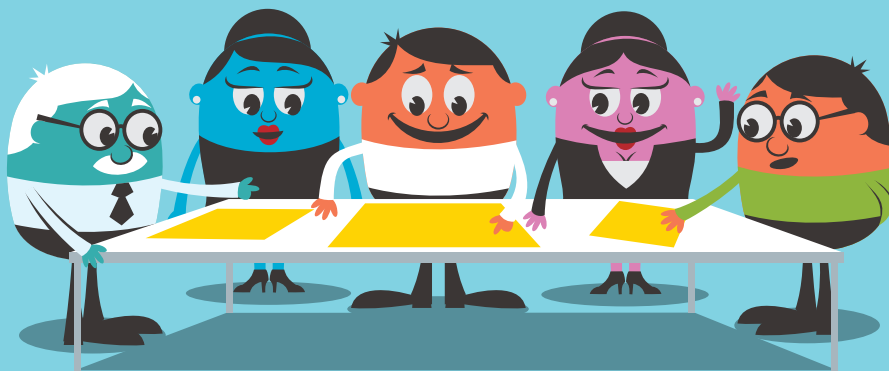# USING THE UN CONVENTION AGAINST CORRUPTION TO ADVANCE ANTI-CORRUPTION EFFORTS: A GUIDE

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

The UNCAC Coalition is a global network of over 350 civil society organisations (CSOs) in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC). It mobilises civil society action for UNCAC at international, regional and national levels.

www.transparency.org
www.uncaccoalition.org

With the support of:

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of January 2014. Nevertheless, Transparency International and the UNCAC Coalition cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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TRANSPARENCY INTERNATIONAL
the global coalition against corruption

USING THE UN CONVENTION AGAINST CORRUPTION TO ADVANCE ANTI-CORRUPTION EFFORTS: A GUIDE

UNCACoalition
CIVIL SOCIETY

**If fully enforced,
[the UN Convention against Corruption]
can make a real difference
to the quality of life
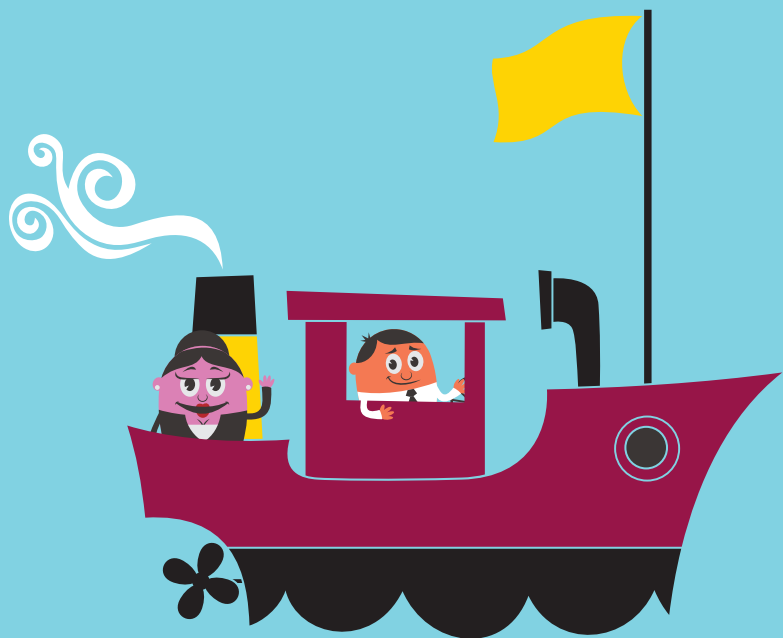of millions of people around the world.**

Kofi Annan[1]

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1
INTRODUCTION

Corruption affects us all – at the local, national and international levels – and challenges us to counter it. Across the world, governments, businesses and civil society are squaring up to this challenge, as it becomes increasingly understood that corruption offends our values and threatens our societies.

It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes quality of life and allows organized crime, terrorism and other threats to human security to flourish.[2]

International conventions such as the United Nations Convention against Corruption (UNCAC) play a key role in anti-corruption efforts.[3] They provide frameworks that set anti-corruption standards and address cross-border issues. They are evidence that the international community takes corruption seriously and recognises the need for common solutions.

The UNCAC is the most comprehensive of all the anti-corruption conventions. As an agreement between 170 countries,[4] it establishes common standards, policies, processes and practices to buttress anti-corruption efforts at the national level. It also facilitates international cooperation by harmonising the legal and institutional frameworks for law enforcement and establishing cooperative mechanisms.

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2   Kofi Annan, Foreword to UNCAC, 2004.
3   Other conventions include the OECD Anti-Bribery Convention as well as regional anti-corruption conventions such as the African Union Convention on Preventing and Combating Corruption; the Arab Convention against Corruption; the Council of Europe Criminal Law Convention on Corruption; the Council of Europe Civil Law Convention on Corruption the European Union Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States; and the Inter-American Convention against Corruption. There is also the Southern African Development Community Protocol on Corruption and the Economic Community of West African States Protocol against Corruption (see Annex 1).
4   Number of States parties to the convention as of 9 January 2014.

The UNCAC does not define corruption

Although the UNCAC lists criminal offenses related to corruption in chapter III, it does not include a definition of corruption. This has advantages, as it means that the convention's coverage is not unnecessarily constrained by the details of a definition negotiated by governments at a specific point in time. Transparency International defines corruption as the **abuse of entrusted power for private gain.** This is a useful starting point and encompasses corruption in many forms, but there are other definitions you might use.

The UNCAC has a review mechanism – adopted in 2009 – to track implementation of the convention. This is a peer review mechanism that produces country review reports, which examine progress in implementation and make recommendations. These activities help sustain the momentum for UNCAC implementation around the world.

The UNCAC and its review mechanism are powerful tools in the hands of civil society. They provide the basis for citizens and civil society organisations to hold governments to account on their anti-corruption commitments.

The UNCAC standards support anti-corruption reform and offer leverage for change. They carry political weight – given their binding nature and international backing – and they remain in place while governments come and go. The UNCAC recognises the crucial role of civil society in successful anti-corruption efforts: supporting governments to meet their UNCAC obligations and contributing to ongoing assessments of their performance through the UNCAC review process.

Whether you seek to reduce corruption in the health or education sectors, remedy failures in the justice system, iron out distortions in public procurement, or tackle lack of budget transparency, the UNCAC provides important support for anti-corruption and accountability initiatives:
– It is **comprehensive**, as it covers almost every aspect of corruption, and provides a foundation for action at the national and local levels.
– It has a **review mechanism**, which invites civil society participation in its national level review process.
– It holds **international meetings**, where you can take your findings and recommendations to increase their impact.

This is a guide to **support civil society organisations in using the UNCAC effectively**. It leads you through its processes and institutions, and explains how to devise an effective approach to monitoring and advocacy that will help you to bring about change and enhance anti-corruption activities at both the national and international levels.

2
EXPLAINING MONITORING AND ADVOCACY

Monitoring and advocacy are mutually reinforcing activities that help to bring about change.

Monitoring is the process of systematically checking whether standards or obligations have been fulfilled and identifying gaps. Effective monitoring provides evidence for advocacy at the local, national and international levels.

Advocacy is the constructive engagement with all stakeholders to promote change and end corruption. It involves a set of activities designed to influence the policies and actions of those in power. In the course of conducting advocacy, civil society organisations (CSOs) can gain insights and gather information for further monitoring initiatives.

Working in civil society coalitions can have significant benefits if you organise an effective division of labour. You can divide up the monitoring and advocacy work according to the expertise of different organisations. Several organisations can use the results of a monitoring exercise for their advocacy.

WHAT IS UNCAC MONITORING?

Once a country ratifies the UNCAC it is bound by its standards. Monitoring involves carefully researching the performance of governments in the implementation and application or enforcement of UNCAC provisions.

The UNCAC has its own review mechanism to monitor country implementation of its standards. The review mechanism produces country review reports on implementation that are the result of a peer review process. CSOs can use the report findings for their advocacy and to structure their own monitoring activities.

Civil society organisations may monitor the implementation of:
– The whole convention
– A few chapters
– One or more articles

CSOs may also monitor the transparency and inclusiveness of the review process.

Monitoring produces findings and recommendations to **support your advocacy**. It also fosters dialogue, builds relationships and leads to engagement with government and other stakeholders.

In order to get an idea of some of the subject areas you could monitor, have a look early in your decision-making process at the guidelines and the report template developed by Transparency International (See Annex 3).

WHAT IS UNCAC-BASED ADVOCACY?

UNCAC-based advocacy makes use of UNCAC standards, the **findings of monitoring** country implementation, UNCAC forums and processes to achieve advances in specific areas of anti-corruption.

Advocacy based on the UNCAC can focus on:
– Better country performance in priority anti-corruption areas through improved implementation of UNCAC standards in your country, whether by correcting gaps in legislation or addressing failures of application or enforcement
– Increased transparency and inclusiveness in national or international UNCAC processes
– Ratification of the UNCAC – if your government is one of the few that has not yet ratified the convention (see Annex 7).

Advocacy is often most effective when you work with a range of stakeholders and build relationships through collaboration with other CSOs. See the work of the UNCAC Coalition for more information (www.uncaccoalition.org).
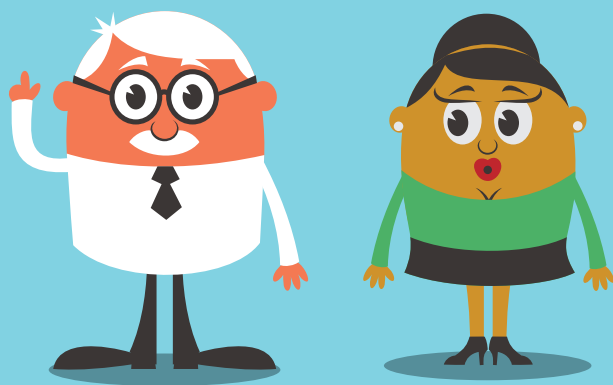
3 THE UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

3.1 THE UNCAC IN BRIEF

Adopted by the UN General Assembly: 31 October 2003
Entered into force: 14 December 2005
Number of states parties: 170 (at January 2014)
Eligible members: All countries and regional economic organisations
Secretariat: United Nations Office on Drugs and Crime (UNODC)

The UNCAC has eight chapters and 71 articles.

Chapter I: General provisions is followed by the following four chapters containing **substantive provisions**.

Chapter II: Preventive measures
The measures covered include codes of conduct for public officials, transparency in public procurement and public finances, and steps to prevent private sector corruption and money laundering. Article 13 mandates states parties to ensure participation of civil society and non-governmental organisations in the prevention of and fight against corruption. It refers to the need for measures ensuring public access to information and participation in educational programmes.

Chapter III: Criminalisation and law enforcement
Crimes covered in this chapter include bribery, embezzlement, abuse of functions, illicit enrichment, concealment, money laundering, trading in influence and obstruction of justice. The chapter also provides for the protection of reporting persons (whistleblowers), witnesses, victims and experts.

Chapter IV: International cooperation
This chapter lays down standards for mutual legal assistance in investigations and the prosecution of offenders.

Chapter V: Asset recovery
This addresses prevention and detection of transfers of the proceeds of crime and measures for their recovery, with an emphasis on international cooperation.

Two further chapters cover agreed **steps to enhance the impact of the convention.**

Chapter VI: Technical assistance and information exchange
This calls on states parties to develop or improve specific training programmes for personnel responsible for preventing and combating corruption. States parties should also consider affording one another the widest measure of technical assistance, especially for developing countries, as well as voluntary mechanisms to provide financial assistance to developing and transition countries.

Chapter VII: Mechanisms for implementation
This establishes the Conference of States Parties (COSP) to improve the capacity of and cooperation between states parties and to promote and review its implementation, as well as to make recommendations in order to improve implementation.

The UNCAC concludes with Chapter VIII: Final provisions
The topics covered here include provisions on entry into force, the ratification process and amendments to the text of the convention.

> The UNCAC secretariat (UNODC) provides additional material and guidance on the UNCAC www.unodc.org/unodc/en/treaties/CAC/ (see in particular technical tools and publications).

3.2 THE UNCAC BODIES AND INSTITUTIONS

The main decision-making body of the UNCAC is the Conference of States Parties (COSP). It has created subsidiary bodies, operating under its mandate, to help it in its work. The United Nations Office on Drugs and Crime (UNODC) serves as its secretariat.

THE CONFERENCE OF STATES PARTIES

All states that have ratified the UNCAC are automatically part of the Conference of States Parties. Other states (signatories[5] and non-signatories[6]), intergovernmental organisations and non-governmental organisations[7] can apply for observer status at COSP sessions.

The COSP meets every two years and adopts resolutions and decisions aimed at building states parties' capacity and cooperation to achieve the convention's objectives as well as promoting and reviewing its implementation. It operates under the Rules of Procedure adopted by the COSP.

– **States parties** can participate actively and fully in COSP sessions, including in the adoption of resolutions and decisions, whether by consensus or by vote. States parties can also participate in working groups and expert meetings.

– **Observers** can attend plenary sessions of the COSP, deliver statements, submit information in writing and receive the COSP documents. One specific category of observers – signatories – can also attend the "non" plenary sessions of the COSP (e.g. informals) and speak during the deliberative process. Observers cannot participate in the adoption of resolutions or decisions by the COSP.

