

UNCAC Coalition

Contribution to the Consultation Process in Preparation of the UN General Assembly Special Session against Corruption 2021

Submission 2

– Key topics for the UNGASS – March 2021

The UNCAC Coalition welcomes the holding of the first-ever UN General Assembly Special Session (UNGASS) against corruption which provides an important opportunity to advance anti-corruption efforts globally. For the UNGASS to have a substantive impact on strengthening efforts to prevent, detect and prosecute corruption, and on mitigating its consequences, ambitious actions and bold commitments from Member States are needed.

With this contribution, we seek to inform the final weeks of negotiations of the UNGASS Political Declaration, adding to our initial written submissions¹ to the UNGASS process, as well as to oral statements we have made during the three intersessional meetings of the UNCAC Conference of States Parties on preparations for the UNGASS.² In this document, we outline observed challenges in policy areas key to fighting corruption, provide examples of good practice approaches from Member States, and outline commitments Member States should make to advance transparency, integrity and accountability, and to make substantive progress in tackling corruption.

The UNGASS should result in a bold and action-oriented political declaration that includes clear commitments to advance the global anti-corruption agenda. The UNGASS in June should not be the conclusion of the discussion but rather a starting point to launch a transparent and inclusive process to discuss gaps in the international anti-corruption framework, shortcomings in its implementation, and possible solutions

¹ See: UNCAC Coalition submission, March 2020: https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UNCAC_Coalition_UNGASS_Consultation_Submission_1.pdf and joint submission of Transparency International and the UNCAC Coalition: Proposal for a Multilateral Agreement on Asset Recovery, https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI_UNCAC_Coalition_Proposal_for_Asset_Recovery_Agreement.12.6.2020.pdf.

² Recaps of these sessions and the Coalition's statements are available at <https://uncaccoalition.org/ungass/>.

to address these challenges. Member States should also report publicly on the progress they make on implementing the UNGASS commitments.

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Key areas for action

Member States should commit to:

- adopting and implementing **strong access to information laws** that comply with international standards, recognising a fundamental right of access to information held by State bodies, and establishing independent oversight bodies to supervise the implementation of this law and to promote effective access to information;
- implementing (or maintaining) **open contracting approaches and ensuring full public access to information** and to all documents and agreements throughout the lifetime of a contract, from planning to implementation, by publishing all state contracts online, in line with best practice, including in standardised open formats such as the Open Contracting Data Standard;
- establishing **central online public registers of the direct owners and beneficial owners** of companies, foundations, trusts and all other legal entities, with timely and accurate information; and to making this information freely accessible online for law enforcement, competent authorities as well as the public in open formats, and where possible, in real-time;
- adopting and implementing measures to ensure **adequate transparency and accountability in the financing of political parties, candidates for public office and electoral campaigns**, as well as independent, adequately-resourced oversight of the finances of parties, candidates and campaigns;
- requiring **civil servants and public officials in decision-making positions to comprehensively disclose their assets and other relevant interests** at least annually; to mandating the **publication of these declarations** in easily accessible formats online; to ensuring independent verification of the filings; and to establishing and enforcing effective sanctions in cases of non-compliance;
- creating and maintaining a **safe and enabling environment for civil society, ensuring the safety of anti-corruption activists, witnesses, whistleblowers, journalists** and others who uncover and report on corruption; to **actively facilitating the participation of civil society and other non-state stakeholders in national, regional and international anti-corruption efforts**;
- taking concrete steps to **strengthen the political and operational independence as well as the capacity of institutions that play a crucial role in national integrity systems**, such as election commissions, regulatory and oversight bodies, financial intelligence units, law enforcement agencies, the judiciary and parliaments;
- addressing weaknesses in legal frameworks and enforcement systems and ensuring **effective investigations and enforcement of all domestic and foreign corruption offences**; and to regularly publishing updated statistics on

criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity;

- adopting and implementing comprehensive legislation on reporting mechanisms, investigations of complaints and **whistleblower protection in line with best practice and international standards**; to ensuring transparent implementation in practice as well as robust protection from retribution and criminalisation to all whistleblowers and their families, providing them with timely and effective assistance and resources as needed;
- taking **effective action against the serious crime of grand corruption** and encouraging the exercise of extraterritorial jurisdiction for the prosecution of the same on a national, regional and international level, in line with UNCAC Article 16.2;
- making **settlement agreements public**, including their terms of justification, the facts of the case and the resulting offences, providing for effective sanctions, and including reparations for damages caused by the corruption as part of the settlement agreement;
- recognising that corruption is not a victimless crime; to establishing legal frameworks to enable and facilitate the compensation of both individual and collective victims of corruption (communities); to **increasing efforts to repair damages caused by corruption by providing victims with material and/or symbolic reparations**; and to **granting independent non-governmental organisations legal standing** before all courts **to represent individual and collective victims of corruption**;
- **advancing the recovery and return of assets, ensuring transparency and accountability at all stages of the process** with the close involvement of civil society and in a manner that contributes to fulfilling the Sustainable Development Goals (SDGs), to the reparation of the damage caused to victims and to society; to considering a new multilateral agreement and/or mechanism to overcome asset recovery roadblocks;
- **acknowledging gendered forms of corruption**, producing gender-disaggregated data on corruption offences, ensuring the criminalisation of sextortion, and creating safe and gender-sensitive corruption reporting mechanisms for women and other vulnerable persons;
- making the **UNCAC implementation review process more transparent, inclusive and effective**, including by committing to involve non-governmental stakeholders in the review process, publishing key documents of the review and information on the process, and by agreeing on a mandatory follow-up mechanism that reviews progress made on implementing recommendations from previous review cycles; and
- launching an inclusive mechanism for Member States, international organisations, experts, civil society representatives and other stakeholders to discuss gaps in the existing anti-corruption framework and shortcomings in implementation, as well as to develop ideas and possible approaches and mechanisms to address those shortcomings.

Prevention

Access to Information

Public access to information is essential to deter and detect corruption. The right to access information held by state bodies is an important tool for the media, civil society organisations, and the general public to monitor the actions of the public administration and the government, and the use of public funds.

The UNCAC highlights the importance of promoting transparency in many of its provisions: Article 10 calls on States to take measures to enhance transparency by adopting procedures or regulations allowing the public to obtain information on the functioning and decision-making processes of the administration, by simplifying procedures to facilitate public access to decision-making authorities, and by publishing information proactively. Article 13 calls on States to take measures to promote the active participation of civil society in the prevention of and fight against corruption by ensuring that the public has effective access to information and by respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption (with certain limited restrictions). The UNCAC, however, falls short of recognising a right to access information.

The right of access to information has been consolidated since the UNCAC entered into force in 2005: regional human rights mechanisms have recognised the right of access to information (the Inter-American Court of Human Rights from 2006 and the European Court of Human Rights from 2009 onwards), closely linking it to freedom of expression in cases where information to investigate wrongdoing is sought and an informed public debate is not possible without access to information. The UN Human Rights Committee in 2011 confirmed that the right of access to information is an inherent part of freedom of expression and that States not only have an obligation to respond to requests (with limited exceptions) but also to public information of public interest proactively.³

The Sustainable Development Goals (SDGs) also recognise the importance of “effective, accountable and transparent institutions on all levels” (target 16.6) and require States to “adopt and implement constitutional, statutory and/or policy guarantees for public access to information” (target 16.10.2).⁴

Close to 130 countries and jurisdictions have so far established a right to access information on the national level. In many countries, however, the legal frameworks fail to ensure effective access to information, in particular to information that is relevant to detecting and preventing corruption.

³ UNHCR General Comment No 34, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁴ See: SDG Indicators, <https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=>.

In their response to the COVID-19 pandemic, many governments have taken measures that limit access to information held by public bodies relating to the pandemic and other crucial areas of public interest, including the allocation of funding and resources, and the award of public procurement contracts.⁵

Achievements and good practices

- The Right to Information (RTI) Rating assesses the quality of national access to information laws around the world. Among the countries with the strongest legal frameworks are Afghanistan, Mexico, Serbia, Sri Lanka, Slovenia, Albania, India, Croatia, Liberia and El Salvador.⁶
- To facilitate access to information requests, CSOs have developed online access to information portals in several countries (one such portal also covers the institutions of the European Union) that facilitate the filing of requests for information to authorities and make the responses from State bodies accessible to the public.⁷

Moving forward

- All Member States should adopt and implement strong access to information laws that comply with international standards, including by applying the law to all branches of government and all public or private bodies which perform public functions and/or operate with public funds.
- The legal framework should have a presumption of openness. Any exceptions to the right of access should be limited, in line with international standards, and be subject to a harm test (evaluating any specific damage caused by releasing information) and a public interest (establishing the public interest in access to information in a specific case). Information relevant to preventing, investigating or exposing corruption should be considered as an overriding public interest.
- Member States should commit to establishing an independent and autonomous institutional body such as an Information Commissioner or an Information Commission to supervise the correct implementation and application of access to information laws and transparency provisions and to increase awareness among all stakeholders on information rights.
- The legal framework should ensure the availability of information and data held by public bodies, including on anti-corruption efforts, the functioning and activities of State entities, and the use of public funds and resources. It should also ensure the proactive publication of information, documents and data, including on anti-corruption efforts, and ensure that information is published in a timely, comprehensive, freely accessible and usable way, fit for the respective

⁵ Article 19: Ensuring the public's right to know in the COVID-19 pandemic, <https://www.article19.org/resources/ensuring-the-publics-right-to-know-in-the-covid-19-pandemic/>.

⁶ Access Info Europe, Centre for Law and Democracy: The RTI Rating, <https://www.rti-rating.org/country-data/>.

⁷ For an indicative list, see: Wikipedia: Alaveteli, <https://en.wikipedia.org/wiki/Alaveteli>.

local contexts, including by using open data formats to facilitate analysis and reuse among stakeholders such as journalists, citizens, civil society, academia and private sector.

- All UN bodies that have not done so, including UNODC as the Secretariat of the UNCAC, should adopt comprehensive policy frameworks in line with international standards that allow for public access to information held by them.

Public Procurement and Transparency of Public Finances

Governments spend approximately one third of their budgets on public procurement, the overall procurement spending exceeds USD 13 trillion per year, but key information on 97% of this spending is not made public.⁸ Public procurement accounts for 12% of GDP in OECD countries.⁹ At the same time, public procurement is a central corruption risk in government: 57% of all prosecuted foreign bribery cases prosecuted under the OECD Anti-Bribery Convention were found to be related to bribes being paid to obtain government contracts.¹⁰

The World Bank estimates that transparent digital procurement systems can generate between 10 and 20% savings of the whole procurement value.¹¹

Civil society groups in many countries have observed that countries fail to promote and ensure the transparency of public contracts required by the UNCAC (Article 9). In responding to the COVID-19 crisis, governments have often used emergency procurement procedures without ensuring an adequate level of oversight and transparency, resulting in high risks for funds being misused or stolen through fraud and corruption.¹²

The 2019 Open Budget Survey found modest improvements in budget transparency globally but also found that three-quarters of the 117 governments surveyed have insufficient levels of budget transparency, often compounded by gaps in independent oversight.¹³

⁸ Open Contracting Partnership, Spend Network (2020): How governments spend: Opening up the value of global public procurement, <https://www.open-contracting.org/what-is-open-contracting/global-procurement-spend/>.

