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The Tell Us What You've Done Initiative

Report on the 2010 Pilot Project on Access to
Information about UNCAC Implementation

Version of 21 October 2011

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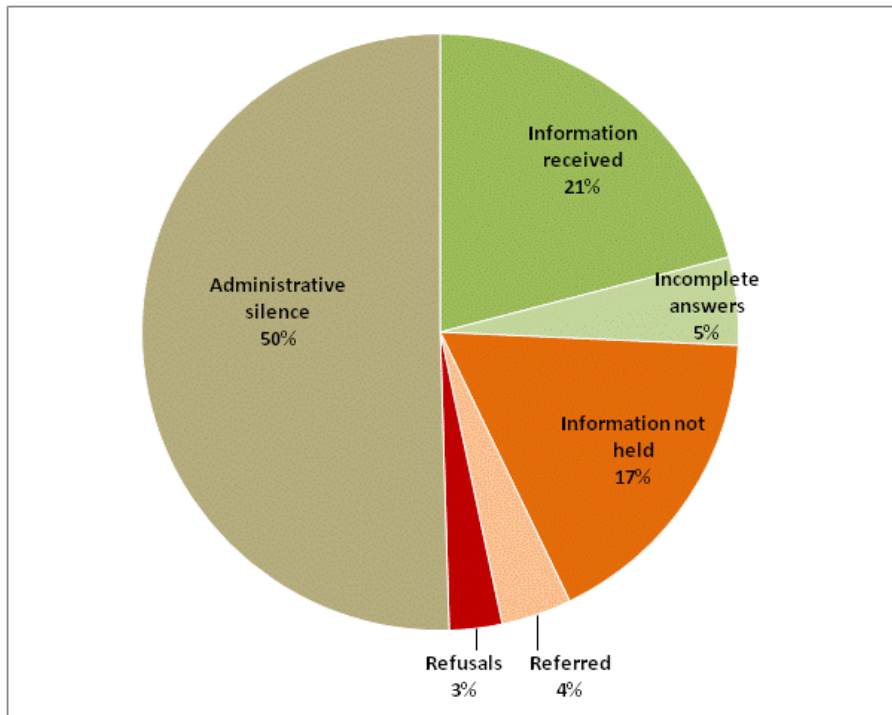
Executive Summary

The “Tell Us What You've Done” (TUWYD) initiative is the first global monitoring project using access to information laws to obtain information on the implementation of the international anti-corruption conventions.

The monitoring study consisted of five identical questions that were presented to public bodies responsible for implementing international anti-corruption convention in 20 countries as well as at the level of the European Union.

The study found that half of the questions put to governments (50%) met with administrative silence and only about one quarter of requests (just 26%) resulted in information (either complete or incomplete information) being provided to the civil society requesters.

Figure 1: Results for 20 Countries monitored plus the European Union



The failure to respond to an access to information request is a violation of the right of access to information and is inconsistent with the spirit of the access to information language in the UNCAC: whether or not the government body holds the information, and whether or not that information falls under a legitimate exception which may justify not releasing it, there is always an obligation to respond to the requester.

For anti-corruption organisations, even a simple response confirming that the public body does not hold the information is useful when monitoring compliance with international anti-corruption treaty commitments, whereas the empty silence of a failure to respond is not.

The study showed that countries with access to information laws were much more likely to either provide information or tell the requester that the information was not available (51% in countries with an ATI law as against 16% for countries with no ATI law) and far less likely to leave questions unanswered (40% in countries with an ATI law as against 84% in countries without).

The study also found that most information was provided in response to a question about public procurement and whether appeals mechanisms had been established (7 countries provided such information).

There was also a moderate response rate to requests for the self-assessment reports which governments have to submit to the anti-corruption treaty oversight bodies (6 countries provided such reports) and on private sector integrity measures (6 countries).

In the remaining countries in the TUWYD survey, civil society had no information about what their governments are saying about treaty implementation or doing to ensure integrity in the private sector.

Fewer responses were received to the questions on public sector disciplinary cases (4 countries), and on measures on right of action for damages (3 countries). These low levels of responsiveness leave civil society and the general public in the dark about what public authorities are doing, it limits their ability to play a watchdog role, and stifles constructive engagement with government on how to strengthen mechanisms that prevent corruption.

Context

Access to information is an essential tool in the fight against corruption and for civil society to be able to monitor the implementation of anti-corruption conventions.

In the 154 States that are parties to the United Nations Convention against Corruption (UNCAC) (as of 18 October 2011), civil society access to information about government anti-corruption efforts is guaranteed by Article 13, as well as by Article 10 which calls on governments to publish information of their own accord.

In the context of the UNCAC review mechanism that started up in July 2010 it is of critical importance that these provisions be respected in order for civil society to play a role in providing inputs to the reviews under that mechanism. More generally, independently of the review process, it is essential that citizens have access to information in order to play their role in efforts to curb corruption, a role foreseen in UNCAC Article 13.

The need to know what states parties to the UNCAC and similar regional anti-corruption treaties or the OECD Anti-Bribery Convention are reporting to the respective oversight bodies on the implementation of these conventions forms the basis of the "Tell Us What You've Done" (TUWYD) initiative.

Led by *Access Info Europe* and *Transparency International*, working together with civil society members of the *UNCAC Coalition* and the *Freedom of Information Advocates Network*, this monitoring study involved submitting the same five requests (See Box A below) in each of twenty countries about measures taken to implement the UNCAC and other regional anti-corruption conventions.

Box A: The Questions in Brief (See Section 2.2 for details)

In each country a civil society organisation asked the government for:

1. **Self-Assessment Questionnaires:** A copy of the country's response to UNCAC's 2007 first self assessment checklist (and where relevant those submitted to GRECO and the OECD)
2. **Public Sector Integrity:** Data on public sector disciplinary cases for violation of codes of conduct, relevant to the implementation of Article 8(6) of the UNCAC.
3. **Procurement:** Information on measures taken to ensure an appeals mechanism in public procurement, relevant to the implementation of Article 9.1.d of the UNCAC.
4. **Private Sector Integrity:** Information on measures taken to promote transparency and integrity in the private sector, relevant to the implementation of Article 12.2.c of the UNCAC.
5. **Actions for Damages:** Information on measures to ensure a right of action for damages for persons or entities harmed by corruption, relevant to the implementation of Article 35 of the UNCAC.

The questions selected represent a cross-section largely (with one exception) seeking information not otherwise requested under the first review round of under the review mechanism that started up in July 2010, covering UNCAC chapters III and IV and ongoing until 2014. They seek several categories of information, ranging from a government document submitted to UNODC to case statistics to regulatory details.

The requests were submitted to the government bodies responsible for the implementation of the UNCAC and other relevant regional anti-corruption conventions, typically central government ministries, and the European Commission in the case of the European Union. The public bodies for each country were selected by the national partners based on their knowledge of which bodies were responsible for which aspects of UNCAC implementation. In some cases the chosen bodies referred the requesters on to other departments or agencies; where this happened there are references in this report.

The twenty countries involved in the Tell Us What You've Done initiative were a global cross-section consisting of the following: **Argentina, Armenia, Bangladesh, Bosnia and Herzegovina, Chile, Colombia, France, Macedonia; Germany, Guatemala, Israel, Italy, Liberia, Nicaragua, Nigeria, Pakistan, Spain, Trinidad and Tobago, the United Kingdom, Venezuela**, along with the **European Union**.¹

¹ In addition, requests were submitted in Hungary but a change of government resulted in the abolition of the ministry to which they had been submitted. The requests should have been transferred to a new ministry but no response was received; it is not clear exactly what happened to the request. The requester,

Of these, one (Germany) had not ratified the UNCAC as of the time of the survey and thus was not subject to its requirements. Fifteen of these countries are also parties to international and regional conventions, notably the OECD Anti Bribery Convention, the Council of Europe Criminal Law Convention or the Inter-American Convention against Corruption. (See Table 2 for listing of countries and their ratification dates.)

Main findings and conclusions

Overall, the Tell Us What You've Done Initiative found that:

- » There were significant failures to provide information or even to respond to information requests, in breach of both the transparency commitments under the UNCAC and, in most of the countries surveyed, of the national access to information laws.
- » In many of the countries that replied, the responses showed significant gaps in implementation of the anti-corruption conventions. Countries where measures exist or have been taken in conformity with the UNCAC's requirements, often failed to provide examples of how such measures are enforced and have been effective in curbing corrupt practices, and/or providing the public with the tools to prevent or fight corruption.

Regarding access to information, the survey found that government performance was surprisingly poor in responding to the five questions with a full 50% of requests going unanswered, suggesting that the UNCAC requirements on public reporting, access to information and civil society participation are either not well understood or not respected by the public officials tasked with implementing them.

The survey also found that in most of the countries with access to information laws those laws are not being adequately implemented. The results are summarised here (See Table 1 on next page) and more detail can be found in Section 3.

- In seven of the 20 countries surveyed, it was not possible to obtain any information at all, namely **Bangladesh, Bosnia and Herzegovina, France, Italy, Nicaragua, Spain** and **Venezuela**, and the same was true of the **European Union**. In three of these countries, France, Nicaragua and Spain, there was administrative silence in response to all the questions. In Bangladesh there was administrative silence in response to four requests and one refusal, while in Venezuela and the European Union, four requests met with administrative silence and, in each case, with one response that the information was not held. In the remaining two countries, Bosnia and Herzegovina and Italy, the claim was made that none of the information was held.
 - In an additional four of the countries surveyed, namely **Argentina, Germany, Liberia and Nigeria**, there were four administrative silence outcomes.
-

the Hungarian Civil Liberties Union, filed a complaint with the Freedom of Information and Data Protection Commissioner but in the meantime Hungary was not included in this study.

- Half of the questions put to governments in this study met with administrative silence and only about one quarter of requests (just 26%) received information (complete or incomplete answers).²
- Countries with access to information laws tended to have higher response rates, demonstrating the importance of such laws for transparency and accountability in the public sector. However, their results were still surprisingly poor.
- Countries were most responsive to the request for the self-assessment report (6 countries) and to the question about procurement (7 countries). The responses on measures on private sector integrity landed in the middle (6 countries). Countries were least responsive on the questions about public sector disciplinary cases (4 countries); and on measures on right of action for damages (3 countries). For analysis of this see Sections 3.6 and Section 4.

Table 1: Results – Information Provided by Question and Country

Q1: Self-assessment questionnaire	Q2: Public sector integrity	Q3: Procurement	Q4: Private sector Integrity	Q5: Actions for damages
Argentina	Armenia	Armenia	Armenia	Colombia
Armenia	Guatemala	Colombia *	Colombia	Israel
Chile	Israel	Guatemala	Israel	Trinidad & Tobago
Colombia	Macedonia	Israel	Macedonia	
Germany		Liberia *	Nigeria	
UK *		Macedonia	Trinidad & Tobago	
		Pakistan *		
		<u>Info indirectly via self-assessment questionnaires:</u>		
		Argentina		
		Chile		
		Germany		
No Information Provided in response to any questions				
Bangladesh, Bosnia and Herzegovina, France, Italy, Nicaragua, Spain, Venezuela + European Union				
* = incomplete information which answers only part of the question only received				

² Incomplete information is when some relevant information is provided but not all the information sought by the requester.

Regarding the substantive information provided, the survey found that:

- The information that was provided by some countries yielded relevant insights enabling better civil society understanding of anti-corruption efforts in those countries and facilitating more informed civil society participation in public debate. An analysis of the substance of the country responses can be found in Section 4 of this report.

