

UNCAC Coalition Submission of Written Comments to the FACTI Panel

24 May 2020

The UNCAC Coalition welcomes the important work the FACTI Panel was mandated to do and thanks the Panel for opening up the consultation process to a wide range of stakeholders, including civil society organisations (CSOs). We hope that both the FACTI Panel and then also UN Member States take the input and comments provided by civil society seriously into account and do their best to implement them.

The FACTI Panel's work and its anticipated report are now more timely than ever: The Covid-19 crisis has highlighted the urgent need to ensure accountability, transparency and integrity as well as to improve and strengthen anti-corruption measures. Due to the ongoing health and economic crisis caused by the Covid-19 pandemic, governments all over the world have introduced legal measures as an emergency response, often limiting fundamental freedoms and civic space. Moreover, many countries are mobilising extremely large sums of emergency funding to respond to the crisis, which, although necessary, is likely to increase the risks of corruption and abuse of power. Consequently, this is a crucial point in time to uphold and strengthen key transparency and anti-corruption principles in order to both maintain and improve the current systems in place. Moreover, only by ensuring high levels of transparency, government accountability, civil society participation and international cooperation can the Sustainable Development Goals (SDGs) of the 2030 Agenda be reached successfully.

Building on input UNCAC Coalition Chair David Banisar provided during a virtual meeting with civil society organised by the Panel on 28 April 2020, this written input covers many different aspects related to transparency and the fight against corruption. We are also raising some of these issues during the preparations of the first-ever UN General Assembly Special Session (UNGASS) on corruption taking place in April 2021, which will be one important opportunity for Member States to discuss and act upon the FACTI Panel's findings and recommendations. Our contribution follows the clusters of work identified by the Panel.

About the UNCAC Coalition

The UNCAC Coalition is a global network of more than 350 civil society organisations in over 100 countries, committed to the monitoring and implementation of the UN Convention against Corruption (UNCAC). The UNCAC is the only universal binding anti-corruption mechanism and has been signed or ratified by 186 countries and the European Union.

Cluster 2: Accountability, public reporting and anti-corruption measures

2.1 Access to Information

In response to the COVID-19 pandemic, a number of governments have taken measures to limit transparency and public access to information, including due to resource constraints. Effective access to information is crucial not only for preventing and detecting corruption and ensuring accountability but also for promoting public trust and tackling misinformation.

During and in the aftermath of the coronavirus crisis, access to information is more important than ever, as the public needs to know exactly what their governments are doing to tackle the crisis and are held to account for their decisions. Above all, governments must not use the pandemic as an opportunity to cover up incompetence, corruption or wider human rights abuses.

The FACTI Panel should urge all Member States to 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 16.10.¹ 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).²

To ensure effective access to information, the FACTI Panel should encourage Member States to 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.

2.2 Beneficial Ownership Transparency

¹ As enshrined in Article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, the right to access to information is an essential component of the right to freedom of expression.

² The United Nations Human Rights Committee has, in its General Comment 34, further specified that States should proactively put information of public interest in the public domain, ensure prompt, effective and partial access to such information, and enact procedures for access to information held by public bodies.

To advance the fight against corruption and tax evasion, it is essential to create transparency over who controls an entity. The FACTI Panel should call on Member States to make a firm commitment to creating 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 (see: UNCAC Articles 12.2(c) and 14).

Furthermore, the FACTI Panel should call on Member States to coordinate efforts to define and implement international norms on beneficial ownership transparency regimes. It would also be of importance to initiate an inclusive and collaborative process to define and adopt a common data standard to record and publish beneficial ownership information in order to enable the interoperability with other data sets (for example, linking beneficial ownership data to public contracting data within the same jurisdiction, or with beneficial ownership and company registry records from other jurisdictions), 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, the FACTI Panel should encourage Member States to also put in place an effective verification mechanism for beneficial ownership information as well as effective, proportionate and dissuasive measures or sanctions for non-compliance, while also ensuring an efficient and effective framework that minimises the administrative burden and costs with the public and private sectors.

Beneficial ownership data should be made public for all legal entities registered within a particular jurisdiction. In line with best practice, Member States should also collect and publish beneficial ownership information of all bidders participating in public procurement procedures and partners in the public sector (i.e. entities that receive public funds, subsidies, grants, licenses, that rent or privatize state assets, or are otherwise parties to contracts with State entities) and natural resources-related contracts.³ In particular, this should also apply to companies and other entities receiving State aid as a result of the Covid-19 crisis.

