
**Conference of the States Parties to the United Nations
Convention against Corruption
Open-ended Intergovernmental Working
Group on Technical Assistance
Vienna, 3 and 4 September 2009**

Technical Assistance on the Road to Doha: Opportunities and Challenges

Background paper prepared by the Secretariat

I. Introduction

1. Technical assistance is pivotal to the successful and consistent implementation of the United Nations Convention against Corruption (UNCAC or the ‘Convention’). This central role has been recognized by the Conference of the States Parties to the UNCAC since its establishment by raising technical assistance to one of three priorities, together with the review of implementation and asset recovery. Progress achieved in the areas of review of implementation and asset recovery has brought to fore the need to address technical assistance in a more systematic and strategic manner. On a relatively small scale, theory has been put into practice, and practical country-level experiences now exist and have a story worth listening to. These experiences will hopefully enable States Parties to draw upon good practices and lessons learned in order to deliberate on and construct a framework in which technical assistance can be provided in a coherent, consistent and effective manner.

2. The UNCAC is the first comprehensive, global legal instrument on corruption with detailed provisions on providing technical assistance and information exchange for the achievement of its objectives. In its resolution 1/5, the Conference of the States Parties to the UNCAC decided to establish an Interim Open-ended Intergovernmental Working Group (Working Group), and gave it the mandate to perform the following functions: review the needs for technical assistance based on the information provided by Member States; provide guidance on priorities; consider information gathered through the self-assessment checklist; consider information, as appropriate and available, on technical assistance activities of the Secretariat and Member States, including successful practices, and on projects and priorities of Member States, other entities of the United Nations system and international organizations; and promote the coordination of technical assistance in order to avoid duplication.

3. The Working Group held its first intersessional meeting in Vienna on 1 and 2 October 2007 (CAC/COSP/2008/5). It reiterated that technical assistance was an integral part of the Convention and recognized that a core priority should be to ensure that sufficient resources were available to provide assistance to States Parties upon request. Further, the Working Group regarded the mainstreaming of

the Convention into ongoing and planned technical assistance programmes as a vital component of its work. There was agreement that specific needs and priorities for technical assistance could only be identified by the State Party requesting assistance. Furthermore, the Working Group recommended that the provisions of the Convention should be fully mainstreamed into the anti-corruption work of States Parties that is funded or to be funded by bilateral and multilateral donor agencies or other providers of technical assistance. The Working Group recommended that the Secretariat should share the analytical reports of needs – prepared on the basis of the responses to the self-assessment checklist – with bilateral and multilateral donors with a view to ensuring that the technical assistance provided or received avoids duplication and provides for better coordination. In this regard, it was widely recognized that the need for improved coordination was common to both donor and recipient States, which had distinct but complementary roles to play. It was also proposed that each Member State establish a focal point to be responsible for collecting and sharing information on anti-corruption technical assistance received or delivered.

4. At its second session, the Conference of the States Parties, in its resolution 2/4, decided that the Working Group should continue its work to advise and assist the Conference in the implementation of the Conference's mandate on technical assistance, and that the Working Group should meet during the third session of the Conference. The Working Group, at its second meeting in Vienna on 18 and 19 December 2008, *inter alia*, impeded the following recommendations: (a) to establish a pool of anti-corruption experts; (b) map out technical assistance activities on a matrix in order to provide an overview of the needs identified and of the supply side of technical assistance; and (c) accumulate knowledge and expertise in three specific areas covered by the Convention, namely prevention, criminalization and asset recovery (CAC/COSP/WG.3/2008/3). The Working Group further reiterated the importance of enhanced coordination among providers and recipients of technical assistance in implementing the Convention and stressed the necessity of identifying ways to fully meet the needs expressed by recipients. To that end, the Working Group concluded that country-based integrated and coordinated programming and delivery should be promoted further, where it does not exist, and recommended that United Nations Office on Drugs and Crime (UNODC) should participate fully in such processes.

5. The Report on the International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption, held in Montevideo from 30 May to 1 June 2007 (CAC/COSP/2008/6) provided a framework to advance the dialogue further and explore means of ensuring the pivotal role of technical assistance in the implementation of the Convention. It focused on the implementation of the Convention as an essential element of sustainable development, and on the issues of consistency and coherence in the delivery of technical assistance. The aim is not to reproduce this report in this background paper, but rather to build upon the information previously considered by the States Parties.

6. The Secretariat has produced this background paper to assist the panel discussions of the Working Group that will be held in Vienna from 3–4 September 2009,¹ and to prepare for the third session of the Conference of the States Parties that is to be held in Doha, Qatar, on 9–13 November 2009.

¹ There has been a useful consultation with the Department for International Development of the United Kingdom (DFID), the German Technical Cooperation Agency, GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) and others in preparing this background paper.

7. The aim of this paper is to consider the manner in which technical assistance is being provided, by whom (i.e. donors, through regional or international organizations, or other coordination networks) and how this can be strengthened. This will draw upon the background paper, titled 'Compliance with the United Nations Convention against Corruption and the technical assistance needed to implement the Convention', particularly in the three areas of prevention, criminalization and asset recovery (CAC/COSP/WG.3/2009/2). The consolidated practical country-level experiences will reflect upon whether technical assistance needs that have been identified by States Parties are currently being addressed. The aim would be for the Working Group to develop a greater understanding of the core challenges and opportunities that lie ahead in constructing a framework for technical assistance on the road to Doha and beyond. Please note that the examples provided in this background paper are not exhaustive, and only those examples that have been drawn to the Secretariat's attention have been included.²

II. Technical Assistance Needs as Identified through the Self-Assessment Checklist

8. The accumulation of knowledge on the technical assistance needs identified by Member States has been a priority of the Conference of States Parties since its first session. Through the self-assessment checklist, States Parties can identify their technical assistance needs. In particular, the above-mentioned background paper, titled 'Compliance with the United Nations Convention against Corruption and the technical assistance needed to implement the Convention' (CAC/COSP/WG.3/2009/2), draws upon the self-assessment reports submitted to the Secretariat by 72 States Parties, as of 8 June 2009. It contains updated information on States Parties' compliance with the 15 UNCAC Articles³ and where partial or no compliance was reported, it offers an overview of the types of technical assistance required to achieve full compliance.

