

TI RECOMMENDATIONS ON UNCAC REVIEW MECHANISM

1. The Present State of Play

The issue of review of implementation was not resolved when the UN Convention against Corruption (UNCAC) was adopted in 2003, and the decision was deferred until after UNCAC entered into effect. The First Conference of States Parties (CoSP) in December 2006 agreed that “effective and efficient review of the implementation of the Convention...is of paramount importance and urgent.” This represented an important agreement in principle. However, the Second CoSP in January 2008 made little progress, largely due to opposition from members of the G77 to elements of an effective mechanism.

During the past year a Working Group on Review of Implementation has held several meetings to define the review mechanism and its terms of reference. While there has been progress, important issues remain unresolved. The Working Group will meet again on 11-13 May and in September 2009. The Third CoSP will meet in Doha during the week of 9 November 2009 and action on the review mechanism is the most important issue on the Doha agenda. Because of the complexity of a decision-making process involving 140 governments, unless controversial issues can be resolved well in advance, the prospects for Doha are poor.

The central question is whether the CoSP in Doha is prepared to establish an effective review mechanism. Failure to establish such a mechanism this year would be a major setback, damaging the credibility of UNCAC and its ability to develop momentum in curbing corruption around the world.

The global nature of the current financial crisis reinforces the importance of UNCAC because other conventions do not have global reach. The financial crisis also makes it urgent that critical UNCAC provisions are implemented promptly. (Examples include articles covering transparency and accountability in management of public and private sector finances, public procurement reforms, bank secrecy and measures for improved international cooperation.) Failure to establish the review mechanism this year would defer action for another two years, thereby making UNCAC largely irrelevant to the solution of the financial crisis.

2. Why Effective Review Mechanism is Necessary

- Surveys conducted by the UN Office on Drugs and Crime (UNODC) show that implementation varies substantially for different UNCAC articles and for different regions.
- Experience with other anti-corruption conventions demonstrates that widespread implementation requires an effective review process. Signing and ratifying a convention is relatively easy. Implementation is much harder because it requires political will to overcome resistance to reforms and commitment of resources.

- UNCAC has many more parties and a much broader scope than the other conventions so an effective review mechanism is even more important for UNCAC.
- UNCAC's asset recovery provisions are particularly dependent on a review mechanism to ensure widespread implementation. Otherwise stolen funds will flow to banking centers with weakest rules.
- The credibility of UNCAC with the private sector depends on an effective review mechanism. While business groups have widely praised the broad scope of UNCAC, many companies are skeptical whether countries where they operate will implement UNCAC.
- It is essential that the review mechanism meet the test of public credibility and effectiveness. An ineffective mechanism would be worse than none, because it would result in cynicism about UNCAC and make it hard to develop momentum for progress.

3. High Priority Issues for Establishment of Effective Review Mechanism

Resolution of the three issues discussed in this section is crucial for an effective review mechanism.

A. Organisation of Review Mechanism

The review mechanism must be effective and efficient. This will require a workable division of policy-making and managerial functions as well as availability of technical expertise in the fields covered by UNCAC.

- Conference of States Parties: should be responsible for setting policies and priorities and providing oversight over the review process. Each biennial session should review what has been done in the prior two years and decide on plans for the next two years.
 - The CoSP should not become involved in approving reports of country reviews and other detailed elements of the review process. The CoSP includes 140 governments and meets for one week every two years, so an approval role would divert it from its policy-making and oversight functions and would be unworkable.
- Secretariat (UNODC): should be responsible for the day-to-day management of the review process, including information gathering surveys, analysis of responses, identification of best practices, preparation of reports to each CoSP on the prior two years work and proposals for the next two years, and for arrangements for cooperation with the monitoring organisations of other conventions.
- Review teams: Country peer reviews should be conducted by small teams of experts appointed by two countries, one from the same region and one from a different region. Review teams should also include a member of the Secretariat to promote consistency and make available experience from other reviews, and assist with planning of country visits including arrangements with the government of the country being reviewed. The review teams would receive inputs from CSOs and the private sector. Following the country visit the review team should prepare a country report, including recommendations for action.