⁹ OECD: Public procurement, <http://www.oecd.org/gov/public-procurement/>.

¹⁰ OECD (2014): OECD Foreign Bribery Report, <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>.

¹¹ World Bank (2016): Benchmarking Public Procurement 2017, p. 28, <http://documents1.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>.

¹² See: Open Contracting Partnership, Spend Network (2020).

¹³ Open Budget Survey (2019), <https://www.internationalbudget.org/open-budget-survey/>.

Achievements and good practices

- The so-called Open Contracting Data Standard¹⁴ (OCDS), developed by the Open Contracting Partnership (OCP), is the only international open data standard for public contracting. It covers the entire project cycle, from planning, procurement to implementation of public contracts. The OCDS has been endorsed by several international organisations, including the OECD, the G20 through its Anti-Corruption Open Data Principles¹⁵ and the G7 through the Biarritz Declaration on Transparency in Public Procurement and the Common Fight Against Corruption.¹⁶ It is already being implemented by more than 30 governments globally.

Three interesting country examples that have established a high level of transparency in public procurement are Ukraine, Georgia and Slovakia:

- In Ukraine, the online Prozorro public procurement portal, which resulted from consultations with government, business and civil society, allows for tracking of and therefore increased transparency in public procurement processes.¹⁷ This e-procurement system has already saved the government significant sums of money and has largely increased competition.¹⁸
- For a decade, Georgia has been publishing all procurement contracts, supporting documents and receipts of state bodies online in an effort coined as radical transparency.¹⁹ According to the World Bank, Georgia saved more than USD 400 million within five years due to the introduction of the transparent digital procurement system.²⁰
- Slovakia was the first country to require that State contracts – including on public procurement, but also on grants, licenses, leases, permits, and privatisations – be published in full text online in order for these contracts to enter into force, ensuring a high level of compliance with transparency provisions.²¹ Within four years of the mandatory contract publication being introduced, the average number of companies bidding on a government

¹⁴ Open Contracting Partnership: The Open Contracting Data Standard, <https://www.open-contracting.org/data-standard/>.

¹⁵ G20 Turkey (2015): Introductory Note to the G20 Anti-Corruption Open Data Principles, <http://www.g20.utoronto.ca/2015/G20-Anti-Corruption-Open-Data-Principles.pdf>.

¹⁶ G7 Biarritz (2019): Transparency in Public Procurement and the Common Fight Against Corruption, <https://www.elysee.fr/admin/upload/default/0001/05/4cc3ad52f529ccc54483768425e61bef8ed4ac9c.pdf>.

¹⁷ Prozorro. Public Procurement, <https://prozorro.gov.ua/en>.

¹⁸ See: Vasyl Zadovnyy (2020): How open contracting approaches help Ukraine to tackle COVID-19, <https://www.open-contracting.org/2020/04/16/how-open-contracting-approaches-help-ukraine-to-tackle-covid-19/>.

¹⁹ Mathias Huter, Giorgi Chanturia (2014): How Georgia is handling procurement transparency, https://www.open-contracting.org/2014/02/03/how_georgia_is_handling_procurement_transparency/; Georgia's State Procurement Agency's Procurement Portal, <https://tenders.procurement.gov.ge/login.php?lang=en>.

²⁰ World Bank (2016): Benchmarking Public Procurement 2017, p. 28, <http://documents1.worldbank.org/curated/en/121001523554026106/Benchmarking-Public-Procurement-2017-Assessing-Public-Procurement-Regulatory-Systems-in-180-Economies.pdf>.

²¹ See: Summary of the UNCAC Coalition side event with the Ministry of Justice of Slovakia at the 8th UNCAC Conference of States Parties, <https://uncaccoalition.org/cosp8-special-event-making-transparency-work-technology-driven-approaches-to-facilitate-public-access-to-information/>.

contract more than doubled, and the share of tenders without competitive procedures dropped from 21% to 4%.²² Several other countries have since replicated the Slovak approach.

Moving forward

- Building upon the UNCAC, which requires the development of public procurement systems that are transparent, competitive and objective, Member States should commit to implementing (or maintaining) open contracting approaches and ensure full public access to information and to all documents and agreements throughout the lifetime of a contract, from planning to implementation.²³ Member States should publish all state contracts online, in line with best practice.
- To facilitate further use and analysis, including the identification of corruption red flags, Member States should strive to make contracting information easily accessible to the public in standardised open formats, such as the Open Contracting Data Standard, ideally through a centralised data portal.
- Member States should introduce and strengthen conflict of interest provisions in public procurement and establish independent complaint and audit mechanisms, as well as inclusive and collaborative feedback and access to information mechanisms throughout the procurement process, enabling public participation and monitoring of public contracting. Citizens should be made aware of the possibility to participate in procurement processes. An independent complaint mechanism that investigates citizens' complaints quickly should also be instituted.
- Member States should commit to ensuring adequate oversight and transparency of public budgets and budget implementation by publishing budget information at all stages of the budget process (including formulation, approval, execution, auditing and legislative evaluation) in a timely, detailed and accessible manner, by encouraging citizen participation in all phases of the budget cycle, and by strengthening oversight institutions.
- Especially in times of crisis, Member States should ensure full transparency and adequate oversight regarding the use of financial and non-financial aid, including by actively disclosing the names and identities of companies and entities that receive emergency assistance or funding, whether in the form of grants or low-interest loans, as well as details of the support provided and any conditions linked to this aid.

²² TI Slovakia (2015): Not in Force Until Published Online – What the Radical Transparency Regime of Public Contracted Achieved in Slovakia, <https://www.transparency.sk/wp-content/uploads/2015/05/Open-Contracts.pdf>.

²³ See: Open Contracting Partnership: Global Principles, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>.

Company Ownership Transparency

Corporate transparency through free public access to official company information, including on the owners, is essential for the public to understand who benefits from public contracts, and for State bodies and the private sector to know who their customers and partners are. Easy access to information on companies, their filings, officers and direct owners, as well as their beneficial owners (i.e., the individuals ultimately controlling the company) helps promote trust and transparency in the business environment, lowers transaction costs, facilitates due diligence and is an effective tool to tackle money laundering, corruption and other crimes.

Crucially, company registries and beneficial ownership registries (which may be combined to a single registry) need to be accessible to the public, which is also of great benefit to businesses: Nine out of ten senior private sector executives say it is important to know the ultimate beneficial ownership of the entities they do business with.²⁴

Public access to company registries as well as beneficial ownership registries also enables domestic and international investigative bodies to access and use the data without having to go through lengthy mutual legal assistance procedures. Furthermore, it also enables the media, civil society groups and the general public to use the information to monitor the use of public funds, for example in public procurement and in the allocation of COVID-19 assistance.

While many countries have created online registries for companies and other legal entities, these registries are often not freely accessible, fully searchable, and in many cases do not provide access to information on officers, direct owners, or company filings. In the vast majority of countries, the information is often not accessible in an open data format and under an open license that would allow third actors such as civil society organisations to reuse the information and to link it to other relevant databases within the same jurisdiction or in other countries.²⁵

Beneficial ownership transparency

Beneficial ownership transparency means that the ultimate owners of an entity, i.e., the natural persons who control an entity, possibly through a web of different companies, trusts, foundations or other entities, are disclosed. A number of countries have established national public registries of beneficial owners in recent years, and others are currently in the process of implementing beneficial ownership commitments they have made.

²⁴ EY: Global Fraud Survey 2016, <https://www.ey.com/gl/en/services/assurance/fraud-investigation---dispute-services/ey-global-fraud-survey-2016>.

²⁵ See the assessments of the openness of company registries from around the world by OpenCorporates, which has been building a global open company registry, so far containing data on more than 180 million companies, <https://opencorporates.com/registers>.

However, it is essential that all jurisdictions mandate the public disclosure of ultimate owners of entities in order to avoid safe havens that can be misused for corruption. The vast majority of grand corruption cases involve the use of shell companies and other opaque and complex corporate vehicles.²⁶

Some jurisdictions mandate companies to hold records on their beneficial owners but do not require that this information be also reported to a central register, thus not creating any transparency. Central registries of beneficial owners, however, facilitate more effective and faster national and international investigations, as law enforcement officials and financial intelligence units can quickly establish who controls a legal entity. Banks and other entities that have to comply with anti-money laundering regulations can more easily and effectively establish who their customers are.

Good practice examples

- Companies House in the United Kingdom registers company information, including company filings and data on direct owners as well as the beneficial owners and makes it available to the public in a freely accessible, searchable online register.²⁷ In 2018, the UK register was accessed more than 6 billion times, creating an estimated total benefit between £1 billion and £3 billion per year.²⁸
- Forty-one countries are fully committed to implementing beneficial ownership transparency. Another 45 countries are partially committed.²⁹ This includes the member states of the European Union, which have to have publicly accessible beneficial ownership registries that will in the future become interconnected.³⁰
- Slovakia requires that all domestic and foreign entities that partner with the public sector and receive public resources, including all bidders on public procurement contracts, such as entities participating in privatisations, receiving grants, subsidies, permits or licenses, as well as companies operating in the healthcare sector, disclose their beneficial owners in a central, publicly accessible database. The framework also includes a mechanism for the verification of ownership information.³¹
- Georgia's company registry is freely accessible and easily searchable online.³² The NGO Transparency International Georgia has set up a platform linking

²⁶ See: StAR: (2011) The Puppet Masters, <https://star.worldbank.org/publication/puppet-masters>.

²⁷ <https://beta.companieshouse.gov.uk/>.

²⁸ <https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year>.

²⁹ Open Ownership (June 2020): Worldwide commitments and actions, <https://www.openownership.org/map/>.

³⁰ Provisions of the EU's 5th Anti-Money Laundering Directive, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en.

³¹ UNCAC Coalition: Key Take-Aways from the CoSP8 Special Session: Getting Serious about Beneficial Ownership Transparency (2019), <https://uncaccoalition.org/our-key-take-aways-from-the-cosp8-special-session-getting-serious-about-beneficial-ownership-transparency/>.

³² <https://enreg.reestri.gov.ge/>.

company ownership data with public procurement data and data on donations to political parties³³ and also uses the data to monitor and verify officials' asset and interest declarations and identify possible conflicts of interest and indications of wrongdoing.

- OpenOwnership has been developing the Beneficial Ownership Data Standard to serve as a framework for collecting and publishing beneficial ownership data, enabling the resulting data to be interoperable, more easily reused, and of higher quality. A common data standard enables the exchange of data between implementing countries and allows for a rapid build-up of best practice on collecting, storing, and publishing beneficial ownership data.³⁴

Moving forward

- Member States should make a firm commitment to creating national-level online public registers of the beneficial owners of companies, foundations, trusts and all other legal entities and arrangements (i.e., the natural persons who ultimately control an entity, possibly through several other legal entities), with timely and accurate information that is freely accessible online for law enforcement, competent authorities as well as the public (UNCAC Articles 12.2(c) and 14).
- To promote compliance with the beneficial ownership regime, Member States should also put in place mechanisms for the verification of data, as well as effective, proportionate and dissuasive measures or sanctions, while also ensuring an efficient and effective framework that minimises the administrative burden and costs with the public and private sectors.
- In line with best practice, Member States should commit to collecting and publishing beneficial ownership information of all bidders and partners in the public sector, including companies that participate in public procurement, join public-private partnerships, receive financial or non-financial state aid, licenses, permits and natural resources-related contracts, take part in the privatisation of public resources or are otherwise party to public contracts or agreements.³⁵
- To promote transparency in the private sector (UNCAC Article 12), Member States should commit to ensuring that adequate, accurate and current information on corporations and other legal entities, including on officers, directors and direct owners, is accessible in real-time in a standardised open data format, utilising free, searchable, public online platforms in order to facilitate access for law enforcement agencies, financial institutions and obliged entities, as well as the general public.