2.3 Company Registries

Corporate transparency through access to official company information is essential for the public and private sector alike in order to know their customers and partners – and with whom they are working. Easy access to information on companies, their filings, officers and direct owners helps to

³ 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/>.

promote trust in business environments, facilitates due diligence and is an effective tool to tackle criminality and corruption.

To promote transparency in the private sector (in line with UNCAC Article 12), the FACTI Panel should call on Member States to ensure that adequate, accurate and current information on corporations and other legal entities, including on officers, directors and direct owners is made accessible to the public through online national public registries.⁴ Such registries should be freely accessible and searchable, and also contain relevant filings made by companies (as well as other relevant legal entities, such as trusts and foundations). Company data should become freely accessible in real-time in a standardised open data format in order to facilitate access for law enforcement agencies, financial institutions and obliged entities, State entities engaging with entities, as well as the general public. Easy access to company data is essential to enable the media, civil society and the general public to detect possible cases of misappropriation, waste and corruption, for example through monitoring public procurement and public spending.

2.4 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), the FACTI Panel should encourage Member States to 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.

In their response to the Covid-19 pandemic, governments should ensure the proactive publication of information regarding public procurement processes and public access to all relevant documentation, including bid evaluations, awarded contracts, their implementation and the closure of projects. Crucially, this should apply to contracts awarded under emergency procedures, which should only be made use of as a last resort. Furthermore, as highlighted in the sections on company ownership and beneficial ownership transparency, the public needs to have access to information, to registration data of companies, their filings, as well as their direct and beneficial owners, in order to monitor who benefits from public contracts.

To facilitate further use and analysis, including the identification of corruption red flags, the FACTI Panel should thus advocate for Member States to make contracting information easily accessible to the public in standardised open formats, such as the global best practice scheme Open Contracting Data Standard.⁵ Furthermore, the FACTI Panel should highlight the importance of establishing

⁴ One good practice example is the UK company registry Companies House. It makes company information available to the public in a freely accessible, searchable online register, which also includes company filings and data on directors and owners. In 2018, the UK register was accessed more than 6 billion times, creating an estimated total benefit between £ 1 and 3 billion per year. <https://beta.companieshouse.gov.uk/>; <https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year>

⁵ Open Contracting Data Standard: <https://standard.open-contracting.org/latest/en/>.

inclusive and collaborative feedback and access to information mechanisms throughout the procurement process, enabling public participation and monitoring of public contracting.⁶

The level of global budget transparency has seen little progress in recent years, despite governments having new tools at their disposal to facilitate public access to budget information and documents online.⁷ The FACTI Panel should call on Member States to 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.

It is also crucial that governments ensure full transparency and adequate oversight over the resources allocated to responding to the COVID-19 crisis. In particular, the names and identities of companies and entities that receive emergency assistance or funding, whether in the form of grants, guarantees or low-interest loans, should be publicly disclosed, as well as details of the support provided and any conditions linked to this aid.

2.5 Asset Disclosure

To promote integrity in the public sector, the FACTI Panel should call on all Member States to 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, the FACTI Panel should emphasise the need to establish an independent monitoring mechanism as well as sanctions for non-compliance on each Member States' national level. To facilitate the verification of asset declaration data, the FACTI Panel should promote Member States' engagement in discussions on creating a framework for the international exchange of this information (UNCAC Articles 8, 14, 43 and 52).⁸

⁶ 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.

⁷ Open Budget Survey (2019): https://www.internationalbudget.org/sites/default/files/2020-04/2019_Report_EN.pdf

⁸ 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/>.

2.6 Asset Recovery

The FACTI Panel should encourage all Member States to take decisive action to ensure the fulfilment of SDG 16.4 on significantly improving asset recovery and return by 2030, in particular by enhancing proactive and timely information sharing, by pursuing corrupt officials domestically to recover their ill-gotten gains hidden abroad (UNCAC Articles 53 and 56).

