

Terms of Reference for a Review Mechanism for UNCAC
Comments from the United Kingdom

1. Summary

The UK believes that an effective review mechanism consistent with the resolutions of the Conferences of States Parties (CoSP) is necessary for UNCAC to be a credible tool in the global fight against corruption. It is important that the next CoSP concludes with such a review mechanism in place so that implementation can commence with the assistance of the UNODC secretariat.

This document summarises the broad position of the UK on what should be the main terms of reference for the review mechanism. It is not intended to be a complete road-map of the review mechanism but as a guide for debate during the open ended inter-governmental working groups on review mechanism.

In order to reduce the length of this document, the CoSP resolutions are attached at flag 1. It should be assumed throughout this document that the UK wishes the terms of reference to be compliant with these resolutions.

2. Key Elements of the Review Process

In order to identify the terms of reference it is important to set out the structure on which the terms of reference will hang. The UK suggests that there are 5 key elements necessary in the review mechanism. They are:

1. Creation of a self-assessment report;
2. The review process;
3. The creation of a draft report;
4. The development of a final report;
5. Follow-up on the findings of the final report.

The views of the UK are set out below under these headings.

3. Self –Assessment

This stage is intended to be an opportunity for a reviewed state to identify internally where it is compliant with UNCAC and identify where there is room for improvement. The UK believes that this is an important element of the review process and would support its inclusion in the final terms of reference.

It is important that any self-assessment is fit for the purpose it serves and there may need to be some refining of the existing self-assessment to meet the purpose of demonstrating compliance.

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4. The Review

There are a number of possible stages involved in the review. The key aspects on which the UK would comment are as follows:

- **Scope** - We would suggest that the review covers compliance with a wide range of articles and includes the non-mandatory provisions. If the intention is to have transparent, non-intrusive, inclusive and impartial review mechanism which facilitates opportunities to share good practice and challenges, limiting the scope of the review to parts of UNCAC also limits the ability to share good practice. Whilst for practical and resource reasons there may be a need to limit the scope of the review or phase the process, we would suggest that this should not prevent the terms of reference making clear that the long-term aim is for a wide-ranging review.
- **Expert Consultation** - A review based on self assessment is useful in collating and receiving the views of the reviewed state. A review further enables a healthy exchange of best practice. As a result we believe that an important element of the review should be a consultation with experts. A country visit would appear to us to mark the gravity of the review and also allow for more in-depth analysis than is possible through other forms of consultation. There are options available regarding having a specific group of experts (experts group) established to perform this function or having country experts carrying out a peer review. Of these options, our preference is for a peer review based on country experts.
- **Information sources** - The issue of what information is relied on to complete the report is an important one. It may be useful for the reviewers to have access to a wide source of information. This could include information from regional reviews, other convention reviews or civil society. The reviewed state would of course need to be informed of the sources relied upon and an opportunity to comment on them. The options are:
 1. Reviewers decide what they can rely on;
 2. Reviewed state can decide what is relied on;
 3. Both agree what is relied on.
- **Confidentiality** - The issue of confidentiality of information provided to reviewers needs to be resolved. We suggest that reviewers would be duty bound to keep all information provided during a review confidential.
- **Supplementary questions** - The terms of reference should explicitly permit time and capacity for supplementary questions. It cannot be assumed that the self-assessment will by itself provide sufficient

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information for reviewers to properly review implementation of UNCAC. It is important that there is scope for clarification on issues by the ability to ask supplementary questions throughout the review.

