Transparency International submission to Office of the High Commissioner for Human Rights based on Human Rights Council resolution 32/31 on Civil Society Space

Transparency and civil society participation in international meetings of anti-corruption review mechanisms[1]

The present submission is a shortened version of an upcoming report by Transparency International which assesses transparency and civil society participation in international and regional anti-corruption review mechanisms.

These include:

- The UN Convention against Corruption (UNCAC) Review Mechanism
- The OECD Working Group on Bribery (OECD WGB) for the OECD Anti-Bribery Convention and other instruments
- The Financial Action Task Force (FATF), which reviews member state compliance with its recommendations
- The Group of States against Corruption (GRECO) for the Council of Europe instruments
- The Mechanism for Follow-Up (MESICIC) on Implementation of the Inter-American Convention against Corruption of the Organization of American States (OAS) and its Committee of Experts
- The OECD/ACN Istanbul Action Plan sub-regional peer review programme

Our findings and recommendations cover the basic framework, which should allow civil society to actively and meaningfully participate in anti-corruption discussions in the international meetings of anti-corruption review mechanisms, namely (1) rules about access to information and civil society participation; (2) proactive disclosure of information; and (3) on-site access to information and participation in meetings.

International standards

The most important standards to consider in assessing the performance of international review mechanisms are international human rights standards, including the rights of access to information and participation. Likewise, relevant international anti-corruption standards, such as UNCAC Article 13, should be considered to govern the anti-corruption review mechanisms and their secretariats.

Human rights review mechanisms, such as of the UN Human Rights Council, provide for high standards of transparency and civil society participation and there is no reason – based on either complexity or sensitivity – why anti-corruption review mechanisms should not achieve the same level of standards.

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Publication of access to information and participation rules

Overall there is a lack of information about rules on access to information and participation in the international meetings of review mechanisms and in some cases there are no detailed rules at all.

The **OECD/ACN Istanbul Action Plan** has clear access to information rules for civil society organisations participating in its monitoring processes, including at its international meetings, but it does not have rules for anyone else not participating in the process.

For **GRECO** the general rules on access to information of the Council of Europe apply. General OAS rules apply to **MESICIC** and its constituting document also has some references to access to information. For both the rules are publicly accessible.

The three remaining review mechanisms – the **UNCAC**, **OECD WGB** and **FATF** – do not publish any access to information rules concerning their international meetings. This means that interested citizens and civil society organisations cannot rely on any available norms to assist them in accessing the details of these meetings.

With regard to participation rules, several of the review mechanisms publish rules online about attending meetings or side meetings of the mechanism, although in some cases this information is hard to find. For example, the **Istanbul Action Plan** refers to such rules in its review methodology, which is a highly technical document and not easily accessible to citizens.[2] (See further information in the Annex.)

Proactive online disclosure of information

Our survey found important gaps in proactive disclosure of information in relation to international meetings. This included deficiencies in access to timetables and agendas, lists of participants and meeting documents. The **UNCAC review mechanism** has the best online access to information about its meetings.

Timetables

Each mechanism publishes timetables of their international meetings for the current calendar. These are useful to provide at least a minimal level of information on the work of these meetings.

Agendas

The full provisional agenda is available for the **UNCAC review mechanism's** Implementation Review Group sessions as well as of the Conference of States Parties. The full agenda is also available for **MESICIC** international meetings.

The **OECD/ACN Istanbul Action Plan** reports that information about its monitoring meetings are published on-line in advance of the meeting.[3] The provisional agenda of the **OECD WGB** and **GRECO** meetings are partially accessible; the review schedule indicates which country reports will be discussed at their meetings.

The **FATF** does not publish a provisional agenda ahead of its review meetings.

