

Implementing the UN Convention against Corruption (UNCAC)

UNCAC Compliance Review – Why and How?

“Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”.

Kofi Annan, United Nations Secretary-General in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption

Why is a compliance review necessary?

The UN Convention against Corruption (UNCAC) requests state parties to implement all provisions within the context of national laws and regulations and with respect to effectively combat and reduce corruption. To reach full compliance with UNCAC provisions the 1st States Parties Conference to the Convention thus calls for the establishment of a mechanism for implementation.

Basically, a compliance process can be described in three major steps. A compliance review or gap analysis is the first step for a systematic assessment of anti-corruption regulations and their institutional functioning. This includes an assessment on how a country is in conformity with the provisions of the Convention. Legal compliance reviews in the form of a self assessment, based on a broad and ownership centred consultative process of what is in place and what is missing when addressing legal reform, is essential to meet the provisions of the Convention. A second step would identify priorities for adapting laws and administrative procedures and putting them into effect. The final step of full compliance means that the legal base vis-à-vis the UNCAC is in place and fully functioning.

How is a compliance review to be designed?

A national mechanism for initiating a compliance process needs to be established. To ensure follow-up the focus is on embedding the review into the formal system, thereby involving all relevant stakeholders. Such a mechanism requires either round tables or a steering committee. Participants are expected to serve and to a certain extent guide the work of a national expert team charged with the implementation of the compliance review. Member should therefore consist of leading law professionals preferably from the national law reform commission, universities, professional bodies government institutions and representatives from civil society. The main task of the expert team is to gather information and to analyse the relevant legislation and its functioning and to dialogue with major stakeholders. The result of the work needs to be detailed in a matrix, which follows the UNCAC provisions one by one.

A matrix for a compliance review

The Indonesian Anti-Corruption Commission, KPK, has developed such a matrix, which was applied for comparing the Indonesian legislation with the provisions of the UNCAC, thereby identifying compliance and gaps.

The matrix follows a simple analysis scheme: The first column states the article of the UNCAC in chronological order, the second column the articles’ provisions. In the third column relevant current national legislation is listed. A fourth column compares the UNCAC with the national legislation and points out differences (gaps), whereas in a fifth column aspects that are not of a strictly legally-comparative nature, but for example refer to existing practices are stated.

In parallel, a prominent international expert team is recommended to be employed for several rounds of review and coaching of the national team. The expert

team would provide expertise on the background and genesis of the UNCAC and internationally accepted good practices, while the national team would provide knowledge of the local legislation and procedures and facilitate access to important stakeholders.



Elaborating a gap analysis

Notwithstanding the recommendations of the 1st Conference of State Parties to the Convention and of the United Nations Office on Drugs and Crime (UNODC) for a formatted self assessment, the matrix based gap analysis helps assessing the levels of compliance of national laws and regulations and their effectiveness in real life in a most simple way. Essential is not the bureaucratic exercise but the stakeholder dialogue and a thorough analysis of the prevailing legal regulations vis-à-vis the provisions of the UNCAC.

The outcome of such a review should trigger a broad reform drive: Reform of the national criminal law, drafting an administrative procedure act, introduction of

integrity standards in the public administration, ethical conduct of the judiciary, introduction of transparent and accountable decisions of the bureaucracy, active involvement of civil society and active engagement of the private sector as well as streamlined international cooperation in the field of legal assistance and asset recovery.

Publication and follow-up

The compliance review would serve as monitoring tool to implement the UNCAC. Publicity is hence crucial. The results of the review need to be circulated among law makers and parliamentarians specifically, leading professionals and also lawyers through their professional associations, representatives from government, private sector and civil society. Conferences and workshops for specific constituencies have proven useful.

The analysis in itself does not yet imply change; it can only be a starting point for compliance. Government and the legislative need to commit themselves to reform, i. e. develop a national anti-corruption action plan.

Costs

A team of national experts is expected to work for about three months to draft the first matrix, which then needs to be reviewed and revised. The international expert would be expected to cooperate on up to four assignments at about four days each, which includes a conference at the end of the exercise. Printing and disseminating the results, campaigning for reform etc., provisions for international dialogue and perhaps retreat sessions of leading government decision makers would top the whole process. Costs are estimated between 60,000 and 100,000 Euros.

Reference

www.gtz.de/en, www.kpk.go.id, www.u4.no, www.baselgovernance.org/icar.

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