives in the UNCAC review process, including inviting them to meet with country review teams and also to make written inputs.
- Countries should ensure adequate collection and publication of statistics and other information about application and enforcement of UNCAC criminalisation provisions.

III. Country implementation and enforcement

This report's findings on implementation and enforcement are based on reports prepared by CSOs in eleven countries in the first year of UNCAC review and two in the second year of review. The findings complement those in the UNODC Thematic report on Chapter III (Criminalization and enforcement) but are based on a different set of countries.⁷

According to publicly available information, those include Finland, Mongolia, Spain and Uganda and perhaps also Bulgaria, Chile and Jordan. Of those, Bulgaria, Chile and Mongolia were also covered in the UNDEF-funded civil society country reports.

Key legal framework issues

With regard to implementation into law of UNCAC chapters III and IV, both the official Executive Summaries produced by the review process, the UNODC Thematic Reports and the CSO reports show that many countries have made significant strides in implementing UNCAC but there are still notable deficiencies.

The CSO reports that provided the basis for this overview report focused on a selection of the UNCAC articles under review, namely Article 15 on bribery of national officials; Article 16 on foreign bribery; Article 17 on embezzlement; Article 20 on illicit enrichment; Article 23 on laundering of proceeds of crime; Article 26 on liability of legal persons; Article 32 on protection of witnesses; Article 33 on protection of reporting persons and Article 46(9)(b) and (c) on mutual legal assistance in the absence of dual criminality. In many of these areas the CSOs found good practices, but without going into the same level of detail and analysis as the official reviews. At the same time, the reports found deficiencies in national legislation including as to the foreign bribery offence, liability of legal persons and whistleblower protection.

The thirteen CSO reports that served as inputs to this report showed a number of cross-cutting issues in common with the Thematic reports on Criminalization and International Cooperation prepared by UNODC.

⁷ The Thematic report covers countries for which the country review reports had been completed or were near to completion on 15 August 2011. According to publicly available information, those include Finland, Mongolia, Spain and Uganda and perhaps also Bulgaria, Chile and Jordan. Of those, Bulgaria, Chile and Mongolia were also covered in the thirteen UNDEF-funded civil society country reports.

The three areas for improvement most commonly identified by many CSO country experts in their surveys of selected UNCAC articles were the following:

- **Foreign bribery offence (UNCAC Article 16):** Several of the CSO reports found a lack of or insufficiently clear definition of the foreign bribery offence. (eg. Bangladesh, Morocco, Papua New Guinea, Ukraine, Vietnam)
The UNODC Thematic report on implementation of Chapter III likewise found (page 3) that a majority of States parties had not adopted specific measures to criminalize both active and passive bribery of foreign public officials and officials of public international organizations. In particular, the relevant conduct had not been criminalized in five cases, with legislation pending in one of them, and it had only been criminalized with respect to active bribery in two others.
- **Liability of legal persons (UNCAC Article 26):** Many of the CSO reports found a lack of or insufficient provision for liability of legal persons, in particular criminal liability (eg. Argentina, Bangladesh, Brazil, Bulgaria, Lithuania, Mongolia, Peru, Ukraine, partly PNG and Vietnam). While criminal liability is not required by UNCAC Article 26, TI and the UNCAC Coalition believe that it is necessary for effective enforcement and that legal traditions do not pose an insurmountable obstacle.
- **Whistleblower protection (UNCAC Article 33):** Another common issue identified in the CSO reports was insufficient or lack of protection in the public and/ or private sector (eg. Argentina, Brazil, Chile (private sector), Lithuania, Mongolia, Papua New Guinea, Ukraine) While protection of reporting persons is non-mandatory, the country experts considered that it was essential for effective anti-corruption efforts that it should be introduced.

In this connection, the UNODC Thematic report on Chapter III (page 13) noted that “As with the protection of witnesses, experts and victims, there was considerable variation among the States parties with regard to the implementation of article 33, on protection of reporting persons. Several States parties had not established comprehensive measures to implement the article, though legislation was pending in some cases. Common challenges related to specificities in the national legal systems and the absence of any specific regulation or systems for the protection of protection of whistle-blowers, which were considered to be matters of concern in several cases.”

Key enforcement issues

In the area of enforcement, three of the issues in common in the CSO country reports were the following:

- **Statistics:** Many of the CSO reports found a lack of statistics about enforcement (investigations, prosecutions etc), or incomplete data, in eight of the countries where CSO reviews were prepared or lack of public access to information about this data. (eg. Argentina, Bangladesh, Bulgaria, Chile, Morocco, Peru, Ukraine and partly in Lithuania.) The UNCAC self-assessment checklist calls for reviewed states to provide this information.

