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CIVIL SOCIETY CONTRIBUTIONS TO THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC) IN SOUTHEAST ASIA

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EXECUTIVE SUMMARY

1) Background information

The United Nations Convention against Corruption (UNCAC) stands out as the leading international treaty tackling corruption. Among several state commitments, Article 13 of the UNCAC obligates State Parties to actively promote the participation of civil society organisations (CSOs) in support of the implementation of the UNCAC provisions.

Southeast Asia is a disparate region of ten nations, spanning economic powerhouses and well managed states like Singapore and Brunei to communist regimes in Vietnam and Laos and the return of military rule in Myanmar. Holding these diverse countries together is a common agenda for economic advancement and regional prosperity in the form of the Association of Southeast Asian Nations (ASEAN), formed in 1967. With the establishment of the ASEAN Community Vision 2025, through the Political Security, Economic and Socio-Cultural Pillars, established to give it deepened focus, the formation of the Southeast Asian Parties Against Corruption, is a welcome initiative.

Corruption was highlighted as a primary obstacle to doing business in all ASEAN countries (Australian Business in ASEAN Survey 2019). The latest World Bank Enterprise survey indicates that 43.5%, of private corporations are expected to engage in gift giving to secure a government contract. Recent spotlight on the private sector and its role in enabling corruption has further complicated the control of corruption everywhere and the ASEAN region is no exception.

1.1 The ASEAN-PAC and the UNCAC

It is promising to highlight the newly minted commitment on the ASEAN Parties Against Corruption (PAC), and its imperative return to the commitments of each of the 10 Member States to the UNCAC. The ASEAN-PAC has two very important objectives:

- Establish and strengthen collaborative efforts against corruption among the parties, and
- Increase capacity and institutional building among the parties in preventing and combating corruption

Civil Society Organizations (CSOs) can be involved in the UNCAC at all stages from the review process to its implementation. Article 13 of the UNCAC encourages States Parties to promote the active participation of civil society in the prevention and fight against corruption. Through promoting the UNCAC, civil society's involvement at all levels in the fight against corruption is strengthened.

A whole-of-society approach is encouraged in emboldening Article 13 of the Convention. It places civil society as a partner and stakeholder in the realization of such commitments, given the near completion of the UNCAC compliance review mechanism of the first and second cycles. The outcome of the UNCAC review process in each of these countries provides a solid basis for formulating anti-corruption technical assistance programmes, and identifying gaps in anti-corruption policies and frameworks where civil society can find genuine spaces for collaboration.

Following on from the country reports in the first cycle, the Fast-tracking UNCAC Implementation project began. The project began with a Regional Conference for Southeast Asia that took place in February 2017 in Bangkok, Thailand, bringing together stakeholders from government, civil society and the private sector. Representatives of CSOs from eight countries attending the regional conference agreed on the following civil society proposals for action.

In the summer of 2021, the CSU commissioned a survey among 43 civil society organisations in the region, and 18 survey responses were received, together with several more conversations and narratives gathered through online calls and interviews to gauge a deeper understanding of challenges in the region.

The second part of the survey pertains to the United Nations Convention on Transnational Organised Crime (UNTOC) and its review mechanism.

2) Assessment Findings

2.1 CSOs participation and contributions to the UNCAC Implementation Review Mechanism

While about 85% of the respondents were aware of the UNCAC review process, just a little more than half had government delegates engage with them on the review mechanism and sought their feedback on the process, in Indonesia, Malaysia, Cambodia, Vietnam, Philippines and Thailand. Almost all respondents claimed to be unsatisfied with the quality of engagement however, citing a lack of meaningful engagement, poor data transparency and reluctance to share information.

2.1.1 Theme 1: CSOs contributions to Whistleblowing protection

Of the 18 respondents, 8 of them affirmed that their countries have some sort of regulation and /or legislation on protecting whistle-blowers, either as a specific legislation like in Malaysia, or included into a larger anti-corruption law in Cambodia.

Of the others, about half of these civil society groups affirmed that they were engaged during the drafting process but lament the many loopholes and lack of protection accorded to whistle-blowers including reprisals, threats of personal safety and a lack of support to face trials. As a result of this poor state of protection, many of the civil society groups who participated in the survey are currently actively engaged in campaigns and public awareness programmes to encourage whistle-blowers to come forward. The challenges associated with civil society support of anti-corruption proceedings were acknowledged in a recent UNODC webinar in Indonesia, which gave consideration to e-based and multi-stakeholder monitoring systems as potential risk mitigation measures. This is an area for UNODC to provide technical assistance and resource support for CSOs in the region.

2.1.2 Theme 2: CSOs contributions to Asset disclosure systems

50% of the respondents affirmed that their country has some sort of procedure or legislation on asset disclosure and detection of illicit enrichment. Only a handful of civil society groups had the opportunity to participate in the drafting of such policies, with Indonesia and the Philippines showing examples of engagement in this process. A decree was implemented in Vietnam on “controlling assets and income of persons holding titles and powers of agencies, organisations and entities.” In the Philippines the submission of statement of assets, liabilities and net worth (SALN) is required by law under Article XI Section 17 of the 1987 constitution and Section 8 of Republic Act No 6713, the “code of Conduct and Ethical Standards for Public Officials and Employees.”

In recognizing the importance of asset disclosure in creating a more accountable governance framework, several CSOs are working on strong public education campaigns to empower citizens and constituents to make this a strong ask of candidates who intend to contest in elections.

The lack of laws on access to information have curtailed proper tracking of illicit enrichment. In this regard, more than one respondent had made references to new efforts at providing greater transparency around beneficial ownership of companies, so that the real ownership and directorship can be made available in a registry. This is consistent with UNODC research into digital anti-corruption practices, in which civil society organisations across the region cited major limitations with regards to legal provisions and the availability of adequate data. A number of CSOs explained that a key challenge was trying to find ways to navigate data sparse environments, such as through the strategic use of partnerships.

