



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

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Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption

Vienna, 22-24 September 2008

Item 2 of the provisional agenda*

**Consideration of proposals for terms of reference for a
mechanism for reviewing the implementation of the
United Nations Convention against Corruption**

Activities undertaken to collect and analyse information on possible methods for reviewing implementation

Background paper prepared by the Secretariat

I. Introduction

1. In its resolutions 1/1 and 2/1, the Conference of the States Parties to the United Nations Convention against Corruption recalled article 63 of the United Nations Convention against Corruption,¹ in particular paragraph 7, 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. In its resolution 1/1, the Conference agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention and decided to establish an open-ended intergovernmental expert working group to make recommendations to the Conference on the terms of reference of such a mechanism, on the basis of certain agreed-upon criteria.

2. In its resolution 2/1, the Conference decided that the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption should prepare terms of reference for a review mechanism for consideration, action and possible adoption by the Conference at its third session.

* CAC/COSP/WG.1/2008/1.

¹ United Nations, *Treaty Series*, vol. 2349, No. 42146.



II. Voluntary pilot programme for reviewing the implementation of the United Nations Convention against Corruption

3. 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 their analysis of implementation efforts and to report on those efforts to the Conference at its second session. Several representatives expressed their Governments' readiness to support, on an interim basis, a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat. In response, the United Nations Office on Drugs and Crime developed a technical assistance pilot review programme to offer adequate opportunities for testing possible means of reviewing the implementation of the Convention. The programme entailed a limited review of the implementation of the Convention in States 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. It 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.

4. A report assessing the pilot review programme was submitted to the Conference at its second session. The experience gained under the pilot review programme was noted with interest and it was suggested that participation should be expanded and that its activities should be extended until the third session of the Conference. Activities carried out under the pilot programme were to inform the discussions of the Working Group on the terms of reference over the course of the four meetings scheduled to be held before the third session of the Conference. Twelve additional States volunteered to join the pilot review programme and the expanded pilot review group adopted terms of reference (see annex to the present report) and a country report blueprint at its meeting held on 8 and 9 May 2008.

5. From the inception of the review process, meeting participants focused on identifying a suitable methodology for reviewing the implementation of the Convention. Emphasis was always placed on the voluntary nature of the pilot review programme and the corresponding ownership of the review process by the States concerned. States under review answered all the questions contained in the self-assessment checklist pursuant to Conference resolution 1/2, including the optional ones, and the pilot review group analysed responses. The importance of active dialogue between representatives of the State under review and experts in the pilot review group was stressed at all stages of the review process. States participated in reviews with one other State in their regional group and a third State. Mutual reviews were avoided to the extent possible within the initial small group of States. That aimed at fostering closer regional dialogue and at providing, where possible, benchmarks for review that could be compared across regions. Experts could conduct country visits to validate the findings of their analysis where appropriate and when agreed by the State under review, which was left, throughout the review process and in consultation with the expert reviewers and the Secretariat, to decide whether to arrange for a country visit.

6. Lessons learned from the pilot review process have been taken into account for the expansion of the membership of the pilot review group and, in particular, for the development of the terms of reference of the expanded pilot review programme. Practical obstacles posed, for example, by the need to translate documents and supporting materials and by the scarcity of resources at the national level, had to be overcome. The Secretariat played a crucial role in contributing to the optimal conduct of the review process, for which it needed adequate resources to perform its duties and provide assistance at every stage of the process. Active dialogue between experts and representatives of the State under review strengthened the review process and was recognized as an element that needed to be included in the terms of reference. Such dialogue was facilitated by the Secretariat through the organization of teleconferences. In order to capitalize on previously performed analyses, experts also considered the findings of reviews already conducted under regional or sectoral mechanisms. In a number of cases, States under review organized country visits in consultation with experts and the Secretariat to validate the findings of preliminary analyses made by the experts. Those visits were viewed as being highly useful and as having enabled an in-depth review and discussion of national efforts to fight corruption. Final reports on the review process were prepared in consultation with the States under review to ensure ownership of findings and recommendations. The technical assistance foreseen as part of the pilot review group's activities to test methods of reviewing implementation had not been provided due to the relatively early stage of the review process. Technical assistance was to be provided during the following phase, to meet the needs of the increased number of developing countries participating in the expanded pilot review programme.

