

Comparative assessment of anti-corruption conventions' review mechanisms

Query:

"Please provide a comparative assessment of review mechanisms currently used to assess progress against UN or other conventions. This should include an analysis of how effective the review mechanisms have been in effecting change."

Purpose:

"To assist in UNCAC Pilot review and developing thought for review mechanism options."

Content:

- Part 1: Comparative Assessment of Existing Mechanisms
- Part 2: Considerations for Establishing an Effective Review Mechanism for the UNCAC
- Part 3: Further reading

Summary:

A range of different monitoring processes are currently in operation in connection with several anti-corruption conventions. They all involve to some degree a combination of monitoring methods including self-assessments, expert reviews, peer reviews, country visits and the publication of a report with recommendations for improvement. They also provide avenues for promoting dialogue and discussions with countries under review. The comparative assessment of the review mechanisms established by the OAS, the OECD, GRECO, UNODC or NEPAD indicate that an effective monitoring system requires a serious commitment by governments, adequate resources and expertise, an independent secretariat, and should provide for civil society participation and access to information and documents. Follow-up mechanisms to assess progress made on the review recommendations such as for the OECD and GRECO mechanisms are essential to promote actual changes.

Part 1: Comparative Assessment of Existing Review Mechanisms

Monitoring the implementation of international agreements has proved instrumental in stimulating government actions with reporting schedules, exercising peer and public pressure on governments to fulfil their anti-corruption commitments and in enabling non-state actors to provide their assessment of government performances in the fight against corruption. Intergovernmental monitoring systems currently exist for a number of conventions and international instruments. These review mechanisms typically use a selection of monitoring methods. They generally involve a self-assessment process where governments respond to a questionnaire, a review of government responses and performances by an expert or a panel of experts, country visits and mutual/peer review where government representatives evaluate one another on their convention performance. On the basis of this review process, the monitoring body supported by a Secretariat produces a country report with recommendations for improvements. This report is discussed with the country under review and

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published in most cases. (In some cases, such as for the OAS convention, the publication of reports is subject to government's agreement). Some review mechanisms also provide for the participation of civil society and the private sector in the process. In addition, most effective monitoring systems have established a follow-up mechanism on review recommendations.

Assessment of the Various Review Mechanisms

The intergovernmental Working Group on review of UNCAC implementation requested that the Secretariat prepare for the second session of the CoSP a report containing a comparative analysis of methods employed by existing regional or sectoral mechanisms to assist the Conference in decision-making on the appropriate review mechanism. The following comparative assessment is based on this review (<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0789281e.pdf>) as well as on the report of a study group on follow-up process for UN the Convention against Corruption organised by TI (<http://www.transparency-usa.org/documents/UNCACReportFinal6-13-06.pdf>). TI's website page on international conventions also provides a good and comprehensive analytical overview of the various existing review mechanisms. (http://www.transparency.org/global_priorities/international_conventions/advocacy/monitoring).

OECD Convention on Combating Bribery of Foreign Officials in International Business

The OECD has put an elaborate monitoring process in place for its Convention that includes elements of self-assessment and mutual reviews through peer reviews. It is considered one of the most vigorous review processes. Implementation is monitored since 1999 by the OECD Working Group on Bribery which is composed of representatives of all signatory states and has been monitoring implementation in two phases. During Phase 1, which ran from 1999 – 2005, the Working Group examined the consistency of national legislation with the Convention and Recommendation standards, pointing out deficiencies and making recommendations on the required new legislation. The Phase 2 process which is currently under way looks at whether parties have the necessary structures and resources to prevent and prosecute foreign bribery.

OECD Convention Monitoring

Methodology: Self-assessment based on questionnaire, on-site visits, and peer reviews with lead examiners and plenary discussions

Scope of the Review: Phase 1 legislation, phase 2 enforcement

Rate of Monitoring for Phase 1: 36 countries reviewed in 2 years

Rate of Monitoring for Phase 2: Approximately 6 per year

Number of Working Group Meetings per year: 5

In-Country Visits: Yes for phase 2

Civil society participation: Yes both in Phase 1 and 2

Publication of reports: Country reports with recommendations published immediately after discussion and adoption by the working group.

Technical assistance: No

Current staffing: 10 persons per year

Estimated cost: 1, 5 million €

Strengths of this review mechanism include well-designed questionnaires, well-organised country visits, active civil society and private sector participation at various stages of the process, detailed published reports with recommendations as well as a process of follow-up on reports and recommendations, especially for countries performing inadequately. Some weaknesses have been recorded as well: country reports tend to be lengthy and legalistic; the peer reviewers are not always equally qualified and there have been instances of insufficient cooperation by the reviewed country.