9. In reference to the global technical assistance needs identified in the background paper, 68 percent (over two thirds) of the States Parties requested technical assistance in order to ensure full compliance with the UNCAC Articles under review. The most requested types of assistance were legal advice (20 percent of the States Parties), model legislation (19 percent) and legislative drafting (17 percent).

10. With regard to the identified technical assistance needs, the data gained from the States Parties' self-assessment reports facilitates the identification of significant trends in respect to: (a) regions of the World⁴; and (b) the UNCAC Articles under review.

² If a Member State would like to submit a technical assistance example in line with the UNCAC to the Secretariat, please email: Ms. Annika Wythes, annika.wythes@unodc.org.

³ The UNCAC Articles in the self-assessment checklist include: 5 (preventive anti-corruption policies and practices); 6 (preventive anti-corruption body or bodies); 9 (public procurement and management of public finances); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 23 (laundering of proceeds of crime); 25 (obstruction of justice); 44 (extradition); 46 (mutual legal assistance); 52 (prevention and detection of transfers of proceeds of crime); 53 (measures for direct recovery of property); 54 (mechanisms for recovery of property through international cooperation in confiscation); 55 (international cooperation for purposes of confiscation); and 57 (return and disposal of assets).

⁴ The regions have been divided into: Group of African States; Group of Asian and Pacific States; Group of Eastern European States; Group of Latin American and Caribbean States; and

a. Not only did the demand for technical assistance vary between the regions of the World, but also with reference to their priorities. By way of example, technical assistance requests relating to UNCAC Chapter II (preventive measures) were particularly indicative of regional trends. A third of the technical assistance requests received from one geographical group were aimed at the development of an action plan for implementation, while this accounted for less than 13 percent of the technical assistance needs in the four other groups. Similar trends also exist for other types of technical assistance; in particular, this reflects upon the various stages of the UNCAC implementation process in different regions, as each type of technical assistance is characteristic of a given step that will be discussed below (in section V).

b. The analysis of the technical assistance needs pertaining to the UNCAC Articles under review reveals that the submitting States Parties' requests relate to the three specific areas covered by the Convention, namely the priority areas: prevention; criminalization; and asset recovery. The absence of requests relating to the other areas may be indicative of various on-going initiatives. For example, no requests were received for UNCAC Article 46 (mutual legal assistance), which may, in part, be due to the increased awareness of and wide utilization of the Mutual Legal Assistance Request Writer Tool provided by UNODC.⁵ This Tool was developed to assist practitioners in drafting effective requests, receive more useful responses and streamline the process.

11. In regards to the priority areas of technical assistance, it should also be noted that the type of assistance requested may vary significantly depending on the UNCAC Chapter considered. For example, the requests for legal advice were a substantive part of the technical assistance needs identified under UNCAC Chapter V, rather than under UNCAC Chapters II and III. Even though few global trends can be identified and the variations between the UNCAC Articles should be appraised on a regional scale, the example above validates the effectiveness of the self-assessment checklist in evaluating the different technical assistance needs of the reviewed UNCAC Articles.

12. In addition to the technical assistance *needed*, the self-assessment checklist also addresses the technical assistance effectively *provided*. According to the self-assessment reports, UNCAC Chapter II (preventive measures) presents the highest technical assistance response rate, whereby 63 percent of the technical assistance requested has either been totally or partially provided. Technical assistance for UNCAC Chapters III (criminalization and law enforcement) and V (asset recovery), 26 percent and 17 percent, respectively, has either been totally or partially provided.

III. The Role of Donors in Technical Assistance

13. The UNCAC, as the first legally binding, global anti-corruption instrument, is an important platform for donors to adopt when addressing the supply side of technical assistance. The benefits of donors using the framework of the UNCAC in their technical assistance programmes will be illustrated in the practical country-level experiences below. Other advantages include: use of the Convention to set standards in donor countries; use of the Convention to guide donor agencies' own work practices; and use of the Convention to guide development assistance for anti-corruption work. The review of implementation mechanism that is expected to be established by the Conference of the States Parties at its third session will influence the means by which States Parties assess their efforts to implement the

Group of Western European and Other States.

⁵ UNODC, *Mutual Legal Assistance Request Writer Tool*, <http://www.unodc.org/mla/index.html>.

Convention and their needs for such implementation. Additionally, it is to be noted that the UNCAC offers the opportunity for a consolidated reporting and review of progress, which may have the important additional benefit of eliminating multiple reporting to different donors, and will provide for donors and recipients alike to be responsive to the same review mechanism.⁶

14. As indicated above, donor agencies can make use of the framework provided by the UNCAC when reviewing progress in their technical assistance programmes. In particular, Articles 60 and 62 of the UNCAC, under Chapter VI on technical assistance and information exchange, call upon States Parties to implement the Convention through economic and technical assistance. There are a wide range of issues covered in Chapter VI, including: building capacity in the development and planning of strategic anti-corruption policies; training competent authorities in the preparation of requests of mutual legal assistance; activities relating to preventing and combating the transfer of illicit assets; and training in national and international regulations. Furthermore, Article 60, paragraph 2 stipulates that “States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat corruption”. According to Article 62(1), “States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development”, and pursuant to paragraph 2, to make “concrete efforts” in this regard.

