

UNCAC Coalition

Contribution to the Consultation Process in Preparation of the UN General Assembly Special Session against Corruption 2021

Submission 1

– Key topics for the UNGASS –
3 March 2020

The UNCAC Coalition welcomes the initiative of the UN General Assembly Special Session (UNGASS) against corruption that will take place from 26 to 28 April 2021. The UNGASS offers an opportunity to advance and shape global anti-corruption efforts for the next decade by promoting bold and innovative approaches, showcasing best practices and kickstarting discussions on the development and implementation of new and upgraded standards and mechanisms for international cooperation.

Furthermore, we welcome the draft resolution agreed upon at the 8th Conference of States Parties (CoSP) to the UN Convention against Corruption (UNCAC) in Abu Dhabi in December 2019, which reiterates the importance of an inclusive UNGASS preparatory process, including extensive and substantive consultations, and which encourages civil society, academia and other relevant stakeholders, alongside UN bodies and other relevant international and regional organisations, “to fully contribute to the preparatory process”.¹

We look forward to contributing to the UNGASS and to facilitating civil society expert contributions to inform discussions and negotiations around the preparation of its political declaration.

In this initial submission, we outline key topics that we believe the UNGASS’ political declaration should address. In a second, forthcoming submission, we will elaborate in more detail on the actions that should be taken.

¹ Draft resolution submitted by the President of the Conference of the States Parties to the United Nations Convention against Corruption (2019):
https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/V1912060_L9_reissued.pdf.

Political Declaration

In order for the UNGASS to have a substantial impact on advancing efforts to prevent, detect and prosecute corruption, to address and mitigate its consequences, ambitious and bold actions are needed.

Corruption is an important cross-cutting issue in the Sustainable Development Goals (SDGs). The UNGASS thus provides an important opportunity to create additional momentum for achieving the SDGs, in particular target 16.5 to substantially reduce corruption and bribery in all their forms, and 16.6, to develop effective, accountable and transparent institutions on all levels.

The discussions and deliberations that will be held over the next year should result in an action-oriented political declaration. The declaration should include a follow-up mechanism embedded in UNCAC work plans through which Member States regularly report on the progress they have made in implementing the recommendations of the political declaration, and on the challenges they have encountered. Such a follow-up process should be transparent and inclusive, i.e. follow-up reports should be publicly accessible, and mechanisms and meetings should allow for the participation of and contributions by civil society organisations (CSOs) and other non-state actors.

Prevention

Access to Information

All Member States should adopt and implement comprehensive constitutional, statutory and/or policy guarantees for public access to information, granting all persons the right to demand information from public bodies, in line with SDG 16.10. The legal framework should ensure the availability of information and data held by public bodies, including on anti-corruption efforts, the functioning and activities of State entities, and the use of public funds and resources (UNCAC Articles 10 and 13).

To ensure effective access to information, Member States should commit to (i) adopting comprehensive access to government-held information laws with a presumption of openness and limited restrictions; (ii) create independent and autonomous institutional mechanisms to supervise the correct implementation and application of access to information laws and transparency provisions; (iii) ensure the proactive publication of information, documents and data, including on anti-corruption efforts, and ensure that information is published in a timely, comprehensive, freely accessible and usable way, fit for the respective local contexts, including by using open data formats to facilitate analysis and reuse among stakeholders such as journalists, citizens, civil society, academia and private sector; (iv) comprehensively

review and ease restrictions on classified information; (v) increase awareness among all stakeholders on information rights.

Public Procurement and Transparency of Public Finances

Building upon the UNCAC, which requires the development of public procurement systems that are transparent, competitive and objective (Article 9), Member States should commit to implementing (or maintaining) open procurement and contracting approaches to ensure full public access to information and to all documents and agreements throughout the lifetime of a contract, from planning to implementation. To facilitate further use and analysis, including the identification of corruption red flags, Member States should strive to make contracting information easily accessible to the public in standardised open formats, such as the global best practice scheme Open Contracting Data Standard.² Furthermore, Member States should establish inclusive and collaborative feedback and access to information mechanisms throughout the procurement process, enabling public participation and monitoring of public contracting.³

The level of global budget transparency has been stagnant in recent years, despite governments having new tools at their disposal to facilitate public access to budget information and documents online.⁴ Member States should commit to ensuring adequate oversight and transparency of public budgets and budget implementation (UNCAC Article 9) by publishing budget information at all stages of the budget process (including formulation, approval, execution, auditing and legislative evaluation) in a timely and accessible manner, by encouraging citizen participation in all phases of the budget cycle, and by strengthening oversight institutions.