The Council of Europe Anti-Corruption Instruments

Greco, the Group of States against corruption, was conceived as a flexible and efficient follow-up mechanism, called to monitor, through a process of mutual evaluation and peer pressure, the observance of a range of legal instruments against corruption. Full membership of the GRECO is reserved for those who participate fully in the mutual evaluation process and accept to be evaluated. The Member States of GRECO appoint permanent representatives who participate in plenary meetings of GRECO and are entitled to vote. The GRECO monitors the Twenty Guiding Principles in the Fight against Corruption, the Council of Europe Criminal Law Convention, the Council of Europe Civil Law Convention, the Recommendation on Codes of Conduct for Public Officials and the Recommendation on Common Rules against Corruption in the Funding of Political Parties. (http://www.coe.int/t/dg1/greco/evaluations/index_en.asp). Compliance is reviewed through a process of mutual evaluation, peer pressure and formulation of recommendations. Full membership of the GRECO is reserved to those who participate fully in the mutual evaluation process and accept to be evaluated. The Member States of GRECO appoint permanent representatives who participate in plenary meetings of GRECO and are entitled to vote. The monitoring process involves country self-assessments, on-site visits by review teams, plenary discussions and a published report with recommendations. The third round of evaluations started in 2007. The GRECO monitoring process is considered to be a strong review mechanism.

GRECO Monitoring

Methodology: Peer reviews with evaluation teams and plenary discussions

Scope of the Review: Specific themes and provisions

Rate of Monitoring for 1st round: 34 countries reviewed in 3 years, 8-13 per year

Rate of Monitoring for 2nd round: 39 countries in 3 years, 7-18 per year

Number of Plenary meetings per year: 3-5

In-Country Visits: Yes

Civil society participation: Yes, upon invitation

Technical assistance: Yes

Publication of reports: Compliance reports published with recommendations, subject to agreement of the reviewed countries.

Current staffing: 10 persons per year

Estimated cost: 1.6 for 2005 million €

The review mechanism benefits from a strong secretariat, adequate funding and an associated technical assistance programme that supports implementation. The EU accession process for Central European countries has also proved to provide powerful leverage for implementation. It also has a follow-up process which follows up on the implementation of the recommendations made. The mechanism also allows for some participation from civil society. The review mechanism has been criticised for its excessive emphasis on formal and legal provisions as opposed to impact assessment, the official nature of the country visits and the required reviewed countries' agreement for publication of reports. Civil society participation has become standard practice but is not required by the rules and could therefore be strengthened. Experience of GRECO has also indicated that substantial resources were needed for the training of evaluators. Thorough review of draft reports has proved time-consuming and the mechanism has had difficulties to run within schedule.

The Inter-American Convention against Corruption (OAS)

The review mechanism of the OAS Convention is based on a peer review monitoring mechanism coordinated by the general Secretariat of the Organisation of American States. (For a detailed overview of this follow-up mechanism:

http://www.oas.org/juridico/english/mec_ron1_inf_hemis_en.doc). The mechanism is composed of two bodies - the Conference of State Parties and a committee of experts which is responsible for the technical analysis of information provided by the state under review. Countries prepare a self-assessments based on a questionnaire and indicators. Civil society also submits written responses to the same questionnaire. Expert review sub-groups conduct a review with the state's response, involving meeting with government and civil society. In the first round of evaluations, countries have been reviewed on a selection of preventive measures, including standards of conduct, public officials' disclosure of assets, oversight bodies and mechanisms to encourage participation by civil society and non-governmental organisations in efforts to prevent corruption. They are also being reviewed on technical co-operation and on central authorities.

OAS Convention Monitoring

Methodology: Self-assessment with peer reviews and committee discussions

Scope of the Review: Each review phase covers selected articles of the Convention

Rate of Monitoring: Approximately 10 countries per year

Committee of Experts meetings per year: 2

In-Country Visits: No

Civil society participation: Yes

Publication of reports: Country report with recommendations, civil society reports.

Technical assistance: Yes in theory, no in practice

Current staffing: 6 devoting 30 % of their time to monitoring

Estimated cost: 350,000 USD per year (2005)

The OAS monitoring mechanism can be distinguished by its well-designed questionnaire, strong civil society participation and useful plenary discussion of draft reports. Criticisms include inadequate funding, slow pace of reviews, lack of country visits and lack of relevant expertise of some experts. The follow-up process was also slow to set up because there was no reference to monitoring in the convention. Plenary proceedings did not move quickly enough and significant time and resources was subsequently allocated to amend rules and procedures. Concerns were expressed with regard to loss of momentum and stale information. Lessons learnt include the importance of adopting a realistic approach to monitoring and avoiding raising too many expectations to promote public confidence in the review mechanism.

The Asian development Bank/OECD anti-corruption plan for Asia and the Pacific

The ADB/OECD anti-corruption plan for Asia Pacific has privileged a non-binding instrument and a soft review mechanism, reflecting a more cautious approach to monitoring. Participating countries prepare self-assessment reports in specific areas based on a questionnaire. Reports are reviewed in plenaries by the Steering Group to assess progress achieved. Report results provide benchmarks to measure subsequent progress. Steering committees are composed of government representatives and national experts as well as representatives of the Anti-Corruption Initiative's Secretariat and Advisory Group. The regional Steering Group has reviewed country implementation of selected projects as well as the legal and institutional framework to fight corruption. The Secretariat prepares a stocktaking overview report based on all self-assessments.

