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This guide focuses on the two principal anti-corruption conventions in the Americas, the OAS and UN Conventions. It explains their uses; describes why and how to promote national ratification, implementation and intergovernmental monitoring; and discusses ways to carry out civil society monitoring. It also describes briefly the other conventions having application to corruption issues in the Americas, notably the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions and the UN Convention on Transnational Organized Crime.

The guide aims to make anti-corruption conventions accessible to a wide range of civil society organisations in the Americas, including not only those working in the anti-corruption field but also those working on human rights, labour rights, environmental issues, access to information, debt relief and other social issues. It explains the benefits of the conventions and offers practical tools for organisations interested in ensuring that the conventions have a real impact.

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ANTI-CORRUPTION CONVENTIONS IN THE AMERICAS

WHAT CIVIL SOCIETY CAN DO TO MAKE THEM WORK



A CIVIL SOCIETY ADVOCACY GUIDE
BY TRANSPARENCY INTERNATIONAL

TRANSPARENCY INTERNATIONAL

ANTI-CORRUPTION CONVENTIONS IN THE AMERICAS: WHAT CIVIL SOCIETY CAN DO TO MAKE THEM WORK

A CIVIL SOCIETY ADVOCACY GUIDE

TRANSPARENCY INTERNATIONAL

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ABOUT THIS GUIDE

Transparency International (TI), is the leading global civil society organisation devoted to the fight against corruption, with close to 90 national chapters around the world. Convinced of the importance of binding international frameworks for addressing the corruption problem, TI has been actively engaged since its founding in 1993 in promoting the development, ratification, implementation and monitoring of international anti-corruption conventions and other international instruments. In particular, TI's national chapters in the Americas have played an active role in advancing the two main anti-corruption conventions in the region:

- the 1996 OAS Inter-American Convention Against Corruption (OAS Convention) and
- the 2003 United Nations Convention against Corruption (UN Convention).

Corruption has been undermining countries in the Americas economically, politically and socially for decades and the anti-corruption conventions that have been introduced in recent years offer a real opportunity for change. TI's experience in the Americas is evidence that civil society organisations have a key role to play in promoting anti-corruption conventions in all phases, from negotiation to follow-up reviews. Civil society groups can press their governments to give priority to convention ratification and implementation by undertaking research, analysis and advocacy work. They can help translate the legal terminology of conventions into language non-lawyers can understand and can communicate to the public the usefulness of these conventions for addressing the corruption problem. They can keep track of their government's performance and make it public, adding an important independent perspective to the government's own assessment of its progress. Where they find deficiencies, they can campaign for improvement, in coalition with supporters in government and the private sector. The more groups engaged in these activities, the stronger and more effective anti-corruption conventions and anti-corruption efforts in general are likely to be.

"We recognise that corruption and impunity weaken public and private institutions, erode social values, undermine the rule of law, and distort economies and the allocation of resources for development."
Declaration of Nuevo León, Special Summit of the Americas (January 2004)

While there already exists in the Americas a network of civil society organisations actively engaged in promoting conventions, TI believes that many more would be interested in joining in these efforts if there were wider understanding of these international instruments and their benefits. By clarifying how they can be used, this guide aims to make the conventions more accessible, thereby helping to mobilise greater support. A wide range of groups are targeted by the guide. It is intended to be useful to groups working specifically in the anti-corruption field, as well as to those working on human rights, labour rights, environmental issues, access to information, debt relief and other social issues. These organisations can draw on provisions in the anti-corruption conventions as a basis for addressing corruption issues relevant to their work and as a basis for developing common positions with other interested stakeholders.

This guide focuses on the two principal treaties in the Americas, the OAS and UN Conventions: it explains their uses; describes why and how to promote national ratification, implementation and intergovernmental monitoring; and discusses ways to carry out civil society monitoring. It also describes briefly the other conventions having application to corruption issues in the Americas, notably:

- the 1997 OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) and
- the 2000 UN Convention against Transnational Organized Crime (UNTOC Convention).

It does not cover the Council of Europe Criminal Law Convention on Corruption and Protocol or the Council of Europe Civil Law Convention on Corruption, which are relevant in the Americas only for Canada, Mexico and the United States.

We hope that you and your organisation will find the guide useful. We aim to revise and update it on a periodic basis and would appreciate your feedback and suggestions. In the next edition of the guide, we hope to include information about how your organisation is using anti-corruption conventions to promote change, and we encourage you to send us your stories.
Please send your comments to tilac@transparency.org.

I. CORRUPTION

WHAT IT IS AND WHY IT MATTERS

"Why does the OAS consider that the fight against corruption is so important? ... It is evident that corruption is a terrible cancer that undermines the legitimacy of institutions and the Rule of Law, and on this matter there is still a long road ahead to travel in the Americas...[There are also] enormous social costs caused by this problem. On this subject, many studies have shown that the principal victims of corruption are the poor. That is why, at the OAS, we consider the fight against corruption to be fundamental to success in combating poverty as well as in the establishment of Social Justice. The third reason has to do with the dramatic negative effects of corruption on trade, economic growth and development. Numerous studies have confirmed that as the levels of corruption escalate in a country, the level of investment and thus the rate of economic growth declines."

Former OAS Secretary General Cesar Gaviria, in a statement in 2003



WHAT IS CORRUPTION?

Corruption is defined by Transparency International as "the abuse of entrusted power for private gain".[1] Similar definitions are used by international organisations such as the World Bank and UNDP. The abuse may be perpetrated by a person with decision-making power in the public or private sectors, may be initiated by that person or induced by a person attempting to influence the decision-making process. (It should be noted that no definition of corruption is provided in the conventions under discussion in this guide; the conventions focus instead on defining corruption offences. Nor is a legal definition of corruption needed to establish an effective national legal framework and system for preventing and punishing corruption.)

Corruption is a manifestation of institutional weaknesses, poor ethical standards, skewed incentives and insufficient enforcement. Corrupt behaviour creates illicit benefits for a person or small group by circumventing rules designed to ensure fairness and efficiency. It produces unfair, inefficient and wasteful outcomes. The illicit rewards for a small rule-breaking group come at the expense of the community-at-large. There are also individual losers, such as those forced into making extortion payments, those who are barred from entitlements because they are unable to make such payments and those who lose bidding competitions to supply goods or services due to bribes paid by less ethical peers.

Corruption includes a wide range of offences, from the high-level embezzlement of public funds to the petty corruption of traffic police or authorities selling licences. It may take the form of bribery of public sector officials, high or low, domestic or foreign. Alternatively, it may involve bribes paid to private sector employees. Corruption may also take the form of embezzlement, misappropriation or other diversion of property by a public official or by a private sector employee. In addition to these offences, corruption is also understood to cover nepotism and favouritism in public sector recruitment and promotion, although these are not legal concepts and are not offences referred to in the conventions. There are further offences relating directly or indirectly to corruption, including laundering of the proceeds of corruption – a key part of the corruption equation – as well as aiding corruption and obstructing justice.

WHY DOES CORRUPTION MATTER?

Corruption harms and undermines societies in many ways. As stated in the preamble to the UN Convention, corruption poses a serious threat "to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law." When corruption is widespread in a country, the adverse effects are felt in different ways by many in society, from businesspeople to school teachers to hospital patients.

CORRUPTION CAUSES DAMAGE IN MANY WAYS

Corruption causes poverty and creates barriers to overcoming it

Corruption affects poor people the most as they are the most vulnerable. These include women, children, the elderly and those wrestling with chronic disease. Without resources at their disposal they simply have fewer options when confronting barriers to accessing basic public services and other resources. They also tend to be most affected by the misallocation of public resources and the resulting inhibited economic development. Programmes to combat poverty are also adversely affected by corruption and are thus made ineffective.

Corruption violates human rights

Corruption violates political and civil rights by distorting or rendering useless political institutions and processes and undermining the functioning of the judiciary and law enforcement authorities.

Corruption also violates economic and social rights by denying equitable access to public services such as health and education, placing obstacles in the way of earning a livelihood in the public and private sectors and, as mentioned above, by distorting decision-making processes regarding the allocation of resources.

Corruption undermines democracy

In countries with a system of elected representatives entrusted with decision-making power, corruption enables wealthy individuals or entities to wield disproportionate influence in national, provincial and local politics. This can be the result of buying citizens' votes in elections, of offering favours to influence political parties or of buying the votes of parliamentary representatives on matters such as taxation, distribution of public resources, regulation of business, or even foreign policy.

Corruption is a barrier to economic development

Corruption acts as a barrier to development by distorting public spending, undermining efficiency and discouraging investment and growth. It thwarts efforts by the private sector to take advantage of business and growth opportunities and undermines economic competition.

Corruption is a cause of environmental damage

Corruption facilitates abuse of the environment and misuse of natural resources. It denies people the right to clean and non-toxic surroundings as well as the public dividends from natural resources.

Corruption is a tool of organised crime

Corruption is a means for organised crime to facilitate the drugs and arms trade as well as human and organ trafficking.

CORRUPTION IS A CROSS-BORDER PROBLEM

In today's globalised world, states are increasingly interconnected through trade, investment, financial transactions and communications. This means that corruption in one country is a matter of concern in other countries because the harm and injustice becomes better known elsewhere; because it interferes with trade and investment opportunities in the country affected; because it may lead to misuse of international development assistance; and because corrupt networks based in one country operate abroad, bringing corruption to other countries – the potential risk is all the greater where a state weakened by corruption becomes a haven for organised crime.

In the Americas, as in other regions, the corruption problem has a variety of cross-border components: Bribe payments are often arranged and made across fronteirs. The proceeds of corruption are concealed by laundering funds across borders. (This may be done via deposits in foreign banks, through cross-border acquisitions or by transferring funds to anonymous shell companies or trusts in haven jurisdictions.) Individuals involved in corruption can often escape law enforcement efforts by leaving the country where investigations or prosecutions are taking place or where a court judgement has been handed down.

These features mean that corruption must be addressed on an international basis and that cross-border cooperation is essential for the prevention, detection and prosecution of corruption. Holding those suspected of corruption accountable, however, is often hampered by the complexities of such cooperation. Governments may be prevented from investigating or prosecuting the corrupt when evidence, witnesses or corrupt persons are located abroad. If foreign governments do not cooperate, enforcement of criminal law is inhibited. Similarly, when the proceeds of corruption are located abroad, it is difficult to recover funds or property without the assistance of foreign institutions.

NEED FOR INTERNATIONAL COOPERATION: EXAMPLES IN THE AMERICAS

Costa Rica: The French telecommunications company Alcatel has been linked to bribery charges in Costa Rica, Taiwan and Africa. In Costa Rica, Alcatel is alleged to have made payments to high-ranking politicians (including former presidents José Maria Figueres and Miguel Ángel Rodríguez, and current president Abel Pacheco) while it was negotiating, *inter alia*, a US$ 149 million cellular phone contract in 2001 and a US$ 109 million fixed telephone line contract in 2002. Costa Rican authorities allege that Alcatel paid a total of US$ 4.4 million to various Costa Rican officials, resulting in a near monopoly for the company on telecommunications services in the country. To investigate this case fully, Costa Rican and French authorities will very likely require mutual legal assistance.

Peru: In 2000, investigators in Peru uncovered evidence leading them to believe that President Alberto Fujimori and his adviser Vladimiro Montesinos Torres had created a criminal organisation comprising hundreds of individuals. This network allegedly established itself in the highest spheres of power and was allegedly responsible for unprecedented looting of Peruvian state resources, acts of corruption (including arms trafficking and the concealment of drug trafficking), assassinations and serious human rights violations. At present, 1,400 alleged members of the criminal organisation led by Fujimori and Montesinos are under investigation. Former President Fujimori faces at least fourteen separate legal proceedings.

One of the cross-border aspects of the case involves money laundering and asset recovery. Stolen Peruvian funds in the amount of US$ 210 million were frozen in countries around the world, of which about US$170 million has already been repatriated. If the seized properties (60 properties) are also considered, there is a total amount of US$ 230 million recovered. The success in identifying and seizing these illicit assets has been tied to the level of cooperation the Peruvian investigators received from other jurisdictions, and also because of the "ley de colaboración eficaz" (effective collaboration law) created during the transition government.

Another cross-border aspect of the case involves the flight of individuals suspected of corruption. Fujimori fled to Japan in November 2000 in the wake of the allegations of corruption and resigned the presidency via fax. The Peruvian Congress lifted the immunity of Fujimori, clearing the way for embezzlement charges and putting pressure on Japan to extradite him. The government of Japan, however, refused to extradite the former leader on the grounds that he is a Japanese national. Montesinos, on the other hand, fled to Panama but was denied political asylum there and returned voluntarily to Peru. Transparency International had put pressure on Panama arguing that providing a safe haven for the corrupt is a clear breach of the OAS Convention.

HOW CAN CORRUPTION BE COUNTERED?

To address the corruption problem in individual countries a comprehensive and global approach is required.[2] National and international systems of transparency and accountability must be fortified.

This includes introduction or strengthening of preventive and punitive measures. The preventive measures are intended to create conditions that promote good, honest, transparent and efficient public management, as well as high standards in the private sector. The punitive measures punish corrupt actions via judicial or administrative processes.

Countering corruption also requires enhanced international cooperation. Individual governments can make progress on the domestic front by introducing preventive and punitive measures but, given the international aspects of corruption, they will also need to cooperate with other governments in order to achieve lasting success. This may take the form of mutual legal assistance. Cross-border cooperation in law enforcement is often the key to successful prevention and prosecution of corruption cases.

Development cooperation is also a necessity as some countries will neither be able to address domestic corruption nor help other countries in cross-border law enforcement without technical and financial assistance.

Anti-corruption conventions provide a framework for strengthening preventive and punitive measures. They also address the need for international legal cooperation and provide frameworks for technical assistance.



1 Sometimes the definition is limited to "the abuse of public power" but this fails to capture corruption within the private sector, sometimes called private-to-private corruption.

2 For a detailed example, see the TI Source Book, Confronting Corruption: The Elements of a National Integrity System, by Jeremy Pope, Transparency International (3rd ed. 2000).

II.

ANTI-CORRUPTION CONVENTIONS IN THE AMERICAS

WHAT THEY ARE, AND WHY THEY ARE USEFUL

If fully enforced, this new instrument [the UN Convention] can make a real difference to the quality of life of millions of people around the world. And by removing one of the biggest obstacles to development, it can help us achieve the Millennium Development Goals.

United Nations Secretary-General Kofi Annan in his statement on the adoption by the General Assembly in 2003 of the United Nations Convention against Corruption



Anti-corruption conventions in the Americas provide an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem. They also provide a basis for collaborating with other countries in doing so. The conventions in question include the OAS and UN Conventions, as well as the OECD and the UNTOC Conventions.

These conventions are the manifestations of an international consensus that emerged in the early 1990s identifying corruption as an important problem requiring internationally-agreed solutions.

The end of the Cold War removed, at least for a period, the national security rationale for tolerating and supporting corrupt regimes around the world. At the same time, the post-Cold War agenda of democratisation, accountability and transparency focused the attention of the global community, including major international financial and development institutions, on the corruption problem.

Moreover, there was concern in the international community in the 1990's that the problem was growing. New corruption opportunities had resulted from worldwide initiatives to privatise and deregulate. Some researchers also claim that reductions in trade barriers in the 1980's and 90's produced not only increased market access but also increased competition among multinationals and – as a by-product – increased corruption in a number of important sectors. Additional impetus for the international anti-corruption agenda derived from the fact that multinational companies based in the United States had long considered themselves disadvantaged in global markets due to the 1977 Foreign Corrupt Practices Act, which imposed criminal penalties for engaging in foreign bribery. The US government consequently was a leading sponsor of efforts to find a solution through an international regime to limit cross-border bribery.

Of the series of international conventions developed in the last decade, the OAS Convention was the first to be adopted, in 1996, in the wake of numerous corruption scandals across the Americas. The Convention resulted from efforts in connection with the first Summit of the Americas and the OAS to address the problem at the regional level with a convention aimed at combating corruption. The UN Convention, adopted in late 2003, is the most recent and possibly the last anti-corruption convention to be adopted. Building on regional and OECD initiatives, it offers the global and comprehensive approach needed.

WHAT ARE ANTI-CORRUPTION CONVENTIONS?

Conventions are binding written international agreements between groups of states that establish commonly agreed rules and standards and express a high level of shared political commitment. Their adoption by assemblies of governments such as the UN General Assembly or regional assemblies establishes international consensus on the matters covered. This consensus is further strengthened when the conventions are signed by a significant number of governments in those assemblies. They become binding when a predetermined number of countries ratify them (See discussion below on steps bringing them to life).

Anti-corruption conventions cover standards and requirements in the prevention, detection, investigation, and sanctioning of acts of corruption. Some conventions have a very broad scope; others are narrower and may cover only a limited number of countries or anti-corruption measures.

Some conventions, including the OAS and UN Conventions, contain both mandatory provisions, which are binding on the states that ratify, and non-mandatory or optional provisions which the states may implement, but need not. In general, the optional provisions represent good practice but in some cases there are legal obstacles to their introduction into a country's legal system.

The anti-corruption measures required by conventions must be implemented by legislation, regulations, policies and practices.

HOW ARE THEY USEFUL?

Anti-corruption conventions are especially important in providing a framework for addressing cross-border issues. They facilitate international cooperation in law enforcement by requiring countries to make the same conduct illegal, harmonising the legal and institutional frameworks for law enforcement and establishing cooperative mechanisms. They also establish, to varying degrees, valuable common standards for domestic institutions, policies, processes and practices, which buttress anti-corruption efforts at the national level.

The existence of anti-corruption conventions is evidence of how seriously the international community takes the anti-corruption problem and the need for common solutions. The standards and requirements that these conventions establish for governments carry great weight, given the conventions' binding nature and international backing, and they remain in place while national governments come and go.

Conventions can therefore generate peer (government to government) and public pressure on governments to comply with the standards and requirements laid down. They serve as tools for citizens and civil society organisations to hold their governments accountable on matters of anti-corruption performance. They provide for fora in which governments can meet to discuss corruption issues, align concepts and review anti-corruption efforts, with inputs from non-governmental actors.

WHAT TOPICS DO THE OAS CONVENTION AND UN CONVENTION COVER?

Both the OAS and UN Conventions take a comprehensive approach to combating and preventing corruption. Both include preventive and punitive measures, as well as provision for international cooperation. However, they differ not only in geographical coverage, but also in the scope and detail of their provisions. Further, there are many provisions that are mandatory in the UN Convention which are only non-mandatory in the OAS Convention.

With regard to mandatory and non-mandatory or optional provisions, in the OAS Convention the mandatory provisions are indicated by the words "shall adopt" and the optional provisions include the words "agree to consider" or "may adopt". Some mandatory obligations are qualified by being subject to "the Constitution and the fundamental principles" of the state's legal system. In the UN Convention, there are effectively three degrees of obligation namely: (1) mandatory, using the wording "shall adopt"; (2) required to consider, using the wording "shall consider adopting" or "shall endeavour to"; (3) optional with the wording "may adopt". As in the OAS Convention, some of the mandatory obligations are qualified by being subject to the fundamental principles of the state's legal system.

PREVENTIVE MEASURES

On the subject of preventive measures the UN Convention's provisions are far more extensive and contain more mandatory provisions than those in the OAS Convention. (See also the Box on page 29 on the UN Convention provisions.) Taken together the two Conventions cover the following areas:

- Anti-corruption policies and practices
- Preventive anti-corruption body or bodies
- Public sector ethics and procedures
- Public procurement
- Public sector finance
- Public reporting, access to information, whistleblower protection
- Public education
- Private sector standards, including accounting and auditing standards
- Money laundering

PUNITIVE MEASURES

The two Conventions also provide for punitive measures. As referred to in the introduction, they call for governments to establish or consider establishing certain criminal offences. Again, the measures provided for in the UN Convention are far more extensive than in the OAS Convention. The two conventions both call for adoption of the necessary legislation and other measures to establish as criminal offences under domestic law the acts of corruption identified namely:

- Bribery of national public sector officials
- Bribery of foreign public sector officials
- Bribery of officials of public international organisations (UN only)
- Bribery of private sector decision-makers (UN only, optional provision)
- Illicit enrichment by a public official (optional in both Conventions) – defined in UN Convention as "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income"
- Embezzlement, misappropriation or other diversion of entrusted property by a public official (optional in OAS and mandatory in UN)
- Embezzlement by persons working in private sector entities (UN only, optional provision)
- Trading in influence (UN, optional) – involving bribery of a public official in order to capitalise on his or her influence in a public institution.
- Abuse of functions (UN, optional) – involving bribery of a public official to induce the performance of an unlawful act
- Improper use of classified or confidential information by a public official (OAS, optional)

In addition, associated criminal offences are:

- Laundering the proceeds of corruption – a key part of the corruption equation
- Concealment or continued retention of the proceeds of crime
- Aiding and abetting corruption
- Obstruction of justice

The UN Convention further provides for such matters as:

- Criminal, civil or administrative liability of legal persons
- Long statute of limitations
- Sanctions, immunities, release pending trial, parole
- Suspension or reassignment of public officials
- Disqualifications of persons from holding public office for a period of time
- Freezing, seizure and confiscation of proceeds of corruption offences
- Protection of witnesses, experts, victims, reporting persons
- Compensation for damages
- Specialised bodies or persons for anti-corruption law enforcement

INTERNATIONAL COOPERATION BETWEEN LAW ENFORCEMENT AUTHORITIES

Some of the most important provisions in the Conventions are those on international cooperation. These cover topics such as:

- Extradition
- Mutual legal assistance in investigations, prosecutions and judicial proceedings
- Law enforcement cooperation, including joint investigations and special investigative techniques

OTHER MEASURES

One or both of the Conventions also contain important provisions relating to:

- Asset recovery [3]
- Technical assistance (UN)
- Mechanisms for implementation (UN; for the OAS Convention this is provided for in a separate agreement)

WHAT ARE THE HIGHLIGHTS OF THE OAS CONVENTION?

