

## Annex

# **Procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto**

## **Preamble**

1. Pursuant to article 4, paragraph 1,<sup>3</sup> and article 32, paragraphs 3 and 4, of the United Nations Convention against Transnational Organized Crime, together with articles 2 and 37 of the Convention and common article 1 of each Protocol thereto, and recalling its resolution 8/2, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime establishes the following mechanism to review implementation of the Convention and the Protocols thereto (hereinafter referred to as “the Mechanism”).

## **I. Introduction**

2. The Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto embodies a review process for the Convention and the Protocols thereto that shall be guided by the principles and characteristics contained in section II below and be carried out in accordance with the provisions contained in section V. The Mechanism shall be facilitated by a secretariat as set out in section VI.

3. The procedures and rules are tailored to address the unique aspects of the United Nations Convention against Transnational Organized Crime and the Protocols thereto and are without prejudice to the procedures and rules of any other United Nations instrument.

## **II. Guiding principles and characteristics of the Mechanism**

4. The Mechanism shall:

- (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) Assist States parties in the effective implementation of the Convention and, where applicable, the Protocols thereto;
- (e) Take into account a balanced geographical approach;
- (f) Be non-adversarial and non-punitive and promote universal adherence to the Convention and its Protocols;
- (g) Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of

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<sup>3</sup> Which provides that States parties shall carry out their obligations under the United Nations Convention against Transnational Organized Crime in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such outcome;

(h) Identify, at the earliest possible stage, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and its Protocols, as applicable, and good practices adopted in efforts by States parties to implement the Convention and, where applicable, the Protocols thereto;

(i) Be of a technical nature and promote constructive collaboration, inter alia, on issues concerning international cooperation, prevention, protection of witnesses and assistance and protection for victims;

(j) Complement existing relevant international and regional review mechanisms so that the Conference may, as appropriate, cooperate with those mechanisms and avoid duplication of efforts;

(k) Be an intergovernmental process;

(l) Be conducted in conformity with article 4 of the Convention, not serve as an instrument for interfering in the domestic affairs of States parties and be conducted in a non-political and non-selective manner and respect the principle of equality and sovereignty of States parties;

(m) Promote the implementation of the Convention and its Protocols by States parties, as applicable, as well as cooperation among States parties;

(n) Provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening cooperation among States parties in preventing and fighting transnational organized crime;

(o) Take into account the levels of development of States parties, as well as the diversity of judicial, legal, political, economic and social systems and differences in legal traditions;

(p) Endeavour to adopt a progressive and comprehensive approach, given that the review of implementation of the Convention is an ongoing and gradual process.

### **III. Efficiency of the Mechanism**

5. The Mechanism shall be cost-effective, concise and user-friendly and make optimal and efficient use of existing information, tools, resources and technology so that it does not impose undue burdens upon States parties, their central authorities, other relevant authorities and experts involved in the review process.

### **IV. Relationship of the Mechanism with the Conference of the Parties**

6. The review of implementation of the Convention and the Protocols thereto and the Mechanism shall be under the authority of the Conference, in accordance with article 32 of the Convention.

7. Without prejudice to the guiding principles and characteristics of the Mechanism contained in section II, the Conference may conduct an evaluation of the organization, functioning, funding, and performance of the review process, so as to amend and improve the existing Mechanism at any time.

## **V. Review process**

### **A. Goals**

8. Consistent with the Convention, in particular article 32, the review process, *inter alia*, shall assist the Conference to:

(a) Promote the purposes of the Convention and the Protocols thereto, as set out in article 1 of the Convention and article 2 of each of the Protocols;

(b) Improve the capacity of States parties to prevent and combat transnational organized crime and to promote and review the implementation of the Convention and the Protocols thereto;

(c) Help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance upon their request;

(d) Gather information on national legislation, successes, good practices and challenges of States parties in implementing and using the Convention and the Protocols thereto, and to promote and facilitate the exchange of this information;

(e) Promote international cooperation as stipulated in the Convention and the Protocols thereto;

(f) Acquire the necessary knowledge of the measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so through information provided through the gathering process described in section V.C of the present procedures and rules.

### **B. Review process**

9. The Mechanism shall be applicable to all States parties to the Convention and to each of the Protocols they are parties to. It shall progressively address all the articles of the Convention and the Protocols thereto. It shall be structured on thematic clusters of articles based on their subject matter, as indicated in table 1 contained in the appendix. The review shall be a gradual process consisting of one preparatory phase (years 1 and 2) and four subsequent review phases (years 3–12).