³³ Transparency International Georgia, <https://www.transparency.ge/politicaldonations/en>.

³⁴ <https://www.openownership.org/what-we-do/the-beneficial-ownership-data-standard/>.

³⁵ See: Experience of Slovakia, presented at an UNCAC Coalition side event at the UNCAC COSP8, <https://uncaccoalition.org/cosp8-special-event-making-transparency-work-technology-driven-approaches-to-facilitate-public-access-to-information/>.

Political Financing

The financing of political parties and electoral campaigns provides ample opportunity for corruption. Illicit and opaque political funding is often linked with other forms of corruption and undermines the fairness, integrity, and credibility of an electoral system. Furthermore, there are specific corruption risks around elections, such as widespread vote buying, extortion of financial contributions to support campaigns, bribery, and the abuse of state resources to advance specific political campaigns and influence or coerce voters.

The UN common position to address global corruption towards the UNGASS 2021 states: “Transparency and accountability in the regulatory frameworks on the financing of political parties and campaigns are important aspects of any measures to prevent corruption in public life”.³⁶

Regulations governing political financing should promote equal opportunity and encourage wide participation in political processes, as well as strengthen public confidence in the integrity of electoral systems.

However, 40% of countries worldwide did not require the disclosure of financial records for political parties and candidates in 2019. While many countries regulate the financing of political parties, candidates and campaigns, these frameworks are often inadequate to ensure transparency, accountability and independent oversight of political financing: Regulation is not always accompanied by proportionate, timely and dissuasive sanctions to promote compliance. Where oversight bodies are in place, they often lack resources, mandates and powers to effectively oversee and enforce regulations. Furthermore, they often also lack independence and are vulnerable to undue political interference. This creates a high risk that legal provisions are not enforced in an impartial and transparent manner, contributing to an unlevel political playing field through the selective enforcement of provisions, providing an advantage to an incumbent party or candidate.

While there are some regional guidelines, so far, there are no global norms on transparency and accountability of political financing. The UNCAC does not provide adequate standards.

Good practice examples

- An Expert Group Meeting on Transparency in Political Finance, held by UNODC, OSCE/ODIHR and IFES in May 2019, developed principles on transparency of political finances, which should serve as a roadmap for national-level reforms and future discussions on minimum standards and good

³⁶ UN common position to address global corruption. Towards UNGASS 2021 (August 2020), p. 14, https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UN_Common_Position_to_Address_Global_Corruption_Towards_UNGASS2021.pdf.

practice approaches. These principles were reflected in the Oslo Statement on Corruption involving Vast Quantities of Assets, which was taken note of in UNCAC CoSP Resolutions 8/7 and 8/9.

- In Slovakia, political parties and presidential candidates have to conduct the financing of their campaigns through a transparent bank account. All transactions of this bank account are visible to the public in real-time, which helps to ensure real-time disclosure, while minimising the burden of compliance.
- In Georgia, political parties have to publicly disclose all contributions they receive from individual donors and disclose campaign expenses ahead of election day. This data can then be analysed and put into a broader context, for example, by linking it with data on public procurement awards. The parties' finances are scrutinised by the supreme audit institutions.

Moving forward

- To strengthen public trust in government, electoral campaigns and political parties, Member States should adopt and implement measures to ensure adequate transparency and accountability in the financing of political parties, candidates for public office and electoral campaigns, as well as independent, adequately-resourced oversight of the finances of political parties, candidates and campaigns (UNCAC Article 7.3), building on the principles developed by the Expert Group Meeting on Transparency in Political Finance in May 2019.³⁷ Building on the principles developed by this group of experts from UNODC, OSCE/ODIHR, IFES and other organisations, Member States should in the context of the UNCAC Working Group on Prevention develop global norms on political financing, including on requirements for political parties and candidates, which should address, among other issues, the following aspects:
 - keep records of all revenues and expenditures;
 - report in a comprehensive, standardised and detailed form on a regular basis (at least annually and post-election) all revenues and expenditures;
 - disclose all donations above certain thresholds established by law, as well as all expenditures, in an accessible, detailed and user-friendly manner;
 - ban contributions from state-controlled entities and foreign actors;
 - ban or cap donations by legal entities and require reporting of revenues and expenditures of third-party campaigns;
 - consider capping and recording campaign expenditures and publicise election administration costs;

³⁷ See: UNODC, IFES and ODIHR (2019): Expert Group Meeting Report – Transparency in Political Finance: https://www.unodc.org/documents/corruption/PragueEGM2019/Report_EGM_Transparency_in_Political_Finance_Prague.pdf.

- ensure oversight, enforcement, as well as effective, proportionate and dissuasive sanctions for violations, including a prohibition for those contestants convicted for offenses under the UNCAC to run for office.³⁸

Asset and Interest Disclosure, and Conflicts of Interest

Reporting and disclosure requirements on interests, income and assets of elected officials, appointed public officials and civil servants are an important tool to ensure transparency of possible conflicts of interest, to prevent corruption and misuse of power, and to detect illicit enrichment.

While an increasing number of countries has introduced some type of disclosure mechanism, these mechanisms often do not cover all relevant public officials in decision-making positions, all relevant types of assets and interests, and fail to mandate the publication of these declarations.

Furthermore, many countries do not have independent and effective oversight and control mechanisms or dissuasive sanctions for non-compliance in place. Public access to asset and interest declarations is a powerful tool to allow for public monitoring to ensure a high level of compliance.

A strong disclosure mechanism by itself is not sufficient to ensure a high level of integrity, honesty and responsibility in the public sector. It is also essential that transparent mechanisms for the hiring and promotion of staff are in place, as well as clear frameworks and codes of conduct to address how possible conflicts of interest can be prevented and managed. Countries should address and regulate outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result, among other aspects. In particular, the frameworks should also regulate the “revolving door” – the movement of individuals between public office and private-sector jobs in the same area (in either direction) – which can result in conflicts of interest, as well as lobbying carried out by public officials. Furthermore, many countries lack effective sanctions, even for the most egregious violations.

Good practice examples

- The International Treaty on Exchange of Data for the Verification of Asset Declarations, signed on 19 March 2021 by Montenegro, North Macedonia and Serbia,³⁹ is the first agreement providing for a direct administrative exchange

³⁸ These principles have been referenced in the report of the Global Expert Group Meetings on Corruption involving Vast Quantities of Assets, which was noted in the UNCAC CoSP resolutions 8/7 and 8/9, https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/Advance_unedited_resolutions_final.pdf.

³⁹ Regional Anti-Corruption Initiative: Signing Ceremony of the International Treaty on Exchange of Data for the Verification of Asset Declarations, <https://www.rai-see.org/all-events/signing-ceremony-of-the-international-treaty-on-exchange-of-data-for-the-verification-of-asset-declarations/>.

of information concerning asset declarations between the parties of the Treaty.⁴⁰ It is open for any country to join, and may ultimately provide a global platform for tracing hidden assets abroad.

- Georgia has an extensive system in place ensuring full public access to the digital asset and interest declarations filed by public officials.⁴¹ After the country introduced an independent monitoring and verification mechanism in 2017, the number of violations started to decline. Civil society organisations are using the publicly accessible declarations extensively to independently verify the data and to detect and publicly discuss possible conflicts of interests and identify red flags for corruption.⁴²
- In Bhutan and Indonesia, asset declarations must be submitted annually by public officials, as well as upon starting and leaving a post. These reports are mostly managed via an electronic declaration system through which public officials submit their full report, which is then reviewed and verified by Bhutan's Anti-Corruption Commission and Indonesia's Corruption Eradication Commission (KPK). A summary of the declaration is made publicly available upon request in Bhutan, and published online in Indonesia.⁴³
- In Bulgaria and Greece, oversight bodies have direct access to banking data,⁴⁴ while in France and Timor-Leste, they may exchange data with Financial Intelligence Units.⁴⁵
- Conflicts of interest violations are criminal offences in many countries, such as France and Tunisia.⁴⁶
- Albania has been cleaning up its highly corrupt judiciary based on asset declarations. Since 2017, more than a hundred judges lost their jobs. In February 2021, the European Court of Human Rights confirmed the vetting procedure as being in line with human rights and as necessary to “ensure public trust” in public officials' integrity (ECtHR 15227/19).⁴⁷

Moving forward

- All Member States should require civil servants and public officials in decision-making positions and prominent public functions, including managers of state-

⁴⁰ Regional Anti-Corruption Initiative (2019): International Treaty on Exchange of Data for the Verification of Asset Declarations, <https://www.rai-see.org/what-we-do/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest/>.

⁴¹ Civil Service Bureau of Georgia, <https://declaration.gov.ge/?cult=en-US>.

⁴² Transparency International Georgia (2020): The Georgian Asset Declaration System is in Need of an Update, <https://transparency.ge/en/blog/georgian-asset-declaration-system-need-update>; <https://transparency.ge/en/tags/asset-declarations>.

⁴³ UNODC (2018): Income and Asset Declaration Systems in Indonesia, https://www.unodc.org/documents/southeastasiaandpacific/topics/anti-corruption/Indonesia_Asset_declaration_systems_Country_report_revised_TH_1.pdf.

⁴⁴ OECD (2018): Technical Report on Asset Declarations in Greece, <https://www.oecd.org/governance/ethics/technical-report-asset-declarations-greece-en.pdf>.

⁴⁵ Article L.561-31 Monetary and Financial Code (France); Article 46 para. 3 Law No. 7/2020 (Timor-Leste).

⁴⁶ Article 432-12 Penal Code (France); Chapter III, Law No. 2018-46 (Tunisia).

⁴⁷ Hoppe, Tilman (2021): Money Talks: The ECtHR is Getting Rid of Corrupt Judges, VerfBlog, <https://verfassungsblog.de/money-talks/>.

owned enterprises, as well as politically exposed persons, in particular those in positions exposed to a high risk of corruption, to comprehensively disclose their assets (held directly and indirectly, at home and abroad) and other relevant interests (including unpaid roles and positions, debts, sources of income and major expenses). These filings should be made annually (as well as upon taking and leaving a position) and be filed electronically to facilitate processing, verification and publication.