OAS

KEY INFORMATION

Adopted	29 March 1996
Parties	33 (As of 6 March 2006).
Entry into force	6 March 1997
Open to	Member states of the Organisation of American States (OAS) i.e. 34 states, excluding Cuba, which is an OAS member but has been excluded from participation since 1962. Other states may also apply to adhere

Website links for updated information
www.oas.org/juridico/english/fightcur.html

The Organization of American States (OAS; OEA in the other three official languages) is an international organisation, headquartered in Washington, D.C., USA, the members of which are the 35 independent nations of the Americas.

In 28 articles the OAS Convention establishes what states should do in the areas of prevention, criminalisation, international cooperation and asset recovery and is now being monitored through a peer review Follow-up Mechanism.

THE OBLIGATIONS OF THE PARTIES TO THE CONVENTION FALL INTO THE FOLLOWING CATEGORIES:

Preventive measures

The preventive provisions in Article III require states to consider standards of conduct in the public sector; systems for registering income, assets and liabilities of persons in public functions; systems of efficient, open and equitable hiring and procurement; systems of revenue collection that deter corruption; systems of whistleblower protection; and books and records requirements for publicly held companies. Mechanisms to encourage civil society participation in anti-corruption efforts are also mentioned. These provisions, which are voluntary and sparingly formulated, have been interpreted in the ensuing monitoring process.

Criminalisation

The OAS Convention covers a range of offences including bribery (domestic or foreign), trading in influence, diversion of property, illicit enrichment and concealment of property. Only the provisions on criminalisation of bribery (domestic and foreign) concealment and conspiracy are mandatory.

International cooperation

To further the coordinated action and cooperation needed to address the international dimensions of corruption, the Convention contains special provisions on extradition, and calls for the widest measure of mutual assistance in investigations, prosecution and other measures to facilitate legal proceedings. Such assistance extends to mutual technical cooperation on the prevention, detection and punishment of acts of corruption; and mutual assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds. Further, bank secrecy is excluded as a basis for refusing to provide assistance.

Follow-up Mechanism

The OAS Convention itself does not provide for a monitoring or follow-up mechanism, but such a system was introduced in June 2001 by majority agreement at a Conference of the States Parties in Buenos Aires. The Follow-up Mechanism is designed to promote and review implementation, and to facilitate technical cooperation and information exchange, as well as the harmonisation of legislation. A Committee of Experts was established for technical evaluation of the Convention's implementation. See Chapter VII for more details about the Follow-up Mechanism.

WHAT ARE THE HIGHLIGHTS OF THE UN CONVENTION?

"The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply, in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalisation of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen…"

United Nations Secretary-General Kofi Annan in his statement on the adoption by the General Assembly in 2003 of the United Nations Convention against Corruption

UN

KEY INFORMATION

Adopted	31 October 2003 by the UN General Assembly
Signatories	140 (Opened for signature on 9 December 2003 and closed on 9 December 2005.)
Parties	49 (as of 6 March 2006)
Entry into force	14 December 2005
Open to	All countries and regional economic organisations

Website for updated information
www.unodc.org/unodc/en/crime_convention_corruption.html

In its eight chapters and 71 articles, the UN Convention obliges the States Parties (i.e. countries that have deposited their instrument of ratification) to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, detection and sanctioning of corruption, as well as the cooperation between State Parties on these matters. The UN Convention is unique among anti-corruption conventions not only in its global coverage but also in the extensiveness and detail of its provisions.

The UN Convention was negotiated in seven sessions over a two-year period at the United Nations Office in Vienna by representatives of more than a hundred countries. The secretariat for the negotiations was the United Nations Office on Drugs and Crime (UNODC). Representatives of civil society organisations, including Transparency International, also participated in this process. Following the conclusion of the negotiations in October 2003, the text of the Convention was presented for approval by the General Assembly on 31 October 2003. Once approved, it was opened for signing at a dedicated conference in Merida, Mexico on 9-11 December 2003. International Anti-Corruption Day on 9 December marks the anniversary of this signing conference.

A noteworthy aspect of the UN Convention is that it employs a very broad definition of the term "public official" which includes any person holding a legislative, executive, administrative or judicial office of the state or performing a public function or service. It also covers officials of public international organisations and requires punitive measures for those who bribe them.

THE OBLIGATIONS OF THE PARTIES TO THE CONVENTION FALL INTO THE FOLLOWING CATEGORIES:

Preventive measures

Of all existing anti-corruption conventions, the UN Convention has the most extensive provisions for preventive measures in the public and private sectors. These cover subjects including preventive anti-corruption bodies, public sector ethics, public contracting and public financial management, public reporting and access to information, private sector standards (accounting, auditing, codes) and measures to prevent money laundering. The Convention also requires states to consider measures to enhance transparency in the funding of political candidates and of political parties. For detailed examples of preventive measures, see the Box on preventive measures below at p. 22.

Criminalisation

The UN Convention includes mandatory and optional provisions calling for criminalisation of a wide range of offences including bribery (domestic or foreign), embezzlement, trading in influence, abuse of functions, illicit enrichment, laundering of proceeds, and obstruction of justice. Moreover, it includes optional provisions relating to bribery and embezzlement in the private sector i. e. private-to-private corruption.

International cooperation

The UN Convention also provides a comprehensive international cooperation framework which has the potential to improve mutual law enforcement assistance, notably in extradition and investigations. These detailed provisions are largely mandatory and replicate provisions in the UNTOC Convention. They cover specific aspects of law enforcement cooperation such as extradition, gathering and transferring of evidence, assisting with investigations and prosecutions. They include requirements that States Parties consider joint investigation, the transfer of criminal proceedings and special investigative techniques. States may not refuse assistance on the basis of bank secrecy and can invoke dual criminality requirements only in limited cases.

Asset recovery framework

One of the Convention's most noteworthy aspects is that it elaborates the first truly global asset recovery framework. It establishes that: "The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall

afford one another the widest measure of cooperation and assistance in this regard." (UN Convention Art. 52) The UN Convention Chapter V provisions on asset recovery are groundbreaking, the outcome of tough and extensive negotiations. One set of provisions calls for states to require domestic financial institutions to adopt stringent "know your customer" procedures, designed to identify high-risk banking customers. The provisions identify in particular those entrusted with prominent public functions, including their family members and close associates, as requiring "enhanced scrutiny". Other provisions address the recovery of property under individual states' domestic laws and through international cooperation on confiscation. The aim is to encourage states to ensure that domestic law permits courts to order those who have committed offences established under the convention to pay compensation or damages to states that have been harmed by those offences. Further measures cover the freezing or seizure of property in a requested state, once competent authorities in a requesting state have issued orders. There is also a positive obligation placed on the requested state to take measures to identify, trace and freeze or seize the proceeds of crime.[4] Another provision covers return of property to its prior legitimate owners.

Technical cooperation and information exchange

In terms of the overall composition and balance of the UN Convention, the provisions on technical cooperation and information exchange are essential. They take account of the need for "enhanced financial and material assistance" to developing countries as well as technical assistance to developing countries and countries in transition to help them implement the Convention. Without such assistance, some countries will not be in a position to implement UN Convention requirements.

Implementation mechanism

UN Convention Chapter VII provides for an implementation mechanism under the auspices of the Conference of States Parties. The first session of the Conference is to be convened within a year after entry into force of the Convention and regularly thereafter.

The responsibilities of the Conference of States Parties include:

- Facilitating activities of States Parties to provide technical assistance and to implement the Convention, including through mobilisation of voluntary contributions
- Periodically reviewing the implementation of the Convention by States Parties
- Making recommendations to improve the Convention and its implementation, including recommendations about technical assistance needs
- Using relevant information produced by other international and regional mechanisms e.g. other mechanisms for monitoring other conventions
- Putting into effect supplemental review mechanisms and establishing any review body it deems necessary to assess the measures taken by States Parties (and difficulties encountered) in implementing the Convention

The States Parties are required to provide information about the measures they have taken to implement the Convention.

Based on experience with other anti-corruption conventions, an effective monitoring mechanism is essential for the UN Convention. It remains to be seen what the Conference of State Parties will decide regarding supplemental review mechanisms and review bodies. Transparency International is developing proposals in this connection, which will take into account cost considerations, the need for technical assistance and the importance of coordination with other monitoring systems.

The secretariat for the Conference of States Parties is the United Nations Office on Drugs and Crime (UNODC).

The extent of the UN Convention's provisions on the private sector is particularly noteworthy. They include, *inter alia*:

- Promotion of standards and procedures, such as codes of conduct, to safeguard the integrity of private entities
- Promotion of transparency among private entities
- Prevention of abuse of procedures regulating private entities, including those regarding subsidies and licences granted by public authorities
- Preventing conflicts of interest by imposing restrictions on private sector employment of public employees leaving the public sector
- Ensuring auditing controls in the private sector
- Ensuring accounting and auditing standards
- Prohibition of tax deduction of expenses that constitute bribes

Some specific provisions to pay attention to in the UN Convention are:

- Requirement of civil, criminal or administrative liability of legal persons, i.e. companies (Art.26)
- Recognition of need for long statutes of limitations (Art.29)
- Recognition of the right of entities or persons who have suffered damages from corruption to initiate legal proceedings for compensation. (Art.35)

EXTENSIVE UN CONVENTION PROVISIONS ON PREVENTIVE MEASURES

Public sector ethics and procedures

- requiring recruitment and promotion based on efficiency, transparency and objective criteria such as merit, equity and aptitude (Art. 7)
- requiring codes or standards of conduct for the correct, honourable and proper performance of public functions (Art. 8)
- imposing restrictions on the employment of public officials in the private sector after their resignation or retirement (Art. 12)

Public procurement

- requiring systems based on transparency, competition and objective criteria (Art. 9)

Public sector finance

- requiring appropriate measures to promote transparency and accountability with respect to, inter alia, procedures for the adoption of the national budget, timely reporting on revenue and expenditure, accounting and auditing standards and related oversight, effective and efficient systems of risk management and internal control (Art. 9)

Public reporting, access to information, whistleblower protection

- requiring that members of the public be allowed to obtain information on the organisation, functioning and decision-making processes of their public administration (Art. 10)
- requiring that the public has effective access to information (Art. 13)
- requiring protection of witnesses, reporting persons and victims of corruption (Arts. 32 and 33)

Public education

- requiring information dissemination through public activities and education programmes, including school and university curricula (Art. 13)

Private sector standards, including accounting and auditing standards

- requiring prohibition of off-the books accounts and transactions, of recording non-existent expenditure, of incorrect identification of liabilities, of use of false documents and intentional destruction of bookkeeping records earlier than prescribed by law (Art. 12)

Money laundering

- requiring a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions (Art. 14)
- ensuring that the authorities dedicated to combating money laundering have the ability to cooperate and exchange information at the national and international level (Art. 14)
- requiring that governments consider establishing a financial intelligence unit (Art. 14)

The above are only selected excerpts from the articles indicated.

WHAT ARE THE HIGHLIGHTS OF THE UNTOC CONVENTION AND THE OECD CONVENTION?

Both the UNTOC and the OECD Conventions also play a role in the Americas region. The UNTOC Convention covers corruption as an element of organised crime. The OECD Convention addresses the "supply side" of cross-border bribery.

UNTOC CONVENTION

UNTOC

KEY INFORMATION

Adopted	15 November 2000 by the General Assembly of the United Nations
Signatories	147 (Opened for signature on 12 December 2000 and closed on 12 December 2002.)
Parties	118 (as of 6 March 2006)
Entry into force	29 September 2003
Open to	All countries and regional economic organisations

Website for updated information
www.unodc.org/unodc/en/crime_cicp_convention.html

The UN Convention against Transnational Organized Crime (UNTOC Convention), recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat organised crime. There are three supplementary agreements: a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; a Protocol against the Smuggling of Migrants by Land, Sea and Air; and a Protocol against the Illicit Manufacturing of and Trafficking in Firearms.

THE OBLIGATIONS OF THE PARTIES TO THE CONVENTION FALL INTO THE FOLLOWING CATEGORIES:

Prevention

With regard to corruption, the Convention calls in general terms for effective measures to promote integrity and to prevent the corruption of public officials. It specifically calls for public authorities to be provided with adequate independence in order to deter the exertion of inappropriate influence on their actions.

Criminalisation

As part of the Convention's international framework for addressing transnational organised crime, it requires States Parties to criminalise corruption, focusing particularly on bribery of public officials. It also calls for effective measures to detect and punish the corruption of public officials.

Anti-money laundering

The UNTOC Convention also requires criminalisation of money laundering and the establishment of a domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering. States are also called on to fight corruption in the private sector.

International cooperation

To fulfil its aim of addressing cross-border aspects of organised crime, the UNTOC Convention provides for a broad framework for international cooperation which has the potential to improve mutual law enforcement assistance. These provisions provided the basis for the international cooperation provisions in the UN Convention against Corruption. The provisions are largely mandatory and cover specific aspects of law enforcement cooperation, such as extradition, gathering and transferring evidence, assisting investigations and prosecutions. They include requirements that states parties consider joint investigations, special investigative techniques and the transfer of criminal proceedings.

Technical assistance

The States Parties are called upon to enhance financial and material assistance to developing countries regarding Convention implementation, to provide technical assistance to developing countries and countries in transition, and to provide more training programmes and modern equipment to developing countries.

Implementation

The Convention calls for a Conference of Parties to be convened within a year after entry into force. Its role is to improve the capacity of States Parties to combat transnational organised crime and to promote and review the implementation of the Convention. The Conference is required to agree on mechanisms for facilitating activities, facilitating the exchange of information, cooperating with other institutions and non-governmental organisations, periodically reviewing the implementation of the Convention and making recommendations to improve the Convention and its implementation. As of March 2006, the Conference of Parties had met twice; the first questionnaires on the Convention and two of the Protocols had been distributed; and another had been approved for distribution. The Conference Secretariat (UNODC) has also prepared an analytical report on the responses received to the first questionnaire. Information about the Conference sessions is provided on the UNODC website.

OECD CONVENTION

OECD

KEY INFORMATION

Adopted	21 November 1997 by the Negotiating Conference
Parties	36 (as of 6 March 2006)
Entry into force	15 February 1999
Open to	All 30 OECD countries and 6 non-member countries: Argentina, Brazil, Chile, Bulgaria, Estonia and Slovenia. Additional accessions are under consideration

Website for updated information
www.oecd.org

The Organisation for Economic Co-operation and Development (OECD), established in 1961, is an international organisation composed of 30 member countries largely industrialised. The member states share a commitment to democratic government and the market economy and seek to encourage economic growth, high employment and financial stability among member states and to contribute to the economic development of less-advanced members and non-member countries. The OECD provides members with a forum in which to establish and coordinate policies. Its work covers economic and social issues, from macroeconomics to trade, education, environment, development, scientific research and innovation.

The OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) is the most focused of the major anti-corruption conventions in terms of subject matter. Its aim is to "address the supply side of bribery by covering a group of countries accounting for the majority of global exports and foreign investment". It does so by providing a framework for developed countries to work in a coordinated manner to criminalise the bribery of foreign public officials in international business transactions. The 36 states (30 OECD and 6 non-OECD) that have ratified the OECD Convention have undertaken to introduce criminal sanctions against such bribery.

THE OBLIGATIONS OF THE PARTIES TO THE CONVENTION FALL INTO THE FOLLOWING CATEGORIES:

Criminalisation

The Convention obligates signatory states to define foreign bribery as a crime and to punish acts of bribery in international business. They are required to do so with an adequate statute of limitations.

Anti-money laundering

States are required to treat concealment of the proceeds of corruption as a money laundering offence, with certain limited exceptions.

Provisions regarding private sector

The Convention requires states to establish the liability of companies and to prohibit accounting practices that enable the bribing of foreign public officials or that allow disguising of such bribery. Thus, parties are required to prohibit the establishment of off-the-books accounts and similar practices used to conceal bribery.

International cooperation

Given that foreign bribery involves actors in different jurisdictions and that international financial channels are often used to carry out or hide international bribery, the Convention prescribes mutual legal assistance between countries and the exchange of information. It also makes extradition easier in relation to offences governed by the Convention and provides for seizure and confiscation of the proceeds of corruption.

Monitoring

The parties to the Convention are required to cooperate in a follow-up review process to monitor and promote the full implementation of the Convention. They commit to bearing the costs of such a programme.

The OECD Convention is supplemented by the OECD Council's Revised Recommendation on Combating Bribery in International Business Transactions, adopted on 23 May 1997. The Recommendation calls for effective measures to deter, prevent and combat foreign bribery including criminal sanctions, the elimination of their tax deductibility, detailed accounting requirements and measures regarding public procurement. It also contains instructions on monitoring and follow-up by the OECD.



3 The recovery of illegally obtained assets is always preceded by three stages: 1) investigative measures to trace the assets; 2) preventive measures to immobilise the assets (freezing, seizing); and 3) confiscation. Only once these three stages have been completed is the recovery of the proceeds of crime possible.

4 Each signatory must furnish copies of all laws and regulations and any subsequent changes giving effect to this set of provisions to the UN Secretary General. (Art. 60) The discussion here on asset recovery draws on unpublished papers by Tim Daniels and Alan Perry of the law firm Kendall Freeman.

III



CHALLENGES IN BRINGING CONVENTIONS TO LIFE AND THE ROLE OF CIVIL SOCIETY

Civil society organisations have an important role to play in keeping convention ratification, implementation and monitoring high on government agendas. Other issues compete for government attention and political will over a sustained period of time cannot be taken for granted. In order to influence government priorities, civil society organisations need to put pressure on key actors, mobilise supporters and attract the attention of the media.

Civil society organisations efforts are essential to securing government action with regard to:

- Securing ratification of, or accession to the UN and UNTOC Conventions (no longer an issue for the OAS and OECD Conventions)
- Ensuring translation into law and practice
- Ensuring effective monitoring mechanisms
- Ensuring civil society inputs into monitoring mechanisms

Civil society work on these subjects is a challenge in that it involves promoting legal instruments and processes that are, in part, quite technical and which ordinary citizens may perceive to be beyond their understanding, experience or field of interest. Also challenging is the fact that convention provisions are often formulated in general terms and civil society organisations, like their governments, need to interpret these requirements and to identify ways of measuring whether the government has done what is required by the convention.

To take advantage of conventions, civil society organisations need to develop effective communications and advocacy strategies. This requires an understanding of the challenges in bringing conventions to life.

WHAT ARE THE PRACTICAL RATIFICATION AND IMPLEMENTATION CHALLENGES FOR GOVERNMENTS?

In order to comply with their obligations under anti-corruption conventions, national governments typically need to introduce new legislation and new or enhanced structures, policies and practices. They also need to ensure that there are adequate resources for the government departments responsible for following up and that sufficient attention is paid by those departments to the new obligations. Implementation of anti-corruption conventions requires considerable government commitment, especially in the case of broad conventions such as the OAS and UN Conventions, which cover topics crossing a range of ministerial responsibilities. Translation of convention provisions into law and practice may require allocation of significant human and financial resources for analysis, drafting legislation (including budgetary appropriations), shepherding draft legislation through parliament and for producing appropriate changes to regulations and guidelines for the executive branch. These challenges require sustained efforts directed from the top to ensure that the convention is taken seriously and given priority. At operational level, convention implementation needs experienced staff in the executive and legislative branches to push reforms through.

Some of the challenges associated with ratification and implementation are

- Leaders must demonstrate sufficient political will and send a clear message to ministers, senior government officials and elected representatives establishing their support for the convention. This is not always done.
- Responsible government officials need to ensure that the necessary steps are taken. They may be distracted by other government business and fail to give the conventions the priority they deserve.
- Implementation may be costly and complicated. Government officials may be unwilling to invest the time and resources.
- Opponents of anti-corruption programmes may seek to obstruct or delay each of the steps, especially in implementation. In some countries each step in implementation becomes more controversial than the preceding step. The signing of an anti-corruption convention is usually a popular step. Legislative ratification may elicit the first signs of opposition. Enactment of implementing laws is likely to meet increased resistance. Enforcement of laws is invariably the most difficult step.
- Delays in implementation by some countries may be used as an excuse by other countries for delaying action.

WHAT ARE THE STEPS IN BRINGING A CONVENTION TO LIFE, AND WHAT IS THE ROLE OF CIVIL SOCIETY?

NEGOTIATION

A convention is negotiated by a group of states, generally within an institutional framework.

The negotiation phase has been completed for all four conventions discussed in this guide. It is possible, however, that supplementary agreements or protocols may be negotiated in the future, as need arises.

