

Policy Position

Table of Contents

1. A comprehensive framework
2. UNCAC: a convention for collective action
3. Following up on the promises
4. Concerns and challenges
5. Recommendations and actions
6. Conclusions



Effectively Monitoring the United Nations Convention against Corruption (UNCAC)

Transparency International (TI) views the upcoming UNCAC meetings in Indonesia as a key moment to take action on monitoring the anti-corruption measures countries have agreed to implement. This paper sets out why effective monitoring is essential and what is needed to make it work.¹

1. A comprehensive framework

The UN Convention against Corruption (UNCAC) provides a comprehensive global framework for combating corruption. Adopted in 2003, it represents an international consensus on the need for collective action. The convention's eight chapters establish government obligations and standards for preventing and punishing corruption, international cooperation, technical assistance and asset recovery. UNCAC has been signed by 140 countries and ratified by more than 107 governments.² This rapid progress has raised high expectations that

TI calls on governments to work together to:

- 🌐 Establish the organisational structure for monitoring.
 - 🌐 Authorise continuing work to: expand current pilot programmes to track progress, implement the convention's asset recovery provisions, promote technical assistance and prevent duplicative reviews of other monitoring processes.
 - 🌐 Commit to starting country reviews in 2010 of UNCAC implementation.
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UNCAC will soon begin to function as the leading global instrument for tackling corruption at the national and international level.

While the convention's adoption marks a watershed for anti-corruption efforts, its ratification by individual countries does not guarantee that government authorities will take the timely steps needed for compliance, especially since many of the measures are controversial and costly. Parties to the convention have recognised this challenge at previous meetings and have endorsed the prompt establishment of a monitoring process to track country implementation. The questions currently on the table are not about whether to monitor but when, how and by what means.

To sustain country commitment to the convention, it is essential that the UNCAC Conference of the States Parties (CoSP) — which will hold its second meeting in Indonesia in January 2008 — responds to these concerns and establishes a review mechanism to monitor implementation. Anything less would undermine the credibility of UNCAC and play into the hands of the sceptics who question the UN's capability to make this complex convention work.

For monitoring to be effective and viable, the process must be flexible, fair, transparent and cost-efficient — and inclusive of civil society views. It must ensure an in-depth monitoring of crucial anti-corruption measures, such as those on asset recovery.

TI recommends that the development of a monitoring system should consist of two phases divided between the immediate (2008-09) and long-term (beginning in 2010). To oversee the work in both periods, a three-part review mechanism should be set up consisting of the CoSP, the United Nations Office on Drugs and Crime (UNODC) and a distinguished Board of Experts.

2. UNCAC: A convention for collective action

UNCAC is the most recent and comprehensive anti-corruption convention. Unlike previous agreements,³ it embodies a global approach to the problem and relies on worldwide participation for enforcement. In a globalised world, UNCAC offers the only viable framework for cooperation on anti-corruption measures, setting out universally agreed standards for government performance (see page 5).

TI has long advocated for the importance of having a global convention on corruption that is effective and implementable. Corruption is not confined to national boundaries. The convention's broad scope provides a framework for countries to act collectively. It covers both the public and private sectors and provides for mechanisms to prevent as well as punish corruption. The convention also serves as a valuable means for holding countries accountable. While governments come and go, the convention's and countries' obligations stay.

3. Following up on the promises

At the first CoSP in Jordan in December 2006, governments took a major step forward in transforming UNCAC from words to deeds. They made the crucial decision that 'effective and efficient review of the implementation of the Convention...is of paramount importance and urgent' and that 'it is necessary to establish an appropriate and effective mechanism to assist in the review of implementation'.⁴

As a first step, UNODC circulated a self-assessment checklist covering various articles of the convention and began conducting a more intensive pilot programme with 16 countries that also involved expert reviews.⁵ Additionally, the second CoSP was called on to approve proposals for establishing a monitoring programme and its terms of reference.

