

Civil Society Statement to the Regional Conference on Fast-tracking UNCAC Implementation for Economic and Social Development in Southeast Asia

Bangkok, 3 February 2017

The regional conference on **Fast-tracking Implementation of UNCAC for Economic and Social Development in Southeast Asia**, 31 January – 3 February 2017 comes at a pivotal time in Southeast Asia, as ASEAN (the association of Southeast Asian nations) turns 50 this year.

The first five decades chartered a colorful yet complex path for the regional association comprising countries of myriad political and economic backgrounds. The next five decades are likely to be even more challenging.

At 50 it marks a new era of global challenges.

The ASEAN Community Declaration 2025: Forging Ahead Together¹ was launched in November 2015 laying out a vision for the next ten years. A key focus is the ASEAN Economic Community, which opened the gates for free trade and services in a borderless region, giving rise to new market opportunities and together with that, new potential for increased corruption.

Hence the need for a comprehensive integrity mechanism, and strong anti-corruption policies within the framework of the United Nations Convention against Corruption (UNCAC) and the Sustainable Development Goals (SDGs) to guide ASEAN's way forward in the next years.

Representatives of civil society organisations from eight countries² attending the regional conference on Fast-tracking UNCAC -implementation on 1 -3 February 2017 agreed on the following proposals for action by states acting at ASEAN and national levels, as well as by civil society organisations.

1. ASEAN level

a. ASEAN joint efforts to fight grand corruption and regional complaints mechanism

States should start discussions within ASEAN about the need to fight grand corruption³, including through recognition of grand corruption as a cause of human rights violations and as an international crime requiring criminal sanctions and civil remedies. States should also commit to

¹ See Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together <http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf>; See also, ASEAN

² Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand, Timor Leste, Vietnam

³ See discussion of grand corruption here:

http://www.transparency.org/news/feature/what_is_grand_corruption_and_how_can_we_stop_it

exploring within ASEAN the creation of a commission to receive and review complaints about cross-border corruption and, where appropriate, issue recommendations.

Financial hubs in the region should improve money laundering prevention and enforcement which can help put a check on corruption in other countries in the region, including grand corruption, reiterating their commitments under UNCAC and Sustainable Development Goal (SDG) 16.

b. Activate the ASEAN Integrity Dialogue

States should commit to activating and resourcing the “ASEAN Integrity Dialogue”⁴ in order to hold joint discussions on follow up to the anti-corruption commitments in UNCAC and SDG 16, as well as those in the ASEAN Community Vision 2025 and the three Community Blueprints 2025⁵ with the following recommended focus areas:

- Achieving and implementing effective anti-corruption policies, legislation and strategies, including with respect to right to information and civil society participation, asset declarations, beneficial ownership transparency, anti-money laundering and whistleblower protection
- Achieving strong and independent anti-corruption institutions
- Achieving international anti-corruption cooperation to strengthen national level efforts to fight corruption and to curb cross broader corruption, with the participation of national authorities, regional and international organisations and other anti-corruption stakeholders, including civil society organisations
- Achieving meaningful engagement and consultation with civil society and the business sector to curb corruption, in line with UNCAC Articles 5, 13 and 39

States should also develop a common mechanism or process within ASEAN to review progress in the sub-region on implementation of their UNCAC SDG 16 and Blueprint anti-corruption commitments and publish periodic progress reports, drawing on and updating UNCAC reports.

c. Prioritise right to information in ASEAN countries

In particular, states should commit to working within ASEAN to place the subject of right to information high on its agenda and to promote passage and application of comprehensive freedom of information legislation in all ASEAN countries. This should cover proactive right to information about procurement and budgets meeting UNCAC standards.

⁴ See ASEAN 2025: Forging Ahead Together

<http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf>;

See also, ASEAN Integrity Community: A vision for transparent and accountable integration (Transparency International,

23 April 2015) https://www.transparency.org/whatwedo/publication/asean_integrity_community

⁵ See ASEAN Community Vision 2025, Economic Community Blueprint 2025, Political-Security Community Blueprint

2025, Socio-Cultural Community Blueprint 2025

<http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf>

d. Prioritise whistle-blower protection in ASEAN countries

States should also commit to working within ASEAN to promote effective whistle-blowing systems that include both effective reporting mechanisms and protection of witnesses and whistle-blowers in both the public and private sectors, including the financial and material resources needed to implement the law. Whistle-blowers should not be hampered, for example, by misuse of official secrets, defamation or sedition laws.

e. Working within the “integrity has no borders initiative”

States should expand the ASEAN Corporate Social Responsibility “integrity has no borders” initiative, which currently targets the private sector, to a broader range of stakeholders including civil society organisations. It should also build synergies with the joint UNODC-UNDP “United against corruption” campaign and support joint awareness-raising and advocacy campaigns with multi-stakeholder involvement.

2. National level

Anti-corruption initiatives in individual countries should take place not only at national level but also at provincial, municipal and local administration levels.

a. Independence and resourcing of anti-corruption institutions

States should ensure political and functional independence and adequate resourcing of investigation, prosecution and oversight services, including anti-corruption agencies and supreme audit institutions, as well as of the judiciary and court administration. Appointments, promotions, transfers and removals should be transparent and based on objective criteria and there should be adequate remuneration.