In addition, there was a lack of access to data about prosecutions and judgements in corruption cases in almost all countries where the CSO reports. Without this data it is difficult to make a real assessment about the enforcement system. It is unclear if such data was provided during the country reviews and included in the final full versions of those country review reports that have not been published. No such data is included or referenced in the official Executive Summaries. This is a serious deficiency that has also been consistently highlighted by TI in connection with its reports on enforcement of the OECD Anti-Bribery Convention.⁸

⁸ Transparency International, Progress Report 2011: Enforcement of the OECD Anti-Bribery Convention, http://www.transparency.org/publications/publications/conventions/oecd_report_2011

- **Independence/ non-interference:** The CSO reports also highlighted the issue of independence of investigation and prosecution services as well as independence of the judiciary. In eight of the countries surveyed for this report, this was highlighted as a key issue. (eg. Argentina, Bangladesh, Bulgaria, Mongolia, Morocco, Peru (sometimes), Ukraine, Vietnam). This is a serious concern, and it is strongly suggested that the matter is addressed by the UNCAC Implementation Review Group and Conference of States Parties.

In the Executive Summaries available to date, the issue was referenced in the Mongolia Executive Summary (page 5) and the Uganda Executive Summary (page 14). The UNODC Thematic report found regarding implementation of Article 36 on specialized authorities: "In several cases, observations were made regarding the independence of those bodies...."⁹

- **Resources, expertise and training:** Deficiencies in these areas with respect to investigation, prosecution services and judiciary were also commonly cited problems. (Argentina, Bangladesh, Bulgaria, Chile, Morocco, Papua New Guinea, Peru, Ukraine, Vietnam).

The UNODC Thematic report found regarding Article 36 "While each of the States parties had established a body or specialized department to combat corruption through law enforcement, in many cases it had been newly created and faced challenges related to limited capacity and resources for implementation, as well as competing priorities. Similar recommendations were issued in a number of cases to increase manpower and resources for training and capacity-building, to strengthen the presence in the regions and provinces, to increase political support and to continue efforts to combat corruption through independent law enforcement bodies focusing, in particular, on addressing implementation challenges in this field."

Recommendations

- Regarding implementation into law of UNCAC Chapter III, countries should include the foreign bribery offence and ensure that definitions of the offence are adequate. Countries should also introduce liability of legal persons and ensure whistleblower protection.
- Regarding enforcement measures, countries should ensure independence of investigation and prosecution services and of the judiciary. They should also ensure adequate resources and training for the relevant institutions.

IV. Conclusions

While noting the progress made with the implementation of UNCAC in many countries subject to review and with the review mechanism in general, this report calls on UNODC, the Implementation Review Group (IRG) and participating States Parties to correct the flaws identified by civil society societies in their reviews in future reviews and to work more towards fully ensuring that the review process is provided with the following:

- all information needed for as comprehensive a review as possible

⁹ For example, in two cases, the investigation of corruption or related action against public officials required the prior authorization of the Government or the prosecutor's office. In one of those cases, additional concerns were raised because a high-ranking official of the agency had been appointed by the Government and also as to the independence of contractors and staff members of the agency who could hold office outside the agency and were not subject to any conflict-of-interest law. In the second case, while it was noted that the anti-corruption law prohibited influencing or interfering in the operation of the agency, a recommendation was issued to also consider establishing related criminal sanctions and to increase the mandate of the agency to investigate all offences covered by the Convention. In another case, a recommendation was issued to strengthen the accountability of the judiciary through consistent and strict application of all legal and disciplinary means to sanction corruption. In some cases, legislation had been introduced or prepared that would strengthen or reorganize the functions and authorities of the law enforcement body."

- involvement of the public in accordance with the relevant articles of UNCAC and the terms of reference of the review mechanism
- providing needed information to the public in accordance with the relevant articles of the UNCAC and the terms of reference of the review mechanism

It also calls for national governments to take measures to improve their data collection and dissemination efforts. Such data is essential for development of anti-corruption policy in general and enforcement policies in particular.

The report further calls on national governments to do even more to ensure UNCAC implementation in key areas. Enforcement institutions must have adequate resources and the ability to function independently otherwise all the laws and measures prescribed by the UNCAC will remain ineffective.

While the UNCAC review mechanism has made some remarkable steps forward, important improvements are still needed. We are optimistic that the necessary improvements will be made and that the review mechanism will then be able to more fully serve its purpose of improving anti-corruption efforts and augmenting transparency and accountability worldwide.

Annex 1

Transparency and participation standards for the UNCAC review mechanism

Both UNCAC itself and the Terms of Reference for the Mechanism of Review of Implementation of the Convention point to the importance of civil society participation and transparency in the fight against corruption in order to ensure the effectiveness of such efforts.