5. The Creation of a Draft Report

- The draft report should be in a consistent format. There should be some reviewer discretion as to the format and contents but subject to compliance with the specific requirements of the CoSP resolutions attached at flag 1.
- The UNODC secretariat should provide advice and comments when sought by the reviewers.
- The premise of this process is that the owner of the draft report is the reviewer.
- The reviewers should prepare a draft report and submit it to the reviewed state for their comments. The reviewed state should provide a clear explanation for any aspects of the report on which they suggest amendments so that the reviewers can fairly consider their views.
- If a dispute cannot be resolved by the parties, it will be necessary for this to be resolved in some other way. The options which we can suggest for consideration are:
 1. Arbitration - an independent individual or body decides the dispute;
 2. The report represents the reviewed state's position.
 - The reviewers record in a separate annex the areas where they disagree, or
 - The reviewers withhold endorsement of the report or part of the report on which there is a dispute.

Both options have their own difficulties and benefits. The UK holds no strong position on which option is favoured at this stage but does take the view that some record does need to be kept of disputes.

- Sufficient time should be permitted for a reviewed state and reviewers to agree a final report. The reviewers shall make the report available to the reviewed state and a copy to the UNODC for use by the CoSP.

6. The Development of a Final Report

- The final report is owned by the reviewed state and the CoSP.
- The final report should include sections which highlight successes and challenges as perceived by the reviewers. This should then be used by the reviewed state to develop its own strategy for development and implementation goals to meet its obligations under UNCAC.

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7. Follow-up on the Findings of the Final Report

- In consultation between the reviewers and the reviewed state, a development plan should be prepared which can be used to formulate technical assistance requirements for the reviewed state, if appropriate.

8. Timetable

- In order to avoid delay and ensure progress, clear timescales should be established for each stage of the process. It shall be for the UNODC secretariat to ensure timescales are monitored and complied with.
- A suggested timetable for discussion is attached at flag 2.

9. Remit of UNODC Secretariat

- The secretariat should be responsible for managing the timescales of the review process.
- It should be actively involved in facilitation of meetings and discussions between the reviewed state and reviewers;
- It shall assist in the collation of the reports into a summary for use by the CoSP.
- The option for the UNODC to attend country visits should be available where it is clear that on a cost/benefit analysis such attendance will add value to the process.

10. Remit of Reviewers

- The reviewers shall act as independent experts under UNCAC regardless of the state which provides them.
- They shall review any state in accordance with the express aims set out in the finalised terms of reference and in particular paying close attention to the resolutions passed by CoSP on the aim and scope of the review and article 1 of UNCAC.
- They shall carry their function in a fair and objective manner with a view to devising constructive dialogue for developing a states practice and implementation of UNCAC.
- Any information provided to reviewers shall be considered confidential.

Nimesh Jani
UK

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REVIEW MECHANISM RESOLUTIONS

Resolution 2/1 - Bali 2008

Review of implementation

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

Recalling article 63, paragraph 1, of the United Nations Convention against Corruption,¹ which established the Conference of the States Parties to the United Nations Convention against Corruption to, inter alia, promote and review the implementation of the Convention,

Recalling also article 63, paragraph 7, of the Convention, according to which the Conference is to establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention,

Bearing in mind that the review of implementation of the Convention is an ongoing and gradual process,

Recalling its resolution 1/2, in which it decided that a self-assessment checklist should be used as a tool to facilitate the gathering of information on the implementation of the Convention,

Welcoming the subsequent development of the self-assessment checklist, its effective use to compile initial information on the implementation of several articles of the Convention and the two reports of the Secretariat analysing the information collected,²

Noting the activities undertaken pursuant to its resolution 1/1 to collect and analyse information on several possible methods to review the implementation of the Convention,

Convinced that effective and efficient review of the implementation of the Convention in accordance with article 63 is of paramount importance and urgent,

Recalling its resolution 1/1, in which it agreed on the necessity of establishing an appropriate and effective mechanism to assist it in the review of the implementation of the Convention, and established an open-ended intergovernmental expert working group to make recommendations to the Conference at its second session on the appropriate mechanisms or bodies for reviewing the implementation of the Convention and on the terms of reference of such mechanisms or bodies,

Takes note with appreciation of the work of the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption at its meeting held in Vienna from 29 to 31 August 2007 and the report on that meeting;³