[2] Istanbul Anti-Corruption Action Plan Methodology for the 4th monitoring round, www.oecd.org/corruption/acn/Methodology-4th%20Round-Istanbul-Action-Plan-ENG.pdf

[3] For example, information on the latest meeting, www.oecd.org/corruption/acn/anti-corruptionnetworkforeasterneuropeandcentralasiaseptember2016meetings.htm. The list of meetings and relevant materials are available, www.oecd.org/corruption/acn/istanbulactionplan/

Lists of participants

None of the mechanisms publish a preliminary list of participants before their meetings, which prevents civil society from initiating any discussions in advance with representatives due to attend. This may be because states parties do not provide this information to the secretariat of the review mechanism until the last minute.

Only the **UNCAC**, the **GRECO** and **MESICIC** review mechanisms publish the final list of participants after their meetings.

Meeting documents

The **UNCAC** and the **MESICIC** mechanisms also publish the list of documents tabled at the meeting and the documents themselves. The other mechanisms do not do this, which prevents the public and civil society from accessing concrete information about the content of these meetings.

For those mechanisms that adopt resolutions, decisions or statements, these are available online. Summaries or minutes of the meetings are also posted online by all the mechanisms except the **OECD WGB**.

Civil society submissions

Fostering participation in public discussions means that review mechanisms should enable a wide range of opinions and facts to be made available in the public online space that they create. It should be possible to easily find there official reports, CSO reports and records of their discussions (consultations) taking place on- or offline.

The **MESICIC** has the best practice of displaying all the documents of a country's review on a country page, including civil society submissions. Not only that, but the MESICIC review timetable includes suggested timing for civil society inputs.

It was not possible to find any civil society submissions about country compliance on the websites of the other mechanisms except for the web pages of the UNCAC CoSP which oversees the **UNCAC** review mechanism. Such submissions are sometimes made in the case of the **OECD WGB**, **GRECO** and **OECD/ACN Istanbul Action Plan** mechanisms, although civil society submissions about country compliance are scarce in any of the mechanisms apart from the **MESICIC**. The **OECD WGB** occasionally organises consultations on cross-cutting topics, receives and publishes submissions from civil society.

With regard to the **UNCAC review mechanism**, short submissions by non-governmental organisations (1000 or 1500 words) that do not make reference to specific country situations are posted by the UNODC on the designated web pages for meetings of the Implementation Review Group and the CoSP. Non-governmental organisation submissions that report on the **UNCAC** compliance of a particular country may not be posted on the IRG web pages but can be posted on the CoSP web pages.

Onsite access to information and participation

The study of the six review mechanisms found important gaps in the approaches of five of them in relation to on-site access to information and more active forms of participation.

Most importantly, civil society representatives may not participate in the formal plenary meetings of any of the review mechanism bodies, whether as active participants or observers, except in the **OECD/ACN Istanbul Action Plan**.

In the case of the **UNCAC**, civil society is excluded from participating as observers in meetings of the UNCAC Implementation Review Group even though participation is foreseen by the Rules of

Procedure of the UNCAC Conference of States Parties[4] and even though the former does not carry out any review work.

The best standard in this area is established by the **OECD/ACN Istanbul Action Plan** review mechanism, covering countries in Eastern Europe and Central Asia. This mechanism allows civil society representatives to attend its plenary meetings as more than observers; they are active participants. As the review manual for the Istanbul Action Plan process says:

> Participation of civil society is promoted through contribution to the preparation of the monitoring report, participation in the on-site visits and in the plenary meetings. The civil society may also contribute to the monitoring by preparing "shadow" reports which will be taken into account in the country assessment. Public participation, transparency of the monitoring process and the publication of the reports remains an important advantage and outstanding feature of Istanbul Action Plan.[5]

Further, in its practical guide for civil society, the Istanbul Action Plan states that:

> Representatives of the civil society can take part in the plenary meeting, including presenting their opinions and proposing amendments to the draft monitoring report.[6]

As to the other systems, despite the fact that **UNCAC**[7] and the **MESICIC**[8] review mechanisms explicitly recognise the importance of civil society participation, representatives of civil society are excluded from their international meetings. At best some of the mechanisms, such as **GRECO**, allow an invited civil society representative to enter the room, to make a statement, possibly respond to questions or comments and then leave.

