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Mongolia - Civil Society Report

by Transparency International Mongolia

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a Transparency International Mongolia report¹ that reviews Mongolia's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Mongolia covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

Assessment of the Review Process

Conduct of process

TI-Mongolia believes that the UNCAC review process was conducted with the appropriate transparency. The support of the governance officers of UNDP-Mongolia, along with the self-assessment developed by the team of national experts led by Professor O. Munkhbat, member of the TIM board, were instrumental in making the process a success. All of the information required for the report has been made available to TI-Mongolia.

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Mongolia.

Table 1 Transparency and CSO Participation in the Review Process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	Yes
Was the self-assessment provided to CSOs? Not published on website yet, as to date, the report is only a draft	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Unknown

Availability of information

TIM issued official letters to the courts, prosecutor's office and the police, with a request for information on corruption cases dealt with and the technical assistance that these authorities required. The responses received were considered insufficient and could not be assessed for the purposes of drafting this parallel report.

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Sukhburen Dugersuren, Transparency International Mongolia. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

Implementation and enforcement

The Criminal Code in Mongolia establishes the offences of active and passive bribery of public officials (UNCAC Article 15). It also criminalises embezzlement, misappropriation or other diversion by a public official (UNCAC Article 17) and money laundering (UNCAC Article 23). The elements of these corruption offences do not fully meet the requirements of the UNCAC. While there are certain provisions in the Criminal Procedure Code of Mongolia that allow for the protection of witnesses, experts, victims and reporting persons (UNCAC Articles 32 and 33) and mutual legal assistance in the absence of dual criminality (UNCAC Article 46(9)), the existing legal provisions still do not fully meet the UNCAC requirements.

Mongolia does not criminalise the bribery of foreign public officials and public officials of international organisations (UNCAC Article 16) and illicit enrichment (UNCAC Article 20), and also does not impose criminal liability against legal persons (UNCAC Article 26).

Enforcement of legislation remains problematic because of unclear and insufficient provisions. The appointments of investigators, prosecutors or judges are politicised and are not always made based on merit. A lack of coordination between investigating and prosecuting authorities can lead to confusion. Insufficient resources and training also remain an obstacle to an effective fight against corruption.

To date, there are around 20 prosecutors within the State Prosecutor's Office who specialise in prosecuting corruption offences.

Recommendations for priority actions

1. Amend the Criminal Code to explicitly criminalise the bribery of foreign public officials and public officials of international organisations, either by amending the definitions of public officials or by introducing separate criminal offences.
2. Consider amending the Criminal Code to criminalise "illicit enrichment", as defined by the UNCAC.
3. Amend the Criminal Code to create criminal liability of legal persons as one of the alternative forms of liability under UNCAC Article 26.
4. Consider adopting provisions allowing the rendering of assistance that does not involve coercive measures in the absence of dual criminality.
5. Not only should more UNCAC provisions be criminalised under the Criminal Code (illicit enrichment, insider trading, etc.), it is essential that the already criminalised acts are made more specific to comply with the convention. Once the criminal offences are duly formulated (the definition of the crimes should be aligned with the UNCAC definition) and incorporated into the Criminal Code, it will be necessary to amend the Criminal Procedure Code to assign corruption offences to the Independent Authority Against Corruption (IAAC).
6. Amend the Criminal Law to allow the IAAC to investigate corruption-related offences (e.g. fraud and other economic crimes) when there are aggravating circumstances such as abuse of office. To date, these remain under police jurisdiction.
7. It is essential to change the text of the Criminal Law in relation to crimes committed against the natural environment through abuse of office (cases related to these types of crimes include among other, abuse of office in issuing licenses, illegal logging, dumping of waste water into rivers, construction activities at national reservations, etc.). Currently the law requires a specification of the damage caused to the environment which is unpractical.
8. The mindset of the general public, politicians and staff of the law enforcement agencies needs to change. The apparent socialist legacy of simply awaiting and accomplishing "orders" from above without proactively seeking results is problematic. The prosecution's and IAAC's regulations should allow for initiation of investigations at their own discretion, but at this moment, these organizations mainly initiate investigations on receipt of complaints. Only beginning January 2011, the prosecution

started requesting police to investigate cases/accusations, referred to in local daily papers².

9. The government should consider seeking technical assistance from UNODC and the IAAC to ensure training for investigators, prosecutors and judges. The government should allocate funds to upgrade the equipment and tools used by the Specialised Inspection Agency and law-enforcement agencies, especially equipment utilised in undercover activities and special technology required to protect victims and witnesses.

The full Transparency International Mongolia review report can be found at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>

² The newly appointed General Prosecutor requested the prosecutors to apply the provision of the Law on Prosecuting Organization, which allowed prosecutors to request the police to investigate into accusations, published in daily papers. This provision was apparently there, but was not exercised due to lack of political will.