A 'Working Group on the Review of Implementation' was created and instructed to deliver these proposals for action to the second CoSP in Indonesia. Only one meeting was organised, supplemented by informal consultations. However, these exchanges have yet to yield any concrete proposals for a monitoring body.⁶

TI believes that establishing a monitoring system at this stage can help to solidify support for the convention by:

- 🌐 Permitting early identification by states parties of problems and needs.
- 🌐 Facilitating timely technical assistance by international agencies (e.g. United Nations Development Programme, World Bank and other multilateral and bilateral donors).
- 🌐 Providing opportunities for exchanging best practices and cooperation.
- 🌐 Offering guidance to governments on prioritising areas for implementation.
- 🌐 Assuring states parties that the other governments will meet their commitments.
- 🌐 Facilitating the establishment of expert groups on issues where collective action is most essential (e.g. asset recovery and anti-money laundering).
- 🌐 Providing information on the status of the convention's implementation to publicly recognise progress and pressure lagging governments.

Without monitoring, there is no guarantee that countries will comply with the convention's commitments in a timely or effective manner. Many steps are needed to implement the convention. Legislatures must pass laws to enforce the convention's provisions. Governments must adopt regulations and provide funding and staffing for agencies administering anti-corruption programmes. As experience shows, governments will give higher priority to pledges if they are being collectively assessed and supported (by funding and technical assistance).

Developing and developed nations must work together to overcome country differences for the sake of UNCAC and international anti-corruption efforts.

4. Concerns and challenges

UNCAC has the broadest and most ambitious scope of any anti-corruption convention, as well as the largest and most diverse number of parties. These factors are its greatest strengths — and most difficult challenges. The monitoring system must have the political, technical and managerial capabilities to cope with these unique complexities.

In designing the monitoring process, these dynamics must be taken into account as well as the specific concerns that have been raised by governments:

- 🌐 **Fairness and credibility.** Some developing country governments are fearful that the review process may be dominated by more powerful nations and biased against them.
- 🌐 **Cost.** Some developed countries would be called on to fund the others, raising concerns over the effectiveness and costliness of monitoring.
- 🌐 **Duplication.** Since monitoring of other anti-corruption conventions is underway, the fear is that UNCAC monitoring will be repetitive.
- 🌐 **Conditionalities.** Some developing countries worry that monitoring might be used as a pre-requisite for receiving financial and technical assistance.

Going into the second CoSP, it is still uncertain what form the review process will take. Governments that are mistrustful of monitoring will wish to limit the review as much as possible. Others have shown hesitation in making the process fully transparent and participatory, fearing civil society criticism.

5. Recommendations and actions

Developing and developed nations must work together to overcome country differences for the sake of UNCAC and international anti-corruption efforts.

Intergovernmental monitoring is essential because it is the only way to ensure the convention is universally upheld and respected. Moreover, it is feasible because there are mechanisms for tracking progress that are relatively inexpensive. Experience gained from monitoring other anti-corruption conventions demonstrates that it can be done effectively and economically.

TI has developed proposals that could serve as the basis for setting up a monitoring system. They are structured around establishing a review mechanism and take into account the political sensibilities and concerns expressed by countries about UNCAC monitoring. Apart from government collaboration, TI recognises that considerable civil society advocacy will be needed to push for an effective system.

TI's recommendations for setting up the right mix of institutional and monitoring structures (political, managerial and technical) are as follows:

Establish a three-part review mechanism.

The second CoSP meeting in Indonesia should adopt a resolution establishing a three-part review mechanism that includes the following actors: the CoSP, the Secretariat and a Board of Experts.

- 🌐 The Conference of the States Parties should have the overall responsibility for establishing an effective implementation review mechanism, its terms of reference and the policies and priorities for the process. Since the CoSP meets every two years, day-to-day management is best delegated to another entity: the Secretariat.
- 🌐 The Secretariat should be responsible for the daily management and work. The Secretariat will require strong leadership and a small professional staff. The UNODC is the obvious body to take on this function given its long-standing role in the development of UNCAC.
- 🌐 A Board of Experts should be established and consist of outstanding experts from across different regions as well as the principal fields covered by UNCAC, such as in public administration, criminal law and asset recovery. Once the proposal is approved, the Board of Experts should be made operational within six months. The Board should have about 12 members and meet as needed, including in smaller, specialised teams. The active involvement of experts will strengthen UNCAC's review process, ensure independence and increase public credibility. Experts should be nominated by the Secretariat and approved by the CoSP (or its Bureau). The Board's first assignment should be to work with the Secretariat to develop recommendations for the operation and terms of reference of the review process. Longer term, the Board should play an important role advising the CoSP on policies and priorities and assisting the Secretariat with conducting the reviews.