FATF holds formal meetings with the private sector, but not with civil society. It appears to have plans to include civil society in workshops in discussions at future Experts Meetings but to our knowledge, this has not yet materialised.[9]

Summary of findings and recommendations

Anti-corruption review mechanisms and their processes seek to determine national compliance with international anti-corruption standards and to formulate policies and priorities. However, the

[4] Rules of Procedure for the Conference of States Parties to the United Nations Convention against Corruption, Rule 17, www.unodc.org/pdf/crime/convention_corruption/cosp/07-80230_Ebooke.pdf

[5] Istanbul Action Plan, "Manual for Monitoring Experts", www.oecd.org/corruption/acn/IAP-Manual-Monitoring-Experts-EN.pdf; see also the "Work Programme 2013-2015", www.oecd.org/corruption/acn/ACNWorkProgramme2013-2015_EN.pdf

[6] Istanbul Action Plan, "Practical Guide: How to Conduct Monitoring by Civil Society", 2014, www.oecd.org/corruption/acn/ACN-Civil-Society-Monitoring-Practical-Guide-ENG.pdf

[7] "3. The Mechanism shall: (a) Be transparent, efficient, non-intrusive, inclusive and impartial", Terms of Reference of the Mechanism for the Review of Implementation for the UN Convention against Corruption, p.4, www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism_for_the_Review_of_Implementation_-_Basic_Documents_-_E.pdf; see also, Article 13 of the UN Convention against Corruption.

[8] "Continue to facilitate the participation and contributions of civil society organizations in the activities of the MESICIC Committee of Experts and Conference of States Parties, in accordance with their corresponding Rules of Procedure, and, when applicable, in processes relating to the implementation of the recommendations in each of the States Parties, in accordance with their domestic legislation." Inter-American Program of Cooperation to Fight Corruption, Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC), Second Meeting of the Conference of States Parties, November 20-21, 2006, Washington DC, OEA/Ser.L/XXIII.2.2. MESICIC/CEP-II/doc.5/06 rev. 2, 21 November 2006, www.oas.org/juridico/english/mesicic_conf_est_parte_II_prog_intam_en.pdf; see also Chapter V of MESICIC Rules of Procedure, www.oas.org/juridico/PDFs/mesicic4_rules_en.pdf

[9] FATF, "Annual Report 2013-2014", www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/FATF%20Annual%20report%202013-2014.pdf

mechanisms are themselves performing badly when it comes to respect for international human rights standards on access to information and civil society participation.

The findings of this study indicate that civil society organisations are not welcome at the table at international meetings when governments discuss the anti-corruption performance of their peers, with only one exception – the **OECD/ACN Istanbul Action Plan**.

This is bad news because excluding civil society diminishes the effectiveness of review mechanisms. If they were more respectful of international human rights standards on transparency and participation, they would yield better results with the benefits of civil society expertise, experience and increased ability to reach citizens.

All the review mechanisms need improvement and most have a considerable distance to go to meet international standards for transparency and participation.

- Overall there is a lack of information about rules on access to information and participation in the international review mechanisms.
  Recommendation 1: All review mechanisms should publish rules on access to information and civil society participation in international meetings.

- Important gaps in access to information exist for international anti-corruption meetings, including access to timetables and agendas, lists of participants and meeting documents.
  Recommendation 2: All review mechanisms should publish all information required for an understanding of and potential participation in the meetings without prior request.

- Important gaps remain in five review mechanisms in relation to on-site access to information and more active forms of participation. The **OECD/ACN Istanbul Action Plan** showed best practice of the six.
  Recommendation 3: All review mechanisms should allow on-site access to information and participation in the international meetings.