Key recommendations

Based on the analysis of the findings of the Tell Us What You've Done study, Access Info Europe and Transparency International, together with our national partner organisations, recommend first to governments and then to civil society organisations (CSOs) as follows.

Recommendations to governments

In order to promote and guarantee the right of access to information, governments of all states signatory to the UNCAC Convention against Corruption should:

- » Take urgent steps to ensure that access to information laws are in place and enforced in practice, in accordance with their obligations under the UNCAC and other conventions (Argentina, Nigeria, Spain and Venezuela are the countries in this study which do not yet have access to information laws);
- » Establish transparency and access to information as a key priority and train public officials in how to respond to such requests;
- » Ensure that the names and contact information of those responsible for handling access to information requests are made public through a variety of channels accessible to the public, including but not limited to the internet;
- » Compile and publish up-to-date information on relevant websites on an ongoing basis to establish a culture which promotes transparency and combats impunity for corrupt acts.

In order to promote civil society participation in the UNCAC review process, governments in all states signatory to the UNCAC Convention against Corruption should:

- » Ensure compliance with key UNCAC provisions on transparency, such as Articles 10 and 13;
- » Make available to the public responses to the 2007 self-assessment checklist where these were prepared;
- » Make public the self-assessments and full review reports in the current UNCAC review process;
- » Compile and publish adequate data on different aspects of anti-corruption prevention and criminalisation, including detailed data on disciplinary actions and procurement proceedings as well as in other areas and review this data as a basis for policy-making and future action;
- » Ensure legal and regulatory compliance with provisions on private sector integrity and on the Article 35 right of action for damages and make relevant information available to the public.

Recommendations to Civil Society Organisations

In order that civil society has access to information about UNCAC implementation, including the UNCAC review process, civil society organisations should:

- » Continue to advocate for the adoption and implementation of access to information laws where these are not in place;
- » Make full use of existing access to information laws to obtain information from governments about the implementation of the anti-corruption conventions;
- » Engage in dialogue with the government about the establishment of websites where up-to-date information about anti-corruption measures and their enforcement can be made available to the public, along with the contact information of relevant government officials;
- » Use comparative data from other countries to advocate for greater access to information and transparency in the access to information process if required.

In order to promote UNCAC implementation and an effective and open review processes, CSOs should:

- » Continue to advocate for the immediate implementation of the UNCAC and other applicable international anti-corruption instrument;
- » Continue to advocate for adequate data collection, compilation and publication by governments as a basis for adequate policy-making;
- » Make the case for a transparent review process, with CSO participation and use the review process as a platform for public advocacy for reforms.

1. Introduction

1.1 The right of access to information

Access to information is an essential tool in the fight against corruption. First, because the legal, policy and cultural changes necessary to combat corruption require the participation of a wide range of actors, including public officials, prosecutors, the judiciary, civil society, the media, and the wider public – and for these actors to participate, they need information. Second, because the public needs information in order to hold governments to account for their actions: transparency directly increases the accountability of public officials.

Civil society actors need to know what steps governments are taking to combat corruption, in order to engage with and support these initiatives, to ensure that anti-corruption laws or regulations are being implemented in line with commitments in anti-corruption treaties.

The UN Convention against Corruption and other anti-corruption treaties therefore include an obligation, in some form or other, for State Parties to provide effective access to information, so as to promote civil society participation in the prevention of and fight against corruption.

In recent years, there has been a tremendous growth in the number of access to information laws around the world, with the right recognised in the legal frameworks of 90 countries and in over 50 constitutions. The right to information has further been confirmed by rulings of the Inter-American Court of Human Rights (2006) and the European Court of Human Rights (2009).³ Both courts linked the right of access to information to civil society's fundamental right to freedom of expression. Hence the right to information of all members of society, and in particular of civil society organisations, seeking to comment on anti-corruption measures is protected not only by anti-corruption multilateral instruments, but also, more generally, by international human rights treaties to the extent they protect freedom of expression.

³ The key ruling of the Inter-American Court of Human Rights 19 September 2006 is *Claude Reyes and others v. Chile*, Series C No. 151 see <http://www.corteidh.or.cr/casos.cfm?idCaso=245> (Spanish original) and <http://www.corteidh.or.cr/casos.cfm?idCaso=245&CFID=525202&CFTOKEN=97319768> (English). The decision of the European Court of Human Rights of 14 April 2009 is that brought by the Hungarian Civil Liberties Union, *Társaság a Szabadságjogokért v. Hungary* (App no 37374/05), ECHR, see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=849278&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

1.2 The UN Convention against Corruption

The UN Convention against Corruption (the UNCAC) was adopted by the United Nations General Assembly by Resolution 58/4 on 31 December 2003, and was signed by 140 countries by the time it closed for signature in October 2005. It entered into force on 14 December 2005, after Ecuador became the thirtieth country to ratify it. As of October 2011, the UNCAC had been ratified, accepted, approved or acceded by 154 countries, which are thus State Parties to the UNCAC.

At the time of conducting the TUWYD pilot study, all countries surveyed were all States Parties to the UNCAC, except for Germany (which has not ratified the UNCAC).

The UNCAC is the most comprehensive international anti-corruption convention to date, as it covers the broadest range of corruption offences, including the active and passive bribery of domestic and foreign public officials, obstruction of justice, illicit enrichment, and embezzlement. It addresses preventive measures, international co-operation and technical assistance, and also contains provisions on asset recovery. It is open to all UN member states.

As noted above, and of particular relevance to the TUWYD Initiative, the UNCAC protects the right for the public to have effective access to information, and obliges State Parties to take steps to increase transparency in public administration and to promote civil society's active participation in combating corruption.

The UNCAC provides, in Article 13.1.b on "Participation of Society", that States Parties should ensure public participation by such measures as "*Ensuring that the public has effective access to information*" for the public.

Article 10 of the UNCAC, dealing with "Public Reporting", obliges State Parties to "*take such measures as may be necessary to enhance transparency in public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public. (...).*"

These provisions are broad and cover a wide range of public administration functions, including anti-corruption measures taken to implement the UNCAC which are of concern and relevance to this study.

Additionally, as discussed in Annex II, the Conference of States Parties to the UNCAC has developed first a self-assessment questionnaire for parties and then a review mechanism to assessment progress in implementation.

1.3 The Inception of the TUWYD Initiative

In 2007, one of Access Info Europe's board members filed a request with the Spanish government for information about what Spain had done to implement the UNCAC, which it had signed in 2005 and ratified on 19 June 2006. Spain's cabinet office (*Ministerio de la Presidencia*) referred the requester to the Ministry of Justice, which in turn did not respond to the request. Access Info Europe filed an administrative appeal. The Ministry of Justice rejected the appeal stating that there was no legal basis to ask for such information. Whilst it is true that Spain does not have an access to information law, such a refusal to provide civil society with information relating to the implementation of the UNCAC was clearly inconsistent with Spain's transparency obligations under UNCAC Articles 10 and 13(1).

The case is currently pending before the Supreme Court. To date the lawyers for the Spanish government have continued to argue that there are "*absolutely no legal grounds for providing information about the implementation in Spain of certain international treaties,*" while Access Info Europe is arguing both that there is a constitutional right of access to information as part of the right to freedom of expression and that this is reinforced by the obligations in UNCAC Articles 10 and 13, a treaty which Spain ratified in 2006.

Based on the response to of information about the case within the UNCAC Coalition (a global civil society network promoting the ratification, implementation and monitoring of the UNCAC), two of its member organisations – Access Info Europe and Transparency International (TI) – decided to develop a pilot project to test civil society access to information about UNCAC implementation in a broader range of countries.

1.4 The Tell Us What You've Done Initiative

The Tell Us What You've Done pilot project requested information about the implementation of the UNCAC in multiple UNCAC State Parties, using five questions prepared by Transparency International.

These five questions were put by local CSO partners⁴ to governments in 20 countries⁵, as well as to the European Commission. The questions concerned the implementation of the UNCAC, and in particular compliance with certain specific UNCAC obligations.⁶ (**Annex II** to this Report provides relevant background to the contents of the UNCAC and to the mechanisms in place to monitor its implementation.)

The questions were structured to obtain information currently not readily available to the public, which would be of value in public debate about the adequacy of domestic measures to comply with the obligations to combat corruption under UNCAC. They were also designed to generate

⁴ The local CSO partners are listed at Annex 1 to this report.

⁵ See Section 2.1 of this report for a table of the surveyed countries.

⁶ See Section 2.2 of this report for details of the questions.

comparative data which could be used by civil society partners in advocacy work to press for greater transparency.

Governments were given one month (20 working days), which is above the global average of around 15 working days,⁷ to respond to the access to information requests. When this timeframe had lapsed and in the absence of a response, the result was classified as administrative silence. (See Annex III on the Methodology.)

The dual objective of the TUWYD Initiative was to use the right of access to information to obtain information that civil society could use to assess government compliance with UNCAC and other anti-corruption treaty commitments, while at the same time measuring the commitment to transparency itself.

This project is the first of its kind to be carried out on a global scale. As such it can be regarded as a pilot study designed to develop a methodology for a larger-scale monitoring of anti-corruption mechanisms using the right of access to information.

2. Countries, Questions and Requesters

2.1 The TUWYD Countries

The organisers of this pilot study selected a range of countries from around the world in which civil society is active in the fight against corruption and/or active in promoting access to government information as well as to the European Union.

The countries surveyed are listed below. At the time of survey all, including the European Union, had signed the UNCAC, and all had ratified or acceded to it except for Germany. At the time requests were filed, fifteen (15) of these countries had an access to information law,⁸ as did the European Union with its access to documents regime. Those without access to information laws were Argentina, Liberia⁹, Nigeria¹⁰, Spain, and Venezuela.

⁷ The average as calculated by the Open Society Justice Initiative is given as just under 15 working days based on analysis of 47 laws. See the report *Transparency & Silence: A Survey of Access to Information Law and Practices in 14 Countries* (2006, New York, Open Society Justice Initiative) on page 146 and footnote 7 on page 185.

⁸ For this project Access Info Europe considered that Colombia has an access to information law, although the national partner, NGO Corporación Transparencia por Colombia disagrees, asserting that the law is so poorly implemented that it fails to establish a mechanism for exercise of this right.

⁹ Liberia adopted a freedom of information law in September 2010

¹⁰ Nigeria adopted a freedom of information law in May 2011.

Table 2: Monitored Countries – ATI law and Treaty Ratifications

Country	ATI Law	Ratified / Acceded to UNCAC	Ratified/ Acceded to OECD Convention	Ratified/ Acceded to Council of Europe Criminal Law Convention on Corruption	Ratified/ Acceded to Inter American Convention on Corruption
Argentina	✘	✓	✓	-	✓
Armenia	✓	✓	-	✓	-
Bangladesh	✓	✓	-	-	-
Bosnia and Herzegovina	✓	✓	-	✓	-
Chile	✓	✓	✓	-	✓
Colombia *	✓	✓	-	-	✓
France	✓	✓	✓	✓	-
Germany	✓	✘	✓	signed only	-
Guatemala	✓	✓	-	-	✓
Israel	✓	✓	✓	-	-
Italy	✓	✓	✓	✘	-
Liberia *	✘	✓	-	-	-
Macedonia	✓	✓	-	✓	-
Nicaragua	✓	✓	-	-	✓
Nigeria *	✘	✓	-	-	-
Pakistan	✓	✓	-	-	-
Spain	✘	✓	✓	✓	-
Trinidad and Tobago	✓	✓	-	-	✓
United Kingdom	✓	✓	✓	✓	-
Venezuela	✘	✓	-	-	✓
European Union	✓	✓	-	-	-

* For the purposes of this study, Colombia was considered to have an ATI law (see Footnote 9; Liberia and Nigeria have subsequently adopted access to information laws.