ADB/OECD Anti-Corruption Plan for Asia and the Pacific Monitoring

Methodology: Self-assessment and peer review discussions
Scope of the Review: Stocktaking of measures, institutions, legislations
Rate of Monitoring: Horizontal study of 26 countries
In-Country Visits: No
Steering Group meetings per year: 2
Civil society participation: In seminars, conference and advisory group
Follow up: Continuous self-reporting on progress in steering group
Publication of reports: Self assessments and stocktaking reports
Technical assistance: Yes
Current staffing: 3, 5
Estimated cost: 350,000 USD per year (2005)

The strength of this review mechanism is that it was requested and designed by involved states and focuses on dialogue and actions to be taken by the reviewed countries. The follow-up is ensured through regular updates and discussions in the Steering Group meetings. A series of in-depth thematic studies are conducted, including curbing corruption in public procurements. The non-binding nature of the instrument as well as lack of country visits are the major weaknesses of this review mechanism.

The African Union Convention on Preventing and Combating corruption

The AU Convention provides for a follow-up mechanism whereby an Advisory board composed of 11 members is required to submit a report to the Executive Council on a regular basis on progress made by each state party. Signatory countries are required to report to the Board on their progress in implementing the AU Convention and State parties are required to provide for the participation of civil society in the monitoring process. The Convention came into force in August 2006, is still in the process of setting up this review mechanism and the Advisory Board is not yet fully operational. The AU has set in motion another governance review process under the New Partnership for Africa's Development (NEPAD)'s African Peer Review Mechanism (APRM). The APRM is not conceived as a review process for relevant conventions in the Africa region, but includes element of monitoring of government anti-corruption activities and performance against convention requirements. The review process includes country self-assessments based on a questionnaire, expert review teams, and on-site visits by expert review teams who consult with government, private sector and civil society representatives, active plenary discussions, revision of country reports and action plans by APR Panel of Eminent Persons.

African Peer Review Mechanism

Methodology: Self-assessment, expert panel and peer review
Scope of the Review: 91 indicators
Rate of Monitoring: Each country reviewed every 2/4 years
In-Country Visits: Yes, with consultation with government, civil society and private sector
APR Panel meetings per year: Approximately 6
Civil society participation: In seminars, conference and advisory group
Follow up: Continuous self-reporting on progress in steering group
Publication of reports: Country reports and action plans
Technical assistance: In theory, yes
Current staffing: 6 coordinators and 6 assistants to the APRM Secretariat
Estimated cost: 100,000 USD pledged by state

The plenary review body is composed of heads of state, which may provide political support but also has obvious limitations. This monitoring mechanism faces major challenges of human, financial and technical resources. African governments have also demonstrated reluctance to criticise each other.

UN Convention against Transnational Organised Crime

Lessons learnt from this convention are particularly valuable for UNCAC as it has a similar membership, includes similar provisions on international cooperation, and also has a Secretariat provided by UNODC.

UNTOC Monitoring Mechanism

Methodology: Factual responses, plenary discussions and follow up questioning

Scope of the Review: Questionnaires on selected topics

Rate of Monitoring: Planned to cover all countries each year, then every second year

Numbers of plenary meetings per year: 1 per year in the first year, then every second year

In-Country Visits: Not planned

Civil society participation: Not yet established

Technical assistance: Yes

Publication of reports: Secretariat overview report

Current staffing: 7-9 persons

Estimated cost: Not yet known

A fully fledged review mechanism was not established in the early days of this convention and the Conference of State parties has taken time to organise its work in this regard. The Secretariat was instructed to collect information on implementation through questionnaires but initially received a relatively low rate of responses. The CoSP to UNTOC also identified the need to involve experts as an important element of the monitoring process given the technical nature of many of the Convention's provisions. The lack of country visits and civil society participation in the process are the main weaknesses of this process.

The Impact of Review Mechanisms on Promoting Change

Although all experts confirm the critical impact that well-designed monitoring mechanisms have had in promoting anti-corruption reforms and effective implementation of internal conventions, there is no systematic record of their specific achievements in effecting change for most of the conventions. When follow-up on recommendations is in place, impact can be assessed by tracking changes and status of recommendations implementation in successive country reports.

The OECD review mechanism is considered one of the strongest to promote effective implementation. According to an OECD consultation paper reviewing cross-cutting issues that have arisen in connection with the implementation of the OECD instruments on combating bribery, ten years after adoption of the OECD Anti-Bribery Convention, all 37 Parties have criminalised foreign bribery and disallowed tax deductions for bribe payments, as well as taken further steps as required by the Convention and other OECD anti-bribery instruments.

(http://www.oecd.org/document/13/0,3343,en_2649_34855_39884109_1_1_1_1,00.html). Another OECD report tracks steps taken by parties to implement and enforce the OECD Convention as well of recommendations.