2.1.3 Theme 3: CSOs contributions to identification and management of conflict of interest in the context of public procurement and political financing

Only 27% of respondents confirmed to their knowledge of a political financing law in their respective countries. And only two groups were engaged in the drafting process, them being Vietnam and Cambodia.

Meanwhile, the Global Organisation of Parliamentarians Against Corruption, an international group building Parliamentarian's commitment to address corruption, had direct experience of working on such a law in Indonesia. Indonesia has a state funding component incorporated in Government Regulation No. 1/2018 on Political Party Funding stipulates that parties winning seats at the House of Representatives receive Rp 1,000 (7 US cents) per vote, while those winning seats in regional legislative receive Rp 1,200 per vote.

In Vietnam, political contributions are not yet recognised by any regulation. Disbursements to the Communist Party of Vietnam (CPV) and political officials come directly from the state budget and not from members of the public, which includes individuals and organisations.

As political financing is understood to be one of the toughest reforms, given that policy makers who are politicians do not want further scrutiny upon themselves. From lessons learned and recommendations, one is to step up training of CSOs and investigative journalists to make better use of data to hold governments better accountable. 13 out of 18 organisations requested technical support and further capacity building in the area of political financing and tracking illicit enrichment.

In moving to the next stages of regional platform, several recommendations were made. They include UNODC to assist governments in formulating better legislative protection for whistle-blowers and for stronger anti-corruption laws. Invest more in open data techniques, big data and technology capacity training, to build skills among CSOs and investigative journalists. Assist civil society in making governments more transparent and accountable, especially with asset disclosure, budgets and public procurement. Reform anti-corruption institutions including its structure and independence to ensure that it is able to implement its mandate without fear and without favour. The KPK experience in Indonesia, where its powers were significantly reduced has been a setback not just for Indonesia but for the region.

2.1.4 Theme 4: Inter-agency cooperation on investigation and prosecution of anti-corruption cases, with a focus on policy development

Independence of specialized bodies to investigate and prosecute corruption Offences

The assessment revealed that the majority of Anti-Corruption Agencies (ACAs) are perceived as compromised. Among the CSOs consulted, 68% perceived ACAs as compromised and therefore not independent. The most topical concerns included a significant degree of political interference in the appointment of the leadership of these ACAs. In some countries, these bodies required consent from other institutions to commence proceedings against accused persons. Among CSOs that participated in the survey, 60% of them carried out activities that include: *research, and evidence-based advocacy for policy and law reform on the theme.*

CSO contributions to capacity-building of specialized bodies to investigate and prosecute corruption offences.

The assessment noted that some governments were not demonstrating political will to fight corruption by ensuring that ACAs are given adequate resources. In addition to inadequate resources, these ACAs suffered from knowledge gaps demonstrated through poor quality investigations, poor quality dockets as well as poor prosecution which results in many accused persons being acquitted. The majority of CSOs (55%) also indicated that ACAs lack capacity. According to Man-wai (2021:133), governments should demonstrate political-will to fight corruption by ensuring that ACAs are given adequate resources[1]. In Hong Kong, Man-wai (2021) submits that 0.3 to 0.4% of the national budget was reserved for the ACA[2].

If a government wants to demonstrate political will, it should ensure that its ACA is given adequate resources[3]. Internally within an ACA itself, best practices dictates that the ACA should allocate over 70% of its resources to the Operations Department[4]. The reasons are that any successful fight against corruption must start with effective enforcement on major targets, so as to demonstrate to the public the government's determination to fight corruption at all costs, as well as to demonstrate the effectiveness of the anti-corruption agencies[5].

CSOs activities included advocacy for more funds to be allocated to ACAs, training these ACAs to build the investigative and managerial skills, and developing IT systems to enhance efficiency. Other activities included the sharing of lessons learned and best practices.

[1] Man-wai, T (2021) _ National Anti-Corruption Strategy: The Role of Government Ministries. [online] Available at https://www.unafei.or.jp/publications/pdf/RS_No79/No79_18VE_Man-wai1.pdf [Accessed on 16 July 2021]

[1] Article 13 of the UNCAC

[2] Ibid

[3] Ibid

[4] Ibid

[5] Ibid p-134

2.2 CSOs reflections on the UNCAC Fast-tracking Regional Platform and linkages with the UN Convention Against Transnational Organized Crime (UNTOC)

The United Nations Convention against Transnational Organized Crime (UNTOC) and its protocols on human trafficking, migrant smuggling and trafficking of firearms, constitute the key framework for a strategic global response against transnational organised crime (TOC). The UNTOC as the name implies, is an effort to fight organised crime, which is transnational in nature.

The implementation of the UNTOC is not the sole preserve of the governments but Civil society organisations (CSOs) play a pivotal role in supporting its implementation through fighting transnational organised crime in many and varied forms, that ranges from providing expertise to governments, conducting research, monitoring and reporting on the status of implementation of UNTOC commitments, denouncing all forms of organised crime, advocacy activities and as well as raising awareness on what TOC is and its deleterious effects. To this end, this assessment sought to gather information on what is known about the UNTOC, related courses of action organisations have undertaken, and pinpointing entry points in fighting corruption to tackle organized crime.

Throughout Southeast Asia, the control of corruption as an enabler of transnational organized crime remains a phenomenal challenge. From the increasing sophisticated means of hi-tech financial crimes, to corrupt law enforcement, coupled with legal loopholes, and a lack of regional mechanisms to detect illicit financial flows and cross border crimes, the interlinking factors between corruption and transnational crimes, have become pervasively more evident.

