Workshop: UNCAC - GOPAC Next Steps

Draft GOPAC Position Statement and Resolution on Parliamentary Support for the UNCAC

Context
The UNCAC is the most comprehensive and authoritative international convention against corruption. It aligns well with GOPAC’s central mission of preventing corruption through improved governance and a focus on the role of parliament. GOPAC has consistently supported the convention from the signing ceremony in Merida Mexico in 2003 by:

- establishing a Global Task Force to guide and mobilize assistance in effective implementation;
- working with UNODC to host Parliamentarians Forums at the last two Conferences of State Parties; and
- promoting the view that parliamentarians can complement government initiatives by playing their democratic roles more effectively.

While all areas of the convention are important, GOPAC has mainly focused on those related to prevention and review mechanisms, as these are most closely linked to GOPAC’s governance thrust and Global Task Forces (GTFs). Other than the articles on measures relating to the judiciary and prosecution services (#11) and the private sector (#12), our current Global Task Forces align well with the prevention section as shown below.

- **Global Task Force on UNCAC**
  - article 5 - Preventative anti-corruption policies and practices
  - article 63 with respect to review mechanisms and development assistance

- **Global Task Force on Parliamentary Oversight**
  - article 6 - Preventative anti-corruption body or bodies
  - article 7 - Public sector
  - article 9 - Public procurement and management of public finances
  - article 10 - Public reporting

- **Global Task Forces on Parliamentary Ethics and Conduct and Parliamentary Immunity**
  - article 8 - Codes of conduct for public officials

- **Global Task Force on Anti Monday Laundering**
  - article 14 - Measures to prevent money-laundering (Anti Money Laundering)
  - article 23 – Laundering of proceeds of crime (criminalization)
  - article 52 – Prevention and detection of transfers of proceeds of crime
  - article 58 – Financial intelligence units

In addition, and subject to the proceedings of the conference, a new Global Task Force may undertake work on article 13 - Participation of society.

Position Statement
- While GOPAC believes it is important to criminalize corrupt actions and work internationally to ensure effective investigation and prosecution, sustained effective prevention requires improved governance, a key component of which is effective parliamentary oversight.
• Parliamentarians should seek to work in harmony with State Parties and international expert organizations to implement UNCAC at the national, regional and global levels. Members should work towards ensuring that State Parties consider parliaments as an important additional instrument of corruption prevention.

• Parliamentarians should play an active leadership role in the ratification, implementation, domestication, monitoring and review of the UNCAC.

  o *Implementation:* Parliamentarians should become involved in how the country plans to implement UNCAC, i.e. the approach or approaches to be taken. (In regards to this, a joint U4-GOPAC discussion paper on Article 5 – Preventive anti-corruption policies and practices is provided in annex 1.) In addition parliamentarians should identify and address legislative and other governance gaps that need to be overcome in implementing the UNCAC. In particular they should pay special attention to the criminalization of corruption through legislation and an independent judiciary system.

  o *Domestication:* Parliamentarians should help ‘domesticate’ the UNCAC by helping adapt international standards to regional or national needs. Adaptation may take place in some of the following ways

    ▪ *transparency* - monitoring and review that blends expert and political attention with sensitivity to distinct domestic cultural values and governance practices
    ▪ *balance* - between effective criminalization of corrupt acts and the prevention of corruption through improved governance practices
    ▪ *innovation* – through parliamentary activities and behaviour that would complement the provisions in the articles of the UNCAC
    ▪ *participation of society* – the parliamentary representation role can help ensure that citizens are well informed and that they and civil society are active participants in the domestication of the UNCAC.

  o *Monitoring and review:* Parliamentarians should endeavour to play an important oversight role in the monitoring and review of the national effort to implement and domesticate the UNCAC. They should also participate, where appropriate, in regional or international review mechanisms. Annex 2 provides more detail in a briefing note on UNCAC review mechanisms.

• Parliamentarians should work with expert agencies to help ensure that efforts are complementary to other ongoing initiatives as well as reflecting current substantive intelligence available on specific issues.