– indicates that the regional treaty is not relevant for that country

2.2 The TUWYD Questions

The five questions filed in the TUWYD project were crafted so as to obtain, if answered adequately by the governments to which they were addressed, information as to that government's efforts to implement the UNCAC. The questions focused in particular on the implementation of specific obligations set out in UNCAC Articles 8.6, 9.1.d, 12.2.c and 35. For full texts of the relevant articles please see Annex II of this report.

The **five questions** were as follows:

1. Self assessments

Request for a copy of the government's completed self-assessment submitted to UNODC in response to the June 2007 questionnaire circulated by UNODC.¹¹ (AS APPROPRIATE: Also request latest self-assessment responses under GRECO and OECD Convention review mechanisms.)

2. Public Sector Integrity

Request for information on the number of disciplinary cases initiated and concluded and the number and value of sanctions imposed for violations of codes of conduct or standards by public officials, as provided in Article 8.6 of the UNCAC.

3. Procurement

Request for information about the number of cases processed annually in the period 2007-2009 by the appeals mechanism referred to in Article 9.1.d of the UNCAC, and average time (in days) taken by the mechanism to make a decision on these cases. In the absence of such appeals mechanism, request for information on any measures planned to introduce such mechanism.

4. Private Sector Integrity

Request for information about measures taken pursuant to Article 12.2.c of the UNCAC to promote transparency among private entities, including identity of legal and natural persons involved in the establishment and management of corporate entities.

5. Actions for Damages

Request for information on measures taken under Article 35 to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

¹¹ See Annex 2 for an explanation of the purpose of the UNCAC self assessment questionnaire.

2.3 The Requesters

Twenty one civil society organisations, including twelve TI National Chapters and the Transparency International Secretariat (TI-S), submitted the requests in twenty countries and the European Union. The requesters are listed in **Annex I** to this report. In each case the requests were filed in the name of the CSO rather than an individual. This was done by using the letter-headed paper of the relevant organisation or by stating in the e-mail that the requester was working for that organisation.

As noted above, in some cases the requests based on these questions were submitted by local partner CSOs to public body believed to be responsible for the anti-corruption issue which was the focus of the question; in some cases of lack of clarity as to which body was responsible or because of overlapping competences, requests were sent to more than one body. If more than one question was submitted to the same public body, the questions were grouped into one request letter. Where relevant, the requesters mentioned that the request was being filed under the national access to information law.

3. Access to information findings

This section presents the main findings of the Tell Us What You've pilot survey analysed from the point of view of the right of access to information.

Sections 3.1 and 3.2 below give a general overview of the outcomes to the requests made in the monitored countries and the EU.¹² Sections 3.3 to 3.8 analyse the responses by “type” of outcome and responsiveness to different questions. Section 3.9 considers to what extent a domestic access to information law made a difference to the request outcomes in surveyed countries.

3.1 Country findings

No country supplied full information in response to all five requests. Only two countries provided information in response to four questions, namely Armenia¹³ and Israel. In the case of Armenia, the fifth question met with administrative silence, and in the case of Israel, it was stated that the information was not held.

It is of concern that in seven of the 20 countries surveyed, it was not possible to obtain any information at all, namely **Bangladesh, Bosnia and Herzegovina, France, Italy, Nicaragua, Spain** and **Venezuela**. In addition, the **European Union** provided no information. In three of these countries, France, Nicaragua and Spain, there was administrative silence in response to all the questions. In one other, Bangladesh, there was administrative silence in response to four requests and one refusal, while in Venezuela and the European Union, there were four cases of administrative silence and one information not held response. In two other countries, Bosnia and Herzegovina and Italy, the claim was made that none of the information was held.

These findings (see Table 3) indicate that some countries which sign and ratify the UNCAC are not always providing civil society with the information required to assess government steps to comply with their UNCAC obligations. This thwarts the role envisaged for civil society in the UNCAC itself as a contributor to anti-corruption efforts.

¹² Annex III to this report explains the methodology used and the classification of the possible types of outcomes to the requests made, namely (i) oral refusal, (ii) written refusal, (iii) request transferred, (iv) request referred, (v) mute refusal, (vi) information received, (vii) incomplete information, and (viii) information not held.

¹³ In the case of Armenia, Questions 2, 3, and 4 had previously been submitted by Transparency International Anti-corruption Center Armenia, so these results were incorporated into the results of the Tell Us What You've Done Initiative.

Table 3: Results by Country Number of Responses, including European Union
(Results ordered with best performing countries at the top)

COUNTRY	ATI Law	Information Received	Incomplete answer	Info not held	Referred	Refusal	Admin. Silence
Armenia	✓	4		1			
Israel	✓	4		1			
Colombia	✓	3	1				1
Macedonia	✓	2	1	1			1
Trinidad and Tobago	✓	2		2			1
Guatemala	✓	2		1			2
Pakistan	✓	1		1			3
Chile	✓	1				2	2
Argentina	✗	1					4
Germany	✓	1					4
Nigeria	✗	1					4
UK	✓		1		4		
Liberia	✗		1				4
Bosnia and Herzegovina	✓			5			
Italy	✓			5			
Venezuela	✗			1			4
European Union	✓			1			4
Bangladesh	✓					1	4
France	✓						5
Nicaragua	✓						5
Spain	✗						5
TOTALS		22	4	19	4	3	53

3.2 The European Union

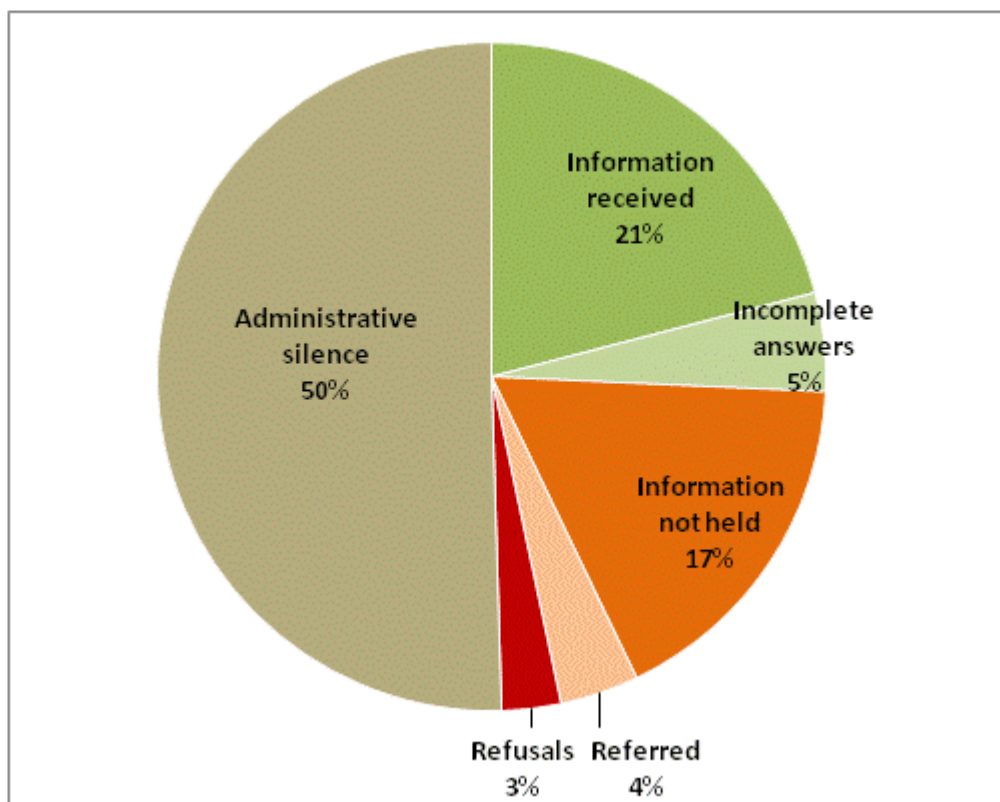
The same five questions were presented to the European Union, being submitted to DG Justice, Freedom and Security of the European Commission. That directorate only sent an answer to the first question, informing the requesters that the UNCAC had been ratified in September 2008 through Council Decision 2008/801/EC and that this was when the obligation of filling in and submitting the self assessment started.

From an access to information point of view this answer would be classified as “information not held”. For the four other questions, no answer was received, making the EU one of the weaker performers in this survey.

3.3 Overall findings

The overall findings for the study were that half the questions (50%) were met with administrative silence, with between 1 and 5 responses not being answered at all in any given country. Of those questions that were answered, just 26% of answers actually provided information which answered the question which had been asked. These results are analysed in more detail in the following sections.

Figure 1: Final Outcomes for all requests globally



3.4 High levels of administrative silence

As noted in the Section 1.3, administrative silence in response to a request about implementation of the UNCAC in Spain was a catalyst for the Tell Us What You've Done Initiative. This broader pilot study of 20 countries plus the EU also met with high levels of administrative silence: in total, half of the requests (50%) went unanswered.

The failure to respond to an access to information request is a violation of the right of access to information and is inconsistent with the spirit of the access to information language in the UNCAC: whether or not the government body holds the information, and whether or not that information falls under a legitimate exception which may justify not releasing it, there is always an obligation to respond to the requester.

A failure to respond to an access to information request can be indicative of a range of problems inside government. It may be due to poor information management, or inefficiencies in internal decision-making processes which cause delays. It may also be indicative of the absence of a culture of responding to the public, even in countries with access to information laws if these are still not fully implemented and the necessary cultural changes which place a priority on responding to the public have not yet taken place. In total 16 countries which have an access to information law failed to respond to one or more information requests. They are shown in Table 4 below.

Table 4: Administrative Silence by country (in descending order)

Country	# Unanswered Requests
France	5
Nicaragua	5
Spain	5
Argentina	4
Germany	4
Nigeria	4
Liberia	4
Venezuela	4
European Union	4
Bangladesh	4
Pakistan	3
Guatemala	2
Chile	2
Colombia	1
Macedonia	1
Trinidad and Tobago	1

Whatever the reasons for administrative silence, from the perspective of the requester, the lack of a response represents a failure to implement UNCAC (and in some cases national) public access to information and transparency obligations.

Three of the 20 countries responded with silence to all the questions, namely **France, Nicaragua and Spain**. In Spain, where the request was this time filed by Transparency International Spain, the Ministry of Justice repeated its previous failure to respond. In France a request covering all five questions was submitted to the Ministry of Justice under France's 1978 access to information law received no response whatsoever.

The countries which have an access to information law and failed to respond to four or more questions were Germany and Liberia (4 questions unanswered), and France and Nicaragua (5 questions unanswered). Of these, France and Nicaragua have ratified, and Liberia has acceded to the UNCAC, and hence all these countries have made express commitments to be transparent about anti-corruption measures. More needs to be done by the governments of these countries to ensure that they fully implement their transparency commitments under UNCAC and other access to information laws where applicable.

In Nicaragua the partner organisation followed up with each institution a total of 6 times¹⁴. In most cases they were told that the relevant officials were working on responses to the requests, but no such responses were received, even after expiry of the one-month deadline.

