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The First and Second Years of the UNCAC Review Process: A Civil Society Perspective

By Gillian Dell, Transparency International

Introduction

This is the executive summary of an overview report¹ by Transparency International (TI) and the UNCAC Coalition about the first two years of the UNCAC review mechanism. It is the second such report² and has been prepared as a contribution to the UNCAC Implementation Review Group (IRG) session in Vienna, 18-22 June 2012. It is based on a survey of the review process in 51 of the 68 countries in the first two years of review. (See Annex 1). The current five-year review round covers UNCAC chapters III on criminalisation and enforcement and IV on international cooperation.³

The report finds that in a majority of the first year countries surveyed: (1) the reviewed country agreed to a country visit and the visit took place; and (2) civil society organisations (CSOs) met with country review teams, albeit sometimes only one or two CSOs. This is encouraging. On the other hand, in most countries CSOs (1) had difficulties accessing the country focal point and country review schedules; and (2) were not invited to contribute to the country self-assessment. Further, only seven countries are known to have published their self-assessments and only seven have committed to publishing their full review report, with one (Finland) actually having done so. However, in many second year review countries the review process appears to be in early stages.

The report also reflects findings from four new CSO country reports on the Philippines, Portugal, the United Kingdom and Zambia that supplement thirteen CSO reports previously submitted to the Fourth Conference of States Parties (COSP) in October 2011. The new reports confirm previous findings about insufficient access to information; inadequacies in country legal frameworks; and weaknesses in enforcement. Across countries there is inadequate enforcement data and insufficient public access to such data. There are common legal framework deficiencies concerning the foreign bribery offence; the liability of legal persons and whistleblower protection, among others. And in many countries the enforcement challenges include insufficient independence of enforcement authorities together with inadequate resources, expertise and training.

The UNCAC review process is highly demanding in terms of the requirements of expertise and coordination. It is to the great credit of the United Nations Office on Drugs and Crime (UNODC) and participating countries that the process is proceeding smoothly producing valuable country executive summaries and thematic reports. It is also a step forward that the IRG has set aside a full day at its upcoming meeting for a briefing for CSOs. TI and the UNCAC Coalition are also very appreciative of the excellent collaboration with UNODC in preparing trainings for CSOs about the UNCAC review process, most recently in South Africa in March 2012.

While recognising the achievements to date, it is a matter of concern that at the end of the second year of the review process, only fifteen country executive summaries have been published online (from the first year of review). Still in the pipeline are twelve reports for the

¹ The full overview report will be available on the UNCAC Coalition website at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>.

² The previous report, submitted to the Fourth Session of the UNCAC COSP in October 2011 can be found on the UNCAC Coalition website <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>

³ At its Third session in Doha in November 2009, the UNCAC Conference of the States Parties to the adopted resolution 3/1, entitled "Review mechanism". <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

first year and forty one reports for the second year or a total of fifty three reports outstanding as the third year of the process begins.

Further, TI and the UNCAC Coalition have identified essential areas for improvement in the UNCAC review process, notably in transparency and civil society participation at all levels of the process, including in the IRG. Our recommendations below are in line with UNCAC articles including Article 13 and with the Terms of Reference of the Review Mechanism (See Annex 2) as well as with the UNCAC COSP Rules of Procedure, including Rule 17.

Summary recommendations to the IRG and COSP

- CSOs should participate as observers in IRG meetings. Pending a decision by the COSP, the IRG should ensure that CSO briefings represent a meaningful dialogue between governments and CSOs;
- Instruct UNODC to publish easily accessible and timely information about focal points and country review timetables and to create a one-stop shop on the UNODC website to provide an easy overview of all information and reports about any country under review;
- Adopt a modified template for the country report executive summary that includes information on (1) the in-country review process; (2) statistics on enforcement, and (3) information about technical assistance needs;
- Remind countries to apply standards of inclusiveness and transparency in their review processes and instruct UNODC to actively facilitate the application of such standards;
- Include civil society organisations in discussions of technical assistance needs;
- Agree measures to strengthen States Parties' collection and publication of enforcement data, including statistics and other information.