- Member States should make a firm commitment to mandate the release of information from these interest and asset declarations to the public through a freely accessible central online registry, including in open data formats to facilitate analysis.
- Member States should also establish an independent monitoring mechanism, equipped with adequate powers and resources, to conduct checks of declarations, provide guidance, promote compliance and initiate sanctions when officials fail to truthfully declare their assets and interests. Access to banking data, a limit of cash transactions, and an exchange of data with Financial Intelligence Units are important measures to improve the effectiveness of the monitoring mechanism.
- To ensure a clear separation of public position and private interests and to prevent and manage conflicts of interest (UNCAC Articles 7.4, 8 and 12.2(e)), Member States should adopt, implement and enforce adequate and comprehensive frameworks to address conflicts of interest for decision-makers in the public sector. Such frameworks should also regulate cases of the “revolving door” as well as lobbying by public officials.
- Member States should include criminal liability, as well as taxation and confiscation of any inexplicable wealth (with the burden of proof ultimately shifting to the declarant) as possible sanctions when officials do not comply with the disclosure requirements. Significant cases of non-compliance must lead to dismissal of public officials as well as to their ban from office.⁴⁸
- To address one of the top challenges in verifying asset declarations, Member States should engage in discussions on creating a framework for the international exchange of this information (UNCAC Articles 8, 14, 43 and 52). The verification across borders is also facilitated by Member States ensuring free public access to the declarations themselves, including an English language interface,⁴⁹ as well as to relevant registries (land registries, company registries, beneficial ownership registries, public procurement data, etc.).⁵⁰
- Similar frameworks for asset and interest declarations should also be introduced at least for senior officials in international organisations.

⁴⁸ See Venice Commission CDL-AD(2015)042 at no. 39; ECtHR 9 Feb 2021, 15227/19, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)042-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)042-e).

⁴⁹ See Art. 8 para. 4 of the International Treaty on Exchange of Data for the Verification of Asset Declarations, <http://www.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest/>.

⁵⁰ The International Treaty on Exchange of Data can serve as a reference for such efforts, <http://www.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest/>.

Civil Society Participation in Anti-Corruption Efforts

A well-informed and engaged civil society and the involvement of non-governmental stakeholders – non-governmental organisations, academia and the private sector – are crucial to effectively preventing and tackling corruption. Non-governmental stakeholders provide valuable expertise and experience, as well as a different perspective from that of public officials. Civil society participation can also help underscore the public interest in ensuring the right outcomes and help raise awareness about the processes underway.

Only 13% of people around the world live in countries with an open or narrowed civic space rating, a 2020 assessment by the NGO CIVICUS concluded, with civic space being on a downward spiral, including due to restrictions imposed by some governments that used the COVID-19 pandemic as a pretext for repression.⁵¹ The limitations of civic space on the national as well as the international level also affect civil society working to promote transparency, integrity and anti-corruption efforts. These developments are inconsistent with several UNCAC provisions, including Article 13 on civil society participation and access to information, as well as with Article 19 and other provisions of the UN Covenant on Civil and Political Rights.

Countless anti-corruption activists, reporters, witnesses and whistleblowers in numerous countries have to worry about their physical safety; too many have faced threats and persecution for uncovering and reporting on corruption and too many have been victims of attacks and/or assassinations.

Moving forward

- Member States should make a firm commitment to creating and maintaining a safe and enabling environment for civil society, and to eliminating any impediments in law and practice that constrain such participation contrary to the letter and the spirit of the UNCAC, international human rights standards and the 2030 UN Agenda for Sustainable Development. Member States should adopt appropriate measures for respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption and the ability for CSOs and the media to organise and operate independently and without fear of reprisal because of their anti-corruption work. The safety of anti-corruption activists, witnesses, whistleblowers, journalists and others who uncover and report on corruption needs to be ensured;
- Member States should recognise the contributions of civil society and other non-governmental stakeholders in anti-corruption efforts and firmly commit to strive for the broadest possible participation of CSOs in the UNGASS and in any follow-up fora, as well as in other regional and international fora discussing

⁵¹ CIVICUS Monitor 2020, <https://findings2020.monitor.civicus.org/downward-spiral.html>.

efforts to tackle corruption, in line with the OHCHR's Guidelines for States on the effective implementation of the right to participate in public affairs (adopted by the Human Rights Council in Resolution 39/11 by consensus).⁵²

- Member States should also commit to actively facilitating the participation of civil society and other non-state stakeholders in national anti-corruption efforts, in line with the spirit of the UNCAC by:
 - including civil society in the UNCAC implementation review processes;
 - involving civil society in the development of anti-corruption strategies and action plans (as well as the monitoring of their implementation) and in the drafting process of laws and policies linked to anti-corruption efforts through consultations;
 - ensuring effective access to information held by state bodies and facilitating monitoring efforts (public spending, public procurement, etc.);
 - creating an enabling and safe environment for non-governmental organisations, including civil society organisations.
- Member States should commit to protecting and expanding the opportunities for non-governmental stakeholders, including civil society and academia, to participate in UNCAC meetings, including by refraining from objecting against the attendance of NGOs, by agreeing to allow civil society observers in subsidiary bodies of the UNCAC Conference of States Parties, in line with the views expressed by the United Nations Office of Legal Affairs in a Legal Opinion from 2010⁵³, and by taking other measures to facilitate participation (i.e. the provision of visas by the host country, ensuring timely access to information needed for meaningful participation, providing opportunities to attend and speak at virtual meetings, etc.).

Effective Institutions

Building strong and effective institutions at all levels, in line with SDG 16.6, is essential to combating and preventing corruption. Captured, dysfunctional and ineffective oversight bodies and institutions are often at the centre of weak oversight systems. Without solid and effective institutions and an independent judiciary that is able to conduct corruption investigations, risks of corruption and impunity are high.

The UNCAC contains two separate provisions on anti-corruption bodies, mandating Member States to ensure the existence of one or more preventive anti-corruption body/bodies (UNCAC Article 6) and of a body, bodies or persons specialised in combating corruption through law enforcement (UNCAC Article 36). Both articles highlight that these anti-corruption bodies have to be able to act independently, receive

⁵² OHCHR: Guidelines for States on the effective implementation of the right to participate in public affairs: https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf, p. 17-19.

⁵³ UNODC (2010): CAC/COSP/IRG/2010/9 – Legal Opinion from the Office of Legal Affairs, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/29Nov-1Dec2010/V1056031e.pdf>.

adequate training and must be provided with sufficient resources. While most countries appear to have set up such bodies,⁵⁴ reports from numerous countries indicate that they often face attempts of political interference and lack the necessary budgetary and staffing resources to effectively fulfil their mandate. In this regard, institutional strengthening has to become a key priority in any anti-corruption strategy.

Good practice examples

- The Jakarta Statement on Principles for Anti-Corruption Agencies formulated by representatives of anti-corruption agencies (ACAs) from around the world in 2012 emphasises the importance of independent and effective anti-corruption agencies, providing clear recommendations on the ACA's independent leadership, transparency, the need for sufficient resources and autonomy, and the appointment of apolitical and impartial ACA heads.⁵⁵
- The International Organisation of Supreme Audit Institutions (INTOSAI) has published a set of transparency and accountability principles to assist Supreme Audit Institutions in strengthening their governance and independence. Furthermore, this publication highlights good practices that can be used by national Supreme Audit Institutions as guidance.⁵⁶

Moving forward

- Member States should take concrete steps to strengthen institutions that play a crucial role in national integrity systems, such as election commissions, regulatory and oversight bodies, financial intelligence units, law enforcement agencies and the judiciary, as well as the oversight role of parliaments. Where necessary, these steps should include actions to strengthen the operational and financial independence of these bodies, capacity-building measures, the development of codes of conduct and efforts to ensure they are adhered to in practice.
- Member States should seek to ensure the establishment of specialised anti-corruption bodies and agencies, and guarantee their independence through an adequate legal framework, building on UNCAC Article 36. In addition, Member States should guarantee that the principles of the Jakarta Statement are fully implemented and complied with, both in law and in practice, to ensure the independence and effectiveness of anti-corruption bodies and agencies.

⁵⁴ See: UNODC (2017, 2nd edition): State of implementation of the UNCAC: Criminalization, law enforcement and international cooperation, https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V.17-04679_E-book.pdf.

⁵⁵ Jakarta Statement on Principles for Anti-Corruption Agencies (2012), https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf. The Principles were noted by UNCAC States Parties in the CoSP Resolution 5/4.

⁵⁶ INTOSAI: Principles of transparency and accountability - Principles and Good Practices, https://dev.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_11_ISSAI_40/issai_21/issai_21_en.pdf.

- Member States should further ensure that these anti-corruption bodies and agencies are provided with the necessary powers and resources to carry out their functions effectively and can operate free from any undue influence (UNCAC Articles 6 and 36).

Criminalisation and Enforcement

Loopholes and gaps in legislation criminalising corruption offenses, weak or captured institutions, and a lack of political will often hinder effective investigations and prosecution of those who engage in corruption. In addition, numerous factors can undermine effective enforcement efforts, including inadequate protection of witnesses and whistleblowers, immunities for public officials, ineffective or inadequate international cooperation, weak and intransparent settlements and a lack of independence and resourcing of investigative bodies and the judiciary. It is therefore of utmost importance to remove these barriers to allow for and improve the effective investigation and prosecution of those who engage in or facilitate corruption and launder its proceeds.

Although the UNCAC covers the criminalisation of different corruption-related offences, the criminalisation of some of these offences is not mandated, but only encouraged. This applies to Article 16.2 (bribery of foreign public officials and officials of international organisations), Article 18 (trading in influence), Article 19 (abuse of functions), Article 20 (illicit enrichment), Article 21 (bribery in the private sector), Article 22 (embezzlement of property in the private sector), and Article 24 (concealment). A number of countries still allow their companies to pay bribes, either directly or through agents, when doing business abroad.

The Anti-Bribery Convention of the Organisation for Economic Co-operation and Development (OECD), adopted in 1997, requires each signatory country to criminalise bribery of foreign public officials.⁵⁷ With 44 signatory countries, the Convention is a useful instrument showcasing how foreign bribery can and should be criminalised. As Transparency International's 2020 Exporting Corruption report on the enforcement of OECD's Anti-Bribery Convention shows, many of the signatory countries have made progress in strengthening their legal frameworks and enforcement systems since signing the Convention but only four out of 41 countries were found to be actively enforcing foreign bribery provisions.⁵⁸

⁵⁷ OECD (2009): Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents, http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf.

⁵⁸ Transparency International (2020): Exporting Corruption – Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention, https://images.transparencycdn.org/images/2020_Report-Full_Exporting-Corruption_EN.pdf.

Moving forward

- To enable informed discussions of a country's enforcement system, Member States should commit to regularly publishing updated statistics on criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity. These statistics should be disaggregated by offence, including a separate category for foreign bribery. While there are legitimate reasons to ensure confidentiality with regard to ongoing investigations, there is no reason why general, anonymised data on the number of investigations cannot be published.
- Member States should address weaknesses in their legal frameworks and enforcement systems and ensure effective investigations and enforcement of all domestic and foreign corruption offences as well as money laundering offences and tax violations.
- In line with UNCAC Article 30.2, Member States need to ensure that immunities for public officials are strictly limited, and that there are transparent and effective procedures for suspending them. Furthermore, Member States should also guarantee that immunities and other privileges enjoyed by public officials – domestic, foreign and international – are not abused, and, in particular, are not used to shield individuals from accountability for corruption offences.
- Member States should commit to guaranteeing the operational independence of specialised enforcement bodies and their resourcing in line with UNCAC Article 36, as well as of the judiciary, pursuant to UNCAC Article 11, and put adequate safeguards in place to ensure there is no undue influence, including political influence, on enforcement decisions.
- Member States should ensure their capability to make and receive requests of mutual legal assistance (MLA), including electronically, and devote adequate resources to ensure, wherever possible, a timely and efficient processing and response to such requests.
- Although the criminalisation of certain corruption offences is not binding under the UNCAC, Member States should commit to criminalising and enforcing all corruption-related offences.