• Parliamentarians should seek, where development assistance is available, additional opportunities to direct that assistance to governance initiatives, including those related to parliament itself. (See briefing note in documentation for workshop on Parliament and Development Assistance.)
Resolution
Aware of the above Context and GOPAC Position Statement, GOPAC resolves to:

- ask each GOPAC member and chapter to pursue as appropriate to each region and country the positions outlined in its Position Statement on the UNCAC, and inform the GOPAC Global Task Force on the UNCAC of the changes that have occurred;
- promote greater public understanding of the negative effects of corruption and the global, regional and country initiatives to combat corruption;
- work cooperatively with governments that have ratified the UNCAC in developing government or country anti-corruption strategies, plans or approaches aimed at effective implementation;
- seek improved operational alliances with international organizations that share the UNCAC objectives so that the work of parliamentarians can better complement that of others;
- pursue a CoSP resolution to formally recognize the importance of parliaments in corruption prevention, and encouraging State Parties to table in parliament information and reports provided to CoSP for their review; and
- maintain its Global Task Force on the UNCAC and urging that it support GOPAC in realizing the aforementioned actions and in addition:
  - build a global network of parliamentary champions for the UNCAC;
  - encourage the development of regional chapter UNCAC implementation initiatives;
  - encourage the development of country chapters, especially in countries that have ratified the UNCAC;
  - engage regional and country chapters to document changes as related to the UNCAC prevention provisions and GOPAC position statements, as well as lessons learned;
  - provide for the sharing of such implementation information;
  - seek resources to carry out a baseline study of parliamentary engagement to date on the implementation of the UNCAC as well as pilot implementation initiatives;
  - explore the feasibility of international parliamentary mentoring as a vehicle for improved parliamentary support for effective UNCAC implementation; and
  - review and adapt the ARPAC experience and handbook for application and tailoring for other regions.


The very nature of corruption is that it is a political problem and that simple technocratic solutions often lead to superficial intervention – political will is needed to change systems and attitudes and to ensure that policies are used in practice and not just on paper.

This joint U4 and GOPAC discussion paper focuses on Article 5 of the UNCAC – Preventive Anti-Corruption Policies and Practices - which we will refer to in short form as ‘anti corruption policies’. The
substance is largely drawn from a recent U4 study as well as consultations with experts and parliamentarians.  

In our recent consultations, there appears to be an emerging view among those international agencies working with GOPAC that to be effective, international conventions may benefit from more integrated approaches that engage not only the executive branch of government but also parliamentarians and civil society.  

This paper presents a case for the involvement of parliamentarians as part of such a more integrated approach as Article 5 does not include a specific reference to the parliamentary engagement in anti-corruption policies, as illustrated in the excerpt below.

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**Chapter II**

**Preventive measures**

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**Article 5**

*Preventive anti-corruption policies and practices*

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

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The U4 study carried out six country case studies with respect to experiences with national anti-corruption policies and strategies. The following findings bear relevance to parliamentarians.

- Not enough attention has been given to the political dimension of anti-corruption policies, in particular the high level political will that gave birth to these anti-corruption strategies could not be maintained from the beginning to end of the government policy cycle, as well as across changes in governments.

- Most anti-corruption approaches were not strategic, they did not set priorities, nor did they consider a sequencing in implementation.

- Monitoring and evaluation has been almost entirely ignored: self-assessments did not bring results and external reviews of progress, e.g. by parliaments, research institutes and universities, had not even been foreseen.

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1 Hussmann, K. Editor. U4. *Anti-corruption policy making in practice: What can be learned for the implementation of Article 5 of the UNCAC?* Dec. 2007

2 Discussions were held with WBI, OECD, TI, UNODC and UNDP in September 2008.

3 Hussmann, page viii
• The lack of information for and communication with implementing agencies, political actors, the media and the public hinders the creation of a sustained political debate and thus political pressure to move anti-corruption policies forward.

The analysis of some key features of policy making can provide some insights into why this happens:

• With regard to national ownership, anti-corruption policies and strategies tend to be concentrated on strengthening the government’s power base and maintaining the status quo. The lack of mechanisms for guaranteeing multi-stakeholder participation throughout the full policy cycle impedes the effectiveness of these anti-corruption efforts.

• In their content, most of the anti-corruption strategies which were studied focus on norms and institutions – with a limited regard for performance and results. The notable mismatch between the political nature of the problem and the technocratic solutions is likely to result in superficial interventions. In addition, envisioned solutions are not based on adequate diagnostics of what causes the problems, and integration with other core governance policies and reforms hardly takes place in practice.