5   Rules of Procedure, Rule 14, www.unodc.org/unodc/en/treaties/CAC/rules-of-procedure.html.
6   Rules of Procedure, Rule 15.
7   Rules of Procedure, Rule 16.

What can CSOs do at COSP sessions?

CSOs can attend the COSP sessions:[8] CSOs that have consultative status with the Economic and Social Council (ECOSOC) can apply for observer status and it should be automatically accorded unless otherwise decided by the COSP. CSOs that do not have ECOSOC consultative status may also apply for observer status, but the procedure is a little more complicated.[9]

CSOs can make written submissions: The submissions – subject to a word limit – become part of the official conference documentation. They are published on the conference website and can be distributed to states parties through formal channels.[10] In previous COSP sessions, CSOs have submitted executive summaries of CSO review reports about country compliance and statements calling for specific action to be taken at the COSP.

CSOs can deliver oral statements: During the plenary sessions,[11] nongovernmental observer representatives that register to speak are called after the list of states parties and intergovernmental organisation speakers has been exhausted.

8   Rules of Procedure, Rule 17.
9   The list of non-ECOSOC CSOs who apply is distributed to the states parties who can object to the participation of one or several of them, and if there is an objection, the matter will be referred to the COSP for a decision.
10 The length of the statement should be in accordance with ECOSOC Resolution 1996/31. Paragraph 37(d) and (e) limits the written statements by CSOs in consultative status to 2,000 (general consultative status) or 1,500 (special consultative status) words per document including footnotes.
11 Rules of Procedure, Rule 17, par.3(b).

CSOs can organise side events: These are meetings, presentations or panel discussions on topics relevant to UNCAC, but outside the formal agenda of the conference. During the 4th COSP in October 2011, CSOs organised panel discussions on the right of access to information and best practices on asset recovery and anti-money laundering. During the 5th COSP in November 2013, CSOs organised a panel discussion on the progress of the UNCAC review process, and presented recommendations for improvements.

CSOs can meet with their government representatives: They can advocate for COSP outcomes as well as discussing the state of anti-corruption efforts at home.
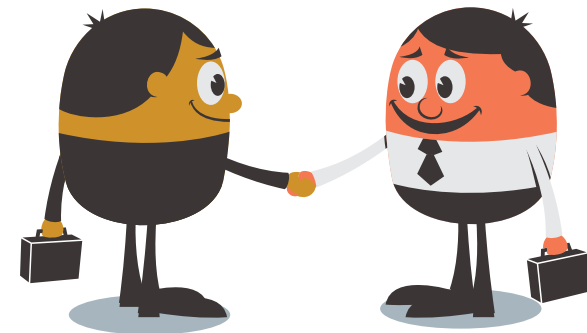
SUBSIDIARY BODIES

The COSP has created a number of "subsidiary bodies". To date they have all been "open-ended intergovernmental groups" made up of representatives of all states parties, with no fixed members. They are meant to advise the COSP and provide recommendations to help deliver its mandate. Their reports, using resolution style language, call on states to take certain actions or request UNODC to carry out specific work.

The Implementation Review Group (IRG): The IRG meets at least once a year and reports to the COSP. In practice it has met twice a year since its creation in 2009. It oversees the UNCAC review process in order "to identify challenges and good practices and to consider technical assistance requirements in order to ensure effective implementation of the Convention". The IRG does not discuss or adopt country review reports. It is tasked with discussing thematic implementation reports prepared by UNODC.[12] On the basis of its deliberations, the IRG can submit recommendations and conclusions to the COSP for its consideration and approval.

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12 The thematic implementation report is a compilation, organised by theme, of the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the country review reports. It is prepared by UNODC.

What can CSOs do at IRG meetings?
The IRG briefing for civil society organisations

Although signatory states and intergovernmental organisations are permitted to attend IRG meetings as observers, civil society organisations have so far been excluded. They were excluded following objections from a few states parties, but contrary to the Rules of Procedure.

Government debates about the admission of CSOs as observers led to a temporary compromise at the COSP4 session in Marrakesh in 2011. Governments agreed on a "briefing" for CSOs "on the margins" of the IRG meetings on the outcomes of the review process, including the technical assistance needs identified. Only CSOs with ECOSOC consultative status or CSOs admitted to participate as observers in the COSP previous to the briefing can attend and make oral and written statements. This briefing is widely considered to be an inadequate substitute for observer status and has been a subject for CSO advocacy.[13]

The working groups and the expert meetings: There are to date two working groups, one on preventive measures and the other on asset recovery. There are also expert meetings on international cooperation. Civil society organisations are currently excluded from attending working group sessions as observers – contrary to the Rules of Procedure – and are advocating for observer status.

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13 See for example documents produced by the UNCAC Coalition, a network of CSOs that promote ratification, implementation and monitoring of the UNCAC.

Why should civil society be allowed to attend meetings of the UNCAC subsidiary bodies?

Transparency and civil society participation are essential for anti-corruption efforts. This is recognised in many articles of the UNCAC. CSOs offer valuable expertise and advice for government initiatives, and support of the wider public is crucial for effective implementation.

Yet since 2010 CSOs have been excluded from participating as observers in the meetings of UNCAC subsidiary bodies. This violates the applicable rules of procedure, which are very clear:

According to **Rule 2**, the COSP rules of procedure must be applied *mutatis mutandis*[14] to subsidiary bodies created under UNCAC Article 63. These bodies include the Implementation Review Group, the Working Group on Prevention and the Working Group on Asset Recovery.

The following rules thus apply to the IRG and working groups *mutatis mutandis*: **Rule 17** says that CSOs can participate as observers in COSP plenaries. **Rule 40** says that COSP plenaries should be public unless the COSP decides otherwise.

➜

A few states parties that wish to exclude CSO observers argue that Rule 17 does not apply to subsidiary bodies because of the reference to "plenaries". This interpretation is incorrect. It fails to give meaning to the term *"mutatis mutandis"*. It ignores the fact that subsidiary bodies take decisions in plenary sessions and that under **Rule 40** their sessions should be public. It also runs counter to UN practice in Geneva and New York, where working groups are public and open to CSO observers unless the working group decides otherwise.

Most importantly, excluding CSOs is inconsistent with the ideals of transparency and multi-stakeholder collaboration embodied in the UNCAC.

The exclusion of CSOs damages the reputation and credibility of the UN and the UNCAC and should be addressed promptly.[15]

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14   "Mutatis mutandis" means changing [only] those things which need to be changed.

15   Gillian Dell, 'Follow the Rules on NGO Observer Status in COSP Subsidiary Bodies', blog, 15 November 2013, http://uncaccoalition.org/learn-more/blog/297-follow-the-rules-on-ngo-observer-status-in-cosp-subsidiary-bodies.

THE UNITED NATIONS OFFICE ON DRUGS AND CRIME

UNODC serves as secretariat for the COSP and provides assistance to it and its subsidiary bodies. It also provides technical assistance to states to support their implementation of the UNCAC. The head of the UNODC substantive office that provides secretariat services to the COSP, is designated as the Secretary of the Conference.

For more detail about the institutions and their functions, visit the UNCAC Coalition and the UNCAC secretariat websites: www.uncaccoalition.org/cosp and www.unodc.org/unodc/en/treaties/CAC/CAC-COSP.html.

3.3 THE UNCAC REVIEW MECHANISM

The UNCAC review mechanism was created by the adoption of Terms of Reference[16] at COSP3 in Doha in 2009.

It contains procedures and processes for the peer review of country implementation of the UNCAC and includes an oversight body called the Implementation Review Group (described above).

Transparency International has developed training videos for CSOs on the UNCAC review process, see: www.uncaccoalition.org/uncac-review/uncac-review-mechanism.

HOW DOES THE UNCAC REVIEW MECHANISM WORK?

The review process comprises two five-year cycles:
– The first cycle (2010–2015) covers chapter III on criminalisation and law enforcement and chapter IV on international cooperation
– The second cycle (2015–2020) will cover chapter II on preventive measures and chapter V on asset recovery

Approximately a quarter of the states parties are scheduled for review in each of the first four years, with the fifth year reserved for unanticipated delays or countries acceding during the review cycle. Each country review should take approximately six months, but significant delays have been common in the first review cycle.

16 Terms of Reference for the Implementation Review Mechanism, www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

collaborative
nonpunitive
efficient
inclusive

transparent

constructive
imparcial
non adversarial
nonintrusive
promote
challenges
share

good
practices

Key principles of the review mechanism[17]

– Transparent, efficient, non-intrusive, inclusive and impartial
– Provide opportunities to share good practices and challenges
– Not produce any form of ranking
– Non-adversarial and non-punitive
– Identify difficulties encountered by states parties in implementing the UNCAC
– Identify good practices adopted in efforts by states parties to implement the UNCAC
– Be technical and promote constructive collaboration
– Complement existing international and regional review mechanisms

17 Ibid.

PHASES IN THE UNCAC REVIEW PROCESS

There are four distinct phases in the review process.

Phase I: Self-assessment

UNODC notifies each state party under review of the start of the review process, and the reviewed country is required to identify and communicate to UNODC the **focal point** that will coordinate the country's participation in the review. The focal point can be an individual, an existing body or ministry department, or an interministerial group created especially for the task. The state party then fills out a standardised **self-assessment checklist** using special software.[18]

Phase II: Peer review

The peer review is conducted by two reviewer countries (including one from the same geographical region as the country under review), which are decided by lots and tasked with providing experts to form an **expert review team**. This team works together to review the self-assessment checklist responses of the country reviewed.

UNODC receives the completed checklist and sends it to the review team experts. With support from UNODC, the reviewing experts prepare a **desk review** analysing the responses to the checklist. The desk review may contain requests for additional information. UNODC sends the desk review to the country reviewed for comment.

Direct dialogue between the review team and the country under review takes place through conference calls and, if the reviewed country agrees, through a country visit (or at UNODC in Vienna).

18 See the Comprehensive Self-Assessment Checklist on the Implementation of the United Nations Convention against Corruption, www.unodc.org/unodc/en/treaties/CAC/self-assessment.html.

Phase III: Country review report and executive summary

The review team experts prepare a draft **country review report**, with support from UNODC. The draft is sent to the state party under review for approval. In case of disagreement, the experts involved engage in dialogue to arrive at a consensual and final report. The final reports range in length from 80 to 300 pages.

The full report is only published on the UNODC website if the reviewed country agrees: an increasing number of countries are agreeing to publication.

The review team experts prepare an **executive summary** of the report, about 7–12 pages in length, with assistance from UNODC. Once completed, the executive summary is automatically published on the UNODC website.

What do UNCAC country reports contain?

The first review cycle (2010-2015) covers the issues of criminalisation and law enforcement (chapter III) and international cooperation (chapter IV). The second review cycle (2015-2020) covers preventive measures (chapter II) and asset recovery (chapter V). Consequently the reports and the pertinent executive summaries for each cycle contain information concerning only these areas.

The executive summary of a country shows:
1. Observations on the implementation of the articles under review (the findings)
2. Successes and good practices (additional findings)
3. Challenges in implementation, where applicable (recommendations for improvement)
4. Technical assistance needs identified to improve implementation of the UNCAC.[19]

➡

19 See: www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.

The full report contains the executive summary material, as well as the following:
1. Detailed description of provisions of national legislation and how they correspond to the UNCAC. These are often complemented with observations on their application in practice and interpretations made by courts.
2. Summary of court cases demonstrating the implementation of particular articles of the UNCAC.
3. Statistics on particular corruption offences and on forms of international cooperation.

Phase IV: Follow up

There is currently no follow-up process to check whether reviewed countries introduce reforms in line with review recommendations, although such follow-up is foreseen in the Terms of Reference for the review mechanism. However, the reviewed country may make requests for technical assistance.

4
MONITORING IMPLEMENTATION OF THE UNCAC

Monitoring UNCAC implementation in a country involves assessing both the good practice and implementation gaps. It means documenting and evaluating the legislation and other measures taken by states parties in light of the standards established by UNCAC. This will provide the basis for specific recommendations for improvements and for UNCAC-based advocacy to achieve those improvements.

Remember that the findings of your monitoring exercise will provide the evidence for your advocacy. A strong evidence-base can lead to strong advocacy and change.

4.1 HOW TO DECIDE WHAT TO MONITOR

What you decide to monitor will depend on a number of contextual and organisational considerations. It is possible to focus on a single issue, a few priority issues, a chapter, or the whole convention.

Contextual considerations

If your country is under review by the UNCAC review mechanism, you may choose to monitor implementation alongside the review process to produce a **parallel country review report** that would either corroborate the official review or highlight different issues and corruption challenges. This approach may be collaborative – complementing and even providing inputs to the official review – or more autonomous. Ideally the report preparation process will allow you to develop constructive relationships with your government focal point and help facilitate future advocacy efforts with decision-makers.

If your country has already been reviewed you may choose to monitor **progress since the review.** This approach would use the official review and its recommendations as a basis to monitor your government's response to the review mechanism findings.

