

Future reform options for the UNCAC IRM

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Note: This intervention draws on comparative academic research on global and regional peer reviews in anti-corruption and other policy areas (human rights, trade, economic policy). Based on this research, the note calls for a reconsideration of certain aspects of the UNCAC Implementation Review Mechanism. Many of these suggestions respond to ongoing discussions about reforms of the review process in the IRG (e.g. UNODC, 2021, 2022, 2023). The author is Principal Investigator of a comparative research project on the authority of peer reviews in different international organizations and policy areas (<https://peer-reviews.info/>) and lead author of a UNODC Secretariat paper on lessons learnt from other peer review mechanisms (UNODC, 2024). **The proposals contained in this note are made in the author's personal capacity. They are completely independent of any third party, in particular UNODC or any of its divisions.**

The UNCAC IRM and the concept of authority

Like many other peer reviews among states, the Implementation Review Mechanism (IRM) of the United Nations Convention against Corruption (UNCAC) serves two purposes. First, it facilitates States Parties to report on their progress in implementing the UNCAC and to identify challenges and possible needs for technical assistance. Second, the IRM creates some limited transparency on implementation practices for other States parties and the global public. The IRM is also credited with triggering legislative and institutional reforms in States parties and facilitating peer-to-peer learning about good implementation practice of the Convention (UNODC, 2022, para. 2).

Compared to other peer reviews in this area – notably the OECD's Working Group on Bribery in International Business Transactions (WGB) and the Council of Europe's Group of States against Corruption (GRECO) – the UNCAC IRM places a comparatively strong emphasis on learning, dialogue and mutual assistance among States parties. It is based on the assumption that States parties are willing to implement the Convention as fully as possible and to openly exchange information on domestic implementation problems. It also assumes that implementation gaps are mostly due to a lack of capacity and/or knowledge of best practices on the side of States parties (Chayes & Chayes, 1993). While the UNCAC IRM is well-suited to addressing such implementation problems, it appears less effective in engaging unresponsive countries and overcoming domestic resistance to the implementation of all elements of the Convention. Due to the strong role of States parties in organizing their own country reviews, comprehensive and complete information on domestic implementation problems may not be available in the IRM.

This note proposes a number of reforms to the IRM in the interest of transparent and consistent implementation of UNCAC provisions. In particular, the Conference of States Parties and the UNCAC Implementation Review Group (IRG) should consider the **plenary discussion of country reviews, the formulation of clear recommendations to the State party**

under review, follow-up action to reviews, and the comprehensive publication of review documents in the next phase of the IRM. The note also suggests facilitating the participation of non-state actors in the review process, in order to harness the expertise and support of national and global civil society for the implementation of the Convention.

This note argues that **such reforms would not run counter to the “non-intrusive, ... non-adversarial and non-punitive” nature of the IRM or its character as “an intergovernmental process”**, as defined in the IRM Terms of Reference¹. Other anti-corruption peer reviews, such as GRECO and the WGB, and other UN reviews, such as the Universal Periodic Review (UPR), demonstrate how the plenary discussion of country reviews, the making of recommendations, and the publication of review documents can be organized without creating conflict and division among States parties. As these reviews also show, the involvement of civil society actors does not qualify the state-driven nature of a review process. **Clever institutional design can preserve state control and the non-adversarial qualities of a review process, while ensuring consistent implementation of legally binding international rules.**

Another reason to reconsider the current procedures of the IRM is its significant lack of *authority* compared to other peer reviews; as shown in the research of the author and his collaborators (Carraro et al., 2019; Conzelmann, 2019; Jongen, 2017, 2018). This note defines authority as existing when participants collectively recognize the legitimacy of international rules of procedures. Specifically, authority refers to the perceptions of the appropriateness of the mission, procedures, and outcomes of a peer review (Cronin & Hurd, 2008). Our research shows that the UNCAC IRM is perceived as less authoritative by government delegates and experts participating in the review compared to the GRECO, the WGB, and the UPR as well as other peer reviews organized in the OECD and the World Trade Organization. This lower level of authority is partly due to specific institutional design features of the IRM. In particular, the lack of plenary discussion of country reports, the absence of recommendations to the state party under review, and the fact that some review documents are not made public are viewed critically by delegates and reduce the perceived legitimacy of the IRM. However, as peer review is a non-binding process, the perceived legitimacy of the process and the outcomes of a review are crucial to its success.