10. For each group of States parties as set forth in paragraph 17, the advancement to the next review phase is conditional upon the completion of 70 per cent of the reviews foreseen at the beginning of the previous phase, unless the Conference decides otherwise.

11. For each group of States parties as set forth in paragraph 17, the implementation of the Convention and the Protocols thereto must be reviewed under the same thematic cluster at the same time.

12. The review process shall be composed of a general review that will be undertaken in the plenary of the Conference of the Parties, and of country reviews that will be conducted through desk reviews. The Conference and its working groups shall add the matter to their agendas as an item consistent with their areas of expertise and without prejudice to their respective existing mandates. Taking into consideration the progressive nature of the review set forth in paragraph 9, the content of the agendas and scheduling of the meetings of the working groups will be decided by the Conference or the extended Bureau in a timely manner. In order to ensure that the working groups may contribute to the Mechanism while also carrying out their respective existing mandates, each working group should dedicate no more

than one agenda item per session to matters pertaining to the functioning of the review process.

13. Country reviews will identify best practices, gaps and challenges in the implementation of the provisions under review, suggestions and, when necessary, technical assistance needs. In accordance with paragraph 43, discussions pertaining to country reviews will be undertaken in the relevant working groups.

14. The general review held in the plenary of the Conference of the Parties shall facilitate the exchange of experiences, lessons learned, best practices and challenges in implementing the Convention and Protocols and the identification of technical assistance needs, with a view to improving their effective implementation and promoting international cooperation. It will be facilitated by the general reports referred to in paragraph 19 of the present procedures and rules.

15. The preparatory phase (years 1 and 2) shall be devoted to the definition of organizational matters, including the preparation of the guidelines for conducting the country reviews and the blueprint for the list of observations and the summaries, and the finalization, in accordance with paragraph 19 of the present procedures and rules, of the self-assessment questionnaire for each of the instruments. This preparatory phase shall also be used to ensure the optimal and efficient use of existing information, tools, resources and technology as part of the review process. The four review phases shall be held from year 3 to year 12. For each group of States parties as set forth in paragraph 17, each phase shall last two years. The four review phases shall be conducted and concluded in line with the multi-year workplan contained in table 2 contained in the appendix.

16. The Conference may decide to make amendments to the multi-year workplan if doing so is deemed appropriate in the light of the efficient functioning of the Mechanism. The relevant working groups may recommend to the Conference adjustments to the multi-year workplan.

17. The selection of States parties participating in the country reviews shall be carried out by the drawing of lots at the beginning of the review process, staggered in three consecutive years. Each year, one third of the States parties to the Convention will be selected to be reviewed for all the instruments they are parties to, in accordance with paragraphs 28 and 29 of the present procedures and rules. If possible, the number of States parties from each regional group to be selected for review in a given year shall be proportionate to the size of that regional group.

18. Each State party shall appoint a focal point to coordinate its participation in the review, and make this information available on the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC). In the case that a State party has not appointed a focal point by the time of the drawing of the lots referred to in paragraph 28, all communications will be submitted to its permanent representative, who shall act as temporary focal point.

### **C. Information-gathering**

19. In order to review each thematic cluster of articles of the Convention and Protocols thereto, short, precise and focused self-assessment questionnaires for the review of implementation of each instrument shall be finalized during the preparatory phase. Provisions of the Convention that apply to the Protocols, *mutatis mutandis*, will be reviewed under the Convention only. In responding to the questionnaires, States parties are

invited to provide complete, up-to-date, accurate and timely information in one of the working languages of the Mechanism, in accordance with section VII. The responses to the questionnaires and the lists of observations indicated in paragraph 38, when available, shall be the basis for a general report of trends, patterns and best practices to be prepared — or updated as appropriate — by the Secretariat for consideration by the Conference at its regular sessions. The responses to the questionnaires shall be the basis for the country review, without prejudice to information or clarification requested by the reviewing States parties and provided by the State party under review.

20. Each State party under review shall provide the responses to the self-assessment questionnaire to the reviewing States parties through the secure module of SHERLOC established in line with paragraph 21. Upon request, the Secretariat shall facilitate the States parties uploading information, including by assisting them with e-training, instructions, advice and credentials.

