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TRANSPARENCY INTERNATIONAL
the global coalition against corruption

Report on Follow-up Process for UN Convention Against Corruption



Fritz Heimann and Gillian Dell
12 September 2006

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ATTACHMENT REPORTS ON MONITORING PROGRAMMES

OECD Convention on Bribery in International Business Transactions

Council of Europe Group of States against Corruption (GRECO)

Inter-American Convention Against Corruption (OAS)

FATF Mutual Evaluation Process

ADB-OECD Anti-Corruption Initiative for Asia-Pacific

Stability Pact Anti-Corruption Initiative

NEPAD African Peer Review Mechanism

UN Convention on the Rights of the Child

UN Convention against Torture

International Covenant on Civil and Political Rights and Protocols

Special Procedures of the UN Commission on Human Rights

BACKGROUND OF STUDY

section I

The UN Convention against Corruption (UNCAC) represents a crucial step in building an international framework to combat corruption. In today's global economy, corruption has become a worldwide phenomenon making it essential to have an international convention that binds all countries. Because of its universal reach, UNCAC makes it possible to tackle problems that cannot be addressed through existing regional conventions.

Experience with other anti-corruption conventions has demonstrated the importance of a systematic monitoring process to ensure timely and effective implementation by national governments. UNCAC provides for a Conference of the States Parties to the Convention (CSP) which has broad responsibilities to promote and review its implementation, including establishing "any appropriate mechanism or body to assist in the effective implementation of the Convention". The first meeting of the CSP will be held in December of 2006.

Transparency International (TI) organised a Study Group on a Follow-up Process for UNCAC to develop ideas for consideration by the CSP. The Study Group consists of individuals with extensive experience with monitoring of other anti-corruption conventions. The names of the participants are listed on page 2. They participated as individuals, not as representatives of the organisations with which they are affiliated. The Study Group held four meetings: in Paris on 19 December 2004 and 18 March 2005 and in Berlin on 22-23 June and 23-24 September 2005. On 24 January 2006, a meeting was held in Vienna at which representatives of nineteen governments commented on the work of the Study Group.[1]

The Study Group spent substantial time reviewing the monitoring processes of other anti-corruption conventions. These provide important background for the consideration of UNCAC monitoring and information on these processes is contained in the Appendix and in the Attachment to this report. The Study Group also analysed the concerns about monitoring that were raised during the Vienna negotiations that led to the adoption of UNCAC and considered how these should be addressed. This report presents TI's synthesis of the Study Group's work. TI takes sole responsibility for its contents.

During the work of the Study Group it became clear that the issues of implementation, monitoring, and technical assistance were closely interconnected. Therefore this Report deals not just with monitoring, but more broadly, with the need for a "Follow-up Process for UNCAC".

TI gratefully acknowledges the support of the United Nations Foundation for the work of the Study Group and the support TI is receiving from the Foreign Ministry of Finland. TI also wishes to express its appreciation to the experts who contributed the eleven reviews of monitoring systems attached to the Report.

Definition of Terms Used in this Report

Monitoring
refers to an international review process to assess whether national governments have taken adequate action to implement provisions of UNCAC.

Implementation
refers to action by national governments including ratification, passage of laws implementing UNCAC provisions, as well as administrative, regulatory and enforcement actions to carry out UNCAC provisions.

Technical Assistance
refers broadly to assistance provided to national governments to strengthen their capacity to comply with UNCAC.

1 Representatives of the following countries including most of the members of the Friends of the Convention group attended the 24 January meeting: Argentina, Austria, Canada, Egypt, Finland, France, Japan, Jordan, Mexico, Netherlands, Nigeria, Norway, Pakistan, Peru, Poland, Russia, South Africa, UK and the US.

Members of the TI Study Group on UNCAC Follow-up Process

Gillian Dell	TI Programme Manager, Conventions
Ugo Draetta	Chairman, Stability Pact Anti-Corruption Initiative; Professor of International Law at the Catholic University of Milan
Kirstine Drew	Coordinator, UNICORN
Fritz Heimann	TI Founding Member and Senior Advisor on Conventions; Vice-Chair, ICC Commission on Anti-Corruption; former Associate General Counsel, General Electric Company;
Drago Kos	Chairman, GRECO; Chairman, Commission for the Prevention of Corruption, Republic of Slovenia
Kamal Hossain	Member and Former Chair, TI Advisory Council; former Special Rapporteur of the UN Commission on Human Rights for Afghanistan; former Law Minister and Foreign Minister of Bangladesh
Phil Mason	Coordinator, UN High Level Panel 2005, UK Department for International Development
Valeria Merino	Member of the Board, Transparency International
Patrick Moulette	Head of the OECD Anti-Corruption Division
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François Vincke	Chair, ICC Commission on Anti-Corruption

KEY FINDINGS AND RECOMMENDATIONS

section II

- **Follow-up essential:** A follow-up and monitoring process is essential to enable UNCAC to become an effective framework for combating corruption around the world. Such a process should be authorised at the December 2006 Conference of States Parties and should start in 2007. This would sustain momentum for implementation and promote public confidence in UNCAC.
- **Objective:** The objective of the follow-up process should be to ensure the evolution of UNCAC into an effective global framework for combating corruption. This will take time because UNCAC is a complicated instrument. Not all UNCAC provisions can be implemented at the same time and governments should be allowed to make progress at different rates.
- **Secretariat:** A strong secretariat with adequate and dependable funding is needed to manage the follow-up process.

  Experience with other anti-corruption conventions shows that an effective monitoring process can be conducted with a small staff at relatively modest cost.
  The successful role played by the UN Office on Drugs and Crime (UNODC) in the development of UNCAC provides assurance that it has the managerial and professional capability to conduct an effective follow-up programme.
- **Follow-up process:** The follow-up process should begin by asking governments to identify potential implementation problems, needs for technical assistance, and action plans for implementation.

  The Secretariat should work closely with donor agencies to facilitate the provision of technical assistance.
  After reasonable time for implementation, periodic reviews should be conducted to evaluate the adequacy of national implementation and enforcement.
- **Coordination:** UNCAC monitoring reviews should be coordinated with the monitoring programmes of other anti-corruption conventions in order to avoid duplicative monitoring and to take advantage of regional capabilities.
- **Transparency:** The follow-up process should be conducted transparently because public support for reducing corruption is the best lever for achieving UNCAC's objectives. Active involvement by the private sector, trade unions and civil society is essential.

These recommendations are spelled in greater detail in Section VII, Follow-up and Monitoring Organisation; Section VIII Follow-up and Monitoring Programmes; Section IX Meeting Technical Assistance Needs; and Section X Coordinating UNCAC and Other Monitoring Programmes below.

section III

IMPORTANCE OF FOLLOW-UP PROCESS

A. Basic Rationale

UNCAC represents the collective commitment by more than 140 countries to create an international framework for combating corruption. The parties recognise that, in a global economy, corruption has taken on global dimensions. Governments acting alone, or even in the framework of regional conventions cannot address global corruption effectively. Adoption and ratification of UNCAC are initial steps. To make UNCAC work will require a follow-up process of many years duration.

A follow-up process is necessary because much of UNCAC is not self-executing and numerous actions by national governments are needed to implement the Convention. Legislatures must pass laws implementing provisions of UNCAC. Governments must also provide funding and staffing for agencies administering anti-corruption programmes. Most importantly, government leaders must maintain the political will to overcome opposition to enforcement and other controversial anti-corruption actions. UNCAC monitoring faces unique challenges:

- UNCAC has the largest and most diverse number of parties of any anti-corruption convention. More than 140 countries have signed UNCAC and are expected to ratify and become parties. This compares with 36 OECD parties, 33 OAS parties, and 39 GRECO parties. UNCAC parties also have a greater diversity in political, legal, and economic systems than the other conventions.
- UNCAC has the broadest scope of any convention. However, governments have varying interests in particular provisions of UNCAC.

These challenges make monitoring UNCAC even more important than under other conventions. They also make it more difficult to conduct an effective and politically acceptable monitoring process.

UNCAC's worldwide membership is its greatest strength. However, the large number of parties, and their wide diversity, present a complex challenge for achieving successful collective action. Many developing countries are likely to need technical assistance. In both developed and developing countries, there may be political resistance to the reforms called for by UNCAC. Delays in some countries will be exploited by advocates of delay in other countries. There will also be changes in governments.