In Germany, where there was eventual administrative silence in response to four questions, there was a pattern of delays in answering. When the civil society organisation which had submitted the request contacted the Ministry of Justice in early October, well beyond the one-month deadline, the Ministry of Justice stated that they were still working on an answer. A little later the requester was told that the Ministry didn't have time at that moment to work on the answer but would get to it; no answer was ever provided

As noted in Section 1.4 above, the cut-off point for qualifying a request as administrative silence was one month or around 20 working days. None of the countries that had failed to reply within the one month time limit ended up replying at a later date. The finding from this monitoring indicates that either public bodies respond to requests within a reasonable time-frame or they do not respond at all.

3.5 Positive Responses providing information

Positive responses are those that provide some information. A total of 13 countries out of the 20 countries plus the EU provided some information (See Table 5 below for details). This left seven countries plus the EU which provided no information (even where they answered some requests).

¹⁴ The follow up was in the form of telephone calls made on the dates of 17, 19, 21, 25, 26 and 27 May 2010.

In total 26% of questions received answers containing information; of these 5% were incomplete. A further 18% received answers admitting that the information was not held (see Section 4 for further analysis of these answers).

That only 21% of answers were complete and provided all the information which had been requested is a disappointingly low rate of response given the combination of transparency obligations under the UNCAC and under national Access to Information (ATI) laws prevailing in the countries included in the survey.

Table 5: Countries Providing Information, ordered by number of responses

COUNTRY	Information Received	Incomplete answer	TOTAL POSITIVE RESPONSES
Armenia	4		4
Israel	4		4
Colombia	3	1	4
Macedonia	2	1	3
Trinidad and Tobago	2		2
Guatemala	2		2
Chile	1		1
Argentina	1		1
Germany	1		1
Nigeria	1		1
Pakistan	1		1
UK	1		1
Liberia		1	1

The countries which provided most information in response to the requests were Armenia and Israel (4 complete answers) and Colombia (3 complete answers and 1 incomplete).

Armenia was one of the stronger performing countries providing most information.¹⁵ However not all the information was provided within the timeframes established by the Armenian access to information law, which prescribes a 5-day timeframe for responding to information requests: the information provided in response to Question 1 on the self-assessment questionnaire was provided one month after the request was filed (on 3 June in response to a request submitted on 5 May). The information was provided both on CD and in hard copy, which is good practice from the perspective of the information requester who wants to be able to work with the information subsequent to receiving it.

¹⁵ Transparency International Anti-corruption Center Armenia had previously requested and received some of the information that was the subject of this monitoring survey, and so the results were incorporated in the study rather than unnecessarily repeat the requests. See Footnote 12 for details.

Another country which provided a high number of substantive answers was Israel, providing information in response to 4 of the questions (the 5th was referred to an institution responsible for that answer).

Colombia also had a high response rate. As the CSO partner in Colombia, Corporación Transparencia por Colombia, which conducted the monitoring was unsure which institutions would handle which request, a total of a 10 requests were filed of which 9 received responses. Not all of these answers provided information – in total Colombia provided complete or incomplete information in response to 4 questions – but it is very positive that they were processed and answered. Corporación Transparencia por Colombia was provided with a copy of the UNCAC self-assessment questionnaire in response to Question 1, something which happened in a total of just 6 countries (See Section 3.5 below).

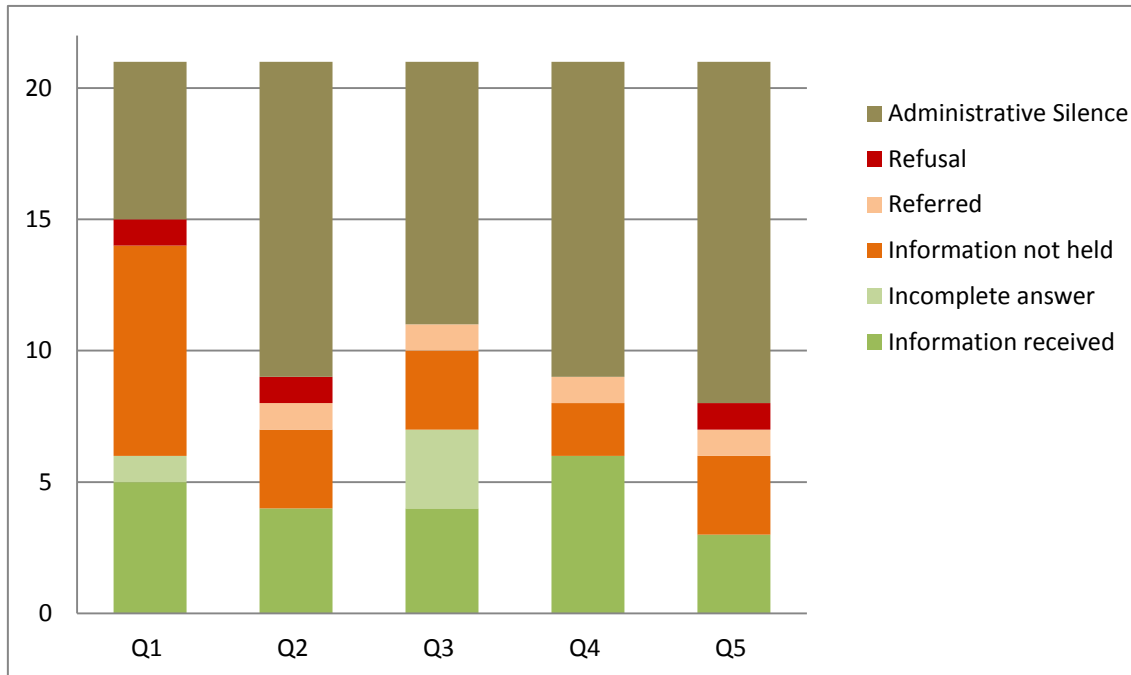
Trinidad and Tobago provided substantive information in response to questions 4 and 5, and gave partial answers to the other questions.

Macedonia also had good level of responsiveness in spite of one request going unanswered (administrative silence). As in Colombia, a number of requests (16 in total in the case of Macedonia) were submitted to different governmental bodies and most were answered, but not all yielded information. In total Macedonia provided information in response to two requests (Questions 2 and 4), gave an incomplete answer in response to Question 3, and stated that it did not hold the self-assessment report asked for in Question 1).

3.6 Results by question

A breakdown of the results by question gives an interesting insight into government readiness to be transparent on different anti-corruption measures, as well as about information management issues.

Figure 2: Outcomes by Question



Question 1 on the self-assessment questionnaires received the highest number of positive responses. But in total less than one third of the surveyed countries (6 countries) provided these questionnaires. These were: Argentina, Armenia, Chile, Colombia, Germany and the UK¹⁶. This is a particularly important finding as the self-assessment questionnaires are key documents for civil society to be able to monitor compliance with the anti-corruption conventions.

The questions which required data to be compiled, such as Question 2 on the number of disciplinary cases for sanctions, had the lowest level of information received. This could possibly be due to the perceived sensitivity of the question (disciplinary sanctions involve people and therefore the full data would contain personal data) but as only statistical data was requested this would be a mistaken interpretation of data protection rules. In any case no formal refusals were received for Question 2. The same considerations might apply to Question 3 about the appeals mechanism on procurement. Whatever the reasons for the low response rate, it is of concern that information on the implementation of the control mechanisms established by UNCAC is so hard for the public to obtain.

¹⁶ Information from the UK was about GRECO only

The low response rate and high level of administrative silence in response to Question 4 might point to lack of action by the governments concerned to take measure to ensure integrity and transparency of private enterprises. It is often a more complex process to introduce such measures. Nevertheless, the obligations under the UNCAC are clear and rooting out corruption requires stronger controls of the private sector.

Responsiveness was lowest for Question 5 on Actions for Damages: there seems to have been a widespread failure either to establish mechanisms whereby those harmed by corrupt acts can claim damages or, at least, a failure to inform the public about these mechanisms. This is of concern because ensuring that victims of corruption have a right to claim damages is part of an effective anti-corruption strategy and it is essential that the public be informed of the right to compensation.

A more detailed analysis of government responses to each question can be found in Section 4 of this report.

3.7 Information not held outcomes

In total 18% of answers had Information Not Held outcomes (some of which came with a referral to another institution). From an access to information perspective an “information not held” answer is positive: although no information is provided, assuming that the answer is true, it tells the requester about the state of information collection and management within the public body. On the other hand, from the perspective of citizens seeking information about the UNCAC and how measures to tackle corruption are being implemented, it is of concern that the information is not held by the relevant public body responsible for overseeing anti-corruption measures. This highlights problems with information management inside government.

Table 6: Information Not Held outcomes

COUNTRY	Information not held
Bosnia and Herzegovina	5
Italy	5
Trinidad and Tobago	2
Armenia	1
Guatemala	1
Israel	1
Macedonia	1
Pakistan	1
Venezuela	1
European Union	1

The countries which provided most Information Not Held answers were Bosnia and Herzegovina and Italy where requesters were told that none of the information requested was held.

In Bosnia and Herzegovina the requester contacted the government agency involved in UNCAC activities and was referred to the Ministry of Security. The Ministry's response,¹⁷ was that they have no information regarding the issues presented in our requests. They failed to refer the requester to another agency as required by Bosnia and Herzegovina's access to information law. It is unlikely that no agency in Bosnia and Herzegovina holds this information.

In Italy the requester was told informally at a meeting by representatives of the Anti-Corruption authority and the Ministry of Justice that as the UNCAC was only ratified less than one year ago, the requested documents were not yet ready. It is true that Italy, as a signatory and not a party of the UNCAC in 2007, would only have been invited to complete the self-assessment questionnaire (as opposed to being required to do so, as for State Parties). But regardless, the response should have been provided in writing in compliance with the obligations under Italy's access to information law and standard good practice on the right of access to information.

In each of Macedonia, Israel, and Trinidad and Tobago, a written Information Not Held answer was provided to one of the questions. In the case of Armenia, Question 5 received a timely answer from the Government's Judicial Department stating that they did not have information on the measures taken under Article 35 to provide mechanisms for actions for damages. A request was also made to the General Prosecutor's office which also stated that it did not hold the information.

In Israel a detailed answer was received in response to Question 1 about the self-assessment questionnaires explaining why the information was not held. From a transparency perspective this is important as it provides civil society with details on what the government does and does not hold. Similarly an Information Not Held answer was received in Trinidad and Tobago, in connection with Question 3.

Even a simple response confirming that the public body does not hold the information is useful for civil society organisations monitoring compliance with international anti-corruption commitments, whereas a failure to respond in any way to a request is not.

3.8 Other outcomes: Written refusals and referrals

The Tell Us What You've Done Initiative resulted in just three outright refusals to provide the information (two in Chile and one in Bangladesh) and a handful of referrals to other institutions.

These results indicate that the requesters had, in general, presented the requests to the right institutions and that the information being requested did not fall under one of the legitimate exceptions under an access to information law.

In Chile the requests about integrity in the public sector which included a request for the number of public officials sanctioned under disciplinary proceedings were refused in writing on the grounds that they fell outside the scope of the access to information law. It is not clear how this refusal can be justified when the information requested clearly relates to the functioning of the

¹⁷ The Response was received on 25 May 2010.

public authorities and is statistical information, which would not contain any personal data or other detail which could be used to justify it being withheld.

In Guatemala the referral came from the Ministry of Foreign Relations in response to Question 1 on the self-assessment questionnaires. The Ministry responded within one month stating that it did not hold the requested information and referred the requester to a number of other bodies, including the Ministry of Public Health, the Ministry of Government, and the Executive Secretary of the Commission against Addiction and Illicit Traffic of Drugs.