21. The self-assessment questionnaire shall be available on SHERLOC. A new secure module shall be developed as a further component of SHERLOC to host the questionnaires and responses thereto, which shall ensure the full confidentiality of all data submitted by States parties. The module shall include a secure written communications platform for the ensuing dialogue between the State party under review and the reviewing States parties, and archive capabilities.

22. When responding to the self-assessment questionnaires, States parties may also refer to information provided in the context of other relevant review mechanisms of instruments to which they are parties. States parties shall bear in mind that any update since previous submissions of information under other review mechanisms are appropriately reflected in the responses. In particular, when reviewing the same legislation for obligations which are identical or similar to those under the United Nations Convention against Corruption, a State party under review may refer to responses and additional documentation that it has submitted under the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

23. The State party under review is encouraged to prepare its responses to the self-assessment questionnaire through broad consultations at the national level with all relevant stakeholders, including, where appropriate, the private sector, individuals and groups outside the public sector, non-governmental organizations and academia, taking into consideration the specificities of the Convention and the Protocols thereto.

24. The Secretariat shall be responsible for optimizing and maintaining SHERLOC to serve as the user-friendly database for collecting and disseminating information on the Mechanism.

#### **D. Conduct of the country review**

25. The country review shall consist of a single review for each State party of its implementation of the Convention and of each Protocol it is party to. It shall be conducted in phases, with each phase beginning with the completion by the State party under review of the relevant sections of the self-assessment questionnaire on its implementation of each instrument to which it is a party.

26. The responses to the self-assessment questionnaire and any additional information provided by the State party under review, including reference

to relevant legislation, shall be reviewed by two other States that are parties to the relevant instruments, with the active involvement of the State party under review. States parties under review are also encouraged to provide to SHERLOC any other reference materials that may contribute to a better understanding of their legal framework.

27. Each State party shall, for the purposes of the review, designate at least one governmental expert with expertise relevant to the instruments it is party to and make this information available on SHERLOC.

28. At the beginning of the review process, a joint intersessional meeting of the working groups without interpretation shall draw lots to select as reviewing States one State from the regional group of the State party under review and one State from another regional group. The reviewing States shall serve as such for the duration of the review process for each State party under review through four subsequent review phases. The method for the drawing of lots will be based on the following criteria:

- (a) States shall not undertake mutual reviews;
- (b) For each instrument, a State party under review shall not be reviewed by States which are not parties to the same instrument; in the case that a drawn reviewing State is not party to all the instruments to which the State under review is party, an additional drawing of lots shall be carried out so as to select an additional reviewing State only for those instruments;
- (c) The total number of reviewing States for all instruments shall not exceed four unless the State under review decides otherwise;
- (d) The State party under review and the reviewing States may request a maximum of four times each that the drawing of lots be repeated, including but not limited to, for the purpose of facilitating the selection of a mutual working language for the conduct of the country review or to facilitate the participation of at least one reviewing State from a similar legal system;
- (e) In exceptional circumstances, States parties may request a redraw;
- (f) If needed, the drawing of lots may be repeated at a subsequent intersessional meeting.

29. By the end of the review process, each State party must have undergone its own review and performed a minimum of one review and a maximum of three reviews. On a voluntary basis, States parties may participate as reviewing State party in more than three reviews.

30. If a reviewing State party is unable to carry out its duties as a reviewer, in accordance with the guiding principles of the Mechanism, the State party under review shall request a consultation with that reviewing State party and the Secretariat with a view to addressing the concern. In the case that the States parties fail to resolve the issue through the consultation, the State party under review may request a redrawing of lots at any time. The redrawing of lots shall be held in any working group meeting and in accordance with the provisions of paragraph 28.

31. The State party under review shall undertake consultations with the reviewing States parties, through their focal points, with the assistance of the Secretariat, on the establishment of time frames and the requirements of the country review, in accordance with the guidelines for conducting the country reviews, including the selection of the working language or languages, in accordance with section VII of the present procedures and rules.

32. Governmental experts from the reviewing States parties with expertise relating to the relevant instrument may divide tasks and issues among themselves, taking into account their respective fields of competence.

33. The Secretariat shall provide administrative support to facilitate the establishment of lines of communication among the governmental experts involved in the country review upon request, in order to ensure that they can make best use of the secure written communication platform developed under SHERLOC and referred to in paragraph 21. The Secretariat shall be kept abreast of all communications made through SHERLOC.