For all of these reasons, a well-organised follow-up process is essential to make sure that UNCAC will become a functioning international framework for combating corruption. Section V "Lessons Learned from Other Monitoring Programmes" describes the key elements needed for an effective UNCAC monitoring programme.

B. Benefits of Follow-up Process

The follow-up process can provide benefits to individual governments, as well as to UNCAC's collective objective.

- It permits early identification of implementation problems and needs for technical assistance.
- It facilitates timely provision of technical assistance and stimulates coordination between UNDP, the World Bank, other international financial institutions and bilaterals.
- It provides opportunities for exchanging best practices and other forms of cooperation.
- In view of UNCAC's very broad scope, the follow-up process can provide guidance to governments on priorities for implementation.
- It maintains momentum for implementation by assuring governments willing to move promptly that other governments will be encouraged to meet their commitments.
- It facilitates the establishment of expert groups on issues where collective action is most essential, for example, recovery of proceeds of corruption deposited in foreign banks, mutual legal assistance and anti-money laundering.
- It provides information on the status of implementation, including public recognition of progress made.

C. Experience with Other Conventions Shows Monitoring is Key to Progress

- There was no monitoring of the OAS Convention for four years after it became effective and there was little government action against corruption. Monitoring started in 2001 and this has stimulated government action.
- OECD monitoring sailed through its first phase, reviewing implementing laws. But review of national enforcement programmes was slowed down for two years because of inadequate funding for monitoring of enforcement. Action on enforcement lagged until monitoring was fully resumed.
- The GRECO process provides a follow-up procedure which assesses measures taken by governments to implement recommendations emanating from GRECO country reviews. As a result, there has been substantial progress in implementing the Council of Europe's anti-corruption conventions.

D. Why Follow-up Process Works

Follow-up reviews have an impact by bringing a variety of influences into play:

- Reporting schedules or review team visits stimulate government action.
- Progress reviews, such as OECD's regular "tours de table," provide a forum for peer group pressure by other governments.
- Country visits enable private sector and civil society groups to provide non-governmental assessment of progress on implementation.

- Reports from follow-up reviews build public pressure for action by lagging governments.
- Reviews call attention to technical assistance needs.

E. Follow-up is Crucial for Success of UNCAC

If UNCAC is properly implemented it will result in major reductions in corruption, producing great benefits in terms of better democratic governance, accelerated international development, more efficient government procurement, stronger competition, and alleviation of poverty around the world. An effective follow-up process ensures that such implementation will take place and that the goals of UNCAC can be achieved. Without follow-up there is a high risk that UNCAC will become another example of the futility of high aspirations.

APPLICABLE UNCAC PROVISIONS

section IV

UNCAC contains detailed provisions dealing with steps to promote effective implementation. These provisions establish a solid framework for action by the Conference of States Parties on a process to promote implementation, encourage technical assistance, and conduct follow-up monitoring. The proposals made in this Report are consistent with these provisions.

Chapter VI of UNCAC covers "Technical assistance and information exchange," including:

- Training and technical assistance.
- Collection, exchange and analysis of information on corruption.
- Implementation of the Convention through technical assistance to developing countries and countries in transition.

Chapter VII covers "Mechanisms for implementation", and outlines the responsibilities of the Conference of the States Parties to promote and review implementation. These include:

- Reviewing periodically the implementation of the Convention by the States Parties.
- Making recommendations to improve the Convention and its implementation.
- Receiving reports by governments on measures taken to implement the Convention and the difficulties encountered by them, including information on programme plans and practices as well as legislative and administrative measures to implement the Convention.
- Obtaining information on programmes, plans and practices to implement the Convention from international organisations, and from relevant non-governmental organisations.
- Cooperating with other international and regional organisations and non-governmental organisations (NGOs).
- Making appropriate use of information produced by other mechanisms for combating corruption in order to avoid unnecessary duplication of work.
- Making recommendations regarding technical assistance requirements.
- Establishing, if deemed necessary by the Conference of States Parties, any appropriate mechanism or body to assist in the effective implementation of the Convention.
- Providing Secretariat services to the Conference of States Parties.

section V

LESSONS LEARNED FROM OTHER MONITORING PROGRAMMES

A. Monitoring Should Start Promptly

- Starting a monitoring programme promptly after a convention enters into force has great advantages. At that time, there will be strong support for the convention, and the monitoring process can build on that momentum. The monitoring process can be staffed by persons with first-hand experience in the drafting and negotiation of the Convention. In the case of OECD, there was a seamless transition from working on the preparation and adoption of the Convention to monitoring its implementation.
- The experience with the OAS Convention demonstrates the difficulties caused by delay. Monitoring did not begin until four years after entry into force. By that time, support for the Convention had diminished, and it has been difficult to build an effective monitoring programme.

B. Strong Secretariat is Needed

- Experience with existing monitoring mechanisms makes clear that a capable secretariat is needed to manage the monitoring process. Adequate staffing for the secretariat is critical to the success of the monitoring programme.
- One of the strengths of the OECD and GRECO review processes is the support from their secretariats, which have generally been adequately staffed. The OAS process has had only limited secretariat support.

C. Adequate Funding is Essential

- Adequate funding is needed to support the secretariat and to conduct monitoring reviews. Because monitoring must be organised as a continuing, long-term programme, funding must be secure and dependable.
- Funding from the regular budget of the sponsoring international organisation is preferable to reliance on contributions from wealthier countries. The first phase of OECD monitoring was funded by individual contributions from several countries. However, after country visits began it became necessary to obtain funding from the OECD budget.
- The OAS experience shows that monitoring can be impaired by inadequate funding. The OECD programme was also hampered by inadequate funding during 2002-2003.

D. Wide Range of Monitoring Methods Should be Used

Experience has been obtained with a wide variety of monitoring methods. The method used should be based on suitability for particular issues.

- **Questionnaires** directed to governments are a common starting point to determine the rate of progress on implementation of convention provisions. While questionnaires are useful, they are not sufficient when it comes to complex issues where inputs from different sources are needed. Response rates can be inadequate and shortcomings in government programmes may not be adequately disclosed.
- **Country Visits** provide the most effective method for obtaining inputs from multiple sources and for in-depth questioning by reviewers. Country visits are conducted by OECD and GRECO, as well as by FATF and NEPAD reviews. They are more expensive than questionnaires but provide better and more balanced information. Country visits can be conducted by the staff of the secretariat, peer reviewers, expert reviewers, or a combination of the foregoing.
- **Peer Reviews** can be conducted by small teams composed of persons from other parties, working with staff from secretariat. OECD uses two lead reviewers, one from a party with legal institutions similar to the country being reviewed and one from a country with different institutions. GRECO evaluation teams consist of 3 to 4 experts from different member states.
- **Expert Reviewers:** The use of a roster of experts can help expand the resources of the secretariat, without expanding its full-time staff. It is particularly necessary when conventions cover a wide range of technical fields not all of which can be represented on the full-time staff. It is particularly necessary when the conventions cover a wide range of technical fields not all of which can be represented on the full-time staff.
- **Plenary Reviews:** Monitoring systems commonly include plenary reviews, at which reports and recommendations from monitoring reviews are presented to all member governments. This is desirable politically, but can become unwieldy when the plenary group is very large and there is a strict requirement for consensus.

  The OECD Working Group on Bribery includes representatives from all 36 parties and meets five times each year. Each meeting includes reports on country reviews and also a "tour de table" at which government representatives report on the steps taken to enforce the OECD Convention. This has proved very helpful in maintaining peer pressure.
- **Horizontal Reviews:** This approach is useful for conventions with broad scope such as UNCAC, and involves separate rounds of reviews covering a limited number of issues based on a method of prioritization. Parties are reviewed on selected issues before starting the next round. These are used by GRECO and OAS.
- **Vertical Reviews:** These reviews cover all provisions of a convention for each country. These are used by OECD and FATF but are impractical for conventions with broad scope such as UNCAC.

E. Monitoring Reviews should Identify Deficiencies and Provide for Action Plans and Follow-up

- **Country reports** should be prepared by the secretariat, by independent experts, or by a combination of the two.
- **Clear conclusions and recommendations** should be included in country reports.
- **Country action plans** to correct deficiencies should be required as part of review process.
- **Follow-up reviews** should be conducted to ensure that deficiencies identified by the reviews are corrected.