Transparency International calls on the states parties and secretariats in charge of these anti-corruption mechanisms to set a better example of how to comply with international obligations. According to international standards, transparency and civil society participation are among the fundaments of anti-corruption efforts. Pertinent review mechanisms should build on instead of forgoing these.

Annex[10]

	UNCAC COSP	UNCAC IRG	OECD WGB	FATF	GRECO	MESICIC	ISTANBUL ACTION PLAN
On-site access to information and participation							
Rules on civil society participation are published	Yes: on UNODC website under "Information for participants"[11] and on the host-country's website.	NGOs and many experts take the view that the COSP Rules of Procedure cover IRG attendance but some countries dispute this. There are published rules for the meetings NGO briefings on the margins of the IRG sessions[12] in Resolution 4/6, but they are not entirely clear and arguably contradictory.	No	No	Yes: NGO Participatory rules for the Council of Europe.[13]	Yes	Yes
Formal meetings[14] are open to any CSO[15]	Yes: Plenary sessions of the Conference are accessible to NGOs in consultative status with ECOSOC and also "other relevant NGOs".	No	No	No	No	No	Yes[16]
Formal meetings include discussions with CSO participants	Yes, CSOs can make statements in plenary. And discussions at Special Events.	No. But see #5 below.	No	No	No	No	Yes
Formal meetings are open to the media	No: Media Representatives are invited to attend the Press Conference only.	No	No	No	No	No	No
Review body holds meetings[17] with CSOs separate from formal meetings.	N/A	Yes: briefings on the side-lines of the IRG[18] (Resolution 4/6). Only for NGOs that attended the previous COSP.	Yes: periodic consultations.	Yes in principle but if so the format in which it takes place is not clear.	Yes: periodic consultations.[19]	Yes. Before the official meeting starts and only for those CSOs that have responded to the questionnaire.	N/A Since CSOs may attend the formal meeting, no separate meeting is required.
Meetings referred to in previous point are open to the media	No	No	No	No	No	No	N/A
The Secretariat of the meeting actively reaches out in order to make possible broad CSO presence	Yes.	Yes	No	No	No	Yes. They reach out to civil society registered under the OAS.	Yes

[10] African Union Advisory Board on Corruption, the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and the SADC Protocol against Corruption have o functioning review mechanisms that's why these are Not included in the table.
[11] www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1504782e.pdf
[12] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session4-resolutions.html
[13] https://wcd.coe.int/ViewDoc.jsp?p=&Ref=Res(2003)8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true
[14] Formal meetings are Conference of the States Parties to the United Nations Convention against Corruption; Meetings of the Implementation Review Group of the United Nations Convention against Corruption; Meetings of the OECD Working Group on Bribery in International Business Transactions; Plenary meeting of the FATF; Plenary meeting of the GRECO; Meetings of the Committee of Experts of the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption; Istanbul Anti-Corruption Action Plan Meetings.
[15] "Any CSO" means as a result of a fair selection process a manageable number of CSOs can participate.
[16] www.oecd.org/corruption/acn/ACN-Civil-Society-Monitoring-Practical-Guide-ENG.pdf (page 10)
[17] This refers to meetings on international level. An example is the UNCAC IRG's civil society briefing. http://uncaccoalition.org/en_US/uncac-bodies/implementation-review-group-irg/7th-irg/#fifth-irg
[18] www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1254390e.pdf
[19] There are meetings organised ad hoc with CSOs, typically at the launching or closure of an evaluation round. The four evaluation rounds were launched 01.01.2000, 01.01.2003, 01.01.2007, 01.01.2012 respectively, so these meetings take place every four years on average. These meetings take the form of an "exchange of views". The only example available on GRECO's website was in 2010 (http://www.coe.int/t/dghl/monitoring/greco/news/index_en.asp#2010). In March 2017 the High-Level Launch of the Fifth Evaluation Round included a debate with civil society participation (https://www.coe.int/en/web/greco/conferences/high-level-launch-fifth-evaluation-round).

