

23 November 2023

English only

Tenth session

Atlanta, United States of America,
11–15 December 2023

**Statement submitted by Transparency International, a
non-governmental organization in consultative status with
the Economic and Social Council***

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* The present document is processed in the form in which it was received.

V.23-23221 (E)



Please recycle



Transparency International – Written submission to UNCAC CoSP10

Article 13 and civic space

This submission focuses on the implementation of UNCAC Article 13 and its nexus with civic space, as the necessary precondition to ensuring the effective participation of society in preventing and combating corruption.

In September 2020 the United Nations issued a system-wide [Guidance Note](#) on the protection and promotion of civic space defining civic space as “the environment that enables people and groups – or ‘civic space actors’ – to participate meaningfully in the political, economic, social and cultural life in their societies.” It further states that this requires “an open, secure and safe environment that is free from all acts of intimidation, harassment and reprisals, whether online or offline. Any restrictions on such a space must comply with international human rights law.”

UNCAC explicitly recognises the important role of civil society in anti-corruption efforts in its Articles 5(1) and 13. The Convention also recognises in Articles 13(2) and 33 the public’s important role in reporting corruption and protecting whistleblowers. Further, the 2021 [UNGASS Political Declaration](#) recognises that civil society must be able to operate independently and without fear of reprisals.

Article 13: Explicit and implicit States Parties’ obligations

UNCAC Article 13 explicitly requires measures to promote the participation of civil society in preventing and combating corruption, including in decision-making processes and to ensure access to information and the right to seek, receive, publish and disseminate information. Importantly, the latter also includes information exposing wrong-doing and seeking accountability. The Article 13 obligation bolsters the individual right to participation in public affairs recognised under international human rights law.

A necessary precondition for Article 13 implementation is that civil society actors enjoy the rights to freedom of association, assembly and expression – the bedrock of civic space. The ability to form groups and associations, to meet and operate safely, independently and free from undue restrictions, is essential for civil society actors to play the role envisioned by the Convention. Article 13 therefore also depends on respect for international human rights obligations on States Parties to respect, protect and fulfil these rights. Reviews of the implementation of Article 13 must necessarily consider how States Parties implement these rights and whether civil society enjoys an enabling environment.

Risks and challenges to CSO participation and civic space

The UN Human Rights Council (UNHRC) has long expressed concern about attacks and restrictions on civil society. Its [2023 resolution on civil society space](#) notes that civil society participation in decision-making processes has decreased and expresses grave concern that civil society actors face direct attacks and restrictions on freedom of association, expression and peaceful assembly, including restrictions on access to funding. CIVICUS Monitor’s [2022 global findings](#) note that civil society is under severe attack in 117 out of 197 countries.

Successive [UN Special Rapporteurs on the situation of human rights defenders](#) have identified anti-corruption activists and CSOs as particularly at risk.¹ The Special Rapporteur issued a [report on the situation of anti-corruption activists](#) in 2022. The report finds that activists and CSOs working on

¹ A/70/217, p.14, and A/HRC/19/55, pp.10-11

corruption “are often subjected to a range of attacks, including electronic or physical surveillance, cyberattacks, direct threats, online harassment and smear campaigns, criminalization, judicial harassment, attacks on their property and physical attacks, including murder.”

Inadequate reviews of Article 13

UNODC’s [report on the implementation of UNCAC preventive measures](#) finds that Article 13 ranks first in the number of States with good practices and second as to number of good practices. The report also finds that Article 13 ranks second-last in terms of the number of States with recommendations and last as to number of recommendations.

The abundance of good practices on Article 13 and the very limited number of recommendations and of States to which recommendations are made stand in sharp contrast to the significant risks and restrictions that civil society groups face across all regions, as outlined above.

In one country reviewed by the Implementation Review Mechanism (IRM) in 2023, the [review executive summary](#) focuses primarily on access to information in assessing civil society participation. No specific recommendations on Article 13 are made. Yet in 2022, the UNHRC [expressed concern](#) about that same country relating to “continued reports of restrictions of civic and democratic space, including arbitrary detention, acts of intimidation and reprisals, public defamation of [...] civil society stakeholders”. In 2023, a UN-mandated independent international fact-finding mission [reported](#) that attacks on civic and democratic space have intensified.