F. Participation by NGOs, Private Sector, and Trade Unions is Essential

- Assessing corruption and the effectiveness of anti-corruption measures is always difficult, and it is not enough to rely solely on the perspectives of government officials. Inputs from non-governmental organisations, the private sector and trade unions are essential to provide monitors with a balanced picture. There is specific provision for NGO inputs into the OECD, OAS and NEPAD review processes. Such inputs are also generally obtained under the GRECO process.
- The importance of civil society participation in anti-corruption efforts is recognised in Article 13 of the UNCAC. Article 63 refers to inputs from relevant non-governmental organisations.
- It is essential for an effective monitoring process that it provide for official channels for written and oral civil society inputs.
- NGOs have played an important role in getting monitoring programmes launched, in making sure that they don't lose steam, and in publicising their results. The role of NGOs can become controversial, when they press for actions that governments are reluctant to take, but that only confirms that the NGO role is important. In particular, TI played a role in getting OAS monitoring launched and in pushing for adequate funding for OECD monitoring at points when government support was flagging.
- NGOs should be encouraged to conduct their own monitoring programmes, which can supplement official monitoring programmes. For example, TI, with the use of its national chapters, prepares an annual progress report on national enforcement of the OECD Convention which it submits to OECD's Working Group on Bribery and also issues publicly.

G. Monitoring Programmes should be Conducted in Transparent Manner

- **Reports** by monitoring bodies should be made public, including website publication, promptly after conclusion of reviews. This is done under many of the monitoring systems, including OAS, OECD and GRECO. FATF started publishing reports and summaries in 2005. Publication of monitoring reports makes participating governments accountable to their own public.
- **Questionnaires** that governments are asked to fill out should be made public, including website publication. The OAS, OECD and GRECO questionnaires are published on their respective websites.
- **Government responses** are made public under the review processes for the OAS Convention and the ADB-OECD Action Plan for Asia-Pacific. Under OAS, countries can refuse but almost all countries release their responses. Under OECD, it is left to countries to decide whether to publish their responses. Requiring publication of government responses can arguably make such responses less candid. In TI's view, there is a clear public interest in making government responses public and this outweighs possible inhibition in governmental candor.

OVERCOMING CONCERNS ABOUT UNCAC MONITORING

section VI

Concerns about UNCAC monitoring were raised during the Vienna negotiations. It is essential that these concerns are addressed to ensure support for monitoring at the Conference of States Parties.

A. Cost and Effectiveness.

Concerns:

- Can UNCAC monitoring operate at a reasonable cost and without building a large staff?
- Will UNCAC monitoring be effective?

Response: The record of UNODC in managing the development of UNCAC with a small staff provides assurance that UNODC can manage the follow-up process effectively and efficiently. Section VII – Monitoring Organisation and Section VIII – Monitoring Programmes, provide recommendations on how an efficient and cost-effective monitoring programme can be organised.

B. Impact on Technical Assistance Funding

Concern: Would funds for monitoring reduce funds available for technical assistance?

Response: The following points should help to place this concern in perspective:

- The cost of follow-up and monitoring is likely to be only a small fraction of the cost of technical assistance.
- The cost of follow-up and monitoring should come from the UNODC budget, while technical assistance should be funded by UNDP, the World Bank, regional multilateral development banks and bilateral donors.
- Funding available for technical assistance could well be increased by providing for close cooperation between monitoring reviews and technical assistance. Monitoring should provide information about the need for technical assistance.

C. Duplicative Reviews

Concerns:

- Would UNCAC monitoring duplicate reviews conducted under other anti-corruption conventions?
- Would UNCAC monitoring undermine support for existing regional monitoring programmes and hinder efforts to develop a monitoring programme for the African Union Convention?

Response: Duplicative monitoring became a problem prior to UNCAC because pre-existing anti-corruption conventions developed without consideration of the effect on other

conventions with similar provisions and overlapping membership. Because UNCAC is the only convention with global membership, it provides the opportunity to address the duplication problem. This can be done by coordinating UNCAC monitoring with other anti-corruption monitoring programmes. Recommendations are contained in Section X.

D. Fairness of Reviews

Concerns:

- Would developing countries be unfairly criticised for deficiencies they do not have the capability to correct?
- Would weaker countries be treated more harshly than powerful countries?

Response: Providing technical assistance to developing countries to enable them to implement UNCAC should alleviate concerns about unfair criticism and lack of capacity. Experience under existing monitoring programmes demonstrates that both weak and powerful countries can be treated fairly and equally. The use of peer groups with regional participation to conduct reviews can provide assurance of fair treatment. Proposals are set forth in Section IX.

E. Timing of Reviews

Concern: Would countries be reviewed before they have had adequate time to implement UNCAC provisions?

Response: The timing of reviews should take into account that not all provisions of UNCAC can be implemented at the same time and that some countries need more time than others.

F. Infringement of Sovereignty and Intrusiveness

Concern: Would UNCAC monitoring be an infringement of sovereignty and an intrusion in national affairs?

Response: Experience with other anti-corruption conventions demonstrates that monitoring programmes can be conducted using methods that the many countries which have participated in such programmes have not considered to be infringements of sovereignty or intrusions in their national affairs. The wide range of available monitoring methods is described in Section VI-D. The objective should be to use methods that are effective but not unduly burdensome. UNCAC provisions on implementation and on the mandate of the Conference of States Parties accentuate a positive, constructive and supportive approach. Monitoring reviews should be regarded as a process of mutual support and encouragement.

FOLLOW-UP AND MONITORING ORGANISATION

section VII

A. Conference of States Parties

- Under the Convention, the Conference of States Parties (CSP) has responsibility for follow-up monitoring and the UNCAC Secretariat operates under the supervision of the CSP.
- Because the CSP is likely to consist of delegates from more than a hundred countries, and will meet annually in the first three years and then every two years, consideration should be given to establishing a CSP subgroup of a reasonable size that can work with UNODC between CSP meetings. There is substantial experience from other UN review processes for the creation of such sub-groups.

B. UNCAC Secretariat

- A strong secretariat will be needed to manage UNCAC's follow-up monitoring programme. UNODC has been designated by the UN Secretary-General as the secretariat for the Conference of States Parties. The benefits of using the staff familiar with the negotiation of the convention for follow-up monitoring are confirmed by OECD and GRECO experience.
- The key to effective monitoring is strong leadership and a competent professional staff. The experience of OECD and GRECO indicates that the staff required is quite small. The OECD reviews are currently being managed by a staff of eight persons and GRECO is currently employing ten.
- The record of UNODC in managing the development of both UNCAC and UNTOC with a small professional staff provides assurance that UNODC can manage the UNCAC monitoring programme successfully and cost-effectively.
- Collaboration with the secretariats that support the other monitoring programmes would augment UNODC's capacity.
- A roster of experts should be established, including nominations from member governments and from other monitoring organisations. Persons with specialised monitoring experience are in short supply and funding for a training programme is likely to be needed.

C. Funding

Funding for monitoring should be provided from the regular UNODC budget. Such funding would be preferable to reliance on special contributions from wealthier countries from the perspective of public credibility. Dependable multi-year funding commitments will be needed to permit adequate planning and staffing.

- Once it is in full operation, an estimated cost in the range of €5 million per year for UNCAC follow-up reviews would seem reasonable. The costs of OECD and GRECO monitoring programmes are in the range of €1-2 million per year, not including the costs incurred by the country being monitored. OECD and GRECO are widely considered the most effective monitoring programmes and include country visits by review teams. The €5 million estimate for UNCAC monitoring recognises UNCAC's larger number of parties and broader scope. The costs of monitoring are very modest when compared with the benefits, measured in terms of progress in reducing corruption.

FOLLOW-UP AND MONITORING PROGRAMMES

section VIII

This section will suggest possible follow-up monitoring programmes, recognising that such programmes will need to evolve over time.

- The first phase should be a survey of implementation designed to identify rate of progress, potential problems and technical assistance needs. It should be authorised by the Conference of the States Parties (CSP) in December 2006 and the results from the survey should be presented at the second CSP in late 2007.
- Subsequent follow-up programmes should be defined based on the results of the survey of implementation.