15. The development community is emphasizing the importance of the Paris Declaration on Aid Effectiveness. This is an international agreement that was endorsed on 2 March 2005 by over one hundred Ministers, Heads of Agencies and other Senior Officials from developed and developing countries. It requires countries and organizations to adhere and commit themselves to enhancing aid effectiveness. This is guided by five principles: (a) ownership, whereby countries are to set their own strategies for poverty reduction, improve their institutions and tackle corruption; (b) alignment, meaning that donor countries are to align themselves behind the objectives of the Paris Declaration and use local systems; (c) harmonization, requiring donor countries to coordinate, simplify procedures and share information to avoid duplication; (d) results, whereby partnership countries (i.e. a country requiring assistance and a donor) shift focus to developing results and to results being measured; and (e) mutual accountability, requiring donors and partners to be held accountable for development results.⁷ Additionally, reference is also often made to the guidelines developed by the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), in 2007, titled ‘Policy Paper and Principles on Anti-Corruption: Setting an Agenda for Collective Action’⁸.

⁶ For more information, see: U4 Anti-Corruption Resource Centre, *Query: Implementing UNCAC*, <http://www.u4.no/pdf/?file=/helpdesk/helpdesk/queries/query71.pdf>; U4 Anti-Corruption Resource Centre, *Query : The UN Convention against Corruption and the Donor Community*, <http://www.u4.no/helpdesk/helpdesk/queries/query41.cfm>.

⁷ OECD, *The Paris Declaration and AAA*, http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1,00.html.

⁸ Full text available under: <http://www.oecd.org/dataoecd/2/42/39618679.pdf>; also, see: OECD, *Harmonising Donor Practices for Effective Aid Delivery*, <http://www.oecd.org/dataoecd/0/48/20896122.pdf>; OECD, *Joint Responses: Synthesis Report and Draft Recommendations on Donor Responses* (Room Document 2), DAC Network on Governance, Paris, 1 April 2009; L. Green, G. Larbi & M. Hubbard, *A review of in-country donor coordination in Africa against corruption*, University of Birmingham, commissioned by DFID, 2005.

16. In particular, the Paris Declaration has been applied, *inter alia*, by the Department for International Development of the United Kingdom (DFID) and the German Technical Cooperation Agency (GTZ). Commissioned by the Federal German Ministry for Economic Cooperation and Development (BMZ), GTZ intends to respond to short- and longer-term needs of partner countries and contribute to implementing UNCAC Chapter VI in the context of bilateral and multilateral development cooperation. The aim of the German UNCAC Project is to support the capacity of developing countries and countries with economies in transition to prevent and combat corruption, and meet their needs for implementing the UNCAC. The ownership of the Project belongs to the partner countries either *ad hoc* or with a longer-term focus on strategically important measures, which may contribute to governance reform. As it is the responsibility of governments to implement the UNCAC, it is for governments to identify their gaps and analyze their own national situations. GTZ therefore developed a tool called UNCAC Gap Analysis and Compliance Review, which is to be ideally conducted by national stakeholders, even though support by international experts may be required in cases of lack of capacity.⁹ Examples of UNCAC Compliance and Gap Analyses will be provided in the next section.

17. It is also to be noted that anti-corruption initiatives are becoming more increasingly embedded, either implicitly or explicitly, in development programmes. In order for this to become common practice, a recommended initial step might be for donors to consider mapping the relevance of existing aid-funded programmes for UNCAC implementation. By profiling the interface of current activities with the Convention, donors may strengthen the position of all reform advocates – not just themselves – in discussions vis-à-vis the State, other donors and relevant stakeholders. Such a mapping would also provide an invaluable contribution to the coordination of efforts and avoid duplication.¹⁰

Examples of Donor Coordination in Tanzania, Uganda and Mozambique

18. The Tanzanian Government set out its ‘National Framework for Good Governance’¹¹, which consists of five pillars, *inter alia*, its national Anti-Corruption Strategy II. Donors are currently supporting the implementation of this framework, and in cooperation with the Government, a ‘division of labor’ was agreed upon, whereby different donors are supporting different pillars so as to avoid duplication. Additionally, the donors in Tanzania have organized a government working group, and within this group, an anti-corruption network has been established so as to benefit donor coordination in this area. This network is preparing a holistic ‘Monitoring and Evaluation Framework for Corruption’ for October 2009.

19. In Uganda, in response to its emerging accountability sector, donors are currently in the process of amalgamating the framework of the financial management reform with the anti-corruption working groups. This is to form a single accountability working group that is to ensure that donor support is aligned with the Government’s structures and initiatives, as well as to allow for a more coherent dialogue.¹²

⁹ GTZ, *Making Technical Assistance Work: The German UNCAC Project*, <http://www.gtz.de/de/dokumente/gtz-en-factsheet-uncac-project-2007.pdf>.

¹⁰ Hussmann, K. & Peñailillo M., *How can Technical Assistance support the Implementation of UNCAC?*, U4 Anti-Corruption Resource Centre, May 2007.

¹¹ For general information, see: UNDP, *Tanzania – Governance and Anti-Corruption*, http://www.tz.undp.org/dg_proj_dg_intro.html.

¹² For general information, see: Parliament of the Republic of Uganda, *Parliamentary Donor Co-ordination Office*,

20. A Memorandum of Understanding was signed in Mozambique on 18 March 2009, providing for in-country donor coordination.¹³ In furtherance of the previous Memorandum of Understanding that operated from 2004 until 2009, this agreement was signed by the Government of Mozambique and nineteen development partners. It institutionalizes the dialogue between the Government of Mozambique and the Programme Aid Partners (PAPs), in support of the Mozambican Strategy for National Development and Poverty Reduction (PARPA II), including anti-corruption measures. The new Memorandum of Understanding reaffirms the partners' commitment to mutual accountability between the signatories (Article 13) and to joint action (Article 20).¹⁴ Furthermore, the PAPs have committed themselves to increasing the predictability of the flow of donor funds, *inter alia*, through multi-year agreements on budget support (Article 25), and therefore contributing to the sustainability of anti-corruption efforts.

