

To the UNCAC Working Group on Prevention,

23 August 2013.

Dear members of the Working Group on Prevention,

We are writing to you in advance of the next meeting of the Working Group on Prevention and of the Fifth Session of the Conference of States Parties (COSP) to be held in Panama this November to share with you two priority issues for the civil society community.

The more than 350 members of the UNCAC Coalition from around the world have identified progress on access to information and on beneficial ownership as being key to further progress on the prevention of corruption. Access to information is vital for civil society organisations and members of the public to be able to fulfil their role of participating in anti-corruption efforts. Greater transparency of beneficial ownership is critical for reducing the ability of corrupt officials to launder and use their ill-gotten gains in the global economy, which would reduce the appeal of engaging in large-scale corruption.

This letter provides the UNCAC Coalition's recommended actions for improving access to information and beneficial ownership transparency and a brief explanation of their importance from the perspective of our civil society representatives.

UNCAC Coalition Priority Issues for the Prevention of Corruption

1. Access to Information

We propose that the Working Group on Prevention's recommendations to the 5th COSP include the following recommended language for the Prevention resolution

- **"Concerning UNCAC chapter II, especially Articles 5(1), 9, 10 and 13, reminding States Parties that access to information is essential for corruption prevention and calling on them to adopt and implement comprehensive access to information legislation."**
 - i. The COSP should call on States Parties to adopt laws that protect the right of access to information (also referred to as "freedom of information") in line with international standards, where these already exist, they should ensure that these laws are being properly adopted and implemented in practice.
 - ii. Member States should instruct the UNODC to develop interpretative notes to accompany the Self-Assessment Questionnaire prepared for the next cycle of the Implementation Review Process. In particular, the notes should clarify that under the questions referring to Article 13 states should report on whether they have a functioning and comprehensive access to information law.

- iii. The Working Group on Prevention should include in their work plan the issue of “ensuring that the public have effective access to information” (as detailed in Article 13). There should be a focus on access to information laws as mechanisms to achieve this.

Throughout the past decades, access to information laws have been consistently recognized as an essential mechanism in the fight against corruption. In 2003 when the UNCAC convention was adopted just 40 national access to information laws existed, that has risen to 95 today. The right to information has been recognized as a human right by the UN Human Rights Committee, a move supported by a number of decisions of the Inter-American Court of Human Rights and the European Court of Human Rights, and by the recognition of access to public documents as a fundamental right in the European Union. There is also a fast developing movement for Open Government Data.

There is now a need to ensure that commitments made under Articles 10 and 13 of the UNCAC, which specifically refer to access to information, are implemented and reported on at the implementation stage.

2. Beneficial Ownership

We propose that the Working Group on Prevention’s recommendations to the 5th COSP include the following additional recommended language for the Prevention resolution

- **“Concerning UNCAC Article 12 (c) and building on Resolution 4/4, calling for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information.”**
 - i. Signatories to the UNCAC should require the disclosure of beneficial ownership for all companies, trusts and foundations to bolster existing anti-money laundering laws.
 - ii. This information should be added to existing registry lists, so that the information is available to the public and compliance is simple.
 - iii. In line with the above, Member States should instruct UNODC to publish guidance for the Self-Assessment Questionnaire stating that States that do not have a registry of beneficial ownership should be deemed non-compliant, and States with a registry that is not public should be deemed partially compliant. The Self-Assessment includes questions of beneficial ownership but lacks sufficient guidance for accurately gauging compliance.

Several Articles in the Convention call for transparency of beneficial ownership. Article 12 (2) (c) specifically calls for “measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.” Article 14 (1) (a) also calls on UNCAC State Parties to institute comprehensive money laundering regulations and oversight for financial institutions, including a recommendation for record-keeping of beneficial ownership. Know-your-customer laws, including beneficial ownership, are also explicitly cited in Article 52 (1) for the “Prevention and Detection of Transfers of Proceeds of Crime.”

Despite these provisions, the practice in many countries is to allow for the ability to disguise the true beneficiaries of accounts and entities through the use of nominees, trustees, anonymous shell companies, and fake foundations and trusts.¹ This opacity impedes the ability of financial institutions to follow the rules on due diligence and knowing your customer to limit the access of terrorists, criminal groups, entities under international sanctions, and potentially corrupt politically exposed persons (PEPs) to the legitimate financial system. It also routinely stymies law enforcement investigations into such groups and persons and efforts to recover stolen assets.

➤ **On the Exclusion of Civil Society Representatives from the Working Group on Prevention**

The UNCAC Coalition would like to express its concern about UNODC's notification to the UNCAC Coalition that civil society representatives will not be permitted to participate as observers in the upcoming Working Group meeting. Rules 2 and 17 of the [Rules of Procedure](#) of the UNCAC Conference of States Parties (COSP) allow for civil society to attend these meetings with full observer status, in recognition of our expertise and our contribution to the legitimacy of the anti-corruption process. We encourage you to reaffirm the Rules of Procedure that grant observer status and issue invitations to civil society representatives to attend this and all future Working Group meetings.

Thank you for taking the time to consider the views of the expert civil society organizations engaged at the national and international levels on these issues. We would welcome an opportunity to discuss the priorities outlined in this letter further and how your government can partner with the UNCAC Coalition to address these critical areas for preventing corruption as envisioned in the UNCAC to which you have committed.

Yours sincerely,

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Coordination Committee

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¹ See "[Anonymous companies: How hidden ownership is a major barrier in the fight against poverty and what to do about it](#)," Global Witness, May 2013. See "[Anonymous companies: How hidden ownership is a major barrier in the fight against poverty and what to do about it](#)," Global Witness, May 2013.