A. Phase I: Survey of Implementation

The first phase of UNCAC follow-up monitoring should be a survey of the status of implementation by the parties, to be conducted in 2007. The purpose would be to obtain data providing a basis for decisions on actions needed to strengthen implementation, such as providing technical assistance, preparing guidance documents and model laws, and conducting workshops. The implementation survey should involve the following stages:

1. Self-Evaluation. Governments should respond to a questionnaire, prepared by the Secretariat, covering the following:

Status of implementation, indicating provisions that have been implemented and those that have not

Identification of obstacles to implementation

Action plan to overcome obstacles, including technical assistance needs and priorities for future progress

In drafting the questionnaire the Secretariat should request enough information to obtain a reliable picture, without making this an overly burdensome exercise. Civil society organisations, the private sector and trade unions should be invited to make submissions at this stage.

2. Review of Responses. The responses should be reviewed by the Secretariat and by experts chosen by the Secretariat. The review process should include discussion with submitting governments in case of questions.

3. Report to Conference of States Parties. The Secretariat should prepare a report summarising the country responses and proposed priorities for consideration at the 2007 Conference of States Parties. This report should be published.

4. Proposals on Technical Assistance. The Secretariat should also conduct a survey of technical assistance needs and proposals for addressing such needs for consideration at the 2007 Conference of States Parties. See Section IX below.

5. Follow-up Surveys. Additional surveys of implementation should be conducted periodically, including reports by new parties and updates by other parties. The frequency of follow-up surveys will depend on how rapidly progress is made.

B. Subsequent Phases: Monitoring of Specific Provisions

In subsequent years the follow-up programme should focus on monitoring of progress on specific UNCAC provisions. The Secretariat should manage the monitoring process and identify provisions to be monitored each year, taking into account the results of the survey of implementation, availability of technical assistance, as well as ability to achieve timely results.

- Early priority should be given to UNCAC monitoring of cross-border issues, particularly those requiring North-South participation, where UNCAC has the greatest comparative advantage over other conventions. These should include asset recovery, mutual legal assistance and cross-border bribery and extortion.
- The monitoring process for each of the issues should be tailored to the nature of the issue. For example, with respect to asset recovery it might be useful to begin by forming a working group consisting of (i) several countries whose former leaders had deposited substantial funds in foreign banks, and (ii) leading banking centres, such as Switzerland, the UK and the US. This group should explore the development of uniform expedited procedures for the identification, freezing and repatriation of the proceeds of corruption. Consideration should also be given to the investment of frozen funds in the country from which such funds were taken by the World Bank or other financial institutions, until the conclusion of litigation.
- Another priority should be the development of best practices for the implementation of UNCAC's preventive measures. This should be done in cooperation with the secretariats administering the other anti-corruption conventions, several of which have extensive experience with the implementation of preventive measures. Cooperation on the development of best practices would provide a basis for determining how monitoring of implementation of preventive measures could be allocated between the UNCAC secretariat and the secretariats of the regional conventions.
- In future years, monitoring programmes for a broader range of UNCAC provisions should be conducted.
- The timing of monitoring reviews for particular countries will require flexibility. A reasonable balance should be maintained between giving countries enough time for implementation, while ensuring collective momentum.
- It may be useful to conduct pilot projects which could serve as a basis for future monitoring work. Such projects could conduct test runs of monitoring models with a limited number of countries in order to develop suitable techniques that are effective without being overly burdensome.

C. Monitoring Methods

- The UNCAC follow-up process should utilise a variety of monitoring methods including questionnaires, expert reviews, peer reviews and country visits. (The range of monitoring methods used under other monitoring programmes is described in Section V-D, on pages 8 and 9 above.) Selection should be based on suitability of the particular method or combination of methods for the issue being reviewed.
- Use of outside experts provides an important method to supplement the professional resources of the Secretariat and thereby enables it to operate with a small staff.
- Country visits are indispensable for issues where a reliable assessment requires inputs from different sources of information, including not only government officials but also the private sector and civil society. Country visits also enable the monitors to conduct probing

exchanges to determine the reliability of differing inputs. Country visits can have another important benefit, namely promoting public interest in UNCAC and its implementation by concerned groups and media. A part of the visit should provide for public participation.

- Peer groups can be organised on a regional basis, or on other bases such as level of economic development or special interest in particular UNCAC provisions such as those on asset recovery or money laundering. In the case of regional peer groups, cooperation should be sought from monitoring groups for the regional conventions.
- The objectivity of the reviews is essential to their credibility. Reviewers should not be citizens of the country being reviewed and should not be selected or approved by that government.

D. Need for Independent Reports, Transparency and Diverse Sources of Information

- One of the key outputs of the monitoring programme in subsequent phases should be independent country reports on the status of implementation and technical assistance needs. These reports should contain conclusions and recommendations. They should be prepared by the Secretariat or by independent experts selected by the Secretariat.
- Participation by NGOs, the private sector and labour unions is important to ensure that the monitoring programme obtains a balanced picture.
- Questionnaires should be made public and governments should be encouraged to make their responses public.
- Monitoring reports, identifying deficiencies in implementing UNCAC provisions, should also be made public. Publication provides the best assurance that the deficiencies will be corrected.
- Country visits should include a press conference or other public event to encourage public interest and support for UNCAC implementation.
- NGOs can strengthen UNCAC monitoring by taking actions in addition to participating in UNODC monitoring reviews. Such actions include promoting government support for monitoring, filling gaps in official monitoring programmes, developing innovative approaches, and evaluating and reporting on the effectiveness of official monitoring programs. NGOs have taken such actions in support of OECD, OAS and other anticorruption conventions. Such an NGO role is likely to be even more important for UNCAC.

E. Promoting Consistent Interpretation of UNCAC Provisions

- The monitoring process can play an important role in promoting consistent implementation and interpretation of UNCAC provisions. Consistency is important to the success of UNCAC in the global economy, because

  It assists prosecutors in the application of UNCAC's mutual legal assistance provisions.
  It benefits the many companies doing business in multiple jurisdictions.
  It makes it easier for citizens to hold governments and private actors accountable.

  Consistency could be promoted by publishing official commentaries on potentially ambiguous provisions, as has been done by the OECD Working Group on Bribery.
- The Secretariat could also provide a forum where governments, companies or others could raise concerns or bring complaints about government actions that appear seriously inconsistent with the letter or spirit of UNCAC. The Secretariat could evaluate such concerns, and where appropriate meet with the government whose actions are being questioned in order to promote consistent implementation and might make arrangements for mediation.

section IX

MEETING TECHNICAL ASSISTANCE NEEDS

The importance for the success of UNCAC of providing capacity-building assistance is widely recognised. However, the development of a successful technical assistance programme for UNCAC will require cooperation among international, regional and bilateral donor agencies. It will also require agreement on priorities for the implementation of different UNCAC provisions and reconciliation of competing interests among recipient countries, since demand for technical assistance is likely to exceed available funding. It is essential that UNODC work with UNDP, the World Bank and other donor agencies and governments to develop an effective process for resolving these issues.

UNCAC-related technical assistance will need to take into account existing donor funding for governance and anti-corruption activities. Donors already consider anti-corruption strategies in formulating their development assistance programmes. Furthermore, there already exist donor coordination arrangements at country level in many countries. It is also necessary to take into account the different ways that donors operate. Some donors operate decentralised country programmes and may prefer to provide technical assistance for UNCAC implementation through such programmes. Others may prefer to contribute to a central fund.

In view of the broad scope of UNCAC and the diversity in the administrative and legal capabilities of the parties, it is essential that technical assistance be broadly conceived. It should encompass all forms of capacity-building assistance that will enable governments to implement UNCAC.

Technical assistance programmes must be carefully selected and administered to ensure that tangible results are achieved. This is essential to maintain public support for the long period for which technical support will be needed.

The following recommendations should be considered.

A. Donor Commitment to Provide Technical Assistance

In preparation for the first Conference of States Parties, discussions should be held with leading donor agencies, particularly UNDP and the World Bank, as well as other multilateral development banks and bilateral agencies. The objective should be to have these agencies make a public statement at the Conference of States Parties that they will assign high priority to providing funding for developing countries for UNCAC implementation.