One of the key problems is the lack of public access to data from all countries regarding the asset recovery process, both internationally and domestically. The Panel should call for Member States to make publicly available information on i) the relevant legal and policy frameworks for asset recovery, ii) statistics related to asset recovery (cases, mutual legal assistance requests sent, received and processed, assets frozen, confiscated, returned, etc.) and iii) information on individual cases (including decisions, bi- and multilateral agreements, assets confiscated and returned, modalities for the return, disbursement and use of returned assets, etc.). In almost all countries, too little information is available in relation to whether confiscation orders are successfully executed and consequently, about how the assets are used.

At all stages, the process of asset recovery must be guided by the principles of accountability and transparency. The inclusion of non-governmental stakeholders is essential: Civil society has to play an important role in asset recovery – a role that should also be properly and officially recognised. Member States should adopt frameworks to allow for the admission of public interest claims by independent civil society organisations in relation to the recovery of proceeds of corruption transferred abroad (UNCAC Articles 13 and 35).

Member States should enact and implement comprehensive laws and close gaps in their legal frameworks on asset recovery, providing for the confiscation of any asset obtained through or derived from the commission of an offence established by the UNCAC 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”)⁹ 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. Therefore, special attention should be given to the principles of transparency and accountability in regard to the management and use of returned assets.

⁹ 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>.

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.

In addition, there is a lack of specialised services and adequate resources to detect and investigate cases of assets related to corruption. Member States should streamline the number and structure of agencies responsible for asset recovery and remove legal obstacles impacting their effective cooperation. They should also ensure adequate financial and staff resourcing for those agencies.

Member States should also continue and enhance their effort to compile and disseminate good practises related to the identification and compensation of victims of corruption in order to establish a set of guidelines and principles based on best practises examples.

2.7 Civil Society Participation in Anti-Corruption Efforts

Civil society, including human rights and environmental defenders, journalists, media organisations, NGOs, trade unions, academia, as well as whistleblowers, are often side-lined or even threatened when acting in their role as set out by Article 13 of the UNCAC. Citizens can play a crucial role in uncovering corruption on a local, national, regional, and even global level. However, potential whistleblowers and civil society working on anti-corruption topics are often intimidated by state actors when trying to report corruption, which results in fear of retaliation and, consequently, an underreporting of corruption, crimes and other wrongdoing.

States sometimes misuse laws in order to restrict civil society organisations from operating, by imposing restrictions on movement, freedom of assembly and access to information, thereby decreasing government transparency. Especially in times of crises, such as the COVID-19 pandemic, temporary emergency measures must be proportionate and must not be used to silence or limit civil society involvement.

Citizens around the world are looking to their governments to deliver decisive action against corruption to reverse systems and trends of injustice and inequality. Tackling corruption requires serious collaborative efforts among states and prosecution authorities, as well as the involvement of all relevant non-governmental stakeholders. As recognised by the UNCAC, civil society can make substantial contributions to the fight against corruption with its expertise and insights, on the local, national and regional levels, as well as in various global fora, such as the UNCAC, the General

Assembly Special Session against Corruption in 2021 and by contributing to the advancement and monitoring of the SDGs.

However, in the context of the UNCAC, civil society organisations have not been allowed to participate in subsidiary bodies of the UNCAC Conference of States Parties (CoSP). Several NGOs have been banned from attending the UNCAC Conference of States party for unknown reasons by unknown States, with no recourse.¹⁰ This is in stark contradiction to OHCHR's Guidelines for States on the effective implementation of the right to participate in public affairs.¹¹ It is also contrary to the spirit of the UN Human Rights Committee's General Comment No 25, which recognised the right to participate in public affairs at the supranational level.

The FACTI Panel should call on Member States to allow for the broadest possible participation of CSOs in all relevant international fora that promote transparency, accountability and anti-corruption and contribute towards achieving the SDGs, and to actively encourage and facilitate the participation of civil society representatives, in line with the OHCHR's Guidelines (adopted by the Human Rights Council in resolution 39/11 by consensus). Effective access to information is a precondition for civil society to be able to make meaningful contributions.

2.8 Whistleblower Protection

Recognising the importance of whistleblower protection in the public and private sector, especially during times of crisis, the FACTI Panel should urge all Member States to adopt and implement comprehensive legislation to encourage and protect whistleblowers, in line with best practice and international standards.¹² This legislation should provide for confidential and secure reporting mechanisms within entities, where appropriate, and external mechanisms operated by anti-corruption authorities. Furthermore, the FACTI Panel should call on Member States to ensure that all threats against whistleblowers, witnesses, journalists and civil society activists involved in pursuing corruption cases be taken seriously and that effective assistance be granted in a timely manner by relevant authorities, or, where appropriate, through international, regional and other channels and mechanisms.

