



Conference of the States Parties to the United Nations Convention against Corruption

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Review of the implementation of the United Nations Convention against Corruption

The pilot review programme: an assessment

Background paper prepared by the Secretariat**

I. Introduction

1. In accordance with article 63 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex), the Conference of the States Parties to the United Nations Convention against Corruption was established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation. Pursuant to article 63, paragraph 5, of the Convention, the Conference is to acquire the necessary knowledge of the measures taken by States parties in implementing the Convention – and the difficulties encountered by them in doing so – through information provided by them and through such supplemental review mechanisms as may be established by the Conference. The Convention thus established the principle of review of its implementation by the Conference, leaving decisions on the means of such review to the Conference.

2. At its first session, held in Amman from 10 to 14 December 2006, the Conference took an important step in that direction by agreeing that it was necessary to establish an appropriate mechanism to assist it in reviewing implementation of the Convention. In its resolution 1/1, the Conference established an open-ended, intergovernmental expert group to make recommendations to the Conference at its second session on appropriate mechanisms or bodies for carrying out the implementation review.

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** Submission of the present document was delayed by the need to reflect consultations with the countries participating in the pilot review programme.



3. The Conference agreed on certain characteristics that the review mechanism should encompass. It should be transparent, efficient, non-intrusive, inclusive and impartial; it should not produce any form of ranking; it should provide opportunities to share good practices and challenges; and it should complement existing international and regional review mechanisms in order for the Conference to cooperate with them as appropriate and avoid duplication of effort.

II. Methodologies selected by the different review groups

4. At its first session, the Conference requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and analysis of implementation efforts and to report on those efforts to the Conference. During the session, several representatives expressed their Governments' readiness to support, on an interim basis, a review mechanism that combined the self-assessment component with a review process supported by the Secretariat. The United Nations Office on Drugs and Crime (UNODC) responded by developing a technical assistance project to offer adequate opportunities for testing possible means of reviewing the implementation of the Convention. The project entailed a limited review of the implementation of the Convention in countries that had volunteered to participate, using a method that combined self-assessment and group and expert reviews as a possible mechanism (or mechanisms) for reviewing the implementation of the Convention. The pilot programme was aimed at testing the effectiveness and efficiency of the approach with a view to assisting the Conference in reaching a decision on the establishment of an appropriate review mechanism. The participating States were Argentina, Austria, Finland, France, Greece, Indonesia, Jordan, the Netherlands, Norway, Peru, Poland, Romania, Sweden, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania and the United States of America.

5. The States having volunteered to participate in the pilot programme held initial meetings to discuss the terms of reference of the expert review group and agreed on a number of options for the review methodology. Specifically, countries under review would have to answer all questions, both the optional and the mandatory ones, contained in the self-assessment checklist pursuant to resolution 1/2 of the Conference and the expert review group would analyse the responses. Emphasis was placed on the importance of active dialogue between the country under review and the experts. In addition, countries would participate in reviews with one other country in their regional group and a third country in an effort to foster closer regional dialogue and provide, where possible, benchmarks for review that would be situated in a comparable context. Experts could conduct country visits to validate the findings of their analysis where appropriate and when agreed by the country under review. As the process was a voluntary one, it was emphasized that the country under review held full discretion throughout the review process to decide, in consultation with the expert reviewers and the Secretariat, whether to arrange for a country visit.

6. At the time of the expert review group meeting, held in Vienna in December 2007, the 16 country reviews had reached various stages of progress. All countries under review had identified focal points and submitted their self-assessment checklists. Similarly, all countries had been in contact with the experts

tasked with review. Countries had engaged in active dialogue with the experts and with the Secretariat on a range of issues. Telephone conferences had been conducted to discuss specific points contained in the self-assessments and the organization of country visits, some of which would take place before and some after the second session of the Conference. In cases where reviews had been completed and no country visits were foreseen, experts were finalizing reports on the review process at the time of preparation of the present background paper.

III. Lessons learned: salient features of the pilot programme

A. The self-assessment checklist and review methodologies

Self-assessment

7. The experts agreed that the self-assessment checklist provided a useful basis and starting point for the review exercise. There was general consensus that the checklist format was useful for gathering information on legislation, although less adequate for reviewing the implementation of such legislation or regulations in practice. The selection of articles, though limited, nevertheless covered the four main pillars of the Convention, and the format provided ample opportunity for States to identify technical assistance needs. It was also found that the process itself of filling out the checklist had been useful in terms of coordination of the relevant departments or agencies involved in national anti-corruption efforts. The checklist provided a written starting point for analysis of implementation, but experts also noted that, in respect of every self-assessment checklist submitted to the Secretariat, additional information and discussion had been necessary to explore further some of the “yes/no” answers provided. For instance, most experts requested the provision of documentation concerning laws and regulations to support answers contained in the checklist. It was noted as well that an opportunity to correct or supplement information in the checklist should be factored in, as some countries had recognized errors or inconsistencies in their checklist submissions thanks to comments provided by reviewing experts. Experts had requested more explanation and detail on answers and recognized that information on concrete implementation of the Convention was not always adequately captured in responses to the checklist.