Plenary discussions

A key difference between the UNCAC IRM and other peer reviews is that IRM country reports are not reviewed in the plenary of ‘peers’ (i.e. delegates from other States parties). Instead, the IRG only publishes the executive summaries of the country review reports on its webpage “for information purposes”. The IRG discusses any implementation challenges in “thematic” (i.e. not

¹ UNCAC IRM Terms of Reference, para. 3 (a) and (f).

country-specific) implementation reports.² This appears to be a missed opportunity, as plenary discussions of country reports provide an opportunity for States parties to ask questions for clarification concerning the self-assessment and the country reports. In addition, plenary discussions facilitate peer dialogue and learning. Delegates can better understand why certain policy choices have been made by the State party under review and can draw lessons for their own country. For the State party under review, the discussion provides an opportunity to justify and explain its policies to the peers. It can also better understand whether domestic practice is appreciated by other States parties outside of the review team and where it may fall short of expectations. For the membership, plenary discussions help to build consensus among the reviewers, the State party under review and the wider membership. The discussion can also create a common understanding of "good practice" among peers and may result in recommendations to the reviewed state (see below). Experience from other reviews shows that plenary discussions are consistently conducted in a respectful and non-adversarial manner and do not lead to divisions among the members. Moreover, plenary discussions can promote the consistency of assessment standards across different country reviews (Carraro et al., 2019; Conzelmann, 2014, 2023; UNODC, 2024, paras. 35 and 36).

The UNCAC Implementation Review Group's (IRG) practice of not discussing country review reports is therefore a missed opportunity to create transparency, consensus and shared understanding of good practice. While workload considerations may appear to be an obstacle, shortening the country review reports or merging them with a more comprehensive executive summary³ could address this concern while retaining the benefits of a plenary discussion of country reports.

Collective recommendations to the state party under review

A common outcome of peer reviews is the formulation of policy recommendations to the reviewed State party. The main benefit of policy recommendations is that they send a message to the State party under review as to whether or not its domestic policies are in line with the provisions of the Convention and the best practices identified by the peers. Recommendations can highlight and reinforce successful policies and good implementation practices. Where there is room for improvement, recommendations can provide practical advice on how to adapt domestic policies and facilitate follow-up (see below). **Country-specific recommendations thus make an important contribution to the "progressive and comprehensive approach" advocated in the IRM Terms of Reference** (para. 9).

Compared to other anti-corruption peer reviews and peer reviews in other policy areas, the IRM has two peculiarities: first, the recommendations to States parties are often formulated in a non-

² Ibid., para. 35

³ See the respective discussion in UNODC (2023), paras 47-54.

binding manner. It is not uncommon for the executive summaries to mention measures that “could be considered” or to provide “observations”, without making clear recommendations on what the State party under review should do to align domestic policies with good practice. Expert reviewers can only use the term “recommendations” if the State party under review has agreed to this. Second, the observations made in the IRM executive summaries are issued on behalf of the review team, but are not endorsed by the other States parties. This makes the recommendations of the expert reviewers less authoritative than they could be. The lack of plenary endorsement also removes an important oversight function, by which the peers can ensure consistency of assessment standards across reviews and intervene if recommendations are formulated in an overly vague manner. The need to obtain plenary endorsement at a specific point in time can also prevent individual country reviews from becoming stalled due to disagreement between the State party under review and the review team on the observations to be adopted.

A comparison with the OECD's Economic and Development Review Committee (EDRC) shows how recommendations can be negotiated with the reviewed state while still involving the entire membership (Conzelmann, 2014, 2022). The EDRC combines a plenary discussion of the full country report and preliminary recommendations with a subsequent negotiation with the State party under review on the conclusions of the country review. At the end of these negotiations, policy recommendations are formulated and adopted by the full membership. Proponents of this model argue that it increases the political ownership of recommendations while ensuring the consistency of review standards and the quality of the recommendations (Thygesen, 2008). Other peer reviews use a decentralized system, in which recommendations are made by individual States parties, but are not adopted by the plenary. Examples include the Universal Periodic Review (UPR) and the WTO Trade Policy Review Mechanism (TPRM). In these reviews, the political relevance of recommendations is created either by the decision of the State party under review to “support” certain recommendations, i.e. to commit to implementing them (UPR), or by the reiteration of recommendations made by one country by other States parties (TPRM). In the latter system, a recommendation gains political weight the more countries endorse certain recommendations (Carraro et al., 2019). The examples of the EDRC, the IPR, and the TPRM show that the adoption of recommendations by the plenary does not have to be done through the perhaps more adversarial ‘consensus minus one’ procedure used by GRECO and the WGB.

In summary, **policy recommendations clarify the findings of a review process and provide States parties with actionable advice on how to improve or maintain certain policies. Adoption of recommendations by the whole membership can enhance their authority, ensure the consistency of assessments, and build consensus on best practices.** There are established models in other peer reviews to adopt recommendations in the plenary. These procedures respect the norm of non-interference and do not call into question the character of peer review as an instrument “that respects sovereignty and diversity” (Bocquet, 2008).