The scale of transnational crime in Southeast Asia, covering multiple typologies, would not be achievable without significant levels of corruption. Recent research implicates corrupt actors in all stages of the human trafficking process in the region, from initial recruitment through to the flouting of immigration regulations and final exploitation. Widespread corruption in prominent trafficking industries, such as the fisheries and palm oil sectors, prop up demand for irregular migration and forced labour. More broadly, corruption plays a major role in transregional wildlife trafficking on every level of the supply chain, from the bribing of customs authorities to the acceptance of fraudulent documentation. Research by the FAO suggests that South and Southeast Asia had been subjected to more deforestation than any other sub-region in the world over 2000-2012, likely driven by a combination of legal and illegal logging. A study in Indonesia, for example, suggests that of volumes of timber trade between 2008-2014, 77-81% had not been reported to the proper authorities. Case studies have shown some hydroelectric and agricultural projects to be pretexts for illegal logging in the Mekong region, the result of collusion between public officials and private sector actors.

To launder the substantial proceeds of crime, criminal groups rely on the complicity of public and private sector institutions, such as commercial banks, real estate agencies and casinos.

Despite the temporary disruptions posed by Covid-19 to the licit and illicit flows of goods, a regionwide increase in corruption risks has problematic implications for transnational crime. Corruption continues to play a role in the manufacturing and trade of falsified medicines, facilitated in many instances by complicit regulatory officials and formal pharmaceutical executives. Stresses to global supply chains have propped up demand for cheap contraband and fake goods, potentially exacerbating the corruption-enabled trade of illicit tobacco products. This assessment hence strikes at an important time to address the pulsating need to counter new and more multifarious forms of corruption, and how civil society can play a more significant role in expanding its bandwidth in calling to turn the tide against corruption in the region.

The assessment made among anti-corruption CSOs had the following key findings:

1. A staggering 79% of the survey respondents had little or no knowledge of the UNTOC. While not surprising, the convention has been on the back burner, while a long-drawn review mechanism was finally agreed upon.
2. Activities linked to transnational crime were also rather poor, as about 21% had conducted research and data collection on illicit financial flows, shell companies and on trafficking and migrant smuggling issues. Most of the respondents suggested that focus has been on country level corruption, and some initial efforts at tracking transnational corruption met with very minimal availability of data, and they could not develop sufficient bandwidth to take the issues forward. This is consistent with the findings of a UNODC report from a 2018 workshop on the links between corruption, human trafficking and migrant smuggling in Southeast Asia, in which civil society delegates from Cambodia, Myanmar and Thailand called for more to be done to cross-reference cases through data sharing between organizations in different countries.
3. 71% of the respondents were aware in varying degrees of linkages between corruption and organized crime and listed several cross-linking factors. They include:
 - Corruption as an enabling factor
 - Law enforcement agencies, including immigration and border patrols are deeply mired in corrupt activities involving more than one country. One prominent case known to a number of the respondents was the Wang Kelian “mass graves” expose, in which state officials from Thailand and Malaysia were linked to smuggling and trafficking syndicates, where victims whose families would not afford extortionary payments were subjected to torture and being buried alive..
 - Granting contracts for logging to suspicious companies, for kickbacks, bribes and illicit enrichment (Indonesia – Malaysia).

4. Among the areas listed for capacity-building around the UNTOC and its 3 supplementing protocols:
 - The use of illicit financial flows and money laundering
 - The use of the UNTOC, its protocols and how to engage in its review mechanisms
 - Developing investigation skills, and data collection on cross border crimes like trafficking in persons, drug smuggling and environmental crimes
 - Workshops to cover grand corruption
 - The use of the UNTOC as framework to cut corruption

5. Other areas mentioned on transnational crime are:
 - Real estate as a front for money laundering
 - Wildlife trafficking, drug trafficking
 - Illegal Gambling and Casino activities
 - Illicit Financial Flows and Tax Justice
 - Recruitment of migrant workers
 - Grand Corruption

6. UNODC and other developing partners could assist civil society through the following means:
 - Build capacity for data collection across borders
 - Help improve research and investigation skills of journalists in uncovering corruption involving more than one country in the region.
 - A CSO project to monitor transnational crimes and its interlinking area to address corruption.
 - Develop better understanding of the components of the UNTOC and its protocols.

2.3 Proposed future priority areas on fast-tracking platforms of government and civil society

After carefully analysing the responses, it appears like there is a steadier form of engagement on the UNCAC, and buy-in on the Convention and its review mechanism. However, among the anti-corruption CSOs there remains a minimal level of awareness and exposure to the UNTOC, its protocols and review mechanisms. While the UNODC Civil Society Unit and Regional Office for Southeast Asia and the Pacific have made critical inroads on several fronts, and ventured into very interesting areas of anti-corruption work, on fast tracking the UNCAC, as well as cross border and transnational issues, the involvement of civil society as partners in the process, should be scaled up in various ways.

3. Recommendations

a) Civil Society contributing to the implementation of the UNCAC in Southeast Asia