To make the review mechanism effective, reliable funding is essential. While the initial phases of the monitoring process can be covered by voluntary contributions, longer term funding should come from the regular UN budget.

Use a two-phase approach for setting up the review process.

The first phase should consist of the establishment of the review mechanism at the second CoSP and the following activities for the period 2008-09:

- 🌐 Continue gathering information about country progress and the development of implementation tools (guides, model laws, etc.).
- 🌐 Promote the implementation of different chapters and key articles of UNCAC (i.e. the asset recovery chapter, articles from the prevention chapter and the mandatory criminalisation and law enforcement articles).
- 🌐 Continue and expand pilot programmes. The programmes, begun in 2007 to assess the status of country implementation, should be extended to include additional parties and a wider range of UNCAC provisions.

The five (5) key UNCAC chapters:

Prevention (Chapter II)

Provides an ambitious programme to reduce corruption risks and strengthen accountability on the part of different actors:

- 🌐 Public sector: Addresses anti-corruption bodies; public sector ethics and procedures; public procurement and financial management; and public reporting.
- 🌐 Civil society: Emphasises role of citizens including participation; access to information; complaint channels; and public education.
- 🌐 Private sector: Sets out standards, including for accounting and auditing and anti-money laundering provisions.

Criminalisation (Chapter III)

- 🌐 Covers a range of offences. Notable attention is given to issues of bribery, embezzlement, money laundering, etc.
- 🌐 Provides for corporate criminal liability and compensation for damages.
- 🌐 Includes private-to-private offences.

International Cooperation (Chapter IV)

- 🌐 Calls and provides for detailed rules on mutual legal assistance, extradition processes and a collective framework for action.

Asset Recovery (Chapter V)

- 🌐 Characterises the return of assets as fundamental.
- 🌐 Offers detailed rules on the process and actions for cooperation.

Technical Assistance (Chapter VI)

- 🌐 Outlines areas for training and assistance and the channels for collecting, exchanging and analysing information on corruption.

Effectively Monitoring UNCAC

- 🌐 Review implementation of the asset recovery provisions, including the technical assistance required (see recommendation below).
- 🌐 Work with donor agencies to coordinate technical assistance to developing countries (see recommendation below).
- 🌐 Establish a coordination group among organisations monitoring other anti-corruption conventions to promote collaboration and resource sharing while equally tracking the implementation of country obligations.

The second phase (beginning in 2010) will require action by the third CoSP and will be shaped by recommendations from the Secretariat and Board during the first period. Among the tasks will be how to structure a programme of country reviews. Based on other monitoring systems, essential elements to include are:

- 🌐 Country visits. TI suggests these reviews should cover key articles from each UNCAC chapter with the goal of completing one round of assessments for all parties by end of 2014. These could help to promote public interest in UNCAC and participation by civil society organisations (CSOs), including TI National Chapters. To assist this process, CSO contact points could be established.
- 🌐 Reports and action plans. Each country visit should result in an independent country report, including an action plan to correct any deficiencies found.
- 🌐 Transparency and public participation. The review process should be transparent with active involvement of civil society and the private sector. Reports should be promptly made public. In TI's view, publicising government responses must outweigh concerns about how it might inhibit their candour.

Advance implementation of asset recovery provisions.

Prompt establishment of the monitoring mechanism is particularly important for the success of UNCAC's asset recovery provisions — a top priority for developing countries. Effective monitoring is essential to ensure stolen assets do not simply flow to countries where implementation is weakest.

The Working Group on Asset Recovery, established during the first CoSP, should initiate a programme of activities in 2008-09 that includes a broader review process beyond pilots begun in 2007. This work should cover the principal banking centres as well as developing countries engaged in asset recovery.

- 🌐 A subgroup consisting of requesting countries (whose former leaders had deposited substantial funds in foreign banks) and leading banking centres should be formed and include CSO involvement. This group should explore how to develop uniform, expedited procedures for identifying, freezing and repatriating the proceeds of corruption.