(http://www.oecd.org/document/44/0,3343,en_2649_34859_36433004_1_1_1_1,00.html)

The **Greco's review mechanism** can also be credited for its contribution to a series of anti-corruption measures and achievements that are reflected in various GRECO reports. (Please see the links to specific reports that are provided in the annex). Achievements that are reflected in these reports include:

- Throughout Europe, countries have put into place or improved anti-corruption legislation;
- Many countries have adopted comprehensive anti-corruption strategies with clear objectives and responsibilities;
- Financial investigations are being carried out in an increasing number of countries as a matter of routine and significant proceeds from corruption and other forms of serious crime are now being confiscated;
- Special anti-corruption bodies have been created in many countries with the necessary expertise to conduct corruption investigations in a more effective manner;
- Initiatives have been taken to reduce the immunities from prosecution enjoyed by certain categories of holders of public office and/or elected representatives with measures such as asset declaration, whistleblower protection, and ethical codes of conduct, transparent recruitment and promotion procedures in public administration.

With regard to the **OAS convention**, until implementation review started four years after the Convention became effective, there was little recorded government action against corruption. Monitoring started in 2001 and stimulated government action. A TI status report on the OAS convention indicates areas of the Convention where most progress has been made on the regional level, including in access to public information, public contracting systems, criminal regulations, use of public funds, collaboration between the state and civil society. Although not directly linked to the monitoring process, such achievements may have been supported by the follow up provided by the review mechanism. Less progress has been recorded on a regional level in protection of whistleblowers, codes of ethics in the public service, public official hiring. This report also presents a few proposals for improving the OAS review mechanism, whose recommendations are not binding, including exploring ways to give greater political weight to the recommendations made.

In addition to helping review government's performance more accurately, the involvement of civil society in the monitoring mechanism had an impact on CSOs themselves, by providing an opportunity to gain in-depth knowledge on the convention and the domestic challenges of implementation. Through this process, CSOs have also gained influence on certain areas of public policy at country level. In some cases, the reports have also helped build strategic alliances between CSOs and the public sector.

<http://www.transparency.org/content/download/17883/241986/file/Informe%20TI%20Implementacion%20CICC%20Inglés.pdf>.

Lessons learnt from Reviewing Implementation of International Instruments

The following lessons emerge from the review of the various mechanisms in place to monitor international instruments against corruption:

Monitoring should privilege a positive approach, and be structured towards fostering support for reform rather than evaluating performance and identifying compliance gaps.

Most effective monitoring processes combine a wide variety of monitoring methods, such as the ones used by GRECO or for the OECD Convention. Some practical solutions should be envisaged for the UNCAC given the number of parties involved, as well as the breadth and complexity of the provisions. In addition, country visits to all or selected countries as well as civil society involvement in the monitoring process have proven to be an effective complementary

approach to evaluate how legal and institutional reforms work in practice. Follow-up on recommendations made are also an important element of an effective monitoring process.

Gathering information from a wide range of sources, including civil society enriches the monitoring process and stimulates the debate with state parties. The more review mechanisms consider information collected from open sources, civil society organisations, the private sector, intergovernmental organisations, which provide an opportunity to promote internal dialogue on issues related to corruption as well as build domestic demand for reform. Although each instrument requires its own monitoring mechanism to promote effective implementation, monitoring can also benefit from information and lessons learnt from other existing mechanisms.

Experience has shown that the scope of the monitoring review should remain focused in the initial stage. Ultimately, monitoring should cover the legal and institutional framework in place as well as how it works in practice. Although implementation of all provisions should ultimately be monitored, the review could focus on different articles of the convention or specific aspects of implementation in successive phases. The involvement of experts or an expert advisory body to set priorities and advise on the scope of the review is recommended.

Dialogue with reviewed countries emerges as a key element of an effective monitoring process. A review mechanism can provide an opportunity to promote constructive dialogue with state parties on issues related to corruption. Countries should be able to clarify their report, provide additional information when required, and respond to enquiries from reviewers, experts or the Secretariat. This also promotes ownership of the review process by the state parties.

Monitoring should ideally be combined with provision of technical assistance to support state parties in their efforts against corruption. The outcome of the monitoring process should include the formulation of concrete recommendations for improvement as well as support to implement these recommendations. This approach can also reassure countries that the purpose of the monitoring process is less to identify and sanction non-compliance than promote the implementation of effective strategies against corruption.

Part 2: Considerations for Establishing an Effective Review Mechanism for the UNCAC

The United Nations Convention against Corruption (UNCAC) was adopted by the UN General Assembly on 31 October 2003, entered into force on 14 December 2005 and has been signed by over 140 countries and ratified by 110 countries to date. With both its global coverage and extensive and detailed provisions, the UNCAC represents a major landmark in the fight against corruption. It obliges the States Parties to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These obligations include measures aimed at preventing, detecting, and sanctioning corruption as well as at promoting international cooperation and mutual assistance, technical cooperation and implementation mechanisms.