B. Survey of Technical Assistance Needs

An important objective of the survey of implementation called for under Section VIII-A of this Report is to obtain information on technical assistance needs and on what technical assistance is already being provided. The responses to the survey should enable the Secretariat to assess technical assistance needs for particular UNCAC provisions as well as the countries in need of such assistance.

Alongside the survey of technical assistance needs, UNCAC's Secretariat should work with UNDP, the World Bank and other donors to assess existing and planned technical assistance activities relevant for UNCAC implementation.

Based on the information collected, the Secretariat should make a report to the Conference of States Parties and to donor agencies on the technical assistance needs and available funds and make recommendations on technical assistance priorities.

C. Longer-Term Cooperation

The benefits of close cooperation between UNODC, UNDP, the World Bank and other donor agencies are clear. It is beyond the scope of this Report to make specific suggestions regarding the modalities for achieving effective cooperation. One possibility would be to organise a technical assistance working group, including the leading donor agencies, that would meet with UNODC on a regular basis to review the status of UNCAC implementation and make recommendations to donor agencies regarding priorities for technical assistance. Such a working group should also consider which technical assistance needs could be best served through creation of special funds.

We urge the leaders of UNODC, UNDP and the World Bank to meet before the Conference of States Parties to develop suitable modalities for cooperation. OECD-DAC should play an important role in making inputs to such a meeting.

D. Annual Public Report on Funding Status

In order to ensure that UNCAC-related technical assistance remains a priority and to facilitate informed decision-making by all donors, UNODC should work with UNDP and the World Bank to publish an annual report on UNCAC-related technical assistance.

section X

COORDINATING UNCAC AND OTHER MONITORING PROGRAMMES

Concern about duplicative monitoring for different anti-corruption conventions is an obstacle to the establishment of an UNCAC monitoring programme. For that reason, UNODC should take the initiative to organise a coordinating group with representatives from the monitoring organisations of the other anti-corruption conventions.

A. Avoiding Duplicative Monitoring Programmes

- Anti-corruption conventions adopted before UNCAC did not take into consideration the existence of other conventions. The adoption of UNCAC provides an opportunity to think through and rationalise the relationship among the different anti-corruption conventions and their monitoring programmes. Regional conventions and the OECD Convention should be regarded as important building blocks of the system for combating corruption for which UNCAC can provide the unifying worldwide framework.
- Concern that UNCAC monitoring would duplicate monitoring under other anti-corruption conventions can be addressed through cooperation and collaboration among the different monitoring organisations. Paragraphs 4 (c) and (d) of Article 63 of UNCAC refer to cooperation with relevant international and regional organisations and to making use of information produced by other mechanisms for combating and preventing corruption "in order to avoid unnecessary duplication of work." These provisions provide the basis for cooperation in the conduct of UNCAC's monitoring programme.
- There is a practical incentive for cooperation among the organisations administering anti-corruption conventions because they all have serious resource constraints. Collaboration should enable each programme to accomplish more with its available resources. Moreover, it is important for UNCAC to build on rather than undermine existing regional mechanisms.
- Because each convention has a different political constituency, there may be some resistance to cooperation. It may be argued that monitoring reviews conducted by another organisation would lack legitimacy. The interests of legitimacy and avoiding duplication need to be reconciled.

  The principal criterion should be pragmatic, not legalistic, i.e. focusing primarily on the adequacy of the review process, not on which organisation has legal authority to conduct the review.

  Focus on legal authority would lead to irresolvable differences, with each monitoring organisation claiming authority to monitor all issues within the scope of its convention. The issue should not be whether the UNCAC review process has the authority to monitor how an OECD country enforces the prohibition on foreign bribery, but rather whether it would be useful for the UNCAC process to do so after OECD has already done so.

- Cooperation between UNCAC and other monitoring programmes should be considered in two stages, which are outlined below. The first stage, primarily involving exchanges of information, should be non-controversial. The second stage, which would promote coordination and collaboration, including understandings regarding priorities for monitoring particular issues, may be more controversial.

B. Stage 1: Cooperation among Monitoring Programmes

A procedure for cooperation should be established promptly. This should include such steps as:

- Hold regular meetings of representatives of monitoring organisations to discuss their plans for reviews, including countries and issues to be reviewed, and how to share experience and avoid duplication.
- Designate liaison representatives to maintain regular contacts between annual meetings.
- Exchange information from prior reviews, including access to reports and other relevant data.
- Develop roster of experts on subjects of common interest.

C. Stage 2: Coordination and Collaboration

As soon as possible the procedure for cooperation established in Stage 1 should be expanded to consider steps to promote coordination and collaboration, including understandings on priorities for monitoring different issues. All conventions, other than OECD, have broad scopes, with UNCAC having the broadest scope. Given the limited resources for monitoring, only a few provisions can be monitored in any year. Thus, monitoring organisations need to establish priorities, and it would be useful to take into account the priorities of the other programmes.

The exchange of information contemplated in Stage 1 should provide the basis for developing understandings about which issues should be given priority by each monitoring programme. It is recognised that each convention is a separate legal instrument, and each organisation has its own procedure for deciding on priorities for monitoring. However, there should be room for coordination and collaboration, taking into account the comparative advantages of different organisations.

The following points illustrate how prioritization might work; they are intended only as a starting point for consideration.

- **UNCAC Review Process:** A global process is best for monitoring issues where worldwide cooperation, particularly North-South cooperation, is needed. Examples include mutual legal assistance, asset recovery, cross-border bribery and extortion.
- **Regional Monitoring Bodies:** These provide useful fora for cooperation and mutual support among countries with similar legal and economic systems. Regional monitoring organisations should wherever possible take responsibility for monitoring issues of particular concern to specific regional monitoring mechanisms, such as those of GRECO, the OAS etc. Support for implementation of preventive measures might also be conducted at the regional level because examples of best practices from within the region are likely to be considered more relevant; implementation should be monitored by experts from the region.

- **OECD:** The UNCAC Secretariat should work with OECD Working Group on techniques for UNCAC monitoring of foreign bribery prohibitions in non-OECD countries, taking advantage of OECD's extensive experience with foreign bribery issues and its well-developed follow-up monitoring programme.
- **FATF:** UNODC should work with FATF, as well as with regional anti- money laundering organisations, on UNCAC monitoring of anti-money laundering provisions in countries that are not FATF members.

Prioritisation should be regarded as a practical way to allocate limited monitoring resources in a cooperative and cost-effective way. UNCAC should retain legal authority to monitor any issue covered by its provisions. There should be flexibility in working out arrangements for different issues and for different regions taking into account capabilities and level of interest of regional monitoring organisations.

Decisions regarding prioritisation should be regarded as practical steps to allocate limited monitoring resources in a cooperative and cost effective way. Prioritisation should not mean exclusive responsibility; cooperation between UNCAC and regional organisations will be necessary on many issues. Understandings regarding priorities will need to be reviewed periodically in the light of developing experience with UNCAC and with the regional conventions.

In principle, it seems appealing to make an allocation of follow-up programmes under which the UNCAC monitoring programme would have responsibility primarily for issues requiring global participation, while the programmes for regional conventions would be responsible for most other issues. However, it is premature to make firm decisions. There are substantial uncertainties about the follow-up programmes of the other anti-corruption conventions. As indicated in the review of monitoring programmes in the Appendix which follows, only the Council of Europe and OECD have strong programmes. The programme of the Inter-American Convention is still weak and it is uncertain when it will obtain more adequate support. The regional programmes for Africa and Asia are still in a formative stage. It would be useful to have a concept describing how a strong global monitoring programme should relate to strong regional monitoring programmes. However, for the near term monitoring is in an evolutionary phase, where the principal focus has to be on what can be made to work with existing organisations and available resources.

