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Papua New Guinea - Civil Society Report

by Transparency International Papua New Guinea

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

-Executive Summary-

This is the executive summary of a Transparency International Papua New Guinea (TIPNG) report¹ that reviews Papua New Guinea's (PNG) 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 PNG 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).

As far as the actual compliance with UNCAC obligations is concerned, PNG is at just below satisfactory level, with confusion caused by overlapping legislation. There is also a lack of witness and whistleblower protection. A critical challenge for the key agencies engaged in anti-corruption efforts is the lack of financial resources. We have seen some progress since August 2011 when the National Anti-corruption Strategy (NACS) was approved by the national Executive Council. The Prime Minister in his Inaugural Speech to Parliament undertook to combat corruption and under his governorship, will establish the independent Commission Against Corruption and look at other relative legislation including the Whistleblowers Act.

This report took into account the recent review of Papua New Guinea's in the context of a Thematic Review on Criminalization of Bribery within the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, published in 2010.²

Assessment of the review process

Conduct of Process

The PNG government has not yet completed its self-assessment so that it is premature to report on the review process.

Availability of Information

Information necessary for this report was made available by government officials within a very short timeframe. Details of cases prosecuted by National Anti-Corruption Authority (NACA) were made available.

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Mayambo Ipu Peipul, Transparency International Papua New Guinea. A draft of the report was shown to the government and 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.

² The Criminalisation of Bribery in Asia and the Pacific, Framework and Practices in 28 Asian and Pacific jurisdictions - Thematic Review and Final Report, pp. 97-112, <http://www.oecd.org/dataoecd/2/27/46485272.pdf>

Access to public servants tasked with implementing UNCAC was straightforward largely due to the good working relationship TIPNG has with them. We have compiled an update on cases investigated and prosecuted as of July 2011.

Implementation and enforcement

Criminal legislation, such as the *Proceeds of Crime Act 2005* (Proceeds of Crime Act) and the Mutual Assistance in Criminal Matters Act 2005 ensures that active and passive bribery and other forms of corrupt behaviour amongst domestic public officials are prohibited. There is, however, significant overlap across the various laws which means there is tension between and / or overlap of sanctions.

A key area of concern is the delay in the introduction and implementation of the NACS. Now that the NACS has been approved, its implementation will lead to the self-assessment being completed by PNG. Part of TIPNG's advocacy plan relates to ensuring that this occurs soon.

The complexity of UNCAC as well the endemic nature of corruption in PNG necessitates the introduction, implementation and enforcement of substantive policies effecting legislative, institutional and attitude change. The introduction of the National Anti Corruption Strategy (NACS) will facilitate better coordination between implementing agencies. The government commits through NACS to implement UNCAC which can be better accommodated into PNG laws and policies

Existing agencies such as Financial Intelligence Unit (FIU) and the Ombudsman will be funded appropriately, a specialised Independent Commission against Corruption (ICAC) will be created and legislation will be amended and implemented.

Legislative approval of the establishment of an ICAC appears to demonstrate political exhibited on the part of the current government. Establishing an ICAC would guarantee the existence of a constitutional body that can investigate and prosecute a wide gamut of corruption related offences.

Recommendations for priority actions

1. Provide resources to existing anti-corruption agencies to investigate, prosecute and / or otherwise enforce existing laws
2. The Government to approve and implement the National Anti-Corruption Strategy (NACS)
3. Amend existing legislation apart from the newer Proceeds of Crime Act to ensure different sanctions are made consistent
4. Whistleblowers, witness protection and freedom of information legislation to be introduced. Whistleblower legislation has been drafted and is awaiting Cabinet approval. Witness protection and freedom of information legislation has yet to be drafted.

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