Civil society's role: Civil society organisations should play a role in negotiations by developing proposals regarding convention provisions, submitting these to governments and negotiating bodies, and supporting those positions with advocacy activities. Transparency International contributed in this way to the UN Convention negotiations and the negotiations of an agreement to introduce a follow-up mechanism for the OAS Convention.

ADOPTION

Once the negotiating states have reached agreement, the convention is placed before an assembly of the states participating in the treaty-making process for a formal act by which they express their consent and by which the form and content of the proposed treaty are established. Treaties negotiated within an international organisation will usually be adopted by resolution of a representative organ. The members of the organisation constitute the principal potential parties to the treaty.

This stage has also been completed for all four conventions discussed in this guide.

Civil society's role: No action is currently needed in the Americas. When needed, civil society organisations can bring pressure to bear at national and international level to help assure adoption of an international anti-corruption instrument.

SIGNATURE

After a convention is adopted, it is then opened for signature by states. This indicates their intent to become parties and this is usually done by the executive branch of government. There is usually a time limit for signature, after which states wishing to become parties must do so by accession.

The OAS Convention has been signed by 28 of 35 Member States. (Six countries that did not sign have acceded.) The UN Convention has been signed by 140 countries and as of 9 December 2005 is no longer open for signature.

Civil society's role: No action is currently needed in the Americas. As a general rule, when needed, civil society organisations can bring pressure to bear at national and international level to help assure signature of an international anti-corruption instrument.

RATIFICATION OR ACCESSION

To become a party to a convention, and thus be bound by its requirements when it enters into force, a state must express its consent by ratification or accession to the convention. The procedures for doing so are laid down under national law and usually involve approval by a national legislative body, following consideration of the text. Sometimes publication in an official gazette is also required. The approval process sometimes involves passage of legislaton. Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It usually occurs after the treaty has entered into force.

By ratifying or acceding a state becomes a "State Party" to the treaty. Sometimes states ratify with "reservations", stating that they consider certain specified passages or articles in the instrument non-applicable or non-binding in their case. Permissible reservations may be specified in the convention. If not, the Vienna Convention on the Law of Treaties applies. This provides that any reservation made should not be incompatible with the object and purpose of the treaty.

The ratification and accession process has been completed for the OAS Convention, with the exception of one OAS Member State. (Barbados has not ratified. Cuba is presently excluded from participation.) The same is true for the OECD Convention except that additional parties may join the OECD Convention, as Estonia did at the end of 2004.

Ratification and accession is expected to remain on the agenda in many countries in the Americas for the UN Convention during 2006 since a majority of countries have not yet ratified. The same is true, albeit to a lesser extent, for the UNTOC, which, as of February 2006, had not been ratified by a number of countries in the Americas.

Civil society's role: In those countries that have not yet ratified the UN and UNTOC Conventions, civil society organisations should campaign at national and international level to promote such action. Actions to consider in promoting ratification are discussed below in Chapter V.

DEPOSIT OF INSTRUMENT OF RATIFICATION OR ACCESSION

The final step in the ratification and accession processes is generally for the government of the ratifying or acceding country to deposit an instrument of ratification or accession with an institution or office designated in the treaty.

All the countries that ratified or acceded to the OAS and OECD Conventions have also deposited their instruments with the General Secretariat of the OAS and with the Secretary General of the OECD, respectively, as required in the Conventions.

For the UN Convention, during 2006, this is expected to remain on the agenda, given that many countries in the Americas have not yet ratified the Convention. The same is true for the UNTOC Convention.

Civil society's role: In those countries that have not yet ratified the conventions or ratified but not yet deposited their instruments of ratification, civil society organisations should remind their governments that the act of ratification at national level is not enough for a country to become a party and that the instrument must be deposited. It is not uncommon for deposit to take place a considerable time after ratification.

ENTRY INTO FORCE

A convention has application to states that have ratified it only once it enters into force, which usually occurs upon ratification by a certain number of states. The convention will specify how many ratifications must be deposited for entry into force. It will also fix an amount of time between the deposit of the threshold instrument and the actual entry into force. For additional countries ratifying, the convention may also fix the amount of time to elapse before entry into force in those countries.

All four Conventions discussed in this guide have entered into force.

Civil society's role: In the negotiation phase of conventions, civil society organisations should try to influence the discussion to ensure that the threshold number of ratifications needed for entry into force is not too high. When entry into force takes place, civil society groups should use this opportunity to draw public attention to the convention and to the fact that countries that have ratified are now bound by it.

NATIONAL IMPLEMENTATION INTO LAW

Before or after ratifying, States Parties must review whether their national legislation and regulations are consistent with convention requirements and make any necessary changes in law implied by the convention.

Considerable work will be needed on this front in countries in the Americas in connection with both the OAS Convention and the UN Convention, in order to translate convention requirements into law. Part of this process requires, of course, interpretation of convention standards. Efforts will also be needed to ensure UNTOC and, where applicable, OECD Convention implementation.

Civil society's role: Civil society organisations can have an impact by reminding governments to make implementation a priority and also by exerting pressure for the highest standards to be applied in the implementation.

To play a role in convincing governments to implement conventions, civil society organisations need to carry out their own research and analysis of existing legislation, policy and practice, and its consistency with convention requirements. This can form the basis of proposals to government on changes needed or inform commentary on government positions. Civil society organisations can play an important role in influencing the interpretation of convention requirements at the national level and, more specifically, in contributing to the government drafting process for legislation, regulations and guidelines. Where multiple conventions apply, the task

is more complicated. Interpretation of convention requirements is discussed in Chapter VI .

ACCESS TO INFORMATION LEGISLATION IN ARGENTINA

Civil society work in Argentina on access to information legislation provides an example of how to promote national implementation in one of the areas covered by the OAS and UN Conventions. Civil society organisations worked together to establish local and provincial level commissions in the provinces of Mendoza, Tucumán and the city of Rosario, to follow up on the OAS Convention. The commissions have advocated for provincial level laws on access to information that include all information produced and held by the provincial government.

These commissions have also mobilized their member organisations to lobby their representatives in the two-chamber federal congress for approval of the federal access to information bill that has been pending in Congress for the last three years but has yet to be approved. This law would provide public access to information from the federal government. The house produced an effective text after negotiations with a broad range of stakeholders. The senate, however, introduced crippling changes to the draft legislation. Argentinian civil society organisations have since been campaigning for more effective provisions.

NATIONAL TRANSLATION INTO INSTITUTIONAL POLICY AND PRACTICE, INCLUDING APPLICATION AND ENFORCEMENT

Apart from changing the legislative and regulatory framework where necessary, states must review and make changes to the policies and practices of state institutions to bring them into line with convention requirements. This includes ensuring that legal prohibitions are actually enforced. Governments must provide funding and staffing for organisations administering anti-corruption programmes.

Considerable work will also be needed on this front in countries in the Americas in connection with both the OAS and the UN Conventions to translate their requirements into policy and practice. Again, part of this process requires interpretation of convention standards. Efforts will also be needed to ensure UNTOC and OECD Convention implementation in practice.

Civil society's role: While legislation establishes an important framework, the key question is whether convention requirements are given practical effect and civil society organisations need to be especially active at this stage. At the same time, obtaining the information necessary for advocacy at this stage may be particularly difficult. As with implementation into law, civil society organisations need to carry out their own research and analysis of existing institutions, policy and practice and their consistency with convention requirements and this can form the basis of proposals to the government on changes needed.

CONFERENCE OF STATES PARTIES

The conference of states parties is made up of the countries that have signed and ratified a convention convened to discuss important issues in relation to the convention, including procedures for follow-up and of review the status of the convention.

The OAS Convention does not explicitly call for a conference of states parties but such a conference has in fact been convened and adopted Rules of Procedure in April 2004 to regulate the Mechanism for Follow-up on OAS Convention Implementation.

The UN Convention provides for a Conference of States Parties to be convened within one year after entry into force of the Convention and then regularly thereafter. Draft Rules of Procedure were approved in January 2006 and will be adopted by the first Conference which is expected to take place in December 2006. The UNTOC Convention simply requires that a Conference be convened within one year after entry into force. The UNTOC Conference has met twice and will meet for a third time in October 2006.

Civil society's role: Civil society organisations convey their views on the importance of follow-up by the parties to conventions and contribute to a public discussion. The Rules of Procedure for the UN Convention Conference of States Parties govern whether your organisation is eligible to attend the Conferences sessions as an observer. (See Rule 17 of the Draft Rules.)

INTERGOVERNMENTAL FOLLOW-UP AND MONITORING

All of the conventions discussed here provide for an institutionalised follow-up and review process, albeit with different formats. This kind of monitoring is needed to ensure that states translate their commitments into actions. Such reviews mean that states need to commit resources, both to support the reviewing body and to marshal the information on their own performance required for review. Moreover, where the monitoring finds their performance lacking, governments may be called on to devote resources to correcting deficiencies. An emerging challenge is that an increasing number of countries are covered by multiple conventions and are subject to multiple review processes, which stretches the capacity of even the most developed countries. Since the monitoring process can be costly in terms of human and financial resources, some less developed countries may require financial and technical assistance in order to participate, to manage the processes and, when reviewed, to institute needed reforms. Such assistance, provided by more developed countries, may be a prerequisite to the participation of the less developed countries in international anti-corruption conventions at all stages from negotiation through implementation into monitoring.

Monitoring processes are in place for the OAS and OECD Conventions and include opportunities for civil society involvement as indicated below. The OAS Monitoring process is discussed in more detail on p. 99 et seq.

Civil society role: Civil society organisations should make contributions both to the development and maintenance of effective review processes and to the review processes themselves. In particular, in 2006 civil society organisations should bring pressure to ensure that effective monitoring is promptly introduced for the UN Convention. This includes making suggestions for a design that will assure effectiveness.

Once a system is introduced, civil society organisations will also need to work to ensure that the system is adequately resourced and evolves to become more and more effective. They will also need to make sure that the system allows for them to contribute their own independent views about country performance to the review process, thus helping to ensure that the inputs into the process are balanced. This should preferably be a formally recognised contribution. Civil society groups will also need to work to ensure that the outputs in the form of country assessments and recommendations are publicly known and receive follow-up.

Civil society's role in various stages of existing monitoring processes is discussed further in the following paragraphs.

- Government responses to questionnaires

  At present, government responses to questionaires in the OAS and OECD monitoring processes are only made public subject to government agreement, but over time it is expected that such publication will become standard.

  Civil society's role: Civil society can help keep their government 'honest' by monitoring publicly available responses and commenting on these to the government itself, to the monitoring body and to the public. If the government does not agree to publication of its self-assessment, civil society organisations should press it to explain its reasoning. They should also prepare and publish their own responses to the questionnaires.

- On-site review and peer review meeting

  Existing peer review processes, such as those of the OAS and OECD Conventions, allow for civil society organisations to make written or oral submissions to the reviewing body.

  Civil society's role: In the OAS Follow-up Mechanism, civil society organisations may make written submissions and may also be heard in an informal consultation. According to its guidelines, the OECD process allows civil society organisations to make oral or written presentations during the on-site visits that are part of the Phase 2 review process, involving review of national enforcement. This provides important opportunities for advocacy work, before, during and after the consultation. Civil society groups were also able to submit written inputs to the OECD Phase 1 review process.

- Published responses and reports
  The written reports produced through the OAS and OECD peer review processes are published on the websites of the respective organisations. Until recently, in the case of the OAS review process, countries had to authorise publication, but thanks to a recent change in procedures advocated by TI this is no longer required.

  Civil society's role: An important role for civil society organisations is to publicise the reports, make the conclusions and recommendations known and apply pressure on governments to take action to implement the changes required. If their governments do not do so within a reasonable time frame, civil society groups should publicise this failure to comply with international obligations.

ISSUES IN THE UN CONVENTION NEGOTIATIONS

There were marked North-South differences on some issues in the UN Convention negotiations. The G77 countries favoured stronger provisions on asset recovery and money laundering, more flexibility with regard to the requirement of dual criminality and recognition of the crime of illicit enrichment.

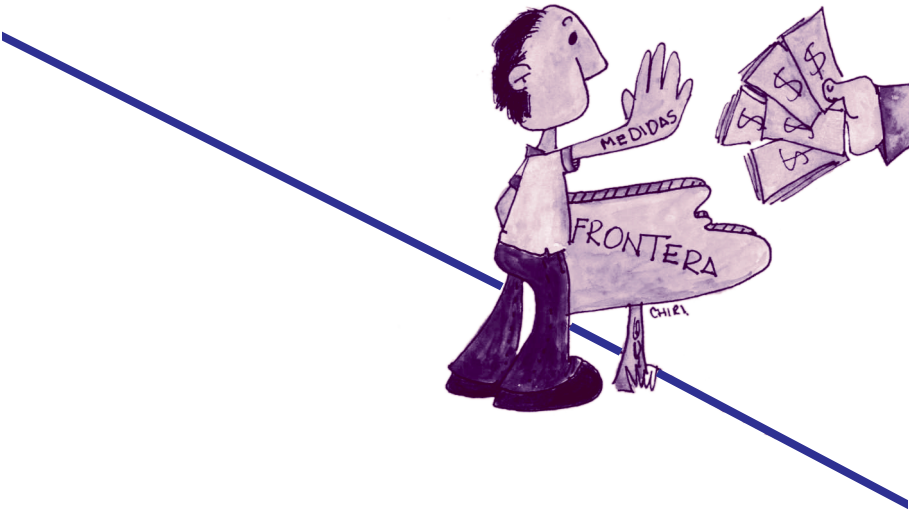
Asset recovery was identified from the start as a central issue for the Convention. A study prepared as background for the negotiations showed that between 1995 and 2001, Haiti, Iran, Nigeria, Pakistan, the Philippines, Peru and the Ukraine had claimed losses ranging from US$ 500 million to US$ 35 billion due to the corruption of former leaders or senior officials whose money had been channelled out into foreign bank -accounts. There are further examples, including Zaire (now Congo) and China. The debates on the asset recovery provisions continued through to the end of the negotiations and hinged on the details of a range of provisions, including the know-your-customer provisions and the specific measures to allow States Parties to recover property, in particular in relation to confiscation. The final text resulted from a process of reconciliation of the needs of the countries seeking the return of the assets with the legal and procedural safeguards required by the countries whose assistance is needed.

On the issue of a review mechanism, there was general acceptance of the need for follow-up but no agreement on the details. Elaborated models for monitoring mechanisms were presented early on in the negotiations by a handful of developed countries. These were resisted on the one hand by G77 countries, many of whom were concerned about whether such a system could function fairly, and by influential developed countries including France, Germany, Japan and the USA, which opposed the creation of a costly monitoring organisation. In the end, the question of including a monitoring mechanism or body was deferred to the Conference of States Parties. On other controversial issues, such as the provisions on private sector corruption and political party finance, although there was considerable support for mandatory provisions on these subjects, no consensus could be reached and the provisions were made optional.

IV.

DEVELOPING AN ADVOCACY STRATEGY

Your organisation can play a significant role in promoting signature, ratification, implementation and monitoring of anti-corruption conventions. To do so, you need to develop effective communications and advocacy strategies. This calls for the preparation of a strategic plan describing your advocacy objectives. The main steps in developing such a plan are described below.



IDENTIFY KEY ISSUES BASED ON RESEARCH

For advocacy regarding ratification or accession, civil society organisations need to determine what the process is for ratification or accession in their country; whether it is in progress; if so, what stage it has reached; and if not, why not.

For advocacy regarding implementation, civil society organisations should first evaluate what improvements are needed in the national system in order for it to comply with the requirements and standards under the two conventions and make decisions about priority areas. It will often be necessary to prioritise in order to be effective. Thus, for example, even if national legislation is deficient in many areas, it will probably be more effective to highlight a few key issues. Civil society organisations will also need a solid understanding of the legislative and executive branch decision-making processes in their country, including those relating to budgeting and resource allocation.

Having conducted an initial evaluation civil society organisations engaged in on-going campaigns will want to conduct periodic research or monitoring to update their initial findings.

IDENTIFY KEY PLAYERS

In order to have an impact in relation to signature, ratification, implementation and monitoring, it is important to identify the key players with influence on the decision-making processes. Depending on the stage of the convention process and the country's political system, this may include the president or prime minister, the cabinet or the legislature. Other government officials who may have a direct or indirect influence on ratification and implementation processes include ministers of justice, finance and foreign affairs and those officials that work most closely with them on relevant matters.

It is desirable to identify particular actors responsible for, or able to play a role in, moving the process forward and to try to work with them. Ratification and implementation work will likely involve efforts to influence actors in both the legislative and executive branches, to influence draft legislation, regulations, policies and practices. This can potentially involve a wide range of actors, given the breadth of the OAS and UN Conventions. The implementation of the preventive measures alone may involve all or almost all government institutions.

If civil society organisations do not have direct access to the key decision makers, then they should see if they can access such people indirectly via existing contacts.

IDENTIFY KEY AUDIENCES AND MESSAGES

There are different approaches to advocacy and the choices made will vary from country to country, from group to group and from issue to issue. The question is: what will persuade the target audience to take the actions wished for?

In some countries and for some issues it may be productive to take a cooperative attitude towards government. In those cases, civil society organisations may prefer to target key decision-makers with behind-the-scenes communications. In other countries or on other issues it may be necessary to publicly challenge government leaders, for example where they seem to deliberately delay action. In that case, organisations may seek to mobilise citizens through the media and through public education programmes.

In developing messages, it is important to identify some key benefits to be gained in the country by ratification and implementation, in terms of improvements in the quality of life in the country. If progress is slow, it will also be desirable to send a message about the need for prompt action.

IDENTIFY MEANS AND MATERIALS FOR DELIVERING THE MESSAGES

Once civil society organisations have identified key persons in the executive and legislative branch, as described above, they need to establish the best way of keeping their issue high on the agenda of the persons identified.

Direct communication with the executive branch and parliamentarian

This may include personal meetings and short briefings as well as in-depth research, letters and phone calls.

Training materials and courses

A very effective way to influence government decision-makers at different levels is to provide them with training materials and training courses on anti-corruption conventions.

Public activities

Activities to consider include rallies, workshops, concerts and other public events, as well as development of posters, postcards, flyers and other promotional material. Examples of public activities by TI National Chapters in the Americas can be found in the Tools at the end of this Chapter as well as on the TI web pages describing TI activities on International anti-corruption day.

Communication via electronic media

Such media include websites and emails. If used well, these can mobilise support in a short period of time among a wide range of groups and individuals.

Working with the media

Coverage in the print and broadcast media can be one of the most effective ways to get your message across. The objective, however, must be carefully considered. There are occasions when media coverage may undermine your efforts to influence government policy and practice.

Possible vehicles for conveying messages to and through the media include:

- Press releases, web sites and press conferences. See Tools at the end of Chapters V and VI.
- Surveys and exclusive reports. An example is the Americas Conventions Report Card described in Chapter VI.
- Informal meetings and public workshops
- Letters to the editor, newspaper articles or op-eds. See Tools at end of this Chapter and Chapter V for sample materials.

To get the message across, it is important that the presentation is clear, concise and simple and uses repetition to good effect.

STEPS TO GETTING MEDIA COVERAGE

- Analyse which media outlets reach your target audiences most effectively and what kind of content is most appropriate.
- Try to build relationships with members of media independently of particular deadlines.
- Identify key dates for approaching the media.
- Target journalists who are interested in your specific topic or have written about your organisation. Place your calls in the morning or late afternoon. Be persistent in getting direct contact details and do not settle for leaving a message with the receptionist at the front lobby.
- If you are organising a media event, call ahead of a planned event twice, but not too far in advance – call the first time a week and then one or two days before the event.
- Try to list your event in planning diaries so that you can draw wide attention to your event.

- Try the following points in talking to journalists:
  - Find out if the journalist has a specific deadline
  - Find out when journalists have their planning meetings
  - Have written statements prepared, with a prioritised list of exactly what you want to say. Be brief and clear, animated and lively
  - Provide compelling reasons why your story warrants an article
  - Make your pitch interesting and unique
  - When answering inquiries, if you find you do not have the answer to a question, say so and offer to get back with an answer
  - Follow up if a journalist writes about your event and thank him or her for the coverage. If there are inaccuracies, call to make a correction
  - Call every journalist who attended your event after it is over. Offer to provide additional information or an interview. Also call journalists you spoke to before the event but who did not attend

- Have clear messages, use short sentences and repeat your messages
- For television: emphasise the visual appeal of your event. This is the medium of pictures not words.

IDENTIFY KEY PARTNERS TO WORK WITH

The broad coverage of the anti-corruption conventions, means that a wide range of civil society organisations and private entities may potentially see them as benefiting their cause. There are many examples of civil society coalitions and networks campaigning in the anti-corruption field. Potential partners include organisations working on human rights, the environment, access to information, monitoring public budget processes, corporate social responsibility, health, education and many other topics.

IDENTIFY KEY DATES AND EVENTS

Civil society organisations should also keep in mind opportunities to bring pressure to bear on special occasions at national and international level. These include occasions when the media will be especially interested in stories relating to global efforts to fight corruption. International anti-corruption day on 9 December is one such day.