7. It was anticipated that the Working Group would find it useful to consider the lessons learned during the implementation of the activities of the pilot review programme, which were to be concluded before the third session of the Conference.

Annex

Expanded pilot review programme: proposed terms of reference

<i>Month</i>	<i>State under review</i>	<i>Reviewing State</i>	<i>Secretariat</i>
May 2008	<p>First meeting of expanded pilot review group</p>	<p>First meeting of expanded pilot review group</p>	<p>First meeting of expanded pilot review group</p>
June-July 2008	<p>Completion of self-assessment checklist and selection of experts/points of contact</p> <p>The State under review will submit to the Secretariat a complete and updated self-assessment report with answers to all questions (mandatory and optional) on the limited scope of the pilot review programme and to an additional question on mutual legal assistance (article 45, paragraph 9 of the United Nations Convention against Corruption^a) and supporting documentation.</p> <p>The State under review may request the Secretariat for technical and substantive support for the completion of the self-assessment checklist. It may also request any other tools from the Secretariat that it might wish to have at its disposal, including the <i>Legislative Guide for the Implementation of the United Nations Convention against Corruption</i> and the Anti-Corruption Toolkit.^b</p> <p>The State under review will submit to the Secretariat the names and contact details of one or more persons who will act as contact points for communicating with the reviewing experts and the Secretariat. The State should ensure the availability of its contact points and experts.</p>	<p>Selection of experts/points of contact</p> <p>Reviewing States will select their experts and provide the Secretariat with their names and their contact details. The States are requested to ensure that the experts will be available when required and that they will have either the relevant expertise to review all subjects covered in the checklist or access to the necessary expertise. The States are also requested to ensure that the experts will, where relevant, have the appropriate linguistic abilities.</p> <p>The number of experts who can be appointed to review the self-assessment checklist and to engage in an active dialogue with the States under review is not limited.</p>	<p>Establishment of communication channels and teams of States</p> <p>The Secretariat will liaise with all States concerned in order to ensure that the names and contact details of experts and contact points have been submitted. The Secretariat will ensure that the information is regularly updated and communicated to all relevant participants.</p> <p>The Secretariat will, in coordination with the pilot review group, team each State under review with two other States. In general, the teaming will follow the principle that two States, one from the same region as the State under review and another from a different region, will conduct each review.</p> <p>Upon receipt of the self-assessment checklist reports, the Secretariat will submit them to the reviewing States. Where required, the Secretariat will ensure translation of the reports into English.</p> <p>The Secretariat will support the experts throughout the review process (see below).</p>
July-August 2008		<p>Review of self-assessment report, accompanying documentation and other available information</p> <p>The experts will analyse all provided information and accompanying documentation, make note of any</p>	<p>Review of self-assessment report, accompanying documentation and other available information</p> <p>The Secretariat will review the self-assessment reports for completeness and liaise with the reviewing experts to</p>

^a United Nations publication, Sales No. E.06.IV.16.

^b United Nations Office on Drugs and Crime, September 2004, available at http://www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf.