• In terms of implementation, coordination and monitoring, it is particularly worrisome to note that this crucial phase of the policy cycle does not receive sufficient political and operational attention. Leadership and oversight are often characterised by a mismatch between limited institutional capacities and too ambitious objectives. Also, it is not clear how an approach of self-reform through self-assessment is supposed to work, in particular when taking into account that institutions in general tend to resist change. Last but not least, the lack of meaningful participatory monitoring and evaluation seems to convert anti-corruption policies into paper tigers.

The U4 study concludes that corruption might be addressed directly or indirectly through many different policy options. The direct anti-corruption approach might not always be suitable and promoting widely accepted antidotes to corruption such as transparency and accountability – e.g. through strengthened parliamentary oversight – might promise greater impact, especially in countries where corruption is endemic. Above all, it is of great importance to recognise the need to build high-level political agreements and achieve a national consensus in order to develop a strategic vision about how to fight corruption.

Based on these findings, three main areas of anti-corruption policy making emerge for parliamentarians to play a role in:

• if these country anti-corruption policies were developed more openly and tailored or domesticated to specific national reform needs, it would help ensure aligning proposed improvements with the country context and public values, an approach that could reduce resistance to changes and engage more stakeholders. Success of reform will in this regard depend as mentioned above on achieving high-level political agreements and a national consensus – both processes bear considerable potential for parliamentary involvement;

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4 Examples of policy approaches could include: explicit broad national frameworks; explicit policies on improving accountability or other areas; embedding anti-corruption in broader public service reforms; or legislative agendas.

5 Hussmann, p. x
• if parliaments and their respective committees were involved more in the design of such policies, they could ensure keeping realistic goals and consistency with allocating the necessary budgetary resources to the proposed reform steps. After all, implementation is often hampered by capacity and resource constraints; and

• increasing the involvement of parliamentarians not only in the design, but especially in the oversight of implementing anti-corruption polices could help maintain a continuing political focus, most of all when governments change, and help ensure monitoring results. Such review of anti-corruption policies in the parliament or in parliamentary committees would also provide for greater accountability of the executive to parliaments and the public and could contribute to any future review mechanism installed by the Conference of State Parties to UNCAC. (See Annex 2 for a briefing note for GOPAC members on review mechanisms.)

Potential next steps: for discussion
In terms of next steps, GOPAC members could explore and discuss among themselves what approaches would work best or do not in their respective regions or countries. They could discuss what types of initiatives are needed to ensure that the country’s approach to address the specific corruption issues of the nation is doable in a practical way.

More specifically, GOPAC members and others could:
• encourage parliamentary engagement and open processes to review the anti-corruption policies, to promote, among other things, societal learning and credibility by assigning the process to a parliamentary committee;

• play an active role in building a national consensus for anti-corruption reform;

• encourage the setting of specific priorities and staged implementation given that the UNCAC is very broad and not everything can be done at one;

• raise awareness that parliaments and parliamentarians, as instruments of good governance, can play an important role in the development, implementation and monitoring of country anti-corruption policies;

• explore and highlight good practices where parliamentarians have played a role in the life cycle of an anti-corruption strategy or approach, for example, where there has been political discussion in setting priorities, in particular how more generic approaches were adapted or domesticated to better align with a country’s institutions, culture and values;

• work closely with international agencies to ensure GOPAC initiatives are based on sound empirical studies and evidence;

• train parliamentarians on the different anti-corruption policies or approaches a country can take in combating corruption or other initiatives; and

• encourage regional and national chapters to examine anti-corruption policies and the issues around them.
Annex 2: The UNCAC and Review Mechanisms – A Briefing Note for GOPAC Members

Background
In December 2006 the first Conference of State Parties (CoSP) in Jordan decided that it was necessary to establish an appropriate and effective review mechanism on the implementation of the UNCAC. At its second session, held in Indonesia in January-February 2008, the Conference went further by stating that effective and efficient review of the implementation of the Convention is of paramount importance and urgent. To this end, the Conference decided that:

- the Intergovernmental Working Group on Review of the Implementation of the UNCAC must prepare terms of reference for this review mechanism for consideration, action and possible adoption at the third CoSP in the fall of 2009 at Doha; and
- State Parties and signatories submit proposals on the terms of reference for the review mechanism to the Working Group for its consideration. The deadline for the proposals was July 1, 2008.

The first meeting of the Working Group subsequent to the second COSP was held in September 2008 in Vienna. The meeting was informed by 33 proposals from State Parties and attended by over a 100 delegations including States Parties and signatories to the Convention and regional economic integration organizations.