Summary recommendations to States Parties regarding national level reviews

- Ensure that the review process is transparent. This should include
 - publishing a range of timely information about the process such as the name of the country focal point and the schedule for the country review to enable public participation in the process.
 - publishing the country's self-assessment on the UNODC website and on national government websites.
 - publishing the full final review report on the UNODC website and on national government websites in the national language.
- Ensure that the review process is credible and participatory. This should include
 - consulting with relevant CSOs on the government self-assessment, to take advantage of their expertise and their interest.
 - arranging a country visit for the review team, to ensure quality reviews, to facilitate broader inputs and to assist in raising awareness about UNCAC.
 - inviting civil society representatives to meet with country review teams and also to make written inputs to ensure a range of views enabling a more sound assessment.
- Publish available statistics and enforcement information and work on improving this data, to ensure a sound basis for decisions about the enforcement system.
- Address promptly the findings of the review process and enlist the support of civil society organisations for doing that.

Annex 1 UNCAC Review Process: First Year of Review⁴

A summary of civil society participation and transparency in the UNCAC review process.

	Contact details of focal point public	CSO consulted in preparation for the self-assessment	Self-assess made public	Onsite visit	CSO inputs to review team	Publish full report	Exec Sum as of 6.6.12
1. Argentina	No	No	Yes after an access to info request	No	No	Govt official says yes	No
2. Bangladesh	Yes	No	Yes	Yes	Yes	No	No
3. Brazil	No	Yes	Yes	Yes	Yes	Unknown	No
4. Bulgaria	No	No	No	Yes	Yes	Unknown	Yes
5. Burundi	No	No	No	Yes	Yes	Unknown	
6. Chile	No	No	No	Yes	Yes	Govt official says yes	Yes
7. Croatia	Yes	No	No	No	No	Unknown	No
8. Dominican Republic	No	No	No	No	No	Unknown	No
9. Fiji	No, but on inquiry	No	No	Yes	Yes	No	Yes
10. Finland	Yes	Yes	Yes	Yes	Yes	Yes, on national website	Yes
11. France	Yes	Yes	No	Yes	Yes	No	Yes
12. Indonesia	Yes	Yes	Yes	Yes	Yes	Unknown	Yes
13. Jordan	Not determined	No	No	Yes	Unknown	Unknown	Yes
14. Lithuania	Yes	No	No	Yes	No	Govt official says yes	
15. Mongolia	Yes	Yes	No but provided to a CSO	Yes	Yes	Unknown	Yes
16. Morocco	No	No	No	Yes	No	Unknown	No
17. Niger	Yes	No	No	Yes	Yes	Unknown	No
18. Peru	Yes	No	No	Due	Unknown	Unknown	No
19. PNG	Indirectly	N/A ⁵	N/A ¹	Yes	Yes	Yes	No
20. Rwanda	Indirectly	No	Yes	Yes	Yes	Unknown	No
21. Spain	Unknown	None known	No	Yes	No	Unknown	Yes
22. Togo	No	No	No	Yes	Yes	Unknown	Yes
23. Uganda	No	Yes	No	Yes	Yes	Unknown	Yes
24. Ukraine	Yes	No	No	Due	Unknown	Unknown	
25. USA	Yes	No	Yes	Yes	Yes	Yes	Yes
26. Zambia	No	Yes	No	Yes	Yes, some	Unknown	
TOTAL YES	11 Yes	7 Yes	7 Yes	21 Yes	17 Yes	1 actual, 5 planned	

⁴ No information is included on Sao Tome y Principe because no contact could be identified

⁵ The PNG government has not yet completed its self-assessment.

UNCAC Review Process: Second Year of Review⁶

An interim summary of civil society participation and transparency in the second year of the UNCAC review process. The responses are *partial and provisional* as the second year process is still under way.

