



## ABA RULE OF LAW INITIATIVE

# Policy Brief

### ANTI-CORRUPTION POLICY AND RESEARCH OUTREACH AND ENGAGEMENT (APROE) PROGRAM

Report of American Bar Association Rule of Law Initiative  
and UNCAC Coalition Virtual Roundtable

## Opportunities to Advance the Anti- Corruption Agenda at the 10th UNCAC CoSP

October 19, 2023



### Introduction

The American Bar Association Rule of Law Initiative (ABA ROLI), the Bureau of International Narcotics and Law Enforcement Affairs (INL) at the U.S. Department of State, and the UNCAC Coalition held a virtual roundtable, “**Opportunities to Advance the Anti-Corruption Agenda at the 10<sup>th</sup> UNCAC CoSP**,” on Thursday, October 19<sup>th</sup>, 2023. This expert roundtable discussed how governmental and non-governmental actors can leverage the upcoming U. N. Convention against Corruption Conference of the States Parties (UNCAC CoSP) being held from 11-15 December in Atlanta, Georgia, to accelerate anti-corruption efforts under the UNCAC and strengthen civil society and private sector engagement in these efforts.



**Andrea Currie-Edwards, Senior Program Manager, ABA ROLI**, welcomed everyone to the event. She laid out how the event is part of the INL-funded Anti-Corruption Policy and Research, Outreach and Engagement (APROE) program, which facilitates dialogue on current activities under the [United States Strategy on Countering Corruption](#), published in December 2021. This roundtable's focus is on Pillar Four of the Strategy, "Preserving and Strengthening the Multilateral Anti-Corruption Architecture".

**Mathias Huter, Managing Director of the UNCAC Coalition and moderator**, opened the event by highlighting that the UNCAC is the most comprehensive and only legally binding anti-corruption treaty in the world, with nearly universal coverage. The event sought to explore how to leverage the UNCAC to stem illicit financial flows through beneficial ownership transparency and to defend, protect and promote the crucial role civil society plays in combating corruption and raising awareness as outlined in Article 13 of the UNCAC.

**Laura S.H. Holgate, U.S. Ambassador to International Organizations in Vienna**, made opening remarks focusing on the harmful impacts of corruption and the U.S. Government's efforts to tackle it in collaboration with non-governmental actors.

Ambassador Holgate highlighted that corruption undermines stable, secure and functioning societies and has a devastating effect on individual lives. It weakens democratic institutions, degrades the rule of law, perpetuates violent conflict, undermines markets and continues to pose an unusual and extraordinary threat to the national security and economy of our countries. She underlined that the United States has committed to lead by example to counter corruption, working in partnership with allies, civil society and the private sector. This commitment is reflected in the first-ever U.S. Strategy on Countering Corruption, with one key pillar of this Strategy centers on preserving and strengthening the international multilateral architecture to combat corruption, a cornerstone of which is the UNCAC.

The 10th UNCAC CoSP that will be held in Atlanta provides an opportunity to reflect on progress made as we reach the 20th anniversary of the UN General Assembly's adoption of the treaty. It also represents a chance for the U.S. and its governmental and non-governmental partners to chart the course for the next 20 years. At CoSP10, the U.S. will sponsor the Atlanta Declaration to highlight that the UNCAC is a promise by governments to be accountable to their citizens to take action to prevent and combat corruption. The Atlanta Declaration will remind States Parties that they are accountable to the Convention itself through full implementation of their obligations as signatories, including by: holding corrupt actors accountable for their crimes by criminalizing corruption, adopting enforcement mechanisms with appropriate penalties and sanctions, establishing

and maintaining institutions with the necessary independence to hold corruption actors responsible, supporting mechanisms for international cooperation, and strengthening the capacity of law enforcement and the judiciary to investigate and prosecute corruption offenses, and deny safe haven for the corrupt and the proceeds of their crime.

One of the strongest and most reliable tools for countering corruption lies in civil society engagement. Civil society organizations (CSOs) have deep expertise to inform our policies, raise awareness of corruption and aid in its prevention, and along with academia and the private sector, play a pivotal role in exerting pressure on governments to address corruption and hold bad actors accountable. Civil society groups and non-governmental organizations (NGOs) are often undermined by authoritarian governments for the work they do in highlighting and countering corruption, and they can be targeted precisely for their efforts to demand transparency, fairness and accountability. Despite these risks, we have seen countless civil society groups act fearlessly to call out corruption and bolster government commitments to fight corruption. While the Convention recognizes the importance of civil society and the fight against corruption, civil society has not always been sufficiently integrated into the work of UNCAC States Parties and their meetings, such as the CoSP. That's why the U.S. will host a signature event the day before the CoSP, the Civil Society Forum, to help move the needle on greater civil society involvement at the multilateral level.



## Summary of Panelists' Remarks

**Thom Townsend, Executive Director of Open Ownership**, presented on promoting beneficial ownership transparency in combating corruption and stemming illicit financial flows.