The UK Ministry of Justice responded to the initial request containing all 5 questions in 3 working days seeking clarification about “*how this relates to the MoJ.*” The CSO requester responded that according to the Ministry of Justice’s own website it is responsible for leading the fight against corruption in the UK and providing links to the relevant pages on its own website. In addition, links to information on the Council of Europe’s GRECO website were provided with the names of the Ministry of Justice officials which participate in GRECO meetings.

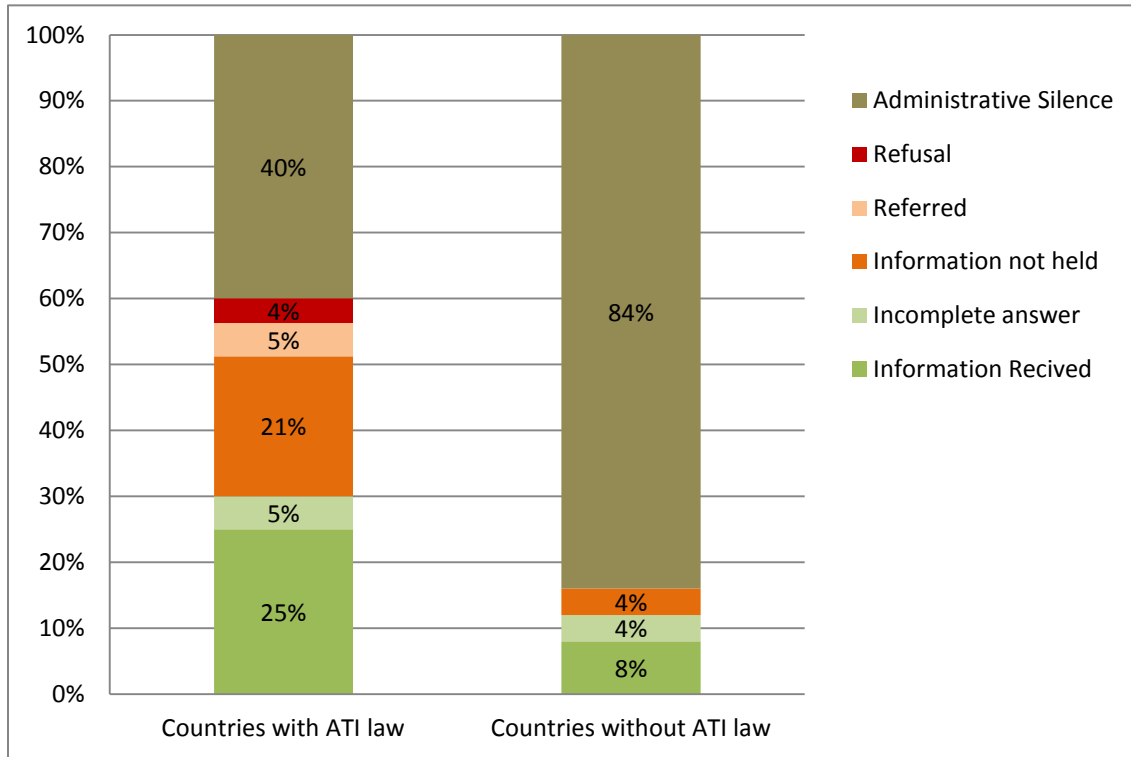
The response received three weeks later only partially answered Question 1, providing a copy of the UK’s two most recent evaluations submitted to GRECO in 2007 on the topics of the incriminations provided for in the Criminal Law Convention on Corruption and on the transparency of party funding respectively. The Annexes were not provided and the letter stated that it had not been possible to locate them. The requester was referred to other government bodies for information about the UNCAC and OECD Convention on Combating Bribery of Foreign Officials. Given the time that had elapsed before this referral was received, it was not pursued.

3.9 Better Results with Access to Information Laws

The study found that having an access to information (ATI) law made a significant difference: countries without an access to information law had more than double the level of administrative silence.

The percentage requests which went unanswered was 84% for non-ATI countries as against 40% in ATI countries. The five countries without an access to information law at the time of the Tell Us What You’ve Done Initiative research were Argentina, Liberia, Nigeria, Spain and Venezuela.

Figure 3: Results by ATI and non-ATI countries



This finding demonstrates that an access to information law is an essential tool for achieving the transparency necessary for civil society to monitor government action to combat corruption. Only with a fully functioning access to information law is civil society provided with a mechanism to request such information, while governments only feel obliged to respond if they have a clear legal obligation to do so.

That said, in countries with access to information laws, only just over half (51%) of requests received answers which either provided information or admitted that the information was not held. This still leaves almost half (49%) of questions meeting with unsatisfactory answers. Given that there can be no justifiable reason for not providing civil society organisations with information about the measures being taken to implement the UNCAC, this amounts to a very poor performance by the countries monitored.

Any country which is serious about fighting corruption and meeting its UNCAC commitments must both adopt an access to information law and ensure that it is fully implemented in practice.

4. Analysis of information provided

This section reviews and analyses the information received from the EU and the 20 countries surveyed in the TUWYD pilot study.

Given the partial, and in many cases, non-substantive, nature of the responses to the questions posed, only a very incomplete picture can be drawn of the surveyed countries' anti-corruption performance in respect of the areas on which they were questioned.

A summary of the results is shown in Table 1 included below again for convenience.

Table 7: Results by Question

Outcome	Q1	Q2	Q3	Q4	Q5	Totals
Information received	5	4	4	6	3	22
Incomplete	1	0	3	0	0	4
Information not held	7	3	3	2	3	18
Referred	0	1	1	1	1	4
Refusal	1	1	0	0	1	3
Admin. Silence	6	11	9	11	12	49
Totals	20	20	20	20	20	100

4.1 Question 1: Self Assessment Questionnaires

The first request was for a copy of the completed 2007 self assessment questionnaire submitted to UNODC,¹⁸ and/or, where appropriate, any self-assessment responses completed recently pursuant to Council of Europe and/or OECD review mechanisms. The purpose of this question was to establish how accessible such self-assessment questionnaires would be to the general public as well as to assess the level of commitment of each surveyed country to implementation of the UNCAC. (An explanation of the self assessment questionnaire mechanism is set out in **Annex II** to this report).

As mentioned above, all surveyed countries had signed the UNCAC in 2003 or 2005, well before the UNCAC self assessment checklist was circulated in June 2007. Pakistan and Macedonia ratified the UNCAC in 2007 and Israel, Italy, Venezuela and the EU only ratified the UNCAC in 2009, but, as States Parties to the UNCAC they would have been invited (though not required) to complete the questionnaire regardless of ratification status.

¹⁸ The UNCAC Conference of States Parties decided in its Resolution 1/2 (2006) to develop a self assessment checklist on the implementation of the UNCAC. The Conference of States Parties urged State Parties and signatories to the UNCAC to complete and return the checklist by the deadline of 15 August 2007.

Out of 20 states surveyed plus the EU, all had signed the UNCAC in 2007, and all except Germany had ratified or acceded to it by 2009. Those 19 countries and the EU, all of which had ratified on or before November 2009¹⁹ would have been required to complete the UNCAC self assessment questionnaire, and those which had signed would have been invited to do so (see **Annex II** for an explanation of the self assessment mechanism).

In fact, based on information from UNODC, 15 of those countries did in fact submit checklist responses namely: Argentina, Armenia, Bangladesh, Chile, Colombia, France, Germany, Guatemala, Italy, Macedonia, Nigeria, Pakistan, Spain, and the United Kingdom. The following were classified by UNODC as “non-reporting” meaning that they did not submit responses to the 2007 checklist: Bosnia and Herzegovina, Israel, Nicaragua, Trinidad & Tobago, and Venezuela.²⁰

Overview of state responses to Question 1

As noted in Section 3.6 and Figure 2 above, this question received a high number of positive responses relative to the other questions but low overall.

Out of the 19 states which should have completed self-assessment questionnaires, only five were able to provide the requesting CSOs with copies of their completed UNCAC questionnaires upon request: Argentina, Armenia, Chile, Colombia, and Germany. In addition, the UK provided a copy of its response to one of the GRECO third round questionnaires.

Argentina, Colombia, and Chile's questionnaires contain a great deal of information illustrating existing or new measures to implement the UNCAC. It is beyond the scope of the Tell Us What You've Done Initiative to assess whether the examples given reflect a real development of the legal tools available in combating corruption, however the information seems to be comprehensive enough to give national civil society and anti-corruption experts a basis for carrying out such an evaluation.

Armenia's questionnaire lacks detail and is insufficient for assessing the gaps in the national anti-corruption legislation. While Armenia responded in the affirmative to most questions asked concerning measures taken to implement specific obligations in the UNCAC, very few examples are given of how these measures actually work in practice.

In its questionnaire responses, Germany provided detailed reference to specific domestic legislation implementing the UNCAC, but almost no examples of the effectiveness of such legislation in meeting the purpose of the UNCAC articles. However, as Germany has not yet

¹⁹ The obligation to respond to the initial, experimental checklist launched in June 2007 terminated with the adoption of the Review Mechanism at the Third Conference of States Parties on 13 November 2009.

²⁰ Self-assessment reports submitted as at 28 October 2009: 87 Member States, of which 84 are parties to the Conventions, 60 per cent response rate. CAC/COSP/2009/CRP.4 28 October 2009

ratified the UNCAC, the mere fact that it has completed the questionnaire even though it was under no compulsion to do so is a positive step.

The UK responded to Question 1 by supplying a copy of its completed GRECO third evaluation round questionnaire on the incriminations provided for in the Council of Europe Criminal Law Convention on Corruption. (It did not, however, provide the responses to the third evaluation round questionnaire on transparency of party financing). While this is no substitute for completing and submitting the UNCAC self-assessment questionnaire, this response demonstrates some commitment to implementation of international instruments to combat corruption. In the case of the UK, the GRECO questionnaire was provided following a letter to the requester asking for clarification of what was sought, and the GRECO questionnaire was provided without annexes.

No countries provided responses to the OECD Conventions Phase 2 questionnaire, nor to the OAS Convention questionnaire — however, under the OAS Convention review process, the questionnaire responses of participating countries are published on the OAS website.

In sum, fifteen (15) of the countries surveyed and the EU did not provide a completed UNCAC questionnaire. Pakistan and the EU indicated that the self assessment was underway and would be available in the future. Bosnia and Herzegovina, Guatemala, Israel, Italy, and Macedonia replied stating that the information was not held. The remaining eight countries responded with silence or in the case of Bangladesh a refusal to provide the information.

