UNCAC COUNTRY REVIEW FOR KENYA: A CIVIL SOCIETY PERSPECTIVE

Samuel Kimeu
Executive Director
Transparency International Kenya
Introduction

- First country to sign and ratify UNCAC
- Public participation – Constitution of Kenya, 2010
- Two civil society representatives appointed into the National Steering Committee on the review of the Implementation of the United Nations Convention against Corruption
The Steering Committee

- Maryann Njau-Kimani (Ms.)— Sec. SLO—(Chairperson).
- Michael Mubea—Dep. Sec., EACC (Vice-Chairperson).
- Dorcas Achapa (Ms.)—Dep. Solicitor Gen.
- Joash Odhiambo Dache—Sec., KLRC
- John Kithome Tuta, Chief Legal Officer, SLO
- Peter K. Ndung’u—Manager (Compliance), PPOA
- Tobias Konyango—Dep. Comm. (Ethics and Integrity Division), Kenya Revue Authority.
- Emily W. Kamau (Ms.)—Sen. Asst. Dir. Public Prosecutions
- Morris Odhiambo—ED, CLARION (Civil Society)
The Steering Committee...(2)

- Dalmas Okendo—Head of Programs, TI Kenya (Civil Society)
- John Opondo, Public Service Commission
- James Manyonge, Financial Reporting Centre
- Chrisantus Makokha, Kenya Prisons Service.
- Yuvinalis Angima, Ombudsman
- David Gathii, National Anti-Corruption Campaign Steering Committee.
- Mary M. Wairagu (Ms.), Dep. Chief Legal Officer, SLO (Joint Secretary).
- David Kaboro—Attorney, Ethics and Anti-Corruption Commission—(Joint secretary)
Terms of Reference

(a) Undertake the necessary technical work
(b) Co-ordinate the completion of the self assessment checklist
(c) Discuss with parties/stakeholders and UNCAC Review Experts
(d) Make recommendations for new legislation/review of existing
(e) Undertake technical needs assessment
(f) ensure timely submission of UNCAC comprehensive self-assessment checklist and the supporting documentation
Terms of Reference ...(2)

(g) Facilitate support and training to MDAs and other stakeholders on the requirements of UNCAC
(h) Advise the Government on measures necessary to comply with Kenya’s obligations under UNCAC
(i) Facilitate the publication of comprehensive self-assessment checklist on the implementation of UNCAC for public input
(j) Prepare an analysis of the Report, identifying...challenges faced, technical assistance needs...for remedial action
(k) Prepare an Action Plan for the implementation of the UNCAC Implementation Country Review Report. c) Co-opt any persons that it may consider necessary and expedient for the proper performance of its functions.
Negotiating for free space – Right to file alternate report

Unpacking the terms of reference

Attend National Committee—meetings, retreats, teleconference, (including sub-committee meetings) etc

Reviewed the checklist through a consultant

Engagement with reviewing countries – Cape Verde & Papua New Guinea – including during review visits

Expanded the scope of participation by engaging with other civil society organisations to input into the checklist
Civil Society Input...(2)

- Special session of Committee in which the CSO position on the checklist was presented (13\textsuperscript{th} Nov. 2013)
- A team of the Committee formed to look into CSO recommendations
- Some of the issues raised reflected in the report
- Hosted APNAC-Kenya (Members of Parliament) members to Mombasa retreat (28\textsuperscript{th} and 29\textsuperscript{th} February)
What went well

- Timely set up of the Steering Committee – good will & momentum
- Involvement of civil society
- Sequencing of activities
- Observation of timelines (checklist)
- Production of comprehensive checklist
- Fairly good coordination between MDAs
- Fairly good relay of information from agencies to committee
What did not gone so well …

- Failure to conclude rules of procedure which could have streamlined some of the major activities

- Failure to publish self-assessment checklist for public discussion in line with TOR (i)
  - Facilitate the publication of the self-assessment checklist on the implementation of UNCAC for public comments and debate before such reports are submitted to the Attorney General for eventual submission to the UNCAC secretariat
What has not gone so well...(2)

- Anticipated consultation never materialized to desired level—no mechanisms to involve those outside process
- Statistics and information not available
- Packaging of information a hindrance
- Inertia while waiting for feedback from the expert reviewers
What has not gone so well…(3)

- Commitment to review not backed by resources
  - Role of development partners
- Representation: Many times key persons represented by alternates
  - the requisite institutional memory was at times lacking
- Committee’s engagement with external public not sufficient
  - media not deployed to reach out the public
  - Not clear whether the Constitutional threshold was met
Important Issues for CSOs

- Build capacity of stakeholders on UNCAC review
- Access to information key to success
  - lobby for an enabling legal & policy framework
- Communicate review process to the wider public
- Role of judiciary and legislature – Independent SAGAs*
- Familiarise with guidelines for alternative reporting
- Advocacy—utilizing review report
- Work in networks e.g. UNCAC Coalition and others
- Establish and empower local networks
After the Review...

- Spurred momentum for new laws
  - Access to Information Act, 2016
  - Whistleblower Protection Bill, 2016
  - The Bribery Bill, 2016
  - Miscellaneous Law Amendment Bill, 2016

- Taskforce on review of structural, legislative and institutional structure to strengthen the fight against corruption