Although experience with other anti-corruption conventions confirms the need for an intergovernmental monitoring process, there are no concrete provisions on the establishment of a monitoring mechanism for the UNCAC. Chapter VII of the Convention provides for an implementation mechanism under the auspices of the Conference of States Parties (CoSP). Among other responsibilities, the CoSP is in charge of reviewing periodically the implementation of the Convention by States Parties, making recommendations for improvement, establishing appropriate review mechanisms as well as any review body deemed necessary to assess states parties' implementation progress and difficulties encountered.

In its first session, held in December 2006 in Jordan, the Conference of State Parties to the UNCAC agreed on the urgent need to establish an appropriate and effective mechanism to assist in the

review of the implementation of the Convention. The CoSP also called for an open-ended intergovernmental working group on review of implementation to make recommendations on the establishment of this mechanism.

(<http://www.unodc.org/unodc/en/treaties/CAC/working-group1.html>).

Key Characteristics of a UNCAC Review Mechanism

First CoSP recommendations on UNCAC review Mechanism

In its resolution on the need to establish an effective review mechanism for the UNCAC, the first CoSP underlined the following characteristics that such a mechanism should have:

Transparent, efficient, non-intrusive, inclusive and impartial

Transparency covers issues such as involvement of civil society in the review process and public access to reporting documents, findings, and deliberations. The efficiency of the mechanism will largely depend on the nature and scope of the intended implementation review as well as on practical considerations such as levels and sustainability of funding. The non-intrusive and impartial characteristics of the mechanism relate to the need to respect the sovereignty of the state parties and ensure full ownership of the process at country level.

Should not produce any form of ranking

There is a large consensus on the importance of avoiding any form of ranking, with the view to preventing the stigmatisation of states performing poorly as well as avoiding it to be used for aid conditionality. As countries' situations differ according to specific contexts and levels of developments, the aim of the exercise should be to assess progress and establish benchmarks reflecting the initial situation/state of development of each country rather than universal targets and standards.

Should provide opportunities to share good practices and challenges

Given the complexity of corruption-related issues, providing opportunities for sharing practices and challenges was also considered an important feature of such review mechanism. The review mechanism should also allow input from international and specialised organisations as well as from civil society and promote exchange of information, practices, international cooperation and exchanges. As a first step, a summary of practices presented by the state parties was presented at the second session of the CoSP.

(http://www.unodc.org/pdf/crime/convention_corruption/cosp/WGs/WG3/V0786497e.pdf).

Should complement existing international and regional review mechanisms

Another concern of the CoSP with regard to the establishment of a review mechanism is to avoid duplication of efforts. There is a wide range of different monitoring and follow-up processes currently operating in connection with several of the conventions and attention should be given to avoid wastage of resources and duplication of efforts. Much can be learnt from the experience of other review mechanisms. They also generate a body of knowledge and information that can be drawn upon as a secondary source of information for relevant UNCAC provisions.

In addition to CoSP's consensual decisions on the characteristics of a review mechanism for the UNCAC, some participants in the working group recommended that such mechanism be: (https://css.unodc.org/pdf/crime/convention_corruption/cosp/session2/V0786745e.pdf)

- Carried out by the state parties, all state parties being obliged to report on implementation progress and enjoying equal footing in any review mechanism or body;

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- Non-adversarial in nature;
- Linked to technical assistance to remedy gaps identified in legislative and institutional frameworks;
- Encouraged to use a variety of sources of expertise, benefiting from the involvement of experts and civil society;
- Transparent and open to public scrutiny, ensuring public reporting and access to information;
- Monitoring reviews should provide for follow up, with concrete action plans being developed and implemented to address identified gaps and deficiencies, with provision of technical assistance when necessary.

The **second CoSP** held in Bali at the beginning of 2008 decided that the review mechanism's objective should be to assist states in effective implementation of the Convention and that it should be not adversarial and not punitive. It should also have established guidelines for the compilation and dissemination of information, identify possible difficulties encountered by states parties in fulfilling their obligations, and should be of technical nature and promote a constructive collaboration.

Civil society's recommendations on UNCAC review mechanism

In addition, civil society organisations call for UNCAC monitoring to be conducted with the active involvement of non state stakeholders-including civil society and the private sector- as an important element to consider in the design of the review mechanism. (TI's recommendations for review mechanism for UNCAC: http://www.transparency.org/global_priorities/international_conventions). The spirit of Article 13 of the UNCAC that promotes civil society participation in anti-corruption efforts also applies to the review process. There is a growing recognition by the various stakeholders of the key role that civil society organisations can take in the implementation of the UNCAC, especially in independently monitoring or participating in the implementation review of such conventions. In addition to promoting the introduction of monitoring mechanisms, CSOs can participate directly in the monitoring process or produce alternative reports. So-called "shadow" reporting provides a civil society perspective on state obligations and progress made towards the domestication of international conventions.

TI has formulated a set of recommendations for setting up an effective review mechanism in a Position Paper on "Effectively Monitoring the UNCAC" (www.transparency.org/content/download/28888/436039/). Recommendations include establishing a three-part review mechanism, composed of the CoSP that would have the overall responsibility of the process, the Secretariat that would be in charge of day to day management of the review process and a Board of Experts with relevant thematic and regional expertise. A two phase approach is recommended, with the first phase focusing on the establishment of the review mechanism including information gathering, pilot programmes and provision of technical assistance and the second phase establishing a programme of country reviews through a transparent and participatory process. The involvement of civil society in the monitoring process is of paramount importance.