Company Registries

To promote transparency in the private sector (UNCAC Article 12), Member States should commit to ensuring that adequate, accurate and current information on corporations and other legal entities, including on officers, directors and direct owners, is published through freely available public registers in real-time, using an open data standard, in order to facilitate access for law enforcement agencies, financial institutions, and the public.

² Open Contracting Data Standard: <https://standard.open-contracting.org/latest/en/>.

³ One approach to citizen monitoring of public contracts are Integrity Pacts, which have been highlighted as good practice by the G20 and the EU (2019): https://ec.europa.eu/regional_policy/en/newsroom/news/2019/07/07-10-2019-integrity-pacts-included-in-the-g20-compendium-of-good-practices-promoting-integrity-and-transparency-in-infrastructure-development.

⁴ Open Budget Survey (2017): <https://www.internationalbudget.org/open-budget-survey/>.

Beneficial Ownership Transparency

Member States should make a firm commitment to create national-level online public registers of the beneficial owners of companies, foundations, trusts and all other legal entities and arrangements (i.e. the natural persons who ultimately control an entity, possibly through several other legal entities), with timely and accurate information that is freely accessible online for law enforcement, competent authorities and the public (UNCAC Articles 12.2(c) and 14).

Furthermore, Member States should coordinate efforts in defining and implementing international norms on beneficial ownership transparency regimes. They should also initiate an inclusive and collaborative process to define and adopt a common data format to record beneficial ownership information in order to enable the interoperability with other data sets, to make use of all available information to investigate corruption and money laundering offences, and to identify recoverable assets.

To promote compliance with the beneficial ownership regime, Member States should also put in place effective, proportionate and dissuasive measures or sanctions, while also ensuring an efficient and effective framework that minimises the administrative burden and costs with the public and private sectors.

In line with best practice, Member States should commit to collecting and publishing beneficial ownership information of all bidders and partners in public sector and natural resources-related contracts.⁵

Political Financing

To strengthen public trust in government, electoral campaigns and political parties, Member States should adopt and implement measures to ensure adequate transparency and accountability in the financing of political parties, candidates for public office and electoral campaigns, as well as independent, adequately-resourced oversight of the finances of political parties, candidates and campaigns (UNCAC Article 7.3), building on the principles developed by the Expert Group Meeting on Transparency in Political Finance in May 2019.⁶

⁵ Slovakia's approach can serve as a reference, which requires all domestic and foreign entities who partner with the public sector (public procurement, privatizations, grants, permits, licenses, etc.) as well as companies in the healthcare sector to disclose their beneficial owners in a publicly accessible database. UNCAC Coalition: Key Take-Aways from the CoSP8 Special Session: Getting Serious about Beneficial Ownership Transparency (2019): <https://uncaccoalition.org/our-key-take-aways-from-the-cosp8-special-session-getting-serious-about-beneficial-ownership-transparency/>.

⁶ See: UNODC, IFES and ODIHR (2019): Expert Group Meeting Report – Transparency in Political Finance: https://www.unodc.org/documents/corruption/PragueEGM2019/Report_EGM_Transparency_in_Political_Finance_Prague.pdf.

Conflicts of Interest

To ensure a clear separation of public position and private interests and to prevent and manage conflicts of interest (UNCAC Articles 7.4, 8 and 12.2(e)), Member States should adopt, implement and enforce adequate and comprehensive frameworks to address conflicts of interest for decision-makers in the public sector. Such frameworks should also regulate cases of the “revolving door” – the movement of individuals between public office and private sector jobs in the same area (in either direction).

Asset Disclosure

To promote integrity in the public sector, all Member States should require civil servants and public officials in decision-making positions and prominent public functions, as well as politically exposed persons, in particular those in positions exposed to a high risk of corruption, to regularly and comprehensively disclose assets and other relevant interests (including unpaid roles and positions). This information should be made accessible to the public through a freely accessible central online (and, where appropriate: offline) registry, including in open data formats. Furthermore, Member States should establish an independent monitoring mechanism as well as sanctions for non-compliance. To facilitate the verification of asset declaration data, Member States should engage in discussions on creating a framework for the international exchange of this information (UNCAC Articles 8, 14, 43 and 52).⁷

Private Sector

Member States should put measures in place to promote integrity and transparency in the private sector. Such measures should include establishing corporate criminal liability (i.e. criminal liability for companies and other legal entities that are involved in corruption and money laundering offences) and the effective enforcement of foreign bribery provisions.