Finally, if your country has particular corruption problems that are not addressed by the current review cycle you may wish to concentrate on **different issues from the UNCAC review mechanism.** For example, while your country may be under review in the first cycle on criminalisation and international cooperation, you may consider it a higher priority in your country context to tackle asset recovery.

If your country has not yet ratified the UNCAC, you may still choose to conduct a monitoring exercise. It would allow you to be ready to help your country introduce the necessary reforms to comply with the UNCAC and become a valuable ally (see Annex 7).

Organisational considerations

Consider what kind of monitoring would be **relevant** for the future work of your organisation. You should think about how the strategic priorities of your organisation could be advanced by monitoring. Monitoring should either contribute to on-going projects and advocacy, or form the basis of new ones.

Estimate the **time and resources** you need for monitoring. You could get advice from other organisations on their experiences of monitoring UN conventions. Consider each step of the monitoring exercise, how many people need to be involved, the level of expertise that will be required and whether you could seek assistance from other organisations. This will help you in defining expectations, planning your monitoring budget and coordinating with others.

Consider whether there are other organisations you could **collaborate** with to collect information: civil society organisations can complement each other in collecting information. Taking existing data and information and updating it, using questionnaires designed by others and improving them, and sharing experiences and difficulties improves the quality of the monitoring. Building on others' experience and sharing work is cost-effective and broadens the basis of support for the monitoring outcomes when it comes to the advocacy stage.

Availability of information

A major obstacle to effective monitoring is often the availability of information. Data on the application and enforcement of provisions may not be recorded or collected. Even in countries with well-functioning freedom of information regimes information may be difficult to obtain. Many CSOs have faced difficulties obtaining enforcement statistics and case law.

> If there is lack of information and limited access to official review processes, this will be an important finding of your monitoring in itself. It can be used as the basis for advocacy on increased transparency measures.

4.2 HOW TO MONITOR STEP-BY-STEP

Whatever you decide to monitor, the aim is to assess the extent to which UNCAC standards have been implemented in your country. The research and data collection methods should involve a range of different methods. Chief among them is a **desk review** of existing legislation and of measures applying and enforcing the law, as well as **key informant interviews**. Information on cases and investigations is valuable in relation to discussions of enforcement.

You can inform the government of your intention to conduct an evaluation of the country's performance in implementing UNCAC provisions. Indicate your interest in getting their feedback on a draft of your evaluation.

Mandatory and non-mandatory provisions

Understanding the difference between mandatory and non-mandatory provisions is essential when monitoring the UNCAC.

Mandatory provisions are those that a state party to the convention must implement. They usually state: Each state party "shall adopt".

Non-mandatory provisions are provisions that states parties are not obliged to implement, although it is recommended. Typical language would be: "Each State Party shall endeavor to adopt …",[20] or "Each State Party shall consider adopting …"

Optional measures typically state: states parties "may consider adopting..." State parties have total discretion whether to implement the provision or not.[21]

Note that many provisions have both mandatory and non-mandatory paragraphs (for example Article 37).

20 Examples of Preventive measures (chapter II): preventive anti-corruption policies (paras 2 and 3, Article 5), public sector (paras 1 and 4, Article 7), provisions on assets declarations (para. 4, Article 8); Examples in International cooperation (chapter IV), expedite extradition (para. 9 of Article 44).
21 Examples in International cooperation (chapter IV): transfer of sentenced persons (Article 45), international cooperation in absence of dual criminality (para. 9(b), Article 46).

THE FOLLOWING STEPS ARE RECOMMENDED FOR YOUR MONITORING:

STEP 1: Develop a deep understanding of the UNCAC articles

The UNCAC provisions are often formulated in general terms and civil society organisations – like their governments – need to consider what these requirements mean in practice. The legislative[22] and technical[23] guides to the UNCAC developed by UNODC and the *travaux preparatoires* of the negotiations for the elaboration of the UNCAC[24] are valuable tools to help you understand its provisions better. Consulting with experts is also recommended.

22 See UNODC Legislative Guide for the Implementation of the United Nations Convention against Corruption, www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html.

23 See UNODC Technical Guide to the United Nations Convention against Corruption, www.unodc.org/unodc/en/treaties/CAC/technical-guide.html.

24 See Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Corruption, www.unodc.org/unodc/en/treaties/CAC/travaux-preparatoires.html.

STEP 2: Determine the form your monitoring will take

This will involve deciding on the questions or indicators you will use to monitor your country's performance. You may have decided to prepare your own report or to comment on the official country review report when it is released. In either case, you should decide in advance on the form your monitoring will take in light of your advocacy goals.

If you are preparing your own parallel country review report, you may wish to use selected questions from the self-assessment checklist used by governments,[25] or choose to develop your own questionnaire. If you work on criminalisation and enforcement, you may wish to use Transparency International's guidelines and report template (see Annex 3).

Transparency International has also developed guidelines and a template to produce a commentary on official UNCAC review reports (see Annex 4).

25 See Comprehensive Self-Assessment Checklist on the Implementation of the United Nations Convention against Corruption, www.unodc.org/unodc/en/treaties/CAC/self-assessment.html.

STEP 3: Conduct research on whether the UNCAC has been translated fully into your national legislation

The TRACK legal library developed by UNODC contains laws and jurisprudence and information on anti-corruption authorities in over 175 countries, indexed and searchable by country and UNCAC article.[26] This should help expedite your research and analysis.

You should also look at the reports produced by the monitoring mechanisms of other international anti-corruption instruments, such as the Anti-Bribery Convention of the Organisation for Economic Cooperation and Development (OECD),[27] the Inter-American Convention against Corruption,[28] or the conventions and instruments monitored by the Council of Europe's Group of States against Corruption (GRECO).[29] Statements from government representatives in anti-corruption forums or the press can also be informative and integrated into advocacy activities later.

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26 See TRACK Legal Library, www.track.unodc.org/LegalLibrary/Pages/home.aspx.
27 See the country reports on the implementation of the OECD Anti-Bribery Convention, www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm.
28 See the reports of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption, www.oas.org/juridico/english/mesicic_reports.htm.
29 See GRECO evaluations, www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.

STEP 4: Conduct research on the application or enforcement of the provisions implementing the UNCAC

Whether you are monitoring provisions on prevention, criminalisation or asset recovery it is important to check not only the legislative framework but also institutional arrangements, policies and practices. Are specific preventive measures in place? Have there been successful cases of international cooperation or asset recovery? For chapter III – criminalisation and enforcement – there is a range of issues to consider beyond the legal framework. Do enforcement authorities have the necessary independence, resourcing and expertise? Are there any investigations of corruption cases, prosecutions and condemnations of corruption offenders? What sanctions have been imposed? Conduct a thorough online search for any available information about cases or investigations,[30] including news reports or other reputable publications[31] and statistical data from the government. If this information is not available online, it may take some time to obtain it.

> Monitoring exercises should be repeated every few years to build up data and track progress. Given that the five-year-cycle of the UNCAC review is prone to delays, you might want to plan your monitoring cycles independently.

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30 The annual country reports on human rights practices produced by the US State Department have a section on "Official Corruption and Government Transparency" and contain information on cases and investigations, www.state.gov/j/drl/rls/hrrpt/index.htm.
31 For each case or investigation mentioned, a citation should be supplied in a footnote, preferably including a web link. Indicate the source if you use data received.

4.3 RESEARCH AND DATA COLLECTION METHODS

Questionnaires: Government officials and experts

Questionnaires are an effective way to acquire basic information from public officials, experts at anti-corruption bodies and oversight bodies or academics and independent legal experts. [32]

Good questionnaires are clearly structured and contain a few main questions that can be broken down further into two or three sub-questions. You should develop some open questions that leave space for respondents to elaborate on their ideas. It is a good idea to test your questionnaire before sending it off to ensure that you get the right information and there is no ambiguity. Teaming up with a research institution can help to achieve meaningful results, and adding questions on the UNCAC to other related surveys is also an option.

Interviews: Government officials and experts

Interviews – on the phone or in person – are an alternative to written surveys. You can interview government officials or experts working on related issues: for example defence lawyers on criminalisation matters, victim associations for victim protection, or compliance officers for private sector issues.

Interviews may be semi-structured or open-ended or they may be more firmly structured with closed questions.

When approaching government officials, allow considerable lead-time to set up the meetings. It is also wise to communicate your questions before the interview and explain how the responses will be used. You should discuss upfront how the information given by the interviewee will be referenced in the end product.

32 More information on online survey tools designed for civil society organisations: Eric Leland, 'A Few Good Online Survey Tools', February 2011, www.idealware.org/articles/fgt_online_surveys.php.

Research tips

To improve the effectiveness and quality of monitoring:
– Share drafts with government and other experts, as this helps to avoid mistakes and begins to build constructive relationships for future advocacy.
– Seek pro-bono assistance from post-graduate students, academics or lawyers.
– Spread the word and let people know that you are undertaking the monitoring: government authorities, academics, think-tanks, other civil society organisations, journalists and individuals might contribute or share valuable information and insights.
– Share efforts by building relationships with other organisations and incorporating expertise from various fields to produce reports that are supported by several organisations.

Remember that the people you approach and build relationships with during the monitoring phase may also be useful allies for your advocacy work.

4.4 PRESENTING MONITORING RESULTS

The **results of your monitoring** can form the basis of **effective advocacy.** A civil society monitoring report is an important advocacy tool.

A monitoring report should provide an evidence-based assessment of the implementation of the UNCAC in the areas monitored. This should lead to justified conclusions and recommendations for change.

All data should be clear, concise and user-friendly, including graphs and tables where appropriate. You should use comprehensive references. Sources should be cited either in the text or footnotes. Statements containing allegations of misconduct by any individual or organisation should be supported by references to reliable sources and great care should be taken to avoid libellous statements. Where a report contains allegations, it is recommended to have the text reviewed by a libel lawyer.

A civil society report will have the most impact if the presentation of the monitoring findings and recommendations are linked to **concrete advocacy objectives**.

Guidelines on how to prepare a civil society parallel report and a commentary on official review reports, as well as templates, can be found in Annexes 3 and 4.

5
ADVOCACY
TO IMPROVE NATIONAL
ANTI-CORRUPTION
MEASURES

UNCAC-based advocacy aims to achieve specific improvements in a country's anti-corruption system by referencing UNCAC standards and calling for the government to fulfil its UNCAC commitments. As with all advocacy, it is necessary to develop an effective advocacy strategy. This section provides suggestions for the advocacy planning process.

> For a comprehensive approach to advocacy please refer to Transparency International's guide to advocacy planning.[33]

5.1 IDENTIFY KEY ISSUES AND TARGETS FOR ADVOCACY

Your organisation may have identified weaknesses in your country's anti-corruption framework that it considers require priority attention. This may be based on your organisation's own analytical studies or it may rely on studies carried out by other organisations, such as Transparency International's National Integrity System studies, which highlight deficiencies.[34] You can then determine which UNCAC provisions are relevant and provide guidance on the performance your government has committed to.

If you don't know what the key issues are and you are trying to find out, you can do a **monitoring exercise** and see where your country is doing well and where action is still needed. These would be the key issues (see previous section). You can also refer to the UNCAC country review findings. Indeed, country review reports and their executive summaries provide useful content for advocacy purposes, because they include clear and concise recommendations, as well as more detailed findings.

Once you have identified your priority targets for improved performance, you are in a position to make recommendations about steps your government should take to meet UNCAC commitments. You can also use the recommendations contained in the "official" country review report – if available – and supplement them where necessary.

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33 Transparency International, *Developing an Anti-Corruption Advocacy Plan: A Step-by-Step Guide*, (Berlin: Transparency International, 2013), www.uncaccoalition.org/learn-more/resources/finish/49-advocacy/391-developing-an-advocacy-plan-a-step-by-step-guide-transparency-international

34 National Integrity System assessments, www.transparency.org/whatwedo/nis.

5.2 IDENTIFY THE KEY ACTORS IN THE DECISION-MAKING PROCESS AND OTHER STAKEHOLDERS

Understanding the decision-making process with respect to your advocacy targets is a prerequisite to identifying the key stakeholders.

In the case of UNCAC-based advocacy, the power to make changes is in the hands of the state – the executive and legislative branches need to pass laws, make any necessary institutional changes and ensure laws are applied and enforced in practice.

Once it is clear who holds the power to make change, you can consider stakeholders who are in the position to influence them. The private sector can be a powerful ally, and CSOs in other areas may also have good working relationships and significant influence with decision-makers.

If you or your partner organisations have already completed a monitoring exercise, you will have started some groundwork for advocacy – keep in mind the contacts you made with key stakeholders when you prepared your monitoring report.

5.3 IDENTIFY YOUR KEY MESSAGES

For maximum impact, key messages should identify problems and provide clear solutions or suggest actions for decision-makers and be tailored to the specific audience.

Messages should be focused and clear, consistent and coherent:
– Focused: pick one or a limited number of closely related topics
– Clear: be direct
– Consistent: you may have to advocate for the same goal for years
– Coherent: your arguments should complement each other

You need to identify what you want your audience to do and what the audience *can do* to advance your advocacy goal. For example, you cannot ask private companies to adopt legislation criminalising foreign bribery – it is not in their power, but they can still support it by various means.

Remind your audience that when your country ratified the UNCAC, it committed to implementing and applying its provisions.