Challenges Involved in Establishing a Review Mechanism for the UNCAC

There are a number of strategic and operational challenges involved in establishing a review mechanism for the UNCAC.

Strategic issues

Fairness of the process to developing countries

Developing countries fear that such mechanisms may be biased against them. Countries are at different stages of development and experience different circumstances and levels of corruption.

They face different constraints, challenges and impediments, have different resources and capacity. There were concerns that establishing a monitoring process could stigmatise developing countries and criticise them for deficiencies they don't have the capacity/resources to correct. Directly linked to this concern, is the issue of aid conditionality. Developing countries fear that performance in UNCAC implementation could be used to determine aid and technical assistance.

Infringement on Sovereignty of the State parties

State parties expressed fear and reluctance that UNCAC monitoring could result in a form of intrusion of the international community in domestic affairs. The need to take into account the sensitive and complex nature of anti-corruption efforts, as well as respect principles of sovereignty and non-intrusion in domestic affairs was emphasised by state parties on a number of occasions. It is therefore important to strike a balance between implementation requirements and the respect of states' prerogatives for internal affairs.

Civil society involvement

Civil society has a key role to play in the implementation of international anti-corruption instruments, especially with regard to UNCAC monitoring. The UNCAC itself contains mandatory provisions that promote CSOs' participation in the fight against corruption but little information is available on how state parties have implemented them. The role and potential contribution of civil society to the monitoring process is not explicitly mentioned or discussed in-depth in official documents or recommendations on the review mechanism. In some contexts, state parties may even impose severe restrictions on the operations of CSOs and be extremely reluctant to involve them in political processes. (Please see unpublished U4 expert answer attached to this answer). Article 63 of the UNCAC mentions that "*input received from relevant NGOs duly accredited in accordance with the procedures to be decided upon by the CoSP may also be considered*".

Political acceptability of the review mechanism

UNCAC has the largest and most diverse number of state parties, representing a wide variety of political, legal and economical systems. This makes it even more difficult and complex to develop an effective and politically acceptable monitoring process than for other conventions.

Operational issues

Adequate and sustained funding is essential. Monitoring reviews must be conducted on a periodic basis in order to assess progress over time. Because monitoring is a long term process with periodic progress reviews, funding must be adequate, predictable and dependable. As UNCAC has the largest number of parties and broadest scope of any convention, concerns have been raised about the costs involved in setting up such monitoring processes.

Capable secretariat with adequate staffing and resources is needed.

Managing such review process is a time consuming and work intensive process that involves a wide variety of coordination tasks as well as administrative responsibilities. They include activities as diverse as budget management, organising plenaries and consultations, coordinating international efforts, visits and reviews, drafting questionnaires, conducting research, drafting, revising and adopting reports, formulating recommendations, translating and disseminating reports and findings, etc. These have important logistical implications that should be realistically assessed and taken into account when establishing a review body. Sufficient allocation of financial and human resources is needed to manage the monitoring. This is all the more important since a rapid increase in membership can be expected in the mid-term.

Review mechanism should be simple, cost-effective, clearly defined and reliable.

Resources should not be diverted from implementation of reforms to reporting on reforms and organising monitoring conferences. With this in mind, the review mechanism should be established with a clear definition of objectives, composition, as well as scope of the review to ensure satisfactory functioning, continuity and consistency of monitoring activities. Given the scope of the Convention

and the multidimensional aspect of corruption, information gathering may also prove to be a challenging task in view of both the breadth of required information and the limited capacity/resources of many state parties. Therefore, this mechanism should be designed in a simple and cost effective way, with the view to allowing reliable data collection in countries where capacity is weak and keeping a reasonable a balance between the need for data and the cost of data.

Overlaps and duplication of efforts should be avoided.

Many international instruments overlap with UNCAC provisions and there is a risk of overloading national agencies. UNCAC review mechanisms should avoid redundancy and duplication of efforts and have a pro-active role in soliciting information from other review mechanisms. This challenges implementers to find ways to use the wealth of information gathered through other review mechanisms (regional or sectoral), cross check information collected through the UNCAC mechanism and avoid contradictory information to be collected from various involved monitoring bodies. An issue to consider in this regard is the legitimacy of using "processed" information from other review mechanisms.

Assessment of the Pilot Review Programme for the UNCAC

Following the first CoSP held in Amman, UNODC developed a technical assistance project testing possible means of reviewing the implementation of the Convention to assist the Conference's decision on a review mechanism for UNCAC. 16 countries agreed to participate in a pilot review of the Convention and an assessment of the exercise was prepared by UNODC for the second session of the CoSP that was held in Bali from 28 January to 1 February 2008.

