

UNCAC REVIEW MECHANISM: URGENCY OF ACTION IN DOHA

The adoption of the UN Convention against Corruption in 2003 created a global framework for combating corruption -- a development of enormous potential. However, UNCAC has not yet been transformed from words to deeds. An effective implementation review mechanism is needed to ensure implementation by governments.

The First Conference of States Parties (CoSP) held in Jordan in December 2006 agreed that "effective and efficient review of the implementation of the Convention...is of paramount importance and urgent." No progress was made at the Second CoSP in January 2008. During the past two years an Inter-Governmental Working Group has sought to develop a consensus on the review mechanism and its terms of reference. However, a small number of governments has been blocking agreement on several critical issues.

It is essential that the deadlock be resolved at the Third Conference of States Parties meeting in Doha in November 2009. The importance of this issue is recognised in the G20 Leaders Statement, issued on 24 September 2009, which calls for the adoption of "an effective, transparent and inclusive mechanism for the review of implementation" in Doha. Failure to establish a review mechanism in 2009 would also impair UNCAC's ability to play a timely role in dealing with the economic crisis. The review mechanism must meet the test of effectiveness and public credibility to enable it to develop momentum for progress.

1. Why an Effective Review Mechanism is Necessary

Surveys conducted by the UN Office on Drugs and Crime (UNODC) show that implementation of UNCAC varies substantially for different provisions and for different regions. Experience with other anti-corruption conventions demonstrates that an effective review process is needed to achieve widespread implementation. Follow-up monitoring of those conventions has resulted in significant progress in combating corruption. An effective review mechanism is even more important for UNCAC because it has three times as many parties and a much broader scope than the other conventions.

UNCAC's asset recovery provisions are particularly dependent on a review mechanism to achieve their objective. Unless they are implemented in all banking centres, corrupt officials will simply deposit their stolen funds in places where the asset recovery provisions have not been implemented. Building a level playing field for global competition -- a key interest of the international business community -- is also unattainable without an effective review mechanism.

2. Highest Priority Issues

There is widespread agreement on important elements of the review process, including (a) the responsibility of the CoSP for setting policies and priorities and providing oversight; (b) the responsibility of the Secretariat (UNODC) for the day-to-day management of the review

process; (c) the use of review teams from two countries to conduct country reviews; and (d) the need for an Implementation Review Group.

Three issues remain unresolved that are essential for an effective review mechanism. Compromising or diluting these issues would undermine the public credibility of UNCAC.

Country Visits

Country visits by review teams from other governments are a necessary element of the review process. Desk reviews conducted by the Secretariat in Vienna can check whether a law contains the provisions called for by UNCAC. Country visits are the only way to determine how anti-corruption systems are functioning in practice. This calls for judgments based on dialogue with regulators, with those regulated and other informed sources. The importance of country visits is fully confirmed by the experience of other review mechanisms, including OECD, FATF and GRECO (Council of Europe).

Non-Governmental Inputs

Reviews must provide opportunities for inputs to the review teams from non-governmental entities, including civil society organisations and the private sector. Otherwise the review process will be unbalanced and will lack public credibility. This is consistent with UNCAC Article 13, *Participation of Society*, and with practices established under other anti-corruption conventions.

Transparent Process

Reports and recommendations from country reviews must be made public. Citizens of the country under review are entitled to such information. It is also of great interest to governments of other parties to the Convention as well as to civil society organisations and the private sector. Transparency and access to information are called for by UNCAC Article 10, *Public Reporting*, and Article 13, *Participation of Society*, and is consistent with practices under other anti-corruption conventions. Failure to publish reports and recommendations from country reviews would badly weaken the public credibility of the review process.

3. Other Important Issues

Composition of Implementation Review Group

The Review Group should consist of about 15 distinguished experts in the major professional fields covered by UNCAC, with appropriate regional balance. They should function as independent experts and not as representatives of their governments. Such a group would ensure the fairness and credibility of the review process. Substantially enlarging the Review Group would make it more difficult to function as a cohesive body and would dilute the personal commitment of its members. An open-ended group would be practically unmanageable.

Adequate and Dependable Funding

Funding must be adequate and dependable because the review process for UNCAC – covering 57 articles and currently 140 parties - will take many years and will require staffing and planning to operate efficiently.

4. Relevance of UNCAC to the Economic Crisis

UNCAC includes numerous provisions, including preventive measures and requirements for stronger international cooperation, which are vital to overcoming the problems that led to the present economic crisis. The global nature of the current economic crisis reinforces the importance of UNCAC because other anti-corruption conventions do not have global reach. It is also clear that the recession has heightened pressure to use corruption to win orders and that financial rescue packages and massive stimulus spending programmes

present extensive opportunities for corruption. For these reasons, it is urgent that critical UNCAC provisions are implemented promptly. Establishing an effective review mechanism at Doha will enable UNCAC to function as the global anti-corruption framework and to contribute to the solution of the economic crisis.

5. Conclusion

In addition to the G20 Leaders Statement calling for the establishment of an “effective, transparent and inclusive review mechanism”, the global civil society community has expressed its strong support for an effective review mechanism. A CSO Coalition Statement dated 20 August 2009 has been signed by more than 260 organisations worldwide. More than 50 religious leaders from around the world have called for urgent action on the review mechanism in a letter to the UN Secretary-General Ban-Ki Moon, dated 21 August 2009. The need for an effective review mechanism to make UNCAC work was also emphasised in a letter to UN Secretary-General Ban Ki-Moon signed by 24 CEOs of major global corporations, dated 31 May 2009.

The prolonged deadlock over implementation review has impaired the ability of UNCAC to become the key global framework for combating corruption. It must be resolved at Doha. The Rules of Procedure applicable to CoSP meetings provide that “If consensus cannot be reached, decisions shall be taken by vote and each State party shall have one vote.” (Rule 57) In view of the urgent need to establish the review mechanism at Doha, a vote should be taken if a consensus cannot be reached.

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