An example of key messages

You may have identified as a problem that foreign bribery is not criminalised in your country, contrary to UNCAC Article 16.

Your objective is to have it criminalised, so you aim to persuade your government to present a bill on that subject to the parliament.

Your key messages should include strong arguments and evidence tailored to your advocacy (think about what will persuade them to act):

– Foreign bribery damages the competitiveness of the bribing companies in the medium term; it can have repercussions for an entire sector of the national economy. The *Ministry of Economic Affairs* is likely to consider this argument.

– The *Ministry of Justice* may find convincing that this is part of an agreed framework in the international fight against corruption and that your government has made a commitment on this subject.

– If the *Ministry of Foreign Affairs* is planning to ever host or participate at major regional or international events where important partner countries are present, you could remind them that it may be embarrassing for them to explain why foreign bribery has not yet been criminalised.

– If your country provides significant funds for development, the responsible agency is likely to be unhappy with the level of corruption in the aid-recipient countries; you could make the case that corruption in those countries is exacerbated by foreign bribery from your country.

If you cannot convince the government to take on the bill, perhaps a *committee or member of parliament* may be interested in sponsoring a bill instead. Before elections politicians are often happy to engage in such high-profile projects.

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Even with government or other support, you still need majority support for the bill. Your messages should be tailored to a wide range of programmes and policies. While remaining non-partisan you may emphasise various advantages of criminalising foreign bribery in line with each party's preferences.

Some members of parliament may have close relationships with the *business community* and will listen to the opinion of business associations and companies; others may be involved in anti-corruption associations such as the *Global Organization of Parliamentarians Against Corruption*. If you engage with a broad range of stakeholders you can carry your message through various channels. If you can convince influential corporations to include criminalisation of foreign bribery into their lobbying priorities, for example, you may increase the chance of your success.
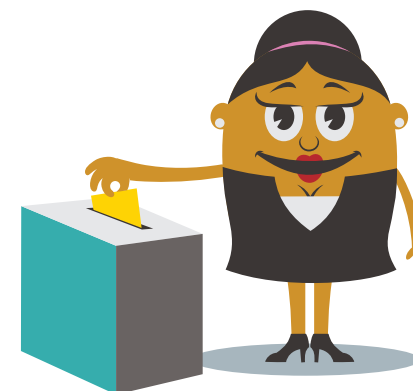
5.4 IDENTIFY KEY OPPORTUNITIES FOR ADVOCACY

The UNCAC is one of the most important sets of legal standards against corruption. When your organisation comments on a draft law, a bill or an anti-corruption strategy or even when you just give an interview to the media, using the UNCAC as a legal basis for your arguments can strengthen them.

The UNCAC review process provides key advocacy opportunities to present recommendations to decision-makers and push for UNCAC implementation.
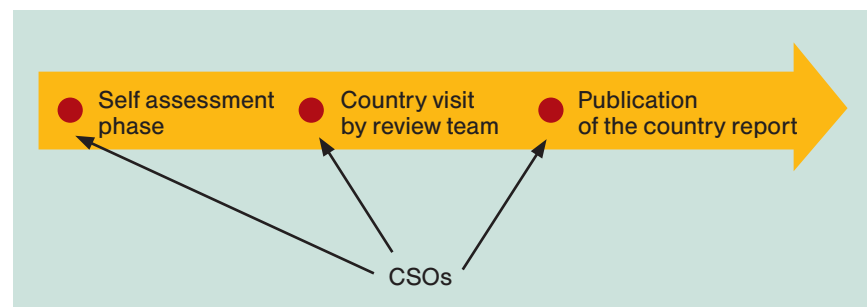
Note that many of the opportunities offered by the UNCAC review process are discretionary; see section 6 for more information.

Sessions of the UNCAC bodies can also present occasions for advocacy, and these can be particularly useful when doors at home are closed. Encouragement from neighbouring states, pressure from partners, getting negative attention from the international community and press might create waves that reverberate at the national level and influence your government.

You can bring your messages to the UNCAC Conference of States Parties (meeting every two years) and the briefing for CSOs of the UNCAC Implementation Review Group (every year in Vienna). During these sessions, you can meet with your government representatives about the changes you are seeking. You also have the chance to meet with other actors interested in seeing anti-corruption standards raised, including in your country.
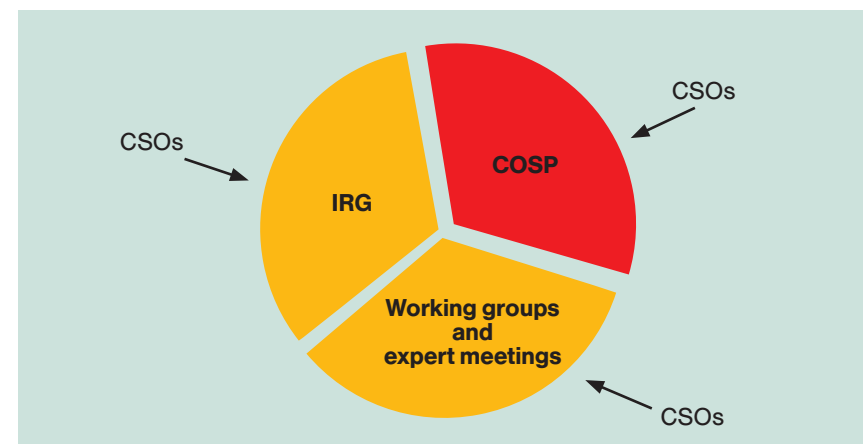
For more detailed information on the UNCAC forums and the advocacy opportunities they offer for CSOs, see section 3.2.

Other international forums, such as the G-20 and meetings of the bodies of other anti-corruption conventions, or of human rights conventions, can also provide good advocacy opportunities.

5.5 IDENTIFY ADVOCACY ACTIVITIES

There is a wide range of advocacy activities that you can consider and the approach you take will depend on whom you are trying to influence.
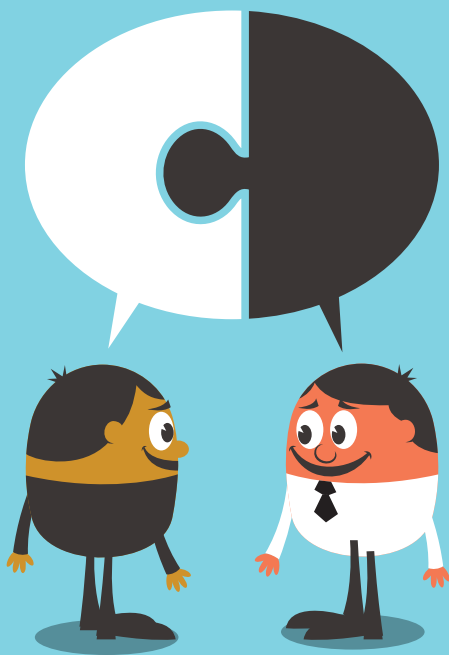
Examples of advocacy activities include:[35]
– **Networking:** making contacts with people to share information and work together, either informally or formally through an organised group.
– **Lobbying:** working to directly influence decision-makers; activities include writing letters, sending position papers and making phone calls to influential people, and arranging a visit or a meeting, or participating in a public meeting or conference.
– **Campaigning:** mobilising people to take action; activities include writing newspaper articles or adverts, newsletters, website articles/blogs, producing radio programmes or adverts, participating in televised interviews, making speeches, conducting online petitions, distributing campaign postcards, fact-sheets, petitions, and running meetings, workshops or events.
– **Education and awareness raising:** educating people on the UNCAC and the importance of anti-corruption; activities include organising public meetings and rallies, participating in radio broadcasts, writing newspaper articles and press releases, and distributing posters and information leaflets.

35 See Transparency International's *Developing an Anti-corruption Advocacy Plan: A Step-by-Step Guide*, pp.42-4.

In terms of UNCAC advocacy, your organisation could consider the following advocacy and communication activities:
– Publish your monitoring report or commentary on the official country review report (see Annexes 3 and 4).
– Prepare a press release and a short document summarising the findings of your monitoring report or of your commentary on the official country review report (maximum 3 pages)
– Organise a press briefing with short briefing notes (1-page) for journalists on top priority issues
– Publish a statement on your website (the press release is a good basis for this)
– Start a discussion on social media sites
– Circulate your monitoring report or commentary on the official country review report along with the executive summary/ full report to mailing lists of policy-makers and policy analysts
– Write letters to the government commending them for their strengths and calling on them to address weaknesses (attach your monitoring report or commentary on the official country review report)
– Organise a meeting with relevant government representatives or your national anti-corruption agency to present the results of your UNCAC monitoring exercise, or to discuss the recommendations of the "official" UNCAC country review report
– Organise a roundtable event – after there has been time to implement the review recommendations – to discuss the progress made by the government and invite government experts, policy-makers, law-makers, legal professional and, depending on the agenda and the participants, the press
– Organise a briefing or training session on the UNCAC for members of parliament or other government officials
– Initiate a discussion on the findings of the review process and/or your monitoring exercise in legal, criminology or political science journals

6 ADVOCACY TO PROMOTE A TRANSPARENT AND INCLUSIVE UNCAC REVIEW PROCESS

The UNCAC encourages transparency, accountability and civil society participation in the fight against corruption.[36] The Terms of Reference of the review mechanism also call for transparency and inclusion.[37] In particular, governments are encouraged to consult with all relevant stakeholders.[38]

However, countries are also afforded a great deal of discretion in how transparent and open the review process is in their countries. It is up to them to decide whether to allow:

– Civil society involvement in the preparation of the self-assessment checklist
– Publication of the self-assessment responses online or access to the responses directly to civil society organisations upon request
– Inclusion of some form of civil society dialogue with the peer reviewers, including an opportunity to submit written reports
– An in-country visit with an opportunity for civil society groups and other stakeholders to meet and provide oral and written input to the official reviewers
– Publication of the full country review report (it is only mandatory to publish the executive summary)

It is also up to the reviewed country to decide whether to announce the focal point and to give information about the timetable of the review process, as these steps are not specifically mentioned foreseen by the Terms of Reference.

It is therefore important that CSOs actively advocate for transparency and participation during the UNCAC review process in their country.

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36 UNCAC Article 13.
37 Mechanism for the Review of Implementation of the United Nations Convention against Corruption—Basic Documents, www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf.
38 Resolution 3/1 of the Conference of the States Parties to the UNCAC, www.unodc.org/unodc/en/treaties/CAC/CAC–COSP-session3-resolutions.html.

At the end of the process, it also helpful if you **evaluate the transparency and inclusiveness of the process:** the UNCAC review mechanism process can expose problems in these areas in your country. Monitoring the UNCAC review process provides a litmus test of transparency and participation and can help you to highlight concerns[39]. If your country did not take advantage of the various possibilities for including civil society, this can be criticised openly. However, if participation was encouraged, positive accounts of the process from civil society help to build relationships and add to best-practice examples.

The TI Guidelines for preparing a parallel report and report template contain a section on monitoring the review process that may be useful (see Annex 3).

6.1 PHASE I: SELF-ASSESSMENT

Once you know that your country has been selected for review in a given year, ensure that you **find out who is your country's focal point**. This person or entity and his / her managers will be your main advocacy targets within the government.

The focal point is not generally announced publicly and may sometimes be difficult to find out. If it is a single person she or he may be included on the country's list of experts on the UNODC website.[40] The Foreign Ministry is likely to be the best informed about the UNCAC review process and there may be a particular unit with responsibility for international treaties. Another option is to approach the Ministry of Justice or Interior and the anti-corruption agency or agencies.

Next, your organisation, perhaps together with others, should attempt to **contact the focal point.** You should emphasise the importance of CSO participation and indicate your willingness and competence to participate in the review process.

Regardless of the government's cooperation, you can **inform the government** of your intention to conduct an evaluation of the country's performance in implementing UNCAC provisions and its conduct of the review process. Indicate your interest in getting their feedback on a draft of your evaluation.

If you are producing a **monitoring report** and it is ready early enough, submit it to the focal point so that the government can take it into account in preparing their self-assessment.

Finally, once the government has completed its responses to the **self-assessment checklist** urge it to **publish the document**.

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39 Your evaluation of the transparency and inclusiveness of the review process in your country can also be used as a tool for international advocacy for a more transparent and inclusive review mechanism.

40 Governmental Experts for the UNCAC Review Mechanism, www.unodc.org/unodc/en/treaties/CAC/IRG-experts.html.

Example of CSO participation: Cambodia

In Cambodia the government took steps to be inclusive in the self-assessment phase of the review process. It appointed a steering committee of 16 members, representing various stakeholders including the government's anti-corruption institution (as the chair), the national assembly, the senate, the national audit authority, the banking inspectorate, the judiciary, academia, the private sector and civil society.

It was mandated to play an oversight role for the self-assessment, providing feedback on the government's self-assessment report on the UNCAC articles under review and approving it before it was submitted to the prime minister. The self-assessment was carried out by a group of experts appointed by the committee.