Consideration should also be given to the opportunities for direct or mediated influence on or around regional and international fora. In each region, there are a range of regional fora and meetings where pressure can be exerted. It is generally possible to make submissions in advance of such meetings and to attract press attention with messages released around the time of the meetings. Transparency International has been active in advocating convention ratification and implementation in such fora as the Group of 8 (G-8) Summits, Summits of the Americas, and OAS meetings.

TOOLS FOR DEVELOPING AN ADVOCACY STRATEGY

The tools provided below are included to help with

- Identifying issues and the means for delivering messages
- Using key dates
- Using international events

1) IDENTIFYING ISSUES AND THE MEANS FOR DELIVERING MESSAGES

A great number of civil society organisations in the Americas have actively worked at a national level to raise awareness of the obligations of the States Parties to the OAS Convention. These organisations have designed programmes and events, often in co-operation with their governments, to lobby for the complete implementation of the Convention and for the monitoring of compliance by states with recommendations issued by the Committee of Experts. Below are some examples of TI National Chapter efforts to promote national implementation of the OAS Convention.

CIVIL SOCIETY ORGANISATIONS' EFFORTS TO PROMOTE OAS CONVENTION IMPLEMENTATION

Poder Ciudadano, TI´s national chapter in Argentina has not only advocated for the ratification of the OAS Convention at a federal level, but has also contributed to the establishment of follow-up commissions at the provincial level, which monitor the implementation of the Convention. Local civil society organisations are members of these provincial commissions. Feedback from the commissions is fed into the monitoring report produced by the national civil society organisation as part of the Convention review process.

Chile Transparente, TI´s national chapter is carrying out a cycle of eight television programmes, one of them on the anti-corruption conventions. This project seeks to promote the different existing Conventions by creating a dialogue between citizens and politicians. It also organised a workshop involving civil society, the private sector, public officials, and the media in order to develop strategies for implementing the Convention.

Transparencia por Colombia, TI´s national chapter has participated in the OAS Follow-up Mechanism by submitting responses to the questionnaire and has published the OAS Experts Report in a manual as part of its series, 'Workbooks for Transparency'. It has also worked with the Office of the Vice-President to prioritise experts' recommendations and to develop a strategy for implementing them. Transparencia por Colombia has trained civil society in Central America on the methodology used to respond to the questionnaire.

Participación Ciudadana, TI's national contact in the Dominican Republic, works on the OAS Convention within the framework of its project, "Transparency in Public Management". One of Participación Ciudadana's principal areas of work is monitoring the OAS Convention, with the participation of citizens and representatives from the different sectors of Dominican society.

Corporación Latinoamericana de Desarrollo (CLD), TI´s national chapter in Ecuador, promotes the implementation of the OAS Convention through a civil society evaluation of the efforts of their country to implement the Convention. CLD-TI has also carried out training seminars aimed at the public officials responsible for implementing the OAS Convention in their country.

Probidad carries out a project in El Salvador aimed at promoting citizen participation in combating corruption through raising awareness of the OAS Convention requirements in relation to budgetary and government procurement systems. Among its activities, this organisation has developed citizens' guides to the Convention.

Acción Ciudadana, TI's national-chapter-in-formation in Guatemala, works on strengthening existing state and civil society initiatives for combating corruption through its programme, 'Promoting Transparency and Institutional Strengthening'. The project focuses on monitoring the application of the OAS Convention in Guatemala.

Transparencia Venezuela, TI's national chapter, has a programme to monitor implementation of the OAS Convention, which aims at exerting pressure on the government to drive the process forward.

2) USING KEY DATES

International Anti-Corruption Day on 9 December provides an excellent opportunity for promoting convention ratification and implementation as the Op-ed piece below illustrates.

EXAMPLE: OP-ED PIECE PROMOTING UN CONVENTION RATIFICATION

ANTI-CORRUPTION DAY: A DECISIVE STEP FOR TRANSPARENCY - EDITORIAL

El Nuevo Herald, 09 December 2004
By Rosa Inés Ospina

We asked a rural dweller in Colombia where corruption could be found. His response was categorical: "Right here, among us." We could easily have been given the same response by an Argentine executive, a Peruvian worker or any other inhabitant of a Latin American country. This is because of the fact that most of our region perpetuates its reputation and poor scores yielded in Transparency International's Global Corruption Perceptions Index.

But this is only one side of the coin. The tradition of corruption is present among multinationals from many different countries around the world, which engage in fraudulent practices – acts of bribery more often than not – to secure favourable decisions made by government officials. Such findings were reflected in the Bribe Payers Index – created by the same non-governmental organisation – in which major export countries were ranked based on the perceptions of each country's leading companies that operate at the international level. The index, which surveys the scope of fraud committed in the hemisphere in terms of bribe offers, detected (alarmingly) a host of companies and developed countries in Asia and the Northern hemisphere implicated in shady illegal dealings that are far from exemplary.

Lack of ethics and disregard for the law know no boundaries. We consequently asked ourselves if the Costa Rican legal system and France's courts will truly resolve what happened in Costa Rica following the bribery accusations levelled at former Costa Rican President Miguel Angel Rodríguez in connection with his business dealings with French firm Alcatel. Both countries must clear up whether or not one or more transnational companies bribed the former president in order to secure favourable contracts, thereby excluding other companies and acting to the detriment of citizens.

Furthermore, it is time for citizens, companies and civil society-based organisations to put an end to such criminal acts by demanding more appropriate ground rules when the decisions on the part of the courts in our countries take a long time to be made.

The means are within our reach: the United Nations Convention against Corruption, the foremost international legal instrument in this area, created to ensure countries could prevent and punish acts of corruption committed in the public and private sectors. But how? By providing tools for ensuring sanctions at the national and transnational level, chasing down acts of bribery in the private sector and ensuring the obligations required of legal entities are met. Arbitration under the Convention allows countries to demand fair shared responsibility on the part of the private sector in cases of corruption in Latin America. Irrespective of whether theirregularities crop up in government decisions, political financing or private-sector financial flows, the Convention provides for legal assistance, technical assistance and information exchange. The document, at the least, prevents multinationals from the various countries from continuing to identify loopholes or arguments that permit bribery in their respective countries. This is why it is so important that more and more parties accede to the Convention, since, even though it was signed in Merida (Mexico) by 120 nations in December 2003, only a dozen have ratified the document in its first year. Ratification by at least 30 are required for the instrument to enter into force.

We must demand clear indications on the part of our leaders that they will not tolerate acts of corruption in our countries and that there will be no place in the world where those guilty of corruption will be able to evade justice. And the best way to send this message is by ratifying the UN Convention. Then, of course, the countries will have to duly implement the instrument and put an end to the practice of enacting modest legislation and regulations that lack teeth. And thereafter, they must ensure this act is shared by all, by actively promoting the involvement of civil society and the private sector in efforts aimed at fighting corrupt practices.

It is true that ratifying the Convention, implementing it effectively and consolidating joint efforts implies a long road ahead. But to reach this end, an initial step must be taken. And if such a responsibility falls to our representatives, only the watchful awareness of citizens, from all over, will ensure their message and the strength of their voice are heard: This is your world. Fight against corruption.

Vice President of Transparency International.
© El Nuevo Herald, 2004. Published originally in Spanish

3) USING INTERNATIONAL EVENTS

The Summits of the Americas and G-8 meetings are examples of international events where civil society organisations in the Americas can bring pressure to bear for ratification and implementation of conventions.

LOBBYING SUMMIT OF THE AMERICAS AND G8 MEETINGS

Summit of the Americas' Meetings

Efforts to influence discussions, decisions and evaluations of the Plan of Action of the Summit of the Americas should begin early. The Summit of the Americas is the most important hemispheric meeting and is held every four years. There have been three Summits in the past, in Miami (USA, 1994), Santiago (Chile, 1998) and Ottawa (Canada, 2001). The IV Summit took place in Mar del Plata, Argentina, in November 2005.

To have an impact, civil society organisations should participate actively in the "Summit Process". This process consists of a series of preliminary meetings organised between Summits and follows up on the implementation of the Summit Plans of Action, generating hemispheric debate and negotiating the Final Declaration and the Plan of Action for the next Summit. These include preliminary summit meetings with civil society, as well as sectoral meetings that take place during the year before the summit. During the Summit, civil society organisations may also be able to take advantage of the presence of a large press corps covering the meeting to communicate their messages. TI and other groups were active in one or more of these ways in the four preliminary civil society meetings in 2005 and at the IV Summit of Americas, in Mar del Plata, Argentina.

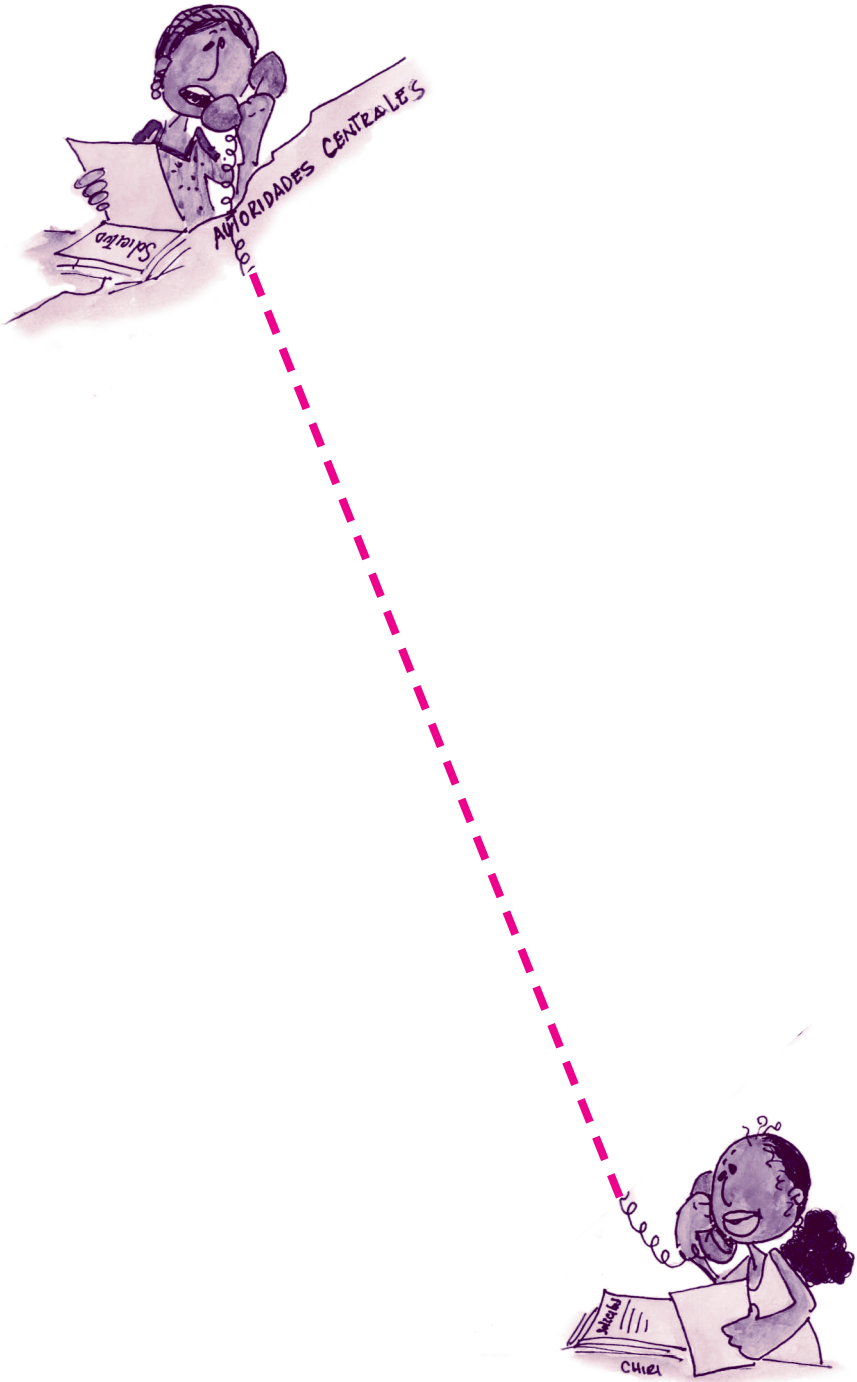
The agenda of the Summit can be indirectly influenced through national and regional discussions and agreements in other important fora. For example, the OAS General Assembly, which meets each year, paves the way for the summit deliberations. Conversely, the Summits provide an opportunity to influence the OAS agenda.

G-8 Meetings

The Group of 8 is composed of the seven leading industrial nations and Russia and convenes an annual Summit meeting, as well as a series of ministerial meetings leading up to it. Efforts to influence the G-8 discussions and its final Communiqué should also begin early. Civil society organisations should consider communicating their messages to G-8 consultation meetings with civil society, as well as to meetings of sous-Sherpa, Sherpa and Ministers, which take place in advance of the G-8 Summit of Heads of State. During the G-8 Summit, civil society organisations

may also be able to take advantage of the presence of a large press corps covering the meeting to communicate their messages. TI and other groups were active in one or more of these ways at the Gleneagles G-8 Summit in July 2005.

On the subject of corruption, point 14 of the Gleneagles Communiqué of the G-8 states, *inter alia*, that the G-8 states will:
"Work vigorously for early ratification of the UN Convention against Corruption and start discussions on mechanisms to ensure its effective implementation. Work to establish effective mechanisms, consistent with the provisions of UNCAC and previous G-8 commitments, within our own administrations for the recovery of assets, including those stolen through corruption ... We encourage all countries to promulgate rules to deny entry and safe haven, when appropriate, to officials and individuals found guilty of public corruption, those who corrupt them and their assets ... "


AUTORIDADES CENTRALES
Solicitud
CHILD

V. PROMOTING RATIFICATION AND ACCESSION

Some countries in the Americas have not yet ratified or acceded to the UN and UNTOC Conventions. In those countries, it is important for civil society organisations to campaign for their governments to take the necessary action.

To promote ratification and accession, your organisation should consider the following steps:

- Determine if the Conventions have been ratified or acceded to by your government and whether the instruments for ratification have been deposited.
- If the Conventions have not been ratified or acceded to, research the process for ratification or accession in your country; determine the stage the government has reached in that process and any obstacles to completing the process.
- Determine the entry points for civil society advocacy at national and international level.
- Develop an advocacy strategy.



HAVE THE CONVENTIONS BEEN RATIFIED?

To determine the status of ratification of or accession to a given convention in your country, the easiest first step is to check with the international organisation (OAS, UN, OECD) where the instruments of ratification and accession are deposited. Information about deposited instruments is made available on their websites. If the instrument has not been deposited then it will be necessary to study the ratification process in your country in order to determine where to bring pressure. Generally, in any given country, the information should be available from one or more responsible ministries, such as the foreign, justice or interior ministries, potentially from the president's or prime minister's office, and from appropriate parliamentary committees.

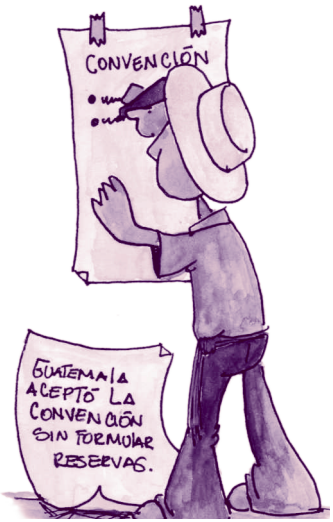
As part of your advocacy work you may want also want to determine the status of ratification in other countries. If other countries are ahead, you may want to point this out to your government.

WHAT IS THE RATIFICATION PROCESS?

The procedures for ratification or accession are laid down under national law and generally involve approval by a national legislative body and by the head of state. Publications in an official gazette may also be required.

In many countries, the main complication arises where there is a rule or practice requiring that prior to ratification the government must first make any changes in national legal framework required by the convention. This will then slow down the ratification process. For example, in quite a few OECD countries, the government must change the domestic legal framework for asset recovery in order to comply with UN Convention requirements.

For more information about the process see the Tools section below.


CONVENCIÓN
GUATEMALA ACEPTÓ LA CONVENCIÓN SIN FORMULAR RESERVAS.

TOOLS FOR PROMOTING RATIFICATION AND ACCESSION

The tools below help with:

- Determining the status of ratification in your country and other countries
- Understanding the ratification process in your country
- Determining the entry points for civil society advocacy
- Developing advocacy materials

1) DETERMINING THE STATUS OF RATIFICATION IN YOUR COUNTRY AND OTHER COUNTRIES

The following table on signature and ratification of anti-corruption conventions in the Americas is based on information available on OAS, UN and OECD websites as of 6 March 2006.

SIGNATURE AND RATIFICATION TABLE

Countries	OAS Convention	UN Convention	UNTOC Convention	OECD Convention
Argentina	S+R	S	S+R	S+R
Antigua + Barbuda	A	-	S+R	N/A
Bahamas	S+R	-	S	N/A
Barbados	S	S	S	N/A
Belize	S+R	-	A	N/A
Bolivia	S+R	S+R	S+R	N/A
Brazil	S+R	S+R	S+R	S+R
Canada	S+R	S	S+R	S+R
Chile	S+R	S	S, R	S+R
Colombia	S+R	S	S+R	N/A
Costa Rica	S+R	S	S+R	N/A
Cuba	-	S	S	N/A
Dominica	A	-	-	-
Dominican Rep.	S+R	S	S	N/A
Ecuador	S+R	S+R	S+R	N/A
El Salvador	S+R	S+R	S+R	N/A
Grenada	A	-	A	N/A
Guatemala	S+R	S	S+R	N/A
Guyana	S+R	-	A	N/A
Haiti	S+R	S	S	N/A
Honduras	S+R	S+R	S+R	N/A
Jamaica	S+R	-	S+R	N/A
Mexico	S+R	S+R	S+R	S+R
Nicaragua	S+R	S+R	S+R	N/A
Panama	S+R	S+R	S+R	N/A
Paraguay	S+R	S+R	S+R	N/A
Peru	S+R	S+R	S+R	N/A
St Kitts & Nevis	A	-	S+R	N/A
St Lucia	A	-	S	N/A
St Vincent & Gr.	A	-	S	N/A
Suriname	S+R	-	-	N/A
Trinidad & Tobago	S+R	S	S	N/A
United States	S+R	S	S+R	S, R
Uruguay	S+R	S	S+R	N/A
Venezuela	S+R	S	S+R	N/A

Signature (S), ratification (R), and accession (A)[5]

2) UNDERSTANDING THE RATIFICATION PROCESS IN YOUR COUNTRY

The ratification process varies from country to country and it will be necessary to determine which institutions bear responsibility and, if possible, which individuals within those institutions. The information below gives a quick overview of some of the systems in the Americas.

SAMPLE LEGAL REQUIREMENTS FOR TREATY RATIFICATION IN THE AMERICAS

Brazil
The ratification process requires simple majority approval by successive votes of the House of Representatives and the Senate. (Constitution Art. 49.)

Canada
Implementing legislation has to be introduced with the ratification bill and both have to be passed by the House of Commons and the Senate.

Mexico
After the signature, the legislative branch and the country's state legislatures must pass the necessary reforms to allow the Senate to ratify. The Senate has exclusive powers to ratify and once the ratification bill is approved it is passed on to the Chamber of Deputies and then to the Legislatures of States. The treaties will become supreme law. (Constitution Art. 76)

Paraguay
Congress must approve treaties. After approval, the treaty becomes part of domestic law. (Constitution Art. 141)

Peru
In most cases, Congress must approve treaties before they are ratified by the President. (Constitution Arts. 55, 56, 57, 102, 118)

Venezuela
The National Executive negotiates international treaties and Congress approves their ratification. (Constitution Art. 128)

USA
The Senate's consent to international agreements is required before the President can ratify a treaty. Senate consent does not mean that ratification by the President is required. (Constitution Article II)

3) DETERMINING THE ENTRY POINTS FOR CIVIL SOCIETY ADVOCACY

To influence the ratification process in your country you will need to analyse the process, how far along it is, what the obstacles are and how you can influence the process. As an example, the process in Chile is described in detail below.

NEGOTIATION, SIGNATURE AND RATIFICATION PROCESS IN CHILE AND THE ROLE OF CSOS[6]

Negotiation

Under Chilean law the responsibility for negotiation of an international anti-corruption convention or agreement lies with the head of government, the President of the Republic. In practice, conventions are negotiated by ambassadors and governmental officials from the Ministry of Foreign Relations, often with the help of national anti-corruption experts.

Signature

The head of government in Chile is also solely responsible for signing international agreements. In practice, ambassadors and other government representatives are delegated the task of signing the document on behalf of the President of the Republic. This often takes place at an international event held specifically for this purpose, as was the case for the United Nations Convention against Corruption signed by 111 States in Mérida, México, on 9-11 December 2003.

Approval by Congress

In Chile, prior to ratification a binding international legal instrument must be approved by both houses of the Chilean Congress through a process similar to that used for ordinary legislation. The President is responsible for submitting the instrument to both houses, following its signature.

- Assessment and review by the Executive

  All initiatives submitted to Congress must first pass through certain channels of assessment and review within the executive. The document may be held up within a certain ministry, such as the Ministry of Finance (through which all legislative bills must pass), the Ministry of Justice, the Ministry of Foreign Relations or the Ministry of the Interior. Often, this internal review process is not subject to any particular time constraint.