- In addition to existing CSOs that are part of UNCAC Fast-tracking Regional Platform, it is recommended to widen and deepen CSOs in the Regional Platform to include other interested CSOs whose activities are linked to the implementation of the UNCAC
- The mobilization of Civil society organisations should also be done through existing anti-corruption networks that operates at national, regional and international levels
- Efforts should be made to build and/or enhance the capacities of CSOs participating in the UNCAC Fast-tracking Regional Platform to effectively, efficiently and sustainably support the implementation of UNCAC fast-tracking recommendations
- Capacity-building workshops with civil society groups and investigative journalists on developing Beneficial Ownership Transparency and Company Open Data, and how civil society can better monitor and track companies and their directors, illicit enrichment, and tax evasions schemes. The cases exposed in the Pandora papers, can be used as case studies for the region

b) Civil Society contributions to the UNCAC Review Mechanism

- Raising awareness or conducting a training on how CSOs should meaningfully contribute to the UNCAC Review Mechanism
- Disseminating information to CSOs informing them on the timelines for the UNCAC reviews to enable them to participate
- Organisations such as the UNCAC Coalition should mobilise resources to enable CSOs to produce CSOs Parallel reports
- Governments should disclose information to CSOs when assessments start and seek their active participation
- Asset recovery and civil society participation could be an interesting way forward to deliberate how the second cycle findings can help UNODC and civil society discuss roadblocks and develop better capacity-building and technical assistance for civil society involvement

c) CSOs contributions to the implementation of Regional recommendations

- Avail resources to CSOs to enable them to implement UNCAC recommendations and execute their mandates in the most effective, efficient and sustainable manner
- Conduct trainings to ensure that CSOs and specialized bodies execute their mandates in the most effective, efficient and sustainable manner
- A Regional Meeting to contextualise the First UNGASS Against Corruption Political Declaration with current challenges around fast tracking the implementation of the UNCAC, identifying priority areas for the region and collaborative initiatives around strengthening its implementation

d) CSOs reflections on the UNCAC Fast-tracking Regional Platform

- Follow up meetings or workshops should be organized to re-energise members of the platform
- Incorporate other CSOs that have expressed interest to participate
- Consistently document best practices and lessons learned
- The ASEAN-PAC is a new commitment by member states in ASEAN to achieve better cooperation on addressing corruption in the region. It is a significant development and holds two broad objectives: Establish and strengthen collaborative efforts against corruption among the parties, and increase capacity and institutional building among the parties in preventing and combating corruption

e) Methodologies for partnering with governmental counterparts

- Aside from providing areas of technical expertise to these state parties, the UNODC could work as a facilitator to open spaces for collaboration between member states and civil society and the professional and private sectors, including the media. Activities could include joint research, skills training and mapping of mutual commitments to fast track the UNCAC, including the use of technology in increasing collaborative efforts
- In order to effectively work with the government CSOs should identify and establish contact with government focal points, establish real partnership based on common goals, align activities to national priorities, and demonstrate the role of civil society as an impartial watch-dog and establish but maintaining CSOs independence.



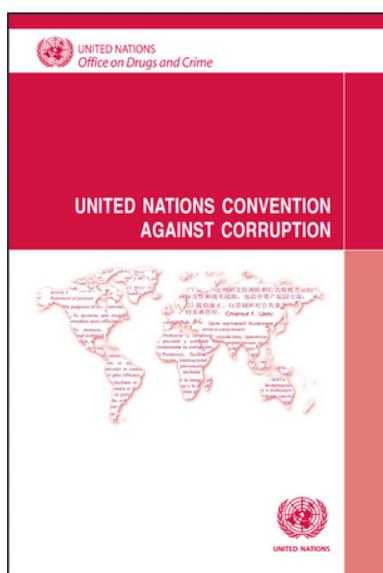
1. INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

The United Nations Convention Against Corruption (UNCAC)[6] is the only universally agreed and binding international anti-corruption instrument in the world, with 188 countries having ratified it.

UNCAC State Parties (governments[7] and regional economic integration organizations[8] in partnership with Civil Society Organisations (CSOs) play a very important role in ensuring not only the realisation of the domestication processes but the implementation of national laws and policy frameworks in a country. The participation of CSOs is promoted by Article 13 of the UNCAC, which calls upon State Parties to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption[9].

In keeping thereof, this report captures CSOs contributions, and examples of CSOs best practices. In addition, the assessment was designed to gather potential new areas of collaboration to further enhance civil society active participation in the implementation of the UNCAC in Southeast Asia.



[6] https://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html

[7] Article 67 (1) of the UNCAC

[8] Article 67 (2) of the UNCAC

[9] Article 13 of the UNCAC

There were a total of 43 civil society organisations that were reached for this survey assessment. Of this, 17 participated in the survey directly, 1 group made calls to speak and asked for assistance to fill out their answers. As such there were 18 responses in total.

1. Country Breakdown

Cambodia - 4

Singapore - 1

Indonesia - 2

Thailand - 2

Laos - 1

Vietnam - 2

Malaysia - 4

Philippines - 1

Myanmar - 1

There were 3 groups working on a regional level which also participated in the survey.

2. CIVIL SOCIETY CONTRIBUTIONS TO THE UNCAC IMPLEMENTATION REVIEW MECHANISM

2.1. CSOs Participation in the UNCAC Implementation Review Mechanism

83% of respondents indicated that CSOs in their respective countries are aware of the UNCAC review process.

Furthermore, the majority of respondents viewed that the main avenues to foster partnership with government counterparts in the implementation of the UNCAC were by “emphasizing on the role of CSOs as a bridge between government and the people, followed by equal parts information sharing, identifying and establishing contact with the government focal points as well as establishing areas of mutual benefit whilst balancing independence of the CSO.” The option with the lowest support was for governmental counterparts to “serve as partners and not merely as critics”.

The pattern indicates the importance of the preservation of the CSO’s independence, while allowing for transparency and cooperation between governmental counterparts and CSOs.

2.2 Civil Society Contributions in the UNCAC Implementation Review Mechanism (IRM)

50% of respondents had government delegates engage with them on the UNCAC review mechanism. When asked if they were satisfied with the quality and level of engagement in the UNCAC review mechanism process, most respondents were not satisfied. Respondents who were satisfied with the level of engagement cited the invitation to meetings, and participation at one-off meetings when asked of the specific details on the level of engagement.

Of those who were not satisfied, many claimed that there was unclear communication and a lack of meaningful engagement in the review mechanism, with some respondents citing a lack of “continuity of engagement and information access during the review process”. More than half of the respondents also cited the lack of data transparency on the government’s part as a barrier towards a meaningful level of engagement in the review mechanism.