- 🌐 Arrangements need to be proposed for funding the legal expenses of requesting states. A multilateral fund with contributions from wealthier countries is an option.
- 🌐 Consideration should also be given to investing frozen funds tied up in protracted litigation. The funds could be put to use in the country from which they were taken by the World Bank or other financial institutions.

Solidify technical assistance and funding.

The convention clearly recognizes that successful implementation of UNCAC in developing countries requires capacity-building assistance.⁷ Although a Working Group on Technical Assistance has been established, increased Secretariat cooperation with donor organisations must be a high priority for 2008-09. Technical assistance to countries for convention implementation should include:

- 🌐 Advisory services, such as hotlines and helpdesks;
- 🌐 Help in identifying and addressing technical assistance needs;
- 🌐 General assistance with treaty implementation (meetings, workshops, national guidelines) and policy and strategy support;
- 🌐 Specialised assistance for bringing domestic legislation into line; and
- 🌐 Support in researching and collecting information.

6. Conclusions

UNCAC represents a crucial step in building an international framework to combat corruption. Because of its universal reach, UNCAC makes it possible to tackle problems that cannot be addressed through existing regional conventions. To make UNCAC work will require a follow-up process lasting many years and consisting of intergovernmental monitoring and technical support. Civil society advocacy can play a crucial role in these efforts and there are important opportunities for CSOs and TI to get engaged in tracking the convention's progress.

If UNCAC can be properly implemented it will result in major reductions in corruption. It has the means to produce great benefits in terms of better democratic governance, accelerated country development and poverty alleviation, more efficient government processes and stronger market competition. An effective review mechanism ensures that such implementation will take place and that the goals of UNCAC can be achieved. Without monitoring there is a high risk the convention will become another example of the futility of high aspirations. 🌐

To make UNCAC work will require a follow-up process lasting many years and consisting of inter-governmental monitoring and technical support.

Effectively Monitoring UNCAC

For more information on TI's work on UNCAC and other international anti-corruption conventions, visit the TI website at: www.transparency.org/global_priorities/international_conventions.

References:

- ¹ This paper draws on the recommendations previously outlined by TI. See: Fritz Heimann and Gillian Dell, Recommendations for Review Mechanism for UN Convention against Corruption (Berlin: TI, 15 August 2007). www.transparency.org/content/download/23042/343390/file/TIRecsUNCACReview.22.8.07.pdf. Fritz Heimann and Gillian Dell, Report on Follow-up Process for UN Convention against Corruption (Berlin: TI, 12 September 2006). www.transparency.org/content/download/11929/112476/file/UNCAC_Monitoring_Report_english.pdf.
- ² These figures are as of 17 January 2008. See: www.unodc.org/unodc/en/treaties/CAC/signatories.html.
- ³ These conventions and instruments include: the Organization of American States Convention against Corruption (1996); the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention (1997); the Council of Europe Criminal and Civil Law Conventions on Corruption and other instruments (1998, 1999); the United Nations Convention on Transnational Organized Crime (2000); the Asia Development Bank-OECD Action Plan for Asia-Pacific (2002); and the African Union Convention against Corruption (2003).
- ⁴ See: CAC/COSP 1. Resolutions and Decisions. First Conference of the States Parties (Amman, Jordan 10-14 December 2006). www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1-resolutions.html; Chapter VII, Article 63, Paragraph 7. United Nations Convention against Corruption. www.unodc.org/pdf/corruption/publications_unodc_convention-e.pdf.
- ⁵ The conference secretariat — the UNODC — is gathering the information. The checklist covers 15 articles from all substantive chapters of the convention and seeks feedback on country needs for technical assistance. The voluntary pilot programme includes: Argentina, Austria, Finland, France, Greece, Indonesia, Jordan, the Netherlands, Norway, Peru, Poland, Romania, Sweden, Tanzania, the United Kingdom and the United States.
- ⁶ The first meeting was held in Vienna, Austria, from 29-31 August 2007. For more information on the meeting, see: www.unodc.org/unodc/en/crime_convention_corruption_WG_1.html.
- ⁷ For more details, see Chapter V of the convention. www.unodc.org/unodc/en/treaties/CAC/index.html.

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