  Interested civil society organisations should gather information on the internal review status of the convention within the executive, and then go to these ministries to urge them to streamline the review process for the document.

- Submission to Congress

  In practice, this task of submitting the signed instrument to the Chilean Congress is carried out by the Ministry of the General Secretariat of the Presidency, which is the ministry responsible for submitting legislative bills. The Ministry must justify to Congress the need to give the document legal force within Chile and to bind the state internationally.

  Prior to submission, interested civil society organisations can request open sesions and submit petitions to governmental authorities with a view to urging the President to submit the signed convention to congress for its adoption, or to being heard while the drafting of the presidential address to be appended to the convention is under way. More often than not, such internal processes are expedited when government stakeholders in charge of initial reviews are identified and urged to expedite the process, either at meetings or via the media.
- Priority status

  In Chile, the constitution grants the President of the Republic the power to influence the work of Congress by assigning a level of urgency to the review process for a particular bill and requiring the Congress to grant that process a higher priority than other initiatives.

  Civil society organisations can pressure the President to exercise those powers to expedite the approval process.
- Review by Congress

  Once submitted to Congress, the international instrument is reviewed and debated in each house. Each house first conducts a general review, followed by a more thorough review. The latter is handled by a specific house committee, which reports on its findings during a plenary session of congress, after which the document is voted on. When an international convention is under review, the document is typically reviewed by several legislative committees before the respective house votes on its adoption. As such, the Constitution, Legislation and Justice Committees, in addition to the Foreign Relations Committee, and potentially the Finance Committee or any other committee deemed necessary, are involved in the review of the document.

  Civil society organisations may want to identify lawmakers aligned with the anti-corruption fight who can help them gain access to committees and lawmakers.

  Each of the aforementioned committees normally requests technical reports to determine whether the adoption of the convention is appropriate. Such reports and presentations are provided by governmental anti-corruption agencies, such as the bodies responsible for anti-corruption matters within the Ministry of Foreign Relations, the Ministry of Justice, the Office of the Controller General of the Republic and the Supreme Court. The technical opinions of the Chilean Bar Association, or other trade associations, NGOs or experts in the field are requested.

The committees´ requests for reports represent an opportunity active participation by civil society organisations in the debate and for presenting their reports and studies in favour of the passage of the convention in Congress.

During the debate, arguments in favour and against passage of a convention are heard, and opinions may be provided by experts and prestigious institutions.

At this stage, it would be advisable for civil society organisations to organise, possibly in conjunction with Congress, specialised seminars at which experts from other countries and international organisations can put forth arguments and recommendations in favour of the adoption of the international convention under review. Arguments in favour of the convention made by institutions or individuals removed from the country's internal conflicts, lend added weight.

Civil society organisations should also engage in activities to publicise and raise awareness about the importance of an anti-corruption convention. These may make it more difficult for lawmakers to publicly refuse their support, especially if the corruption issue is already on the public agenda.

- Rejection by one house

  The possibility exists that one house will pass an international instrument while the other rejects it. In this case, the house that approved the agreement can, subject to an exceptionally high quorum, compel the house that rejected it to debate and vote again.

  Civil society organisations can play a role at this juncture by putting legitimate political pressure on deputies or senators so that, during a subsequent round, the convention will be approved.

Ratification

Once congressional approval is obtained, the President of the Republic has the power and responsibility of proceeding with the ratification of the document, i.e. the formal act of stating by that the government has adopted the instrument.

Publication

In Chile, an international treaty must also be enacted and published in the Official Gazette to gain legal force in the country and be put into practice.

Deposit of the instrument of ratification

The President's statement must subsequently be deposited at a location agreed upon by the signatory states of the convention. In this connection, the ratification instrument for the Inter-American Convention against Corruption was deposited at OAS headquarters. The ratification of the United Nations Convention against Corruption must be deposited at the UN headquarters. Once ratification and deposit procedures are complete, the State of Chile becomes legally bound, alongside the other states parties, in accordance with international law.

Possibility of delay

As only the President of the Republic is empowered to deposit the ratification instrument and the constitution does not stipulate a period of time within which a treaty must be enacted and published, it is possible for weeks, months or even years to pass before an anti-corruption convention passed by congress becomes legally binding for the country at the international level or for the document to have legal force within the country.

As such, it is important that civil society organisations interested in such issues monitor the government, identify the ministry or office in charge of such procedures (Ministry of Foreign Relations; Legislative Legal Division of the Ministry of the General Secretariat of the Presidency) and demand publicly or at sessions with authorities that the convention be ratified, deposited, enacted and published.

4) DEVELOPING ADVOCACY MATERIALS

The following text is a sample press release designed to promote awareness of the UN Convention and to promote ratification, especially in G-8 countries. It's release is linked to a key date, namely entry into force of the UN Convention.

EXAMPLE: TI PRESS RELEASE ON UN CONVENTION

FIRST GLOBAL CONVENTION AGAINST CORRUPTION TO ENTER INTO FORCE

SEVEN OF G-8 HAVE YET TO RATIFY
THE FIRST TRULY GLOBAL ANTI-CORRUPTION CONVENTION

Berlin, 16 September 2005

With ratification yesterday by Ecuador of the United Nations Convention against Corruption (UNCAC), the first truly global tool in the fight against corruption will enter into force on 14 December 2005. This milestone has been reached despite the fact that, of the Group of Eight industrialised nations (G-8), only France has ratified this essential agreement.

"The G-8 needs to show that they are in this fight to win. Wealthier countries can hardly call on their poorer neighbours to take the fight against corruption seriously when they themselves are unwilling to act," stated Transparency International chief executive, David Nussbaum. "The next ratifications must include all the major industrialised countries, or the G-8's pledges will be worth no more than the paper they're printed on."

Bribe payments, the laundering of corrupt income and the flight of corrupt officials are cross-border phenomena and demand an international solution. The UN Convention against Corruption addresses this. It is a powerful legal instrument that will:

- Accelerate the retrieval of funds stolen by dictators and other public officials, such as under Nigeria's Abacha regime, via faster and better cooperation between governments.
- Push banking centres like Switzerland and the UK to become more responsive to such investigations and take action to prevent money laundering.
- Enable global judicial action against the corrupt, no matter where they are hiding. Even without great resources, nations will be able to pursue foreign companies and individuals that have committed corrupt acts on their soil.
- Activate, for all parties, including major non-OECD trading powers such as China,

Russia and Saudi Arabia, a prohibition on the bribery of foreign public officials, drying out a major channel for dirty money.

- Provide a framework for domestic anti-corruption legislation, introducing, in particular, whistle-blower protection, freedom of information and accountability systems for the public sector.
- Require measures to enhance accounting and auditing standards in the private sector and punish non-compliance.

Thus far, 129 countries, including the G-8, have signed, giving it an unprecedented geographical reach. Yet only a quarter of them have ratified, meaning that widespread adoption into national law is still a long way off.

Countries must do more than sign the right documents; they must translate the UN Convention's provisions into action. The follow-up conference in late 2006 for signatory states must generate an explicit and effective system for reviewing each country's implementation of the convention.

TI is the leading global non-governmental organization devoted to the fight against corruption.
Contact for the media: Add name, telephone and e-mail address



5 N/A means the OECD Convention is not applicable in the country in question.

6 Adapted from text provided by Miguel Peñailillo, TI Regional Conventions Coordinator for the Americans

VI.

PROMOTING IMPLEMENTATION INTO LAW, POLICY AND PRACTICE

If your government has ratified the UN and OAS Conventions, and the other two conventions, it is necessary to monitor whether they have translated the convention requirements into law, policy and practice. Part of this process requires interpretation of convention standards. Civil society organisations can have an impact by reminding governments to make implementation a priority and, if possible, by pushing for high standards to be applied in the implementation process.

To promote full implementation of one or more of the conventions in your country, your organisation should consider the following steps:

- Get a clear understanding of what the conventions require in their mandatory provisions and encourage in their non-mandatory provisions. Remember that the provisions affect not only the legislative framework but also regulations, policies and practices. Your organisation may be interested in looking at the conventions in their entirety or at specific provisions, depending on your focus.[7]
- Determine what international standards are relevant and useful in interpreting the convention provisions you are interested in.
- Research existing legislation, regulations, policies and practices in your country and their consistency with convention requirements. In this connection, you will need to develop a good understanding of domestic constitutional law and fundamental legal principles, as these influence your country's ability to implement certain convention provisions. Your initial focus should be on whether an adequate legislative framework is in place.
- Develop conclusions about changes needed and determine whether to (1) work on all changes or identify priority areas; and (2) go for high standards or take a minimalist approach.
- Develop proposals for reforms.
- Research the processes for implementation in your country, including legislative, regulatory, policy making and translation in practice. Analyse government positions on implementation, if available.
- Determine the entry points for civil society advocacy at national and international level.
- Develop an advocacy strategy.

HOW SHOULD CONVENTION REQUIREMENTS BE INTERPRETED?

The greatest challenge in connection with convention implementation lies in interpreting the standards and requirements laid down in the convention.

The process of interpretation can be made more manageable by reference to:

- Guidance material on the convention prepared by the negotiating conference or by the secretariat responsible for follow-up, such as the Legislative Guide on the UN Convention commissioned by UNODC.
- Questionnaires and indicators developed as part of monitoring processes, such as the material developed in the OAS Convention follow-up process. Examples of this material are included in the Tools section of Chapter VII.
- International standards developed by international intergovernmental organisations, especially the organisation responsible for follow-up.
- International standards developed by other respected international bodies or organisations.
- International best practice or model legislation developed by respected institutions.

Examples of international standards on preventive measures developed by respected institutions are provided below in the Tools section.

HOW SHOULD YOU RESEARCH YOUR NATIONAL SYSTEM AND DETERMINE CHANGES NEEDED?

Civil society analysis and assessment can take a variety of forms including:

- Detailed desk studies on implementation, into law of all or a range of convention provisions.
- Detailed expert reports on country performance with respect to enforcement or application of laws, taking account of multiple expert views and subject to expert review.
- Summary expert reports on country performance with respect to implementation into law, and enforcement or application of laws.
- Polling of public perceptions with regard to performance indicators established in the convention.

In analysing national implementation, civil society organisations may refer to a range of studies that have been prepared specifically to analyse compatibility of national systems with convention requirements. These include:

- Studies commissioned by UNDP, UNODC and other organisations to assess the legal framework and other elements of the system in a range of developing and transition countries, with a view to assessing steps to be taken for UN Convention implementation.

- Country reports by the Committee of Experts of the OAS Convention Follow-up Mechanism assessing implementation of the OAS Convention. See Chapter VII.
- Country reports on Argentina, Brazil, Canada, Chile, Mexico and the US produced by the OECD Working Group's Phase 1 and Phase 2 review processes on OECD Convention implementation and enforcement.
- TI's Americas Conventions Report Card. See Box on p. 81.

Civil society organisations may also find useful information in country studies that review country performance in areas covered by the conventions, although they have not been produced with the conventions in mind. These include:

- TI National Integrity System studies in a range of countries in the Americas. These are studies of the key institutions, laws and practices that contribute to integrity, transparency and accountability in a society, based on a holistic approach to countering corruption.
  See www.transparency.org/policy_and_research/nis/regional
- Country studies produced as a basis for anti-corruption work, by institutions such as the UN, World Bank and others, as well as by independent researchers.
- Studies by organisations such as the International Budget Project. The IBP has prepared studies on budget transparency in countries of the Americas. See the Tools section below.

WHAT PROPOSALS FOR REFORMS?

The OAS and UN Conventions are very broad, taking a systemic approach to the corruption problem and including a wide range of preventive and punitive measures. The components of an anti-corruption system are interconnected and, in principle, should not be considered separately.

It may be difficult to conduct advocacy work on implementation with respect to all the issues covered by the conventions and it may be necessary to prioritise. If your organisation is specialised in a particular area, then the choice of priority areas will be relatively easy. Otherwise, the selection might focus on:

- the mandatory provisions of the conventions and/ or
- the most important weaknesses in your country's system

Moreover, the convention provisions can be a basis for promoting minimum standards of performance or a platform for advocating the highest standards. With regard to the standards promoted, governments may choose to interpret convention provisions to require a low standard of performance. In that case, it will be up to civil society organisations to make a convincing case for higher standards, to argue for best practice. In that connection, in countries where technical assistance is provided to the government for onvention implementation, it will be important to try to ensure that technical assistance advisers liaise with civil society organisations.

TI'S PROGRESS REPORT ON OECD CONVENTION ENFORCEMENT

On 7 March 2005, TI publicly released its first annual *assessment of government enforcement* of the OECD Convention on Combating Bribery of Foreign Public Officials. The *TI Progress Report on OECD Convention Enforcement* provides a clear, concise overview and assessment of government enforcement performance in 24 of the 36 OECD Convention signatory countries with recommendations for improvements. The report concluded that there had been few bribery cases and that *enforcement efforts had to be stepped up substantially to achieve widespread awareness in the business community that foreign bribery does not pay*. The most important recommendations of the Progress Report called for OECD Convention parties to:

- Strengthen coordination of government enforcement by creating a national office for that purpose
- Improve access to enforcement systems through enhanced complaint procedures and whistleblower protection
- Continue the OECD monitoring programme beyond 2007

To read the report go to:
www.transparency.org/building_coalitions/oecd/oecd.html

TI'S AMERICAS CONVENTIONS REPORT CARD

TI is developing an Americas Conventions Report Card examining regional progress in the implementation of the OAS and UN Conventions with respect to provisions in two priority areas, namely: public contracting and public integrity, The initial exercise in 2005 / 2006 covers 10 countries. The Report Card will be produced on a regular basis to provide a clear and media-friendly assessment of convention implementation by a range of countries in the areas selected. It will serve as a powerful advocacy tool for national civil society campaigns on the topic areas and more generally for civil society efforts to bring pressure to bear in favour of the conventions.

See Tools section below for an excerpt from the public integrity questionnaire.


IGSS
MUNICIPALIDAD
CENTRO DE CAPACITACION NACIONAL
INGUAT
CONVENCIÓN

TOOLS FOR PROMOTING IMPLEMENTATION

The tools discussed in this section are designed to assist in:

- Interpreting convention provisions
- Determining the status of implementation in your country and other countries
- Assessing the legislative process in your country
- Developing advocacy materials

1) INTERPRETING CONVENTION PROVISIONS

The following texts provide examples of selected inter-governmental and non-governmental standards that have been developed on the basis of international consultation processes and may be useful in interpreting convention provisions. The first text contains examples of international standards on preventive measures developed by respected institutions and listed by topic area. The second text is a set of principles on the right to know developed by the Open Society Justice Initiative together with partner organisations and the third is a set of standards on public contracting developed by Transparency International.

It should be noted that apart from standards on preventive measures, there also exist standards relating to other areas covered by the anti-corruption conventions. For example, in the area of international cooperation, the UN has developed a range of useful materials, including model laws and other tools.

INTERNATIONAL STANDARDS ON PREVENTIVE MEASURES

PUBLIC SECTOR ETHICS AND CODES OF CONDUCT FOR PUBLIC OFFICIALS (OAS ART. III (1,2,3); UN ARTS. 7 AND 8)

- United Nations, International Code of Conduct for Public Officials (1997)
  www.un.org/ga/documents/gares51/gar51-59.htm
- OECD Council Recommendation on the Guidelines for Managing Conflict of Interest in the Public Service (2003)
  www.oecd.org/dataoecd/13/22/2957360.pdf
- OECD Recommendation on Improving Ethical Conduct in the Public Service (1998)
  www.oecd.org/dataoecd/60/13/1899138.pdf
- International Criminal Police Organization (Interpol) Code of Conduct for Law Enforcement Officers
  www.interpol.int/Public/Corruption/IGEC/Codes/Default.asp
- Interpol, Global standards to combat corruption in police forces/ services
  www.interpol.int/Public/Corruption/Standard/Default.asp
- INTOSAI Code of Ethics for Auditors in the Public Sector
  www.intosai.org/3_ETHICe.html.
- Council of Europe Committee of Ministers Recommendation to member states on common rules against corruption in the funding of political parties and electoral campaigns (2003)
  http://portal.coe.ge/downloads/REC%20(2003)4.en.pdf

PUBLIC PROCUREMENT (OAS ART. III(5); UN ART. 9)

- WTO Agreement on Government Procurement (1994)
  www.wto.org/english/docs_e/legal_e/gpr-94.pdf
- UNCITRAL Model Law on Procurement of Goods, Construction and Services (1994)
  www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/1994Model.html
- Transparency International's Minimum Standards for Public Contracting.
  See Tools below.

MANAGEMENT OF PUBLIC FINANCES (OAS ART. II (6); UN ART. 9)

- International Monetary Fund Code of Good Practices on Fiscal Transparency (2001)
  www.imf.org/external/np/fad/trans/code.htm
- International Monetary Fund Code of Good Practices on Transparency in Monetary and Financial Affairs: Declaration of Principles (1999)
  www.imf.org/external/np/mae/mft/code/index.htm
- OECD Best Practice Guidelines for Budget Transparency (2000)
  www.oecd.org
- INTOSAI's Lima Declaration of Guidelines on Auditing Precepts (1977)
  www.intosai.org/Level2/2_LIMADe.html

MEASURES RELATING TO THE JUDICIARY AND THE PROSECUTION SERVICES (UN ART. 11)

- The Bangalore Principles of Judicial Conduct (2002)
  www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

PRIVATE SECTOR (OAS ART. III (10); UN ART. 12)

- International Financial Reporting and Accounting Standards
  www.iasb.org/standards/summaries.asp
- International Standards on Auditing
  www.icaew.co.uk/library/index.cfm?AUB=TB2I_25595#history
- TI Business Principles for Countering Bribery
  www.transparency.org/global_priorities/private_sector/business_principles
- International Chamber of Commerce Rules of Conduct and Recommendations for Combating Bribery and Extortion (2005)
  www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/ICC_Rules_of_Conduct_and_Recommendations%20_2005%20Revision.pdf

PARTICIPATION OF SOCIETY (OAS ART. III(11); UN ART. 13)

- Reports of the Inter-American Commission on Human Rights and decisions of the Inter-American Court on the issue of access to information
- United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted 25 June 1998)
  www.unece.org/env/pp/
- Article 19, Model Freedom of Information Law
  www.article19.org/pdfs/standards/modelfoilaw.pdf
- Open Society Justice Initiative, Ten Principles on the Right to Know.
  See Tools below.
  www.justiceinitiative.org/Principles/index

MEASURES TO PREVENT MONEY LAUNDERING (UN ART.14)

- United Nations Office on Drugs and Crime, An Overview of the UN Conventions and the International Standards Concerning Anti-Money Laundering Legislation (2004)
  www.imolin.org/pdf/imolin/overview.pdf
- Bank for International Settlements, Basel Committee on Banking Supervision, Prevention of criminal use of the banking system for the purpose of money-laundering (1988)
  www.bis.org/publ/bcbsc137.htm
- Bank for International Settlements, Basel Committee on Banking Supervision, Customer Due Diligence for Banks (2001)
  www.bis.org/publ/bcbs85.htm
- Financial Action Task Force, Forty Recommendations
  (see e.g. Recommendations 4 -20)
  www.fatf-gafi.org/document/28/0,2340,en_32250379_32236930_33658140_1_1_1_1,00.html
- Wolfsberg Group Statement on Monitoring, Screening and Searching (September 2003); Anti-Money Laundering Principles for Correspondent Banking; and Wolfsberg Anti-Money Laundering Principles on Private Banking
  www.wolfsberg-principles.com/standards.html

TEN PRINCIPLES ON THE RIGHT TO KNOW

Released by the Open Society Justice Initiative on the third International Right to Know Day, 28 September 2005.

1. Access to information is a right of everyone.
Anyone may request information, regardless of nationality or profession. There should be no citizenship requirements and no need to justify why the information is being sought.

2. Access is the rule – secrecy is the exception!
All information held by government bodies is public in principle. Information can be withheld only for a narrow set of legitimate reasons set forth in international law and also codified in national law.

3. The right applies to all public bodies.
The public has a right to receive information in the possession of any institution funded by the public and private bodies performing public functions, such as water and electricity providers.

4. Making requests should be simple, speedy, and free.
Making a request should be simple. The only requirements should be to supply a name, address and description of the information sought. Requestors should be able to file requests in writing or orally. Information should be provided immediately or within a short timeframe. The cost should not be greater than the reproduction of documents.

5. Officials have a duty to assist requestors.
Public officials should assist requestors in making their requests. If a request is submitted to the wrong public body, officials should transfer the request to the appropriate body.

6. Refusals must be justified.
Governments may only withhold information from public access if disclosure would cause demonstrable harm to legitimate interests, such as national security or privacy. These exceptions must be clearly and specifically defined by law. Any refusal must clearly state the reasons for withholding the information.

7. The public interest takes precedence over secrecy.
Information must be released when the public interest outweighs any harm in releasing it. There is a strong presumption that information about threats to the environment, health, or human rights, and information revealing corruption, should be released, given the high public interest in such information.

8. Everyone has the right to appeal an adverse decision.
All requestors have the right to a prompt and effective judicial review of a public body's refusal or failure to disclose information.

9. Public bodies should proactively publish core information.
Every public body should make readily available information about its functions and responsibilities, without need for a request. This information should be current, clear, and in plain language.