CSOs can deliver oral statements at the formal meetings	Yes[20]	No.	No	No.	Yes, occasionally	No	Yes
Opportunities for CSO submissions are announced	Yes but only in Rules of Procedure.[21]	Yes to those NGOs that register.	Yes but only when there is a public consultation.	No	No	Yes	Yes
CSOs can submit written statements to the meeting that are distributed to the participants	Yes	Yes but country-specific submissions not permitted.[22]	Yes selected CSOs can submit documents and request that they be circulated.	No	No	Yes CSOs can submit their responses to the questionnaire.	Yes
CSOs have on-site access to draft documents of the formal meeting	Very limited. Only one set of documents for all NGOs present. Increasing efforts to prevent any NGO access to draft documents previously granted.	No	No	No	No	No	Yes
CSOs have on-site access to hard copies of all final documents of the formal meeting	Very limited. Only one set of documents for all NGOs present.	No	No	No	No	Hard copies are not distributed at the meeting to anyone, but these documents are available online.	Yes

Proactive online disclosure of information

(also for those who are not present at the event)

	UNCAC COSP	UNCAC IRG	OECD WGB	FATF	GRECO	MESICIC	ISTANBUL ACTION PLAN
Rules on access to information are published	No	No	No	No	Yes, general rules of the CoE apply to GRECO.[23]	Yes, general OAS rules apply to MESICIC and its constituting document also has some references to access to information.[24]	Partly: rules for NGOs participating in the monitoring are available, but not for those not participating in the process.[25]
Timetable of the meetings for the current calendar year is published	Yes: on UNODC website[26] under Upcoming 2016 Events.	Yes: on UNODC website[27] under Upcoming 2016 Events.	Yes, but the exact dates are not indicated and it can be deduced from the Monitoring Schedule only.[28]	Yes[29]	Yes[30]	Yes[31]	Yes[32]
Provisional agenda is published before the meeting	Yes: on UNODC website.[33]	Yes: on UNODC website.[34]	Partially in that the countries to be reviewed are listed in advance.	No	Partially in that the countries to be reviewed are listed in advance.[35]	Yes: in the general OAS calendar.[36]	Yes[37]

[20] http://uncaccoalition.org/en_US/uncac-bodies/conference-of-states-parties/sixth-cosp-st-petersburg/#coalition-oral-statements
[21] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6.html
[22] www.unodc.org/unodc/en/treaties/CAC/IRG-session6.html
[23] www.coe.int/en/web/documents-records-archives-information/rules-and-procedures
[24] AG/RES. 1784 (XXXI-O/01) Report of Buenos Aires on the Mechanism for Follow-Up of Implementation of the Inter-American Convention Against Corruption, Sections 3d and 7a, www.oas.org/juridico/english/ag-res_1784_2001.pdf
[25] www.oecd.org/corruption/acn/Methodology-4th%20Round-Istanbul-Action-Plan-ENG.pdf
[26] www.unodc.org/unodc/en/corruption/index.html?ref=menuside
[27] www.unodc.org/unodc/en/corruption/index.html?ref=menuside
[28] www.oecd.org/daf/anti-bribery/Phase-4-Evaluation-Schedule-2016-2024.pdf
[29] www.fatf-gafi.org/calendar/eventscalendar/?hf=10&b=0&s=asc(fatf_date1)
[30] www.coe.int/t/dghl/monitoring/greco/meetings/Greco(2016)2%20Dates%202016.pdf
[31] www.oas.org/juridico/PDFs/mesicic5_schedule.pdf
[32] www.oecd.org/corruption/acn/istanbulactionplan/
[33] www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1505911e.pdf
[34] www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1501966e.pdf
[35] www.coe.int/t/dghl/monitoring/greco/meetings/Greco%282016%292%20Dates%202016.pdf
[36] www.apps.oas.org/oasmeetings/default.aspx?Lang=EN
[37] www.oecd.org/daf/anti-bribery/ACN-Plenary-Meeting-October-2015-Agenda-ENG.pdf