He explained the importance of advancing beneficial ownership transparency to properly tackle many of the issues that we aim to address through the UNCAC. In every jurisdiction around the world, governments should ensure that it is mandatory for businesses to disclose the real people who ultimately control companies, not just those that are named as the legal owners. This matters because companies and all the different corporate vehicles that exist (of which there are many different types) are typically used in most corruption cases and in most efforts around stealing money linked to other crimes, including environmental crimes and human trafficking. The international anti-corruption community took a step forward in 2021 at the UNCAC CoSP9 with the adoption of Resolution 9/7 on beneficial transparency to advance the issue of data use. However, we need to go much further by focusing on effective delivery of

existing commitments in UNCAC and other fora, such as the Financial Action Task Force (FATF), and ensuring that departments across governments, tax authorities in particular, start to use this data, where it's available.

Townsend underlined the need for a global system of interoperable information about who owns companies across the widest number and widest range of countries possible. This is essential in efforts to carry out a proactive risk assessment of companies within a jurisdiction, for red flagging purposes and to provide a deterrent effect for using businesses in corruption. Interoperability of the data is important to avoid hundreds of silos and jurisdictions that cannot talk to each other about the data. Corruption is a transnational crime, and therefore requires a transnational data solution.

It is very important to have central registers, where all beneficial ownership data is centralized in one location within a government, to ensure that data is available at the heart of government and at a minimum, is available to all those departments within government and law enforcement to be able to see and use the information. One major challenge is that many governments are designing these tools in isolation, which means they don't necessarily work as planned when they are finally launched.

Public, central registers are important to ensure that anyone can access the data, including civil society, journalists, and others. This will bring many eyes to the data to address not just corruption issues but also to address other critically important issues. Furthermore, it enables people who are named as beneficial owners to check if they are in that register. In the United Kingdom (UK) we see a situation where beneficial ownership data is not verified, meaning that one could be named as a beneficial owner of a UK company without knowing it because no one verifies or checks the data.

**Jessica Estrada, Director of Transparency, FUNDE (El Salvador)**, focused her remarks on the challenges facing civil society working on anti-corruption in El Salvador.

Civil society in El Salvador faces many challenges and restrictions in its ability to campaign on anti-corruption issues and works to overcome them on a day-to-day basis. One major challenge is getting access to public information and therefore, having evidence to document and investigate corruption cases. The country's access to information law establishes that most information should be published, without having to request it. However, civil society has found that if this information is requested, many institutions are denying requests, citing security reasons, for example, for emergency plans during the Covid pandemic. This lack of access to information made it difficult to develop a parallel report on UNCAC implementation in El Salvador and her organization even had threats

made against the people that were carrying out the first analysis of the parallel report, directly from government officials.

In El Salvador, civil society also suffers from the absence of local bodies to which civil society can report corruption cases and to request protection for whistleblowers and others exposing corruption, which represents a great risk. In this era of misinformation and fake news, another major challenge is to promote the fight against corruption and confront the fact that the government is doing nothing about it. The government is restricting access to information, limiting citizen participation, and does not have an accountability mechanism. Civil society was encouraged five years ago when there were improvements in transparency and tackling corruption, due to citizens demanding action and to national oversight bodies that were able to take actions to address corrupt practices. Estrada described how civil society members knew all those improvements were fragile but did not realize how easily and quickly they could fall apart. The government installed an anti-corruption commission but then expelled it as soon as it began to identify corruption cases related to the current government.

The arbitrary detention of civil society members is another major threat facing civil society in El Salvador and it is even more dangerous for civil society in a country where due process and judicial independence no longer exist. Another significant and ongoing risk civil society faces is being spied on by state intelligence, particularly through the use of Pegasus software. In addition, restrictive new laws and regulations hinder the work that civil society is doing, especially affecting those groups working on protecting human rights and fighting corruption.

**Nicholas Miller, Senior Legal Advisor & Coordinator for Multilateral Engagement, International Center for Non-for-Profit Law (ICNL)**, presented an overview of challenges and restrictions that civil society faces across the globe.

Many of the challenges facing civil society from El Salvador are emblematic of the trends that we are seeing internationally. Unfortunately, the trends on civic space globally are negative. However, it is important to keep in mind that civil society around the world continues to fearlessly work for causes such as the fight against corruption and the preservation of democracy. ICNL tracks laws and policies adopted in different countries. Over the last five years, ICNL has seen at a minimum 288 initiatives adopted by states that affect civic space, which involve both laws and policy changes. Of those measures, 83 percent are restrictive. This limits our tracking of measures that directly affect expression, association, and assembly. While that is a significant limitation, the number of 288 is high because these measures are universal and affect the entirety of the



nonprofit sector. This is not only happening in authoritarian states but also in democratic countries.