1. UNCAC provisions: Articles 5, 10, 13 and 63

UNCAC Article 5 calls on each State Party to develop anti-corruption policies that *promote the participation of society* and reflect the principles of the rule of law...transparency and accountability.

UNCAC Article 10 calls on each State Party to enhance *transparency in its public administration*. The types of measures envisioned include procedures *to allow members of the general public to obtain information* on the functioning of its public administration and on decisions and legal acts that concern members of the public and *to facilitate public access to the competent decision-making authorities*. They also include *publication of information*, which may include periodic reports on the risks of corruption in public administration.

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 promoting 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.”*

UNCAC Article 63 (4) (c) calls for the Conference of States Parties to agree on activities *facilitating the exchange of information with [inter alia] non-governmental organisations*.

2. Terms of Reference of the Review Mechanism

The Terms of Reference for the Review Mechanism agreed by the CoSP in November 2009 call for a review mechanism that is “transparent, efficient, non-intrusive, inclusive and impartial”.¹⁰ They also provide in paragraph 28 that “The State party under review shall endeavour to prepare its responses to the comprehensive self-assessment checklist through broad consultations at the national level with all relevant stakeholders, including the private sector, individuals and groups outside the public sector.” They further provide in paragraph 30 that “States parties are encouraged to facilitate engagement with all relevant national stakeholders in the course of a country visit.”

3. Opinion of the UN Office of Legal Affairs on the Implementation Review Group

In August 2010, following an inquiry from the Implementation Review Group (IRG), the UN Office of Legal Affairs issued a Legal Opinion on the question of whether observers, including non-governmental organisations can participate in the work of the UNCAC Implementation Review Group.¹¹

¹⁰ Resolution 3/1 Review mechanism, Annex 1 Terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, adopted at the 3rd Conference of States Parties, 9 – 13 November 2009

¹¹ Office of the Legal Counsel, UN Office of Legal Affairs, Interoffice Memorandum of 5 August 2010, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/29Nov-1Dec2010/V1056031e.pdf>

The opinion makes clear that Rule 17 of the Rules of Procedure of the UNCAC Conference of States Parties applies to the IRG because it is a subsidiary body of the Conference. Rule 17 covers NGO attendance at plenary meetings, oral statements, written submissions and receipt of documents.

In its opinion the UN Office of Legal Affairs noted in paragraphs 11 - 13 that:

“11. Pursuant to article 63, paragraph 3, the Conference has adopted rules of procedure. Rule 2 of those rules provides as follows concerning their scope of application:

1. These rules of procedure shall apply to any session of the Conference in accordance with article 63 of the Convention.

*2. **These rules shall apply, mutatis mutandis, to any mechanism or body that the Conference may establish in accordance with article 63 of the Convention, unless it decides otherwise.** (Emphasis added.)*

12. The Conference, when establishing the Implementation Review Group under the resolution, did not indicate that there should be special procedures for its activities or specifically give the Implementation Review Group the authority to decide upon its own rules of procedure for the conduct of its work. Therefore, the rules of the Conference apply to the Implementation Review Group as a subsidiary body that the Conference has established in accordance with article 63 of the Convention.

13. Section V of those rules concerns the participation of observers in the Conference and deals with the participation of four separate groups of observers, i.e. signatories, non-signatories, intergovernmental organizations and non-governmental organizations. It would thus be advisable that the Implementation Review Group apply the provisions of section V to its activities, mutatis mutandis.” (Italics added)

Annex 2 UNCAC Review Process: First Year of Review*

The following table provides a summary of government performance as to civil society participation and transparency in the UNCAC review process.