	Contact details of focal point public	CSO consulted in preparation for the self-assessment	Self-assess made public	Onsite visit	CSO invited to input to review team	Private sector invited to input to review team	Publish full report
1. Australia	Indirectly	Partially	No	Yes	Yes	No	Unknown
2. Azerbaijan	Yes	Yes	Yes	No	Yes*	No	No
3. Cameroon	Yes	Yes	No	Not yet	Yes*	Yes*	Unknown
4. Colombia	No	Yes	No	Unknown	Unknown	Unknown	Unknown
5. Congo	Yes	No	No	Not yet	No	No	No
6. El Salvador	Unknown	Not yet	No	Not yet	Unknown	Unknown	Unknown
7. Estonia	No	No	Yes	Yes	Yes	Unknown	Govt official says yes
8. Georgia	No	No	No	Yes	Yes	Unknown	Unknown
9. Jamaica	Yes	No	No (not yet)	Yes	Yes	Unknown	Unknown
10. Kuwait	Unknown	No	No	No/ not yet	No	Unknown	Unknown
11. Kazakhstan	No	Yes	Yes	No	No	No	No
12. Montenegro	No	No	No	Yes	Yes	No	Unknown
13. Mozambique	No	No	No	Unknown	No	Unknown	Unknown
14. Nicaragua	No	No	No	No	No	Unknown	Unknown
15. Panama	Yes	No	No	No	No	Unknown	No
16. Philippines	No	Partially	No	Not yet	Yes*	Unknown	Unknown
17. Portugal	Yes	No	Yes	Unknown	Unknown	Unknown	Unknown
18. Serbia	Indirectly	Partially	No	No	No	No	No
19. Sierra Leone	Yes	Yes	No but provided to some CSOs	Undecided	Unknown	Unknown	Unknown
20. South Africa	No but on request	Yes	Incomplete	Not yet	Yes*	Unknown	No
21. Slovakia	No	No	No	Yes	Yes	Yes	Unknown
22. Switzerland	Yes	Yes	Unknown	Yes	Yes	Yes	Unknown
23. United Kingdom	Yes	Yes	Yes	Yes	Yes	Unknown	Unknown
24. Viet Nam	Yes	Yes	No	Yes	No	No	Unknown
25. Zimbabwe	No	No	No	Yes	No	Unknown	Unknown
TOTAL YES	10 Yes	9 (12) Yes	5 Yes	9 Yes	12 Yes	3 Yes	1 Planned

*CSO invited but on-site visit has not yet taken place

⁶ No information is included on 16 countries: Benin, Brunei, Cape Verde, Central African Republic, Cuba, Dominica, Iran, Iraq, Laos, Mauritius, Norway, Russia, Seychelles, Timor Leste. Uruguay and United Arab Emirates because no information currently available to CSOs contacted or contact could be identified.

Annex 2

Transparency and participation standards for the UNCAC review mechanism

Both UNCAC and the Terms of Reference for the Review Mechanism point to the importance of civil society participation and transparency in the fight against corruption.

1. UNCAC provisions: Articles 5, 10, 13 and 63

UNCAC Article 5 calls for anti-corruption policies that *promote the participation of society* and reflect the principles of the rule of law...transparency and accountability.

UNCAC Article 10 calls on each States Party to enhance *transparency in its public administration* such as through procedures *to allow members of the general public to obtain information* on [its] functioning ... and *to facilitate public access to the competent decision-making authorities*. Relevant measures include *publication of information*, including on the risks of corruption in public administration.

UNCAC Article 13 requires States Parties to take appropriate measures “*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*” and to strengthen that participation by measures such as, “*enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*”

UNCAC Article 63 (4) (c) calls for the Conference of States Parties to agree on activities *facilitating the exchange of information with [inter alia] non-governmental organisations*.

2. Terms of Reference of the Review Mechanism

The Terms of Reference for the Review Mechanism agreed by the CoSP in November 2009 call for a review mechanism that is “transparent, efficient, non-intrusive, inclusive and impartial”.⁷ They also provide in paragraph 28 that “The State party under review shall endeavour to prepare its responses to the comprehensive self-assessment checklist through broad consultations at the national level with all relevant stakeholders, including the private sector, individuals and groups outside the public sector.” They further provide in paragraph 30 that “States parties are encouraged to facilitate engagement with all relevant national stakeholders in the course of a country visit.”

⁷ Resolution 3/1 Review mechanism, Annex 1 Terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, adopted at the 3rd Conference of States Parties, 9 – 13 November 2009