IV. Efforts to Enhance Coordination in Technical Assistance Between Various Stakeholders

21. Not only is the participation of the donor community important, but also the inter-institutional coordination of Member States, regional and international organizations, and cooperation networks are indispensable.¹⁵ Serious weaknesses in the area of coordination are deemed to exist in various countries. Some weaknesses stem from the design of the coordination approach itself, while others are due to a lack of human and financial resources. These shortcomings need to be considered, and creative ways need to be developed in order to support more progressive coordination mechanisms. These will inevitably vary widely from country to country, but the fundamental principle of providing technical assistance in a coherent, consistent and effective manner remains as strong as ever.

22. As indicated above, pursuant to Article 62(2), "States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations: (a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption; (b) To enhance financial and material assistance to support the efforts of developing countries to prevent and fight corruption effectively and to help them implement this Convention successfully". Practice has shown that some donors have financially supported various organizations and networks, as financial cooperation is sometimes the preferred means of engagement, rather than by directly delivering technical assistance themselves. This has to do with the existence of various organizations, such as the U4 Anti-Corruption Resource Centre that already have the depth of knowledge and experience required to provide for technical assistance in the manner desired.

23. The U4 Anti-Corruption Resource Centre, operated by the Chr. Michelsen Institute (CMI), "assists donor practitioners in more effectively addressing

http://www.parliament.go.ug/index.php?option=com_content&task=view&id=30&Itemid=101; Aga Khan Development Network, *Countries – Akdn in Uganda*, http://www.akdn.org/uganda_partners.asp.

¹³ Full text available under: http://www.pap.org.mz/downloads/mde_marco_2009.pdf

¹⁴ For more information, see: <http://www.pap.org.mz/>

¹⁵ Other stakeholders may, *inter alia*, include civil society and non-governmental organizations, and members from the private sector and even industry specific areas (i.e. health, education).

corruption challenges through their development support”¹⁶. The U4 serves eight development agencies: DFID (UK), GTZ and BMZ (Germany), the Netherlands Ministry of Foreign Affairs, the Norwegian Agency for Development Cooperation (NORAD), the Swedish International Development and Cooperation Agency (SIDA), Belgian Technical Cooperation (BTC), the Australian Agency for International Development (AusAID) and the Canadian International Development Agency (CIDA/ ACIDI). The Centre provides a platform for these donors to, *inter alia*, engage in joint programming, share information, resources and training, develop joint strategies and common procedures, and take common action. This joint diagnostics between donors, via an organization or network, is a good starting point to ensure the channeling of divergent interests and strengths into effective coordination structures. One such example is the In-Country Course that was held in Zambia on its ‘National Anti-Corruption Policy and UNCAC’. This was hosted by the U4 Anti-Corruption Resource Centre and included the participation of nearly all the relevant donors in Zambia. The idea is to shift away from the ‘band-aid approach’ to providing for more medium- and long-term commitments on behalf of donors, regional and international organizations and other cooperation networks, some of which will be highlighted below.

Examples of Regional Initiatives

24. The Asian Development Bank (ADB)/ Organization for Economic Cooperation and Development (OECD) Anti-Corruption Initiative sets out the goals and standards for sustainable safeguards against corruption in the economic, political and social spheres of countries in Asia and the Pacific.¹⁷ Similar joint initiatives¹⁸ contribute to fostering the regional cooperation against corruption in Africa, Eastern Europe, Central Asia, and Latin America and the Caribbean.

25. In South Eastern Europe, the Regional Anti-Corruption Initiative fosters regional cooperation and coordinates its nine Member States’ efforts against corruption.¹⁹ While the Initiative was initially launched within the framework of the ‘Stability Pact for South Eastern Europe’, its regional ownership has been promoted in the last few years through concrete steps, such as the Secretariat’s relocation to Sarajevo. Given its strong institutional structure and its close relations with key partners (including the Council of Europe, the European Commission, the Organization for Security and Co-operation in Europe, OECD, the United Nations Development Programme (UNDP) and UNODC), the Initiative fosters concerted action against corruption in the region.

Examples of Regional Instruments Against Corruption

26. Besides organizations solely dedicated to fighting corruption, most regional organizations have established special organs with a view to monitoring the compliance with regional legal instruments against corruption and assisting their Member States to improve their capacity in this respect. For example, the Group of States against Corruption (GRECO), established by the Council of Europe, provides for a mutual evaluation procedure and subsequent recommendations in order to strengthen Member States’ capacity against corruption.

¹⁶ U4 Anti- Corruption Resource Centre, *About U4*, <http://www.u4.no/about/main.cfm>. Their homepage is: <http://www.u4.no/>.

¹⁷ ADB/OECD, *Supporting the fight against Corruption in Asia and the Pacific: The ABD/OECD Anti-Corruption Initiative*, http://www.oecd.org/pages/0,2966,en_34982156_34982385_1_1_1_1_1,00.html.

¹⁸ For OECD regional initiatives, see: http://www.oecd.org/department/0,3355,en_2649_34857_1_1_1_1_1,00.html

¹⁹ For more information, see: <http://www.rai-see.org/>.