(<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850016e.pdf>)

Review Methodology

A group of 16 countries have tested a review of the implementation of the Convention on a voluntary basis. The group of countries discussed the terms of reference of the expert review group and agreed on a number of options for the monitoring methodology that included:

- A self-assessment covering all mandatory and non mandatory provisions contained in the UNODC checklist ;
- A review by an expert review group. Emphasis was placed on active dialogue between reviewed countries and the group of experts.
- Elements of peer review. Each state participated in reviews from one other country in its region and a third country to foster regional dialogue and provide suitable benchmarks for comparable contexts.
- Country visits. Experts conducted country visits to selected countries to validate their findings, subject to the agreement of countries under review.
- Full discretion was ensured throughout the process justified by its voluntary nature.

Assessment of the Review process

UNODC compiled an assessment of the pilot programme for the second CoSP:

- The **review methodology** was generally assessed positively in terms of the usefulness of the self-assessment and the overall review process. Experts noted that country visits had proven especially useful to enable deeper analysis and assess implementation on the ground. Operational problems had arisen with the need to translate checklist responses and supporting documentation.
- The **engagement in active dialogue with countries under review** at every state and level of the review process through various channels of communication was judged to be one of the strongest elements of the review methodology used. The review process generated a

wealth of knowledge and information on good practices extremely valuable to the implementation of the Convention that should be actively acknowledged and shared.

- **Coordination at all levels** as well as among and between experts and countries under review was found to be key to the success of the exercise. The Secretariat played an important role in this regard and any review mechanism should receive substantial support from a well-resourced and professional secretariat.
- A **suitable format for the final product of the review process** should be developed with clear guidelines. The need to promote ownership of the outcome by the country under review, as well as to include recommendations and conclusions made by the experts and discussed with the reviewed country was underscored by the assessment.
- The need to identify **technical assistance needs** at all stages of the process was emphasised in the report, which had not been sufficiently provided for in the pilot review.

The report does not mention the nature and extent of civil society's involvement at any stage of the process, which may be a weakness of this process.

Part 4: Further Reading

Report on the Meeting on the Working Group on Review of the Implementation of the UNCAC

This report provides an overview of the discussions that took place in the meeting of the open-ended working group on review of the implementation of the UNCAC that was held in Vienna from 29 to 31 August 2007. It outlines considerations to take into account for reviewing the implementation of the UNCAC.

https://css.unodc.org/pdf/crime/convention_corruption/cosp/session2/V0786745e.pdf

Parameters for Defining the Review Mechanism for the UNCAC

This paper prepared by the Secretariat for the second session of the CoSP that was held in Bali from 28 January to 1 February 2008 contains a comparative analysis of methods employed by existing regional or sectoral mechanisms based on an overview of these mechanisms.

<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0789281e.pdf>

The Pilot Review Programme: an Assessment

This report provides an assessment of the pilot review programme that was carried out with 16 state parties on a voluntary basis to test the effectiveness and efficiency of a review method combining self-assessments and group and expert reviews as a possible review mechanism for the UNCAC.

<http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850016e.pdf>

Effectively Monitoring the UNCAC

This TI policy paper recommends that the development of a monitoring system should consist of two phases. To oversee the work in both periods, a three-part review mechanism should be set up consisting of the CoSP, UNODC and a distinguished board of experts.

http://www.transparency.org/publications/publications/ti_pp_01_08_uncac

Report of TI Study on Follow-up Process for UNCAC (June 2006)

This report presents a synthesis of the work of a study group of experts on a follow-up process for the UNCAC organised by TI. The study group spent substantial time reviewing the monitoring procedures of other anti-corruption conventions that provides background for the consideration of UNCAC monitoring. www.transparency-usa.org/documents/UNCACReportFinal6-13-06.pdf

Attachment to TI Report on Follow-up Process

This report provides an overview of anti-corruption, anti-money laundering as well as human right follow-up processes, providing for each instrument details on the scope of the monitoring, the methodology used, timing and frequency of reviews, financial aspects, opportunities for participation and technical assistance as well as lessons learnt

[www.transparency.org/content/download/10617/90979/file/c3\)_Attachment_TI_Report_Follow-Up.pdf](http://www.transparency.org/content/download/10617/90979/file/c3)_Attachment_TI_Report_Follow-Up.pdf)

Informal Consultation Meeting of the Friends of the Helsinki Process and the Friends of the UNCAC on Implementation of the UNCAC

This report provides a summary of an informal consultation meeting that was held in March 2006 by representatives of the Friend of Helsinki Process governments and the Friends of the UNCAC governments to ensure that an effective monitoring mechanism is developed by the CoSP.