34. Within a reasonable time frame, to be mutually agreed by the parties involved, not exceeding six months, the State party under review shall provide the responses to the self-assessment questionnaires to the reviewing States parties through the secure module of SHERLOC.

35. Within a reasonable time frame, not exceeding six months, of the receipt of the responses to the self-assessment questionnaires from the State party under review, the reviewing States parties shall submit to the State party under review written feedback on the measures taken in the implementation of the Convention and the relevant Protocols, as well as on successes and challenges of such implementation. The feedback may also contain, where necessary, requests for clarification or additional information, or supplementary questions to which the State party under review is encouraged to respond. A constructive dialogue between the State party under review and the reviewing States parties shall be guided by the principles and characteristics set forth in section II as well as the provisions set forth in section III, and a record of that dialogue shall be archived in the designated confidential module in SHERLOC.

36. While SHERLOC represents the primary platform of communication, as described in sections V.C and V.D of the present procedures and rules, States parties participating in a review may use other available technological tools, such as virtual networks, conference calls and videoconferences, as part of their constructive dialogue. States parties are encouraged to take advantage of regularly scheduled meetings of the Conference of the Parties and its working groups to further the direct dialogue. Relevant information on such dialogues may be uploaded to the sections of SHERLOC dedicated to the ensuing dialogue between the State party under review and the reviewing States parties, in order to keep a record of the process.

37. The reviewing States parties, their governmental experts involved in the review and the Secretariat shall maintain the confidentiality of all information obtained in the course of, or used in, the country review. On a voluntary basis, parties under review may request the Secretariat to use information provided during their reviews to populate the public elements of SHERLOC.

## **E. Outcome of the country review**

38. At the final stage of each review phase for each State party, the reviewing States, in close cooperation and coordination with the State party under review, and with the assistance of the Secretariat, shall prepare a list of observations indicating any gaps and challenges in the implementation of the provisions under review, best practices, suggestions and any technical assistance needs identified to improve implementation of the Convention and its Protocols. Such lists shall follow the blueprint format referred to in paragraph 15, be precise and concise, and be based on the responses to the self-assessment questionnaire and ensuing dialogue. The list of observations shall be made available to the working groups as a conference room paper,

unless, in exceptional circumstances, the State party under review decides to keep some parts of the list confidential. At the end of each phase, a summary of the lists of observations, not exceeding 1,500 words and based on the same blueprint, shall be translated into the six official languages of the United Nations and be made available to the Conference and its working groups.

39. The list of observations, gaps, challenges, best practices, suggestions and, when necessary, technical assistance needs, and the summaries shall be finalized upon agreement between the reviewing States parties and the State party under review.

40. In order to improve and strengthen cooperation and learning among States parties, the responses to the self-assessment questionnaires submitted after the adoption of the Mechanism shall be made accessible to all States parties in the secure module of SHERLOC. The State under review may also decide to make available the ensuing dialogue mentioned in paragraph 21 and additional documentation pertaining to its review.

41. A State party may decide to make public the responses to its self-assessment questionnaire, ensuing dialogue and additional documentation, or part thereof, including through SHERLOC.

42. After the submission of the responses to the questionnaires, a State party under review may, on a voluntary basis, share its good practices and experiences with regard to the exercise of completing the questionnaires.

## **F. Follow-up procedures**

43. The working groups of the Conference shall draw upon the lists of observations mentioned in paragraph 38 in preparing their sessions, and take them into account when proposing generally applicable recommendations to the Conference.

44. The Working Group of Government Experts on Technical Assistance shall consider the technical assistance needs identified during the review process and make recommendations to the Conference of the Parties on how to assist States parties in their efforts to implement the Convention and the Protocols. As appropriate, States parties shall also provide information to the Working Group on whether technical assistance needs identified in relation to their review reports have been addressed.

45. As a follow-up to its review, a State party may request technical assistance based on the specific needs identified in the review process with a view to improving the capacity of the State party to effectively implement the Convention and the Protocols thereto. The Secretariat shall endeavour to seek voluntary contributions for these purposes, in accordance with the rules and procedures of the United Nations.

46. As a follow-up to its review, each State party is encouraged to share with the Conference and the relevant working groups information on progress achieved in connection with the lists mentioned in paragraph 38 and on any measures planned or undertaken. Additionally, each State party may wish to upload to SHERLOC information on progress achieved. At the end of the review, the Conference may consider further means to report on progress achieved.