27. The Inter-American Convention against Corruption is supported by an inter-governmental body established within the framework of the Organization of American States to follow-up the implementation of the Convention. This body, the MESICIC²⁰, supports States Parties in their implementation of the provisions of the Convention through a peer review evaluation²¹. MESICIC does not only help identify gaps in national legislation, but also provides for technical assistance to the States Parties through its Technical Secretariat. The Technical Secretariat has developed a set of legal cooperation tools to assist States Parties. It provides, *inter alia*, for legislative guidelines and samples of national legislation on a wide range of topics covered by the Convention. Moreover, the Technical Secretariat established a technical assistance programme to support States Parties in the creation of a national 'Plan of Action' to implement the recommendations formulated by the Committee of Experts during the peer review. Nine countries have already developed 'Plans of Action' with the help of the Technical Secretariat, while six countries are currently working on this.

The Partnership for Governance Reform in Indonesia

28. The Partnership for Governance Reform (PGR) in Indonesia is a cooperation agreement between the Indonesian Government, civil society, the private sector and donors, which aims to facilitate and support governance reform in Indonesia.²² It used to have stronger links to UNDP, as it formally began as a project under its auspices, the World Bank and ADB.

29. The PGR focuses on six priority sectors, *inter alia*, anti-corruption. The dialogue between international and local stakeholders, under the umbrella of the PGR, has been fruitful in providing for greater understanding of the local conditions and necessary support required for national actors. In its report, titled 'Indonesia: Utstein donor support to the Partnership for Governance Reform', the lessons learned included: applying a multi-stakeholder approach as this was deemed essential to accelerate the reform agenda; the importance of working with local stakeholders to maintain the initiatives at the local level; and promoting comprehensive reform strategies of 'capacity form within, pressure from without', by strengthening the capacity of State institutions and policy makers, and also improving the capacity of the public to control the policy-making process and policy implementation. Additionally, since the ratification of the UNCAC by Indonesia, the PGR has also supported the Compliance and Gap Analysis of Indonesia (in detail, under section V. a.).

Memorandum of Understanding between UNODC and UNDP

30. The Secretariat signed a Memorandum of Understanding (MOU), on 15 December 2008, with UNDP in order to successfully collaborate in joint efforts at the global and regional levels in support of the UNCAC. The aim is also to develop and share common goals with regard to the delivery of technical assistance in the areas of the rule of law, and the strengthening and reform of criminal justice systems, and to enhance the effectiveness of their development efforts in the areas of mutual concern.

²⁰ La Convención Interamericana contra la Corrupción y el Mecanismo de Seguimiento de su implementación (MESICIC).

²¹ For further information, see: <http://www.oas.org/juridico/english/FightCur.html>.

²² U4 Anti-Corruption Resource Centre, *Indonesia: Utstein donor support to the Partnership for Governance Reform*, http://www.u4.no/themes/coordination/donor_coordination_indonesia.cfm; also, see: <http://www.kemitraan.or.id/>

31. One joint project, in operationalizing the MOU, has been the one between UNODC and UNDP-POGAR (Programme on Governance in the Arab Region) is 'Supporting UNCAC Implementation in the Arab Countries'.²³ This joint effort, within the framework of the UNDP Arab Initiative on Governance for Development, is to ensure maximum cooperation in a strategic partnership for the benefit of the Arab Region. The three areas of common interest include: anti-corruption; judicial reform; and criminal justice reform. UNDP regards corruption as a 'governance deficit' that exacerbates poverty and prevents the realization of the Millennium Development Goals,²⁴ while UNODC is the guardian of the UNCAC. This project brings to bear the relevant expertise and experience of UNDP and UNODC.

V. Practical Country Level Experiences in Implementing the Three-Step Approach

32. It has been widely acknowledged that isolated and piecemeal anti-corruption activities bear little fruit. This is why it is particularly important to use the UNCAC "as a vehicle for promoting public integrity, transparency and accountability as key ingredients for good governance and hence sustainable development"²⁵. The means of successfully providing technical assistance to States Parties in order to support their efforts of complying with the UNCAC have been referred to as a three-step process.

33. The first step is an analysis of requirements. This involves often a systematic assessment of anti-corruption laws, regulations and measures in relation to the UNCAC Articles, and their institutional functionality. The UNCAC self-assessment checklist created by the Secretariat provides a broad and country ownership-based, consultative tool to review what is in place and assist a country to determine if it is in full compliance with the UNCAC Articles (see above: section II). The second step involves the identification of priorities for adapting laws and administrative procedures, and then putting them into effect. This involves a specific capacity-building component to ensure the compatibility of skills and mechanisms to that end. The final step is to address the technical assistance needs identified by the given State Party with the necessary technical assistance. The examples of country level experiences outlined below are divided into these three steps, so as to highlight the current progress that is being made in the area of technical assistance in line with the UNCAC.

a. The First Step: Self- Assessment Process

34. With regard to the first step, the practical country level experiences that have been gathered invariably follow a similar pattern in assessing compliance with the UNCAC. In general, each of the countries assessed either their compliance Article by Article of the whole of the UNCAC, of the mandatory provisions only, or of the 15 Articles in the self-assessment checklist.

35. The UNCAC self-assessment checklist is a computer-based survey tool that was developed by the Secretariat, pursuant to resolution 1/2. Following guidance received from States Parties and Signatories, the self-assessment checklist elicits

²³ See: UNDP, *POGAR*, <http://www.pogar.org/index.aspx>.

²⁴ See: UNDP, *Corruption and Development*, http://www.undp.org/governance/docs/Corruption_and_Development_Primer_2008.pdf; also, see: UNDP, *Anti-Corruption Practice Note*, February 2004, http://www.undp.org/governance/docs/AC_PN_English.pdf.

²⁵ Hussmann & Peñailillo, *op.cit.*, p. 5.

information on compliance with and technical assistance needed to implement the 15 selected UNCAC Articles. To date, 77 States Parties and 6 Signatories to the Convention have submitted self-assessment reports, thereby setting the response rate at 57 per cent. This has been a powerful tool that has been used by numerous Member States in furtherance of their self-assessment process, and its use is to be encouraged by other Member States.

