

Norwegian proposal to the working group for the terms of reference of the mechanism for the implementation of the UN Convention against Corruption

1. OBJECTIVES

The review mechanism should assist States Parties in their effective implementation of the Convention, cf. article 63 (7) and resolution 2/1 op. para. 3 (a). To achieve this, it is necessary to identify the current situation in each country with regard to the UNCAC, in order to identify areas of compliance, specific challenges and possible needs for technical assistance.

The Convention sets a global standard, and this calls for a global review mechanism. The review mechanism should be inclusive and impartial, and must apply in an equal manner to all States Parties, cf. resolution 1/1 op. para. 3 (a). It should, however, be applied with a view to the individual situation of each State Party.

The mechanism should ensure review of the implementation of articles from all chapters of the Convention including asset recovery, cf. scope, to reflect the carefully balanced compromise achieved in the Convention.

The review process should be concluded with a report containing recommendations as appropriate and agreed with the country under review.

Furthermore, the review mechanism should provide opportunities for experts to meet and exchange views and ideas, and thus contribute to strengthening cooperation in the international fight against corruption.

2. METHODOLOGY

a. Self-assessment

Self-assessment, through completing a checklist, should form the first step and basis for the review mechanism. The checklist, when completed, is an important source of information, and it is therefore necessary to ensure that each State Party completes the self-assessment part of the review mechanism, if needed with assistance of the UNODC Secretariat.

b. Team of experts

The implementation of the Convention by a State Party will be reviewed by a team of experts consisting of the Secretariat and experts from two other States Parties.

Pursuant to resolution 2/1 op. para. 3 (b) the mechanism should take into account a balanced geographical approach. This should be taken into consideration when setting up the review teams. One of the reviewing countries should be from the same region as the country being reviewed, and preferably have a similar legal system, whereas the other country should be from a different region. A country should not evaluate a country that it has been, or will be, evaluated by.

The Secretariat is to set up the teams in consultation with the States Parties and should take into consideration that not all countries may have the capacity to review others while being reviewed themselves.

c. Dialogue

With the checklist as a basis, the experts should enter into a constructive and non-adversarial dialogue with the country under review, cf. resolution 2/1 op. para. 3 (c).

The experts may ask for additional information and explanations. They may also discuss information gathered from other sources (cf. section 5 below) with the country under review.

d. On-site visit

The team of experts may carry out an on-site visit to the country under review, unless otherwise agreed.

Meeting face-to-face is likely to provide a fuller and more accurate understanding of the situation in the country. An on-site visit should allow the experts to compile additional information and provide an opportunity for both parties to sort out any misunderstandings, etc.

The experience from the pilot project is that an on-site visit is useful both for the experts and the country under review.

It can provide a good opportunity to share good practices and challenges, cf. resolution 1/1 op. para. 3 (c).

The visit should be non-intrusive, cf. resolution 1/1 op. para. 3 (a). Thus, the programme is to be set up in close cooperation and dialogue with the country under review.

The Secretariat has an important role as organiser and facilitator before and during the on-site visit.

For the visit to be efficient, all information must be available to the experts in a language which they understand, and necessary translations must be provided.

e. Draft report

The team of experts is to write a draft report, according to an agreed blueprint for such reports.

The country under review should then submit its comments on the draft report to the Secretariat. A constructive dialogue, facilitated by the Secretariat, should take place between the team of experts and the country under review with a view to agreeing on the final report.

f. Final report

Pursuant to resolution 1/1 op. para. 3 (b), the final report should not produce any form of ranking.

The experts may make recommendations to be included in the final report.

The Conference of States Parties has recognised that technical assistance is an essential element in the effective and speedy implementation of the Convention, cf. resolution 2/4, and the States Parties should afford one another the widest measure of cooperation and assistance in the field of asset recovery. The review mechanism should therefore, when relevant, identify specific needs for technical assistance so that effective assistance can be provided to help States Parties in implementing the Convention. Thus the report can be considered a tool for accomplishing the aims of resolution 2/4. The report can then be used by the country under review to identify and substantiate its needs to donors and donor agencies. Moreover, it can help donors and donor agencies within the country under review to coordinate their efforts and meet the needs identified in the report.

The final report will also provide background material for exchanging information on solutions adopted at the national level with a view to tracing financial flows linked to corruption, seizing assets derived from corruption and returning such assets.

3. SCOPE

The UNCAC is a global Convention, and sets a global standard. This calls for a global review mechanism where all countries should be evaluated on their implementation of the same articles of the Convention. This will secure equal treatment and consistency.

The Convention is a carefully balanced compromise, and this balance needs to be reflected in the review mechanism. The Convention is, however, very extensive, and the

review mechanism would be too wide-ranging should it cover the entire Convention from the start. Some articles should therefore be chosen for a first round of review.

The mechanism should contain a balanced selection of articles from each of the chapters of the Convention. Due consideration should be given to including articles that are closely interlinked.

The first round of review should cover key articles of the Convention, and in particular mandatory ones.

4. TIME FRAME

While bearing in mind that the time frame will depend on the scope of the review mechanism, it is preferable that all States Parties go through a first round of review within 4 years (i.e. before the 5th Conference of States Parties).

5. SOURCES OF INFORMATION

The review mechanism can only assist States Parties in effectively implementing the Convention if the team of experts is provided with adequate and reliable information about the current situation in the country under review. To ensure that the review is made on a sufficiently solid basis, several different sources of information should be available to the team of experts.

The team of experts should, in a transparent manner and in full openness with respect to the country under review, openly *seek* and *have free access to* sources of information. Access to information is essential if the review mechanism is to be an effective and functional tool to help States Parties implement the UNCAC.

The country under review may freely comment on and express its views on the information and its sources.

The *use* of the information should be discussed. In lack of a common position, the use of the information should be allowed provided that the concerns of the country under review are duly reflected.

In line with the principles laid down in Articles 5 and 13 of the Convention, the review mechanism should allow active participation of civil society.

Sources of information should include; (1) States Parties (e.g. the checklist, dialogue with the team of experts and publicly available information provided by the government), (2) other existing review mechanisms, (3) competent international organisations, (4) non-governmental organisations/civil society, (5) labour organisations, (6) businesses and (7) the media.

6. THE RELATIONSHIP TO OTHER MECHANISMS

For the sake of efficiency and to avoid duplication, information gathered through other relevant review mechanisms can be used in the review of a country under the UNCAC, cf. resolution 1/1 op. para. 3 (d).

The information must be up to date and relevant, and its use should be based on agreement with the country under review.

7. TRANSPARENCY

The importance of transparency in all areas of combating corruption is underscored in the Convention, particularly in Article 5. Pursuant to resolution 1/1 op. para. 3(b) this should also be a fundamental principle for the review mechanism.

There should be full openness between the team of experts and the reviewed country at all stages of the process.

The final report should preferably be made public, or at least a summary of the report and its recommendations.

8. THE ROLE OF THE SECRETARIAT

The Secretariat plays a decisive role in ensuring that the review of the implementation is conducted in an efficient manner. It is thus crucial for the realisation of the review mechanism to provide the Secretariat with adequate resources.

The Secretariat should act as a facilitator of the review mechanism. It should be an objective third party that ensures consistency and equal treatment of the States Parties throughout the process. It should collect and distribute self-assessments, organise on-site visits and assist in obtaining information and drafting reports. It should seek to ensure that the reports are impartial, streamlined and consistently worded.