Translation

8. The translation of checklist responses, supporting documents and the questions and answers was one of the major challenges to ensuring an effective review. In that context, a broader issue was documentation and the processing of the large volume of material generated by the review process, particularly if the experience within a group of limited size were projected to the ever-growing number of parties to the Convention.

Other review mechanisms

9. The effective use of the output of other existing review mechanisms was discussed. Some experts pointed out that their countries did not participate in any existing mechanism, while others felt it was necessary to find a way to efficiently include both the information collected for those review mechanisms and the product

of the reviews. Options ranged from having the responding experts decide which information would be included to requesting the Secretariat to supplement the information contained in the completed checklist of the respective countries with any existing reports from other mechanisms that pertained to those countries.

The inherently positive approach of the Convention

10. It was recognized and stressed that the implementation of the Convention was a process that would have different requirements for different countries depending on, inter alia, their level of development. That factor would need to be taken into account in the development of the review mechanism as it would affect the pace of implementation and the resulting outcome of the review. It was emphasized that the Convention's approach was inherently positive and that the Conference had already incorporated that approach into the attributes of the review mechanism outlined in its resolution 1/1. The Convention and the Conference were geared towards finding ways to foster and support national anti-corruption efforts rather than towards anticipating lapses in implementation or evaluating performance. Therefore, any review mechanism would have to be structured in a similarly positive manner and not be oriented towards finding fault with compliance. Implementation of the Convention needed to be regarded in the context of each country and reviewed at the individual country level. The current structure of the pilot programme, which was built around the self-assessment checklist, sought to establish benchmarks against which each country could measure its own progress. That approach inherently excluded any notion of comparison or ranking but aimed to support individual efforts and commitments, including by highlighting and acknowledging good practices.

Scope and depth of review

11. The scope and depth of the review was discussed, with experts noting that review could occur at the normative and policy levels and involve more documentation and analysis than that contained in the checklist. In that respect, the experts noted that country visits would enable deeper analysis and assessment of national anti-corruption efforts by examining implementation through achievements and shortcomings on the ground. Such country visits, it was noted, would be effected only with the agreement of the country under review. The expert dialogue made possible by such country visits appeared to provide a good way to identify the means of fostering and supporting the national anti-corruption efforts referred to above.

B. Engaging in active dialogue

Active dialogue

12. Experts agreed that the active dialogue which had taken place during the review process was of immense value. The dialogue occurred at every phase and every level of the review process. The use of the self-assessment checklist as a basis for the review fostered discussion in the initial stages of the review process. Experts had exchanged a wealth of communications around the checklist, including requests for clarification and additional documents. Those exchanges were carried out

by e-mail, telephone conferences and meetings. Experts noted the role of the Secretariat in facilitating such dialogue and recommended that that role be reinforced.

13. The experts also stressed the overall extremely positive experience of engaging in active dialogue with the country under review. The high volume of e-mail, telephone and face-to-face exchanges throughout the review process was hailed as one of the strongest features of the pilot programme. The active dialogue served to address issues concerning the checklist and to clarify certain aspects of national implementation. Planning for country visits was also undertaken, where agreed and appropriate.

Country visits

14. In some cases, countries under review and experts determined that country visits were not necessary and agreed to finalize the review process through the existing channels of communication. In other cases, where visits were suggested and agreed by the country under review, they were discussed and planned through telephone conferences facilitated by the Secretariat. Fostering active dialogue between experts and countries under review was viewed as an important factor enabling country visits to be used as a methodological tool for reviewing implementation, in particular by agreeing on terms of reference and details of visits and meetings to be organized.

Exchange of good practices

15. The documentation gathered and exchanged during the pilot review process was considered very valuable and there was some discussion about preserving the wealth of information and knowledge that the exercise was producing. In addition, active dialogue between experts and mutual review could in certain cases foster the exchange of good practices. It was noted that the pilot review process should actively acknowledge good practices identified by the reviewing experts, in line with the positive approach of the Convention and the Conference. Meetings of the expert review group provided a forum for the exchange not only of such information but also of information on the implementation challenges facing certain countries.

Coordination and the role of the Secretariat

16. Special emphasis was placed on the importance of coordination during the review process. Coordination was needed at three different levels: (a) at the national level; (b) among the reviewing experts and between those experts and the country under review; and (c) between the experts, the country under review and the Secretariat.

17. Coordination was necessary from the very inception of the process, with the completion of the self-assessment checklist at the national level. Experts pointed out that the completion of the checklist was often the fruit of inter-agency coordination among the institutions responsible for corruption prevention, criminalization, asset recovery and the fight against international corruption. Furthermore, the pilot programme called for the appointment of focal points for each country under review. The focal points were to liaise with the reviewing experts and the Secretariat.