This approach provided opportunities to cross-check the inputs and information, and enabled debate and the incorporation of CSO perspectives and recommendations. It also raised awareness more broadly of the government's obligations under the UNCAC and the role of the review process, and strengthened relationships between government and CSOs, paving the way for constructive dialogue and engagement in the collective effort to fight against corruption.[41]

6.2 PHASE II: PEER REVIEW

If your government does not seem able or willing to keep CSOs informed about developments in the UNCAC review process, **inquire regularly about the status of the review** and, where appropriate, inform the public of progress.

If the government has not made its self-assessment public, continue to **advocate for its publication**.

Early on you should indicate your interest in **submitting your views in writing to the review team experts**. You should also urge your government to invite review team experts for a **country visit**, and request the right to participate in the visit.

> If you are invited to attend a meeting or communicate with the review team, request a copy of the desk review conducted by the expert review group in order to prepare your advocacy.

41 See Intervention of Kol Preap, executive director of TI Cambodia at the Implementation Review Group Briefing for CSOs in May 2013, www.uncaccoalition.org/learn-more/blog/259-experience-on-the-review-of-the-uncac-implementation-in-cambodia.

Example of successful CSO participation in Bangladesh: How an UNCAC review can help build bridges with a government

Bangladesh's implementation of UNCAC chapters III and IV was reviewed in 2011. Transparency International Bangladesh (TI Bangladesh) prepared its own parallel review report, which was published in 2011.[42]

In conducting its evaluation, TI Bangladesh contacted a number of relevant government departments including the Ministry of Law, Justice and Parliamentary Affairs and the Ministry of Foreign Affairs. Initially TI Bangladesh met with strong resistance rather than a willingness to cooperate.

The lack of access to information, in particular the lack of specific details, would have proved problematic for the completion of TI Bangladesh's review. However, TI Bangladesh's persistence and constructive approach led to a gradual change for the better.

TI Bangladesh was invited by the government to present its draft report to the peer reviewers and UNODC representatives. TI Bangladesh also hosted a dinner at which the peer review team and the relevant government officials interacted with a cross-section of other civil society groups and the media. It was a successful story of engagement.[43]

42 Iftekhar Zaman et al., *UNCAC Civil Society Review: Bangladesh 2011*, (Dhaka: Transparency International Bangladesh/UNCAC Coalition, 2011), http://uncaccoalition. org/learn-more/resources/finish/13-2011-cosp-materials/72-civil-society-review-bangladesh-2011.

43 Iftekhar Zaman, 'Bangladesh: How UNCAC Review Helps Build Bridges with Government', Transparency International Bangladesh, blog, 16 May 2013, www. uncaccoalition.org/learn-more/blog/242-bangladesh-how-uncac-review-helps-build-bridges-with-government.

6.3 PHASE III: COUNTRY REVIEW REPORT AND EXECUTIVE SUMMARY

If the government has not already agreed to do so, you should advocate for the **publication of the full country review report**. These reports contain valuable information that will not be reflected in the short executive summary.

You should also announce the publication of the executive summary and, as the case may be, of the full report to media and interested parties. Your aim is to bring the UNCAC findings and recommendations to the attention of the public to keep up momentum for change. Since experience to date shows that governments do not usually publicise their review reports, you will have an important role in ensuring the review report and UNCAC implementation is taken seriously. Your main activity will be communications to highlight the most important findings of the review report. You could also publish a **commentary on the executive summary or full report**, perhaps with reference to your own monitoring (see Transparency International template for commentary on review reports in Annex 4).

Should you disagree with some findings of the official country review, you should compile a list of the areas of disagreement. However, be cautious when focusing on these in your advocacy: highlighting

Publicise your monitoring report findings and your **evaluation of the transparency and inclusiveness** of the UNCAC review process in your country. Publicising your experiences builds public awareness of the issues and also puts pressure on the government to improve their practice.

Guidance for CSOs seeking publication of full UNCAC country review reports

Why should governments publish the full report?
Although executive summaries of UNCAC review reports are published online for each country, these leave out valuable information. This information would enable further analysis and public discussion.

There is no reason why the full reports should not be published. They do not contain sensitive information and are part of a review process aiming to achieve transparency and accountability. Publication of the full report helps to fulfil those aims. In the unlikely event that any of the reports included sensitive information about investigations this could be removed before publication.

How should the government publish the report?
There are two main avenues for government publication:
– The full review report should be published on a UNODC website, at the government's request. This makes it possible to find full reports for many countries in one location.[44]
– The government should publish the full report on a national government website. It should be translated into the national language(s) if feasible, and published on a website that is easy to access and find.

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What steps should you take?

Identify the right person to talk to in the government: The person responsible may be someone other than the focal point. Sometimes government decision-makers are not aware that this decision needs to be made.

Send a letter to the person(s) identified: Sending a letter enables you to explain your request clearly and to keep track of it. A sample letter can be found in Annex 5. You could follow the guidance in Annex 6 on making a formal freedom of information request.[45] You should send the letter both by email (or fax) and by post. You might consider enlisting other organisations, including from the private sector, to join your organisation in signing the letter.

Make follow-up phone calls: You should call within a week of sending your letter to check if it has arrived and is being handled and make further calls periodically until you receive a response.

Make an appointment for a meeting: If you receive a negative response or no response, try to make an appointment to meet with those responsible to discuss the issue. You might consider going to the appointment with a small group of representatives of organisations interested in the subject. (They may have signed the letter.) You might also consider other recourse pursuant to the guidance in Annex 6 on making a formal freedom of information request.

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44   Country profiles on UNODC website, www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html.

45   The sample letter in Annex 4 does not include such a request because some countries do not have a freedom of information law and because each country that does has its own mechanism

7
JOINT ADVOCACY TO IMPROVE INTERNATIONAL ANTI-CORRUPTION STANDARDS

The UNCAC provides opportunities for international advocacy that can raise standards for anti-corruption performance in your country and others.

This advocacy may influence the understanding of UNCAC norms, as elaborated in official guidance and interpretative material or in COSP resolutions, or influence the design of international processes for following up on UNCAC commitments.

Example: Resolution on asset recovery adopted at the 4th COSP

At the 4th COSP there was acknowledgment of the systemic failures in the controls that should stop banks accepting dictators' money. Resolution 4/4, initiated by Egypt and adopted by consensus focused heavily on the Arab Spring and, like Resolution 3/3 at the 3rd COSP, agreed that more action was needed to help reclaim stolen funds.

Resolution 4/4 made the step of calling on states to require that banks know which of their customers are politically exposed (with "prominent public functions"), and make sure they are not handling looted state funds. Although existing laws already require this, the COSP recognised weaknesses in enforcement and that "robust regulatory action" was needed.

Further the COSP urged countries to be quicker at responding to requests for assistance from victim countries and to be more proactive in providing information.[46]

46 Maud Perdriel, Sherpa and George Boden, Global Witness, "Highlights of the resolutions adopted from a civil society perspective – Asset recovery", UNCAC Coalition Newsletter December 2011, www.uncaccoalition.org/learn-more/newsletter/167-uncac-coalition-newsletter-december-2011.

Key opportunities and partnerships for advocacy

International advocacy involves targeting selected UNCAC forums – whether the COSP, IRG or working groups. Promoting transparency and civil society participation in those forums is thus essential. (See section 3.2 of this guide). International advocacy can also involve raising UNCAC issues in other international forums.

Advocacy to improve international anti-corruption standards is likely to **require multi-country coalitions** with other national CSOs and partners.

International advocacy is more complex than advocacy at the national level and will tend to yield results more slowly. The results may, however, be longer lasting. For those organisations with a global or regional perspective, international advocacy offers the possibility of achieving outcomes in multiple countries through a single campaign.

Since 2006, the UNCAC Coalition has been coordinating CSO advocacy toward UNCAC bodies. If your organisation is interested in advocacy at the international level, consider joining the UNCAC Coalition.[47]

About the UNCAC Coalition

The UNCAC Coalition is a global network of over 350 CSOs in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UNCAC.

Established in August 2006, it mobilises civil society action for UNCAC at international, regional and national levels.

Since the UNCAC framework is so comprehensive, the coalition includes a wide range of CSOs working on human rights, labour rights, governance, economic development, environment and private sector accountability.[48]

The coalition engages in joint action around common positions on the UNCAC, facilitates the exchange of information among members, and supports national civil society efforts to promote the UNCAC. Coalition members share views via the coalition website and internet mailing list and *ad hoc* working groups.

The coalition's first campaign objective was to secure an effective, transparent and participatory monitoring mechanism for the UNCAC. Members engaged in joint advocacy ahead of and during key intergovernmental meetings. In November 2009, the UNCAC review mechanism was adopted and is now operational.

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48 The member groups include 5th Pillar, Access Info Europe, AfriCOG, BRAC University Institute of Governance, Christian Aid, Commonwealth Human Rights Initiative, GAATW, Global Financial Integrity, Global Witness, Institute for Security Studies in South Africa, PSI Link, Tax Justice Network, Tearfund, Transparency International, UNICORN and many more.

47 Information and online application form to join the UNCAC Coalition, www. uncaccoalition.org/get-involved/application-for-membership.

The coalition now seeks to ensure that civil society groups can contribute to the review process and supports them in making quality submissions. It also aims to gain government agreement to publish review reports for public scrutiny.

The coalition also sets international advocacy targets in relation to specific UNCAC-related topics, such as access to information, asset recovery and protection of whistleblowers and anti-corruption activists.

For more information on the UNCAC Coalition and its joint advocacy work, please visit its website at www.uncaccoalition.org.

8
ANNEXES
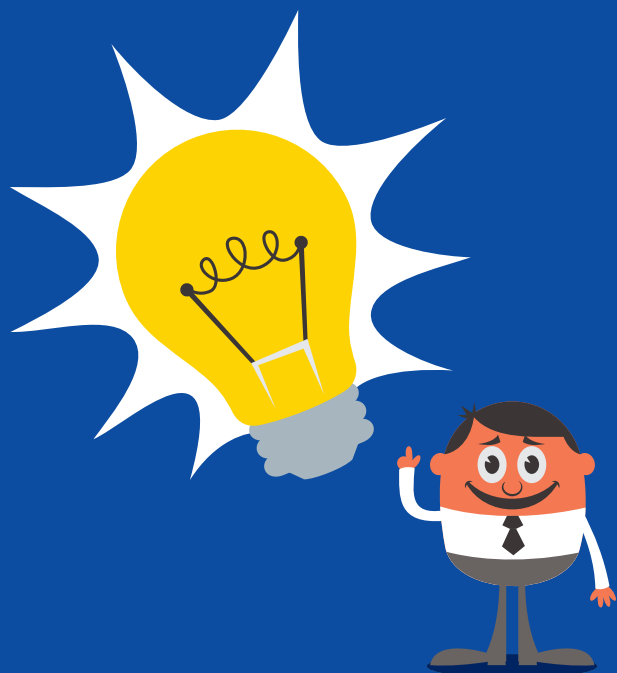
ANNEX 1:
OTHER INTERNATIONAL ANTI-CORRUPTION INSTRUMENTS

Global and inter-regional
– Convention on the Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development (OECD)
– Revised Recommendation of the Council of the OECD on Combating Bribery in International Business Transactions
– United Nations Convention against Transnational Organized Crime

Africa
– African Union Convention on Preventing and Combating Corruption
– Economic Community of West African States Protocol on the Fight against Corruption
– Southern African Development Community Protocol against Corruption

Americas
– Inter-American Convention against Corruption

Asia and Pacific region
– ADB–OECD Action Plan for Asia and the Pacific

Europe
– Council of Europe Civil Law Convention on Corruption
– Council of Europe Criminal Law Convention on Corruption
– European Union Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States
– European Union Convention on the Protection of the Communities' Financial Interests and the Fight against Corruption and two Protocols
– Resolution (99) 5 of the Committee of Ministers of the Council of Europe: Agreement Establishing the Group of States against Corruption
– Resolution (97) 24 of the Committee of Ministers of the Council of Europe: Twenty Guiding Principles for the Fight against Corruption

Middle East / North Africa
– Arab Convention against Corruption

❚ Learn more about those instruments at: http://archive.transparency.org/global_priorities/international_conventions/conventions_instruments.

ANNEX 2:
USEFUL LINKS

African Union
www.africa-union.org

Council of Europe - Group of States against Corruption
www.coe.int/t/dghl/monitoring/greco/default_en.asp

Organisation of American States – Mesicic
www.oas.org/juridico/english/mesicic_reports.htm

Organisation for Economic Cooperation and Development – Working Group on Bribery
www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm

Track Legal Library
www.track.unodc.org/LegalLibrary/Pages/home.aspx

Transparency International
www.transparency.org/

U4 Anti-Corruption Resource Centre
www.u4.no/

UNCAC Coalition
www.uncaccoalition.org/

United Nations Development Programme
www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_anti-corruption.html

United Nations Office on Drug and Crime
www.unodc.org/unodc/en/treaties/CAC/

ANNEX 3:
DRAFTING A PARALLEL REPORT FOR THE UNCAC REVIEW: GUIDELINES AND REPORT TEMPLATE

This document is intended to assist civil society organisations (CSOs) in preparing parallel reports for the UN Convention against Corruption (UNCAC) review. It includes:
– A set of guidelines, addressing key issues
– A proposed report template with guidance at the end of each section (pp 80-99)

GUIDELINES

1. Background

The CSO parallel reports on the UNCAC review aim to contribute to national and international dialogue and advocacy on UNCAC implementation, in order to improve the quality of anti-corruption efforts worldwide. The reports provide input into the UNCAC review process, which checks country-level implementation of the Convention. They should complement government reports by providing supplementary information, filling gaps and taking a more critical perspective on implementation.