Protection of Whistleblowers and Corruption Fighters

Whistleblowers are individuals who use free speech rights to challenge abuses of power that betray the public trust. Whistleblowing is a powerful mechanism to expose corruption and other wrongdoing. Not only do whistleblowers provide a benefit to society and strengthen the functioning of institutions, they also benefit businesses by saving them money since a higher number of internal whistleblowing is associated with fewer and lower amounts of government fines and material lawsuits.⁵⁹

⁵⁹ Stephen Stubben and Kyle Welch, 'Evidence on the Use and Efficacy of Internal Whistleblowing Systems' (2020) 58 *Journal of Accounting Research* 473, quoted in: International Bar Association & Government Accountability Project (2021): *Are whistleblowing laws working? A global study of whistleblower protection*

Around the world, whistleblowers, witnesses, civil society activists, human rights and environmental defenders, as well as journalists face threats, intimidation and retaliation due to their involvement in uncovering and reporting on corruption. In most countries, the legal system in place does not provide them with adequate protection.

To date, only about 65 countries have comprehensive stand-alone laws (counting all EU member states currently implementing the EU Whistleblower Directive), meaning about 70 per cent of countries do not have a comprehensive national whistleblower law.⁶⁰ Even in countries that do have such laws in place, these are inadequate on paper or their implementation is flawed – in practice, weak laws may effectively be traps structured to rubber stamp retaliation for nearly all who challenge them. This can put whistleblowers in grave danger. Hence, without adequate and effective reporting and protection mechanisms, whistleblowers fear to speak out, which in turn increases levels of impunity as many corruption cases go unreported.

A recent report on the use of whistleblower laws by the CSO Government Accountability Project (GAP) and the International Bar Association found that in countries with whistleblower laws, these laws are widely underutilised, that the majority of whistleblowers do not formally succeed when filing complaints against the retaliation they face – and even when they formally win, they often face substantive financial losses due to the high costs of and lengthy procedures for resolving retaliation cases.⁶¹

Good practice examples

There are several directives or principles that establish minimum standards for the protection of whistleblowers. While the EU Directive 2019/1937 on Whistleblowers⁶² represents legally binding minimum standards for EU countries, the G20 High-Level Principles for the Effective Protection of Whistleblowers⁶³ are a political commitment on whistleblowing. Furthermore, the Tshwane Principles⁶⁴, as well as Transparency International's International Principles for the Protection of Whistleblowers⁶⁵ and Best Practice Guide for Whistleblowing Legislation⁶⁶ are all civil society proposals on the

litigation, p. 8, <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>.

⁶⁰ About 96 countries have sectoral or illusory whistleblower laws.

⁶¹ GAP, IBA (2021): Are whistleblowing laws working? A global study of whistleblower protection litigation, pp. 8-9, <https://whistleblower.org/wp-content/uploads/2021/03/Are-Whistleblowing-laws-working-REPORT.pdf>.

⁶² Official Journal of the European Union L 305/17 (2019): EU Directive (EU) 2019/1937 on Whistleblowers, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&rid=4>.

⁶³ German Bundesministerium der Justiz für Verbraucherschutz: G20 High-Level Principles for the Effective Protection of Whistleblowers, https://www.bmjv.de/SharedDocs/Downloads/EN/G20/G20_2019_High-Level-Principles_Whistleblowers.pdf?__blob=publicationFile&v=1.

⁶⁴ Open Society Foundations (2013): The Global Principles on National Security and the Right to Information (Tshwane Principles), <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf>.

⁶⁵ Transparency International (2013): International Principles for Whistleblower Legislation, https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

⁶⁶ Transparency International (2018): A Best Practice Guide for Whistleblowing Legislation, <https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation>.

topic of whistleblowing. The CSO Government Accountability Project (GAP) collected best practice approaches on whistleblower policies worldwide⁶⁷ and has mapped all existing whistleblower laws.⁶⁸

Some achievements regarding whistleblower protection are the following:

- In Argentina, the “National Program for the Protection of Witnesses and Defendants”⁶⁹ can also be applied to cases of public interest in exceptional cases and at judicial discretion, which could include corruption cases.
- In Uruguay, a unified corruption complaints portal⁷⁰ is managed by the independent national Transparency and Public Ethics Board with direct control by civil society. When a complaint is received through this portal, it is referred to the corresponding organism, and followed up on to make sure the necessary steps have been taken to investigate the complaint. Centralising the point of entry for whistleblower complaints allows for the collection of updated statistical information, for instance, on the volume of complaints, and on which bodies handle which types of complaints, among other indicators, which should then be made available to the general population.
- Numerous civil society organisations, including several member organisations of the UNCAC Coalition, media organisations and public bodies around the world operate secure online whistleblower mechanisms to receive reports about corruption.⁷¹
- Serbia’s experience illustrates that training can have a significant impact: The country requires that judges hearing cases are certified for completion of prior training on the whistleblower law. Unlike other nations where rights have taken years to have an impact, Serbian courts granted interim relief to 25 of 31 whistleblowers who filed reports during the first six months of this requirement being in place.

Moving forward

- Building upon Article 10, 13, 32 and 33 of the UNCAC and recognising the importance of whistleblower protection in both the public and private sector, all Member States should adopt and implement comprehensive legislation on reporting mechanisms, investigation of complaints and whistleblower protection in line with best practice and international standards, covering all areas (including administrative and labour violations as well as criminal conduct).⁷² This legislation should provide for confidential, anonymous and secure

⁶⁷ See GAP: <https://whistleblower.org/international-best-practices-for-whistleblower-policies/>.

⁶⁸ See GAP (2021): <https://whistleblower.org/map-2/>.

⁶⁹ Ministerio de Justicia y Derechos Humanos. Presidencia de la Nación (2003): Programa Nacional de Testigos e Imputados, Ley 25.764, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/87581/norma.htm>.

⁷⁰ Junta de Transparencia y Ética Pública: Portal de denuncias: Anónimas, <https://www.gub.uy/tramites/portal-denuncias-anonimas>.

⁷¹ For examples, see GlobalLeaks.org: <https://www.globaleaks.org/usecases/anticorruption/>.

⁷² International Principles for Whistleblowing Legislation (2013), https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

reporting mechanisms within entities, where appropriate, and external mechanisms operated by anti-corruption authorities, as well as the recognition of civil society-driven whistleblower platforms. The legislation should provide robust legal protection from retribution and criminalisation to all whistleblowers and their families, including those reporting to CSOs and the media. Finally, whistleblower laws should ensure that the losing party of legal proceedings does not pay the other party's fees, since this represents a significant aspect of dissuasion for potential whistleblowers.

- Member States should ensure that all threats against whistleblowers, witnesses, journalists and civil society activists involved in pursuing corruption cases be taken seriously and that effective assistance be granted in a timely manner by relevant authorities, or, where appropriate, through international, regional and bilateral channels.
- Member States should ensure that libel is decriminalised and that the laws governing freedom of speech and the media cannot be misused to silence those who investigate and uncover corruption, demand transparency and hold decision-makers to account.
- Member States should commit to granting the right to asylum or other forms of support to those who are persecuted or intimidated because of uncovering corruption and wrongdoing.
- Member States that already have whistleblower legislation in place should reassess its effectiveness and the implications that whistleblowing has in practice to help inform legislative amendments and procedural updates.
- Agencies and institutions in the public and private sector dealing with whistleblower complaints should thoroughly document their responses to these complaints, so that this response could be evaluated by specialised independent anti-corruption bodies and information on the response can be published (while respecting the whistleblower's right to anonymity and data protection laws).
- Member States should be required to publish court and/or agency case decisions, as applicable, on websites with searchable databases. Furthermore, States should publish reports with consolidated information about how agencies are handling disclosures. The resolution of whistleblower disclosures is one of the most important indicators of an effective whistleblower system. Reporting metrics should be consistent and report essential data, including:
 - the number of disclosures submitted and referred to another agency;
 - the number of disclosures investigated and concluded; and not investigated;
 - the number of substantiated versus unsubstantiated disclosures; and
 - how all outcomes of substantiated investigations made a difference, either in terms of financial recoveries, changes in law, or tangible impacts,
 - any applicable reward provided to the whistleblower;

- how many requests for investigation and protection informal remedial agencies received and how many were granted;
- how many whistleblower complaints were filed and how many were confirmed; and
- how confirmed retaliation complaints were resolved.
- After creating an adequate legal protective framework for whistleblowers, governments and communities on the national, regional and local level should promote whistleblowing as a necessary tool to detect and deter from corrupt practices in society. In this way, the existing barriers of fear of retaliation can be lowered resulting in more transparency and less impunity. Member States should target negative attitudes that vilify whistleblowers through public education campaigns and training for various stakeholders including law enforcement, employers, lawyers, and NGOs.

Grand Corruption

The UNGASS provides an important opportunity to address the ever-increasing problem of grand corruption and to tackle the impunity of culprits in grand corruption cases. Grand corruption schemes usually involve both public and private actors across multiple jurisdictions that are not held accountable by national justice systems. Currently, international frameworks do not provide a strong basis to address the prosecution of these culprits, to ensure that victims receive reparations for the harm caused and to guarantee the protection of investigators, activists, judges and whistleblowers who shed light on these cases. Moreover, through a gross misappropriation of public funds and resources and the resulting lack of financial means for the education and health sector, among others, grand corruption provides a serious threat to the fulfilment of the 2030 Agenda for Sustainable Development.

Improved, more effective, and possibly also new mechanisms for international cooperation are needed to successfully investigate and prosecute grand corruption cases and Member States should use the UNGASS to discuss and evaluate options for new international mechanisms, approaches and a new legal infrastructure to do so.

The 2019 Oslo Statement, which was adopted by the UN Expert Group Meeting on Corruption Involving Vast Quantities of Assets (VQA), provides a wide range of valuable suggestions that can serve as reference points for addressing grand corruption.⁷³ It includes recommendations on new international standards and agreements (e.g. with regard to asset verification, beneficial ownership transparency, public registers of legal entities and the concept of legal privilege), on improved systems and approaches (e.g. strengthened international reviews of anti-corruption and anti-money-laundering systems, improved international information sharing

⁷³ Oslo Statement on Corruption involving Vast Quantities of Assets (2019), https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo_Outcome_Statement_on_Corruption_involving_Vast_Quantities_of_Assets_-_FINAL_VERSION.pdf.

systems, strengthened global networks of law enforcement authorities working on VQA cases, joint investigation in transnational cases), on the protection of enforcers (e.g. anti-corruption bodies, whistleblowers, journalists and civil society activists), and highlights the need for further international research. The statement was noted in resolution 8/7 and 8/9 of the eighth CoSP in 2019.