When asked to comment on the main obstacles encountered in the Review Mechanism process, responses commented on both UNODC and the government’s lack of meaningful engagement. They acted together and did not reach out. Two respondents commented on the lack of clarity in communication and engagement, with one respondent noting the “unfriendly” nature of the review process for online participants not within the Vienna time zone (location of UNODC HQ).

On the other hand, respondents commenting on the latter primarily cited the lack of transparency, no technical support, funding, support and meaningful engagement with criticisms and inputs on the side of the government.

2.3 Best Practices and Lessons Learned

This section captures key contributions made by the respective respondents' organisations. The following are the shining examples of best practices in the CSOs participation:

- a) Engagement with parliamentarians
- b) Advocacy efforts that led to or are intended to lead to the enactment of legislation protecting victims and witnesses
- c) Advocacy efforts that led to legislation fulfilling article 26 of the UNCAC (establishes the liability of legal persons as a mandatory provision)
- d) Support for victims
- e) Sharing of information with the public
- f) Building tools to extract and publish open data
- g) Research on supply chain corruption
- h) Report on the implementation of UNCAC
- i) Public consultation on the review process to pressure government agents on the important role of civil society participation.

It is notable that amongst the 18 responses, only two organisations' efforts have led to legislative change, affirming the governmental barriers (lack of engagement and transparency) mentioned in the above survey response.

Additionally, one respondent mentioned the lack of engagement with the government and highlighted the useful nature of the UNODC's capacity building programmes in its contribution to knowledge sharing.

2.3.1 CSOs Lessons Learned in the UNCAC

Key valuable lessons that respondents wished to share with other CSOs include building on the work of international open data standards to extract and publish open data from a variety of sources to aid in better understanding of the international system and cross-border investigations and collaborations.

A respondent also described the importance of going creative in reaching out to young people in education on UN Mechanisms, as they are international, complicated cross border findings, involving political leaders of their countries. These include social media, board and card games and breaking down information in easy-to-read material and formats.

Other responses include the eradication of corrupt culture amongst authorities by having a better monitoring system, tracker apps. Further to this, a better complaints mechanism and external judicial oversight like an independent anti-corruption court, if judicial independence has been threatened at home.

Transparency International Cambodia had also shared their perspectives on balancing advocacy and service in an environment where civil society advocacy is stifled.

3. CIVIL SOCIETY CONTRIBUTIONS: FAST-TRACKING CONFERENCE RECOMMENDATIONS

The Regional Platform for South East Asia was created through the regional conference held in Bangkok, from 31st January to 3rd February 2017. At the end of the conference, participants, including high-level officials, technical experts, representatives of civil society and development partners, agreed on a set of recommendations to fast-track the implementation of the UNCAC in the four thematic areas identified as regional priorities. This section captures CSOs contributions and examples of best practices under the four thematic areas shown below:

3.1 Theme 1: Whistleblowing protection

3.1.1 Introduction

55% of respondents indicated to their knowledge that their respective countries do not have a policy or law to protect whistle-blowers. 39% of the organisations were involved in the feedback process in the drafting of said bills and laws. Of those involved, 4 of the respondents - Global Organisation of Parliamentarians Against Corruption (GOPAC), Transparency International Cambodia, Vietnam Justice Support Association for the poor (VIJUSAP) - Indonesia Corruption Watch highlighted that they were part of either the drafting committee on the laws or participated in meetings, giving their opinions in the law-making process. The respondents were asked of the adequacy of the laws in providing real and comprehensive protection within five areas: protection from legal suits, personal and professional risk, risk of retaliation in the work environment as well as the confidentiality of reports made and protection against any form of retaliation.

The highest number of responses indicated that there were no real and comprehensive protections against significant and professional risk as well as protection from any form of retaliation, followed by equal parts the lack of protection against legal suits, against the risk of retaliation in the work environment and the lack of confidentiality of reports made. For respondents that answered in the affirmative when asked if the existing laws were adequate in providing real and comprehensive protection, the highest number of responses were with regard to the protection against legal suits, risk of retaliation in the work environment and the lack of confidentiality of reports made. Lack of trust in enforcement agencies was also sighted.

Hence, jurisdictions did not provide real and comprehensive protection, there was a lack of comprehensive victim protection guidelines. On the other hand, amongst the respondents whose jurisdictions had policies or laws protecting whistle-blowers, more than 50% commented that these policies and laws were not comprehensive within the 5 areas stated above.

When asked of improvements needed to the current legislative framework surrounding whistle-blower protection, respondents commented on the narrow scope of protection under the current Acts e.g. “Does not protect whistle-blowers if a law was broken, in obtaining or disclosing information” and “Only protects if released to enforcement authorities S6 of the WBPA Act 2010 , and not through other channels such as media or civil society” as in the case of Malaysia. The Act is further subservient to the Official Secrets Act 1972, and punishes those who reveal classified information when blowing the whistle.

One respondent mentioned the “lack of secretarial capacity” to obtain a national analysis of this issue, while two respondents mentioned the need to minimise government interference and to facilitate trust and a safe space for whistle-blowers. Retribution and reprisals are key recurring factors that harm the empowerment of whistle-blowers.

Additionally, a respondent highlighted that “the existence of laws does not translate into actual protections”. Reflecting upon the rise of authoritarianism and transnational crimes in Southeast Asia in the midst of the Covid-19 pandemic, several respondents noted that “laws that are not specifically related to whistleblowing (e.g., Thailand’s draconian lèse-majesté law) are regularly used to silence voices”. In Malaysia the Sedition Act continues to stifle dissent. Hence, improvements with regard to greater transparency and open data are necessary to increase accountability and correct exercise of the law.