Final agenda is published after the meeting	Yes, as part of the conference report.[38]	Yes, as part of the conference report.	No	No, though it can be partially deduced from the outcomes.[39]	Yes, as part of the plenary meeting summary report.[40]	Yes, linked to the meeting minutes.[41]	Yes[42]
Preliminary list of participants is published before the meeting	No	No	No	No	No	No	No
Final list of participants is published after the meeting	Yes[43]	Yes[44]	No	No	Yes[45]	Yes[46]	No
The list of documents tabled at the meeting is published	Yes[47]	Yes	No	No	No	Yes	No
The documents tabled at the meeting are published (Yes/partly/Not)	Yes,[48] although the draft resolutions are not published on UNODC website and it is very challenging to find them on the UNOVDC site after the meeting.	Yes	No	No	No	Yes	Yes
Resolutions, decisions or statements of the meeting are published	Yes[49]	N/A, IRG does not generally adopt resolutions.	N/A, OECD WGB does not adopt resolutions, but issue press releases.	Yes	Yes[50]	Yes	N/A, Istanbul Action Plan does not adopt resolutions, but issue press releases.
Summary of the meeting is published (Yes/partly/Not)	Yes: the UNODC final report on COSP 6[51] contains a summary of the COSP overall in a mainstreamed language, side events[52] are summarised very succinctly in a very short way about 4 lines.	Yes, in the Final Report[53]	No	Yes[54]	Yes[55] on GRECO website a summary of the Plenary meetings.	Yes	Yes
CSO submissions are published	Yes: on UNODC website under “NGO documents”.[56]	Yes[57]	Yes, on some occasions when they are invited to submit statements.[58]	No	No	Yes[59]	Partly, they are published in some cases.
Plenary/sessions of the meeting is online streamed and no registration or other screening is need	Yes	No	No	No	No	No, only the CSO part.	No
Plenary of the meeting is video recorded and remain online for at least until the consecutive meeting	Yes, recorded, but it is up to the host country how long these remain accessible[60]	No	No	No	No	No, only the CSO part.	No

[38] www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1508646e.pdf
[39] www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html
[40] www.coe.int/t/dghl/monitoring/greco/documents/2016/Greco%282016%298_Summary%20Report_GRECO%2071_EN.pdf
[41] www.oas.org/juridico/PDFs/mesicic5_acta_xxvi_en.pdf
[42] www.oecd.org/daf/anti-bribery/ACN-Plenary-Meeting-October-2015-Agenda-ENG.pdf
[43] www.unodc.org/documents/treaties/UNCAC/COSP/session6/FINAL_LOP_COSP_6.pdf
[44] www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/Final_List_of_Participants.pdf
[45] www.coe.int/t/dghl/monitoring/greco/documents/2016/Greco%282016%298_Summary%20Report_GRECO%2071_EN.pdf
[46] www.oas.org/juridico/PDFs/mesicic5_acta_xxvi_en.pdf
[47] www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1508646e.pdf (Annex II)
[48] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6.html
[49] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6-resolutions.html
[50] www.coe.int/t/dghl/monitoring/greco/meetings/plenarymeetings_en.asp
[51] www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1508646e.pdf
[52] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6-specialevents.html
[53] www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/1-5June2015/V1504265e.pdf
[54] www.fatf-gafi.org/about/outcomesofmeetings/
[55] www.coe.int/t/dghl/monitoring/greco/meetings/plenarymeetings_en.asp
[56] www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6.html
[57] www.unodc.org/unodc/en/treaties/CAC/IRG-session7.html
[58] www.oecd.org/daf/anti-bribery/OECD-ABC-Responses-Phase4.pdf
[59] For example: http://www.oas.org/juridico/spanish/mesicic4_hnd.htm
[60] www.uncorruption.ru/en/agenda/daily/352/#broadcast ()