The UNODC, as the Secretariat of the Conference, is now preparing a consolidation of the country proposals for the terms of reference for the review process. Such a consolidated document is available, as a rolling text, from the UNODC website (http://www.unodc.org/unodc/en/treaties/CAC/working-group1.html). This ‘backbone’ document will form the basis for discussions at the next working group meeting in December 2008.

Although the terms of reference are at the drafting stage, there appears to be an early preference for:
- self-assessments (not necessarily by the executive branches only) as a means to gather information on UNCAC implementation efforts, implementation gaps and related needs for technical assistance; and
- countries’ peer reviews. Countries would be matched, based on various considerations such as region, language, and the type of law (common, civil or sharia), the similarity of governance institutions and so on. Matches would be approved by the countries involved. The peer review process could also engage the UNODC Secretariat.

Prior to the meeting in Vienna, the GOPAC Secretariat raised the concern with UNODC, UNDP and other international agencies that the proposals submitted in July 2008 are silent as to the engagement of parliaments or parliamentarians in the review mechanism. The report of the Vienna meeting indicated

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6 In accordance with UNCAC article 63. While this article states that “...The Conference...shall establish, if it deems it necessary, any appropriate mechanism of body to assist in the effective implementation of the Convention”, the Conference decided, at its first session, that such a mechanism is indeed necessary.
that there were no objections raised to such involvement, parliaments being perceived as part of the formal institutional landscape.7

Engaging Parliamentarians in the UNCAC Review Mechanism
Based on a review of the 33 proposals submitted, which indicate how the review mechanism is taking shape, we have identified three potential points of entry for parliamentarians in the review process.

- **National approach.** The preparation of the national self-assessment reports seems to be the responsibility of the executive branch of government. National governments could however share these reports with parliamentary committees or parliamentary commissions for information and discussion.

- **Peer review.** The visiting experts from the reviewing country could meet with parliamentarians to get an understanding of their perspective and information.

- **Recommendations and monitoring.** The peer review process is expected to result in a report. Some States Parties have suggested that such a report should also identify implementation gaps and formulate recommendations for the gaps to be filled. Parliamentarians or committees could play a role in monitoring how the government addresses the peer review recommendations. The ultimate aim would be to ensure ongoing implementation and compliance with the UNCAC as well as improvements and learning.

**Next Step**
Should GOPAC issue a position statement on review mechanisms? This briefing note suggests that a discussion should first take place in the Kuwait 2008 workshop on the UNCAC as part of the preparation for the Doha CoSP. Some early points for consideration follow.

- There appears to be an emerging view among the international agencies working with GOPAC that to be effective, international conventions may benefit from a more integrated approach. In other words, in addition to engaging the executive branch of government there likely is value in engaging, among others, parliamentarians and civil society.8

- Where countries have submitted proposals to UNODC on their recommendations regarding the review mechanism, GOPAC members could examine these proposals and provide comments and recommendations.

- Once the actual country progress reports are written (e.g. government self-assessments and possibly external peer reviews of UNCAC implementation), the examination and discussion of these reports by parliamentary committees could ensure greater public debate and add credibility to such government reports, and help monitor the implementation of recommendations.

- Given the scope of UNCAC, the review mechanism process is currently envisaged as something that will take place in two year cycles with a focus on a selected topic(s). GOPAC could perhaps provide

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7 Ongoing debates are reported on the involvement on non-institutional stakeholders such as non-governmental organizations, the private sector, labour organizations, academia and the media.

8 Discussions were held with WBI, OECD, TI and UNDP in September 2008.
additional analyses and recommendations at the regional and perhaps global levels.

- Parliamentarians could press for additional performance information to support submissions to UNCAC by the government, e.g. programme evaluations of specific initiatives or audits by the Supreme Audit Organization in the country.

- The performance or non-performance of parliamentarians in review mechanisms is also of concern. Our understanding is that in the past OECD events to engage parliamentarians on the Anti-Bribery Convention were not always successful. GOPAC regional and country chapters would need to be active in ensuring representatives from legislatures are present and prepared for any such events.

- Case studies could be carried out on how parliamentary oversight can improve the effective implementation of the UNCAC, including the review process. This may lead to insights on the need for further training and guidance so that parliamentarians play a more effective role.

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