3.1.2 Civil Society Contributions

72% of respondents are currently engaged in a whistle-blower protection campaign. Key highlights of their engagement include training programmes for communities, legislative amendment and recommendations as well as the setting up of a free legal aid for victims of corruption. One respondent noted their efforts in narrowing the “trust deficit in the whistle-blower protection mechanism with the authorities”.

The following are shining examples of CSOs interventions:

Box 1: Transparency International Cambodia

Law on the protection of reporting persons as well as the law on the protection of experts, victims and witnesses.

Despite the limiting environment in Cambodia for effective civil society participation, Transparency International Cambodia (TI Cambodia) and Cambodian Integrity and Social Accountability (CISA) has had several successes in engagement with the government.

Sustained advocacy efforts for example have led to TI Cambodia being appointed into the drafting committee which saw the development of a law on the protection of reporting persons as well as the law on the protection of experts, victims and witnesses.

While the work is still in progress to develop an adequate legal framework and effective enforcement on whistle-blower protection, TI Cambodia finds more possible entry points by balancing advocacy efforts with service providing efforts.

With regard to further capacity building and training from the UNODC in the area of whistle-blower protection, 15 out of 18 respondents affirmed that such an initiative is necessary.

Box 2: CSOs contribution to whistle-blowers protection policies in Malaysia

Malaysian Anti-Corruption Act (MACC Act 2009)

Malaysia has adopted a game changing corporate liability provision better known as the S17A provision. Modelled after the UK Anti Bribery Law, it has a very vast reach and targets all commercial organizations who partake in bribery as part of doing business. For the first time, the corporate veil of Directors can be removed, and be made liable on a bribery and corruption charge.

TI Malaysia are working with the Malaysian Anti-Corruption Commission (MACC), and the Securities Commission as well as the Legal Affairs Division of the government to provide trainings to SMEs and companies to instill better due diligence and whistleblower protection policies.



3.1.3 Conclusion

The above findings confirm that CSOs make valuable and unique contributions to the creation of an enabling whistleblowing environment. The ways in which CSOs contribute are many and varied. Particular areas where more training is needed include:

- Comparative legal analysis on the protection of whistleblowers
- Sharing best practices from around the world
- Sharing of case studies and the experience of whistleblowers as well as challenges faced
- Training on effective practices and law enforcement on whistleblower protection
- Best practices on publishing information while protecting whistleblowers
- Narrowing the trust deficit with the authorities when it comes to existing whistleblowing mechanisms
- Risk assessment and practical guidelines on the area of whistleblower protection
- Whistleblower protection for investigative journalists

3.2 Theme 2: Asset disclosure, including declaration

3.2.1 Introduction

50% of respondents stated that to their understanding their country has an asset disclosure and detection of illicit enrichment system in place, and of those 50%, a little less than half responded they had worked on the establishment of the asset disclosure and declaration law.

These efforts include the provision of recommendations to revise anti-corruption laws and subsequently a decree implementing a policy on “controlling assets and income of persons holding titles and powers in agencies, organizations and entities” as well as engagement with the working group drafting said laws.

In Malaysia the change of government in 2018 had paved the way for a first-time asset disclosure mechanism among MPs, which was later strengthened through a Parliamentary resolution compelling all MPs to disclose their assets. The exercise made moderate gains, despite shortcomings on transparency in data and willingness to share the breakdown. The MACC had also advocated for a proper legislation in place for better enforcement to be undertaken.

3.2.2 Civil Society Contributions

Amongst the respondents that did not have a system of asset disclosure and detection of illicit enrichment, more than half of the respondents had engaged in efforts to establish such laws but to no avail. These efforts include recommendations on anti-corruption legislative amendment based on the UNCAC provisions, advocacy efforts to ensure the establishment of a robust public asset declaration framework to deter corruption and misuse of public office.

When asked if there exists open publication and transparency in the asset disclosure system, 39% answered in the positive. Amongst those that answered in the affirmative, the system includes an obligation on the part of politicians to declare their assets to the local anti-corruption commission as well as the establishment of a transparency framework that is to be conducted in all government agencies. In the Philippines for example the submission of a Statement of Assets, Liabilities, and Net Worth (SALN) is required by law under Article XI Section 17 of the 1987 Constitution and Section 8 of Republic Act No. 6713, the “Code of Conduct and Ethical Standards for Public Officials and Employees.” It includes a waiver authorizing the Ombudsman or his authorized representatives to obtain documents that may show assets, liabilities, net worth, business interests, and financial connections from all appropriate government agencies.

61% of the respondents were involved in engagement programmes and initiatives on Asset Declaration and Tracking of Illicit Enrichment. The main challenges faced in civil society in tracking Asset Declaration and Trafficking of Illicit Enrichment include the lack of laws pertaining to freedom of information/right to information, lack of resources and skill set including investigative capacity, apathy from the government and a lack of political will as well as a lack of an existing legislative framework for asset declaration and the detection of illicit enrichment.

One respondent, a regional organisation working in the Mekong sub region, mentioned the tentative establishment of a tracker to monitor foreign investments that aims to “expose beneficiary ownership and expose inadequacies in public procurement” and the challenges faced include “ineffective law enforcement and capacity and complacency of the public officials”.

Only around 20% of respondents had existing best practices in their country in fast tracking the UNCAC recommendations in the area of asset declaration. This includes legal dissemination courses for communities, distribution of leaflets to citizens and the naming and shaming of persons with unexplained wealth. This is a relatively low percentage of actual fast tracking of the implementation of the UNCAC provisions in the area of asset declaration.