36. Several Member States, including donor countries, have held that in order to develop a compliance review process, a national mechanism for initiating the process needs to be established. To ensure that there is a follow-up mechanism in place, all relevant stakeholders should be included, which links in with the ideas discussed under section IV. Stakeholders could partake in either round tables or a steering committee, whereby they play a role in not only serving, but also where possible guiding, the work of a national expert team charged with implementing the compliance review process. The primary function of the expert team is to gather relevant information and to analyze the relevant legislation and how it is applied in practice through dialogue with the selected stakeholders. The result of this can be detailed in a matrix that is in line with the UNCAC Articles.²⁶

37. Several States Parties have expressed the need for assistance in assessing their national laws, rules and regulations are in line with the UNCAC. For this reason, various initiatives have an important role to play in supporting States Parties in the first step. By way of example, with the support of the Arab Initiative on Governance for Development discussed above, the Arab Governmental Expert Group (AGEG) on UNCAC Self-Assessment was established in December 2007. This Group comprises of government experts from 17 Arab countries who have officially been nominated by their countries to improve the capacity of Arab countries on assessing the implementation of the UNCAC, “with the aim of supporting policy makers and reform efforts through identifying implementation gaps and technical assistance needs and priorities”²⁷.

38. Apart from the Member States who have already completed the self-assessment checklist (see above: in particular, section II), it would be useful if donors supported National Gap Analyses in order to overcome the lack of knowledge in understanding where national legislation is not in compliance with the UNCAC and where gaps currently exist. This is not only to determine, *prima facie*, whether legal provisions exist at the national level and comply with the UNCAC, but also to take it a step further in assessing to what extent these provisions are applied in practice. Examples of where countries have engaged in the self-assessment process are provided below.

Compliance and Gap Analyses

Bangladesh

39. In 2007, an Inter-Ministerial Committee, headed by the Secretary of the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA), conducted the Compliance and Gap Analysis for Bangladesh.²⁸ This was carried out in

²⁶ GTZ, *UNCAC Compliance Review – Why and How?*, <http://www.gtz.de/de/dokumente/en-gtz-uncac-compliance-review-why-and-how-2007.pdf>.

²⁷ UNDP in partnership with UNODC, *Working Session for the Arab Governmental Expert Group (AGEG) on UNCAC Self-Assessment*, 24 June 2009, <http://www.arabgov-initiative.org/publications/GfDII/corruption/AGEG3/Background-EN.pdf>.

²⁸ The Government of the People’s Republic of Bangladesh, *UNCAC – A Bangladesh Compliance & Gap Analysis*, http://www.baselgovernance.org/fileadmin/docs/pdfs/Publications/GOB_UNCAC_Part1.pdf.

partnership with experts from the Institute of Governance Studies at the University of Bangladesh, and financial and technical support was received by GTZ and expert advice from the Basel Institute on Governance. The process included completing the self-assessment checklist, an orientation and methodology workshop was held, and desk-based research was conducted, as well group discussions and interviews were carried out with technical specialists in government ministries and departments. The Analysis addressed the following main areas: prevention; criminalization; law enforcement; international cooperation; and asset recovery. The thematic approach – instead of Article by Article – was agreed on in a stakeholder orientation workshop, and was placed into a matrix format. After publication of the Analysis, a ‘Needs Assessment Workshop’ was held in May 2008 that was attended by members from MoLJPA, the Anti-Corruption Commission, Ministry of Home Affairs, Cabinet Division, Bangladesh Bank, Office of the Attorney General, Ministry of Foreign Affairs, Foreign Aided Projects Audit Directorate and civil society to take Bangladesh into the second step.

Cameroon

40. In Cameroon, a ‘Study on the Operationalization of the UNCAC’²⁹ was prepared by two external expert consultants for UNDP. The aim was to conduct a critical review of anti-corruption laws as a contribution to the ongoing implementation of the ‘Comparative Guide on UNCAC for Legislators’.

41. The focus was on the institutional mechanism currently in existence in Cameroon. Individual anti-corruption institutions were singled out as those who should be responsible for the various binding provisions of the UNCAC. In concluding, the experts recommended establishing a new institution, the High Authority of Ethics, Good Governance and Combating Corruption to replace the National Anti-Corruption Commission, and the manner in which it should be structured. It was held that “the analysis is suitable as a conceptual approach for possible institutional reform”; however, introducing a new institution was deemed problematic, as the proposal was held not to take sufficient account of existing national institutional capacity. The overall sentiment appeared to indicate that local stakeholders should have played a more active role in the Study.

Colombia

42. The Colombian ‘Compliance Review Study’³⁰, was prepared by a national legal expert, with the financial support of GTZ. The expert was tasked with comparing domestic legislation with the UNCAC Articles relating to criminalization, and reference was also made to decisions of the Colombian Constitutional Court and government directives on implementing the Inter-American Convention against Corruption. The review considered the UNCAC Articles one by one, and determined whether or not Colombia was in compliance. Where it was not, concrete recommendations provided for how compliance might be achieved. The approach of comparing the government directives with the binding UNCAC provisions helped to pinpoint which measures are lacking in the

²⁹ GTZ, *The United Nations Convention against Corruption: A Comparison of Compliance Review: Indonesia, Colombia, Cameroon, Germany*, http://www.igac.net/pdf/publications_gtz_compliance.pdf.

³⁰ This was titled, *Convencion de las Naciones Unidas contra la Corrupcion y Derecho Interno Colombiano*, see: <http://www.u4.no/pdf/?file=/themes/conventions/docs/UNCAC-Compliance-Review-Colombia-SUMMARY.pdf> (in Spanish only).

fight against corruption and which interfaces can be identified as ways of implementing the UNCAC.