The reports can be used in two main ways: (1) for advocacy work at the national level to push governments to fully implement the UNCAC into domestic law and practice: (2) to exert pressure on national governments in the international forum of the Conference of States Parties (COSP) to the UNCAC, as well as its subsidiary body, the Implementation Review Group (IRG), which was created by the COSP to oversee the review process. In this context it is important to bear in mind the different audiences the reports will need to address.

2. Qualifications of the person preparing the report

The researcher preparing the report should have the following qualifications:
– Knowledge about criminal law and practice in the country covered. This could be as a practising lawyer or an academic
– Proven expertise in political-institutional analysis, with particularly strong knowledge of the country's judicial system
– Familiarity with transparency, accountability and the anti-corruption discourse
– Ability to write succinctly and for a non-academic audience
– Proven commitment to practical policy reform and evidence-based advocacy in the field of anti-corruption and good governance

3. General approach in preparing the report

The reports should provide an assessment of whether or not implementation of UNCAC in a certain area (i.e. legislation, enforcement, international cooperation etc.) is considered satisfactory. The report should be comprehensive enough on the articles covered to allow sound conclusions to be drawn, taking into account statistical and other data and information. It should clearly explain the reasons for any conclusions and recommendations.

All data and information should be presented clearly in a concise and user-friendly manner, including graphical presentation where appropriate (i.e. tables, graphs). The information should be properly referenced: sources should be quoted either in the text itself or in footnotes.

4. Executive summary

The executive summary highlights the most significant findings and recommendations. It should enable the reader to understand the main issues without reading the entire study: policymakers and journalists will focus on this part of the report.

All conclusions should be based on material in the main body of the report and recommendations are likely to have more impact if they are limited to the most important rather than including a diverse laundry list.

The executive summary can and should be submitted to the UNCAC Conference of States Parties.

5. Libel issues and referencing sources of information

Qualified lawyers should conduct a libel check in the final stage of production of the report, but in order to reduce the risk of libellous material the following standards should be observed when drafting of the report:

– The study should be balanced, written in neutral language and all statements should be substantiated.

– Statements containing allegations of misconduct by any individual or organisation should be supported by references to reliable sources. The referenced sources should be crosschecked as far as possible, and in case of any doubt, allegations should be omitted.

– Language about allegations should be toned down appropriately, qualifying statements with words such as "allegedly" and "reportedly".

– When discussing particular (criminal) cases, mentioning the names of implicated persons should be avoided unless a reliable open source reference can be provided. Authors should be careful to reflect the status of cases at the time of writing: whether there have been allegations only, or whether investigation or prosecution by authorities has begun or has resulted in a judgement and whether it is final or subject to appeal. This distinction is important to assess the reliability of the information and the libel risk posed by using the case.

– All sources of data/information included as text or tables/diagrams should be fully referenced and identified as either "official" or "unofficial".

– If data/information is available online, provide the internet addresses (including the date accessed).

– Where data are available in both English and the national language, please provide the English source and its internet address as well.

– When citing interviews, it is best practice to agree in advance with the interviewee the title you will use (e.g. district court judge or senior official department of justice) when making any reference to the interview in the report.

– Where an interviewee wishes to remain anonymous, citations should give relevant information about the interviewee, the place and date of the interview and the absence of names should be explained. Example: Interview of district court judge with author, Colombo, 8 December 2009 (name withheld by request).

– Legal concepts and terms should be provided in the footnotes in the national language next to the English translation.

6. Length and style

The study should be about 6,000-8,000 words long. Statistical tables and other data, including presentation of case law, should be included in the body of the report, unless they take several pages, in which case the most important information should be included in the text and the rest in an annex.

When drafting the report, the author is asked to use a "scientific journalism style", which presents valid analysis and arguments about technical matters in a language that is also accessible to non-experts. The following guidelines should be taken into account:

– Use clear and concise language.
– Avoid highly technical terms/language.
– Substantiate any assertion with references, using footnotes.
– Be balanced (highlight strengths as well as weaknesses in the performance).
– Use topic sentences to structure paragraphs. A topic sentence is "a sentence whose main idea or claim controls the rest of the paragraph; the body of a paragraph then explains, develops or supports with evidence the topic sentence's main idea or claim".[49]

7. Steps in preparing the report

When drafting the report, use the template provided below (pp 80-99). The data collection process involves a range of different methods, with emphasis on a desk review of existing legislation, cases and investigations, and key informant interviews. In terms of covering specific events or time-bound data sources, the UNCAC review report time period usually covers the 24 months prior to the start of the analysis.[50] Below each data collection method is outlined, but more detailed information for the specific data required for each UNCAC article under review can be found in report template.

– **Information on legislation:** Tools and Resources for Anti-Corruption Knowledge (TRACK) is a useful resource developed by the United Nations Office on Drugs and Crime (UNODC). The TRACK legal library contains laws and jurisprudence and information on anti-corruption authorities from over 175 states worldwide, indexed and searchable according to each provision of the UNCAC.[51]

– **Information on cases and investigations:** There should be a thorough search for any available online information about cases or investigations.[52] For each case or investigation mentioned, a citation should be supplied in a footnote, preferably including a web link and this may be a news report, where the publication is reputable. The most recent statistical data from the government should also be provided, including any available links. If this information is not available online it may take some time to obtain and the source should be indicated.

– **Consultations with well-informed persons:** The report should include information from consultations with law enforcement officials and other well-informed persons, in order to enhance its validity. It should include a list of all those consulted, unless a request to anonymity has been made, in which case the person's position and institution should be included.

– **Consultation with government:** Government feedback should be obtained on a near-final draft of the report from appropriate officials in the Justice or Interior Ministry or the anti-corruption agency, as well as from one of the government's official delegates to the previous UNCAC Conference of States Parties.[53] This helps to avoid errors and to build a dialogue about the issues covered in the report. These inputs should be taken into account, but the final product should be independent and reflect an objective judgment of the evidence collected. Appointments should be made well in advance of any meetings about the report, and the draft should be provided to enable adequate time for meaningful feedback.

– **Explanations:** An explanation of the response is very important as it greatly enhances the credibility and persuasiveness of the report by providing the factual basis and reasoning behind the answers.

49 For more information see, http://grammar.ccc.commnet.edu/grammar/paragraphs.htm.
50 CSOs can adjust this time period, if there are reasons for using a slightly different time horizon. This needs to be indicated in the report. Also, information about earlier events might provide relevant historical background.
51 See: www.track.unodc.org/LegalLibrary/Pages/home.aspx.

52 The annual Country Reports on Human Rights Practices produced by the US State Department have a section on "Official Corruption and Government Transparency" which contains information on cases and investigations, www.state.gov/j/drl/rls/hrrpt/index.htm.
53 A list of participants to previous COSP can be found on UNODC website.

TRANSPARENCY INTERNATIONAL CSO PARALLEL UNCAC REVIEW REPORT TEMPLATE ©

→ Specific instructions and guidance are provided for each section in blue.

INTRODUCTION
Please use the following structure:

(Country name) signed the United Nations Convention against Corruption (UNCAC) on (date) and ratified it on (date).

This report reviews (Country name)'s implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the United Nations Convention against Corruption (UNCAC). The report is intended as a contribution to the UNCAC implementation review process currently under way covering those two chapters. (Country name) was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the (first/second/third/fourth) year of the process. A draft of this report was provided to the government of (Country name) (where applicable).

Scope. The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damage (Article 35) and mutual legal assistance (Article 46). (list to be adapted if needed)

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information; as well as about implementation and enforcement of selected UNCAC articles. Section II covers the conduct of the review process in (Country name) as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues

related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

Methodology. The report was prepared by (Name of the CSO) with funding from (name where appropriate). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them where applicable.

The report was prepared using guidelines and a report template designed by Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practice and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33, 35 and 46(9)(b) and (c). (List to be adapted if needed)

In preparing this report, the authors took into account the recent review of (Country name) carried out by (refer to other review mechanisms). (where applicable)

I. EXECUTIVE SUMMARY
(maximum 1,500 words)

Include here a few highlights about the process and overall compliance, including significant deficiencies and successes. The structure should as much as possible follow the structure of the report. Please bear in mind that while the whole report will be published, only the executive summary will be submitted to the Conference of States Parties (COSP) as an official contribution to the review process.

Conduct of process

TABLE 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes / No
Was civil society consulted in the preparation of the self-assessment?	Yes / No
Was the self-assessment published online or provided to CSOs?	Yes / No
Did the government agree to a country visit?	Yes / No
Was a country visit undertaken?	Yes / No
Was civil society invited to provide input to the official reviewers?	Yes / No
Has the government committed to publishing the full country report?	Yes / No

Availability of information (1 paragraph)
Overall assessment of the existence of and access to the information required for the report, and quick description of the institutions approached to get the information. Please indicate whether requests were made under access to information legislation.

Implementation into law and enforcement
Elaborate on key points of implementation and enforcement, including challenges and areas of concern (include reference to any noteworthy case law).

TABLE 2: Implementation and enforcement summary table

UNCAC article	Status of implementation	How are these provisions enforced in practice?
Art. 15 (bribery)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 16 (foreign bribery)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 17 (embezzlement)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 20 (illicit enrichment)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 23 (money laundering)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 26 (liability of legal persons)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 32 and 33 (protection of witnesses + whistleblowers)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 35 (compensation for damage)	Fully / Partially / Not implemented	Good / Moderate / Poor
Art. 46(9) (b) & (c) (mutual legal assistance)	Fully / Partially / Not implemented	Good / Moderate / Poor

In evaluating whether an UNCAC article has been fully or partly implemented into law an assessment should be made; not simply stating that there is a law in place, but indicating whether the law has any gaps or inconsistencies. If these are relatively minor, then the article may still be considered implemented. If they are major gaps or inconsistencies or if there is no law, then the article may be considered not implemented. There is also specific guidance below on evaluating implementation into law of various articles.

In evaluating whether enforcement is good, moderate or poor, account should be taken of whether relevant legal provisions are applied in practice, whether there are obstacles to their practical application and what kinds of outcomes there are when relevant provisions are applied.

Recommendations for priority actions
Key recommendations, to cover, as appropriate:
– Government interaction with NGOs
– Access to information
– Implementation
– Enforcement

II. ASSESSMENT OF REVIEW PROCESS FOR (Country name) (1–2 pages)

This part asks for an assessment of the transparency of the government's review process.

A. Report on the review process

Please complete Table 3 providing details of the transparency, country visits and civil society participation in your government's UNCAC review process.

The review process may extend over a period of as much as a year with a possible country visit six months or more after the start of the process. Thus depending on when a CSO starts to work on this report it may or may not be possible to complete this table for some time.

Concerning the disclosure of information on the focal point, if this was done, please indicate whether this was done online or by other means.

With regard to the questions about civil society consultation on the self-assessment and civil society input to the official reviewers, please reference in the comments section whether the invitation was a broad one or whether only a select group was invited and if possible how this selection was made.

TABLE 3: Transparency of the government's UNCAC review process

Did the government make any public announcements about the review?	Yes / No	*Comments*
Did the government disclose information about the country focal point?	Yes / No	*Comments*
Was the review schedule known?	Yes / No	*Comments* Please indicate whether the review was on time
Was civil society consulted in the preparation of the self-assessment?	Yes / No If yes, who was consulted? (Please tick) O Access to information groups O Academic networks O Anti-corruption groups O Trade unions O Women's groups O Other (please list)	*Comments* – Please list the organisations consulted – Please indicate date of consultation
Was the self-assessment published online or provided to civil society?	Yes / No	*Comments* Please enter link if applicable and date of publication or information about when / how the self-assessment was provided
Did the government agree to a country visit?	Yes / No	*Comments* Please indicate date of the visit

Was a country visit undertaken?	Yes / No	*Comments*
Was civil society invited to provide input to the official reviewers?	Yes / No If yes, who was invited? (Please tick) O Access to information groups O Academic networks O Anti-corruption groups O Trade unions O Women's groups O Other (please list)	*Comments* – Please list the organisations invited – Please enter the form of input invited
Was the private sector invited to provide input to the official reviewers?	Yes / No	*Comments* – Please list the firms / organisations invited – Please enter the form of input invited
Has the government committed to publishing the full country report?	Yes / No / Unknown	*Comments* Please indicate if published by UNODC and / or country and enter a link if applicable
Did the government publicly announce the results of the review and plans to follow up on the recommendations?	Yes / No	*Comments*

B. Access to information

This part should reflect information on the ease with which the public can access information concerning the implementation and enforcement of UNCAC at national level, in particular whether there is any access to information legislation facilitating this process.

