



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
17 May 2013

English only

Implementation Review Group

Fourth session

Vienna, 27-31 May 2013

Item 5 of the provisional agenda*

Other matters

**Statement submitted by Transparency International, a
non-governmental organization in consultative status with
the Economic and Social Council, and by the Transparency
and Accountability Network, a non-governmental
organization not 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.

* CAC/COSP/IRG/2013/1.

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



16 May 2013

Recommendations for Action by the United Nations Convention against Corruption Implementation Review Group and the Conference of the States Parties

On behalf of the UNCAC Coalition and its Coordination Committee we are writing this second letter to urge the Implementation Review Group of the United Nations Convention against Corruption and the Conference of the States Parties to advance the work on international best practice guidance to States Parties in support of effective country implementation. This submission is made on behalf of the UNCAC Coalition by the Transparency and Accountability Network in the Philippines and by Transparency International.

Despite progress in law enforcement efforts against corruption around the world, this work is still hampered by numerous obstacles ranging from weaknesses in legal frameworks to deficiencies in enforcement systems. This is shown by the results of Convention against Corruption reviews in the 5-year cycle of the Convention against Corruption review process as well as the findings of other review processes.

This letter focuses on three key topics and urges action: (1) settlements/plea bargains in corruption cases; (2) immunities; and (3) independence and resources for specialized enforcement bodies and the judiciary. It draws on information from official country review reports as well as civil society reports.¹

Settlements/plea bargains in corruption cases: Articles 26(4) and 30(1)

Summary of experience in this area: In an increasing number of countries civil society organizations (CSOs) have reported new legislation providing for plea bargains or settlements in corruption cases and have also reported concerns about the settlements actually reached in those cases. In one country, new legislation was applied to reach a confidential settlement in a long-running international corruption case involving three “oligarchs”. The case was concluded with the accused paying a fine of an unknown amount without admission of guilt. In another country, a high profile settlement reached with a major multinational company levied a low fine, barred enforcement against accused employees of the company and closed files to enforcement agencies in other countries. Parts of the settlement were not made public. In a small-island territory, a confidential settlement reached in a case involving alleged bribes to high-level officials resulted in the accused wealthy bribe-payer returning property without admission of guilt.

Conclusion: Settlements and plea bargains in corruption cases have a role to play but should not be a vehicle allowing the wealthy and well-endowed to buy their way out of being held to account. Safeguards should be built in, such as settlements only in cases where guilt is admitted; publication of agreements with justifications as

¹ See for example, United Nations Convention against Corruption CSO reports available here: www.uncaccoalition.org/uncac-review/cso-review-reports. See also Transparency International Progress Reports on OECD Convention Enforcement, available here: http://archive.transparency.org/global_priorities/international_conventions/projects_conventions/oecd_convention.

well as performance reports; judicial oversight; dissuasive sanctions and confiscation of illicit proceeds; compensation to victims for damages; and allowing for prosecution of other persons involved.

Recommendation: UNODC should be requested to convene expert discussions on best practices for settlements in corruption cases.

Immunities: Article 30(2)

Summary of experience in this area: Immunities pose an important barrier to anti-corruption law enforcement in many countries and this is well-covered in UNODC's thematic report.² The problems posed in such cases are well known to CSOs in many countries whether due to immunities under domestic law or under international law. CSOs have reported on a range of cases where investigation and prosecution of parliamentarians, ministers and high ranking officials were stymied due to the immunities barrier, often despite solid evidence of malfeasance. One CSO cited the case of a parliamentary leader who introduced legislation providing for retroactive immunity that would serve to shield him from ongoing investigations.

Immunities can also pose serious problems in international investigations of corruption. As an example, a CSO reported on a case involving the son of a head of State. After the son was made the subject of an international corruption investigation, he was appointed Vice-President of the country and made a delegate to an international institution, claiming immunities associated with these positions.

Conclusion: Countries should impose strict limits on immunities for public officials and have procedures for suspending them as well as ensuring that immunities are not used to shield individuals from being held to account for corruption offences. Consideration should be given to the recommendation in the 2005 Report of the Commonwealth Working Group on Asset Repatriation that "Commonwealth Heads of State/Government, ministers and other public officials should not have immunity from prosecution in domestic courts for alleged criminal activity".³

² UNODC Thematic report on articles 30-39, www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-31May2013/V1382050e.pdf; See also, UNODC, Technical Guide to the UNCAC, p. 85 et seq. www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf.

³ Key recommendation 2 of the Report of the Commonwealth Working Group on Asset Repatriation (August 2005). Available here: www.thecommonwealth.org/Shared_ASP_Files/UploadedFiles/E6642A80-04E0-4848-A2FE-0397BADBC2DE_LMM05_AssetRepatriationReport.pdf.

Recommendation: Building on its thematic report, UNODC should convene an expert meeting to discuss recommendations for implementing Article 30(2). It should also prepare a report on immunities under international law.⁴

Independence and resources for specialized enforcement bodies and the judiciary: Article 36 (does not cover the judiciary)

Summary of experience in this area: Problems of limited independence of prosecution services and lack of resources and training of enforcement bodies are known across numerous countries and have been cited in Convention against Corruption review reports as well as country reports from other review processes. Likewise, CSOs in numerous countries have also reported on these problems.⁵ In a recent example, one CSO cited media reports in their country that the finance minister had a veto over the decisions of a key enforcement body's decisions on whether to pursue corruption cases.

It is also important to look at these issues as they relate to the judiciary. In many countries, CSOs have reported that courts are under-resourced and that cases may continue for years before conclusion. In one country a CSO reported that the chief judge of a central appeals court announced that the court would be shut down due to lack of resources. In another, they reported on pressure brought to bear on a judge in an important case. In a considerable number of countries, concerns have been raised about appointment, conditions of service, salaries, transfer and dismissal of judges.

Conclusion: The lack of independence, resources and/or training for specialized enforcement bodies presents a serious obstacle to anti-corruption enforcement in many countries and requires attention. The same is true for the judiciary in many countries, though the Convention text does not specifically refer in the enforcement chapter to the role of the judiciary. Instead, some of the measures needed to assure the judiciary's work are covered in the chapter on prevention.⁶

Recommendation: UNODC should prepare a study on experiences and best practices in implementation of Article 36 of the Convention against Corruption, in particular regarding the functional independence and resourcing of specialized law enforcement bodies and other investigative bodies or persons. Along the same lines, UNODC should also address in this study issues relating to the resourcing and independence of the judiciary.

⁴ A report might also be made on follow-up to General Assembly Resolution 58/4 of 31 October 2003 adopting the United Nations Convention against Corruption, which requested "the Conference of the States Parties to the Convention to address the criminalisation of bribery of officials of public international organisations, including the United Nations, and related issues, taking into account questions of privileges and immunities, as well as of jurisdiction and the role of international organisations, by, inter alia, making recommendations regarding appropriate action in that regard." General Assembly Resolution, A/RES/58/4, paragraph 6. Available here: www.un.org/ga/search/view_doc.asp?symbol=A/RES/58/4&Lang=E. See also Resolution 1/7 of the Conference of the States Parties to the United Nations Convention against Corruption. www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1-resolutions.html.

⁵ See footnote 1 of this letter.

⁶ See Article 11 of the Convention against Corruption and the discussion about this article in UNODC, Technical Guide to the Convention (2009), pp. 46 et seq. www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf.

We believe that these steps to produce best practice guidance will serve to strengthen implementation of the Convention against Corruption and thus the potential of the Convention to make a difference in the global fight against corruption.