A number of countries surveyed stated that they had not – or not yet – completed the UNCAC self assessment questionnaire:

- » The Ministry of the Attorney General in Trinidad and Tobago replied that a self-assessment questionnaire was never completed or submitted for Trinidad and Tobago.
- » Pakistan informed the requester that *“the Self-Assessment checklist of Pakistan submitted to UNODC is at the stage of deliberations by the reviewers who will finalize the Country Report of Pakistan in consultation with Government of Pakistan (NAB) in near future. After the finalization of this report NAB would be in a position to provide you an appropriate response.”* In fact, Pakistan had completed and submitted responses to the 2007 self-assessment questionnaire and even participated in UNODCs pilot review programme calling for some in-depth review of their questionnaire responses.
- » Similarly, the European Commission stated: *“UNCAC was ratified in September 2008 by the former European Community/EU through Council Decision 2008/801/EC on the conclusion of the United Nations Convention against Corruption. Therefore, the legal obligation to self assessment only applies from the moment of ratification... In the case of the EU, the process of self assessment is more complex than for other State Parties to UNCAC, as it involves cooperation between all EU institutions and bodies, as well as with EU [Member States] in matters falling under a mixed or shared competence (such as money laundering). The Commission initiated this process last year and the self assessment process is still ongoing with a view to finalize it by late 2010.”* It is not clear whether the self-assessment process has now been completed. In any event, the self-

assessment obligation was still effective when the EU ratified. Moreover, although completion of the 2007 UNCAC questionnaire was not a “legal obligation” on signatories who had not yet ratified the UNCAC, in fact all States Parties, including the EU, were “invited” to complete the questionnaire by Resolution 1/2 of the Conference of State Parties.²¹

- » Israel sought to justify its failure to produce the completed self assessment by stating that *“At this point in time, the mechanism set to monitor the implementation of the United Nations Treaty against Corruption has not started yet, answering the self-assessment questionnaire, which was delivered by the conference member states secretariat, is not defined as mandatory, but as a possibility given to the member states to do so. The State of Israel, which ratified the treaty in February 2009, has yet to deliver an answered questionnaire to the secretariat.”* There seems to be a misunderstanding here of the timeframe for and status of the UNCAC experimental self-assessment process, which began in 2007, when Israel was already a signatory to the UNCAC and would therefore have been invited to participate (though far more informally than a State Party) by way of Resolution 1/2 of the Conference of State Parties. The obligation was still in place in February 2009 when Israel became a party.
- » Italy gave a similar justification of not having ratified in 2007 in a conversation with the requester. However, a UNODC report in October 2009 listed Italy as having completed and submitted responses to the 2007 self-assessment questionnaire. Thus, although Italy only ratified in October 2009, it did in fact complete the checklist, contrary to the response given.

Other states eluded answering the question by referring the requester from one public body to another, namely Bosnia and Herzegovina and Venezuela, which did not complete the 2007 self-assessment checklist (according to a 2009 UNODC report) and Guatemala which did:

- » Bosnia and Herzegovina’s government agency involved in UNCAC activities redirected the questions to the Ministry of Security, which responded that they had no information regarding the requests.
- » Venezuela redirected the requesting CSO to the Ministry of Foreign Relations, but no response was received concerning whether or not the questionnaire had been completed.
- » Guatemala’s Ministry of Foreign Affairs responded that it did not hold the requested questionnaire, and suggested referring the request to any of three alternative government bodies (The Ministry of Public Health and Social Aid, the Ministry of Government, or the Commission against Addiction and Illegal Drug Trafficking).

Bangladesh reported that the questionnaire had been completed but a copy was not provided to the requesting CSO.

²¹ See above section 1.3 on the UNCAC.

No response whatsoever was given by France, Liberia, Nicaragua, Nigeria, Spain, in spite of repeated follow-up requests by post or telephone (Nicaragua), or visits to the relevant government body (Liberia). In the case of France, Nigeria and Spain, it is known that they did in fact submit responses to the 2007 checklist. In the case of Nicaragua and Liberia, it is known that they did not.

Conclusions for Question 1

Whether the failure of a large majority of the 19 surveyed states that had responded to the self-assessment checklist to produce to the requesters a UNCAC self assessment questionnaire (or indeed any other self assessment questionnaire) reflects a failure to keep track of the existence of the completed questionnaires, or rather a refusal to make the completed questionnaires available to the general public, is not clear.

Whatever the reason, these findings demonstrate a preoccupying lack of commitment to public reporting on the implementation of the UNCAC in a majority of the states surveyed. Public access to the UNCAC questionnaire responses is apparently not considered important in most of the UNCAC parties that completed it. This renders evaluation of progress through country feedback impossible and weakens the purpose of the UNCAC itself. This is of ongoing concern in the context of the official UNCAC review mechanism that started up in July 2010 and currently under way, where government self-assessments are inputs and evaluation reports are outputs of the review process.

4.2 Question 2: Public sector integrity

The second request was for information on the number of disciplinary cases initiated and concluded and the number and value of sanctions imposed for violations of anti-corruption and anti-bribery codes of conduct or standards by public officials, in the period 2007-2009.

Overview of state responses to Question 2

Only three of the states surveyed gave a substantive response to Question 2. These were Guatemala, Israel and Macedonia. In addition, Armenia had already supplied this information to the national requesting organisation prior to commencement of this project.

One country (Chile) claimed that access to this information is not permitted under local access to information laws. Three (Bosnia and Herzegovina, Italy and Venezuela) claimed that this type of information is not recorded, and the majority (12 countries) did not respond.

Of the three countries which supplied data in response to requests submitted as part of the Tell Us What You've Done Initiative – Guatemala, Israel, and Macedonia – data was provided concerning disciplinary proceedings against public officials (notably number of proceedings and number and type of sanctions imposed). In two of the countries that supplied detailed data, Israel and Guatemala, there was an increase in the number of proceedings over time whereas

in the third Macedonia there was a decline. However, this data left many questions unanswered and would be inadequate as a basis for formulating anti-corruption policy.

In particular there was a lack of information as to the types of offences and types of officials being sanctioned. It is unclear, for example, in the case of Israel and Guatemala, how many of these disciplinary proceedings actually dealt specifically with breaches of anti-corruption codes of conduct or standards, or other corruption or bribery offences. Only in Macedonia were figures supplied of disciplinary proceedings arising specifically out of offences relating to Article 8.6 UNCAC, although again no details of the alleged offences were given.

Israel supplied figures on disciplinary proceedings of public officials for the years 2008 to 2009, but not for years prior to that, as follows:

Table 7: Data on disciplinary proceedings in Israel

Measure	2008	2009
Disciplinary complaints	1005	1090
Disciplinary files	344	401
Criminal files	153	234
Procedures in the disciplinary court	128	166
Employees suspended	58	110
Employees fired	10	21
Cases terminated	810	1037

In Guatemala, the requester addressed Question 2 to the Police, the Judiciary and the Public Ministry, and data concerning disciplinary proceedings against relevant public officials was provided by each of these bodies.

Table 8: Data on disciplinary proceedings in Guatemala

Measures	2007	2008	2009
Disciplinary proceedings against officers of the Public Ministry, in which sanctions were imposed	128	129	151
Disciplinary proceedings against officers of the Police in which sanctions were imposed	2018	1179	1252
Disciplinary proceedings against judicial officers in which sanctions were imposed	417	401	382

In Macedonia, the requesting CSO filed the request with several different bodies. The initial response was that *“The General Secretariat of the Republic of Macedonia did not employ any public officials in the period between 2007-2009 (this category has been introduced for the first time with the Public Officials Act in 2010), therefore there are no records with disciplinary cases against public officials, however there are records of cases against state officials, whereby disciplinary procedures have been conducted and completed in accordance with the State Officials Act.”* The respondent went on to say that should the requester want information on a

specific disciplinary case it should rephrase its question, as the question in its current formulation seemed to be aimed at obtaining an overview of disciplinary proceedings, which was not readily available and would need to be created exclusively for the requester. Upon doing so, Macedonia's Civil Servants Agency provided a detailed and exhaustive response, including the number of disciplinary sanctions relating specifically to violations of Article 8.6 of the UNCAC, whether or not the case was concluded, and the sanctions imposed.²²

Table 9: Data on disciplinary proceedings in Macedonia

Measures	2007	2008	2009
Disciplinary proceedings	141	121	103
Disciplinary actions involving violation of Article 8.6	5	10	11

Macedonia's Ministry of Justice was able to provide figures for violations of work discipline for the years 2007 to 2009, but advised that *"In the period between 2007-2009 there haven't been any disciplinary proceedings on that ground [Article 8.6 UNCAC], neither at the State Administrative Inspectorate nor in the Institutions whose work is supervised by the Inspectorate."* The lack of consistency between the two government bodies' responses is not explained.

A number of countries did not address Question 2 at all, in spite in some cases of repeated follow-up telephone calls or visits: Argentina, Bangladesh, Colombia, France, Germany, Liberia, Nicaragua, Nigeria, Pakistan, Spain, Trinidad and Tobago, and the EU. In several of these

²² Macedonia's Civil Servants Agency stated: *"In 2007 there were 141 initiated disciplinary proceedings, 114 were concluded and 27 were in proceeding in the time when making the report.*

"In 2009 there were 5 disciplinary actions; one completely in accordance with article 8(6) UNCAC concluded with termination of the employment; and the rest consisting of various violations including the one covered in the UNCAC; two with 10% of the salary reduction as pecuniary penalty in term of one month, one with 30% of the salary reduction as pecuniary penalty in term of three months, one with deployment to lower job position in 12 months period.

"In 2008 there were 121 initiated disciplinary proceedings, 91 were concluded and 30 were in proceeding in the time when making the report.

"In 2008 there were 10 disciplinary actions with violations of the article 8(6) UNCAC. Three ended with 10% of the salary reduction as pecuniary penalty in term of one month, one with 10% of the salary reduction as pecuniary penalty in term of three months, one with 30% of the salary reduction as pecuniary penalty in term of three months, two with deployment to lower job position in 12 period, one with termination of employment, one is dismissed, one was put on idle due the criminal proceedings.

"In 2009 there were 103 initiated disciplinary proceedings, 92 were concluded and 11 were in proceeding in the time when making the report.

"In 2009 there were 11 disciplinary actions with violations of the article 8(6) UNCAC. The one completely in accordance with article 8(6) UNCAC was concluded with termination of the employment The rest two ended with 10% of the salary reduction as pecuniary penalty in term of one month, one with 15% of the salary reduction as pecuniary penalty in term of three months, two with 20% of the salary reduction as pecuniary penalty in term of two months, one with deployment to lower job position in 12 period, one with termination of employment, two were dismissed because past periods of limitations, one was dismissed due the lack of evidence.

"Noting that this violation is most hard to prove, because of lack of evidence."

countries the requester was referred to another government body, ultimately receiving no answer to the question: Colombia, Bosnia and Herzegovina, and Venezuela.

The UK did not respond to Question 2, referring the requester elsewhere, although the GRECO report filed did provide some information concerning sanctions of state officials.

Chile informed the requester that the information requested was not within the remit of what is accessible under its access to information law (Chile's *Ley de Transparencia y Acceso a la Información Pública*).

Conclusions for Question 2

Very little substantive information was provided in response to Question 4. It seems that the requesters' inability to obtain a substantive response in 16 out of 20 of the countries surveyed, as well as from the EU, indicates that either the public authorities do not have the information or they are unwilling to provide it to civil society groups.

For those countries that do not have the information, it may be because they have yet to establish codes of conduct for and/or to take measures against public officials who violate such codes or standards. In that case these countries are failing to implement UNCAC Article 8, and specifically, Article 8.6.

A further possibility is that while they have implemented Article 8, they are not collecting data on actual practice with respect to the relevant measures. This suggests a lack of seriousness in analysing and following up on public sector integrity issues.

Finally, it is possible that the governments have implemented the measures and are collecting data, but do not wish to give civil society members access to the resulting information. This runs contrary to Article 13.1.b of the UNCAC which requires State Parties to ensure the public has effective access to information, as well as Article 10 of the UNCAC on public reporting and transparency in public administration.

Further research is needed to get a clearer picture of the exact situation country by country. In the meantime, whichever hypothesis is correct – and it may well vary from country to country – this indicates serious gaps in UNCAC implementation that need to be rectified.