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		<p>questions and comments they might have and indicate points to be clarified with the State under review.</p> <p>The experts may also consult information related to the State under review that is the product of existing multilateral anti-corruption review mechanisms. The experts may further consult other open-source information. Such action should be disclosed in advance to the State under review, which should confirm the authenticity of the information.</p> <p>If the self-assessment report is incomplete, the reviewing experts will, with the assistance of the Secretariat, request the State under review to provide the missing information.</p> <p>The experts may request the Secretariat for assistance at any stage of the process, including through the provision of tools such as the <i>Legislative Guide for the Implementation of the United Nations Convention against Corruption</i>, arranging telephone conferences, supplying additional documentation etc.</p> <p>Information reviewed and developed during the pilot review programme will be kept confidential unless otherwise agreed upon by the State under review.</p>	<p>ensure they have received the reports and any accompanying documentation. Where applicable, the Secretariat will provide the experts with additional information on the State under review. (For example, members of the Working Group on Bribery in International Business Transactions of the Organization for Economic Cooperation and Development have agreed to share all their reports with the Secretariat with a view to providing the reports to the reviewing experts as background material.)</p> <p>When requested by the experts, or if otherwise appropriate, the Secretariat will also assist in providing the experts with relevant open-source information related to the State under review, including information resulting from existing multilateral anti-corruption review mechanisms.</p> <p>If the self-assessment report is incomplete, the Secretariat will facilitate requests to the State under review for missing information. Upon request, the Secretariat will also assist the experts with other relevant tasks, including the provision of materials from the Secretariat which the experts may wish to have at their disposal, such as the <i>Legislative Guide for the Implementation of the United Nations Convention against Corruption</i>, the Anti-Corruption Toolkit, and any other relevant materials.</p> <p>Information reviewed and developed during the pilot review programme will be kept confidential by the Secretariat unless otherwise agreed upon by the State under review.</p>
September 2008	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption
September- November 2008	Active dialogue All experts are encouraged to maintain open channels of communication, exchange information on the status of review and supply additional and	Active dialogue Throughout all stages of the review, the experts are strongly encouraged to exchange information and communicate with experts from the other reviewing	Active dialogue The Secretariat will encourage experts to exchange information and communicate among themselves and with the representatives of the State

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	<p>updated information as relevant. Experts are also encouraged to keep the Secretariat abreast of any such communication and exchange of information.</p> <p>During the dialogue, the State under review may be requested to provide additional information or clarify any outstanding issues.</p> <p>Dialogue can be conducted via e-mail and telephone, including through telephone conferences organized with the assistance of the Secretariat. The State under review and the reviewing experts can decide when to establish contact. The experts are strongly encouraged to keep the Secretariat involved in the active dialogue and in their communication with the State under review. States may request the assistance of the Secretariat on substantive and technical matters, for example on setting up conference calls, at any stage of the dialogue.</p> <p>During the active dialogue, the State under review will indicate as soon as possible, for future planning purposes, whether it is interested in hosting a site visit with a view to enhancing the analysis of the information provided or whether it prefers the experts to base their observations on the self-assessment report and the outcome of the active dialogue.</p>	<p>State and from the State under review. Experts from the reviewing States shall decide among themselves how to organize their work. Once the experts have reviewed the information contained in the self-assessment checklist and accompanying documentation, they will engage in an active dialogue, also with experts from the State under review in order to clarify any outstanding issues.</p> <p>Experts are strongly encouraged to keep the Secretariat involved in the active dialogue and to inform the Secretariat about their communication with the State under review. They may request the assistance of the Secretariat on substantive and technical matters, for example on setting up conference calls, at any stage of the process.</p> <p>Experts will inform the Secretariat when they consider the active dialogue to have concluded.</p>	<p>under review throughout the process. While the experts shall decide among themselves on the practical organization of their work, the Secretariat will be available to provide any assistance requested.</p> <p>The Secretariat will coordinate with the experts and the State under review during the structured dialogue process and will request that it be copied on all communication.</p> <p>The Secretariat will also be available to provide assistance on substantive and technical matters, for example on setting up conference calls and on finding necessary legislation, or other matters that become relevant during the dialogue process.</p> <p>The Secretariat will liaise with experts to determine when, in the opinion of the experts, the structured dialogue has concluded.</p>
October 2008	Second meeting of expanded pilot review group	Second meeting of expanded pilot review group	Second meeting of expanded pilot review group
November 2008	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption
October 2008-February 2009	<p>Country visits (where agreed)</p> <p>The dates of a country visit that has been agreed upon by the State under review will be determined jointly by that State, the experts and the Secretariat.</p> <p>The country visit will be organized by the State under review, with assistance from the Secretariat. The programme for</p>	<p>Country visits (where agreed)</p> <p>The State under review may decide, where appropriate, to proceed with site visits in order to enhance the analysis of information provided. The dates of the country visit will be agreed upon by the State under review, the experts and the Secretariat. The country visits will be organized by the State under review,</p>	<p>Country visits (where agreed)</p> <p>At the conclusion of the structured dialogue stage, the Secretariat will liaise with experts and the State under review to agree on dates for any country visit that has been agreed to by the State under review.</p> <p>While the organization of the country visit will be left to the discretion of the</p>