Involvement of civil society actors

Non-state actors are a broad category that includes think tanks, advocacy organizations, academics, business and professional associations. These actors have practical or research-based experience of how domestic anti-corruption policies work, can monitor compliance with international commitments, and can play an important role in policy implementation. Many peer reviews therefore actively involve non-state actors at different stages of the review process, in particular during the preparation of the self-assessment and the country review report (Conzelmann, 2011; UNODC, 2024, para. 42).

The IRM again shows some peculiarities. It uses a centralized and non-binding procedure (the State party under review shall “endeavour” to consult with relevant national stakeholders⁴), whereas other peer reviews facilitate decentralized input through a system of written submissions or direct interactions during country visits. The GRECO, the WGB, and the Financial Action Task Force (FATF) leave it to the discretion of the respective country review teams which stakeholders to consult during country visits. The IRM is also an outlier in terms of making country visits optional and placing the responsibility for their conduct in the hands of the States parties.⁵ Expert reviewers cannot consider or refer to external sources in their report unless the State party under review has provided this document. The government of the State party under review can therefore effectively act as a gatekeeper for input by non-state actors in the IRM and can ‘filter’ the information that the expert reviewers can (officially) consider in their review.

The main advantage of soliciting the views and expertise of civil society actors is that they can provide a complete and realistic picture of the domestic situation. Business actors, civil society organizations or bar associations may have knowledge that government actors may not be aware of or unwilling to share in their self-assessment. By accessing such sources of information, the review team can fill in missing or conflicting information and produce a more comprehensive country report. In later stages of the review process, non-state actors can monitor how states parties are following up on specific recommendations from their peers and can push states to act through public pressure (Carraro et al., 2019). They can also alert the Secretariat and other peers to potential cases of backsliding on anti-corruption standards, a situation for which GRECO has a specific procedure.

Importantly, **allowing civil society actors to play an active role in a peer review can improve the quality of the information available, while not diminishing the formal role of the States parties or the review team.** States retain the ability to shape their self-assessment and to respond to the country report as they see fit. In addition, most peer reviews restrict the access of non-state actors to plenary discussions of country reports in order to preserve the confidentiality of the deliberations. **The main effect of opening the door to non-state actors is to make better**

⁴ IRM Terms of Reference, para. 28.

⁵ IRM Terms of Reference, paras. 29 and 30.

(i.e. broader and less ‘filtered’) information available to the review process; an effect that should be welcomed by all States parties in the interest of the quality and transparency of the review exercise. The most logical way to implement this idea would be to make country visits mandatory and give the country review team more discretion in the selection of relevant non-state stakeholders to be consulted. This idea is already advocated by several States parties⁶ and used by other peer reviews such as the WGB, FATF, and GRECO.

Follow-up to reviews and effectiveness considerations

The IRM Terms of Reference advocate an “ongoing and gradual” process of implementing the Convention (para. 9). This can be read as justifying the focus of the different phases of the IRM on different UNCAC chapters,⁷ but also as an encouragement to **build linkages between different reviews of the same country**. Such follow-up to the findings of previous reviews of the same country is foreseen in paragraph 40 of the IRM Terms of Reference for the second review cycle. It is also an important dimension of the discussion among State parties on changes in the next phase of the IRM.⁸ The most recent internal review of the UNCAC IRM notes that for “[m]any States parties ... the main weakness of the Mechanism was the lack of a clearly defined follow-up procedure” and that “[s]everal States parties ... found detrimental the non-enforceable nature of the recommendations and the lack of tools to engage unresponsive countries in their reviews” (UNODC, 2023, para. 14).

For a peer review to be meaningful, there should be an obligation for both the State party under review and the peers to revisit the findings of a previous country review during the next review cycle. Such a process is facilitated if there are clear recommendations at the end of a country review and if these recommendations have been endorsed by the whole membership, as discussed above. Experience shows that an obligation to report on progress made since the last review exerts soft social pressure on the State party to address possible issues in an effective manner (Jongen, 2018, p. 928), while leaving States parties discretion on how to address these issues. Revisiting the findings of previous reviews increases peer accountability (Grant & Keohane, 2005) as well as the salience and credibility of the entire review mechanism, as review findings are taken seriously and States parties are engaged in an ongoing discussion about implementation.

Revisiting the findings of previous review rounds is standard practice in most peer reviews. The GRECO, FATF, the WGB, the EDRC, and the UPR have developed different models for follow-up (UNODC, 2024, para. 41). Similar models exist in the EU rule of law peer review (Conzelmann,

⁶ UNODC (2023), para. 45. Also see UNODC (2022), para. 48

⁷ The first phase of the IRM has focused on criminalization and law enforcement (chapter III of the UNCAC) and international cooperation (chapter IV). The ongoing second phase focuses on preventive measures (chapter II) and asset recovery (chapter V).

⁸ UNODC (2021), paras. 38-41 and 45; UNODC (2022), para. 47.