18. In order to ensure active dialogue throughout the review process, it was noted that coordination among the reviewing experts themselves was important. In some reviews, experts consolidated their comments for transmission to the country under review, prepared joint workplans for carrying out the review and agreed to draft consolidated reports either in their entirety or by dividing portions among themselves.

19. A key lesson drawn from the pilot review programme was that any review mechanism required substantial support from a well-resourced and professional secretariat. More specifically, the secretariat had a key role to play in coordinating, programming and supporting the review process and in ensuring timeliness and continuity through its involvement at all stages. The secretariat was further considered instrumental because of its institutional duty to remain impartial and independent. Those were necessary attributes of a mechanism that would be not only fair and objective but also characterized by respect and equal treatment of all participating States. Such characteristics were considered essential for the entire mechanism and in particular its final product. The current resource level of the secretariat of the Conference was clearly inadequate to allow it to perform those functions and, therefore, one of the issues requiring close attention would be that of finding appropriate remedies to the problem.

C. Determining the end result of review

Terms of reference

20. Experts underscored the need to develop guidelines and procedures for the review process. In particular, the end product of the review would need to be streamlined in order to ensure balance and fairness. It was suggested that a blueprint for the final product of the review could be produced in order to facilitate the experts' work and ensure consistency in the presentation of the outcome and possible commitments by the countries under review, giving due consideration to the individual features of each country. The format of the end product was discussed by the experts and it was agreed that, whatever the format that the review ultimately produced, the central element would be ownership of the product by the country under review. In that respect, it was noted that the Secretariat could assist and advise during the elaboration of any such final product but that the product would remain within the sole remit of the experts and the country under review.

21. It was suggested by the experts that the final product could include recommendations, conclusions or suggestions made by the experts and discussed and agreed with the country under review; and that it could contain commitments formulated by the country under review and any good practices identified during the review process.

Technical assistance

22. The experts underscored the need to identify technical assistance needs at all phases of the review process, including through the self-assessment checklist. That aspect of the pilot programme had not been activated yet but was foreseen for upcoming activities. To properly test that aspect of the pilot programme's

methodology, the respective activities might have to be prolonged in order to assess technical assistance needs and the delivery and effectiveness of technical assistance.

IV. The way forward

Outreach

23. The expert review group expressed the view that there were clear benefits to be realized by expanding the pilot programme to include more than the current 16 participating States. Should such an expansion be deemed an appropriate course of action, the experts agreed that it would be necessary to develop a set of principles for the continuation of the expanded programme in order to integrate lessons learned through its operation. The composition of an expanded pilot programme would aim at equitable geographical representation, and the country partnerships would continue to involve the country under review, at least one other country from the same regional group and one country from another regional group. Furthermore, the review group recommended that countries volunteering to take part in the programme would need to be given the opportunity to participate both as reviewed and reviewing country, with the appropriate initial period of observation of ongoing reviews in order to fully integrate and familiarize themselves with the process. States wishing to join the pilot programme should express their interest at the second session of the Conference or shortly thereafter.

Timing

24. The experts concurred that building in a sunset clause for the pilot programme was crucial in order to avoid perpetuating the process and to provide the third Conference with timely and in-depth conclusions and lessons learned. A deadline for conclusion of the programme was further important to avoid its institutionalization and the concomitant risk of creating de facto a two-tiered approach to the review of implementation. In that vein, the expert review group concurred on aiming to complete the pilot by the end of the second quarter of 2009.

Role of the Secretariat

25. The expert review group recommended that the Secretariat play an active role in supporting the review process, in particular by facilitating and taking part in active dialogue, facilitating coordination between the experts and countries under review and ensuring time management for the different phases and activities. The Secretariat's role was therefore to be strengthened and the experts requested the Secretariat to develop a blueprint for review reports or other possible end products for the experts to use, thereby ensuring congruence, quality, continuity and consistency. The Secretariat would need to be sufficiently strengthened in order to perform the active role recommended by the expert review group.

Country visits

26. The expert review group agreed that country visits were a useful element of the review process as they could enable experts to gauge implementation of the Convention at a more practical level. It was stressed, however, that country visits should in each and every case be decided and agreed by the country under review

and they should be carried out with a maximum degree of flexibility in terms of schedule and content.

Final product

27. The expert review group recommended that the next step should be to continue developing clear terms of reference for the review process and in particular for the final product of the review. The experts emphasized, however, that ownership of the end product would remain with the country under review. The content of the final product could include recommendations agreed by the experts and the country under review, as that was viewed as a means to translate the positive spirit of the Convention into reality. The experts also noted the usefulness of the end product for benchmarking in order for the country concerned to measure progress.

Technical assistance

28. The expert review group noted that the review process had not yet included the identification, delivery and evaluation of technical assistance and that it was therefore important to focus attention on that aspect of the pilot programme in the immediate future. The experts underlined, however, that technical assistance was a much broader issue, reiterating its crucial nature as determined by the Convention and making clear that the delivery of technical assistance to requesting States parties for the implementation of the Convention was in no way linked to participation in the pilot programme.
