



**Conference of the States Parties
to the United Nations
Convention against Corruption**

Distr.: General
13 November 2013

English only

Fifth session

Panama City, 25-29 November 2013

Item 7 of the provisional agenda*

Other matters

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

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* CAC/COSP/2013/1.

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**Nepal – Civil Society Report
By Transparency International Nepal
An input to the UNCAC Implementation Review Mechanism:
Gap Analysis of UNCAC and its Implementation**

– Executive Summary –

This is the executive summary of Transparency International Nepal's *Gap Analysis of United Nations Convention Against Corruption (UNCAC) and its Implementation in Nepal*¹ of December 2012. The analysis covers all of the UNCAC articles and identifies gaps between ratification of UNCAC and its implementation.

International cooperation and coordination play a vital role in combating and controlling corruption. Considering this fact, the international community, with painstaking effort, concluded the UNCAC in 2003. The convention has been signed by more than 150 countries,² including Nepal, which ratified the convention on 23 February 2011. As rampant corruption has posed a serious threat to national wealth as well as to the whole edifice of democracy, the convention can be regarded as an expression of the global effort against corruption.

The fundamental purposes of the UNCAC are: to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and to promote integrity, accountability and proper management of public affairs and public property. For this purpose, the convention includes many detailed provisions relating to preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.

The convention has also assigned state parties to formulate and implement the laws to meet its prescribed requirements. This study found that in Nepal many challenges have been faced in the implementation of the convention, including in the formulation and implementation of new laws in line with the convention, raising awareness among the people, and information and evidence exchange with other state parties. Other challenging areas have been policy formulation, legal reform, development of infrastructure, building expertise and knowledge, ensuring complex coordination among the relevant national bodies, and meeting the extended provisions of the convention. Political instability has added to the difficulties faced in implementing the convention.

The absence of transparency in public sector decision-making contributes to corruption both directly and indirectly. There is lack of an integrated code of conduct for public officials and for political leaders including elected and appointed authorities. Nepalese laws have covered many issues relating to prevention and criminalization of corruption; however, other issues are missing, including bribery

¹ The analysis is available at <http://www.tinepal.org/?p=677>. Its authors are Milan Shrestha, Advocate (Lead Researcher) and Rukamane Maharjan, Advocate (Associate Researcher). The full report will be used for continuing the dialogue and engagement with stakeholders, including the government.

² As on the date of finalizing the gap analysis in December 2012.

of foreign public officials and officials of public international organizations, and corruption in the private sector. Similarly, Nepal lacks effective laws to control embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions and illicit enrichment, while the prosecution process is very complex and lengthy. No effective laws have been made to protect witnesses, experts, informants and victims, and there are no provisions for compensating them. There are no laws available on transfer of sentenced persons, criminal proceedings or mutual legal assistance.

This study found that there is no clear legal provision for the freezing and seizing of assets earned through corruption once they have left the country. Many international instruments state that it is a duty of the state party to establish a financial intelligence unit to combat asset laundering and investment in corruption and terrorism. In this context, this study has proposed the following recommendations to implement provisions of the convention:

- Nepal should formulate laws relating to anti-corruption for both the private and public sector, including: protection of witness, informants, victims and experts; mutual legal assistance; civil, criminal and administrative accountability of legal persons; assets recovery; political party accountability; bribery of foreign public officials and officials of public international organizations; joint investigation and implementation of the verdict and order issued by foreign courts and authorities.
- Existing anti-corruption laws including the Prevention of Corruption Act and Extradition Act, regulations on financial institutions, insurance, companies and laws related to financial governance and procedures, local bodies, elections, government officials and personnel should be amended in line with the convention.
- There should be relatively severe punishments and sanctions to control corruption, including relatively long jail sentences and confiscation of assets and properties for persons involved in corruption directly or indirectly.
- Efforts taken by institutional bodies such as the Financial Information Unit, Department of Money Laundering Investigation, and the Commission for Investigation of Abuse of Authorities should be effective, and to this end these institutions should be well equipped both legally and logistically to combat corruption. The Financial Information Unit should be substituted by a financial intelligence unit with concrete powers in line with the provision of the convention. Capacity building should be a priority of the government. Official posts in anti-corruption bodies should not be left vacant. Clear plans and policies should be formulated and regularly reviewed. The state should encourage civil society to participate in training and awareness-raising programmes.
- To make political parties accountable and hence discourage corruption, the necessary laws on political parties should be enacted and the prevailing laws should be enforced effectively.
- The National Vigilance Centre, Judicial Council, the Office of the Attorney General, and the Special Court should also be well equipped with the necessary authority and resources to tackle corruption effectively.

Additionally, a code of conduct for civil servants and elected persons should be formulated and implemented in line with the International Code of Conduct for Public Officials and the UNCAC.

- There should be a proper body to reconcile government's efforts and public participation through public-private partnership. Some promotional activities related to anti-corruption should be planned and implemented nationwide to make public institutions accountable. At the government level, a national integrity strategy should be developed and implemented.
- Nepal has yet to criminalize certain provisions of the UNCAC, such as bribery of foreign public officials and officials of public international organizations, and bribery in the private sector; these should be criminalized as soon as possible to combat corruption.