Reaffirms that any such mechanism established to assist the Conference of the States Parties to the United Nations Convention against Corruption in the effective implementation of the United Nations Convention against Corruption⁴ should:

- (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
- (b) Not produce any form of ranking;
- (c) Provide opportunities to share good practices and challenges;
- (d) Complement existing international and regional review mechanisms in order that the Conference may, as appropriate, cooperate with them and avoid duplication of effort;

Decides that any such mechanism should also reflect, inter alia, the following principles:

- (a) Its objective should be to assist States parties in the effective implementation of the Convention;
- (b) It should take into account a balanced geographical approach;

¹ General Assembly resolution 58/4, annex.

² CAC/COSP/2008/2 and Add.1.

³ CAC/COSP/2008/3.

⁴ General Assembly resolution 58/4, annex.

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- (c) It should be non-adversarial and non-punitive and should promote universal adherence to the Convention;
- (d) It should base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and submission of the outcome to the Conference, which is the competent body to take action on such outcome;
- (e) It should identify, at the earliest stage possible, difficulties encountered by parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;
- (f) It should be of a technical nature and promote a constructive collaboration, inter alia, in preventive measures, asset recovery and international cooperation;

Decides that the Working Group shall prepare terms of reference for a review mechanism for consideration, action and possible adoption by the Conference at its third session;

Decides also that the Working Group shall hold at least two meetings prior to the third session of the Conference in order to perform its mandated tasks;

Requests the United Nations Office on Drugs and Crime, in the interim and subject to the availability of voluntary contributions, to continue to assist parties, upon request, in their efforts to collect and provide information requested by the self-assessment checklist, and to analyse and report on the information collected to the Conference at its third session, and urges States parties and signatory States that have not yet done so to complete the checklist and submit it to the United Nations Office on Drugs and Crime;

Requests the Secretariat to explore the option of modifying the self-assessment checklist to create a comprehensive information-gathering tool that might serve as a useful starting point for collecting implementation information in any future reviews;

Also requests the Secretariat to assist the Working Group by submitting to it background information, including terms of reference of existing review mechanisms and information on the activities undertaken pursuant to Conference resolution 1/1 to collect and analyse information on possible methods for reviewing implementation;

Calls upon States parties and signatory States to submit proposals to the Working Group for the terms of reference of the mechanism sufficiently in advance of the meetings of the Working Group for its consideration;

Requests the Secretariat to assist, within existing resources, the Working Group in the performance of its functions, including by providing interpretation services.

Resolution 1/1 - Jordan 2006

Review of implementation

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

Recalling article 63 of the United Nations Convention against Corruption, especially paragraph 7, according to which the Conference shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention,

Convinced that effective and efficient review of the implementation of the Convention in accordance with article 63 is of paramount importance and urgent,