REVIEW OF OTHER MONITORING PROGRAMMES

appendix A

The Study Group received reports from experts on monitoring programmes related to the following anti-corruption instruments:

- OECD (Organisation for Economic Cooperation and Development) Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Convention)
- Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption as well as several other standard-setting instruments of the Council of Europe (reviewed by the Group of States against Corruption or GRECO)
- Inter-American Convention against Corruption (OAS Convention)
- ADB-OECD (Asian Development Bank and OECD) Anti-Corruption Action Plan for Asia-Pacific (ADB-OECD Action Plan)
- African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD)
- Stability Pact Anti-Corruption Initiative (SPAI)
- Financial Action Task Force (FATF) Recommendations

The Study Group also received reports on the monitoring programmes related to the following UN instruments:

- UN Convention on the Rights of the Child
- UN Convention against Torture
- UN Covenant on Civil and Political Rights and Protocols
- Special Procedures of the UN Commission on Human Rights

These reports are contained in the Attachment. In this Appendix key information about these monitoring systems, as well as about monitoring of the UN Convention on Transnational Organised Crime, is presented in summary form in order to provide a quick and handy overview of these systems. This includes summary information about their strengths and weaknesses.

A. OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Convention)

OECD Convention Monitoring

Started: **1999**
Number of countries: **36**
Organisation: **OECD Working Group on Bribery; Lead examiners; Secretariat;**
Methodology: **Self-assessment and peer review with lead examiners and plenary discussion**
Scope of review: **Phase 1 legislation; Phase 2 enforcement**
Rate of monitoring for Phase 1: **35 countries reviewed in 2 years. 1 additional review still to be done.**
Rate of monitoring for Phase 2: **Approximately 6 per year, all 36 countries reviewed by 2007**
Number of Working Group meetings per year: **5**
In-country visits: **Yes for Phase 2**
Civil society participation: **Yes**
Follow-up: **Yes. Phase 2 bis (Japan) and Reports on Progress**
Technical assistance: **No**
Reports published: **Country report with recommendations**
Current staffing (estimate): **About 10 persons**
Estimated cost: **Approximately €1.5 million**

Strengths

The OECD reviews are effective due to a combination of the following factors:

Organisation

- Adequate funding until 2007; commitment for continued funding thereafter will be needed.
- Strong secretariat and overall professionalism.
- Working Group on Bribery with strong chairman meets five times annually.

Methodology

- Well-designed questionnaires.
- Well-organised country visits.
- Active civil society and private sector participation.
- Record of criticising even powerful governments, such as UK and Japan.
- Review produces detailed published reports with recommendations.
- Process of follow-up on reports and recommendations, especially regarding countries found to perform inadequately.

Transparency

- Publish explanation of review process, schedule and questionnaires.
- Reports on country reviews published, including on website.
- Steps have been taken to synthesise the lengthy, complicated reports for a wider public.

Weaknesses

Some weaknesses of the OECD process relate primarily to the methodology and are:

- Country reports are lengthy and legalistic; efforts have been made recently to make them more accessible.
- Occasional lack of cooperation by reviewed country in agreeing on people/organisations to be interviewed.
- Uneven quality of peer reviewers.

B. GRECO: Council of Europe Conventions on Corruption and other instruments

GRECO Monitoring

Started: **2000**
Number of countries: **39**
Organisation: **GRECO Plenary; Evaluation Team; Secretariat**
Methodology: **Peer review with evaluation teams and plenary discussion; questionnaire, responses and other inputs**
Scope of review: **Each evaluation phase on given themes and specific provisions**
Rate of monitoring for 1st evaluation/compliance round: **8-13 countries per year; 34 countries in 3 years**
Rate of monitoring for 2nd evaluation round: **7-18 countries per year; 39 countries in 3 years**
Number of Plenary meetings per year: **3-5**
In country visits: **Yes**
Civil society participation: **Yes**
Follow-up: **Compliance reports. Thereafter, "addenda" which are additional reports if non-compliance**
Technical assistance: **Yes**
Reports published: **Evaluation and compliance reports, with government agreement**
Current staffing (estimate): **10 persons employed at the secretariat**
Estimated cost: **Overall budget of €1,660,000 for 2005**

Strengths

Organisation

- Adequate funding.
- Strong secretariat and high level of professionalism.
- GRECO plenary with strong chairman meets 3 - 5 times annually.
- EU accession requirements for Central European countries provided an effective lever.
- Associated technical assistance programme.

Methodology

- Well designed questionnaires.
- Well-organised country visits.
- A compliance process which follows up on the implementation of the recommendations made in the evaluation process.
- Some civil society participation.
- Scrupulous equal treatment of all countries and willingness to recommend improvements.
- Systemic audit with wide coverage.
- Review produces detailed reports with recommendations.

Transparency

- Publishes explanation of review process, schedule and questionnaires.
- Evaluation and compliance reports are always published, subject however to agreement of country reviewed.

Weaknesses

There has been criticism of GRECO on the following grounds:

- Too much focus on formal provisions, insufficient focus on some questions of real impact.

- Country visits are largely official, with evaluated countries not always providing the civil servants with the best information.
- Civil society participation could be strengthened; it is not required in the rules, but has become a standard part of country reviews.
- Agreement of countries is required for publication of reports.

C. Inter-American Convention Against Corruption (OAS Convention)

OAS Convention Monitoring

Started: **2001**
Number of countries: **28 (of 33 signatories)**
Organisation: **Conference of States Parties; Committee of Experts; expert sub-group; Secretariat**
Methodology: **Self-assessment and peer review with expert subgroups and committee discussion**
Scope of review: **Each review phase covers selected articles of the Convention**
Rate of monitoring: **Currently 10 countries per year; 28 countries in 5 years**
Number of Committee of Experts meetings per year: **2**
In-country visits: **No**
Civil society participation: **Yes**
Follow-up: **Yes, starting in 2006**
Technical assistance: **In theory yes, in practice, no**
Reports published: **Country report with recommendations, civil society reports**
Current staffing (estimate): **6 professionals devoting approximately 30% of their time to monitoring**
Estimated cost: **Budget of US $350,000 for 2005**

The OAS Convention follow-up process got off to a very slow start because there was no reference to monitoring in the Convention. This meant that it had to be introduced afterwards, which required four years of effort. Monitoring did not fit readily into the OAS' traditional role of providing help when requested by member governments. As a result of pressure by civil society and several governments, monitoring got under way. The monitoring process is still evolving and still needs strengthening, including increased funding.

Strengths

Methodology

- Well designed questionnaire.
- Expert teams review country and work with secretariat on draft report to working group.
- Strong civil society participation.
- Useful plenary discussion of draft reports.
- Review produces detailed reports with recommendations.

Transparency

- Publish explanation of review process, schedule and questionnaires.
- Arrangements for website publication of government and civil society responses to the questionnaire, but publication of government responses subject to government agreement, not always given.

- Arrangements for publication of country reports, with conclusions and recommendations. Until recently this was subject to government agreement but this is no longer the case.

Weaknesses

- Inadequate funding; the funding comes primarily from a single country.
- Slow pace of reviews.
- Lack of country visits.
- Too few experts with relevant professional experience.

D. ADB-OECD Action Plan for Asia-Pacific

Monitoring of the Anti-Corruption Action Plan

Started: **2002**
Number of countries: **currently 25**
Organisation: **Steering Group; Advisory Group; Secretariat**
Methodology: **Self-assessment and peer review discussion**
Scope of review: **Stocktaking of measures, institutions, legislation; thematic reviews**
Rate of monitoring for stocktaking report: **Horizontal study of 25 countries;**
Rate of monitoring thematic review: **Horizontal study of 21 countries in 1 year**
Number of Steering Group Meetings per year: **2**
In country visits: **No**
Civil society participation: **Participate in seminars, conferences and in Advisory Group**
Follow-up: **Yes, continuous self reporting on progress in Steering Group and regular updates of stocktaking and on recommendations to thematic reviews**
Technical assistance: **Yes**
Reports published: **Self-assessment and stocktaking reports**
Current staffing (estimate): **3.5 persons**
Estimated cost: **Annual budget of approximately US $350,000**

The approach to corruption in the Asia-Pacific region thus far has been via a non-binding instrument and an evolving soft review process. Countries that have endorsed the Anti-Corruption Action Plan for Asia-Pacific assess and review progress in their efforts to implement the Action Plan in various ways, including self-assessment and mutual reviews that are supported by horizontal analytical studies. The mechanisms for review of anti-corruption policies and frameworks aim foremost at guiding the national and regional anti-corruption agenda by identifying of legal and institutional weaknesses and priorities for future reform. A report that takes stock of the legal and institutional frameworks to fight corruption assists the countries in detecting needs for reform. (Second round completed in 2005.) Thematic reviews addressing issues that the endorsing countries have identified as common priorities add to these mechanisms. The first such review was launched in 2004 on public procurement and is expected to be completed in 2006.