Member States should also put in place mechanisms that ensure transparency in the interactions between the public sector and the private sector, including by ensuring a high level of transparency regarding the award of i) government contracts, licenses, permits, subsidies and grants; ii) the disclosure of company information, including on direct and beneficial owners through freely accessible online public registries (see sections on company registries and beneficial ownership transparency above); iii) by promoting compliance with “revolving door” regulation; iv) by putting in place systems to regulate and make transparent private sector contributions to political parties and electoral campaigns; v) by creating mechanisms to adequately regulate and make

⁷ The International Treaty on Exchange of Data for the Verification of Asset Declarations can serve as a reference for such efforts: <http://www.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest/>.

transparent lobbying efforts as well as meetings and communication between private sector representatives and public officials.

Civil Society Participation in Anti-Corruption Efforts

Member States should use the UNGASS for a high-level political commitment highlighting the importance of involving CSOs, academia and other non-government stakeholders in anti-corruption efforts. Furthermore, the political declaration should include a clear commitment to creating and maintaining a safe and enabling environment for civil society, to eliminate any impediments in law and practice that constrain such participation contrary to the letter and the spirit of the UNCAC, international human rights standards and the 2030 UN Agenda for Sustainable Development.

This requires appropriate measures for respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption and the ability for CSOs and the media to organise and operate independently and without fear of reprisal because of their anti-corruption work.

Effective Institutions

Member States should commit to ensuring that anti-corruption bodies – those mandated to work on the prevention of corruption as well as those specialized in investigating and combatting corruption – are provided with the necessary independence, powers and resources to carry out their functions effectively and can operate free from any undue influence (UNCAC Articles 6 and 36), including by ensuring that the principles of the Jakarta Statement are fully implemented and complied with, both in law and in practice.⁸

More broadly, in line with SDG 16.6 (“develop effective, accountable and transparent institutions at all levels”), Member States should take steps to strengthen institutions that play a crucial role in national integrity systems, such as election commissions, regulatory and oversight bodies, law enforcement agencies and the judiciary as well as the oversight role of parliaments. Captured, dysfunctional and ineffective oversight bodies and institutions in many countries are at the centre of weak oversight systems and poor performance in preventing and fighting corruption.

⁸ Jakarta Statement on Principles for Anti-Corruption Agencies (2012): https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf.

Criminalisation and Enforcement

Whistleblower Protection

Recognising the importance of whistleblower protection in the public and private sector, all Member States should adopt and implement comprehensive legislation on whistleblower protection in line with best practice and international standards,⁹ providing for confidential and secure reporting mechanisms within entities and anti-corruption authorities and robust legal protection from retribution to all whistleblowers, including those reporting to CSOs and the media.

Prevention of Attacks against Corruption Fighters

Around the world, whistleblowers, witnesses, civil society activists and journalists face threats and retaliation due to their involvement in uncovering and reporting on corruption. Member States should ensure that all threats against whistleblowers, witnesses, journalists and civil society activists involved in pursuing corruption cases be taken seriously and that effective protection and assistance be granted in a timely manner by relevant authorities, or, where appropriate, through international, regional and bilateral channels (UNCAC Articles 13, 32 and 33).

Grand Corruption

The UNGASS provides an important opportunity to tackle impunity of culprits in grand corruption cases. It is clear that new and stronger mechanisms for international cooperation are needed to successfully investigate and prosecute grand corruption cases and Member States should use the UNGASS to discuss and evaluate options for new international infrastructure to do so.

Member States need to take action to ensure that legal and natural persons are held accountable for corruption offences while ensuring that anti-corruption enforcement measures comply with human rights standards as well as with the principles of fairness and equality before the law. A set of measures to tackle grand corruption impunity should also include the introduction of a criminal offence of grand corruption, possibly through a protocol to the UNCAC.

Member States also need to ensure that domestic immunities for public officials are strictly limited with transparent and effective procedures for suspending them (UNCAC Article 30.2) and that those immunities and other privileges enjoyed by public officials – domestic, foreign and international – are not abused or used to shield individuals

⁹ International Principles for Whistleblowing Legislation (2013): https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

from accountability for corruption offences or to provide safe havens for their ill-gotten gains.