One increasingly common restriction is the elevation or imposition of barriers to access funding, in particular foreign funding. While this is not a new trend, ICNL has seen an increasing number of outright bans, or other strategies on the part of authoritarian and some non-authoritarian states in limiting access to funding; measures include the imposition of onerous reporting requirements or direct repression or attacks on organizations for receipt of international funding. This is especially important in the context of developing countries, where there often is not a robust domestic funding ecosystem. It is also of particular concern for organizations working on anti-corruption, which are challenging those in power, or those working on behalf of marginalized communities and on human rights issues. Another trend is the deployment of other laws to target civil society such as national security laws, counterterrorism laws and anti-money laundering. For example, in Nicaragua, over half of the nonprofit sector has been completely shuttered in recent years using a countering the financing of terrorism law.

NGOs also face barriers to operation, a generic category which many of the more insidious restrictions fall under, including the arbitrary application of administrative power to CSOs. This can include the denial of registration as well as the imposition of management burdens. Some countries, for example, require CSOs to make all their management meetings open to participation by public officials, presenting significant challenges for CSOs focused on holding governments accountable. There are also obstacles related to access to information and a lack of transparency. In some cases, this means preventing civil society from having access to routine information. There is also a suspension of Freedom of Information Act (FOIA) equivalent laws, which is specific to countering corruption and gives civil society few options for repeal when it happens in a country in which legal systems and the rule of law are weak.

## Recommendations to enhance beneficial ownership transparency



- **Adopt a strong resolution at CoSP10 to advance beneficial ownership transparency and deliver on commitments:** A resolution should have clear, strong language that pushes forward efforts to effectively make use of the data that is available. Efforts must also focus on collecting the data and ensuring that data is verified and structured so that it can be widely used.

- **Create publicly available, central registers of all corporate vehicles:** Registers should have adequate, accurate, and up-to-date information that is freely accessible online and can be rapidly accessed by a wide range of stakeholders, including civil society and the media, to maximize its impact in preventing and detecting corruption. The data should be linked to other datasets (such as public procurement data, data on political contributions, and data on interest disclosures of public officials).
- **Promote its use by government agencies and law enforcement:** Data should be made available in a central register to ensure that all those departments within government and law enforcement are able to see and use the information. In countries where beneficial ownership data is not yet available, it is critical that those other parts of government that will be the end users of this information are properly involved in the process of designing and delivering the system that they should benefit from.

## Recommendations to defend, protect and promote civic space in anti-corruption



- **Promote a safe and enabling environment for civil society:** Ensure that laws regulating the NGO sector enable organizations to operate freely and without governmental interference and are carefully calibrated for legitimate purposes. Ensure that laws not specifically regulating the non-profit sector (such as defamation, money laundering, tax, and terrorism laws) are not used to target civil society.
- **Protect civil society members coming under attack:** Build upon and expand the good work being done to protect civil society, including the work of the UN Special Rapporteur on Human Rights Defenders<sup>1</sup> and of other initiatives such as the Lifeline Embattled CSO Assistance Fund<sup>2</sup>. More support should be provided to NGOs that are already carrying out a great deal of important work to protect people in critical and even dangerous situations.

<sup>1</sup> A/HRC/49/49: At the heart of the struggle: human rights defenders working against corruption: <https://www.ohchr.org/en/documents/thematic-reports/ahrc4949-heart-struggle-human-rights-defenders-working-against>.

<sup>2</sup> <https://freedomhouse.org/programs/emergency-assistance-and-thematic-programs/lifeline-embattled-cso-assistance-fund>.

- **Raise awareness of anti-corruption commitments:** Increase awareness about the importance and the benefits of complying with international commitments like the ones established in the UNCAC and other conventions and put greater focus on reaching and involving citizens and other stakeholders in anti-corruption efforts.
- **Build and strengthen national and local civil society coalitions and networks:** Efforts should focus on strengthening coalitions and networks for NGOs to effectively work together to advance anti-corruption efforts, nationally, regionally, and globally, such as through UNCAC-related fora and other fora to defend democracy, combat corruption, protect civic space, and ensure sharing of information, experiences and lessons learned.
- **Establish and fully implement access to information laws:** Effective access to information is critical for CSOs to combat corruption and promote government accountability. Robust access to information laws need to be effectively implemented, an obstacle in many countries.
- **Involve civil society in technical assistance:** The United Nations Office on Drugs and Crime (UNODC) and other UN bodies should carry out its technical assistance and other types of assistance in an inclusive manner by meaningfully engaging CSOs and other relevant stakeholders at the national level in the development and delivery of technical assistance projects.
- **Meaningfully engage civil society in the UNCAC review mechanism:** Strengthen the UNCAC's Implementation Review Mechanism (IRM)<sup>3</sup> to be more effective, inclusive and transparent so that reviews of UNCAC implementation create momentum for reforms at the national level. Governments should engage civil society organizations at key stages of the review process and in follow-up measures, and make the process more transparent by publishing the country reports and other documents.

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<sup>3</sup> See the UNCAC Coalition's resources and tools on the IRM: <https://uncaccoalition.org/uncac-review/uncac-review-mechanism/> and <https://uncaccoalition.org/uncac-review/>. See also UNCAC review status tracker: <https://uncaccoalition.org/uncacreviewstatustracker/>.