2022). This is facilitated by the existence of actionable and country-specific policy recommendations in these reviews, as discussed above.

An additional benefit of following up on the results of previous review rounds is the focus on the effectiveness of implementation. Many peer reviews, including the FATF, GRECO and the WGB, have started with a review of the 'law on the books' and later on proceeded to examine how domestic anti-corruption policies work in practice (UNODC, 2024, paras. 29-30). Such a system also makes it possible to check the effectiveness of follow-up by States parties to recommendations they received. It is notable that States parties in the IRM consider “a stronger focus on follow-up or on the effectiveness of implementation” one of the key desirable changes to the mechanism (UNODC, 2023, para. 25; also see paras. 26, 28, 56, and 69 of the same document).

Transparency and publication of review documents

The IRM Terms of Reference commit to a “transparent” procedure (para. 3 (a)), without specifying how transparency should be achieved and to whom the review process should be transparent. The UNCAC Coalition's Transparency Pledge⁹ calls for the mandatory publication of all review documents and transparency about review timelines and responsible government contacts. The mandatory publication of all review documents (the self-assessment, country reports, meeting summaries and peer recommendations) is in fact common practice in many other peer reviews, including the WGB, GRECO, FATF, UPR, EDRC, and the TPRM. **The benefits of mandatory publication of review documents are twofold: first, it increases transparency among the peers about the state of implementation of the Convention and facilitates mutual learning. Second, transparency about the review process helps the media and national civil society to engage with the review.** In the early stages of a review (collection of country-specific information), the publication of review schedules and relevant government contacts facilitates the input by civil society actors. Once the review has been completed, the publication of all review documents creates transparency among the States parties about the findings on a particular country and can enhance peer learning. It can also alert domestic stakeholders to the findings, initiate policy discussions and support pro-change coalitions. This seems particularly valuable in cases where domestic vested interests are resisting reform of domestic legislation. There are numerous examples where reference to peer review findings has helped to initiate reform and lend external legitimacy to reform projects.

Existing peer reviews have adopted different degrees of transparency: While the WGB, the FATF, the EDRC, the UPR, and the TPRM publish all review documents, the IRM and the GRECO are the only reviews that allow their members to publish only executive summaries. However, there is an

⁹ <https://uncaccoalition.org/uncac-review/transparency-pledge/>; last accessed on 6 January 2025.

informal agreement among the vast majority of GRECO members not to use this option and still publish all documents. Full transparency is not necessarily at odds with the confidentiality of deliberations. Some peer reviews (EDRC, WGB) foresee the removal of potentially sensitive information from the public version of review documents. Such measures can help to balance transparency considerations with the goals of promoting open exchanges during plenary discussions and respecting confidentiality (Carraro & Jongen, 2018; also see UNODC, 2023, para. 55; UNODC, 2024, para. 39).

For the IRM, publishing the full country review in addition to the executive summary would be a useful approach. Moreover, information on review findings should not just be made available by UNODC some time after the review, but should be actively promoted once a country review has been completed. Such "active" forms of publication include press releases and briefings to the media and civil society on the outcome of a review, as practiced in many of the other reviews discussed in this paper. Such active publication of review documents can help to make a country review a story in the national media and can lead to further involvement of the national authorities, as they need to approve a press release and prepare for questions by the media. The **publication of all or selected documents (e.g. executive summaries) in the local language** of the State party under review is another good way to facilitate engagement and raise public awareness of a review and its findings. GRECO and the WGB have developed some good practices in this respect.

Summary

Based on the above considerations, this note invites States parties to consider a number of changes to the UNCAC IRM in order to improve the quality and authority of the process:

- The introduction of plenary discussions of full country reports;
- The consistent use of country-specific policy recommendations to States parties and their endorsement by the whole membership;
- Greater involvement of civil society actors in the preparation of responses to the self-assessment checklist and during country visits;
- Revisiting findings of earlier review rounds during the next review of the same country;
- Greater transparency of the review process, including the publication of all documents from the peer review and an “active” publication strategy (press releases, briefings).

These recommendations can be implemented together or separately, without undermining the character of the UNCAC IRM as a non-interfering, non-punitive, and non-adversarial process. Experience from other peer reviews and the findings of academic research shows that plenary discussions of full country reports are led in a respectful and cooperative manner and

that recommendations can be formulated and adopted in non-adversarial ways. Revisiting the findings of previous review rounds triggers implementation efforts and enhances the credibility of the peer review, without limiting the policy space of the reviewed State party. Civil society participation enhances the quality of the review process and can be organized without compromising the confidential nature of deliberations or the intergovernmental nature of the review. Transparency about the review process and its outcomes can engage a wider range of actors and make the review process, including the progress made by States in implementing the Convention, better known. “Active” publication strategies are particularly important to raise public awareness of a review and its outcomes.

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