

The UNCAC and Review Mechanisms – A Briefing Note for GOPAC Members

Background

In December 2006 the first Conference of State Parties (CoSP) in Jordan decided that it was necessary to establish an appropriate and effective review mechanism on the implementation of the UNCAC.¹ At its second session, held in Indonesia in January-February 2008, the Conference went further by stating that effective and efficient review of the implementation of the Convention is of paramount importance and urgent. To this end, the Conference decided that:

- the Intergovernmental Working Group on Review of the Implementation of the UNCAC must prepare terms of reference for this review mechanism for consideration, action and possible adoption at the third CoSP in the fall of 2009 at Doha; and
- State Parties and signatories submit proposals on the terms of reference for the review mechanism to the Working Group for its consideration. The deadline for the proposals was July 1, 2008.

The first meeting of the Working Group subsequent to the second COSP was held in September 2008 in Vienna. The meeting was informed by 33 proposals from State Parties and attended by over a 100 delegations including States Parties and signatories to the Convention and regional economic integration organizations.

The UNODC, as the Secretariat of the Conference, is now preparing a consolidation of the country proposals for the terms of reference for the review process. Such a consolidated document is available, as a rolling text, from the UNODC website (<http://www.unodc.org/unodc/en/treaties/CAC/working-group1.html>). This 'backbone' document will form the basis for discussions at the next working group meeting in December 2008.

Although the terms of reference are at the drafting stage, there appears to be an early preference for:

- self-assessments (not necessarily by the executive branches only) as a means to gather information on UNCAC implementation efforts, implementation gaps and related needs for technical assistance; and
- countries' peer reviews. Countries would be matched, based on various considerations such as region, language, and the type of law (common, civil or sharia), the similarity of governance institutions and so on. Matches would be approved by the countries involved. The peer review process could also engage the UNODC Secretariat.

Prior to the meeting in Vienna, the GOPAC Secretariat raised the concern with UNODC, UNDP and other international agencies that the proposals submitted in July 2008 are silent as to the engagement of parliaments or parliamentarians in the review mechanism. The report of the Vienna meeting indicated

¹ In accordance with UNCAC article 63. While this article states that "...The Conference...shall establish, if it deems it necessary, any appropriate mechanism of body to assist in the effective implementation of the Convention", the Conference decided, at its first session, that such a mechanism is indeed necessary.

that there were no objections raised to such involvement, parliaments being perceived as part of the formal institutional landscape.²

Engaging Parliamentarians in the UNCAC Review Mechanism

Based on a review of the 33 proposals submitted, which indicate how the review mechanism is taking shape, we have identified three potential points of entry for parliamentarians in the review process.

- *National approach.* The preparation of the national self-assessment reports seems to be the responsibility of the executive branch of government. National governments could however share these reports with parliamentary committees or parliamentary commissions for information and discussion.
- *Peer review.* The visiting experts from the reviewing country could meet with parliamentarians to get an understanding of their perspective and information.
- *Recommendations and monitoring.* The peer review process is expected to result in a report. Some States Parties have suggested that such a report should also identify implementation gaps and formulate recommendations for the gaps to be filled. Parliamentarians or committees could play a role in monitoring how the government addresses the peer review recommendations. The ultimate aim would be to ensure ongoing implementation and compliance with the UNCAC as well as improvements and learning.

Next Step

Should GOPAC issue a position statement on review mechanisms? This briefing note suggests that a discussion should first take place in the Kuwait 2008 workshop on the UNCAC as part of the preparation for the Doha CoSP. Some early points for consideration follow.

- There appears to be an emerging view among the international agencies working with GOPAC that to be effective, international conventions may benefit from a more integrated approach. In other words, in addition to engaging the executive branch of government there likely is value in engaging, among others, parliamentarians and civil society.³
- Where countries have submitted proposals to UNODC on their recommendations regarding the review mechanism, GOPAC members could examine these proposals and provide comments and recommendations.
- Once the actual country progress reports are written (e.g. government self-assessments and possibly external peer reviews of UNCAC implementation), the examination and discussion of these reports by parliamentary committees could ensure greater public debate and add credibility to such government reports, and help monitor the implementation of recommendations.
- Given the scope of UNCAC, the review mechanism process is currently envisaged as something that will take place in two year cycles with a focus on a selected topic(s). GOPAC could perhaps provide

² Ongoing debates are reported on the involvement on non-institutional stakeholders such as non-governmental organizations, the private sector, labour organizations, academia and the media.

³ Discussions were held with WBI, OECD, TI and UNDP in September 2008.

additional analyses and recommendations at the regional and perhaps global levels.

- Parliamentarians could press for additional performance information to support submissions to UNCAC by the government, e.g. programme evaluations of specific initiatives or audits by the Supreme Audit Organization in the country.
- The performance or non-performance of parliamentarians in review mechanisms is also of concern. Our understanding is that in the past OECD events to engage parliamentarians on the Anti-Bribery Convention were not always successful. GOPAC regional and country chapters would need to be active in ensuring representatives from legislatures are present and prepared for any such events.
- Case studies could be carried out on how parliamentary oversight can improve the effective implementation of the UNCAC, including the review process. This may lead to insights on the need for further training and guidance so that parliamentarians play a more effective role.