Establishment of the Presidential Regulation Number 13 on beneficial ownership

In Indonesia the regulation requires every company operating to report their beneficial owner(s), as a way to deter shell companies and proxy directors. The extractive, forestry, and plantation sectors were prioritised in the implementation of beneficial ownership transparency under the National Strategy on Corruption Prevention 2019 – 2020. Civil society monitoring of progress on effective beneficial ownership transparency (BOT) has become a crucial exercise to expose corrupt relationships between public officials and mining companies. Civil society conducted an evaluation on the progress of implementing beneficial ownership. The findings were presented to the Indonesian Anti-Corruption Commission (KPK) and National Secretariat of Corruption Prevention (STRANAS PK) in November 2020.

Malaysian taskforce to develop and implement anti-corruption plans

Following the change in government in 2018, the new Pakatan Harapan government then, had worked to address several anti-corruption measures and institutional reforms in the country. Civil society groups including the Center to Combat Corruption & Cronyism (C4 Center), was appointed into the taskforce to develop an anti-corruption plan to span 5 years from 2019-2023, mirroring the UNCAC provisions. C4 Center was also appointed into the special taskforce to help identify, map and recommend charges around the grand corruption case of the IMDB and its related scandals, while TI Malaysia was appointment into a public procurement taskforce. Another Malaysian group Sinar Project, was actively engaged on open data initiatives, as an important step in promoting greater data transparency in improving public services delivery.

CSOs have been trying to implement reform initiatives also after the change of Government in March 2020, including on the Whistleblower Protection Act, Illicit Enrichment and Asset Disclosure bill and the Political Financing Bill.

3.3 Theme 3: Conflict of interest in the context of political financing

3.3.1 Introduction and background Information

27% of respondents to their understanding do have a political financing law in their country, with two of the respondents being involved in the establishment of such laws. The countries with a political financing law are as follows:

1. Indonesia
2. Vietnam
3. Cambodia

Indonesia has a state funding component incorporated. Government Regulation No. 1/2018 on Political Party Funding stipulates that parties winning seats at the House of Representatives receive Rp 1,000 (7 US cents) per vote, while those winning seats in regional legislative receive Rp 1,200 per vote.

In Vietnam, political contributions are not yet recognised by any regulation. Disbursements to the CPV and political officials come directly from the state budget and not from members of the public, which includes individuals and organisations.

3.3.2 CSOs contributions

Two out of the 11 responders who answered in the negative were engaged in the establishment of such laws. This includes CISA Cambodia and Transparency International Malaysia. The efforts of those involved include drafting of the law (which later did not get implemented) as well as policy recommendations to the government which did not bear fruit.

Only one respondent (Vietnam Justice Support Association for the poor (VIJUSAP)) discussed best practices in their government in fast tracking the UNCAC recommendations in the area of political financing and touched on public audits on governments and NGOs which made transparent finance-related information to the public.

Box 5 Towards Transparency's engagement in Vietnam against conflicts of interest

Vietnam anti-corruption law

Civil society groups like Towards Transparency's engagements and recommendations with the Vietnamese government on the strengthening and revision of the anti-corruption law of 2018, as well as the decree dated 30 October 2020, guiding implementation of the law on controlling assets and income of persons holding titles and powers in agencies and entities were accepted.

When asked of best practises in their respective governments with regard to fast tracking the UNCAC recommendations in general, respondents touched on supervision from NGOs, workshops on drafting the political finance law as well as amendments to whistle-blower protection laws and a tentative access to information Cabinet paper.

In terms of lessons learned, respondents mentioned that CSOs working together (as opposed to NGOs engaging individually) would yield better results. Furthermore, a respondent also highlighted the importance of transparency and data to ensure good governance and shared current projects increasing accessibility to such data. Additionally, training should be offered to journalists and civil society to “make better use of information available to hold the government accountable”.

3.4 Theme 4: Inter-agency cooperation

3.4.1 Capacity-building of specialized bodies to investigate and prosecute corruption offences

3.4.2. Introduction and Background Information

13 out of 18 respondents expressed the need for further capacity building and/or training by the UNODC in the area of asset declaration and political financing.

3.4.3 Civil Society Contributions

CSOs contributed in various ways to ensure that these entities are capacitated and well-resourced to more effectively investigate and prosecute corruption offences. The following are selected examples:

Box 6: Transparency International Cambodia

Inter-ministerial framework of cooperation in Cambodia

A Memorandum of Understanding (MoU) has been signed between the Cambodian Ministry of Interior (MoI) and Transparency International Cambodia (TI Cambodia), to provide a framework for both the Ministry and TI Cambodia to implement a joint project on School of Governance Phase II (2021-2025). This MoU is seen as an important collaboration and best practice initiative in building structures towards the prevention of corruption and building of integrity, as promoted by the UNCAC.

Phase I of the project was aimed at supporting the government in its efforts to strengthen the capacity of its institutions and agencies at both national and sub-national levels, that in turn led to more promising outcomes of better public service delivery. A notable achievement of the collaboration has been the successful trainer training of officials from the MoI on knowledge and tools for promoting good governance. These officials have now become key trainers at the School of Governance.

Key responses highlighted that such trainings should be geared towards sharing of best practices and review of political financial and whistle-blower law drafts, “training/roundtable discussion on asset declaration on the experience of other countries in enacting the law” as well as increasing understanding on the area of asset declaration and political financing to support the analysis and visualization of data.

4. CONCLUSION AND RECOMMENDATIONS

This study has underpinned the importance of the activities of CSOs in support of the implementation of the UNCAC and other anti-corruption priorities at the local, national and global levels. Testimonies from CSOs confirmed their most valuable and unique contributions to the fight against corruption. The modes and means of participation are many and varied. These include using anti-corruption information to engender superior levels of transparency, accountability and integrity; engaging in evidence-based advocacy, learning and awareness-raising; and supporting the development of anti-corruption laws, policies and projects/programmes. Furthermore, the study has established that civil society organizations offer expertise in various areas, assist governments to coordinate anti-corruption programmes, and give support services and advice to whistleblowers. In addition, CSOs produce research into various areas of anti-corruption work; and use the findings of the researches thereof for advocacy purposes.