In another country reviewed in 2021, the [review executive summary](#) does not identify specific challenges or make specific recommendations concerning civil society. Yet according to a [report](#) by the UN Special Rapporteur on human rights defenders, laws and policies in that country significantly hinder the ability of civil society to operate. The report documents the use of stigmatisation, criminalisation and detention, restrictions on freedom of expression, drastic impediments to the right to freedom of association, frequent refusal or inadequate responses to requests by civil society to access information.

The discrepancy between IRM findings and those of other UN sources in the two examples above demonstrates the need to strengthen the IRM process in relation to Article 13. Further, very limited information is available on stakeholders’ engagement in the IRM process and civil society participation in the implementation of IRM recommendations.

CSO exclusion from UNCAC subsidiary bodies

Also of concern are limitations on the ability of civil society groups to contribute to international-level UNCAC anti-corruption discussions. CSOs are currently excluded from participating as observers in all meetings of UNCAC subsidiary bodies, including the Implementation Review Group, the Working Group on Asset Recovery and the Working Group on Prevention.

In addition, States Parties can object to the participation of non-ECOSOC accredited CSOs to CoSP without providing any valid reason. This results in the arbitrary exclusion of CSOs since objections, when challenged, are only addressed at the opening session of the CoSP. It will generally be impossible for a representative of an affected CSO to travel to the CoSP, for financial and potentially visa reasons. The [UN Special Rapporteur on the rights to peaceful assembly and of association](#) pointed to these challenges in his [2014 report](#) on the right to freedom of association in multilateral organisations.

Recommendations

Transparency International urges UNCAC States Parties to ensure the full **implementation of Article 13** by providing an enabling environment for civil society. This must include:

1. Effective measures to foster inclusive and meaningful **participation of independent civil society** in anticorruption efforts, including in national action plans and relevant legislative and policy processes, as well as in contributing to accountability by exposing wrong-doing;
2. Ensuring that laws regulating the establishment and operations of CSOs fully respect the right to **freedom of association** in accordance with international standards, without undue restrictions. This includes the right to seek and access financial resources from abroad;
3. Ensuring that **other laws**, including on public order, terrorism and national security, cyber-crime and defamation, are fully compliant with international standards on the right to freedom of association, assembly and expression;
4. Effective measures to ensure the **protection** of civil society actors facing risks and retaliation due to their anti-corruption work. This includes comprehensive whistleblower protection laws in line with international best practice;² human rights defenders protection instruments;³ as well as ensuring that threats and attacks are effectively investigated and perpetrators held to account.

Transparency International also urges the UNCAC CoSP to ensure that UNCAC participation principles are implemented **at the international level** including by:

5. Permitting civil society participation as observers in UNCAC subsidiary bodies and informal negotiations, and reforming the objections process for non-ECOSOC accredited CSOs to prevent its abuse and ensure a timely decision in advance of the CoSP;
6. Ensuring transparency of State Party information concerning their engagement with stakeholders in the IRM process and civil society participation in the implementation of IRM recommendations, including by joining the [Transparency Pledge](#) and supporting the current UK initiative on transparency in the IRM;
7. Implementing the recommendations on the right to freedom of association in multilateral organisations by the UN Special Rapporteur on the rights to peaceful assembly and association.

Finally, Transparency International urges the CoSP to mandate **UNODC** to:

8. Carry out a **study** on the reviews of the implementation of Article 13 to increase understanding of the apparent contrast between such reviews and the trend of shrinking civic space, including for anti-corruption work;
9. Review and update existing IRM **guidance** on reviews of the implementation of Article 13 to ensure that it is comprehensive, includes relevant findings of international human rights bodies and accurately reflects the challenges faced by civil society seeking to engage in anti-corruption work;

² [UNODC Resource Guide, CoE Recommendation CM/Rec\(2014\)7, https://www.transparency.org/en/publications/international-principles-for-whistleblower-legislation, A Best Practice Guide for Whistleblowing... - Transparency.org](#)

³ On protection laws, policies, mechanisms and guidelines, see <https://ishr.ch/defenders-toolbox/national-protection/>

10. Ensure closer **liaison** between the UNCAC IRM and UN human rights bodies, as well as between UNODC and OHCHR, with a view to integrating human rights standards and findings of relevance to CSO participation into UNCAC work.

20 November 2023