States should also ensure that court judgments are announced and published in line with the Proactive Disclosure Principles⁶ (available, findable, relevant, comprehensible, free and up to date). Judgments in corruption cases (criminal, administrative or civil) should be published when these are communicated to parties of the case.⁷ Information disclosed in open court-hearings should be freely accessible to the public. States should also ensure compilation of relevant enforcement statistics, made available and understandable to the public.

⁶ See Proactive Disclosure Principles, pages 31-32: www.siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf .

⁷ Any restriction on information contained in judgments, case files, trial minutes or other related documents may be subject to narrow restrictions, not exceeding what is foreseen by Article 19 of International Covenant on Civil and Political Rights, together with other documents such as case files, trial minutes. See <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

Further, states should ensure multi-agency coordination, including among agencies responsible for anti-money laundering, anti-corruption, investigation and prosecution.

b. Asset declarations and disclosure

States should establish in law and practice that a list of Politically Exposed Persons (PEPs) and their asset declarations should be made public in line with open data principles⁸ and should include the family members of public officials. The asset declarations should be verified by an oversight body with the necessary financial expertise and in case of omissions or false information proportionate and deterring sanctions should be imposed.

c. Public registers of beneficial ownership

States should establish the legal framework for public central registers of beneficial ownership information and should establish such registers as a means to detect corruption crimes and to prevent the misuse of legal entities and arrangements in support of money laundering and illicit financial flows. Measures for the transparency of beneficial ownership should include improved data collection and sharing.

d. Professional enablers of corruption

States should ensure adequate penalties against professional enablers of corruption and tax evasion. In particular, they should impose sanctions on financial institutions that fail to perform their anti-money laundering obligations.

e. Civil society and media space

States should ensure civil society participation in the fight against corruption in line with UNCAC Article 13, including through public consultation processes, inclusion in enforcement efforts and asset recovery processes and through making provision for private prosecutions and public interest litigation on behalf of victims. They should publicly commit to and, where required, adopt measures to guarantee protection of civil society space and media freedom as well as citizen's participation.

f. Transparent and inclusive UNCAC review process with follow-up

States should also publicly commit to establishing a transparent and inclusive 2nd cycle of the UNCAC review process. In particular, they should publicly endorse the UNCAC Review Transparency Pledge⁹ developed by the UNCAC Coalition, a global network of civil society organisations committed to the effective implementation and monitoring of UNCAC.¹⁰

⁸ See Open Data Charter <http://opendatacharter.net/principles/>

⁹ See UNCAC Review Transparency Pledge: <http://uncaccoalition.org/files/UNCAC-Review-Transparency-Pledge-English.pdf>

¹⁰ See UNCAC Coalition website: www.uncaccoalition.org

States should also commit to supporting an agreed and effective process of follow up on country review recommendations, including recommendations for technical assistance, and ensure civil society participation in that process. (UNCAC Article 63(4)(5)(6) and (7)).

3. Civil society organisations and journalists

a. Establishing networks

Civil society organisations, including youth organisations, should set up a network in the sub-region, as well as networks at national level, for participating in and sharing information about UNCAC reviews, and other relevant reviews, promoting inclusive reviews and ensuring civil society participation in the review process. The networks should also work together to advocate on priority topics such as access to information and protection of whistle-blowers and should make efforts to work with the private sector.

b. Exchanging information

Journalists and researchers should encourage more cross-country learning on offshore accounts, transfer pricing, and relevant instruments and agencies that perform key roles in the implementation of UNCAC.

Private Sector Recommendations: Fast-Tracking Implementation of UNCAC for Economic and Social Development in Southeast Asia

1st February 2017

The group of private sector and civil society representatives discussed various aspects of the anti-corruption efforts in the region and how the private sector can support it. The group produced the following recommendations for consideration by governments and businesses in Southeast Asia in the coming years:

1. Businesses have changed over the years, becoming more global in orientation and scope as well as more IT-savvy in practice; businesses are merging and operating across industries and physical boundaries. In order to promote the fight against corruption in the private sector, governments need enhanced awareness of the ways in which businesses function and information on corruption in the private sector. Lack of trust between the private sector and the government is also a problem to be addressed.
2. Education programmes for business leaders, starting at schools, should enable the business sector to become more open and transparent with regard to business processes and procedures and enhance cooperation with the public authorities.
3. The group stresses the importance of the UNCAC measures contained in Chapter II and Chapter III, especially on matters related to Article 9 (procurement), Article 10 (public reporting), Article 12 (private sector), Article 14 (money laundering), Article 15 (bribery), Article 18 (trading in Influence), Article 21 (bribery in the private sector).
4. The group advocates for better governmental system for data analysis and reporting on economic development and corruption, and for more consistency in the accounting systems across ASEAN.
5. The group endorsed integrity as pivotal to the business community and agreed that it has to become a key observance among all in the business, government and civil society.
6. Training and knowledge is pivotal for the fight against corruption. Training on accountability, understanding finance systems, compliance are crucial and need constant application for both private and public sector.
7. In relation to Asset Recovery (Chapter 5 of UNCAC), the group highlights the importance of recovery of stolen assets through cross-border investigations. Systems for cooperation should be enhanced and enforced.

8. The Group highlights that a multi-stakeholder approach including businesses, civil society and national authorities would be crucial for the private sector to take on a more relevant role in enhancing prevention of corruption.