¹⁰ See: UNCAC Coalition: UNCAC CoSP 8 – Statement to the general plenary session by David Banisar, UNCAC Coalition Chair, 17 December 2019, <https://uncaccoalition.org/wp-content/uploads/COSP8-Statement-by-David-Banisar-UNCAC-Coalition-Chair-to-General-Plenary.pdf>

¹¹ OHCHR: Guidelines for States on the effective implementation of the right to participate in public affairs: https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf, p. 17f.

¹² See: International Principles for Whistleblowing Legislation (2013): https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation; TI: A Best Practice Guide for Whistleblowing Legislation, <https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation>; Government Accountability Project: International Best Practices for Whistleblower Policies (2019), <https://whistleblower.org/international-best-practices-for-whistleblower-policies/>

Finally, the legislation should provide robust legal protection from retribution and criminalization to all whistleblowers and their families, including those reporting to CSOs and the media. For all Member States that already have whistleblower legislation in place, the FACTI Panel should emphasise the need to assess and review their effectiveness and the implications that whistleblowing has in practice. After creating an adequate legal protective framework for whistleblowers, States should also take steps to encourage and promote whistleblowing as a tool to detect and deter corrupt practices.

2.9 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. The FACT Panel should call on all Member States to 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 (see: UNCAC Articles 13, 32 and 33).

2.10 Private Sector

The FACT Panel should call on all Member States to put measures in place that 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.

Furthermore, the FACTI Panel should also encourage Member States to 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, including all forms of emergency assistance (loans, guarantees, non-financial aid, etc.) granted in response to the Covid19 crisis;
- 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 adopting and promoting compliance with “revolving door” regulation that addresses the movement of individuals between positions of public office and jobs in the same area in the public and private sector;
- 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 transparent lobbying efforts as well as meetings and communication between private sector representatives and public officials.

2.11 Effective Institutions

The FACTI Panel should encourage Member States to commit to ensuring that anti-corruption bodies – those mandated to work on the prevention of corruption as well as those specialised in investigating and combating 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.¹³

More broadly, in line with SDG 16.6 (“develop effective, accountable and transparent institutions at all levels”), the FACTI Panel should call on Member States to 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.

2.12 Political Financing

To strengthen public trust in government, electoral campaigns and political parties, the FACTI Panel should encourage Member States to 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 2019.¹⁴

2.13 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)), the FACTI Panel should urge Member States to 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

¹³ 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.

¹⁴ 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.

cases of the “revolving door” – the movement of individuals between public office and private-sector jobs in the same area (in either direction).

Cluster 3: Cooperation and settling disputes

3.1 Settlements

The FACTI Panel should call on all Member States to 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).

3.2 Remedies for Corruption

The FACTI Panel should encourage Member States to 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, the FACTI Panel should call on UN Member States to advance efforts to identify and compensate victims in corruption cases, including by developing guidelines as well as building on and promoting good practice examples.

3.3 Grand Corruption

The FACTI Panel should encourage all Member States to explicitly recognise grand corruption as a threat to the 2030 Agenda for Sustainable Development and should initiate discussions on a definition of grand corruption.¹⁵ It is clear that new and stronger mechanisms for international

¹⁵ Transparency International is currently working on a new legal definition of grand corruption, which focuses on three main points: 1) it is a scheme with a systematic or well-organised plan of action; 2) it involves high-level public officials; 3) it causes serious harm, which can take the form of large-scale misappropriation of public resources or gross violations of human rights. For more details, see Transparency International’s separate submission to the UNGASS:

<https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TransparencyInternational.pdf>

cooperation are needed to successfully investigate and prosecute grand corruption cases. The FACTI Panel could suggest options for new international infrastructure to do so, contributing to discussions taking place in the context of the UNCAC and the preparations of the UNGASS against corruption.

Furthermore, the FACTI Panel should urge each Member State to take effective action against the serious crime of grand corruption and to encourage the exercise of extraterritorial jurisdiction for the prosecution of the same on a national, regional and international level, in line with UNCAC Article 16.2.