| | Contact details of focal point public | CSO consulted in preparation for the self-assessment | Self-assess made public | Onsite visit | CSO inputs to review team | Publish full report |
|-----------------------|---------------------------------------|--|-------------------------------------|--------------|---------------------------|---|
| 1. Argentina | No | No | Yes after an access to info request | No | No | Govt official says yes |
| 2. Bangladesh | Yes | No | Yes | Yes | Yes | No |
| 3. Brazil | No | Yes | Yes | Yes | Yes | Unknown |
| 4. Bulgaria | No | No | No | Yes | Yes | Unknown |
| 5. Burundi | No | No | No | Yes | Yes | Unknown |
| 6. Chile | No | No | No | Yes | Yes | Govt official says yes |
| 7. Croatia | Yes | No | No | No | No | Unknown |
| 8. Dominican Republic | No | No | No | No | No | Unknown |
| 9. Fiji | No, but provided on inquiry | No | No | Due | Unknown | Unknown |
| 10. Finland | Yes | Yes | Yes | Yes | Yes | Yes, published in Finnish on national website |
| 11. France | Yes | Yes | No | Yes | Yes | Unknown |
| 12. Indonesia | Yes | Yes | Yes | Yes | Yes | Unknown |
| 13. Jordan | Not determined | No | No | Due | Unknown | Unknown |
| 14. Lithuania | Yes | No | No | Yes | No | Govt says yes |
| 15. Mongolia | Yes | Yes | Yes provided to a CSO | Yes | Yes | Unknown |
| 16. Morocco | No | No | No | Yes | No | Unknown |
| 17. Niger | Yes | No | No | Yes | Yes | Unknown |
| 18. Peru | Yes | No | No | Due | Unknown | Unknown |
| 19. Rwanda | Indirectly via list of experts | No | Yes | Yes | Yes | Unknown |
| 20. Spain | Unknown | None known | No | Yes | No | Unknown |
| 21. Togo | No | No | No | Yes | Yes | Unknown |
| 22. Uganda | No | Yes | No | Yes | Yes | Unknown |
| 23. Ukraine | Yes | No | No | Due | Unknown | Unknown |
| 24. USA | Yes | No | Yes | Yes | Yes | Yes |
| 25. Zambia | No | Yes | No | Yes | Yes, some | Unknown |
| TOTAL YES | 9/10 Yes | 8 Yes | 8 Yes | 18 Yes | 15 | 1 so far |

* No information is included on Sao Tome y Principe because no contact could be identified.

Annex 3

Background on the preparation of the detailed findings and recommendations on country reviews and implementation

In view of the importance of the UNCAC review process and also taking account of the provisions in UNCAC itself and the Terms of Reference for the Review Mechanism, Transparency International (TI) and the UNCAC Coalition, for which TI provides the secretariat, has undertaken to encourage national civil society organizations to prepare contributions to the country review process, to the Implementation Review Group and to the Conference of States Parties concerning the conduct of the review process and issues relating to implementation of the UNCAC chapters under review in the first cycle of the review process (Chapters III and IV).

This report's general findings and recommendations on the country review process are based on a survey of civil society organizations active in anti-corruption efforts in 25 of the 26 countries in the first year of review. We believe their information—or lack thereof-- about the process is a useful input to an understanding of how the process is working.

Furthermore, as part of a United Nations Democracy Fund (UNDEF)-funded project on enhancing civil society's role in monitoring corruption, Transparency International offered small grants for civil society organizations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of CSO review reports as a contribution to the review process. Twelve such reports were produced reviewing country compliance with selected articles in UNCAC chapters III and IV. Our objective is to contribute to the review process as much as possible and to place at the disposal of the governments in question and of the reviewers some additional material and perspectives on the implementation of UNCAC. The cooperation provided by so many members of government in the reviewed countries is very much appreciated.

The reports produced with UNDEF funding were prepared by national level civil society organizations engaged in anti-corruption work, most of them Transparency International National Chapters. These groups made efforts to obtain information for the reports from government offices in their country and to engage in dialogue with government officials. The views contained in the reports were conveyed to government officials as part of this dialogue, in most cases through supplying a draft of the report.

All the reports were prepared using a questionnaire and report template designed by Transparency International for the use of CSOs. These tools reflected but simplified the 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 namely Article 15 on bribery of national officials; Article 16 on foreign bribery; Article 17 on embezzlement; Article 20 on illicit enrichment; Article 23 on laundering of proceeds of crime; Article 26 on liability of legal persons; Article 32 on protection of witnesses; Article 33 on protection of reporting persons and Article 46(9)(b)&(c) on mutual legal assistance in the absence of dual criminality. Some of the groups added to or subtracted from these in their analysis. Because of funding limitations, the groups were not asked to provide detailed legal analysis.

In addition, many of the groups preparing reports benefited from a training provided by UNODC jointly with Transparency International and the UNCAC Coalition at the International Anti-Corruption Academy in February 2011. TI and the UNCAC Coalition are very grateful for this valuable collaboration.

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. They interviewed other experts in the process, including government officials and other local experts. Each of the first year reports have been peer reviewed by a national expert identified by Transparency International or by a pro bono law firm identified by Thomson Reuters TrustLaw Connect in

collaboration with Mayer Brown, a prominent international law firm with offices in the Americas, Asia and Europe. Where up-to-date reports from other monitoring systems were available, these were also considered. In the case of the report on Vietnam, the process involved consultations with experts and a workshop to discuss the responses to the questionnaire.

In addition, in line with the guidelines for preparing the CSO reports, in most cases the draft were shared with government in most cases for comments prior to finalizing other and in two cases the views expressed in the report were otherwise made known to the government. Those governments that invited CSOs to input into the self-assessment process or the country visit will certainly have heard the views. Finally, a final draft of each report has been sent to the respective government prior to publication with the aim of continuing the dialogue beyond the first round country review process.