10. The right should be guaranteed by an independent body.
An independent agency, such as an ombudsperson or commissioner, should be established to review refusals, promote awareness, and advance the right to access information.

www.justiceinitiative.org/Principles/index

MINIMUM STANDARDS FOR TRANSPARENCY IN PUBLIC CONTRACTING

Transparency International's *Minimum Standards* for Public Contracting, originally published in the Global Corruption Report in 2005, provide a framework for preventing and reducing corruption based on clear rules, transparency, and effective control and auditing procedures throughout the contracting process. These are a helpful tool for governments, businesses, civil society, monitors and journalists to measure if a contracting system provides minimum transparency assurances.

The standards focus on the public sector and cover the entire project cycle, including needs assessment, design, preparation and budgeting activities prior to the contracting process; the contracting process itself; and contract implementation.

The standards extend to all types of government contracts, including:

- procurement of goods and services
- supply, construction and service contracts (including engineering, financial, economic, legal and other consultancies)
- privatisations, concessions and licensing
- subcontracting processes and the involvement of agents and joint-venture partners

Public procurement authorities should:

1. Implement a code of conduct that commits the contracting authority and its employees to a strict anti-corruption policy. The policy should take into account possible conflicts of interest, provide mechanisms for reporting corruption and protecting whistleblowers.

2. Allow a company to tender only if it has implemented a code of conduct that commits the company and its employees to a strict anti-corruption policy.

3. Maintain a blacklist of companies for which there is sufficient evidence of their involvement in corrupt activities; alternatively, adopt a blacklist prepared by an appropriate international institution. Debar blacklisted companies from tendering for the authority's projects for a specified period of time.

4. Ensure that all contracts between the authority and its contractors, suppliers and service providers require the parties to comply with strict anti-corruption policies. This may best be achieved by requiring the use of a project integrity pact during both tender and project execution, committing the authority and bidding companies to refrain from bribery.

5. Ensure that public contracts above a low threshold are subject to open competitive bidding. Exceptions must be limited and clear justification given.

6. Provide all bidders, and preferably also the general public, with easy access to information about:

- activities carried out prior to initiating the contracting process
- tender opportunities
- selection criteria
- the evaluation process
- the award decision and its justification
- the terms and conditions of the contract and any amendments
- the implementation of the contract
- the role of intermediaries and agents
- dispute-settlement mechanisms and procedures.

Confidentiality should be limited to legally protected information.
Equivalent information on direct contracting or limited bidding processes should also be made available to the public.

7. Ensure that no bidder is given access to privileged information at any stage of the contracting process, especially information relating to the selection process.

8. Allow bidders sufficient time for bid preparation and for pre-qualification requirements when these apply. Allow a reasonable amount of time between publication of the contract award decision and the signing of the contract, in order to give an aggrieved competitor the opportunity to challenge the award decision.

9. Ensure that contract 'change' orders that alter the price or description of work beyond a cumulative threshold (for example, 15 per cent of contract value) are monitored at a high level, preferably by the decision-making body that awarded the contract.

10. Ensure that internal and external control and auditing bodies are independent and functioning effectively, and that their reports are accessible to the public. Any unreasonable delays in project execution should trigger additional control activities.

11. Separate key functions to ensure that responsibility for demand assessment, preparation, selection, contracting, supervision and control of a project is assigned to separate bodies.

12. Apply standard office safeguards, such as the use of committees at decision-making points and rotation of staff in sensitive positions. Staff responsible for procurement processes should be well trained and adequately remunerated.

13. Promote the participation of civil society organisations as independent monitors of both the tender and execution of projects.

2) DETERMINING THE STATUS OF IMPLEMENTATION IN YOUR COUNTRY AND OTHER COUNTRIES

The following texts provide examples of monitoring carried out by Transparency International and the International Budget Project. The first example involves monitoring designed to check implementation gaps in relation to the OAS and UN Conventions. The second example involves monitoring not specifically linked to anti-corruption conventions but addressing a subject covered by the conventions.

EXAMPLE OF CONVENTIONS' MONITORING

One method for assessing implementation in your country that may lend itself well to advocacy work is through concise expert reports on the status of implementation. TI developed questionnaires for that purpose, to examine implementation of the OAS and UN Conventions in the areas of public integrity and public procurement. The following text provides excerpts from the questionnaire on public sector integrity.

EXCERPTS OF TI'S PUBLIC INTEGRITY QUESTIONAIRE FOR THE TI CONVENTION REPORT CARD

The normative standards that apply to the disclosure of revenues, assets and liabilities are established specifically in Article III, paragraph 4 of the OAS Convention and in Article VIII, paragraph 5 of the UN Convention. Of particular relevance are the developments made with the OAS Committee of Experts First Round Questionnaires, and most specifically the Committee's Recommendations issued to the countries of the region studied in the past three years. Such recommendations, based on their regularity, demonstrate a consensus as to which elements characterize adequate regulatory framework and conduct relating to the disclosure of revenues, assets and liabilities.

The model that is derived from these international provisions and from the advances in the Follow-up Mechanism outlines the following accepted standards for the disclosure of revenues, assets and liabilities:

1. Requirement on the part of high-level and high-ranking public officials to report where they maintain their chattels and assets.
2. Requirement to submit statements of income, assets and liabilities at the time of assuming a public position and again at the time of leaving a public position, as a minimum.
3. Existence of procedures to ensure this requirement is met.
4. Verifiability of the information contained in such statements.
5. Public disclosure of and accessibility to such statements.

QUESTIONNAIRE ON THE DISCLOSURE OF REVENUES, ASSETS AND LIABILITIES

STATEMENTS OF INCOME, ASSETS AND LIABILITIES

Standards and Questions on institutional and legal framework.

Existence of a provision requiring public officials to submit statements of income, assets and liabilities that are verifiable and public

	Response	YES	NO	N/A
Question 24	Does the legal system in your country stipulate that public officials are required to report their income, assets and liabilities?			
	Source:			
Question 25	Does the legal system in your country stipulate that public officials are required to report their chattels?			
	Source:			
Question 26	Does the provision requiring income, assets and liabilities to be reported apply to the highest-level public officials of the Administration?			
	Source:			

...

STANDARDS AND QUESTIONS ON PERCEPTIONS REGARDING PERFORMANCE

Mechanisms and practices for compliance with the requirement to submit a statement of income, assets and liabilities (NB: a mechanism is defined as the procedures or agents by which a specific objective is achieved)

	Score	1	2	3	4
Question 29	Public services apply support procedures to help public officials comply with their requirement to submit the statement (such as direction, training, information)				
	Source:				
Question 30	Income, asset and liability statements are subjected to procedures to verify the veracity of the information performed by the proper governmental bodies or units.				
	Source:				
Question 31	The income, asset and liability statements are public or are at the disposal of the public through means that are accessible to the citizenry.				
	Source:				

PERFORMANCE INDICATORS AND STATISTICAL DATA:

33. Please specify what percentage of legally required public officials have in fact met this requirement to date:
34. Please specify the number of administrative or criminal proceedings that have been initiated for non-compliance with the requirement to submit a income, asset and liability statement in 2004:

For the full questionnaire please visit
www.transparency.org/tilac

EXAMPLE OF MONITORING BUDGET TRANSPARENCY

BUDGET TRANSPARENCY IN LATIN AMERICA: IMPROVEMENTS SEEN IN SOME COUNTRIES BUT STILL LACKING IN OTHERS

A new survey of budget transparency in eight Latin American countries finds that experts generally rate the accessibility, comprehensiveness and reliability of information on their government's financial activities as poor.

The 2005 survey, covering Argentina, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, Nicaragua, and Peru, finds a substantial improvement in experts' rating of budget transparency in two countries in comparison with a previous survey conducted in 2003. However, in Nicaragua and El Salvador experts in each country rated their government's commitment to budget transparency even lower than the already low levels seen in the 2003 survey.

The report, issued every two years, evaluates the perceptions about budget transparency among legislators, academic experts, media and civil society organizations, also contains policy recommendations for each country on how it can improve its budget transparency.

"Budget transparency is absolutely essential to ensure that governments are responsive to the needs of their citizens, and are truly committed to reducing the high levels of poverty seen in the region," said Mariana Pérez, coordinator for Fundar's regional initiative. "But given the current low levels of commitment to transparency and accountability, instead what we see too often throughout the region are corruption allegations and scandals involving funds that could be better put to use serving desperately needy populations."

GENERAL INDEX OF THE PERCEPTION OF BUDGET TRANSPARENCY*

	2003	2005
Costa Rica	48.8	60.1
Colombia	44.3	58.1
Mexico	50.4	53.8
Peru	44.6	51.9
Argentina	44.1	46.8
Guatemala		43.5
Nicaragua	46.4	38.5
El Salvador	40.3	31.1

*Score based on a scale of one to 100. These results reflect respondents' evaluations of their own country's budget transparency after completion of the perceptions survey.

STUDY EVALUATES BUDGET PROCESSES, PUBLIC ACCESS TO BUDGET INFORMATION, AND PUBLIC INPUT IN BUDGET PROCESS

Researchers from the 11 participating groups asked those familiar with budget information and the budget process in their countries about their views on a wide range of issues related to access to budget information, the willingness of officials to seek input from citizens on budgeting decisions, and the credibility of institutions such as internal and external auditors. Each country received ratings on these issues, and also a separate overall transparency rating from 1 to 100, with 100 being highly transparent.

In addition to the overall transparency rating shown above, other findings include:

- Citizen participation in the budget process continues to receive extremely low ratings across the region. Colombia, the country that experts gave the highest ratings to in this category, was rated positively by only 35 percent of respondents. Peru, the next highest rated country, only received 16 percent positive responses. And the country rated the lowest – El Salvador – only garnered 5 percent positive ratings. "Generally speaking, mechanisms for the involvement of citizens, those most affected by budget decisions, continue to be absent in the region," said Pérez.
- The timeliness of budget information also received markedly low ratings. In the case of Colombia, the country that again received the highest marks, only 31 percent of responses regarding the timeliness of budget information were positive. This is a concern because the lack of timely budget information only reinforces the lack of opportunities for meaningful participation and input by civil society or-

ganizations, social commentators, academics and journalists in budget debates.

- The category that received the most positive responses was the role and participation of the legislatures in the budget process. The strongest showing in this category was made by Nicaragua, with 62 percent positive responses. Costa Rica, El Salvador, Guatemala and Mexico also had strong responses above 50 percent. "The good news is that it appears that the perception is that in most countries the legislature's role is strengthening, which is a very basic element of a functioning democracy," Pérez said. "This does give us some hope, because without legislatures that can hold governments accountable for the way resources are spent, there is little that we can expect in the way of stronger democratic systems."

POLICY RECOMMENDATIONS FOR EACH COUNTRY TO ENHANCE BUDGET TRANSPARENCY

The final section of the report presents detailed policy recommendations for each country to address its specific weaknesses. Recommendations involve such steps as:

- creating opportunities for public input during the legislature's consideration of the budget;
- enhancing the authority and capacity of comptrollers and their internal auditing functions; and
- disseminating budgetary information more quickly, more frequently, and in greater detail.

The study, the Latin American Index of Budget Transparency 2005, was conducted by a group of leading Latin American non-governmental organizations and academic researchers and overseen by Fundar, a non-governmental research institute in Mexico. Excerpts from text on the website:
www.internationalbudget.org/themes/BudTrans/LA05.htm
www.fundar.org.mx/indice2005/index.html

3) ASSESSING THE LEGISLATIVE PROCESS

In order to ensure the adoption of legislation required for implementation, it is necessary to understand the legislative process. Below is a discussion of the legislative process in Mexico, illustrating the numerous actors involved and the many potential entry points for civil society advocacy. Of course, it is also necessary to understand the role of the executive branch in policy- and rule-making.

THE LEGISLATIVE PROCESS IN MEXICO

Under the Mexican Constitution, the legislative function is given to a General Congress divided in two chambers: one for deputies and one for senators. Annually, the Congress meets for two periods of ordinary sessions. The first one is from September the 1st to December 15th, or to December 31st. The second session runs from March 15th up to April 30th. The Congress or one of the Chambers also meets for extraordinary sessions when the Permanent Commission requests it.

The federal legislative process is based in the Mexican Constitution, the Organic Law, and the regulations for the Congress' internal government and by the parliamentary agreements adopted in full by the members of each chamber. The Constitution specifies that the right to initiate laws and decrees is a function of: a) the President of the Mexican Republic; b) the Congress' deputies and senators; and c) the State's legislatures. (Mexico is a Federation composed of 31 states and a Federal District).

Draft legislation

Laws and decrees can be initiated in either of the two chambers, following the legislature's regulations regarding the form, intervals and procedure in the discussions and votes, with exception of projects related to government loans, contributions and taxes or troops recruitment, which must be discussed first in the Deputies Chamber. The House of Congress where a bill originates is the Chamber of origin and is mentioned to indicate the Chamber where the legislative procedure begins and the Revising Chamber will be the House of Congress that received the bill for consideration.

There is a Parliamentary Gazette of the Senators Chamber that publishes their decisions. The Gazette also has an Internet page. Draft legislation is sent to the Gazette for publication on the date it is presented to the legislature and the President of the Board of Directors will determine the session according to the corresponding commission in accordance with its nature and object.

Commission

The Presidency of the Commission in charge of approving the act will formally accept the text duly documented and founded, in which the reasons or considerations for proposing said law or decree are set forth authors'. It is a parliamentary practice that inside the Commission a sub commission will elaborate the draft of the bill for its presentation, and this will then be submitted to the Commission for approval. The bills approved are accompanied by a report signed by a majority of the members of the Commission. In case of disagreement of one or more members of the Commission a dissenting opinion will be included in the report.

Chamber of Origin

Once a report has been issued the President of the Board of Directors of the Chamber will be notified and includes it in the agenda and in the Parliamentary Gazette for its presentation at the Assembly in a plenary session. Reports are subject to two readings in the Assembly in a plenary session carried out by the Secretary of the Board of Directors. Generally the discussion and voting of the report takes place at the second reading. Every proposed law or rule is discussed and voted first on a general basis, then in detail. Discussions are made alternatively to weigh pros and cons, beginning with cons. At the end of the list of speakers, the President will ask the Assembly if the matter has been sufficiently discussed and if the Assembly so considers, they will proceed to a vote. If a proposed law is not approved, the President will ask if the complete project should be returned to the Commission. If the decision is affirmative, it will be returned to the Commission for modifications, but if the decision is negative it will be rejected.

Once the project has been approved in the Chamber of Origin, it will be turned over for discussion to the other Chamber, unless it is the exclusive remit of one Chamber only. The President and two Secretaries must sign the project, together with the corresponding file, the summary of the discussion and other existing background material.

Revising Chamber

The Revising Chamber receives the minutes of the report together with the project of decree and follows the same procedures of study, report, discussion and approval followed by the Chamber of Origin. If a law or decree project is totally rejected by the Revising Chamber, it will be returned to the Chamber of Origin with the observations of the Revising Chamber. If revised again, it is approved by the absolute majority of the attending members, it will be returned to the Chamber that rejected it, and it will be taken into consideration again. If it is approved by absolute majority, it will be turned over to the President of the Republic for its publication; but, if rejected again, it will not be presented again in the same legislative period.

If the law or decree project is partially rejected only, or if it is modified, or expanded by the Revising Chamber, the new discussion in the Chamber of Origin will deal only

with the rejected part, or with the reforms or additions, and cannot alter any of the already approved articles.

President of the Republic

When the President of the Republic receives the decree approved by the Congress, he has two options: a) make observations on the approved decree, and send it back to the Chamber of Origin for its revision during the ten following days, unless during that period, the Congress has closed, in which case the return of the law or decree will be done on the first working day in which the Congress meets again; or b) promulgate the law and send it to be published.

If the process followed is for a constitutional reform, once the decree is approved by two thirds of both Chambers of the Congress, it is sent to the Legislatures of the States following article 135 of the Constitution. The Chambers of the Congress or the Permanent Commission will receive information from the Local Congress, indicating their approval or rejection of the referred decree in order to work on the count of the same and issue the corresponding statement. In case the decree is approved it is sent to the President of the Republic for its publication in the Federal Official Gazette.

Publication in the Federal Official Gazette

Laws are published in the Federal Official Gazette, which is the vehicle the President uses to announce and disseminate the decrees approved by the Congress and other information.

Based on text at www.senado.gob.mx/senado.php?ver=proceso&lng=en

7 The UNODC Legislative Guide to the UN Convention provides a very useful tool for understanding the Convention.

4) DEVELOPING ADVOCACY MATERIALS

Below is a sample letter to the editor which is an example of advocacy material aimed at promoting convention implementation.

SAMPLE LETTER TO EDITOR

Dear Editor,

On 29 March 1996, Member States of the Organization of American States adopted the Inter-American Convention against Corruption, the first international anti-corruption Convention. From 9-11 December 2003, Heads of State and Ministers gathered in Merida, Mexico, for the signing of the United Nations Convention against Corruption. Our government has shown the importance it attaches to fighting corruption by signing both instruments and ratifying the OAS Convention. (NOTE to letter-writer: Establish whether your government has signed the UN Convention.)

Corruption – the abuse of entrusted power for private gain – undermines the economic, social and political foundations of our societies. Whether it occurs in the public or private sectors, it deepens global poverty and thwarts development.

The OAS Convention and the UN Convention establish internationally agreed standards for the prevention and punishment of corruption. The conventions also provide comprehensive frameworks for international cooperation to combat corruption, including mechanisms for the recovery of stolen assets. As such, they have the potential to facilitate international anti-corruption efforts for years to come. The UN Convention adds to the important regional framework established by the OAS Convention as it is a global instrument, with broader coverage and more detailed provisions on many topics.

Our government has already taken the important steps of ratifying the OAS Convention and participating in its follow-up mechanism. (NOTE: Establish whether your government has participated. If not, call for implementation without this reference.) Our government should prove that it takes those commitments seriously by actively working to ensure full implementation of the Convention, including promptly following the recommendations made for our country under the follow-up mechanism. These recommendations include: (NOTE: Name the most important.)

Our government should also demonstrate its commitment to tackling the scourge of corruption by ratifying the UN Convention as soon as possible. We urge our government to announce this month the date by which it intends have ratified the historic UN Convention. We also urge our government to support efforts to ensure that there will be an effective monitoring process once the Convention enters into force. The UN Convention calls for a review process, but without establishing a clear review mechanism or review body – this lacuna should be addressed at the first Conference of States Parties to the Convention and our government should support the establishment of a vigorous monitoring system. Sincere-

VII.

PROMOTING AND CONTRIBUTING TO INTER-GOVERNMENTAL FOLLOW-UP AND MONITORING

An effective monitoring mechanism must instil public confidence, maintain commitment to reform, ensure continuity, establish benchmarks, encourage open dialogue at the national and international levels, promote reform efforts at the national level, develop a broad basis of support among non-government segments of society, and create reasonable expectations.

Joseph Gangloff, US Department of Justice, in a paper presented to the 11th International Anti-Corruption Conference in Seoul, South Korea, May 2003.



While peer review mechanisms may be costly, they provide civil society with an important means to push a government to implement a convention. But we cannot rely only on a mechanism; civil society must be very active in promoting the convention in society and making it a priority.

Valeria Merino Dirani, Member of the Board of Directors of Transparency International, in a presentation at the 11th International Anti-Corruption Conference in Seoul, South Korea, May 2003

Experience teaches that in order to ensure that the commitments made are translated into action, a convention needs an intergovernmental monitoring process. A designated body should regularly check the progress national governments are making in carrying out their treaty obligations and, where this is inadequate, put pressure on governments to improve their performance.

Such processes are foreseen in three of the four conventions discussed in this guide, namely the UN, UNTOC and OECD Conventions. In the OAS Convention, such a process was introduced by the Conference of States Parties subsequent to adoption of the convention, in large part thanks to efforts by Transparency International.

To promote and contribute to convention monitoring, your organisation should consider the following steps:

- Where there is no monitoring process in place (this is the case for the UN Convention):
  - Get a clear understanding of what the convention provides on monitoring
  - Join advocacy efforts to promote UN Convention monitoring – TI is developing proposals for UN Convention follow-up and monitoring
- Where there is a monitoring process in place (this is the case for the OAS, OECD and UNTOC Conventions):
  - Learn about the process, including the opportunities for civil society inputs, the schedule, the topics already covered and the topics coming up
  - Determine if the process is functioning well and, if not, what might be done to improve it. Important issues include whether sufficient resources are allocated to conduct the monitoring, whether civil society organisations are given an opportunity to contribute, and whether independent reports are prepared and published
  - Determine what inputs your organisation would like to make to the monitoring process. Civil society inputs are not thus far provided for under the UNTOC monitoring process
  - Determine whether there are outputs of the monitoring process that require follow-up
  - Develop an advocacy strategy

The following discussion considers monitoring in general and then looks more closely at OAS Convention monitoring.

HOW DOES INTERGOVERNMENTAL MONITORING WORK IN GENERAL?

In a self-evaluation process, a government is generally given a questionnaire and asked to provide its own assessment of how it is doing in complying with convention requirements. While this can provide very useful information, the drawback is that the government may not be sufficiently self-critical or may try to paint a picture that is rosier than warranted. The information is therefore not entirely reliable and in most monitoring systems is supplemented with information from other sources. In some systems this information is submitted to a committee of independent experts which can ask questions and make recommendations.