<http://www.helsinki.fi/netcomm/imgLib/33/257/Lisbon%20Informal%20Consultations%20Meeting%20on%20UNCAC%20-%20Co-Chairs%20Summary.pdf>

Part 5: Annex

Achievements as reflected in Greco reports (examples from four areas)

Adopting or Amending Legal Provisions on Special Investigative Techniques:

See the First Round Compliance Reports and Addenda thereto, *inter alia*, on the following countries:

GRECO recommended to making the necessary legislative changes so as to permit the use of procedural means which are lacking at present (telephone-tapping in corruption cases and machinery for value based seizure)

First Round Evaluation Report on Belgium, §53, recommendation

([http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1\(2003\)4_Belgium_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1(2003)4_Belgium_EN.pdf))

See result: First Round Compliance Report on Belgium, §21-23 (Greco RC-I (2003) 4E)

GRECO recommended to extend, as far as possible, the use of special investigative means to cases of aggravated bribery, keeping in mind, the low level of corruption in Sweden and the need to respect the principle of proportionality and existing constitutional and legal safeguards.

First Evaluation Round Report on Sweden, §126, recommendation v

([http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1\(2003\)11_Sweden_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1(2003)11_Sweden_EN.pdf))

See result: First Round Compliance Report on Sweden, §26-30 (Greco RC-I (2003) 11E)

GRECO recommended including corruption in the list of serious offences enabling the use of wire-tapping and other special investigative means.

First Round Evaluation Report on Finland, §99, recommendation viii

([http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1\(2003\)3_Add_Finland_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round1/GrecoRC1(2003)3_Add_Finland_EN.pdf))

See result: Addendum to the First Round Compliance Report on Finland, §8-11 (Greco RC-I (2003) 3E Addendum)

Freedom of Information Laws:

See the Second Round Compliance Reports on *inter alia* the following countries:

GRECO recommended that measures be taken to enhance easier access to public information, above all at local level

Second Round Evaluation Report on Latvia, §34, recommendation iv.

See result: Second Round Compliance Report on Latvia §18- 21 (Greco RC-II (2006) 4E)

[http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2\(2006\)4_Latvia_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2(2006)4_Latvia_EN.pdf)

GRECO recommended adopting appropriate freedom of information legislation and putting in place administrative measures facilitating access to information by the public in accordance with such legislation

Second Round Evaluation Report on Germany §44, recommendation i.

See result: Second Round Compliance Report on Germany, §4-11 (Greco RC-II (2007) 3E)

[http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2\(2007\)3_Germany_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2(2007)3_Germany_EN.pdf)

GRECO recommended to review, as necessary, the legislation unduly restricting the right of individuals to have access to official documents and to provide appropriate training to public officials on the implementation of the rules on freedom of information

Second Round Evaluation Report on Romania §46, recommendation v.

See result: Second Round Compliance Report on Romania §33-38 (Greco RC-II (2007) 9E)

[www.coe.int/t/dg1/greco/documents/2007/Greco\(2007\)18_EN.pdf](http://www.coe.int/t/dg1/greco/documents/2007/Greco(2007)18_EN.pdf)

GRECO recommended to urgently adopt basic legislation on access to public information and to develop modern principles and routines for "e-governance"

Second Round Evaluation Report on the "former Yugoslav Republic of Macedonia", §76, recommendation IV

See result: Second Round Compliance Report on the "former Yugoslav Republic of Macedonia" §17-21 (Greco RC-II (2007) 8E)

[http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2\(2007\)8_FYRoMacedonia_EN.pdf](http://www.coe.int/t/dg1/Greco/evaluations/round2/GrecoRC2(2007)8_FYRoMacedonia_EN.pdf)

Amending Legal Provisions on Immunities from Prosecution

(Reducing list of officials covered by immunity provisions and/or developing objective criteria for the procedure of lifting immunities).

See First Round Evaluation (& Addenda) Reports on:

- Albania (recommendation xi):
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1\(2004\)11_Albania_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1(2004)11_Albania_EN.pdf)
- Bosnia and Herzegovina (recommendation xvii):
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1\(2005\)1_BosniaHerzegovina_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1(2005)1_BosniaHerzegovina_EN.pdf)
- Bulgaria (recommendations xiii and xiv):
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1\(2004\)3_Bulgaria_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1(2004)3_Bulgaria_EN.pdf)
- Georgia (recommendation xxiii):
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1\(2005\)4_GeorgiaFinalOverallAssessm_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2005)4_GeorgiaFinalOverallAssessm_EN.pdf)
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1\(2005\)4_Add_GeorgiaFinalOverallAssessment_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2005)4_Add_GeorgiaFinalOverallAssessment_EN.pdf)
- Romania (recommendations xii and xiii):
[http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1\(2004\)8_Romania_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoRC1(2004)8_Romania_EN.pdf)

Adopting or Amending Laws on Reporting of Corruption and Whistleblower Protection.

See the Second Evaluation Round Compliance Reports on:

- Albania (recommendation vii):
[http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2\(2007\)12_Albanie_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2007)12_Albanie_EN.pdf)

U4 Expert Answer

- Estonia (recommendation x):
[http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2\(2006\)3_Estonia_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2006)3_Estonia_EN.pdf)
- Iceland (recommendation iv):
[http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2\(2006\)10_Iceland_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2006)10_Iceland_EN.pdf)
- Latvia (recommendation ix):
[http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2\(2006\)4_Latvia_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC2(2006)4_Latvia_EN.pdf)