Recently, various considerations have been made to reform international justice institutions in order to appropriately address the scale and nature of grand corruption. One proposal put forward by US Judge Mark Wolf is to create an international anti-corruption court with jurisdiction over grand corruption cases.⁷⁴ Other proposals for reforming the international criminal law structure include extending the jurisdiction of the International Criminal Court (ICC), establishing regional anti-corruption courts, creating international or regional anti-corruption prosecutors, enforcement agencies of investigative agencies, or setting up frameworks for ad hoc international anti-corruption courts or ad hoc international prosecution focused on one country.⁷⁵ All of these ideas need further research and discussions. Yet, the international community should acknowledge the need to strengthen and further develop the justice system on an international level to end impunity in grand corruption cases.

Good practice examples

In Guatemala, the CICIG (*Comisión Internacional Contra la Impunidad en Guatemala* - International Commission against Impunity in Guatemala), an independent anti-corruption body that was operative from 2007-2019 with UN support, was one of the first initiatives to address grand corruption in one country with the support and guidance of the United Nations. During its mandate, the CICIG worked alongside investigators and prosecutors to reveal criminal networks entrenched with state power. Its investigations into a criminal network involving the tax and customs agency led to the resignation of the President and Vice-President, as well as other officials in 2015. Next to these prosecution cases, the CICIG has also worked on deeper electoral and judicial reforms to address grand corruption in Guatemala in an all-encompassing way.

Moving forward

- Member States should explicitly recognise grand corruption as a threat to the 2030 Agenda for Sustainable Development and should initiate discussions on

⁷⁴ See Integrity Initiatives International: <http://www.integrityinitiatives.org/international-anticorruption-court>; Remarks of the Foreign Minister of Colombia Mr. Carlos Holmes Trujillo, at the Meeting of the Global Expert Group On Corruption Involving Vast Quantity of Assets (2019), https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Presentations/Opening_Carlos_Holmes_Trujillo_Colombia.pdf; Remarks of Judge Mark L. Wolf, Chair of Integrity Initiatives International, to the Global Expert Group Meeting on Corruption Involving Vast Quantities of Assets (2019), https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Presentations/Mark_Wolf_-_USA.pdf.

⁷⁵ See U4 Anti-Corruption Resource Centre (2019): An International Anti-Corruption Court? A synopsis of the debate, <https://www.u4.no/publications/an-international-anti-corruption-court-a-synopsis-of-the-debate>.

a definition of grand corruption.⁷⁶ Member States should agree on a common understanding of the term and on legal and institutional mechanisms and procedures to combat it, including the introduction of a criminal offence of grand corruption.

- Relatedly, the political declaration of the UNGASS on corruption could mandate the creation of a UN expert working group or task force to oversee a research initiative on the impact of grand corruption and on innovative ideas to reform the international legal infrastructure. This expert working group or task force should lay the foundations for a legal definition of grand corruption and for improved structures and mechanisms to prosecute grand corruption cases.
- Each Member State should take effective action against the serious crime of grand corruption and should encourage the exercise of extraterritorial jurisdiction for the prosecution of the same on a national, regional and international level, in line with UNCAC Article 16.2.
- Member States also need to ensure that domestic immunities for public officials are strictly limited with transparent and effective procedures for suspending them (UNCAC Article 30.2) and that those immunities and other privileges enjoyed by public officials – domestic, foreign and international – are not abused or used to shield individuals from accountability for corruption offences or to provide safe havens for their ill-gotten gains.

Settlements

Settlements are often used to address large-scale international corruption cases. More than 80% of foreign bribery cases in OECD countries have been resolved through non-trial resolutions.⁷⁷ However, they often fall short of delivering justice and holding those involved in corruption accountable. In particular, many settlements do not ensure adequate transparency of the terms or adequate penalties or sanctions for the companies involved, exempting them from admitting any wrongdoing and publicly exposing this wrongdoing. The advantage of settlements can be that they address cases that would otherwise take many years in court, which would elevate costs for the public, as well as the parties involved, relatively quickly. However, settlements often fail to ensure that the countries and groups that have been victims of a corruption case are included and compensated.

Since many settlements allow senior executives to escape the consequences of the corrupt practices their companies engaged in, transparency is primordial, especially in

⁷⁶ Transparency International is currently working on a new legal definition of grand corruption, which focuses on three main points: 1) it is a scheme with a systematic or well-organised plan of action; 2) it involves high-level public officials; 3) it causes serious harm, which can take the form of large-scale misappropriation of public resources or gross violations of human rights. For more details, see Transparency International's separate submission to the UNGASS,

<https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TransparencyInternational.pdf>.

⁷⁷ OECD (2019): Resolving Foreign Bribery Cases with Non-Trial Resolutions, <https://www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm>.

grand corruption cases, to expose all of the actors involved, including the persons in charge, the recipients of bribes, mediators, as well as the facilitators (lawyers, accountants, consultants, banks, agents, etc.).⁷⁸

Moving forward

- Member States should commit to making settlement agreements public, including their terms of justification, the facts of the case and the resulting offences. They should be subject to judicial review and provide for effective sanctions. Relatedly, Member States should ensure that settlement procedures involve countries and groups affected by the foreign bribery, and, to the extent possible, include reparations for damages caused by the corruption as part of the settlement agreement.
- Member States should develop and implement common guidelines for settlements in corruption cases, building on previous work by the OECD.⁷⁹ Settlements should at a minimum:
 - be used only with companies that genuinely self-report, cooperate fully and have properly addressed the wrongdoing internally, including with a credible compliance programme;
 - provide for admission of wrongdoing and full and specific details of the wrongdoing;
 - provide for effective, proportionate and dissuasive sanctions, including the full benefit received from the wrongdoing;
 - provide for compensation to those harmed by the offence, including foreign victims;
 - require that any agreement, both its terms and justification, be subject to a public judicial hearing and to final court approval;
 - include the publication of the agreement and the related court decisions as well as, upon completion of the terms of the agreement, publication of the details on the actual performance of the agreement;
 - provide that, if agreed upon with companies, does not exclude the prosecution of individuals, with no employer contribution to their fines (UNCAC Articles 26.4 and 30.1).

Remedies for Victims of Corruption

Corruption is not a victimless crime, but can cause a wide range of direct and indirect damages to institutions, communities, the public and individuals. The individual, collective and social damages caused by corruption can be material, for instance,

⁷⁸ CSO Letter to OECD on Principles for the Use of Non-Trial Resolutions in Foreign Bribery Cases, <https://uncaccoalition.org/cso-letter-to-oecd-on-principles-for-the-use-of-non-trial-resolutions-in-foreign-bribery-cases/>.

⁷⁹ OECD (2019): Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention, <https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf>.

where there is a financial loss, or immaterial, when, for example, opportunities are lost. In communities, the harms are often to health (tainted medicines, hospitals not built) and livelihoods (land-grabbing, environmental harm), and include loss of opportunity (reduced access to education) and diminished quality of life (prohibitively high costs of water, electricity and other public services).⁸⁰

The rights of victims of corruption are recognised by the UNCAC (Articles 32, 34 and 35), but implementation reviews indicate that while many countries do have legal frameworks that allow for reparations to victims of corruption, reparations only happen in very few cases.⁸¹

In addition to the UNCAC, the rights of victims are also a point of interest in several international fora, as evidenced, for instance, by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁸², the UN Guiding Principles on Business and Human Rights⁸³, which provide a protect, respect and remedy framework, and the 2015 UN Doha Declaration on Crime Prevention and Criminal Justice.⁸⁴ In addition to UNCAC Articles 32, 34 and 35, the Council of Europe Civil Law Convention on Corruption explicitly expresses the need for adequate compensation for victims of corruption. The European Parliament in a 2012 resolution called for a horizontal application of principles of collective redress for all areas across the EU⁸⁵, which was followed by a recommendation on common principles for injunctive and compensatory collective redress mechanisms in EU Member States from the European Commission in 2013.⁸⁶

Nevertheless, victims of corruption are hardly ever included in court proceedings, and rarely receive compensation, as they would with other crimes. Although in some countries legal frameworks allow for redress (for instance in cases of environmental litigation), lawyers and judges often do not make use of these avenues of

⁸⁰ UNCAC Coalition statement to the 7th Conference of States Parties in Vienna on “Recovery of Damages and Compensation for Victims of Corruption” (2017), <https://uncaccoalition.org/files/UNCAC-Coalition-Victims-Statement.pdf>.

⁸¹ See UNCAC Coalition: Civil society parallel reports on UNCAC implementation, <https://uncaccoalition.org/uncac-review/cso-review-reports/>; UNODC (2019): State of implementation of the United Nations Convention against Corruption – Criminalization, law enforcement and international cooperation, https://www.unodc.org/res/ji/import/international_standards/state_of_implementation_uncac/state_of_implementation_uncac.pdf.

⁸² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: adopted by UN General Assembly resolution 40/34 of 29 November 1985; See <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

⁸³ OHCHR (2011): Guiding Principles on Business and Human Rights, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁸⁴ UNODC (2015): Doha Declaration, article 5(l), https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf.

⁸⁵ Official Journal of the European Union C 239 E/32 (2013): European Parliament Resolution on ‘Towards a Coherent European Approach to Collective Redress’, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012IP0021&from=EN>.

⁸⁶ Official Journal of the European Union L 201/60 (2013): European Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013H0396&from=EN>.

compensation. This may be because victims have to prove the direct harm caused by corruption, which in circumstances where communities were harmed may be difficult.

Good practice examples

There are few established good practices on the compensation of victims of corruption, as there are relatively few documented cases where compensation is provided and where victims of corruption are given close consideration when corruption cases are resolved. Some of the noteworthy examples are:

- In the United Kingdom, the compensation of victims is becoming a regular feature of foreign bribery cases and the enforcement bodies have developed principles for compensation in corruption cases.⁸⁷
- In France, several CSOs have legal standing to initiate criminal proceedings in grand corruption cases. The CSO Sherpa has initiated two complaints which led to successful convictions.
- In Costa Rica, the Criminal Procedural Code allows for prosecutors to launch civil action in cases of damages to collective or diffuse interests stemming from criminal offenses and recognises organisations such as NGOs as victims if they are directly affected. Prosecutors have made good use of this framework, for instance, in corruption cases involving high-ranking officials.⁸⁸ This includes compensation for non-financial damage caused by grand corruption, using the concept of “moral damage” to assess the harm caused.⁸⁹

Moving forward

- Recognising that corruption is not a victimless crime, Member States should commit to establishing legal frameworks to enable and facilitate the compensation of both individual and collective victims (communities), including when cases are resolved through settlements and when cases are linked to corruption in several countries.
- Member States should grant independent non-governmental organisations and civil society organisations the right to have legal standing before all courts to represent individual and collective victims of corruption.
- Member States should commit to increasing their efforts to repair damages caused by corruption by providing victims with material and/or symbolic reparations, ensuring that compensation is provided at the earliest possible

⁸⁷ Serious Fraud Office: Compensation Principles to Victims Outside the UK, <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/sfo-operational-handbook/compensation-principles-to-victims-outside-the-uk/>.

⁸⁸ See Olaya J, Attisso, K., Roth, A. (2011): Repairing Social Damage Out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1779834.

⁸⁹ Sistema Costarricense de Información Jurídica: Código Procesal Penal N° 7594, Artículo 38, 70, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297.

stage, rather than only after the conclusion of all civil or criminal proceedings, which may drag on over many years.