In a mutual evaluation, or "peer review" process, government representatives evaluate one another on their performance, generally taking responses to a questionnaire as the starting point. In existing anti-corruption convention monitoring systems [8] for the OAS and OECD Conventions, as well as the Council of Europe Conventions on Corruption, the examination is conducted on a non-adversarial basis, relying heavily on mutual trust among the participating states. The secretariat of the responsible organisation often plays an important role in supporting or stimulating the monitoring. The process brings pressure to bear through a mix of formal recommendations and informal dialogue. It may also include public scrutiny, comparisons and rankings. For the review process to have maximum impact, relevant information should be made available to the public, adding public pressure to peer pressure.

SOME KEY FEATURES OF AN EFFECTIVE MONITORING SYSTEM

- Serious commitment by governments. A critical mass of governments must take the process seriously and exert their influence on peers lacking the same commitment
- Inputs of information from a wide range of sources, including government self-assessments, non-governmental inputs, research by experts and in-country fact-finding by experts
- Preparation of a report by independent experts containing assessments and recommendations
- A strong, adequately resourced secretariat
- Frank, open and constructive discussion of the assessments and recommendations with a group of government peer representatives and adoption of the report
- Identification of technical assistance needs
- Publicity given to the final report
- Follow-up on the recommendations in the report

HOW DOES INTERGOVERNMENTAL MONITORING HELP?

Governments face many competing priorities, often contend with limited resources and may not take their convention commitments seriously enough. Where government performance is inadequate, an effective monitoring system promotes implementation by providing a framework for peer pressure and mutual support, as well as a channel for public pressure. Reporting schedules and review committee discussions or review team visits help stimulate government action. By this means, monitoring helps sustain momentum for implementation and builds public confidence that the convention is being taken seriously.

It should be pointed out to governments that they can benefit from monitoring in the following ways

- It helps them give the necessary attention and focus to a high priority issue
- It provides them with guidance and feedback on implementation and the reviews provide authoritative interpretation of the convention provisions
- It provides a forum for discussion of issues and sharing of good practice
- It identifies difficulties faced and technical assistance needs
- It helps ensure that those countries that promptly implement also benefit from the efforts to assure collective participation; it reduces "free riding"
- It provides public recognition of steps taken and progress made

WHAT ARE THE MONITORING CHALLENGES FOR GOVERNMENTS?

Monitoring, while necessary, represents a challenging task for governments. It requires them to commit resources, both to support the reviewing body and to marshal the information about their own performance required by reviewers. Moreover, where the monitoring finds their performance lacking, governments may be called on to devote resources to correcting deficiencies.

A further emerging challenge is that an increasing number of countries are covered by multiple conventions and are subject to multiple review processes, which stretches the capacity of even the most developed countries.

Since the implementation and monitoring processes can be costly in terms of human and financial resources, some less developed countries may require financial and technical assistance in order to participate, to manage the processes and to institute needed reforms. Such assistance, provided by more developed countries, may be a prerequisite to the participation of the less developed countries in international anti-corruption conventions at all stages from negotiation through implementation into monitoring.

Monitoring is under way for the OAS, OECD and UNTOC Conventions and the systems are described in summary form in the texts below. The OAS Convention Follow-up Mechanism is also described in detail in a subsequent section of this chapter.

OAS CONVENTION MONITORING

Started: 2001
Number of participating countries: 28 (of 33 parties)
Methodology: Responses to questionnaire and peer review with review teams and committee discussion
Scope of review: Each review phase covers selected articles of the Convention
Rate of monitoring: Currently 10 countries per year; 28 countries during the 5 years of the First Round
Number of Committee of Experts meetings per year: 2
In-country visits: No
Civil society participation: Yes
Follow-up: Yes, starting in 2006
Reports published: Most of the country reports with recommendations; civil society reports
Current staffing (estimate): 6 professionals at OAS headquarters devoting part time to monitoring
Estimated cost: Annual budget of USD 350,000 for 2005

OECD CONVENTION MONITORING

Started: 1999
Number of participating countries: 36
Methodology: Responses to questionnaire and peer review with review teams and plenary discussion
Scope of review: Phase 1, legislation; Phase 2, enforcement
Rate of monitoring for Phase 1: 35 countries reviewed in 2 years. 1 additional still to be done
Rate of monitoring for Phase 2: Approximately 6 per year, all 36 countries expected in 6 years
Number of Working Group meetings per year: 5
In-country visits: Yes for Phase 2
Civil society participation: Yes
Follow-up: 2 countries Phase 1 bis, 1 country for Phase 2
Reports published: Country report with recommendations
Current staffing (estimate): About 10 persons per year since 2003 at OECD headquarters
Estimated cost: EUR 1.5 million per year

UNTOC CONVENTION MONITORING

Started: Not yet fully established ; first steps taken at first and second Conference of Parties
Number of participating countries: 112
Methodology: Factual responses to questionnaire, secretariat overview analytical and assessment report, plenary discussion and follow-up questioning
Scope of review: Questionnaires on selected topics, based on programme of work of the Conference of Parties
Rate of monitoring: Planned to cover all countries each year in the first two years, then every second year
Number of meetings per year: One meeting per year in the first two years, then one every second year
In-country visits: None discussed thus far. May have in country visits for assessments of technical assistance needs as follow-up to assessments
Civil society participation: Not yet established
Follow-up: Some initial steps
Reports published: Secretariat overview report
Current staffing (estimate): 7-9 persons employed in Crimes Convention Section
Estimated cost: Not yet known

WHAT IS THE ROLE OF CIVIL SOCIETY WITH REGARD TO INTERGOVERNMENTAL MONITORING?

Civil society organisations have an important role to play in intergovernmental monitoring. To start with, they can help ensure that an effective monitoring system is put in place. TI's experience shows that civil society advocacy regarding effective monitoring can make a real difference. TI's activities have included:

- Currently promoting prompt introduction of effective UN Convention monitoring
- Successfully advocating introduction of OAS Convention monitoring with civil society inputs
- Successfully advocating publication of OAS Convention country reports
- Successfully advocating adequate resources and civil society inputs for OECD Convention monitoring

Once a monitoring system is running, civil society organisations can enrich the monitoring process by offering their own independent views on country performance, thereby helping to ensure that the inputs into the process are balanced. TI national chapters in the Americas have regularly made contributions to the OAS Convention Follow-up Mechanism and their submissions are published on the OAS website.

Civil society organisations can also work to ensure that the outputs in the form of country assessments and recommendations are publicised and receive follow-up. Many TI national chapters are also active in this way.

TI'S ADVOCACY ROLE CONCERNING THE OAS FOLLOW-UP MECHANISM

Starting in 1998, Transparency International pushed for the creation of a Follow-up Mechanism, submitting recommendations and promoting the idea in international meetings. In May 2001, the first Conference of the States Parties to the OAS Convention meeting in Buenos Aires reached a consensus in favour of such a mechanism, reflected in the "Buenos Aires Report', which lays out the most important aspects of the mechanism.[9] This report was submitted to the Conference of States Parties at the thirty-first regular session of the OAS General Assembly on 3-5 June 2001 and was adopted by Resolution 1784 (XXI-0/01).

Since the creation of the Mechanism, TI has made recommendations to improve its effectiveness. TI has pressed for a more transparent mechanism, with all submissions and reports to be made public, and for including formal participation of civil society in the process. TI has also monitored compliance with the recommendations to governments.

To read the recommendations that TI made to strengthen the Follow-up Mechanism, please visit www.transparency.org/tilac

TI PROPOSALS ON UN CONVENTION MONITORING

The UN Convention entered into force in December 2005 but no monitoring system will be introduced before the first meeting of the Conference of States Parties, expected in December 2006. In this context, a key role for civil society organisations is to ensure that an effective monitoring mechanism is in fact established.

With this in mind, starting in December 2004, TI organised a Study Group on Follow-up Monitoring of the UN Convention to develop proposals for consideration by the Conference of States Parties. The Study Group consists of individuals with extensive experience in monitoring of other anti-corruption conventions and other international instruments. It held four meetings between December 2004 and September 2005, devoting substantial time to reviewing existing monitoring systems. The Study Group took up the concerns about follow-up monitoring that were raised during the Vienna negotiations that led to the adoption of UN Convention, and considered how these concerns should be addressed. These included concerns about cost, fairness and duplication of the work of other monitoring systems. The results of the Study Group discussions have been summarised in a report containing a set of recommendations.

For more information about the TI proposals, please write to gdell@transparency.org

THE OAS CONVENTION FOLLOW-UP MECHANISM

The review process for the OAS Convention is currently the most important monitoring process for the whole Americas region and merits further explanation. It provides for both self-evaluation and peer review, as described below.

WHAT IS THE SYSTEM OF MONITORING UNDER THE FOLLOW-UP MECHANISM?

The Follow-up Mechanism for the OAS Convention has been in operation since 2001 and establishes a framework for reviewing whether states are enacting effective measures to combat corruption in line with OAS Convention requirements and for giving guidance on possible ways of improving or strengthening these measures. The Follow-up Mechanism is a voluntary system that attempts to promote compliance through peer pressure and through cooperation among the signatories. As of early 2006, 28 of the 34 Parties to the Convention have joined the Follow-up Mechanism.

In the first round of evaluations, that to ran for five years from 2001 to 2006, countries were reviewed on a selection of preventive measures including public sector standards of conduct, public officials' disclosure of assets, oversight bodies, and mechanisms to encourage participation by civil society and non-governmental organisations. They were also reviewed on technical cooperation and on central authorities for international law enforcement cooperation.

The Mechanism is composed of two bodies:

- the Conference of States Parties, the political body of the mechanism, which establishes guidelines and makes important decisions . The body meets once a year.
- the Committee of Experts, which conducts review examinations in a series of rounds according to a procedure including a preparatory and a review phase, as described below. This Committee is a body of technical experts from institutions with a legal or political responsibility for anti-corruption work in States Parties to the Convention.[10] It meets formally twice a year.

The secretariat for these two bodies also plays an imporant role. Secretariat services are provided by the General Secretariat of the OAS, through its Department of Legal Affairs and Services.

WHAT STEPS ARE INVOLVED IN THE REVIEW PROCESS?

There are three main phases in the OAS follow-up mechanism review process, the preparatory phase, the review phase, and the report and publication phase:

Preparatory Phase

In this phase, the Committee of Experts, with the assistance of the OAS Secretariat

- Selects the provisions of the Convention to be reviewed during the round.
- Approves a methodology for analysing the implementation of those provisions. The methodology, including a questionnaire and indicators, is applied to all countries examined during a given round. See the Tools section below for sample questions and indicators.
- Determines the order in which to review the countries, starting with those countries that voluntarily present themselves for review and continuing according to the date on which each country ratified the Convention.
- Designates review sub-groups by indicating for each country to be reviewed, a set of two states parties responsible for sending experts to examine that country.

Review Phase

- State self-assessments: The states concurrently respond to the questionnaire by a certain deadline. Just before the review, the states are asked to update their responses. These are published on the OAS website subject to the agreement of the country.
- Civil society response: Civil society organisations can respond to the same questionnaire in writing. They must take care to respond by the deadline fixed. These responses are published on the OAS website subject to the agreement of the country.
- Review by sub-groups: Assisted by the OAS Secretariat, the Committee of Experts sub-groups conduct a review of a state's response as well as responses from civil society. The sub-groups and representatives of the states reviewed meet just prior to the Committee of Experts meeting, to share information and provide any necessary clarification. The sub-groups prepare a draft preliminary report to be submitted to the plenary of the Committee of Experts.
- Informal meeting with civil society: Two hours before the Committee of Experts meets formally, it meets informally with representatives of the civil society organisations that have made written submissions by the deadline.
- Formal meeting of the Committee of Experts: Between four and six countries are reviewed at each of the bi-annual, formal committee meetings. The review subgroup presents its findings to the Committee and the Committee examines the state's responses. At the end of the meeting, a country report is approved, containing conclusions and recommendations.

Report and Publication Phase

- Final report of Committee of Experts: At the end of each round, the Committee adopts a final report that includes the individual country reports as well as an overall review, which is submitted to the Conference of States Parties and made public.
- Website publication: The OAS Secretariat publishes on its website:
  - responses to the questionnaire by the examined state, if authorised
  - responses to the questionnaire by civil society organisations, if authorised by the government of the country concerned
  - country reports of the Committee of Experts, including recommendations
  - progress reports on the general implementation of the OAS Convention

WHAT ARE SOME OF THE WEAKNESSES OF THE FOLLOW-UP MECHANISM?

Weaknesses in the OAS monitoring process include the following:

- Lack of adequate funding
- Lack of country visits
- Too few experts with relevant professional experience
- Lack of funding for civil society organisations to participate in the mechanism
- Lack of institutionalised civil society participation
- Slow pace of reviews

HOW CAN CIVIL SOCIETY ORGANISATIONS MAKE A CONTRIBUTION TO THE OAS CONVENTION FOLLOW-UP PROCESS?

As noted above, the Follow-up Mechanism allows for submission to the Committee of Experts of written reports from civil society organisations regarding the application of the Convention in their countries.

In addition, those organisations that have submitted independent written reports and that meet certain formal requirements may participate in an informal session during the review meetings of the Committee of Experts. These organisations may not, however, attend the working meetings of the Committee of Experts, nor can they formally meet with the Committee to present information which may be useful for its work.

In sum, civil society organisations can and should:

- make written submissions
- attend the informal briefing sessions

They should also:

- encourage governments to prepare full and timely reports
- encourage governments to allow publication of their responses to the questionnaire
- follow up on the recommendations in the country reports

THE ARGENTINIAN COALITION:

How an NGO can monitor and evaluate convention implementation

The Association of Lawyers of Buenos Aires and Poder Ciudadano joined forces in 2001 to develop tools to promote the OAS Convention. Their efforts included creation of the Follow-up Commission to Enforce the IACAC (Comision de Cumplimiento de Seguimiento de la CICC or CCSC), composed of representatives of NGOs, professional associations and academia as well as representatives of public institutions who joined as observers, with no speaking or voting rights. The aim of the Commission was to "take action to promote, and review how Argentina was fulfilling the requirements of the OAS Convention." The members of this group worked together to prepare a civil society response to the follow-up mechanism questionnaire. To this end, they prepared their own questionnaire for government authorities and carried out interviews and studies, collecting the experiences of all members of the Commission for use as inputs. The information and data they obtained was consolidated and presented to the OAS Committee of Experts. In addition, some CCSC members created the "Grupo Federal" (Federal Group) to look at how the Committee of Experts' recommendations were being implemented and to promote the OAS Convention at both the national and local level. They gave technical support in the provinces by carrying out workshops on the content of the Convention and civil society's role.

WHAT ARE THE LESSONS LEARNED REGARDING CIVIL SOCIETY SUBMISSIONS TO THE FOLLOW-UP MECHANISM?

TI has learned the following lessons from national chapter participation in the Follow-up Mechanism :[11]

- Follow the rules: Register with the OAS as early as possible. Meet deadlines.
- Stick to the questionnaire: The expert's reports will only cover issues raised in the questionnaire, so raising other issues will not be productive.
- Include a broad base of organisations in the preparation of your questionnaire response.
- Stick to the facts and always cite the source of the data that you provide.
- Establish a working relationship with your country's expert and the experts in the sub-group reviewing your country early on.
- Follow-up is key.

IN WHAT OTHER WAYS CAN CIVIL SOCIETY ORGANISATIONS INFLUENCE THE FOLLOW-UP MECHANISM?

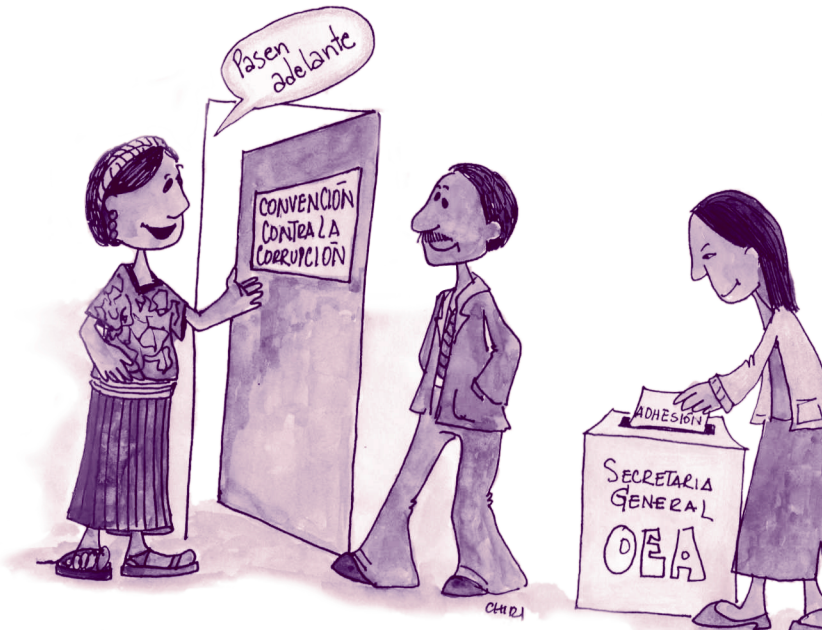
Other civil society activities relating to the Follow-up Mechanism can include:

- making proposals regarding which provisions to review in subsequent rounds and regarding the questionnaire
- submitting reports on collective themes of general interest as indicated by the Committee of Experts and making formal presentations to the Committee. (For more information, see Articles 33, 34, and 35 of the Rules of the Committee of Experts)
- making proposals for improving the Follow-up Mechanism. TI, for example, has submitted recommendations for a more transparent mechanism.

TI SUBMISSIONS TO THE OAS CONVENTION FOLLOW-UP MECHANISM

TI national chapters have been actively involved in making written and oral submissions to the Committee of Experts of the OAS Convention Follow-up Mechanism. As of March 2006, 18 TI chapters or contact organisations from the 28 countries reviewed to date have participated in the mechanism by submitting independent civil society reports regarding the level of compliance by their governments and by participating in meetings with the committee of experts. Most of the final reports issued by the Committee of Experts have included TI national chapter recommendations

TI has often supported other organisations so that they could attend and present their assessment of implementation in their country.


Pasen adelante
CONVENCIÓN CONTRA LA CORRUPCIÓN
ADHESIÓN
SECRETARIA GENERAL
OEA

TOOLS FOR CIVIL SOCIETY INVOLVEMENT IN MONITORING

The tools in this section help with

- Understanding the monitoring process
- Developing advocacy materials

1) UNDERSTANDING THE MONITORING PROCESS

To help understand the OAS Convention monitoring process, excerpts are provided below from the OAS first round questionnaire to governments, showing questions on standards of conduct for the public sector and on participation by civil society. Further excerpts are provided from an OAS document on indicators for the first round questionnaire; the indicators in the excerpt relate to declaration of income and assets and to supervisory control agencies. A third text included here consists of a table showing country and civil society participation in the Follow-up Mechanism.

EXCERPTS FROM OAS QUESTIONNAIRE

COMMITTEE OF EXPERTS OF THE FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Questionnaire on provisions selected by the committee of experts for analysis within the framework of the first round [12] May 24, 2002

...

II. CONTENT OF THE QUESTIONNAIRE

CHAPTER ONE
MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, (1 AND 2) OF THE CONVENTION)

1. GENERAL STANDARDS OF CONDUCT AND MECHANISMS

a. Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions? If so, briefly describe them and list and attach a copy of the related provisions and documents.

b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.

c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

d. If no such standards and mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the standards of conduct for the correct, honorable and proper fulfillment of public functions, and mechanisms to enforce compliance, in accordance with Article III (1) and (2) of the Convention.

...

CHAPTER FOUR
PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)

1. GENERAL QUESTIONS ON THE MECHANISMS FOR PARTICIPATION

a. Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.

b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

c. If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with Article III (11) of the Convention.

2. MECHANISMS FOR ACCESS TO INFORMATION

a. Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? Is so, describe them briefly, and indicate, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.

b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

3. MECHANISMS FOR CONSULTATION

a. Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.

b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.

...

For the full questionnaire for the First Round see www.oas.org

SELECTED OAS INDICATORS

POSSIBLE INDICATORS THAT COULD BE CONSIDERED IN RELATION TO IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW DURING THE FIRST ROUND

By virtue of the terms of general recommendations numbers 7.4, 7.2 and 7.2 of the reports for Paraguay, Colombia, and Nicaragua, respectively, adopted by the Committee of Experts at its plenary session held on July 18, 2003 at OAS headquarters in Washington D.C., the Technical Secretariat of the Committee will proceed to publish the following list of possible indicators that could be considered in relation to implementation of the provisions of the Convention selected for review during the first round, for the purposes indicated in said recommendations:

...

2. SYSTEMS FOR REGISTRATION OF INCOME, ASSETS, AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

2.1. Relevant information to establish the objective results of the use of declarations of net worth as an instrument for preventing and combating corruption, processed so as to make it possible to monitor advances in policies, programs, and decisions of the competent authorities in this field. Indicators such as the following could be used for this purpose: number of cases in which verification, evaluation, or analysis of the information provided in the declaration made it possible to prevent conflicts of interest or to detect the involvement of civil servants in acts of corruption or illicit enrichment; action taken on that basis and the result of said action; sanctions imposed on persons who failed to comply with the standards pertaining to registration, because of either failure to turn in a declaration, or presentation of an improperly prepared, inaccurate, or incomplete declaration; number of training programs offered to civil servants responsible for implementation of such registration systems.

