

MAKING UNCAC WORK: COALITION STATEMENT AHEAD OF THE 5th CONFERENCE OF STATES PARTIES IN PANAMA

Recalling that corruption weakens public institutions and the rule of law, damages the competitive and private investment climate, jeopardizes sustainable development and fosters instability;

Reminding States Parties of their commitments under the UN Convention against Corruption (UNCAC) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively and their obligation to ensure implementation;

Considering that nearly ten years after the Convention was adopted there remains impunity for corruption crimes and this cannot be allowed to continue;

The UNCAC Coalition therefore calls on UNCAC States Parties to adopt resolutions at the 5th session of the UNCAC Conference of States Parties and for the Implementation Review Group and Working Groups to report to the 6th COSP on the following:

On ratification

1. Urging countries that have not yet become parties to the Convention to take the necessary steps without any further delay. In particular, urging Germany and Japan to uphold their G20 commitment made in the G20 Anti-Corruption Action Plan 2013 – 2014 to “lead by example” and to ratify the UNCAC “as soon as possible”.

On prevention

2. Concerning UNCAC chapter II, especially Articles 5(1), 9, 10 and 13, reminding States Parties that access to information is essential for corruption prevention and calling on them to adopt and implement comprehensive access to information legislation.
3. Concerning UNCAC Article 12 (c) and building on Resolution 4/4, calling for the collection of beneficial ownership information through national-level public registers of companies and trusts maintained with updated current information. Notwithstanding the requirements to register beneficial ownership information, calling for customer due diligence obligations, including beneficial ownership, to be required from service providers, including lawyers and trust and company formation providers, and actively enforced.
4. Concerning UNCAC Article 12(d), requesting the Working Group on Prevention to convene an expert meeting to discuss guidelines for the prevention and sanctioning of corruption in the award of loans, subsidies and commercial licences.
5. Concerning UNCAC Article 14 and others, calling for States Parties to publish information on Politically Exposed Persons through national-level public registers as well as to require their Politically Exposed Persons at all levels of government to file comprehensive asset declarations and make them publicly available. Also calling for regulators in States Parties to require banks to integrate corruption risk into their risk assessment programmes.

On criminalisation and enforcement

6. Concerning Article 33, requesting UNODC to prepare a thematic report and guidelines on whistleblower protection.
7. Concerning Articles 15, 16, 18, 23 and 26 requesting UNODC to organize expert discussions on liability of parent companies for acts of subsidiaries and their agents and on criminal enforcement experience regarding payments to political parties and organizers of electoral campaigns intended to improperly influence decision-making by public officials.
8. Concerning UNCAC Articles 26(4) and 30(1), mandating UNODC to work with States Parties develop common guidelines for settlements in corruption cases. These should, inter alia,:
(i) generally be reached only where guilt is admitted; (ii) include publication of the agreements, with their justification as well as publication of the details on the actual performance of the agreement; (iii) be subject to a judicial hearing and court approval; (iv) provide for effective, proportionate and dissuasive sanctions that exceed estimated

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profit from the wrongdoing; (v) provide for compensation to those harmed by the offense, including victims in other countries; (vi) make available evidence to enforcement authorities in other relevant jurisdictions; and (vii) if reached with companies, should leave open the possibility of prosecution of individuals, with no employer contribution to their fines.

9. Concerning UNCAC Article 30(2), calling for States Parties to ensure that immunities for public officials are strictly limited and there are transparent and effective procedures for suspending immunities for public officials as well as ensuring that immunities are not used to shield individuals from being held to account for corruption offences. Also requesting the IRG to build on the thematic report by UNODC and in consultation with an expert group develop standards on this subject for approval at the 6th COSP.
10. Concerning UNCAC Articles 34 and 35 on the consequences of corruption and compensation for victims, calling for States Parties to ensure that these articles have been fully implemented, including recognition of public interest litigation.
11. Concerning UNCAC Article 36, calling on States Parties to ensure the operational independence of specialised enforcement bodies and their resourcing. States Parties should also ensure independence and resourcing for the judiciary pursuant to Article 11.

On asset recovery

12. Calling on States Parties to deny safe haven to proceeds of corruption by introducing legal frameworks enabling them to take legal action in the absence of a request from another country.
13. Referring to UNCAC Articles 35, 53(b) 57 (3)(c), calling on States Parties to recognize the damage caused by corruption and to ensure compensation to states harmed by it. Further referring to UNCAC Articles 53 and 56, calling on States Parties to facilitate the direct recovery of property by notifying affected states of their right to claim for damages or ownership as part of any corruption-related legal proceedings or settlements.
14. Reminding States Parties that asset recovery can serve as an important source of financing for development and mandating international organisations such as STAR to work with States Parties to help ensure that the return of assets pursuant to Article 57 and their subsequent use are managed in a transparent and accountable manner in line with Article 9 of the Convention.
15. Referring to UNCAC Articles 53 - 57 and Resolution 4/4, calling on States Parties to mandate UNODC and the Stolen Assets Recovery Initiative to complete guidelines relating to the issues in points 12 - 14 above at the latest by the time of the 6th Conference of States Parties,

On the UNCAC review process

16. Consistent with Article 63 (4), (5), (6) and (7) adding a process of follow-up to the recommendations in country reviews. The follow-up should include civil society participation.
17. Establishing a transparent and inclusive 2nd cycle of the UNCAC review process that includes country visits, civil society participation in the review process; and publication of the full country reports as well as of the lists of focal points and updated individual country review timetables. Also confirming that COSP rules of procedure 2 and 17 allow civil society organisations to participate in both the IRG and in any UNCAC Working Groups.

On supplementary procedures

18. Concerning Article 63(7), requesting the IRG to prepare for the 6th COSP (1) terms of reference for a communications and reporting procedure for serious non-compliance and lack of effective enforcement of UNCAC obligations and (2) a report on the advisability and practical feasibility of establishing an international anti-corruption authority.

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