Relatedly, the FACTI Panel should call on Member States 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 from accountability for corruption offences or to provide safe havens for their ill-gotten gains.

3.4 Strengthening anti-corruption peer review mechanisms

Effective peer-review mechanisms of commitments States have made to promote anti-corruption, integrity, transparency and accountability, as well as in terms of international cooperation, including through the UNCAC, are crucial to advance the fight against corruption.

First, it is crucial to ensure that civil society can contribute to review processes. It is not possible to tackle corruption without a well-informed and engaged civil society. Its contributions to the implementation and monitoring of the UNCAC review process are crucial, providing valuable expertise and experience, as well as a different perspective from that of public officials. Civil society participation can also help underscore the public interest in ensuring the right outcomes and help raise awareness about the processes underway.¹⁶

Second, processes need to be not only inclusive, but also transparent. In the context of the UNCAC review process, States Parties can decide to keep their self-assessments as well as the full country report secret – only a short executive summary has to be published.

Third, an effective review process needs to include a mandatory follow-up on recommendations made in previous review rounds. This is currently not the case with the UNCAC implementation review.

Fourth, peer review mechanisms need to be adequately resourced in order to ensure swift progress, avoid delays and to ensure high-quality reviews.

¹⁶ See: Transparency International (2017): Transparency and Participation – An Evaluation of Anti-Corruption Review Mechanisms, https://www.transparency.org/whatwedo/publication/transparency_participation_an_evaluation_anti_corruption_review_mechanisms.

In the context of the UNCAC review process, numerous countries have voluntarily committed to higher levels of transparency and civil society inclusion: 24 countries have signed the UNCAC Coalition's Transparency Pledge which contains six transparency principles.¹⁷ This includes publishing up-to-date information on the review process, as well as the self-assessment checklist and full country report in addition to the executive summary. Furthermore, it requires the active involvement of civil society in the review process through briefings and public debates, and publicly supporting participation of civil society observers in the UNCAC subsidiary bodies.

One effective approach to increase the impact of review processes are multi-stakeholder models that bring together States, NGOs, academia and industry to co-develop action plans to fight corruption, vastly expanding stakeholder engagement and support. This model is already being effectively used by the Extractive Industries Transparency Initiative (EITI), the Construction Transparency Initiative (CoST), the Open Government Partnership (OGP), and many others in over 100 countries collectively around the world.

Cross-cutting Issues

4.1 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,¹⁸ the link between gender inequality and corruption is neither specifically addressed in the UNCAC, nor mainstreamed in all anti-corruption discussions, policies and practices. In this regard, it is of utmost importance that the FACTI Panel and Member States acknowledge gendered forms of corruption, and in particular, recognise that corruption can take the form of sextortion.¹⁹

The FACTI Panel should urge Member States to ensure that sextortion is acknowledged as a form of bribery, and that it is criminalised to the same extent as similar acts of corruption involving financial favours under national laws in line with UNCAC Articles 15.2, 16.2, 18 and 21. The FACTI Panel should also encourage Member States to produce gender-disaggregated data on corruption offences and include sextortion as a specific form of bribery in surveys to allow for better estimations of the frequency and amount of gendered forms of corruption.

Furthermore, the FACTI Panel should emphasise the need for a common definition of sextortion and encourage Member States to develop standards and methodologies about gender forms of corruption in line with the suggestions made in UNCAC Article 61.2. Furthermore, and linked to

¹⁷ UNCAC Coalition: Transparency Pledge: <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

¹⁸ 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.

¹⁹ The term sextortion describes the abuse of power to obtain a sexual benefit or advantage, and was coined by the International Association of Women Judges (IAWJ) in 2008.

the points mentioned under whistleblower protection, the FACTI Panel should highlight the importance of creating safe and gender-sensitive reporting mechanisms for women and other vulnerable persons, ensuring confidentiality, privacy and psychological support. Moreover, the Panel should encourage Member States to provide whistleblower or other protection laws for those who report sextortion in line with UNCAC Articles 32 and 33.

4.2 Climate and Environment

The FACTI Panel should highlight 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.

The FACTI Panel should encourage all Member States to take 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, the FACTI Panel should call on Member States to increase and 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) and the UNCAC. Furthermore, the FACTI Panel should urge Member States to 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 (See: UNCAC Articles 23 and 60).²⁰

²⁰ 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.

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