Strengths

Methodology

- Evolutionary approach, requested and designed by the states concerned.
- Process of dialogue about country performance and action to be taken.
- Process mainly involves officials directly involved in anti-corruption activities.

- Thematic reviews are carried out by the countries with support from the Secretariat; these reviews are discussed in the Group and include recommendations.
- Follow-up is ensured through continuous update of reports and regular discussion in the framework of the Steering Group meetings.
- Independent experts provide expertise that flows into the analysis; countries appreciate this as a form of technical assistance.

Transparency

- Explanation of process published on website.
- Country plans and reports prepared by national governments are published on the website.
- As of recently, a comprehensive summary of Steering Group meetings is published on website, subject to clarifications by governments.

Weaknesses

- Instrument is non-binding.
- Lack of country visits.
- Limited discussion in public reports of actual practice.
- Thus far no recommendations to countries, but this is planned.

E. NEPAD: African Peer Review Mechanism

NEPAD Monitoring (APRM)

Started: **2004**
Number of countries: **23**
Monitoring bodies: **APR Forum; Panel of Eminent Persons (7 persons); Secretariat**
Methodology: **Self-assessment, expert panel and peer review**
Scope of review: **Reviews cover 91 indicators**
Rate of monitoring: **Each country reviewed every 2-4 years; 2 countries reviewed so far**
Number of APR Panel meetings per year: **Approximately 6**
In country visits: **Yes**
Reports published: **Country reports and action plans**
Follow-up: **Not yet known**
Technical assistance: **In theory yes, in practice not yet clear**
Civil society participation: **Yes**
Current staffing (estimate): **6 coordinators and 6 personal assistants at the APRM Secretariat**
Estimated cost: **At beginning of peer review process each state was to pledge a minimum of US $100,000**

The NEPAD African Peer Review Mechanism (APRM) only began to function in 2005 and thus it is too early for a meaningful evaluation. By way of a preliminary assessment, the APRM appears to have the following features:

Strengths

Organisation

The process foresees an important role for the APRM Secretariat, including preparation of a background document on the reviewed country. The plenary review body is composed of heads of state, which may provide political support, but this is a two-edged sword.

Methodology

- Indicators in addition to questionnaire.
- Government consultation with stakeholders is required prior to self-evaluation
- Country visits are made by expert reviewers.
- Review produces detailed report with recommendations.
- A national action plan to address deficiencies is prepared by the reviewed government.

Transparency

- It is planned to publish the final reports.

Weaknesses

- Lack of financial and technical resources. The APRM Secretariat is understaffed.

F. Financial Action Task Force (FATF) Recommendations

FATF Monitoring

Started: **1992**
Number of countries: **31**
Monitoring bodies: **FATF; Secretariat**
Methodology: **Self-assessment, peer review with expert teams and plenary discussion**
Scope of review: **47 Recommendations**
Rate of monitoring for 1st evaluation round: **27 countries in 3 years**
Rate of monitoring for 2nd evaluation round: **28 countries in 3 years**
Rate of monitoring for 3rd evaluation round: **16 countries in 3 years**
Number of Plenary meetings per year: **3**
In country visits: **Yes**
Follow-up: **Yes**
Technical assistance: **Yes**
Civil society participation: **No**
Reports published: **Mutual evaluation report, with government agreement**
Current staffing (estimate): **Not available**
Estimated cost: **Not available**

The FATF monitoring system for its "Forty Recommendations on Anti-Money Laundering" began in 1992 and served as a model for the OECD Convention review process. Seven further recommendations have been added.

Strengths

Organisation

- Supported by a small professionally staffed secretariat.
- Plenary review body.
- Cooperates with a number of regional anti-money laundering groups.

Methodology

- Well designed questionnaire.
- Country visits by expert teams. These include meetings with banks and other private sector groups which often provide views sharply different from government representatives.

- Peer review process covers most of the principal international financial centres.
- Governments report not only on measures taken but results attained.
- Evaluations focus on whether the system works, not just on whether there are laws, regulations on the books.
- Provides for follow-up measures to address members not sufficiently in compliance; the follow-up process exerts pressure effectively.
- Supports a number of regional anti-money laundering groups.

Transparency

- In 2005 FATF began publishing country reports, subject to agreement of national governments.

Weaknesses

- It has not been very transparent until recently, including lack of publication of country reports.
- Some claim that the standards applied are not high enough and are not consistently applied.

G. Stability Pact Anti-Corruption Initiative (SPAI) Commitments

SPAI Monitoring

Started: **2003**
Number of countries: **8 in South Eastern Europe**
Monitoring bodies: **Steering Group; Secretariat**
Methodology: **Self-assessment, mutual evaluation (twinning) and external review**
Scope of review: **Simultaneous submission of complete progress reports**
Rate of monitoring: **8 countries twice a year**
Number of steering group meetings per year: **2**
In country visits: **No**
Civil society participation: **Observers at Steering Group Meetings**
Reports published: **Reports by Steering Group**
Follow-up: **Periodic reviews on 6 month basis**
Technical assistance: **Yes**
Current staffing (estimate): **4 professionals at secretariat devoting 30-40% of their time to monitoring**
Estimated cost: **Approximately €35,000 spent on monitoring each year**

The SPAI (Stability Pact Anticorruption Initiative – an arm of the Brussels based international Organisation Stability Pact) is a soft monitoring system for South-eastern Europe in place since 2004, which involves self-assessment and a degree of mutual evaluation. It is interesting to note that SPAI already monitors UNCAC ratification and implementation in its region. The process is still in its early stage, so it is difficult to adequately assess its performances at this time.

Strengths

Organisation

- It is managed by a regional secretariat office (the RSLO – Regional Secretariat Liaison Office), staffed with people from the region.
- Leverage for compliance through development assistance and EU accession.

Methodology

- Method of twinning countries, for mutual review of compliance.
- Compliance matrix tracking measures introduced can potentially give a useful overview of performance.
- Periodic reviews on a six-monthly basis by the Steering Group, the governing body of SPAI including all Member States.

Weaknesses:

- Steering Group recommendations, based on country reports and peer evaluations, are not sufficiently critical.
- Steering Group recommendations are not tailored to individual countries.
- Member countries are overwhelmed by monitoring activities from EU and GRECO and devote scarce resources to SPAI monitoring system.

H. UN Convention against Transnational Organized Crime (UNTOC Convention)

UNTOC Monitoring

Started: **Not yet established**
Number of countries: **118**
Monitoring bodies: **Conference of States Parties; Secretariat**
Methodology: **Factual responses, secretariat analytical and assessment report, plenary discussion and follow-up questioning**
Scope of review: **Questionnaires on selected topics, based on programme of work of the Conference of Parties**
Rate of monitoring: **Planned to cover all countries each year in the first two years, then every second year**
Number of meetings per year: **One meeting per year in the first two years, then one every second year**
In country visits: **None discussed thus far. May have in-country visits for evaluation of technical assistance needs as follow-up to assessments.**
Civil society participation: **Not yet established**
Follow-Up: **Some initial steps**
Technical assistance: **Yes**
Reports published: **Secretariat overview report**
Current staffing (estimate): **Potentially 7 – 9 persons employed in Crimes Convention Section**
Estimated cost: **Not yet known**

The UNTOC Convention entered into force in September 2003 and the Conference of the Parties has met twice since then, once in 2004 and once in 2005. The review process is in development so it is too early to make observations on how it works.

Developments under the UNTOC Convention are of interest in providing lessons for UNCAC monitoring, given the UN framework, the similar membership, the inclusion of many similar provisions on international cooperation, and the fact that UNODC in Vienna also provides its secretariat. However, the provisions in UNTOC on monitoring are far less extensive than those in UNCAC.