This study has also shown that CSOs complement the work of ACAs that suffer from lack of funding, resources and expertise. Inadequate capacity and resources featured as one of the obstacles to effective and sustainable anti-corruption endeavors. To this end, CSOs can fill some of the gaps if given the opportunity to work with ACAs.

In the UNCAC IRM, CSOs contribute by compiling or inputting into CSOs parallel reports, participating during external reviewers' consultations, inputting into self-assessment consultations and advocacy for the implementation review recommendations. In addition, CSOs dispose of a matrix of skills and competencies that supports the implementation of regional recommendations. In this regard, there is evidence that CSOs contributed through research, evidence-based advocacy, capacity development, and information sharing are among some of the competencies. However, the majority of CSOs suffer from lack of financial and human resources which undermines their contributions to the implementation of the UNCAC.

In keeping with the above, the following recommendations are made:

a) Civil Society contributing to the implementation of the UNCAC in Southeast Asia

- In addition to existing CSOs that are part of UNCAC Fast-tracking Regional Platform, it is recommended to widen and deepen CSOs in the Regional Platform to include other interested CSOs whose activities are linked to the implementation of the UNCAC
- The mobilization of Civil society organisations should also be done through existing anti-corruption networks that operates at national, regional and international levels

- Efforts should be made to build and/or enhance the capacities of CSOs participating in the UNCAC Fast-tracking Regional Platform to effectively, efficiently and sustainably support the implementation of UNCAC fast-tracking recommendations
- Capacity-building workshops with civil society groups and investigative journalists on developing Beneficial Ownership Transparency and Company Open Data, and how civil society can better monitor and track companies and their directors, illicit enrichment, and tax evasions schemes. The cases exposed in the Pandora papers, can be used as case studies for the region.

b) Civil Society contributions to the UNCAC Review Mechanism

- Raising awareness or conducting a training on how CSOs should meaningfully contribute to the UNCAC Review Mechanism
- Disseminating information to CSOs informing them on the timelines for the UNCAC reviews to enable them to participate
- Organisations such as the UNCAC Coalition should mobilise resources to enable CSOs to produce CSOs Parallel reports
- Governments should disclose information to CSOs when assessments start and seek their active participation
- Asset recovery and civil society participation could be an interesting way forward to deliberate how the second cycle findings can help UNODC and civil society discuss roadblocks and develop better capacity-building and technical assistance for civil society involvement.

c) CSOs contributions to the implementation of Regional recommendations

- Avail resources to CSOs to enable them to implement UNCAC recommendations and execute their mandates in the most effective, efficient and sustainable manner
- Conduct trainings to ensure that CSOs and specialized bodies execute their mandates in the most effective, efficient and sustainable manner
- A Regional Meeting to contextualise the First UNGASS Against Corruption Political Declaration with current challenges around fast tracking the implementation of the UNCAC, identifying priority areas for the region and collaborative initiatives around strengthening its implementation.

d) CSOs reflections on the UNCAC Fast-tracking Regional Platform

- Follow up meetings or workshops should be organized to re-energise members of the platform
- Incorporate other CSOs that have expressed interest to participate
- Consistently document best practices and lessons learned
- The ASEAN-PAC is a new commitment by member states in ASEAN to achieve better cooperation on addressing corruption in the region. It is a significant development and holds two broad objectives: Establish and strengthen collaborative efforts against corruption among the parties, and increase capacity and institutional building among the parties in preventing and combating corruption

e) Methodologies for partnering with governmental counterparts

- Aside from providing areas of technical expertise to these state parties, the UNODC could work as a facilitator to open spaces for collaboration between member states and civil society and the professional and private sectors, including the media. Activities could include joint research, skills training and mapping of mutual commitments to fast track the UNCAC, including the use of technology in increasing collaborative efforts
- In order to effectively work with the government CSOs should identify and establish contact with government focal points, establish real partnership based on common goals, align activities to national priorities, and demonstrate the role of civil society as an impartial watch-dog and establish but maintaining CSOs independence.

ANNEXES

I. List of consulted Civil Society Organizations (CSOs)

	Name of the CSO	Country	Status on attendance of the 2017 regional conference on fast tracking the implementation of the UNCAC in Bangkok	
			Yes	No
1.	Global Organisaiaon of Parliamentarians Against Corruption (GOPAC)	Indonesia / Qatar		No
2.	Transparency International Cambodia	Cambodia	Yes	
3.	Towards Transparency	Vietnam	Yes	
4.	Vietnam Justice Support Association for the poor (VIJUSAP)	Vietnam		No
5.	The Coalition for Integrity and Social Accountability (CISA)	Cambodia		No
6.	Sinar Project	Malaysia		No
7.	Anticorruption Organization of Thailand	Thailand		No
8.	Coalition for Business Integrity Bhd	Malaysia		No
9.	Transparency International Malaysia	Malaysia	Yes	
10.	Cambodian Human Rights and Development Association	Cambodia	Yes	
11.	The American Bar Association Rule of Law Initiative (ABA ROLI)	USA/SEA Region	Yes	
12.	East-West Management Institute - Open Development Initiative (EWMI-ODI)	Thailand, Laos, Cambodia, Myanmar and Vietnam and Southeast Asia		No
13.	Center to Combat Corruption & Cronyism (C4 Center)	Malaysia	Yes	
14.	ASEAN CSR Network Ltd	Singapore and also cover all ASEAN countries	Yes	
15.	Indonesia Corruption Watch	Indonesia	Yes	
16.	Myanmar Center for Resp Business	Myanmar		No
17.	Caritas	Philippines		No
18.	Koalisi Buruh Indonesia	Indonesia		No