

22 August 2024

English only

Implementation Review Group

First resumed fifteenth session

Vienna, 28 August–6 September 2024

Statement submitted by Transparency International, a non-governmental organization in consultative status with the Economic and Social Council*

The following document is being circulated in accordance with paragraph 1 (i) of resolution 4/6 of the Conference of the States Parties to the United Nations Convention against Corruption and rule 17, paragraph 3 (b), of the rules of procedure for the Conference.

* The present document is processed in the form in which it was received.



Improving civil society participation in UNCAC processes

Transparency International Submission to the 15th Session of
the UNCAC Implementation Review Group

This written submission focuses on civil society participation in UNCAC processes. It offers recommendations pertinent to discussions in the Working Group on Prevention on participation of society in preventing and fighting corruption; inclusive decision-making processes; and the role of non-governmental stakeholders, journalists and the media. Its recommendations are also relevant to current discussions in the Implementation Review Group (IRG) on the next phase of the Mechanism for the Review of Implementation (IRM) of the UNCAC.

Human rights standards on participation of civil society at the multilateral level

The preamble and Article 71 of the UN Charter acknowledge the contribution of civil society to the work of the UN. In addition, international human rights legal frameworks require that the rights to participation, freedom of association and access to information be guaranteed at the multilateral level.

The right to participation is codified in numerous international instruments, including Article 25 of the International Covenant on Civil and Political Rights (ICCPR), on the right to take part in the conduct of public affairs. As affirmed by the UN Human Rights Committee, this right also applies at the international level.¹

In a landmark 2014 report on freedom of association in the context of multilateral institutions, the UN Special Rapporteur on the right to freedom of peaceful assembly and of association called on multilateral organisations to adopt policies recognising that participation at the multilateral level is an inherent component of the right to freedom of association.² The report states:

“Such a policy should grant civil society:

- (i) Full and effective participation in all activities (including planning, agenda setting, decision-making and policymaking);*
- (ii) Access to all meetings, processes and bodies (including through the final stages of decision-making) at all levels;*
- (iii) Speaking rights in all meetings, as a rule, with the same opportunities as Governments and private sector entities to express views and opinions;*
- (iv) The right to submit documents equivalent to Member States;...”³*

Successive resolutions of the UN Human Rights Council (HRC) on ensuring a safe and enabling environment for civil society have reaffirmed the essential role of civil society in international

¹ General Comment No. 25, CCPR/C/21/Rev.1/Add.7 para 5 (1996)

<https://digitallibrary.un.org/record/221930?ln=en&v=pdf>

² A/69/365 (2014) <https://documents.un.org/doc/undoc/gen/n14/523/22/pdf/n1452322.pdf>

³ Ibid., para 87.

organisations.⁴ HRC resolutions have also called on all relevant United Nations bodies to review their frameworks for engagement with civil society in order to support improved civil society engagement with international organisations.⁵

In order to realise the right to participation, the right to access to information is essential. The right to access to information is a human right enshrined in the ICCRP Article 19, which also applies at the international level.⁶ As the UN Special Rapporteur on the right to freedom of expression stated in a 2017 report to the UN General Assembly, “members of the public can only seriously engage with the critical issues pursued by intergovernmental organizations when they have access to information about them.”⁷

Restrictions on participation of civil society in the UNCAC CoSP and its subsidiary bodies

UNCAC Article 13 calls for national measures to promote the participation of society, including non-governmental organisations, in anticorruption efforts. This is part of the broader right to participation, described above, which applies at the international level to UNCAC processes. However, civil society groups face significant barriers to the exercise of these rights in UNCAC bodies.⁸

One barrier is to participation of non-ECOSOC civil society organisations (CSOs) in the UNCAC Conference of States Parties (CoSP). States Parties can object to their applications to attend the CoSP without providing any valid reason. These objections are only addressed at the opening session of the CoSP and it will generally be impossible for a representative of an affected CSO to travel to the CoSP, for financial and potentially visa reasons. The process thus results in the arbitrary exclusion of CSOs.

Further, all CSOs are currently excluded from meetings of UNCAC subsidiary bodies, including the IRG the Working Group on Asset Recovery and the Working Group on Prevention. This is despite the fact that Rule 17 of the CoSP Rules of Procedure, together with Rule 2, foresees their participation as observers in such subsidiary bodies.⁹ Moreover, prior to mid-2010, there was an uncontested practice of allowing CSO observers to participate in UNCAC Working Group meetings.

At the first IRG session in 2010, a few States Parties objected to the participation of CSO observers in the meeting, while others argued in favour.¹⁰ As a result, the IRG sought and received the views

⁴ See for example A/HRC/RES/24/21 (2013)

<https://documents.un.org/doc/undoc/gen/g13/179/57/pdf/g1317957.pdf> and A/HRC/53/RES/13) (2023)
<https://documents.un.org/doc/undoc/gen/g23/150/35/pdf/g2315035.pdf>

⁵ A/HRC/RES/38/12 (2018), OP18 <https://documents.un.org/doc/undoc/gen/g18/213/97/pdf/g1821397.pdf>

⁶ A/72/350 (2017) <https://documents.un.org/doc/undoc/gen/n17/262/72/pdf/n1726272.pdf>

⁷ Ibid., para 19.