## **VI. Secretariat**

47. The Secretariat of the Conference shall be the Secretariat of the Mechanism. The tasks performed by the Secretariat are those indicated in the present procedures and rules.

48. In addition to its tasks provided in paragraph 47, if necessary, the Secretariat may also, upon request and within existing resources of the Mechanism, provide support and assistance to States parties in the conduct of the Mechanism in accordance with the relevant rules and procedures of the United Nations. The tasks envisioned shall not produce an undue burden on the Secretariat or replace tasks that are meant to be carried out by States parties.

## **VII. Languages**

49. The working languages of the Mechanism shall be Arabic, Chinese, English, French, Russian and Spanish.

50. The country review process may be conducted in any one or two of the working languages of the Mechanism that may be decided upon by the State party under review and the reviewing States parties. In exceptional circumstances, the review process may be conducted in three working languages. The Secretariat shall be responsible for providing the required translation as necessary for the efficient functioning of the Mechanism. The States parties are encouraged to conduct the review in only one of the working languages of the Mechanism.

51. States parties may provide for assistance to other States parties that need translation into languages other than the six working languages of the Mechanism through monetary or in-kind contributions. Particular attention should be given to requests from least developed countries and developing countries.

## **VIII. Participation of signatories to the Convention or any of the Protocols in the Mechanism**

52. A State signatory to the Convention or any of the Protocols may participate in the Mechanism as a State under review on a voluntary basis. The costs associated with such participation shall be paid from available voluntary contributions.

## **IX. Signatories, non-signatories, entities, intergovernmental organizations and non-governmental organizations and the Mechanism**

53. In order to promote fruitful engagement with relevant stakeholders, including non-governmental organizations, and in accordance with article 32, paragraph 3 (c), of the Convention, the working groups shall have a constructive dialogue on the review process with relevant stakeholders, including non-governmental organizations, as follows:

(a) As a regular practice, constructive dialogues will be convened with relevant stakeholders following the conclusion of the sessions of the working groups and the adoption of the reports. The constructive dialogue shall be conducted by the chair of the working group, assisted by the Secretariat. A panel with representatives of relevant stakeholders, including non-governmental organizations, may be arranged with the assistance of the

United Nations Office on Drugs and Crime. The Office shall also endeavour to encourage broad participation and facilitate balanced geographical representation of the non-governmental organizations in these constructive dialogues;

(b) No specific country situation shall be mentioned during the constructive dialogues except by the country under review, which may voluntarily raise matters related solely to its own review;

(c) The constructive dialogue shall also be open to States parties and signatories, non-signatories, entities and intergovernmental organizations;

(d) Non-governmental organizations wishing to attend the constructive dialogue shall confirm their attendance no later than 15 days prior to the date

of the dialogue, at which time they will be allowed to provide comments in writing. A list of such applicants will be circulated to States parties no later than 10 days before the constructive dialogue. If there is any objection to the participation of a non-governmental organization, the matter will be referred to the Bureau of the Conference;

(e) Other relevant stakeholders, including representatives of the private sector and academia, may also apply to participate, provided that applications are submitted at least 15 days before the constructive dialogue, at which time they will be allowed to provide comments in writing. A list of such applicants will be circulated to States parties no later than 10 days prior to the constructive dialogue, and the requests should be approved provided that no State party objects;

(f) The chair of the working group may decide not to convene the constructive dialogue if insufficient applications are received by the deadlines set out in subparagraphs (d) and (e) above;

(g) The Secretariat will prepare a programme for the constructive dialogue and background papers to facilitate the engagement of participants;

(h) A written summary of the discussions will be prepared by the chair of the working group and be made available to the working group at its next session;

(i) Such constructive dialogues will allow for briefing participants on the development and outcomes of the review process, and for collecting inputs and suggestions from participants, including their contributions on ways to improve the implementation of the Convention and the Protocols thereto;

(j) Participants are encouraged to take advantage of the constructive dialogues to provide information on their relevant activities, including those activities related to meeting technical assistance needs.

## **X. Funding**

54. The requirements of the Mechanism and its Secretariat shall be funded, in its entirety, from the existing resources of the regular budget allocated to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, and where necessary, additional costs shall be funded from extrabudgetary resources, including voluntary contributions, without conditions that would impact the impartiality of the Mechanism, to be channelled through a dedicated account to be established by the Secretariat, in accordance with the rules and procedures of the United Nations.