Please provide comments on the availability of information (e.g. statistics, details of prosecutions and judgments) for preparing this report. For example:

– Please describe the steps that the expert took in order to obtain the information required to prepare the report: which government entities or other bodies did you contact? Is there a specific government body that deals with anti-corruption policy? If so when was it created, what are its objectives and achievements?
– Did the expert try to make a formal access to information request based on access to information or other legislation? Is so, please specify the relevant legislation.
– Did the expert rely on other sources to obtain relevant information (e.g. media, civil society reports)? Please specify.
– What obstacles did you encounter in obtaining the necessary information? Did the obstacles relate to lack of government compilation, legal barriers or simple government unwillingness to allow access to the information required? Is the information on numbers of cases accessible? Is information on case details accessible?

Note that access to information may be different according to different categories of information. It may be relatively easy to access copies of laws and regulations, although in some countries this may not be the case. It is often more difficult to obtain statistical information about enforcement, although in some countries this is published online. It is frequently the most difficult to obtain details about cases currently prosecuted or concluded. These three categories of information should be distinguished in the response to this question.

III. IMPLEMENTATION AND ENFORCEMENT OF THE CONVENTION (4–5 pages)

A. Key issues related to the legal framework and enforcement of laws

This part focuses on certain articles of UNCAC and asks to what extent these articles have been implemented into law, and what further actions are needed to ensure compliance.

Article 15: Bribery of national public officials and
Article 16: Bribery of foreign public officials

The offence of bribery of national public officials should include both active bribery (offering bribes) and passive bribery (accepting or soliciting bribes). The definition of bribery should be broad, covering instances where no tangible item is offered, and where the advantage is promised or given either directly or indirectly through an intermediary. The definition of public official should be broad, and should include any person who performs a public function or provides a public service.

Note: Please ensure reference to both active and passive bribery components.

Key weaknesses may include:
– Narrow definition of bribe
– Narrow definition of prohibited conduct
– Narrow definition of object of bribery e.g. types of advantages covered
– Failure to include bribes for benefit of third parties or bribes through intermediaries
– High standard of evidence required to prove corruption agreement
– Requirements as to the intentional element of the offence
– Immunities (see also Article 30 (2))
– Jurisdictional limitations (see also Article 42) e.g. restrictions on application of nationality or territoriality jurisdiction
– Inappropriate defences e.g. effective regret
– Low sanctions

Article 17: Embezzlement, misappropriation or other diversion of property by a public official

Legislation on embezzlement, misappropriation or other diversion of property by a public official should be included in criminal law, not only civil or administrative law. The offence should cover acts that are for the benefit of the public officials or for another person or entity. A broad definition of property is necessary to capture the full range of assets that are embezzled.

Note: Does the burden of proof shift to the defendant to prove that the funds in question were legally obtained?

Key weaknesses may include a narrow definition of property.

Article 20: Illicit enrichment

For the purposes of this article illicit enrichment refers to a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

Note: Does the burden of proof shift to the defendant to prove that the enrichment in question was legally obtained?

Article 23: Laundering of the proceeds of crime

Legislation should specifically recognise the link between corrupt practices and money laundering. The offence of money laundering should include 1) conversion or transfer of the proceeds of crime; 2) concealment or disguise of the proceeds of crime; 3) acquisition, possession or use of the proceeds of crime; and 4) participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the foregoing offences.

When determining that property is the proceeds of crime, there should not be a requirement that a person be convicted of a predicate offence. The definition of predicate offences on money laundering should be broad, and should list corruption-related offences specifically. Furthermore, predicate offences should include acts that took place in another country if that act would constitute a predicate offence had it occurred domestically.

Note: Does the list of predicate offences for money laundering include corruption offences? Please state whether corruption offences are listed specifically, or are covered within a broad category of predicate offences such as "all offences".

Key weaknesses may include:
– Narrow definition of money laundering
– Requirement that the person be first convicted of a predicate offence
– Narrow list of predicate offences
– Legal persons are not subject to criminal liability for money laundering or inadequate sanctions under civil or administrative law
– Jurisdictional limitations (see also Article 42) e.g. restrictions on conduct that took place in another jurisdiction
– Requirements as to intentional element of offence
– Low sanctions

Article 26: Liability of legal persons

Legislation needs to be introduced to enable legal persons to be held liable for corruption-related offences, ideally under criminal law, but if not under civil or administrative law with sufficient sanctions provided. The liability of legal persons should not depend on criminal liability of a natural person who has committed the offence. Monetary or other sanctions for corruption-related offences must be serious enough that they are an effective, proportionate and dissuasive deterrent. An example of non-dissuasive sanctions is monetary sanctions so low that the potential benefits of bribery outweigh the potential costs.

Note: Please explain whether legal persons are liable under criminal, civil or administrative law. How many companies have received sanctions under criminal, civil and administrative law for corruption-related offences in the past three years? Are the sanctions for legal persons committing corruption-related offences effective, proportionate and dissuasive?

Key weaknesses may include:
– Lack of criminal liability for legal persons for corruption-related offences
– Liability is dependent on the criminal liability of a natural person
– Low sanctions

Article 32: Protection of witnesses, experts and victims
Article 33: Protection of reporting persons

Protection for witnesses, experts, victims and reporting persons should be as comprehensive as possible, subject to the means of the state, and should include protection for families and associates. Protection should also be provided for persons who report offences, assist with investigations and/or cooperate with cases, in addition to those who actually testify. Victims should also be provided with an appropriate and secure opportunity to present their views and concerns during criminal proceedings.

Note: Please indicate whether it is adequate for both men and women.

Key weaknesses may include:
– Lack of an easily accessible and anonymous complaints mechanism
– Lack of protection from employer reprisals in the workplace

Article 46 (9): Mutual legal assistance in the absence of dual criminality

In line with the spirit of the UNCAC, dual criminality should not pose a barrier to the effective provision of mutual legal assistance (MLA). The scope for MLA to be rendered should be very wide to enable the provision of MLA to the maximum extent possible, even in the absence of dual criminality. This is particularly in cases involving non-coercive measures, where dual criminality should not be required for MLA to be rendered.

Note: Is there a legal provision in the legislation of the country allowing the provision of MLA in the absence of dual criminality? Has your country confronted any obstacles in providing or obtaining mutual legal assistance? If possible, please indicate the countries with which the mutual legal assistance problems have occurred.

Key weaknesses may include:
– Requirement of dual criminality, including for non-coercive MLA
– Lack of centralised system for providing MLA

1. Areas showing good practice

Indicate the UNCAC article, then indicate the relevant national legislation and explain the good practice.
Please provide examples of good practice. References to domestic legislation should include reference to the date when the law was promulgated and the specific articles/provisions being discussed, etc.

This section should include references to laws that are particularly thorough in implementing UNCAC or examples of particularly effective enforcement. It should reference all the items in the table above where an UNCAC article is listed as "fully implemented" and where enforcement is "good".

2. Areas with deficiencies

Indicate the relevant UNCAC article, then indicate the relevant national legislation (if any) and explain the deficiencies.
Please provide examples of deficiencies. References to domestic legislation should include reference to the date when the law was promulgated and the specific articles/provisions being discussed, etc.

This section should cover all the items from the box above that are in the bottom category i.e. "Not implemented" into law or "Poor" enforcement in practice. In addition, it should include the worst cases where an article is implemented only "in part" or "moderately" enforced.

3. Recommendations

Please set out your recommendations for priority actions to improve implementation of UNCAC.

B. Key issues related to enforcement system

Some of the main areas of concern are:

– **Existence of cases or investigations and adequate sanctions imposed:** In the absence of cases and investigations or of cases concluded with adequate sanctions, there is reason to inquire whether there are deficiencies in the enforcement system. Likewise, if there are reasons to believe that only minor cases are pursued or some major cases are not pursued, there is also reason to inquire about the effectiveness of the enforcement system.

– **Independence of public prosecutors and other enforcement agencies and of the judiciary:** Effective and independent enforcement bodies are essential for dissuading individuals from engaging in corrupt acts, and providing redress for the victims of corruption. Likewise an independent judiciary is essential for law enforcement against corruption.

– **Priority given to corruption cases:** Whether the enforcement system creates incentives or deterrents to pursuing corruption, cases may affect enforcement. Because pursuit of corruption cases is often difficult and resource intensive and may affect career development of law enforcement officials, this may affect the priority given to corruption cases.

– **Organisation of enforcement:** Corruption cases are complex and require significant expertise. Prosecutors may be reluctant to bring corruption-related cases because they have limited staff and a large backlog of domestic cases. The reluctance to bring these cases will be even greater where responsibility for investigation and prosecution is left to regional or local offices.

– **Coordination between investigation and prosecution:** Lack of coordination between investigative agencies and prosecution services may result in promising cases being dropped or delayed.

– **Overlapping agency responsibilities:** This may be a problem if it causes officials to work at cross-purposes or results in one agency refraining in the expectation that another will act.

– **Specialised units in the prosecutors' offices (Article 36):** To overcome the obstacles to prosecuting corruption-related offences, in many countries responsibility for corruption-related cases has been assigned to a specialised office. Where responsibility for enforcing corruption is not centralised, another option for governments is to take steps to supervise and coordinate enforcement by decentralised offices.

– **Adequate resources:** Corruption cases are complex, time-consuming and labour-intensive and thus adequate material resources and trained staff are critical. Prosecutors may be reluctant to bring corruption-related cases because they have limited staff and a large backlog of domestic cases.

– **Capacity of enforcement authorities:** The complexity and technicality of corruption cases means they require particular expertise, including trained lawyers, investigators and forensic accountants.

– **Opportunities for procedural delays:** If procedures allow for unreasonable delays this is likely to undermine enforcement efforts and raise their costs.

– **Complaint mechanism:** One of the best ways of uncovering evidence of corruption is through reports or complaints made to law enforcement authorities by persons with inside knowledge of such practices. For this to occur, there must be channels for reporting that are relatively easy to use for those with information, that protect their anonymity, and deliver the information to government authorities able to process it.

– **Public awareness-raising:** To enhance the impact of the laws and their enforcement, it is important that the government provide information to the public sector, the private sector and the wider public about law enforcement with regard to corruption.

1. Statistics

Please provide figures of the number of cases prosecuted in relation to each UNCAC article considered. Indicate in the footnotes all sources of information, including website links where available. If no information is available provide a short explanation of efforts undertaken to contact responsible authorities and the responses received. Include the information in the table below. At the end of the table, provide a short analysis of the data and what it says about enforcement in the country.

TABLE 4: Cases statistics

Article	Trials (on-going and finalised)	Convictions	Settlements	Acquittals	Pending cases
Article 15 (a) Bribery of national public officials (active)					
Article 15 (b) Bribery of national public officials (passive)					
Article 16 Bribery of foreign public officials					
Article 17 Embezzlement, misappropriation or other diversion of property by a public official					
Article 20 Illicit Enrichment					
Article 23 Money laundering linked to corruption					

2. Information on cases and investigations

Please provide the following information about any major prosecutions and civil and administrative actions in each category of cases:
– Name of the case, including parties
– Date when prosecution was brought
– Summary of principal charges
– Penalties or other sanctions sought
– Status of case, including expected trial date or appeal date
– To your knowledge any obstacles holding up the case

In determining whether a case is major, consider for example whether the case involves a large multinational corporation or a senior government official, the amount of capital involved and the seriousness of the case. If there are many cases please select 10 of the most important. Please indicate in footnotes all sources of information, including website links where available.

3. Examples of good practice or progress in enforcement

Please provide a short explanation of these good practices, referring as appropriate to the relevant UNCAC article. For example:
– Law enforcement pursuing major corruption cases or making improvements
– Evidence of independence of investigators, prosecution and judiciary
– Evidence of appropriate and proportionate sanctions being imposed in relation to corrupt acts and practices
– Adequate or increasing resources or training
– Good or increasing coordination

4. Significant inadequacies in the enforcement system for UNCAC-related offences

Please provide a short explanation of the main inadequacies in the enforcement system, referring as appropriate to the relevant UNCAC article. For example:
– Lack of priority given to corruption cases in law enforcement
– Lack of independence of investigators, prosecution or judiciary
– Lack of skills and training to investigate corruption cases
– Lack of specialised anti-corruption units
– Inadequate resources
– Opportunities for procedural delays in processes and proceedings
– Overlapping agency responsibilities leading to confusion
– Lack of coordination between investigation and prosecution
– Lack of public awareness-raising

5. Recommendations

Please set out your recommendations for priority actions to improve the enforcement system.

IV. RECENT DEVELOPMENTS (½ page)

Please describe recent developments in the areas covered in this parallel report or any other areas that you feel are relevant to the implementation of chapters III and IV of the UNCAC, e.g. new legislation, new bills and institutional changes in the last three years.

APPENDIX

List of persons consulted (with affiliation):
Acknowledgements

ANNEX 4
DRAFTING A COMMENTARY ON A COUNTRY REVIEW REPORT: GUIDELINES AND REPORT TEMPLATE

This document is intended to assist CSOs in preparing a commentary on the official review report for your country (the executive summary or the full report if available). It includes:
– A set of guidelines, addressing key issues
– A proposed report template with guidance at the end of each section

GUIDELINES

A commentary on a country review report targets the government, public officials and professionals in the field. You should prepare a thorough analysis, if possible, of the executive summary and/or full report if available.

If you have already prepared a CSO parallel report (see Annex 3) or any other analysis of the implementation then you can compare your findings and recommendations with the official report.