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	<p>such visits is at the discretion of the State under review, which can decide whom to involve in the country visit and whether it wishes the experts to meet with a wide range of relevant stakeholders, including civil society representatives.</p> <p>The State under review is to share the programme with the reviewing experts well in advance of the country visit. When determining the programme, the State should take into account the type and source of additional information suggested by the reviewing experts during the dialogue stage.</p> <p>Country visits should last approximately two to three days; therefore, careful preparation well in advance is crucial. At the outset of the visit, it is crucial for the reviewing experts, together with the Secretariat, to meet and decide on the distribution of work.</p> <p>At least two weeks before the country visit is to take place, the State under review will provide the experts with:</p> <ul style="list-style-type: none"> • A detailed programme of the country visit, including the names of the institutions and persons with whom meetings will be held • Any additional documentation that appeared to be required during the active dialogue; if necessary, such documentation will be translated into English or any other language agreed upon with the experts and the Secretariat <p>The experts and the State under review will be provided by the Secretariat with a draft country report following the format of a blueprint report reflecting the self-assessment report, any other available information and the outcome of the active dialogue, marking unanswered questions and highlighting areas for discussion.</p> <p>If the documentation cannot be provided to the experts in a timely manner, the experts, the State under review and the Secretariat may choose to postpone the visit until the documentation is available.</p> <p>During the country visit, the State under review and the experts will work to</p>	<p>with assistance from the Secretariat. Country visits should last approximately two to three days; therefore, careful preparation well in advance is crucial. At least two weeks before the country visit is to take place, experts will be provided with:</p> <ul style="list-style-type: none"> • A detailed programme of the country visit by the State under review, including the names of the institutions and persons with whom meetings will be held • Any additional documentation by the State under review that appeared to be required during the active dialogue; if necessary, such documentation will be translated into English or any other language agreed upon with the experts and the Secretariat • A draft country report by the Secretariat following the format of a blueprint report reflecting the self-assessment report and the outcome of the active dialogue, marking open questions and highlighting areas for discussion <p>If the documentation cannot be provided to the experts in a timely manner, the experts, the State under review and the Secretariat may choose to postpone the visit until the documentation is available.</p> <p>Experts are strongly encouraged to share, in advance, questions to be discussed during the country visit with the State under review and the Secretariat.</p> <p>During the country visit, experts will actively participate in question and answer sessions and engage in a dialogue with representatives of the institutions of the State under review. They will work to clarify all matters identified for discussion during the active dialogue stage. They will analyse all information provided before and during the country visit, note any comments they might have and clarify any unanswered questions with representatives of the institutions of the State under review.</p>	<p>State under review, the Secretariat will be available to assist in preparing the visit, including by making travel arrangements for reviewing experts from developing countries and countries with economies in transition.</p> <p>The Secretariat will liaise with experts and the State under review to identify issues to be discussed during the country visit and outstanding issues from the structured dialogue requiring further clarification.</p> <p>Using the resulting information, the Secretariat will prepare a draft country report following the format of the pilot review group report blueprint, reflecting the self-assessment report and the outcome of the structured dialogue. That report will highlight areas suggested for clarification and possible areas for discussion. It will be prepared and distributed to experts prior to the country visit.</p> <p>During the country visit, the Secretariat will attend all briefings and meetings between the experts and the State under review.</p>