- Implementation Review Group of outstanding independent experts should be established to provide technical advice and assistance to the CoSP and the Secretariat. The Group should have 10 -15 members with experience in the principal fields covered by UNCAC and with regional balance. (Enlarging the Review Group would make it harder to function efficiently and dilute the personal commitment of its members.) Among the functions of the Review Group would be to approve country reports and to make recommendation to the CoSP and the Secretariat on the planning of country reviews, including which articles and which countries should be included in each two-year phase of reviews. The Review Group would help ensure fair and consistent treatment for all countries.

B. Review Mechanism must be Transparent and Impartial

- Multiple sources of information: Inputs from civil society and the private sector are essential for a balanced and fair review process credible with the public. The mechanism must provide formal channels for non-governmental inputs. This is in line with UNCAC Article 13 Participation of Society. A process limited to governmental inputs will not have public credibility.
- Transparency: Timetables for reviews, and reports and recommendations must be made public. Such publication is essential for an effective and fair process that has public credibility.
- Country visits: Country visits are an essential element of the review process because they are the only way to get an understanding of how anti-corruption systems are functioning in practice. Desk reviews conducted in Vienna can check whether a law contains the provisions called for by UNCAC. Only country visits provide the necessary insight into how laws and institutions are actually working. They are also the best way for reviewers to obtain and question non-governmental inputs.

C. Adequate and Dependable Funding is Necessary

- Funding must be adequate and dependable because the review process for UNCAC – covering 57 articles and 140 parties -- will take many years and will require staffing and planning to operate efficiently.
- Funding should be provided from the regular UN budget or from assessed contributions based on the UN scale of assessment, whichever provides the best assurance of adequate and dependable funding.
- Voluntary contributions from governments and from donor organisations should be accepted where needed to ensure an effective monitoring process, provided they are free from improper conditions.

4. Important Operational Issues

The four issues discussed in this section are important for the success of UNCAC. While they need to be recognized, they do not need to be resolved at the Third CoSP.

A. Cooperation with Other Review Programmes

Arrangements for cooperation with the review mechanisms of other anti-corruption conventions should be established promptly. This is important because many UNCAC parties are also parties to other conventions and there is concern about duplicative reviews. The Secretariat should initiate the organisation of a coordinating group for liaison and exchange of information.

B. Need for Greater Technical Assistance

The self-assessment surveys conducted by UNODC indicate that there is large demand for technical assistance. Such assistance will be critically important for many developing countries. The Secretariat should work closely with UNDP, the World Bank, regional Multilateral Developments Banks and bilateral donors to encourage increased funding and effective coordination.

C. Concerns about Undue Burden and Intrusions on Sovereignty

Reviews should be conducted in a non-political manner and in ways to minimise the burden on the countries being reviewed. Reports prepared for reviews of other conventions should be used to the extent possible to avoid duplication of work.

A review process to check whether governments have met the commitments they have undertaken under the Convention does not constitute an intrusion on national sovereignty. Experience with country reviews under other anti-corruption conventions has shown that reviews can be conducted in a non-political manner and that concerns about intrusions on sovereignty are unwarranted in practice.

D. Order of Reviews

UNCAC's broad scope makes priority-setting for country reviews necessary; it will take several phases to review all 57 substantive articles. We recommend that the initial phase of reviews focus on the following:

Preventive Measures. UNCAC's preventive measures merit high priority because their implementation will enable governments to strengthen their ability to combat corruption. This was recognized at the Second CoSP. Articles covering transparency and accountability in management of public and private sector finances, public procurement reforms and bank secrecy are also important for addressing the current financial crisis.

International Cooperation. Inadequate cooperation among governments has been a major obstacle to combating international corruption. UNCAC is in a unique position to address this issue because other conventions, with much smaller membership, cannot do so effectively.

Asset Recovery. This is another field in which UNCAC has a unique role. Prompt, worldwide implementation of UNCAC's asset recovery provisions is essential to prevent stolen money from flowing to the countries with the weakest implementation, such as retention of bank secrecy.

Criminalisation and Law Enforcement. The articles dealing with bribery of national and foreign public officials, money laundering, and liability of corporations deserve high priority.

5. Proposed Model of Review Mechanism