4.3 Question 3: Procurement

Article 9 of the UNCAC provides that States Parties shall take steps to establish appropriate systems of public procurement based on transparency, competition and objective decision-making criteria. Such systems may include, as provided in Article 9.1.d of the UNCAC, “*an effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed.*”

The third request was for information about the number of cases processed annually in the period 2007-2009 by the appeals mechanism referred to in Article 9.1.d of the UNCAC, and average time (in days) taken by the mechanism to make a decision on these cases. In the absence of such appeals mechanism, the request was for information on any measures planned to introduce such mechanism.

Overview of state responses to Question 3

Six of the surveyed countries responded directly to Question 3 (Colombia, Guatemala, Israel, Liberia, Macedonia, and Pakistan) providing either full or partial information; Armenia had already provided this information to the requesting NGO.

In addition, a further three countries (Argentina, Chile, and Germany) provided this information by virtue of having completed Part C(7) of the UNCAC self assessment questionnaire.

Five of these countries stated that they had legislation in place in compliance with Article 9.1.d of the UNCAC, including measures to ensure transparency and fairness in public procurement processes, and an effective system of review, including an effective system of appeal. These were Colombia, Guatemala, Israel, Pakistan, and Macedonia. However none of the surveyed states were in a position to provide figures as to the number of cases processed in 2007 to 2009, and average time for a decision, although Israel indicated that the information could be obtained by a separate request. The information from Liberia was unclear.

In an additional four countries - Argentina, Chile and Germany along with Armenia - information was provided via the separately requested self-assessment checklist and claimed that they were in compliance with Article 9.1.d and of these, Chile provided some data on cases.

Hence in total, of the ten countries which responded, nine confirmed that they had review and appeal procedures in place in conformity with Article 9.1.d of the UNCAC, but none supplied data concerning the number of cases initiated and processed from 2007 to 2009. In addition, Trinidad and Tobago responded stating that they did not have the required measures in place.

The detailed answers are of value in understanding how the implementation has proceeded in some countries:

Colombia's Presidential Anti Corruption Programme (*Programa Presidencial de Modernización, Eficiencia, Transparencia y Lucha contra la Corrupción*) confirmed that Colombia had legislation in place in conformity with Article 9 of the UNCAC, and in particular 9(1)(d) of the UNCAC. Specifically, the response referred to the Law 80 of 1993 (Ley 80 de 1993) and to the Statute on Public Administration Contracts as modified by Law 1150 of 2007 (*Estatuto de contratación de la Administración Pública modificado por la Ley 1150 de 2007*), and to the Code of Administrative Litigation (Codigo Contencioso Administrativo).²³ However, the response did not

²³ Further, the response stated that there were many preventive actions exercised by control agencies and the national government through the Presidential Programme for Modernisation, Efficiency, Transparency and the Fight against Corruption, so as to avoid any illicit awards of public contracts.

provide any data as to the number of cases initiated in the 2007-2009 period, nor as to the average amount of time involved in such a case before a decision might be reached. Question 3 was also put forward by the requester to other Colombian governmental agencies and Ministries. Of these, none provided information on the number of cases in the time period indicated, although the Ministry of Public Housing and the Ministry of Transport did state that there had not been any complaints during this time period. Furthermore, in Part C(7) of its completed UNCAC self assessment questionnaire (provided in response to Question 1), Colombia gave examples of ways in which Article 9.1.d has been implemented, and referred to 4 cases that were adjudicated by the Third Section of the Administrative Court (*Seccion Tercera de la Sala Contenciosa Administrativa*), although no specific details of these cases were given.

Guatemala's Ministry of Public Finances responded that two mechanisms exist to protect bidders' rights, namely the Law of State Contracts, as amended by the Decree No 11-2006 of Congress (*Ley de Contrataciones del Estado en sus artículos 99, 100, y 101 reformados por los artículos 10,11 y 12 del Decreto No. 11-2006 del Congreso de la Republica*) which regulates such complaints. Also relevant is Article 6 of Decree 27-2009, which introduces the possibility to present a complaint within 5 days of publication. The response further stated that, given that complaints are made to the authority in charge of the relevant subject matter of the complaint, the Ministry was not in a position to provide information as to the number of cases initiated and processed from 2007 to 2009.

Israel confirmed that a "system" which is in conformity with Article 9 of the UNCAC exists in Israel, as encapsulated in the laws of public administration and in the Mandatory Tenders Regulation, 5753-1993, and that recourse to the Courts of Administrative Affairs was possible, which might result in sanctions being imposed if public procurement laws had not been properly followed. Israel's answer also responded that numerical data concerning numbers of such appeals, insofar as it might exist, could be obtained from the Courts Administration, by virtue of Section 8(5) to the Freedom of Information Act, 5758-1998.²⁴ The requester however did not take this further.

²⁴ Israel's answer gave details of the system in place, as follows: "A system, as described in Section 9 of the treaty exists in Israeli Law. Thus, as with regard to any administrative decision, the tender committees' decisions are also subject to the laws of public administration, and any person who believes to have suffered damage as a result of an administrative decision has the right to present his case to the Court of Administrative Affairs and to the Supreme Court of Israel as the High Court of Justice .At the present time, objections concerning public procurement decisions, insofar as they have to do with tenders, are mostly brought to the Court of Administrative Affairs, when the matter at hand is in its field of expertise (section 5(1) of the Administrative Affairs Courts Act, 5760-2000). Any person has the right to appeal the Court of Administrative Affairs decisions to the Supreme Court of Israel, in its capacity as an appellate court. The Courts of Administrative Affairs have the authority to pass judgments, among other things, compensation, restitution and the cancellation of the entire and/or part of the tender committee's decision.

"Other relevant provisions can be found in the Mandatory Tenders Regulations, 5753-1993, which has been recently amended in the year 2009. These regulations deal, among other things, with the obligation to publish decisions not to make contracts through tenders, the right to examine (including receiving copies) of tender committee decisions, of tender committee protocols, of correspondence with those who submit offers, of professional experts' opinions that were made at its request, of the attorney general's position and of the offer the winner of the tender.

A partial oral response was received in Liberia. The requester, after reiterating its request three times, was referred by the Public Procurement and Concessions Commission (the PPCC) information officer to the Commission's website. The information officer further explained that since the 2005 general and presidential Elections in Liberia, the PPCC does not interfere in the procurement bidding process of government institutions, the PPCC only investigates cases that arise from bidders and if the bidder feels that the process was not transparent, that bidder has the right to complain to the PPCC. None of these comments were backed up with reference to legislation.

Macedonia responded that the Law for Public Procurements (Chapter X) regulates rights of appeals on public procurement, but gave no examples of cases processed from 2007 onwards.

Pakistan's Public Procurement Regulatory Authority confirmed that it has "*developed and provided [a] mechanism of redressal of grievances of aggrieved bidders under Rule 48 of Public Procurement Rules, 2004.*" A process of administrative review is available. The response further states that "*As per Rule 48(5), any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction (....) Presently the normal appeal mechanism available to bidders is appeal before the Court of relevant civil jurisdiction. However a 2nd tier grievance redressal mechanism is being developed with Technical Assistance of World Bank.*" The response gave no details as to number of such cases processed or time delays involved.

Argentina, Chile and Germany did not respond to this question but, as was the case with Armenia, Part C of the completed UNCAC self-assessment checklist provided by each of these states to the requester in response to Question 1 addresses implementation of Article 9.1 of the UNCAC. In Part C(7) of their respective questionnaires:

- » Argentina asserted that it has adopted the measures required under Article 9.1.d of the UNCAC and cites the relevant laws and measures. It refers the reader to the website of its anticorruption office for details of delays encountered in the application of these measures (www.anticorruccion.gov.ar).
- » Armenia responded that it has adopted measures as required under Article 9.1.d of the UNCAC in the form of "*Article 52 to 56 of the Law on Purchasing carried out in accordance with the Civil Procedure Code of the Republic of Armenia*"²⁵. As to

"As to your request concerning numerical data, in light of the above, as far as it exists, it is at the Courts Administration and you have the right refer to them with regard to this matter, by virtue of section 8 (5)) to the Freedom of Information Act, 5758-1998.

"One has the right to appeal this decision to the Court of Administrative Affairs, by virtue of the Administrative Affairs Courts Act, 5760-2000."

²⁵ Unofficial translation.

providing examples of implementation of Article 9.1.d, Armenia responds that “*The Ministry of Justice of the Republic of Armenia does not have any information*”²⁶.

- » Chile gave details of measures taken to implement Article 9.1.d and gave figures as to the number of cases processed in relation to these measures by the Administrative Tribunal (*Tribunal de Contratacion Publica*): in 2005, 45 cases, in 2006, 100 cases and in 2007, 47 cases were processed.
- » Germany asserted that Articles 102 to 109 of the German Antitrust Act implements Article 9.1.d, but gave no examples of effective implementation.

In stating that it did not hold the information, Trinidad and Tobago advised that “*the appeals mechanism required by Article 9 (d) of the United Nations Convention against Corruption does not exist within the legal framework of the Central Tenders Board Ordinance. However, proposals have been made to incorporate an appeals mechanism via an appeals tribunal under the new procurement regime.*”

In Bosnia and Herzegovina, the requester was referred to a different government agency dealing with UNCAC matters, which stated that it did not hold the information.

A number of countries did not respond to this question: Argentina, Bangladesh, Chile, France, Germany, Nicaragua, Nigeria, Spain, and Venezuela, along with the European Union.

Conclusions for Question 3

It is of concern that less than half of the countries surveyed responded to this basic question about public procurement, particularly as it is evident that at least an additional seven countries held the requested information but did not provide it.

Moreover, none of these countries were able to supply figures for 2007 onwards illustrating whether these measures are being implemented effectively, by showing that cases are initiated by aggrieved bidders and adequately processed. In the absence of evidence that (i) review and appeal mechanisms available to aggrieved participants in public tenders are actually being used and relied upon by such participants, and that (ii) such mechanisms lead to sanctions or to the redress of unfairness in procurement processes, the existence of national measures or legislation aimed at rendering public procurement processes more transparent may be less effective.

It is also of concern that so many of the countries surveyed (9 countries and the EU) were not prepared to provide information in relation to Question 3. This denotes yet again a reluctance to encourage public reporting and transparency regarding public procurement issues, as well as a failure to promote civil society participation in the prevention and fight against corruption, in contravention of the spirit and letter of the UNCAC.

²⁶ Unofficial translation.

4.4 Question 4: Private Sector Integrity

The fourth request was for information about measures taken pursuant to Article 12.2.c of the UNCAC to promote transparency among private entities, including identity of legal and natural persons involved in the establishment and management of corporate entities.

Overview of state responses to Question 4

Six of the countries surveyed – Armenia, Colombia, Israel, Macedonia, Nigeria and Trinidad and Tobago – provided the requesters with details of their respective domestic legislation, requiring annual reporting and disclosure/registration of shareholdings and company directorships by private entities.

Colombia supplied an elaborate answer, providing details of legislation dealing with accountancy and reporting obligations on private companies, in particular the Commercial Code and Commercial Statute (*Código de Comercio and Estatuto Mercantil*), and of steps taken and circulars published by the private company supervisory organ (the *Superintendencia de Sociedades*) to prevent corruption, money laundering and terrorism financing.