Asset Recovery

While almost all Member States have committed to implementing an asset recovery framework under Chapter V of the UNCAC, only few countries are actively promoting the recovery and return of assets originating from corruption. Under SDG 16.4, Member States have committed to advance the recovery and return of stolen assets. To do so, new and improved efforts and mechanisms of international cooperation are needed.

So far, only a small percentage of the roughly estimated USD 400 billion proceeds of corruption from developing countries has been recovered and returned in the last 10 years.⁹⁰ Especially in grand corruption cases, an effective and transparent implementation of asset recovery could help end impunity and compensate victims of corruption.

Good practice examples

The involvement of civil society has proven very valuable in initiating asset recovery claims and monitoring the return and disbursement of recovered assets:

- In Nigeria, civil society is closely involved in monitoring the return of stolen assets from Switzerland in the return of the so-called Abacha loots. Many of the returned assets are being distributed among highly vulnerable constituencies.⁹¹
- In France, the CSO Sherpa brought two cases to court, resulting in substantial assets being recovered from foreign leaders and their close relatives.⁹²
- The BOTA foundation was created after lengthy discussions between the governments of the United States, Switzerland and Kazakhstan about the return of the assets an American stole, which had been frozen for many years, from a Swiss account to Kazakhstan. During its five and a half years of operation until 2014, the BOTA Foundation had successfully returned USD 80 million of the USD 115 million, using these proceeds to directly benefit poor children, youth and mothers in Kazakhstan. It has been described as a successful example for accountable, transparent and effective return of

⁹⁰ StAR's "Handbook on Asset Recovery" (2011) includes an estimate that USD 20 – 40 billion is lost to developing countries each year through bribery, misappropriation of funds, and other corrupt practices. The joint StAR/OECD report "Few and Far: The Hard Facts on Stolen Asset Recovery" (2014) showed that in the period 2006 -2012, OECD member states froze only USD 2.6 billion and returned USD 423.5 million to the respective countries of origin. See the report here: <https://www.oecd.org/dac/accountable-effective-institutions/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf>.

⁹¹ ANEEJ (2020): ANEEJ, MANTRA Partners Set to Monitor \$308m Abacha 3 Loot from Jersey, <https://www.aneej.org/aneej-mantra-partners-set-to-monitor-308m-abacha-3-loot-from-jersey/>.

⁹² Sherpa: <https://www.asso-sherpa.org/ill-gotten-gains-the-trial-of-teodoro-nguema-obiang-of-the-president-of-equatorial-guinea-finally-starts> and <https://www.asso-sherpa.org/ill-gotten-gains-rifaat-al-assad-uncle-of-the-syrian-president-convicted-in-france-for-laundering-to-the-detriment-of-the-syrian-people>.

recovered assets stemming from corruption.⁹³ Its success can be attributed to the willingness of the governments involved to cooperate, competent local staff of the BOTA Foundation, the role of the World Bank as the “honest broker” that oversaw the establishment and functioning of the foundation, and giving civil society a key role in this undertaking.⁹⁴

In the context of the Global Forum on Asset Recovery (in which the United States, the United Kingdom, Nigeria, Sri Lanka, Tunisia and Ukraine participated), ten principles for the disposition and transfer of confiscated stolen assets in corruption cases, the so-called “GFAR Principles” were developed. These principles address issues such as transparency and accountability, the compensation of victims, and the involvement of civil society.⁹⁵

Moving forward

- Building on Chapter V of the UNCAC, Member States should consider a new multilateral agreement on asset recovery to advance justice, human rights and the achievement of the 2030 Agenda for Sustainable Development. Such an agreement should cover all illicit financial flows and could be a protocol to the UN Convention against Corruption or a stand-alone General Assembly-approved instrument.⁹⁶
- Member States should make firm commitments on taking decisive action to ensure that SDG 16.4 on significantly improving asset recovery and return by 2030 is fulfilled, in particular by enhancing proactive and timely information sharing, by pursuing corrupt officials domestically, and by implementing adequate laws on legal standing (UNCAC Articles 53 and 56).
- Asset recovery must be accountable and transparent at all stages of the process. Civil society has to play an important role in asset recovery – a role that should be properly and formally recognised. Member States should adopt frameworks to allow for the admission of public interest claims in relation to the recovery of proceeds of corruption which were transferred abroad (UNCAC Articles 13 and 35).
- Member States should enact and implement comprehensive laws providing for the confiscation of any asset obtained through or derived from the commission of an offence established by the Convention and allowing for quick freezing of assets suspected to be derived from the commission of such offences (UNCAC

⁹³ Aaron Bornstein (2017): The BOTA Foundation Revisited - Part Three: Why was BOTA so successful?, <https://fcpablog.com/2017/3/7/the-bota-foundation-revisited-part-three-why-was-bota-so-suc/>.

⁹⁴ Aaron Bornstein (2017): Key Lessons of the BOTA Foundation, <https://fcpablog.com/2017/04/05/aaron-bornstein-key-lessons-of-the-bota-foundation/>.

⁹⁵ Global Forum on Asset Recovery (GFAR) (2017): GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

⁹⁶ See the full proposal developed by Transparency International and the UNCAC Coalition here: https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI_UNCAC_Coalition_Proposal_for_Asset_Recovery_Agreement.12.6.2020.pdf.

Article 3). Assets recovered should be used for repairing the harm caused by grand corruption, and for implementing measures to accomplish SDG 16.

- Furthermore, Member States should ensure that returned assets pursuant to the Convention are used and managed in line with the Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (“GFAR Principles”)⁹⁷ and in a manner that contributes to fulfilling the SDGs, and to the reparation of the damage caused to victims and to society. Member States should work to develop and apply guidelines on best practices on asset management and return, which encompass these principles.
- Member States also need to intensify their efforts to effectively prevent illicit financial flows originating from corruption offences. In order to be able to identify relevant assets, Member States need to ensure that comprehensive anti-money laundering frameworks are in place, implemented and enforced in all relevant sectors, both by financial institutions and designated non-financial businesses and professions (casinos, real estate agents, luxury good dealers, lawyers, etc.), requiring that these actors carry out adequate customer due diligence, keep records, and report suspicious transactions (UNCAC Article 52 and Financial Action Task Force (FATF) recommendations 22 and 23). In particular, those Member States that are popular destinations of stolen assets have to ensure that adequate legal and policy frameworks, as well as sufficient institutional capacity, are in place to restrict and prevent incoming illicit transfers.

Cross-cutting Issues

Gender and Corruption

Despite the recognised importance of gender equality for sustainable development in the 2030 Agenda, particularly in SDG 5 on achieving gender equality and the empowerment of all women and girls,⁹⁸ the UNCAC does not address the linkages between gender and corruption. This is problematic, as, although both men and women are negatively impacted by corruption, women are more severely affected by certain gendered forms of it, such as sextortion.⁹⁹ The term sextortion describes the abuse of power to obtain a sexual benefit or advantage.¹⁰⁰ Currently, gendered forms of corruption, and specifically sextortion, are issues that greatly lack visibility and recognition on both international and national levels, allowing it to operate with impunity. So far, no country legislation acknowledges sextortion as a form of

⁹⁷ See: GFAR (2017): <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

⁹⁸ Besides SDG 5, gender equality also relates to SDG 16 (promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels) and is generally highlighted as a cross-cutting issue across the 2030 Agenda.

⁹⁹ Please note that LGBTIQ+ persons may also be victims.

¹⁰⁰ IAWJ (2012): Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion, <http://www.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>.

corruption, failing to recognise sexual favours and other non-monetary benefits as a form of bribery. Moreover, due to a culture of shaming and victim-blaming, the barriers for reporting cases of sextortion are high and even if cases are reported, they are likely to be dismissed.

This has far-reaching consequences, since it negatively affects access to employment, education and basic services such as medical treatment, justice and law enforcement and limits opportunities for professional development, political involvement, building businesses, etc. Women are also disproportionately affected by the impacts of the COVID-19 pandemic.¹⁰¹ Therefore, it is of utmost importance to go beyond the text of the UNCAC and recognise and address gendered forms of corruption and their impacts and to take appropriate political measures accordingly.

As Transparency International's 2019 Global Corruption Barometer shows, one in five persons in Latin America and the Middle-East and North-Africa (MENA) region has experienced or knows someone who has experienced sextortion when accessing public services.¹⁰² Collecting gender-disaggregated data on experiences of corruption is crucial to address the problem. The careful use of semantics when doing so is of utmost importance since sex is still considered a taboo topic in many parts of the world, which in turn increases the likeliness of women not reporting such incidences.

Only once sextortion is officially recognised as a form of corruption, can further steps be taken, such as tailoring policies, improving legal frameworks for both prosecution and reporting mechanisms, and training officials and prosecutors on gender-sensitive approaches. The best results in this regard can be achieved by including more women in public life in general and in the drafting of anti-corruption policies. Greater cooperation of States with civil society organisations, academia and the private sector who work on both the topics of corruption and gender would ensure the integration of women's experiences of corruption in legislation and practice.

Good practice examples

Since the International Association of Women Judges (IAWJ) coined the term sextortion in 2008, important progress has been made. The IAWJ has produced a toolkit to be used for awareness-raising among judges, prosecutors, and other

¹⁰¹ SIDA (2015): Gender Tool Box – Gender and Corruption, <https://www.sida.se/contentassets/165672c0e28845f79c8a803382e32270/gender-and-corruption.pdf>;

Transparency International (2019): COVID-19 makes women more vulnerable to corruption, <https://www.transparency.org/en/news/covid-19-makes-women-more-vulnerable-to-corruption>.

¹⁰² Global Corruption Barometer 2019, Latin America and the Caribbean, <https://www.transparency.org/qcb10/latin-america-and-the-caribbean?qcb10/lac>; MENA region, <https://www.transparency.org/qcb10/middle-east-and-north-africa?qcb10/mena>.

stakeholders,¹⁰³ and has conducted a first comparative study of laws to prosecute gendered forms of corruption.¹⁰⁴

In many international anti-corruption fora and conferences, such as the UNCAC Conference of the States Parties (CoSP) and the International Anti-Corruption Conference (IACC), the link between gender and corruption has increasingly been discussed. The OECD, GRECO and UNODC have also started to address the issue.

Moreover, since 2019, Transparency International has included specific questions about sextortion in its annual Global Corruption Barometer, allowing for better data estimates regarding this topic.

In Indonesia, the SPAK movement (Saya Perempuan Anti-Korupsi – I am a Woman against Corruption) provides a good example for how awareness about gendered dimensions of corruption can be raised.¹⁰⁵ Through SPAK, over 2,000 women across 34 provinces have been trained to facilitate workshops within households and educational institutions. Increasingly, these efforts have sparked the interest of law enforcement institutions and local governments, and SPAK has been asked to run their workshops at police stations across Indonesia.