3. SUPERVISORY CONTROL AGENCIES, WITH REGARD TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)

3.1. Relevant information to establish the objective results of the functions performed by control agencies in relation to compliance with the provisions of items 1, 2, 4, and 11 of the Convention. Indicators such as the following ones could be used for this purpose: number of cases related to said provisions which have been brought to the attention of the competent control agencies, number of unresolved and resolved cases, and number of preventive or corrective measures adopted by those agencies in relation to said cases, with the cases and measures grouped together for each of the provisions to which they pertain; average time required to process each case, giving the percentage of cases whose results were adversely affected by the time required for processing; number of training programs geared to the...

For more information, please see the OAS website at www.oas.org

COUNTRY PARTICIPATION IN THE FOLLOW-UP MECHANISM I ROUND

Country	Ratification/Accession	Member of the Follow-up Mechanism	National questionnaire published	OAS Report published	Inputs of CSOs
Argentina	Yes	Yes	Yes	Yes	Yes
Antigua and Barbuda	Yes	NO	-	-	-
Bahamas	Yes	Yes	Yes	NO	NO
Barbados	NO	-	-	-	-
Belize	Yes	Yes	NO	Yes	NO
Bolivia	Yes	Yes	Yes	Yes	Yes
Brazil	Yes	Yes	Yes	Yes	Yes
Canada	Yes	Yes	Yes	Yes	Yes
Chile	Yes	Yes	Yes	Yes	Yes
Colombia	Yes	Yes	Yes	Yes	Yes
Costa Rica	Yes	Yes	Yes	Yes	Yes
Dominica	Yes	NO	-	-	-
Dominican Rep.	Yes	Yes	Yes	Yes	Yes
Ecuador	Yes	Yes	Yes	Yes	Yes
El Salvador	Yes	Yes	NO	Yes	Yes[13]
Grenada	Yes	Yes	NO	Yes	NO
Guatemala	Yes	Yes	Yes	Yes	Yes
Guyana	Yes	Yes	NO	Yes	NO
Haiti	Yes	NO	-	-	-
Honduras	Yes	Yes	Yes	Yes	NO
Jamaica	Yes	Yes	Yes	Yes	NO
Mexico	Yes	Yes	Yes	Yes	NO
Nicaragua	Yes	Yes	Yes	Yes	Yes
Panama	Yes	Yes	Yes	Yes	Yes
Paraguay	Yes	Yes	Yes	Yes	Yes
Peru	Yes	Yes	Yes	Yes	Yes
Sant Kits & Nevis	Yes	NO	-	-	-
Santa Lucia	Yes	NO	-	-	-
San Viccent & the Grenadines	Yes	Yes	Yes	NO	NO
Suriname	Yes	Yes	NO	Yes	NO
Trinidad & Tobago	Yes	Yes	Yes	Yes	Yes
Uruguay	Yes	Yes	Yes	Yes	Yes
USA	Yes	Yes	Yes	Yes	Yes
Venezuela	Yes	Yes	Yes	Yes	NO

2) DEVELOPING ADVOCACY MATERIALS

In relation to OAS Convention monitoring, civil society can play a useful role by highlighting key issues concerning the process itself as well as by bringing to public attention issues emerging from the reports issued. This may be done via a range of advocacy materials. The press release included below was released on a key date (Right to Know Day) and used the occasion to highlight key conclusions of the Committee of Experts reports on a number of countries.

EXAMPLE: TI PRESS RELEASE ON OAS CONVENTION

ANTI-CORRUPTION ASSESSMENTS REVEAL SECRECY AS A CONTINUING CHALLENGE IN THE AMERICAS

AS CIVIL SOCIETY YESTERDAY CELEBRATED RIGHT TO KNOW DAY, LACK OF UNIVERSAL ACCESS TO INFORMATION CONTINUES TO PLAGUE THE REGION

Washington, 29 September 2005

The United States, Canada and Guatemala share a common concern about public access to information, according to independent reports presented on Monday by national chapters of Transparency International (TI) to the Committee of Experts of the Organization of American States (OAS). The Committee is responsible for monitoring country compliance with the Inter-American Convention against Corruption. "The right to know and to challenge a government's activities is a fundamental element of accountability," said Silke Pfeiffer, Director for the Americas at Transparency International. "All countries in the region must take action to more fully and consistently implement higher standards of access to information.

Guatemala
Guatemala lacks an access to information law.
65 percent of all requests for public information in Guatemala were rejected, denying the people their constitutional right to information, according to Acción Ciudadana, the Guatemalan chapter of Transparency International. Acción Ciudadana monitored access to information between October 2002 and June 2004. Their report shows that the percentage of rejected petitions for access to information increased to 78 percent in electoral periods. Coupled with the country's lack of a law on access to information and an effective system to detect cases of government conflict of interest, a principal tool of good governance is also denied to Guatemalan citizens. Members of the Committee suggested that quick passage of an access to information law was essential in Guatemala.

United States

The United States has a strong access to information regime but exceptions to providing information under the Freedom of Information Act (FOIA) are increasing, according to a Transparency International USA report prepared with the assistance of Foley Hoag LLP and numerous US organisations. The report underscored the robust US regime, but expressed concern about the increased number of exceptions to granting access to government documents under the Freedom of Information Act. The report highlights that from 1995 to 2002 the average number of pages declassified annually was 126 billion. In comparison, a mere 43 billion were declassified in fiscal year 2003.

Canada

Canada also has a strong access to information regime but it is inconsistently implemented.

TI-Canada reports that while there has been considerable progress in implementing the provisions of the Inter-American Convention, Canada's record on access to information shows an inconsistent and mixed response to information requests across the federation, according to the TI chapter.

The OAS Committee of Experts has issued important assessments of how countries are implementing the Convention's provisions in areas that include declaration of assets, conflict of interest prevention, access to information, and civil society participation. But, there is little evidence that countries are acting on those recommendations. Moreover, some governments have refused to permit publication of reports, limiting the capacity of their citizens to identify and support reform efforts.

"This lack of transparency is a fundamental obstacle to the ability of citizens to trust in the political will and capacity of their government to fight corruption", stated Miguel Angel Penailillo, TI's regional co-ordinator of the Americas Anti-Corruption Conventions Programme. "Governments must publicly account for how they are implementing the OAS Committee's recommendations."

In a meeting last week with representatives of Transparency International, Jose Miguel Insulza, the new Secretary General of the OAS, reiterated his commitment to greater transparency and to the fight against corruption. He pledged to work closely with TI, and acknowledged the need to strengthen and accelerate the pace of the follow-up mechanism of the Convention.

Transparency International chapters in the Americas, in coalition with other civil society organisations, have worked for many years to promote implementation of the Convention, which serves as the hemisphere's roadmap for the fight against corruption.

TI is the global civil society organisation leading the fight against corruption.
[Contact for the media: Add name, telephone and e-mail address]



8 Inter-American Convention Against Corruption (1996); OECD Convention on Combating Bribery in International Business Transactions (1997); Council of Europe Civil and Criminal Law Conventions against Corruption (1999).

9 Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption.

10 The experts are appointed by the government of their respective countries. No specific qualifications are required. Some of those appointed have a diplomatic role and act in the absence of an expert.

11 Lessons learned, cited from unpublished paper of Valeria Merino-Dirani, Member of TI´s Board of Directors.

12 This questionnaire was adopted by the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption, in its second meeting, held May 20 to 24, 2002, at OAS Headquarters, Washington, D.C.

13 Since the government did not authorize the publication of the national report, the independent report from the civil society organization was not published by the OAS.

ANNEX: WEB LINKS AND READING MATERIAL

WEB LINKS

OAS Secretariat for Legal Affairs and Services
www.oas.org/juridico/spanish/Lucha.html
www.oas.org/juridico/english/FightCur.html
These pages, in Spanish and English, provide information on signatures and ratifications of the OAS Convention as well as updates on the latest developments in the OAS Convention Follow-up Mechanism and information on technical assistance activities in relation to the Convention.
The pages also make available government responses to questionnaires and country reports adopted by the OAS Committee of Experts containing their findings and conclusions in the first round of examinations. They also provide access to the written civil society submissions to the review process.

United Nations Office on Drugs and Crime (UNODC)
www.unodc.org/unodc/en/drug_and_crime_conventions.html
This site contains information on the UN and UNTOC Conventions. The full texts of the two Conventions are available in all six UN languages, English, French, Spanish, Arabic, Russian and Chinese. Background information on the Conventions, concise overviews of the Conventions' highlights, an up-to-date list of signatories and parties, as well as convention-related documentation, speeches and press releases are all posted on the site. For the UN Convention there is also information on country projects, inter-agency coordination and a link to the Mexican government web site on the High-level Political Conference for the purpose of signing the Convention. For the UNTOC Convention, the site provides a Legislative Guide and will eventually include one for the UN Convention. Apart from the information on the Conventions, the site includes general information on corruption such as an anti-corruption toolkit, web links, information on global trends and on judicial integrity.

Transparency International – Conventions web pages
www.transparency.org/global_priorities/international_conventions
These pages provide comprehensive information about international anti-corruption conventions, including summaries of all relevant conventions and selected instruments, discussion of monitoring processes, explanations of advocacy activities including advocacy tools, web and print resources and other useful information.

Transparency International-LAC Information on Conventions in the Americas
www.transparency.org/regional_pages/americas/conventions
www.transparency.org/regional_pages/americas/conventions/other_documents
On 27 April 2005, TI launched a new website in Spanish and English about anti-corruption conventions in the Americas, including the OAS, UN and OECD Conventions. The new website aims to gather, exchange and disseminate regularly updated information, existing tools and resources, activities and news related to the anti-corruption conventions, all of which will be available in Spanish, English and possibly Portuguese. The website summarises the content of the different conventions, their associated monitoring mechanisms as well as civil society's role in the drafting, ratification, follow-up and promotion of the conventions. Visitors to the site can also find regularly updated news articles related to the conventions. It also serves as an online community, bringing together individuals and organisations dedicated to maximising the potential of these conventions in fighting corruption.

Centro Latinoamericano de Administración para el Desarrollo - CLAD
www.clad.org.ve/redes.html
Through the Network of Institutions Combating Corruption and Rescuing Public Ethics (Red de Instituciones de Combate a la Corrupción y Rescate a la Etica Pública), CLAD aims at curbing corruption and strengthening transparency in Ibero-America.

International Money Laundering Information Network (IMoLIN)
www.imolin.org/imolin/index.html
IMoLIN aims to assist governments, organisations and individuals in the fight against money laundering. It includes a database on legislation and regulation throughout the world (AMLID), an electronic library and a calendar of events in the anti-money laundering field.

Probidad
www.probidad.org
Probidad is a civil society organisation working in the anti-corruption field and has published a guide on International Policies against Corruption.

Revista Inter-Forum
www.revistainterforum.com/espanol/archivos/ArchivoSub_Sociedad.html
This site offers Spanish-language academic articles on corruption and anti-corruption conventions.

TI Pages on the International Anti-Corruption Conference (IACC)
www.transparency.org/iacc/index.html
The International Anti-Corruption Conference takes place every two years and brings together anti-corruption practitioners and policy-makers from around the world to discuss key issues and conclusions gathered from the latest experiences. The last four conferences have included workshops on anti-corruption conventions.

U4 Website: Anti-corruption conventions and treaties
www.u4.no/links/treaties.cfm
The Utstein Group Anti-Corruption Resource Center, set up by donors to serve bilateral donor agencies, includes a special section on anti-corruption conventions and treaties that provides summaries of and links to all anti-corruption conventions, as well as other international instruments. It includes an article on how conventions can serve as useful tools for bilateral donor agencies at headquarters and in the field, and how donors can support convention implementation in developing countries.

UNICORN
www.againstcorruption.org
UNICORN, the Global Unions Anti-corruption Network, was set up by the international trade union bodies, the Trade Union Advisory Committee to the OECD (TUAC), Public Service International (PSI) and the International Confederation of Free Trade Unions (ICFTU). UNICORN focuses on multinationals and corruption, and compiles information on trade union action in combating corruption.

US Department of State, Bureau for International Narcotics and Law Enforcement Affairs
www.state.gov/p/inl/corr
The Bureau for International Narcotics and Law Enforcement Affairs is committed to strengthening the international fight against corruption. The homepage provides information about the UN and OAS Conventions.

SELECTED BOOKS, ARTICLES AND STUDIES

GENERAL AND COMPARATIVE ANALYSIS

United Nations Office on Drugs and Crime
Compendium of international legal instruments on corruption
(Second edition, New York 2005)
www.unodc.org/pdf/crime/corruption/compendium_e.pdf
This book contains 21 major international and regional treaties, agreements, resolutions and other instruments. These include both legally binding obligations and some soft-law instruments intended to serve as non-binding standards. The first section of the book contains a very useful summary of international legal instruments.

Report of the United Nations Secretary-General
Existing international legal instruments, recommendations and other documents addressing corruption
(Report to the Commission on Crime Prevention and Criminal Justice, 10th session, Vienna, 8 – 17 May 2001, E/CN.15/2001/3)
www.unodc.org/pdf/crime/10_commission/3e.pdf
In December 2000, the UN General Assembly requested the UN Secretary General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption and requested the UN Crime Commission to review this at its tenth session and provide guidance as to future work on the development of a legal instruments against corruption.

Carver, Jeremy
Combating corruption: the emergence of new international law
5 Int'l Law Forum No.2, May 2003, p119
www.transparency.org/global_priorities/international_conventions/readings_conventions
The paper discusses how the success of the OECD Convention spurred the previously slow movement of other international anti-corruption measures at the UN and regional level, and states that this progress reflects a fast-evolving awareness of corruption as detrimental to political, economic and social development.

Gangloff, Joseph
Practical Aspects of Peer Review
(May 2003)
www.transparency.org/global_priorities/international_conventions/readings_conventions
This paper, presented at the 11th International Anti-Corruption Conference, deals with the challenge of designing a follow-up mechanism for the UN Convention

against Corruption. It looks at the fundamental objectives of the follow-up mechanism, its key characteristics, practical considerations that need to be taken into account and lessons learned from Council of Europe and OAS monitoring.

Low, Lucinda
The global legal framework: The OECD, OAS and Council of Europe Anti-Bribery Conventions
(unpublished, Paris April 2003)
This article covers new international standards and challenges for effective implementation.

Pagani, Fabrizio
Peer review: a tool for co-operation and change
(OECD, 11 September 2005)
www.oecd.org/dataoecd/33/16/1955285.pdf
This paper examines the practice of peer review and peer pressure in the context of international organisations. In particular, the paper studies the experience of the Organisation for Economic Co-operation and Development. It starts by defining peer review, then clarifies the related concept of peer pressure, and proceeds to examine the main components of a peer review exercise. The last section outlines the role that peer reviews can play and sets out the conditions under which they can strengthen co-operation and bring change.

Posadas, Alejandro
Combating corruption under international law
Duke Journal of Comparative and International Law, Vol. 10, No. 2,
(Spring/ Summer 2000)
This article reviews the history of the development of the international legal framework with regard to corruption. It looks at the origins of efforts to address the issue starting with post-Watergate investigations and continuing with unsuccessful efforts at the United Nations during the late 1970's and early 1980's. It then examines the emergence and development of international anti-corruption initiatives from the 1990's to the present, resulting in large measure from new international realities of the post-Cold War era. It considers the lessons learned from the experience thus far, the current status of international efforts and raises some questions about existing measures to combat bribery and corruption under international law.

OAS CONVENTION
BOOKS AND ARTICLES

Baragli, Nestor. Oficina anticorrupción
Convención Interamericana contra la Corrupción: Implementación de un eficaz Instrumento internacional de lucha contra la corrupción. 2004
www.anticorrupcion.jus.gov.ar/documentos/LIBRO%20CICC-DEFINITIVO-CON%20TAPAS.pdf
In this Spanish-language guide, the Argentinean Anti-corruption Office describes the OAS Convention and its Follow-up Mechanism, as well as the experience of Argentinean civil society with respect to the Follow-up Mechanism

De Michele, Roberto
Follow-up Mechanism of the Inter-American Convention against Corruption, a Preliminary Assessment: is the Glass Half Empty?
Southwestern Journal of Law and Trade in the Americas, Volume 10, (Summer 2004):101-125.

Kohn, Diane,
Follow-up to the Inter-American Convention Against Corruption: a regional initiative of TI in the Americas (2003)
The Organization of American States (OAS) has provided for civil society participation in the review process. Thus, in May 2002, the TI chapters in the Americas prioritised civil society participation in the follow-up process.

Manfroni, Carlos, Werksman Richard, Ford, Michael (Translator)
Inter-American Convention Against Corruption: annotated with commentary,
(June 2003, previous editions in Spanish in 1997 and 2001)
This is the only book so far to analyse the first international agreement designed to fight corruption in the Western Hemisphere. Manfrone and Werksman explain the sense, scope, and consequences of each specific commitment adopted by the countries belonging to the Organization of American States for eliminating criminal offences and unethical practices in government.

Mclean, Magaly, Salas, José Francisco, Castillo Vargas, Sara,
Aravalo Solorzano, Oscar
Difusión e implementación de la convención interamericana contra la corrupción,
Poder Judicial, CONAMAJ (Comision Nacional para el Mejoramiento),
(OAS, 1998)

Ministerio Secretaría General de Gobierno, Formación Jurídica para la Acción (FORJA)
Adaptando la legislación penal de Chile a la Convención Interamericana contra la Corrupción
Subsecretaría de Asuntos Jurídicos. Departamento de Cooperación y Difusión Jurídica (Banco Interamericano de Desarollo 2001)
This book presents the Inter-American Convention Against Corruption and its implementation into Chilean law.

Piza Rodríguez , Dr. Julio Roberto
Ley modelo sobre declaración de ingresos, pasivos y activos, por parte de quienes desempeñan funciones públicas
www.bcn.cl/alegislativo/pdf/cat/docs/2394-07/353.pdf
The Member States of the Organisation of American States, with the aim/objective to create instruments to control corruption, adopted the Inter-American Convention Against Corruption, on March 29th 1996. This study defines the nature, elements and characteristics of the declaration of assets by public officials declaration as a tool for combating corruption and reducing its impact on public ethics.

CASE AND COUNTRY STUDIES

Acción Ciudadana
Estudio sobre la applicación de la Convención Interamericana de Lucha contra la Corrupción en Guatemala, (April 1999)
This study is about the application of the Convention in Guatemala and outlines the problems of not ratifying it.

OAS Secretariat for Legal Affairs
www.oas.org/juridico/english/mec_ron1_rep.htm
These pages make available government responses to questionnaires and country reports adopted by the OAS Committee of Experts containing their findings and conclusions in the first round of examinations of countries under the Follow-Up Mechanism for the implementation of the OAS Convention. The pages also provide access to the written civil society submissions to the review process.

Transparency International
www.transparency.org/regional_pages/americas/conventions/civil_society/soc_civil_oas/oas_mechanism
This page, part of the TILAC website, provides access to country reports prepared by TI national chapters and submitted to the committee of experts as part of the OAS Convention Follow-Up Mechanism.

TI POSITION PAPERS

Recommendations of TI to the XXXV Regular Session of the OAS General Assembly, 5-7 June 2005

TI has actively participated in every OAS General Assembly and in the Summit of the Americas since 1994. TI has presented several proposals and recommendations, some of which have been incorporated in resolutions and conventions originating from those meetings. The present paper covers recommendations on the adoption of international instruments, on the follow-up mechanism for the implementation of the Inter-American Convention against Corruption and on the follow-up of ICAC mutual legal assistance in criminal matters, on transparency and free access to public information, and on international technical and financial assistance.

UN CONVENTION
BOOKS AND ARTICLES

United Nations Office on Drugs and Crime

Draft Legislative Guide to Promote the Implementation of the United Nations Convention against Corruption (2006)

The objective of this practical guide is to assist states seeking to ratify and implement the UNCAC by identifying legislative requirements, issues arising from those requirements and various options available to states as they develop and draft the necessary legislation.

Podesta, Guillermo Jorge

Notes on asset recovery in the U.N Convention Against Corruption (2003)

www.abanet.org/intlaw/hubs/programs/Annual0316.03-16.06.pdf

This article is essential reading for those interested in how the UN Convention will promote asset recovery, even though it deals with the draft of the Convention rather than the final text.

Webb, Philippa

The United Nations Convention Against Corruption: global achievement or missed opportunity?

Journal of International and Comparative Law Law No.1 (2005)

http://jiel.oxfordjournals.org/cgi/content/abstract/8/1/191

This article explores what happened between the first discussions of an international anti-corruption convention at the United Nations in the late 1970s and early 1980s and the adoption of the UNCAC by the UN General Assembly in October 2003. It discusses the main features of the anti-corruption conventions preceding UNCAC, analyses the UNCAC and reviews its negotiating history, concluding with a consideration of the prospects for the UNCAC.

Anti-Corruption Conventions in the Americas:
What Civil Society can do to make them work
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