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	clarify all matters identified for discussion during the active dialogue stage.		
October 2008-April 2009	<p>Drafting of reports (where there is agreement on the establishment of benchmarks and on the elaboration of recommendations and action plans)</p> <p>The State under review will work closely with reviewing experts and the Secretariat to provide any necessary clarification during the preparation of the report.</p> <p>The State under review will be provided with the draft final report prepared by the experts and the Secretariat. It will provide its comments no later than one month after receiving the draft report.</p> <p>A State under review may request that experts work with its representatives to establish recommendations for strengthening implementation and establishing benchmarks for measuring progress in implementation and establishing an action plan. Such recommendations may be included in each final country review. The State may request technical assistance for the implementation of the action plan, as appropriate.</p>	<p>Drafting of reports (where there is agreement on the establishment of benchmarks and on the elaboration of recommendations and action plans)</p> <p>Reviewing experts will provide their comments to the Secretariat no later than one month after the conclusion of the active dialogue stage.</p> <p>In cases where country visits have been conducted, the deadline for submitting comments will be no later than one month after the conclusion of the country visit.</p> <p>The Secretariat will draft a country report following the format of a blueprint report, no later than one month after receiving the experts' comments. For States where no country visit has been carried out, the Secretariat will base its draft report on the self-assessment report, other additional information and the outcome of the active dialogue. In the case of States where a country visit has been carried out, it will base its draft report on the first draft handed out to the experts before the country visit and on the outcome of the country visit.</p> <p>The Secretariat will share the draft report with the experts, who will make any appropriate comments and changes and agree on the final version of the report.</p> <p>A State under review may request that experts work with its representatives to establish recommendations for strengthening implementation and benchmarks for measuring progress in implementation. Such recommendations may be included in each final country review product. Each country review product should start with a description of the methodology used by the State under review and the phases that were followed. The State may also wish to formulate an action plan based on those recommendations, to be implemented</p>	<p>Drafting of reports (where there is agreement on the establishment of benchmarks and on the elaboration of recommendations and action plans)</p> <p>The Secretariat will liaise with experts to ensure they provide their comments no later than one month after the conclusion of either the country visit or the structured dialogue (when no country visit is scheduled).</p> <p>Using this information and the information previously provided, the Secretariat will prepare a draft country report using the pilot review group report blueprint format. (If a draft country report was prepared prior to a country visit, the Secretariat will update the draft with additional information received from the experts and the State under review during the country visit.) The Secretariat will seek to complete that process within two months of the receipt of all necessary information.</p> <p>The Secretariat will provide copies of the draft country report to the experts for their comments and revisions. It will request that the experts provide such information within one month of their receipt of the draft report.</p> <p>Once the comments and revisions have been received, the Secretariat will prepare a revised draft of the country report, a copy of which it will then provide to the State under review.</p> <p>If the State under review should so request, the Secretariat will liaise with experts and the State under review to have the experts prepare recommendations for strengthening implementation of the United Nations Convention against Corruption^c and an action plan with benchmarks for implementing the recommendations. The Secretariat will be available to assist during that process and will incorporate the recommendations, benchmarks and action plan into a final</p>

^c United Nations, *Treaty Series*, vol. 2349, No. 42146.

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		after the review process has ended. On that basis, the State may wish to request technical assistance for the implementation of the action plan, as appropriate.	country report. If the State under review so requests, the Secretariat will also facilitate the provision of technical assistance for the implementation of the action plan or arrange for the provision of such assistance subject to the availability of the necessary resources.
April 2009	Third meeting of expanded pilot review group	Third meeting of expanded pilot review group	Third meeting of expanded pilot review group
May 2009	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption	Progress report to the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption
June 2009	Lessons learned	Lessons learned	Lessons learned
July 2009	Fourth and last meeting of expanded pilot review group	Fourth and last meeting of expanded pilot review group	Fourth and last meeting of expanded pilot review group
June-December 2009	Implementation of Action Plans, where applicable		Implementation of Action Plans, where applicable
September 2009	Presentation to Working Group of lessons learned and proposals for elements to be included in full-fledged mechanism	Presentation to Working Group of lessons learned and proposals for elements to be included in full-fledged mechanism	Presentation to Working Group of lessons learned and proposals for elements to be included in full-fledged mechanism