The UNTOC process began developing its working methods without an early preparatory process and thus without the opportunity for States to exchange views in advance and identify issues to be analysed in-depth. Thus, the Conference of Parties has taken longer than expected to determine how to organise its work. As part of a programme to build a

knowledge base about the status of implementation of the Convention and its Protocols, it instructed the Secretariat to collect information on the basis of questionnaires that it reviewed and approved. The rate of responses to this questionnaire was low but allowed identification of a number of compliance issues. An important development in the UNTOC framework was the decision by the Conference of the Parties to set up an open-ended interim working group to advise and assist it in the implementation of its mandate on technical assistance. Building on its request for an assessment of the challenges in implementing the Convention and its Protocols, the Conference of Parties decided that the working group should perform the following functions:

(i) Review needs for technical assistance

(ii) Provide guidance on priorities

(iii) Take into consideration information on technical assistance activities of the secretariat, as well as of States, and on projects and priorities of States, other entities of the United Nations system and international organisations

(iv) Facilitate mobilisation of potential resources.

The Conference requested the secretariat to develop project proposals to address the needs identified. It was also presented with a secretariat report on the relationship between the Parties to the UNTOC Convention and the Commission on Crime Prevention and Criminal Justice and also with the future Conference of the States Parties to the UNCAC. This concluded that policy coordination might be desirable and that a review of the institutional relationships between the bodies should be considered.

I. UN Convention on the Rights of the Child

Monitoring of the UN Convention on the Rights of the Child

Started: **1991**
Number of countries: **192**
Organisation: **Committee on Rights of the Child (18 experts); Secretariat**
Methodology: **Reporting and technical assistance**
Scope of review: **Every report covers all the articles of the convention**
Rate of monitoring: **27 countries per year (estimate) for the Convention; 4 per Optional Protocol**
Number of Committee meetings per year: **3**
In-country visits: **Very rare**
Civil society participation: **Yes**
Follow-up: **Yes**
Technical assistance: **Yes**
Reports published: **Country reports with recommendations**
Current staffing (estimate): **8 (but only 3 working full-time)**
Estimated cost: **US $695,900 for 2004-2005**

Strengths

Organisation

- A small professional secretariat.
- Regular funding.

Methodology

- A continuous review process on a 5-year cycle.
- Constructive dialogue: the Committee avoids a confrontational approach.
- Participation of non-governmental actors and other UN agencies in the reporting process and other monitoring mechanisms.

- Cooperation between the various stakeholders (government, UN agencies, NGOs) encouraged through the monitoring process.
- Needs for technical assistance are identified during the monitoring process.

Transparency

- Website explaining the monitoring process and on which the reports and other documents are published.
- Mainly public meetings.
- Summary records of those meetings.
- Published country reports.

Weaknesses

- Backlog due to workload and inadequate staff.
- Wide range of issues covered by the Convention can make it a burden to report on for some countries with little capacity.
- Lack of country visits: no fact-finding missions and very rarely visits to follow-up on the concluding observations.
- Vagueness of the concluding observations.

J. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[2]

UNCAT Monitoring

Started: **1988**
Number of countries: **141**
Organisation: **Committee against Torture (10 elected experts); Secretariat**
Methodology: **Reporting and (if accepted by each specific State Party) individual communications, inter-state complaints, and inquiries**
Scope of review: **Every report covers all the articles of the Convention. The rest of mechanisms, if they may be used, give to the Committee considerably broad monitoring powers**
Rate of monitoring: **Approximately 12 States per year**
Number of sessions per year: **2**
In-country visits: **Allowed upon general acceptance of the States, but not used in practice**
Civil society participation: **Yes**
Follow-up: **Yes**
Reports published: **Annual Report to the General Assembly; country reports on countries; final views in individual communications**
Current staffing: **5 (not working full-time on the CAT)**
Estimated cost: **Not available**

Strengths

Methodology

- Regular and relatively frequent (every 4 years) individualised scrutiny, coupled with requests for further information in the meantime. This brings about a continuous monitoring process.

2 UN General Assembly, A/RES/ 39/46 of 10 December 1984

- Complete review of policies and practices of each State party, which tends to be more and more in-depth.
- Possibility to use a fairly wide range of monitoring methods.
- Minimum monitoring level applicably to all State parties in the same manner and on an equal footing.
- Methodology of constructive dialogue, which helps States to adopt a more cooperative attitude.
- Improving follow-up mechanisms.
- Participation of civil society.

Transparency

- Report review sessions are public, summary records of such sessions and final observations/recommendations are made public, as well as final decisions in the framework of individual communications.

Weaknesses

- Significant backlog.
- Lack of means to effectively make States fulfil their reporting obligations.
- Obligation to submit exhaustive reports may become a burden for some countries, especially those with limited resources.
- Poor funding and understaffing of the CAT secretariat.
- Under-exploitation of several mechanisms provided for in the Convention.
- Lack of means to oblige actual implementation of its recommendations by State parties.

K. International Covenant on Civil and Political Rights and its Protocols

Monitoring by the Human Rights Committee

Started: **1977**
Number of countries: **156 (as of May 8, 2006)**
Organisation: **Human Rights Committee; Secretariat**
Methodology: **Examination of State reports and individual communications through the 18-member Human Rights Committee**
Scope of review of State reports: **Initial and periodic reports should cover all the articles of the Covenant.**
Annual rate of monitoring: **Approximately 15 State reports and 30 decisions on the merits of individual communications.**
Number of sessions per year: **Three**
In-country visits: **No**
Civil society participation: **Yes**
Follow-up: **Yes**
Reports published: **Country reports with concluding recommendations; decisions on individual communications**
Current staffing (estimate): **Not available**
Estimated cost: **US $681,600 for 2004-2005**

Strengths

Organisation

- Regular funding.
- Election of members by States parties.

Methodology

- Continuous process of examination of State reports on 4-5 year cycle and of individual communications at every session.
- Constructive, non-adversarial dialogue with States parties on their reports.
- Participation of civil society in examination of State reports, individual communications, and drafting of general comments.
- Special review procedure for State reports.
- Follow-up procedure for concluding observations and for decisions on the merits of individual communications.

Transparency

- Website explaining the examination of State reports and individual communications and the drafting of general comments.
- Website on which State reports, concluding observations, views, summary records, and other relevant documents are published.
- Constructive dialogue held in public.

Weaknesses

Methodology

- Range of issues to be covered can impose a burden on States with few resources.
- No country visits.
- No technical assistance provided by the Human Rights Committee.
- No enforcement mechanism.

Transparency

- Discussion of internal matters, concluding observations, and consideration of individual communications are carried out in private.
- Meetings with specialised agencies and other UN organs that wish to provide State-related information are held in private.

L. Special Procedures of the United Nations Commission on Human Rights

Special Procedures, Rapporteurs, Working Groups, etc.

Started: **1967**
Number of Countries: **Universal, UN Charter-based**
Methodology: **Independent experts are given thematic and country-based mandates; currently, there are 42 different special procedures, 28 of which are thematic, 13 of which are country-based, and one of which is the 1503 procedure.**
Scope of review: **Each special procedure mandate holder reviews human rights abuses related to his or her theme or country.**
In-country visits: **Each special procedure mandate holder goes on one to two country visits annually.**
Civil Society participation: **Yes**
Follow-up: **There are no formal mechanisms to ensure that states follow-up on recommendations**
Reports Published: **Annual reports to the Commission of Human Rights (now transferred to the HRC)**
Current Staffing: **Varying OHCHR staff members assigned to each mandate holder**
Estimated Cost: **US $3,985,623 in the year 2005-2006**

Strengths

Organisational

- Efficiently organised thematically and by countries.
- Regular funding.
- Allocation of staff to assist special rapporteur.

Methodology

- More effective way of ensuring state accountability to human rights protection.
- Integration of the NGO perspective.
- Annual reports to the Commission of Human Rights (now the Human Rights Council).
- Specific recommendations highlighted.

Transparency

- Special rapporteur issues an annual report that documents activities and conclusions annually.
- OHCHR website provides information on all of the special procedures reports, as well as standing requests for country visits.
- OHCHR website also contains individual sections on all of the special procedures, which provides in-depth information on activities, how to file complaints, and actions taken by special rapporteurs regarding specific human rights situations.

Weaknesses

- There is no mechanism to ensure state responsiveness to recommendations made by special rapporteurs.
- There is no mechanism to ensure that states respond to communications received and to requests for state visits.
- There is an overlap between different mandates.
- Unclear regulations on the creation of new mandates.
- Unclear regulations on the termination of existing mandates.

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