If you have not already conducted any analysis of the implementation of the UNCAC, then you will need to do the analytical work at this stage (see section 4 of this guide). You may go through the findings of the executive summary/ full report article by article and comment on them.

You may highlight the findings and recommendations you agree with and consider important. You should also call attention to any inaccuracies, omissions, contradictions or mistakes. If you point to weaknesses, you should take into account that this may create doubt either about the value of the report or your own positions.

▌ Find further guidelines for the preparation of this report in Annex 3.

COMMENTARY ON A COUNTRY REVIEW REPORT TEMPLATE

The present template is comparable to the template in Annex 3 with a significant difference; it should be used only when a cycle of the review process is over and UNCAC implementation review reports of your country are available.

Specific instructions and guidance are provided for each section in blue.

INTRODUCTION

Please use the following structure:

(Country name) signed the United Nations Convention against Corruption (UNCAC) on (date) and ratified it on (date).

This report comments on the findings of (Country name)'s UNCAC (implementation review report / executive summary / self-assessment report) and analyses the implementation and enforcement of selected articles in chapter(s) (II (preventive measures) / III (criminalisation and law enforcement) / IV (international cooperation) / V (asset recovery) / VI (technical assistance and information exchange)) of the United Nations Convention against Corruption.

Scope. The UNCAC articles that receive particular attention in this report are (title and number of each article).

Methodology. The report was prepared by (Name of the CSO) with funding from (name where appropriate). The (Name of the CSO) took part in the review process by (if applicable describe your participation).

The report was prepared using guidelines and a report template designed by Transparency International for use by CSOs.

In preparing this report, the authors also took into account the recent review of (Country name) carried out by (refer to other review mechanisms if applicable).

I. EXECUTIVE SUMMARY

1. The most important findings and recommendations in the report that you agree with
2. The most important areas you disagree with and reasons why
3. Overall assessment of the quality of the review process and report
4. Recommendations for follow-up on the review report

II. ASSESSMENT OF REVIEW PROCESS FOR [country name]

Please assess the adequacy of the transparency and inclusiveness of the review process. Please also include comments on the information provided about the process in the executive summary or full review report. You can use the table provided in Annex 3 to ensure a thorough review of the issues.

III. QUALITY OF INFORMATION AND ACCESS TO INFORMATION

Please assess the quality of the information provided in the executive summary or full review report. Please also comment on the accessibility of such information to the public. (See Annex 3 for guiding questions.)

IV. REPORT FINDINGS ON LEGAL FRAMEWORK AND ON SYSTEM FOR ENFORCING OR APPLYING RULES AND POLICIES

Please assess the quality and adequacy of the findings about your country in the executive summary or full review report. Are all important areas covered? Are important good practices or deficiencies left out?

A. Legal framework

Does the UNCAC review report cover all important issues relating the implementation of the reviewed articles? Do you agree with the interpretation and assessment of the legal provisions as given in the review report? If not, please give the reasons why not (see Annex 3 for guiding questions on some articles from UNCAC chapters III and IV).

You may wish to look at the report findings on all the articles covered by the review or to focus only on some.

B. System for enforcing or applying rules and policies

Do the observations in the UNCAC review report cover all the issues relating to the system for enforcing or applying rules and policies? Do you agree with the findings? If not, please give the reasons why not.

1. Statistics and cases

Are relevant statistics included concerning the implementation of the articles under review e.g., statistics on criminal, civil and administrative sanctions and mutual legal assistance requests; or statistics on prevention work such as code of conduct training, asset declarations, procurement appeals, access to information requests received and responded to, etc.? Are they up-to-date and accurate?

Is information about case examples included in the UNCAC review reports? Are there major, recent cases missing?

2. Resourcing, independence and skills of responsible agencies

Do the observations in the UNCAC review report cover all relevant issues of resourcing independence and skills to the system for enforcing or applying rules and policies?

3. Other institutional issues

Do the observations in the UNCAC review report cover all other relevant institutional issues relating to the implementation of the articles under review?

V. REPORT RECOMMENDATIONS

Please assess the quality and adequacy of the recommendations made. Are all important areas covered? Are important recommendations left out?

Please add your own recommendations on priority issues if they are missing from the review report.

VI. TECHNICAL ASSISTANCE NEEDS

Please assess the recommendations, if any, on technical assistance needs. Please also indicate whether some of those needs could be met by the CSO community.

ANNEX 5:
SAMPLE LETTER TO GOVERNMENT OFFICIAL(S) REQUESTING THE PUBLICATION OF THE FULL COUNTRY REVIEW REPORT

To: (Name of person or office in agency or ministry).

Dear _____ (or) To Whom It May Concern

(I / we) *(If more than one organisation is writing)* have read with interest the executive summary of the review of (Name of country)'s successes and challenges in implementing the chapters of the UN Convention against Corruption (UNCAC) that cover (criminalisation, enforcement and international cooperation / preventive measures and asset recovery) *(depending on whether you are requesting the report of the first or second cycle of review).* That summary was produced in the (first / second) five-year cycle of the UNCAC review process and is posted on the website of the UN Office of Drugs and Crime (UNODC) in Vienna. (The link is provided at the end of this letter.) Unfortunately, (I / we) have not been able to access on a public website a copy of the full review report that provides the basis for the executive summary.

(I am / we are) writing to you on behalf of (name of the CSO(s)) in order to request a copy of the full UNCAC review report for (Name of country) in electronic or paper format *(if you have just one preference request just one format).*

(I am / we are) also writing to inquire if the government of (Name of country) has yet taken two important steps to make available to the public the full results of the UNCAC review process. I would be grateful if you could let me know if the government has:

– Instructed UNODC to publish the full review report on UNODC website? This has been done by an increasing number of governments.
– Published both the full review report and the executive summary on a national website in an easily accessible location? It would be helpful if the report were published in our national language(s) and were placed on a government

website page devoted to the UNCAC review process. Ideally, the website page should indicate what steps the government plans to take to follow up on the report's recommendations.

We have reviewed the full UNCAC country reports already published for other countries and find that they provide valuable information on (criminalisation, law enforcement and international cooperation/preventive measures and asset recovery) *(depending on whether you are requesting the report of the first or second cycle of review)* legislation and practice in the countries concerned. Although the executive summaries include the main findings of the reviews, only the full report provides adequate information on the subject matter reviewed.

The UNCAC itself foresees transparency and civil society participation as part of the fight against corruption. Publication of the full review report would be a step towards supporting those goals and would place our country in a very positive light as one that takes those obligations seriously.

The government has successfully supported the completion of the first official report on (Name of country)'s implementation of UNCAC and we appreciate this achievement. An important further step to demonstrate the government's commitment to implementing UNCAC would be to ensure publication of the full report.

We would be pleased to discuss with you in person the issue of publication of the full report.

Yours sincerely,
(Name) (Title) (Organisation)

cc: (You may want to copy the letter to a number of institutions)

References: The executive summary for (Name of country) can be found at: www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html

ANNEX 6:
GUIDANCE ON MAKING A FORMAL FREEDOM OF INFORMATION REQUEST

Many countries that have finalised their review reports have freedom of information legislation (FOI) in place. These laws may provide for both reactive (on request) and proactive disclosures (publication without request).

Information request

Submit an information request to your government. It should be quite straightforward to obtain the full report through the regular information request procedure (each country has its own mechanism: some have online and others have paper-based processes or both) and keep some proof of your information request such as acknowledgement of receipt, check of registered mail, etc.

With the exception of very few countries, there is no need to explain the reason for the request. However, we suggest that, in order to prevent refusals it is worth briefly describing why you need the full report. Your reasoning does not have to be very detailed, treat it more as a matter of politeness. Send the request to the public body that has the authority to provide this information. This is likely to be the same public body that houses the focal point.

If the requested public body responds to the request by saying that the report will not be published because this is not required by the UNCAC review mechanism, you should seek remedy by saying that FOI laws do not foresee this kind of exemption. Information should be kept secret only within the scope of exemptions provided for by precise and concrete provisions of the law.[54]

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54 Find out whether your country has a freedom of information law and what are the exemptions contained in it, www.freedominfo.org/2012/10/93-countries-have-foi-regimes-most-tallies-agree/; in the news section of freedominfo.org you can also find a list of countries where new freedom of information laws have entered into force.

Each FOI law provides for legal recourse to seek remedy against a refusal. It may be a regular administrative appeal, the procedure of the Information Commission(er) or of an Ombudsperson and in some countries court procedures are also directly available in this field. You must decide depending on each context which choice is best for your situation. If the requested public body does not react, call them after the legal deadline for response has passed, ask for an appointment if needed or just send a reminder repeating your request.

If the country does not have a freedom of information law or decree it is still possible to request this document. In many countries there are particular constitutional provisions on freedom of information. Provisions on freedom of expression or right to petition may also entail the right of access to information. Most countries also ratified international human rights conventions, which include the possibility to request public information.[55] The UNCAC (Article 13) includes the freedom to seek, receive, publish and disseminate information concerning corruption – which has to be implemented in the national legal system. All of these sources of law allow citizens to request, obtain and disseminate the report.

If there is no FOI law in your country that would define the procedures in case of a refusal and the government does not respond positively or does not respond at all, you can still decide to go to court. There are many examples in which the judges have understood that you still have the right to request this kind of information. In each country there are CSOs that have experience with this and can give advice about this possibility, a further option is to find a pro bono lawyer.[56] In any case, your effort is valuable to highlight internationally that your particular country is not complying with Article 13 of the UNCAC.

55 Find a list of relevant international instruments here: www.right2info.org/international-standards.
56 Freedom of information CSOs: www.foiadvocates.net/en/members; Pro bono networks: www.islp.org/content/law-firm-pro-bono-docket; www.pilnet.org/index.php?option=com_content&view=article&id=34&Itemid=55

Procedural rules may vary from country to country, but practically everywhere you can find civil society organisations or pro bono lawyers who can help you with your request or when seeking remedies.

Online publication of the full report

In a significant number of countries there are proactive obligations of the government concerning the publication of information that may also cover the full country review report. As the content of the report is relevant for CSOs, media, business community, etc., it is important that your government provide access to everyone. The best solution is if the responsible public body publishes it in an easily accessible location on the internet and allows UNODC to do the same on its website.[57]

If you receive the full report on request it is only one more step to convince the responsible body to publish it online for the benefit of the public. In any event, unless you have made a commitment to keep the document confidential, feel free to publish and disseminate it as international law provides you this right.[58]

57 Helen Darbishire, *Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges,and Opportunities,* (Washington DC: World Bank, n.d.), http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf.
58 Choose from the provisions of the following international conventions depending on which applies to your country; each of them provides for the right of imparting or disseminating information: the International Covenant on Civil and Political Rights, Article 19 of which provides for the right of access to information; the African Charter on Human and Peoples' Rights, Article 9 of which provides for the right of access to information; the American Convention on Human Rights, Article 13 of which provides for the right of access to information; the European Convention on Human Rights, Article 10 of which provides for the right of access to information.

ANNEX 7:
ADVOCACY FOR RATIFICATION OF THE UNCAC

In countries where the UNCAC has not yet been ratified, it is essential that civil society organisations mount effective advocacy so that their governments take the necessary action. A list of countries that have signed and/or ratified the UNCAC can be found on UNODC website.[59]

If the UNCAC has not been ratified in your country you should consider the following steps to promote ratification:

Research the process for ratification or accession in your country

Ratification processes vary and are found in national law. Generally they involve approval by a national legislative body and the head of state. Publication in an official gazette may also be required. In many countries, there is a rule or practice requiring that prior to ratification the government must first make any changes in the national legal framework required by the convention.

Determine the stage the government has reached and any obstacles to completing the process

This information should be available from one or more responsible ministries, such as the Foreign, Justice or Interior ministries, from the president or prime minister's office, or from appropriate parliamentary committees.
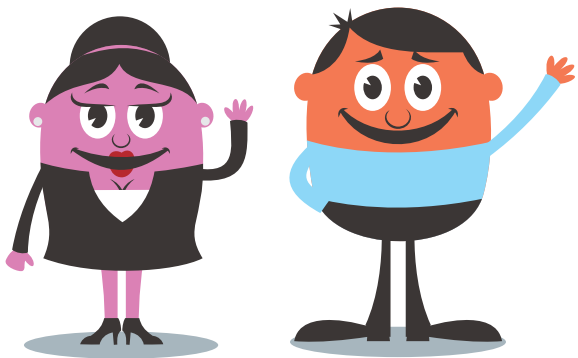
Identify the key stakeholders

It will be necessary to determine which institutions bear responsibility for the ratification process and, if possible, which individuals within those institutions. Do not forget to look for potential allies such as other civil society organisations or private sector partners. Peer pressure from governments of other countries can also be helpful.

> Find examples of activities, sample letters and press releases in Transparency International's *Anti-corruption conventions in Africa – What civil society can do to make them work.*[60]

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59 UNCAC signature and ratification status, www.unodc.org/unodc/en/treaties/CAC/signatories.html.

60 Transparency International, *Anti-corruption Conventions in Africa – What Civil Society can do to make them work*, (Berlin: Transparency International, 2007), pp.67-70, www.uncaccoalition.org/learn-more/resources/finish/9-sample-advocacy-materials/5-africa-advocacy-guide-english-2007.