Moving forward

- Member States should acknowledge gendered forms of corruption, and in particular, should recognise that corruption can take the form of sextortion.
- Member States should seek to ensure that sextortion is acknowledged as a form of bribery, and that it is criminalised to the same extent as similar acts of corruption involving financial favours under national laws in line with UNCAC Articles 15.2, 16.2, 18 and 21.
- Member States should produce gender-disaggregated data on corruption offences and include sextortion as a specific form of bribery in surveys to allow for better estimations of the frequency and case numbers of gendered forms of corruption. Member States should further adapt a common definition of sextortion and develop common standards and methodologies about gender forms of corruption in line with the suggestions made in UNCAC Article 61.2.
- Member States should create safe and gender-sensitive reporting mechanisms for women and other vulnerable persons, ensuring confidentiality, privacy and psychological support. Moreover, Member States should provide whistleblower or other protection laws for those who report sextortion in line with UNCAC Articles 32 and 33. Women should be consulted in the design of such reporting

¹⁰³ IAWJ (2012): Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion, <http://www.iawi.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf>.

¹⁰⁴ IAWJ (2015): Combating Sextortion - A comparative Study of Laws to prosecute Corruption involving Sexual Exploitation, <http://www.iawi.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-2.pdf>.

¹⁰⁵ For more information, see: <http://www.spakindonesia.org>.

mechanisms to identify common barriers to reporting and develop appropriate and context-specific responses.

- Member States should be gender inclusive and gender-responsive in the design, delivery and implementation of technical assistance.
- Member States should raise awareness about gendered forms of corruption in public institutions by addressing the topics in workshops and by closely cooperating with relevant civil society actors to organise events and trainings.

Climate and Environment

Since the creation of the UNCAC, the climate crisis and environmental protection has steadily risen to the top of the list of global priority issues. There is a strong link between corruption, climate change, environmental destruction and the exploitation of natural resources; yet many of these corruption cases go unnoticed and unpunished. Corruption is widespread in the obtaining and granting of different types of permits and concessions in the extractive as well as import and export industries. Similarly, the illegal extraction of natural resources and wildlife, and the dumping of toxic waste can have detrimental effects not only on our climate and the environment, but also on local communities who depend on these resources for survival.

Good practice examples

- The global Publish What You Pay (PWYP) movement works to address a severe lack of transparency in the extractive industries, as well as corruption and mismanagement in several resource-rich countries.¹⁰⁶
- The Extractive Industries Transparency Initiative (EITI)¹⁰⁷ aims to promote accountability and transparency in the management of oil, gas and mineral resources around the world. With the support of a coalition of governments, companies and civil society, the EITI Standard requires its 53 participating countries to disclose specific information on how contracts and licenses are allocated, the beneficial owners involved, and details about how revenues from the extractive industry pass through the government and ultimately benefit the public.¹⁰⁸
- The European Union requires companies in the extractive and logging industries to report on their payments to governments. The EU accounting directive and the transparency directive require companies in the mining and forestry sectors to report on the taxes, royalties and bonuses they pay worldwide. A proposed new directive that would require large multinational companies to publish country-by-country information on where they make their

¹⁰⁶ Publish What You Pay (PWYP): About, <https://www.pwyp.org/about/>.

¹⁰⁷ EITI: About, <https://eiti.org/who-we-are>.

¹⁰⁸ EITI: EITI Standard 2019, <https://eiti.org/document/eiti-standard-2019>.

profits and where they pay taxes appears to be moving forward.¹⁰⁹ Furthermore, the 2019 EU Investor Disclosure Regulation¹¹⁰ requires investors to disclose information on their impacts on people and the planet, as well as which actions they will take to prevent damage.¹¹¹

Moving forward

- In line with CoSP resolution 8/12, Member States should recognise the significant interlinkages between corruption, climate change, environmental destruction and the exploitation of natural resources (including in the wildlife, timber and fishing sectors) and the detrimental impact it has on society as a whole in terms of health, security, development, as well as on the economy and government revenues, and that crimes of this manner are oftentimes transnational in nature.
- Member States should use the UNGASS to come up with concrete actions to fight corruption in the obtaining and granting of building permits, carbon emissions permits, concessions in the extractive industries, as well as of permits and certificates for imports and exports of illegally obtained natural resources or wildlife and those obtained during environmental inspection processes (UNCAC Articles 15, 16, 18, 19 and 21) in line with SDG 13 on climate action and SDG 15 on life on land.
- To detect and prevent corruption as it relates to climate and the environment, Member States should strengthen technical assistance and capacity building for cross-cutting cooperation with multiple stakeholders including local communities, civil society and academia, as well as with other international, regional and national legal instruments such as the UN Convention against Transnational Organized Crime (UNTOC).
- Member States should put in place effective mechanisms to prevent money-laundering and to effectively prosecute those who commit crimes of corruption as they relate to climate and the environment (UNCAC Articles 23 and 60).¹¹² In this context, Member States should introduce country-by-country reporting

¹⁰⁹ European Commission (2021): Public country-by-country reporting, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en#requirements-for-extractive-and-logging-industries; Council approves greater corporate transparency for big multinationals, <https://www.consilium.europa.eu/en/press/press-releases/2021/03/03/council-approves-greater-corporate-transparency-for-big-multinationals/>.

¹¹⁰ Official Journal of the European Union L 317/1 (2019): EU Investor Disclosure Regulation 2019/2088 on sustainability-related disclosures in the financial services sector, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019R2088&from=EN>.

¹¹¹ Global Witness: EU Investor Disclosure Regulation: <https://www.globalwitness.org/en/campaigns/european-union-brussels-global-witness-eu/eu-investor-disclosure-regulation/>.

¹¹² See: Transparency International (2015): Addressing Corruption in an Era of Climate Change. Submission to the 6th UNCAC CoSP, <https://uncaccoalition.org/files/T1-Climate-change.pdf>. UNEP (2018): The State of Knowledge of Crimes that have Serious Impact on the Environment, pp. 16-24, https://wedocs.unep.org/bitstream/handle/20.500.11822/25713/knowledge_crime_envImpacts.pdf?sequence=1&allowed=y; UNODC (2012): Corruption, Environment and the United Nations Convention against Corruption, https://www.unodc.org/documents/corruption/Publications/2012/Corruption_Environment_and_the_UNCAC.pdf.

requirements for multinational corporations, requiring the disclosure of payments made to governments.

- Member States should develop legal frameworks that require private as well as state-owned companies to consult with local communities before starting projects that will affect the climate and environment they depend on, and to respect and adequately investigate their concerns.
- Collusion between the government and companies in the concession of building or extractive permits often goes hand in hand with withholding relevant information from the people affected by these projects, even if the legal framework that requires them to do so is in place. Therefore, Member States should facilitate and publish easily accessible information on environmental management and natural resources as well as on public procurement in this sector in order to increase transparency and the possibility for civil society to monitor this information.

Strengthening of the UNCAC Review Process

Numerous countries have emphasised the need to make progress with the implementation of UNCAC provisions during the e UNGASS preparatory process.

The peer-review process established as part of the Implementation Review Mechanism (IRM) in 2009 set low minimum standards in terms of the review process' transparency and inclusiveness.

The first phase of the IRM, comprising two review cycles, was planned to be completed by 2020. However, due to significant delays in most stages of the review process, instead of a foreseen duration of 6 months, the median duration of country reviews has been 31 months. The deadline for the completion of the first phase was extended to 2024, which might not suffice if reviews continue at their current pace. 170 States Parties have completed their review of the first cycle, and only 50 States Parties have completed the second cycle review by February 2021.

The IRM's Terms of References do not require States Parties to involve civil society and other non-state stakeholders in the reviews. Nevertheless, numerous countries do include non-governmental actors in the process. In terms of transparency, only the executive summary of the country report has to be made public, while the self-assessment checklist and the full country report can remain confidential. As per the second cycle, only 5 out of the 44 States Parties that have published the executive summary have voluntarily published the self-assessment checklist and the full country report. The publication of both of these key documents is crucial, as they contain information regarding the implementation of the Convention, as well as detailed references to relevant legal provisions, policies, and practices that are not included in the executive summaries. Open access to these documents would enable civil society,

academia, the private sector, donors, and the general public to gain a better understanding of the measures countries are taking to fight corruption, and hold their countries to account, which would also increase the credibility of the mechanism.

Good practice examples

- To date, the UNCAC Coalition's Transparency Pledge has been signed by 27 States Parties.¹¹³ The Pledge represents a voluntary commitment to principles of greater transparency and civil society participation in the review mechanism, encouraging States Parties to actively include civil society in the review process and to share documents and information concerning the review with the general public.
- Nigeria has published all three key documents of both their first and second review cycle, namely, the self-assessment checklist, the executive summary, and the full country report.¹¹⁴
- Mauritius and Liechtenstein have published detailed information on their follow-up actions to the specific recommendations given to them in their second cycle reviews. Mauritius comprehensively reflected technical assistance needs in their publicly available full country report of the second cycle.¹¹⁵
- Multi-stakeholder trainings on UNCAC implementation, organised by UNODC and the UNCAC Coalition, brought together national focal points and civil society representatives that later provided meaningful input to the review process in a number of countries, including Côte d'Ivoire, South-Sudan and Ghana.
- The UNCAC Coalition's Guide to Transparency and Participation in the UNCAC Review Mechanism identifies concrete steps that States Parties can take throughout the review process to ensure that it becomes transparent and inclusive.¹¹⁶
- In many States Parties, civil society organisations have contributed their expertise during the different stages of the review, including by providing input in the preparation of the self-assessment checklist. In Ghana, CSOs participated in consultative meetings to mainstream the UNCAC review process into the national anti-corruption plan. In Kenya, representatives of academia, civil society, and the private sector were included in the committees set up to coordinate and oversee the national review process.

¹¹³ UNCAC Coalition: Transparency Pledge, <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

¹¹⁴ See <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fnga.html>.

¹¹⁵ See <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmus.html> for Mauritius and <https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Flie.html> for Liechtenstein.

¹¹⁶ UNCAC Coalition: Guide to Transparency and Participation in the UNCAC Implementation Review Mechanism, <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

- In the reviews of the USA, UK, Portugal, and Israel, among others, dedicated sessions were organised between the governmental experts from the reviewing countries and non-governmental stakeholders, including civil society organisations, during the country visit. In the case of the UK, government officials from the country under review did not participate in the meeting between the reviewers and civil society, providing non-governmental stakeholders the space to share their insights and findings with the visiting experts.

Moving forward

The UNGASS should include a commitment to strengthening the UNCAC Implementation Review Mechanism:

- Member States should redouble efforts to conclude the second review cycle by 2024 in order not to leave the mechanism stagnant and further delay the necessary follow-up actions on the findings of country reviews.
- Member States should commit to making the UNCAC implementation review process more transparent, inclusive and effective, including by:
 - providing public access to key documents of the review process, the self-assessment checklists, and the full country report; contact details on the country focal point, the regularly updated schedule of the review process and the country visit by the peer reviewers;
 - promoting the inclusiveness and contribution of non-state stakeholders, including civil society, to the review process, in line with Article 13 of the UNCAC. The key documents of the review should contain information on the consultations made with all stakeholders;
 - putting a stronger emphasis on the implementation, application, and enforcement of UNCAC provisions in practice, as well as the need for elaboration on specific technical assistance needs of States Parties; and enhancing synergies among the different international and regional review mechanisms to avoid duplication of efforts;
 - including a mandatory follow-up mechanism that reviews progress made on implementing recommendations from previous review cycles; and
 - ensuring that the process is adequately resourced to ensure swift progress.