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Transparency International submission
to the 8th session of the UNCAC Implementation Review Group

Transparency and Participation in the International Meetings of Anti-Corruption Review Mechanisms

Civil society participation "enhances the quality and the implementation of decisions, contributes to public awareness of the issues subject to decision, gives the public the opportunity to express its concerns and enables public authorities to take due account of such concerns".[1]

This submission summarizes findings of a new Transparency International report[2] about levels of transparency and civil society participation in the international meetings of six anti-corruption review mechanisms[3] The report finds that all six mechanisms have deficiencies, some of them considerable, in terms of complying with international standards for transparency and participation.

The six review mechanisms covered in the report are:

- The United Nations Convention against Corruption (UNCAC) Implementation Review Mechanism
- The OECD Working Group on Bribery (OECD WGB) for the OECD Anti-Bribery Convention and other instruments
- The Financial Action Task Force (FATF), which reviews member state compliance with its recommendations[4]
- The Group of States against Corruption (GRECO) for the Council of Europe instruments
- The Mechanism for Follow-Up on Implementation of the Inter-American Convention against Corruption (MESICIC) of the Organization of American States (OAS) and its Committee of Experts
- The OECD/ACN Istanbul Action Plan subregional peer review programme

Applicable international standards

International human rights standards provide for rights to access to information and participation, and other standards call for States to ensure transparency and participation in order to realise developmental and anti-corruption goals. These standards apply to intergovernmental meetings, including the international meetings of anti-corruption review mechanisms.

Human rights: The right of access to information is recognized in a range of human rights instruments, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR). As a human right,[5] it is not only the obligation of states but also of intergovernmental entities to ensure its free exercise.

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[1] United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

[2] The report is entitled Transparency and Participation: An Evaluation of Anti-Corruption Review Mechanisms by Gillian Dell and Adam Földes and can be found in the TI website section on publications. The report does not include findings and recommendations about the functioning of review processes at the national level.

[3] Review mechanisms include institutions, rules and processes related to reviewing the implementation of a set of anti-corruption norms. Review process is a narrower term, understood as the act of reviewing or monitoring countries and discussing and adopting the outcomes of the reviews.

[4] As noted by the FATF, corruption and money-laundering are intrinsically linked and this is also the view of the G20 etc., www.fatf-gafi.org/publications/corruption/?hf=10&b=0&s=desc(fatf_releasedate).

[5] Paragraph 18 of the Human Rights Committee, General Comment No. 34, Freedoms of opinion and expression (Article 19), CCPR/C/GC/34, 12 September 2011.

The right to participation is also acknowledged in numerous international instruments, including Article 25 of the ICCPR, which recognizes the right to take part in the conduct of public affairs. As interpreted by the Human Rights Committee, this right applies not only at national and local levels, but also at international and regional levels.[6] The United Nations Charter also includes the principle of participation in its Article 71.

Role of civil society in intergovernmental meetings: More than a decade ago, the United Nations High-Level Panel on United Nations-Civil Society Relations issued a report on civil society engagement in multilateral processes that stated clearly,

> The growing participation and influence of non-State actors is enhancing democracy and reshaping multilateralism… [We] see this opening up of the United Nations to a plurality of constituencies and actors not as a threat to Governments, but as a powerful way to reinvigorate the intergovernmental process itself.[7]

More recently, the United Nations Human Rights Council has passed resolutions that recognize the important role of civil society at the local, national, regional, and international levels and "the crucial importance of the active involvement of civil society at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels, which is crucial for building peaceful, prosperous and democratic societies".[8]

Human Rights Council resolutions also emphasize the essential role of civil society at all levels, including "in support of the organizations' work, and in sharing experience and expertise through effective participation in meetings in accordance with relevant rules and modalities, and in this regard reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with subregional, regional and international bodies, in particular the United Nations, its representatives and mechanisms".[9]

SDGs: The Sustainable Development Goals include Goal 16 which calls for effective, accountable, and inclusive institutions at all levels. The targets for this goal include target 16.6 "Develop effective, accountable and transparent institutions at all levels" and 16.7 "Ensure responsive, inclusive, participatory and representative decision-making at all levels". Inclusiveness, participation, and transparency at all levels, including international, are key to Goal 16.[10]

UNCAC: Article 13 of the UNCAC states that "Each State Party *shall* take appropriate measures … to promote the active participation of individuals and

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[6] General Comment No. 25, The right to participate in public affairs, voting rights and the right of equal access to public service, Art. 25, 12-07-1996. CCPR/C/21/Rev.1/Add.7.

[7] Report of the Panel of Eminent Persons, "United Nations — Civil society relations", "We the peoples: The United Nations, civil society and global governance", 2004, www.globalpolicy.org/images/pdfs/0611report.pdf.

[8] Resolution adopted by the Human Rights Council, 1 July 2016 — 32/31. Civil society space, A/HRC/RES/32/31 Human Rights Council Resolutions also urge, States "to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity and emphasize the essential role of civil society in subregional, regional and international organizations, including in support of the organizations' work, and in sharing experience and expertise through effective participation in meetings in accordance with relevant rules and modalities, and in this regard reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with subregional, regional and international bodies, in particular the United Nations, its representatives and mechanisms. Human Rights Council Agenda Item 3: "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", UNHRC, 2014, A/HRC/27/L.24, para. 3, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.24.

[9] Human Rights Council Agenda Item 3: "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development", UNHRC, 2014, A/HRC/27/L.24, para. 3, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.24.

[10] The 2011 Busan Partnership for Development also recognized the role of civil society in "enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation".

groups outside the public sector". These measures include ensuring that the public has effective access to information.

Summary of findings and recommendations

The TI report's findings and recommendations relate to the basic framework for transparency and civil society participation in the international meetings of anti-corruption review mechanisms, namely (1) published rules on access to information about and participation in the meetings; (2) proactive online disclosure of information about the meetings; and (3) the practice at meetings regarding access to information and participation:

- Overall, all six mechanisms lack accessible rules on access to information about and participation in their meetings. Three mechanisms — UNCAC, OECD WGB, and FATF-publish no access to information rules at all and also lack rules on participation. Regarding the international meetings of the UNCAC review mechanism, the existing rules governing civil society participation have been challenged by a small group of states resulting in their de facto suspension without any published decision to that effect.
  Recommendation 1: All review mechanisms should publish rules on access to information and civil society participation in their international meetings.
- In four of the six mechanisms there are important gaps in the proactive online disclosure of information about their meetings — this includes lack of easy online access to the schedule of meetings, agendas, lists of participants and/or meeting documents. UNCAC does relatively well in this area, as does MESICIC.
  Recommendation 2: All review mechanisms should publish all information required for an understanding of and potential participation in their international meetings without prior request, including online.
- There are important gaps in five of the six review mechanisms in relation to access to documents distributed at meetings, such as draft resolutions and reports and also with respect to participation in meetings as observers, making statements, and posing questions. The OECD/ACN Istanbul Action Plan is the only one with good practice in this area, welcoming civil society organizations as full partners at the table when government representatives discuss the anti-corruption performance of their peers. The other mechanisms bar civil society representatives from attending their meetings and consequently also any documentation available only on-site is not accessible.
  Recommendation 3: All review mechanisms should allow onsite access to information and participation in international meetings.

Conclusion

Excluding civil society from the international meetings of anti-corruption review mechanisms and failing to provide access to information about those meetings renders the mechanisms non-compliant with international human rights standards and other standards on transparency and participation. This undermines the credibility and legitimacy of their country assessments and diminishes their effectiveness. The UNCAC review mechanism and the other mechanisms should promptly correct their failure to comply with international standards.