Settlements

Member States should develop common guidelines for settlements in corruption cases, ensuring at a minimum that settlements (i) be used only with companies that genuinely self-report, cooperate fully and have properly addressed the wrongdoing internally, including with a credible compliance programme; (ii) require admission of wrongdoing and full and specific details of the wrongdoing; (iii) provide for effective, proportionate and dissuasive sanctions including the full benefit received from the wrongdoing; (iv) provide for compensation to those harmed by the offence, including foreign victims; (v) require that any agreement, both its terms and justification, be subject to a public judicial hearing and to final court approval; (vi) include the publication of the corrupt acts, the full agreement and the related court decisions as well as, upon completion of the terms of the agreement, publication of the details on the actual performance of the agreement; (vii) provide that, if reached with companies, the settlement does not exclude the prosecution of individuals, with no employer contribution to their fines (UNCAC Articles 26.4 and 30.1).

Remedies for Corruption

Member States should take effective measures to address the consequences of corruption and to ensure compensation for victims, both individual and collective (UNCAC Articles 32, 34, 35, 53 and 57). For this purpose, Member States should advance efforts to develop guidelines on the identification and compensation of victims in corruption cases, including by building on and promoting good practice examples. By developing and implementing mechanisms to compensate victims of corruption – including in cases of fines being imposed due to corruption-related offences, settlements and asset recovery cases – the UNGASS could make a positive change in the lives of millions of people around the world.

Asset Recovery

Member States should make firm commitments on taking decisive action to ensure that SDG 16.4 on significantly improving asset recovery and return by 2030 is fulfilled, in particular by enhancing proactive and timely information sharing, by pursuing corrupt officials domestically, and by implementing adequate laws on legal standing (UNCAC Articles 53 and 56).

Asset recovery must be accountable and transparent at all stages of the process. Civil society has to play an important role in asset recovery – a role that should also be properly and formally recognised. Member States should adopt frameworks to allow

for the admission of public interest claims in relation to the recovery of proceeds of corruption transferred abroad (UNCAC Articles 13 and 35).

Member States should enact and implement comprehensive laws providing for the confiscation of any asset obtained through or derived from the commission of an offence established by the Convention and allowing for quick freezing of assets suspected to be derived from the commission of such offences (UNCAC Article 3). Assets recovered should be used for repairing the harm caused by grand corruption, and for implementing measures to meet SDG 16.

Furthermore, Member States should ensure that returned assets pursuant to the Convention are used and managed in line with the Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (“GFAR Principles”)¹⁰ and in a manner contributing to and fulfilling the SDGs, and to the reparation of the damage caused to victims and society. Member States should work to develop and apply guidelines on best practices on asset management and return, which encompass those principles.

Member States also need to intensify their efforts to effectively prevent illicit financial flows originating from corruption offences. In order to be able to identify relevant assets, Member States need to ensure that comprehensive anti-money laundering frameworks are in place, implemented and enforced in all relevant sectors, both by financial institutions and designated non-financial businesses and professions (casinos, real estate agents, jewellers, lawyers, etc.), requiring that these actors carry out adequate customer due diligence, keep records, and report suspicious transactions (UNCAC Article 52 and Financial Action Task Force (FATF) recommendations 22, 23). In particular, those Member States that are popular destinations of illicit financial flows have to ensure that adequate legal and policy frameworks, as well as sufficient institutional capacity, are in place to restrict and prevent incoming illicit transfers.

Strengthening of the UNCAC Review Process

The UNGASS should result in a strengthening of the UNCAC review process. A reformed review process beyond the currently ongoing second review cycle should include stronger mandatory provisions on transparency – including the publication of self-assessment checklists and full country reports, details on the country focal point, the regularly updated schedule of the review process and the country visit by the peer reviewers, in line with the UNCAC Coalition’s Transparency Pledge which has been

¹⁰ See: Global Forum on Asset Recovery (GFAR) (2017): GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

signed by 21 governments – and on the meaningful inclusion of civil society organisations in the review process, in line with good practice approaches.¹¹

An upgraded review process should be adequately resourced to ensure swift progress and should also include a mandatory follow-up mechanism that reviews progress made on implementing recommendations from previous review cycles.