Indonesia

43. In 2006, the Indonesian Anti-Corruption Authority (KPK) in partnership with the GTZ and PGR, developed a matrix, as discussed above, in order to compare Indonesian legislation with the UNCAC Articles and thereby identify the area of compliance and the gaps.³¹ In summary, the findings addressed three main areas: prevention; law enforcement; and international cooperation.

44. The Indonesian team responsible for carrying out the Analysis consisted of the chief negotiator to the UNCAC, KPK personnel, independent jurists, representatives of the Ministry of Justice, and members of civil society organizations. Support to the Indonesian team was provided by the Basel Institute on Governance. The team gathered and analyzed the relevant legislation, and conducted interviews with relevant stakeholders, including: the Ministry of Administrative Reform; Ministry of Justice and Human Rights; Indonesian Chamber of Commerce and Industry; Indonesian Corruption Watch; Indonesian Police Service; PGR; and ADB. Additionally, a two day seminar was held with 31 civil society organizations, watchdogs and journalists from all over Indonesia to explain the importance and implications of the UNCAC.

45. The Indonesian matrix on their compliance gaps consists of a simple analysis scheme, as well as a guideline for practical implementation. The first column contains the UNCAC Articles in chronological order, and the second column contains the Articles' provisions. In the third column, current relevant legislation is listed. The fourth column compares the UNCAC Articles with the current relevant legislation and highlights the areas of compliance and gaps, while the fifth column considers aspects that are not strictly of a legal comparative nature, but for example, refer to existing practices.

Kenya

46. In 2007, the Compliance and Gap Analysis of Kenya officially commenced. The initial draft of the Analysis was based on Kenya's UNCAC self-assessment checklist, and conducted by the Kenyan Anti-Corruption Commission. This was further developed in collaboration with the Ministry of Justice and Constitutional Affairs, Ministry of Foreign Affairs, other Governmental Departments, local consultants and moderators from civil society, and the private sector. Financial and technical support was also received from GTZ and the Basel Institute of Governance. The Analysis addressed most of the areas of the UNCAC: prevention; criminalization; law enforcement; international cooperation; asset recovery; and technical assistance.

47. The matrix used was based on the Indonesian and Bangladeshi models outlined above; however, in addition, another column was added to analyze the measures already implemented in Kenya, which were deemed to be in compliance with the Convention, but were not functioning either at all or as required in order to fulfill the purpose for which they were created. This new column was titled

³¹ GTZ, *Compliance Review (Gap Analysis)*, <http://www.gtz.de/de/dokumente/en-gtz-uncac-compliance-review-indonesia-2007.pdf>; GTZ, *The United Nations Convention against Corruption: A Comparison of Compliance Review: Indonesia, Colombia, Cameroon, Germany*, http://www.igac.net/pdf/publications_gtz_compliance.pdf.

‘Enforcement and Implementation Gaps’. The Analysis is yet to be made public, but once it has been finalized, Kenya will be ready to commence the second step.

b. The Second Step: Determination of Needs and Priorities

48. Based on the conclusions drawn from the first step, States Parties should be in a position to determine their own needs and priorities. The needs and priorities identified by States Parties will require a gradual approach that “needs to pay particular attention to focusing not only on legal reform but also on achieving sustainable change in practice. The latter is far more challenging than the former and will require sustained levels of cooperation and technical assistance for institutional reform and behavioural change”³². The determination can also include an assessment of particular areas and sectors that are vulnerable to corruption that might provide for the basis of specific corruption risk management plans. It is also crucial to reflect upon the local values, beliefs, traditions, principles and local accountability mechanisms in order to understand the type of technical assistance that may meet the local expectations.

49. The outcome of States Parties’ own determination, such as through the UNCAC self-assessment checklist, and compliance and gap analyses, should translate gradually into a strategic action plan for concretely implementing the UNCAC directly, or by aligning it with a country’s national strategy. It is to be taken into account that States Parties’ capacities, as well as financial and technical resources may be limited, and technical assistance should also be geared towards assisting countries in this second step.

Action Plans Developed from the UNCAC Pilot Review Programme

50. The UNCAC Pilot Review Programme has provided an opportunity for the 29 participating States Parties³³ to not only complete the first step, but also take them into the second step of being able to determine their own needs and priorities.

51. The methodology used under the Pilot Review Programme was to conduct a limited review of the implementation of UNCAC³⁴ in the participating countries using a combined self-assessment / group / expert review method as a possible mechanism for reviewing the implementation of the Convention. Throughout the review process, members of the group engaged with the individual countries under review in an active dialogue, discussing preliminary findings and requesting additional information. Where agreed, country visits were conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits were composed of experts from the two prior reviewing countries and the Secretariat.³⁵

³² Hussmann & Peñailillo, *op.cit.*, p. 14.

³³ The 29 participating States Parties include: Argentina; Austria; Bolivia; Burkina Faso; Colombia; Dominican Republic; Fiji; Finland; France; Greece; Indonesia; Jordan; Mexico; Mongolia; the Netherlands; Norway; Pakistan; Panama; Peru; the Philippines; Poland; Romania; Rwanda; Serbia; Sweden; the United Kingdom of Great Britain and Northern Ireland; the United Republic of Tanzania; and the United States of America.

³⁴ The scope of review under the Pilot Review Programme includes Articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and detection of transfers of proceeds of crime); and 53 (measures for direct recovery of property).

³⁵ For more information, see: http://www.unodc.org/documents/treaties/UNCAC/controls-FLASH/RTD_PUBLIC_Current.html.