⁸ A/HRC/44/25 (2020), para 24 <https://documents.un.org/doc/undoc/gen/g20/096/43/pdf/g2009643.pdf>

⁹ Rule 17 allows NGO representatives to participate as observers in CoSP plenary meetings; to make statements and written submissions; and to receive CoSP documents. Under Rule 2, Rule 17 applies to any mechanism or body established by the CoSP pursuant to UNCAC Article 63, unless the CoSP decides otherwise.

¹⁰ See the arguments laid out in the IRG’s request for a legal opinion from the Office of the Legal Counsel, pp 2-3, paras 3 -5 <https://documents.un.org/doc/undoc/gen/v10/560/31/pdf/v1056031.pdf>

of the UN Office of the Legal Counsel in the matter.¹¹ The Office recommended that the IRG should either follow the relevant Rules of Procedure or should request the CoSP to take a decision on them.¹² Thereafter, at the 4th UNCAC CoSP session in 2011, the CoSP adopted Resolution 4/6 relating to the IRG, which did not address the Rules of Procedure, but provided for a briefing for CSOs on the margins of IRG sessions, as a temporary, confidence-building measure.¹³ Since then, despite the Legal Counsel's advice, CSOs have not been permitted to participate as observers either in the IRG or in the Working Groups.

The UN Special Rapporteur on the rights to peaceful assembly and association criticised the exclusion of civil society from UNCAC subsidiary bodies in his 2014 report.¹⁴ More recently, the UN Special Rapporteur on the situation of human rights defenders, in a 2021 report, noted these restrictions and recommended i.a. that "CSOs and other stakeholders should also be allowed to participate as observers in the subsidiary bodies of the [UNCAC CoSP], including the Implementation Review Group, which oversees the review process..."¹⁵

Civil society representatives are also excluded from participating in informal negotiations of draft UNCAC resolutions, in contrast to the practice in the UN HRC in Geneva described below.

The barriers to CSO participation in UNCAC bodies are inconsistent with international human rights standards and with UNCAC Article 13. Not only are CSO representatives unable to listen to the discussions in those bodies but they also cannot contribute their anticorruption experience to the discussions.

Civil society participation hindered in the UNCAC review process

In addition, civil society participation in the UNCAC country review process is hindered by multiple barriers. This starts with limited access to information about the review cycle, the timelines of reviews and how to reach national contact points. Further, consent of the country reviewed is required for reviewers to meet with civil society representatives and to consider their written reports. Additionally, States Parties' self-assessments and full country review reports cannot be published without their consent, although many States Parties do give that consent.

Good practices in the UN Human Rights Council

Other UN bodies, in particular the UN HRC and its peer-review mechanism, the Universal Periodic Review (UPR), offer good practices in terms of inclusion of civil society and access to information.

¹¹ See the UN Office of the Legal Counsel's response to the IRG's request for a legal opinion, pp 5 -7, especially paras 11 -16 <https://documents.un.org/doc/undoc/gen/v10/560/31/pdf/v1056031.pdf>

¹² Ibid para 16

¹³ UNCAC Resolution 4/6 (2011) on non-governmental organisations and the UNCAC review mechanism provides that as a confidence-building measure, the secretariat should hold briefings for NGOs on the margins of the IRG. <https://www.unodc.org/corruption/en/cosp/conference/session4-resolutions.html>

¹⁴ A/69/365, paras 22 and 41.

¹⁵ A/HRC/49/49* page 20, Recommendation (i)

<https://documents.un.org/doc/undoc/gen/g21/396/47/pdf/g2139647.pdf?OpenElement>

Integration of these good practices into the IRM would strengthen both civil society participation and the IRM. Particularly noteworthy is the following about the UPR: (a) civil society can participate as observers in all its meetings; (b) civil society can participate and make statements in informal consultations on draft resolutions; (c) the calendar of reviews for the entire 4-year UPR cycle is published at the beginning of each cycle, giving certainty about when each state will be reviewed; (d) in addition to information from the reviewed state, the review also considers information from UN sources and from other stakeholders, including civil society; and (e) civil society can participate as observers in the HRC meeting where the outcome of the UPR is adopted.

Recommendations

Transparency International urges the UNCAC CoSP to ensure that international human rights standards for participation and transparency are implemented in all UNCAC bodies and processes. We call on the CoSP to:

1. **Improve CSO participation in the UNCAC CoSP and its subsidiary bodies:**
 - a. Implement the recommendations on participation in multilateral organisations made by the UN Special Rapporteur on the rights to peaceful assembly and association. Also implement the right to access to information, as called for by the UN Special Rapporteur on the right to freedom of expression.
 - b. In particular, permit CSO representatives to participate as observers in all UNCAC subsidiary bodies, as well as in informal consultations on draft resolutions, in line with recommendations from UN human rights rapporteurs and UN HRC practice;
 - c. Reform the objections procedure for non-ECOSOC-accredited CSOs to prevent its abuse and ensure a timely decision in advance of the CoSP.
2. **Ensure transparency and inclusion in IRM processes and national reviews**
 - a. Publish a regularly updated calendar of IRM reviews, information on national contact points, self-assessments and full reports from the reviews. Also, publicise widely at the national level that the review is taking place and the timing of country visits, to encourage civil society participation;
 - b. Allow civil society groups to provide information to reviewers, in writing and orally, without requiring consent of the state under review;
 - c. Include in review reports information about civil society participation in the reviews and, thereafter, report on their participation in implementation of IRM recommendations.

19 August 2024