Cross-cutting Issues

Gender and Corruption

Despite the recognised importance of gender equality for sustainable development in the 2030 Agenda, particularly in SDG 5 on achieving gender equality and the empowerment of all women and girls,¹² the link between gender inequality and corruption is not specifically addressed in the UNCAC. Nonetheless, a gender perspective on corruption is needed to understand that corruption affects women disproportionately, which is mainly because women represent a higher proportion of the world's poor and because their opportunities are already constrained by unequal gender relations in society.¹³

Gendered forms of corruption are most prevalent in basic service delivery, where women disproportionately pay for corruption due to their child and family care responsibilities and greater needs for healthcare services in reproductive years,¹⁴ in the access to markets and financial resources, where women face greater constraints,¹⁵ and in sextortion as a form of bribery, which violates women's dignity, harms their mental and physical health and exacerbates gender inequality.¹⁶

Member States should recognise these gendered forms of corruption, and seek to ensure that sextortion is acknowledged as a form of bribery and is criminalised under national laws in line with UNCAC Articles 15.2, 16.2, 18 and 21. In order to adopt gender-inclusive approaches, Member States should appoint national and

¹¹ UNCAC Coalition Transparency Pledge and UNCAC Coalition Guide to Transparency and Participation in the UNCAC Implementation Review Mechanism, <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

¹² Besides SDG 5, gender equality also relates to SDG 16 (promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels) and is generally highlighted as a cross-cutting issue across the 2030 Agenda.

¹³ See: UNIFEM and UNDP (2010): Corruption, Accountability and Gender. Primers in gender and democratic governance, p.5, <https://www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf>.

¹⁴ See: Boehm, F. and Sierra, E. (2015): The gendered impact of corruption: Who suffers more – men or women? U4 Brief, p.9, <https://www.u4.no/publications/the-gendered-impact-of-corruption-who-suffers-more-men-or-women/>.

¹⁵ See: SIDA (2015): Gender Tool Box – Gender and Corruption, <https://www.sida.se/contentassets/165672c0e28845f79c8a803382e32270/gender-and-corruption.pdf>.

¹⁶ See: Transparency International (2019): Gender and Corruption: Forms, Impact and Sanctions. Statement submitted to the 8th UNCAC CoSP, <https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/V1911814e.pdf>.

international experts to collect gender-disaggregated data on forms of corruption to develop common gender-sensitive corruption indicators, in line with the suggestions made in UNCAC Article 61.2. Furthermore, Member States should establish a gender focus in all anti-corruption policies and practices through mainstreaming gender equality.

Climate and Environment

Member States should recognise the significant interlinkages between corruption, climate change, environmental destruction and the exploitation of natural resources (including in the wildlife, timber and fishing sectors) and the detrimental impact it has on society as a whole in terms of health, security, development, as well as on the economy and government revenues, and that crimes of this manner are oftentimes transnational in nature.

Member States should use the UNGASS to come up with concrete actions to fight corruption in the obtaining and granting of building permits, carbon emissions permits, concessions in the extractive industries, as well as of permits and certificates for imports and exports of illegally obtained natural resources or wildlife and those obtained during environmental inspection processes (UNCAC Articles 15, 16, 18, 19 and 21) in line with SDG 13 on climate action and SDG 15 on life on land. To detect and prevent corruption as it relates to climate and the environment, Member States should strengthen technical assistance and capacity building for cross-cutting cooperation with multiple stakeholders including local communities, civil society and academia, as well as with other international, regional and national legal instruments such as the UN Convention against Transnational Organized Crime (UNTOC). Furthermore, Member States should put in place effective mechanisms to prevent money-laundering and to prosecute those who commit crimes of corruption as they relate to climate and the environment (UNCAC Articles 23 and 60).¹⁷

¹⁷ See: Transparency International (2015): Addressing Corruption in an Era of Climate Change. Submission to the 6th UNCAC CoSP, <https://uncaccoalition.org/files/TI-Climate-change.pdf>.
UNEP (2018): The State of Knowledge of Crimes that have Serious Impact on the Environment, pp. 16-24, https://wedocs.unep.org/bitstream/handle/20.500.11822/25713/knowledge_crime_envImpacts.pdf?sequence=1&isAllowed=y; UNODC (2012): Corruption, Environment and the United Nations Convention against Corruption, https://www.unodc.org/documents/corruption/Publications/2012/Corruption_Environment_and_the UNCAC.pdf.