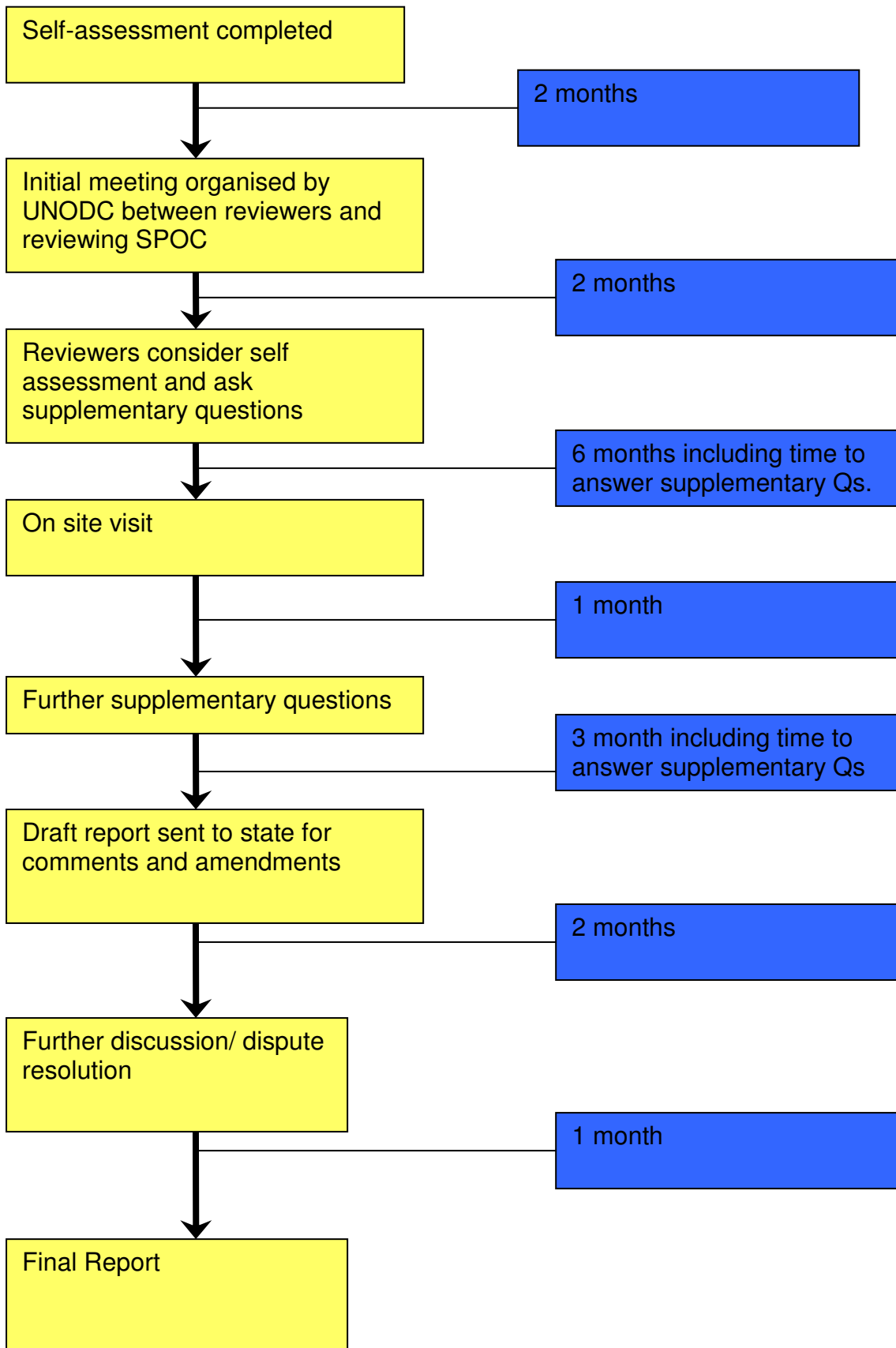
Bearing in mind that the review of the implementation of the Convention is an ongoing and gradual process,

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1. Agrees that it is necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the United Nations Convention against Corruption;
2. Decides to establish, within existing resources, an open-ended intergovernmental expert working group to make recommendations to the Conference of the States Parties at its second session on the appropriate mechanisms or bodies for reviewing the implementation of the Convention and on the terms of reference of such mechanisms or bodies;
3. Underlines that any such review mechanism should:
 - (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
 - (b) Not produce any form of ranking;
 - (c) Provide opportunities to share good practices and challenges;
 - (d) Complement existing international and regional review mechanisms in order that the Conference of the States Parties may, as appropriate, cooperate with them and avoid duplication of effort;
4. Requests the United Nations Office on Drugs and Crime, in the interim and subject to the availability of voluntary contributions, to assist parties, upon request, in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference of the States Parties at its second session;
5. Requests the Secretariat, within existing resources, to assist the working group in the performance of its functions, including by providing interpretation services.

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Timetable for possible approach to Review Mechanism



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