52. After the successful completion of the UNCAC Pilot Review Programme, the 29 participating States Parties will be in the second step. Some States Parties, such as Peru and Indonesia, have already developed action plans based on the identification of their needs and priorities for implementing the UNCAC.³⁶

Identification of Existing Gaps between the UNCAC and Armenia's Institutional Framework on Anti-Corruption

53. In 2008, the report on 'Identification of Existing Gaps between the UNCAC and Armenia's Institutional Framework on Anti-Corruption' was prepared by UNDP Armenia with local experts and technical support from UNODC. This Report was prepared using existing legislative provisions, as well as surveys, studies, and reports produced by international organizations, *inter alia*, the World Bank, UNDP, DFID, OECD and GRECO. Individual meetings were held with representatives of the relevant government bodies, non-governmental organizations, and industry associations. The interviews were used as a means of obtaining clarifications, statistics and information materials.

54. In view of the need to improve implementation, this Report focuses on the analysis and evaluation of existing anti-corruption measures and tries to assist the Armenian Government in developing anti-corruption strategies and strengthening the institutional framework in the fight against corruption. The Report evaluates legal and institutional compliance with the UNCAC in terms of preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange; then, it identifies the existing gaps and makes appropriate recommendations. This information is presented in a matrix with three columns: UNCAC article; gaps; and recommendations. This Report was deemed to have assisted Armenia in developing its Anti-Corruption Strategy.

c. The Third Step: Matching Needs with Technical Assistance

55. In many areas, needs for assistance will not end with legislative assistance in bringing domestic laws into compliance with the UNCAC, but will identify needs for assistance to build upon States Parties' capacity to implement and enforce them effectively.

56. "[T]echnical assistance has so far privileged training, policy advice and technical inputs into the design of specific anti-corruption measures, but support for the implementation phase, including the indispensable capacity development of public agencies, has been relatively minor." For this reason, it is important to draw upon the second step to launch into the third. The capacity to be considered should "go beyond financial and technical support for anti-corruption bodies. More importance needs to be given to the strengthening the integrity and institutional capacities of other key institutions in preventing, controlling and combating corruption in line with the national priority reform agenda. For example, if public financial management and justice sector reform are central policy pillars of a country, the institutional development approach for the Ministry of Finance, Supreme Audit Organisations, Ministry of Justice, Attorney General's Office and court system need to have a strong integrity, transparency and

³⁶ Some countries have made their Pilot Review Programme reports publicly available; for more information, see: <http://www.unodc.org/unodc/en/treaties/CAC/working-group1.html>.

accountability component with specific focus on eliminating opportunities for corruption”³⁷.

57. In order for the third step to be successfully implemented, support measures could include long-term hands-on technical support to governmental institutions where desired, “link institutional development efforts more explicitly with internal integrity and accountability initiatives, dedicate more resources to the implementation and monitoring of codes of conduct and integrity standards”³⁸. Capacity-building needs to take place among a broader range of relevant actors, which will vary from country to country, and often starts with the UNCAC needing to be known to a wider range of people. Awareness raising and education are particularly important when it comes to mainstreaming the UNCAC provisions into general development cooperation projects. No experience to date has been identified as supporting Member States in the third step of the technical assistance process, and this is an area to be developed.

VI. Issues for Further Consideration and Action

58. Based on the previous recommendations made by the Working Group, encouraging the promotion of country-based integrated and coordinated programming and delivery, it was proposed that a small number of pilot countries be chosen to determine how tools used to assess the implementation of the UNCAC can assist to identifying and coordinating technical assistance. These country studies are to be conducted before the third session of the Conference of States Parties.

59. At the moment, there is no direct correlation between the technical assistance needs that have been identified through the UNCAC self-assessment checklist or other compliance and gap analyses (section II), the means required to fill those gaps, such as through donor and coordination efforts (sections III and IV) and the technical assistance currently being provided. For this reason, it is important to engage in the three-step approach outlined in this background paper (section V). To date, the focus has been on the first step, less so on the second step and no practical examples have been provided, to date, with reference to the third step. Each step draws upon the next in order for technical assistance to be provided in a coherent, consistent and effective manner.

60. With the view to fostering programmes and projects in the area of technical assistance, it might be recommended to assist States Parties with technical assistance needs in adopting the three-step approach. The investment for the first step is modest and returns are significant, because of the strategic approach and ownership of the process, which is a prerequisite for sustainability. After the first step has been successfully completed, assistance to the same States Parties in the second step, namely to develop concrete anti-corruption action plans or to align this with their country’s national strategy should be made available upon request. This requires the development of a strategic and comprehensive approach, which requires drawing upon not only donors (as discussed in section III), but also use the coordination networks in existence where possible (as highlighted in section IV), or create a new network that brings together both national and international stakeholders for the State Party to determine its own needs and priorities. The concept of implementing technical assistance is a process that needs to move gradually away from the traditional, *ad hoc*, limited assistance programmes to more medium- and long-term comprehensive engagement. The Secretariat and

³⁷ Hussmann & Peñailillo, *op.cit.*, p. 16.

³⁸ *Ibid.*

experts from other specialized organizations could play a supportive role in this process, and also to assist in addressing short-term priority needs in the context of medium- and longer-term engagement. Support in the second step will ultimately lead to the development of capacity building, and to the third step of matching the identified needs with technical assistance, which to date appears untapped.

61. With reference to Article 62(2)(c) of the UNCAC, in order to assist States Parties with their technical assistance needs for the review of implementation of the Convention, “States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism”. They should also ensure that existing resourcing that is being provided directly at the country-level is framed around the UNCAC.

62. Given the interrelatedness of the three priority areas: technical assistance; the review of implementation; and asset recovery, it is recommended that all three areas remain a point of focus for Member States, whereby the concept of the ‘pooling’ of resources mentioned at the last meeting of the Working Group is to be developed. Coordination on behalf of all Member States is necessary to make sure that none of the different priority areas fall through the cracks. Of equal importance is the development of the country-level and regional mechanisms by which Member States can share implementation experiences and knowledge (including through South-South cooperation).