Israel's Ministry of Justice responded that "*The measures described in Section 12(2) of the United Nations Treaty against Corruption exist in the Israeli law, and appear in legislation and regulations.*" By way of example, Israel referred to (i) the obligation on a private company to report and to file an annual report, which is set out in sections 140 and 141 of the Companies Act, (ii) public companies' obligation to report and file documentation with the Registrar of Companies pursuant to the Securities Regulations (Immediate and Periodical Reports) 5730-1970 and under the Companies Act, and (iii) disclosure obligations of private and public companies concerning identity of shareholders under the Companies Act. In other words, Israel considers that its existing legislative framework concerning private and public companies fully satisfies the requirements of Article 12.2.c of the UNCAC.

Macedonia referred to its Law for the Central Registrar, which establishes the Central Registry as a repository for legal and other relevant data, all of which is publicly accessible.

Nigeria's Corporate Affairs Commission gave a detailed 3 page "Brief on how activities of the corporate affairs commission promotes transparency among private entities", which highlights the Commission's activities in promoting transparency and prevention of corruption, in particular by way of (i) checks and restrictions on who does business with the Commission to prevent fictitious persons, money lending and corrupt practices, (ii) data base cleaning, (iii) striking off dormant companies from the Register of Companies, (iv) inspections and investigations, (v) disqualification, where appropriate, of company directors. However, no evidence was given that these measures are effectively applied.

Trinidad and Tobago responded by referring to various acts that "*were brought into being to deal with the issue of corruption as it may occur in various forms and cause differing kinds of loss or damage*", namely the Proceeds of Crime Act, the Financial Obligations Regulation, the Financial Institutions Act, the Integrity in Public Life Act, the Prevention of Corruption Act

(although Trinidad and Tobago did not specify when these Acts came into force). As regards the requirements of Article 12.2.c, Trinidad and Tobago considered that Article 11 ss 3-7 and Article 12 of Part III of the Financial Obligations Regulations and Financial Institutions Act were of most relevance, providing a copy of the former and stating “*These sections were designed with the purpose of promoting transparency among private entities with specific reference to the identity of legal and natural persons involved in the establishment and management of corporate entities.*”

Two countries responded to this request by sending the requester elsewhere: Pakistan’s National Accountability Bureau referred the query to the Securities and Exchange of Pakistan but no answer was supplied to the requester (recorded as a administrative silence) and in Bosnia and Herzegovina the requester was referred to a different government agency dealing with UNCAC matters, which stated that it did not hold any information.

The United Kingdom also referred the requester elsewhere but did provide the GRECO self-assessment report which contained some relevant information.²⁷

For the remainder of the countries, this question met with administrative silence: Argentina, Bangladesh, Chile, France, Germany, Guatemala, Liberia, Nicaragua, Pakistan, Spain, and Venezuela, as well as the European Union.

Conclusions for Question 3

A majority of countries surveyed did not provide a response to Question 4, which is disappointing. This could indicate that states have not implemented any measures to promote private sector integrity, or that they do not wish to compile the relevant information available to requesters from the public.

It is likely that, in many cases, legislation exists requiring some level of transparency in the identity of legal and natural persons involved in the establishment and management of corporate entities, and that such information is publicly available (for example in the UK, the Companies Act, or, in France the Commercial Code). However, these types of measures, if they exist, are often inadequate in promoting complete transparency among private entities, in view of the legal mechanisms and tax structures available to mask true ownership of private companies, such as, for example, the use of trusts. None of the countries surveyed provided any evidence that they are taking measures to combat opacity in the private sector at this legal and fiscal level.

²⁷ It should be noted however that the UK’s GRECO self assessment report contains a section entitled “Bribery in the Private Sector” which is partially relevant to the implementation of Article 12.2.c of the UNCAC. The UK referred in its GRECO Report to the Prevention of Corruption Act 1906, which makes active and passive bribery in the private sector a criminal offence. The UK’s report also gives examples of sanctions and case law implementing the Act. However, whilst prevention of bribery is one aspect of promoting transparency in the private sector, this response does not address the issue of promoting transparency specifically as to identity legal and natural persons involved in the establishment and management of corporate entities, which was the subject of Question 4.

4.5 Question 5: Actions for Damages

The fifth request was for information on measures taken under Article 35 of the UNCAC to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. The purpose of this request was to establish to what extent civil remedies are available in the surveyed states to victims of corruption, in line with Article 35 of the UNCAC.

Overview of state responses to Question 5

Three of the countries surveyed – Colombia, Israel, and Trinidad and Tobago – gave requesters details of their domestic legislation pursuant to which individuals or entities that have suffered loss or damage may claim compensation in respect of such loss. However, only Israel provided information on cases filed by private individuals or entities, by citing the example of a case involving a government claim.

Colombia advised that this issue was addressed in Article 95 of the Law 599 of 2000, which establishes that natural or legal persons or their successors that are directly prejudiced by punishable conduct are entitled to seek corresponding indemnification, in the form prescribed in the Criminal Procedure Code. The public prosecution body will hold the right of action when the damage is suffered collectively. Colombia's response also refers to Article 102 of Law 906 of 2004.

Israel advised that *"The possibility of filing civil claims, for compensation, by victims of corruption exists in Israeli law"*, and gave the example of a civil claim for damages in the amount of 2.7 million NIS filed by the State of Israel against MP Ofer Hugi, following his criminal conviction for receiving public funds as a result of aggravated forgery and use of false documents. Israel further confirmed that according to general Israeli law, victims of corruption, who are not members of state bodies, may file claims for compensation due to corruption. However, Israel's response did not contain examples of private individuals or entities filing and being successful in such claims for damages.

Trinidad and Tobago responded that *"(...) any person who feels so aggrieved [ie. has suffered damage as a result of an act of corruption] has the right to seek representation in a civil suit against the alleged transgressor for any perceived loss. If the instance of corruption involves a public official some specific courses of action to provide relief exist under the Integrity in Public Life Act. The Prevention of Corruption Act also provides specific mechanisms to deal with offences in relation to corruption: these too apply in very specific circumstances."* No examples of a live case currently or recently before the courts was provided.

Other countries that responded failed to provide information. Chile informed the requester that the information requested was not within the remit of what is accessible under its access to information law (*Ley de Transparencia y Acceso a la Información Pública*).

Armenia's Government Judicial Department stated that they did not hold information on the measures taken under Article 35 to provide mechanisms for actions for damages. The General

Prosecutor's Office responded in the same manner. There were also information not held responses in Bosnia and Herzegovina and in Italy.

Over two thirds of countries surveyed provided no response to Question 5: 12 countries responded with administrative silence – Argentina, Bangladesh, France, Germany, Guatemala, Liberia, Macedonia, Nicaragua, Nigeria, Pakistan, Spain, Venezuela – and from the European Union.

Conclusions for Question 5

The ability for a victim of corruption to seek compensation on a civil basis is key in empowering individuals and private entities in their fight against corruption. Legislation allowing civil claims for compensation for loss arising out of corrupt practices must go hand in hand with the criminalization of such practices.

It is disappointing that so few of the surveyed states provided a substantive response to Question 5. Where legislation was referred to, it was general civil law, tort or negligence statutes or codes existing prior to signature and ratification of the UNCAC, and which were not designed to deal specifically with acts of corruption. However, in most cases the legislation referred to could probably provide a basis for claiming compensation for damage suffered as a result of corrupt practices.

It is also disappointing that those countries that referred the requester to domestic legislation allowing for such civil claims to be brought did not provide examples of recent or current proceedings brought before their courts on that basis.

The lack of response from so many countries may in some cases be the result of an absence of existing legislation or new measures giving effect to Article 35 of the UNCAC. In others, such as France and the UK, it is known independently that domestic laws permit entities or persons to seek compensation for loss suffered as a result of negligent or fraudulent acts (which would include acts of corruption). In the latter category, government officials did not apparently consider it necessary to provide the relevant information to the requesters. This suggests again an indifference to Article 13.1.b of the UNCAC which requires State Parties to ensure the public has effective access to information, as well as to Article 10 of the UNCAC on public reporting and transparency in public administration.

5. Conclusions and Recommendations

This study found that many governments are failing to respond to requests from civil society about the measures taken to implement the anti-corruption obligations established by the UNCAC and other anti-corruption conventions.

Most of the governments in this monitoring survey have a double obligation to provide information: under the UNCAC commitments and under the national access to information law.

The failure or inability to provide information, and the high level of administrative silence is therefore of particular concern. Civil society can only be effective partners for governments in the fight against corruption if they have access to information about the steps being taken.

The results show clearly that where countries have access to information laws in place, far more information about the fight against corruption is available. This is a strong reason for prioritising adoption and implementation of access to information laws in the fight against corruption.

On some occasions in the course of this study, it was found that the information requested was already on government websites or otherwise publicly available. The ideal situation is that the information relating to implementation of the anti-corruption conventions, along with the related laws, data on disciplinary proceedings, court judgements, and so forth, should all be gathered in one place on the internet so that it can be accessed easily by members of the public.

It is of great concern that so few countries provided responses to the questions asked. This indicates that the UNCAC requirements for transparency around the measures being taken to combat corruption at the domestic level are not translating into openness in practice. This leaves civil society with the impression that the UNCAC anti-corruption commitments more broadly are not being taken seriously.

As to the countries that did answer, the overall quality of the answers was disappointing: most gave details of domestic legislation mirroring or implementing the relevant articles of the UNCAC, but few were able to provide examples of how such legislation is enforced and has resulted in prevention or sanction of corrupt practices.

Recommendations to governments

In order to promote and guarantee the right of access to information, governments of all states signatory to the UNCAC Convention against Corruption should:

- » Take urgent steps to ensure that access to information laws are in place and enforced in practice, in accordance with their obligations under the UNCAC and other conventions (Argentina, Nigeria, Spain and Venezuela are the countries in this study which do not yet have access to information laws);
- » Establish transparency and access to information as a key priority and train public officials in how to respond to such requests;

- » Ensure that the names and contact information of those responsible for handling access to information requests are made public through a variety of channels accessible to the public, including but not limited to the internet;
- » Compile and publish up-to-date information on relevant websites on an ongoing basis to establish a culture which promotes transparency and combats impunity for corrupt acts.

In order to promote civil society participation in the UNCAC review process, governments in all states signatory to the UNCAC Convention against Corruption should:

- » Ensure compliance with key UNCAC provisions on transparency, such as Articles 10 and 13;
- » Make available to the public responses to the 2007 self-assessment checklist where these were prepared;
- » Make public the self-assessments and full review reports in the current UNCAC review process;
- » Compile and publish adequate data on different aspects of anti-corruption prevention and criminalisation, including detailed data on disciplinary actions and procurement proceedings as well as in other areas and review this data as a basis for policy-making and future action;
- » Ensure legal and regulatory compliance with provisions on private sector integrity and on the Article 35 right of action for damages and make relevant information available to the public.

Recommendations to Civil Society Organisations

In order that civil society has access to information about UNCAC implementation, including the UNCAC review process, civil society organisations should:

- » Continue to advocate for the adoption and implementation of access to information laws where these are not in place;
- » Make full use of existing access to information laws to obtain information from governments about the implementation of the anti-corruption conventions;
- » Engage in dialogue with the government about the establishment of websites where up-to-date information about anti-corruption measures and their enforcement can be made available to the public, along with the contact information of relevant government officials;
- » Use comparative data from other countries to advocate for greater access to information and transparency in the access to information process if required.

In order to promote UNCAC implementation and an effective and open review processes, CSOs should:

- » Continue to advocate for the immediate implementation of the UNCAC and other applicable international anti-corruption instrument;
- » Continue to advocate for adequate data collection, compilation and publication by governments as a basis for adequate policy-making;
- » Make the case for a transparent review process, with CSO participation and use the review process as a platform for public advocacy for reforms.