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**Good practices and lessons learned from implementing the
UNCAC Pilot Review Programme**

Note prepared by the Secretariat*

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PILOT REVIEW PROGRAMME

Good practices and lessons learned from implementing the UNCAC Pilot Review Programme



A. INTRODUCTION

Background

1. In accordance with article 63 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex), the Conference of the States Parties to the United Nations Convention against Corruption was established to improve the capacity of, and cooperation between, States parties to achieve the objectives set forth in the Convention, and to promote and review its implementation. Pursuant to article 63, paragraph 5, of the Convention, the Conference is to 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 by them and through such supplemental review mechanisms as may be established by the Conference. The Convention thus established the principle of review of its implementation by the Conference, leaving decisions on the means of such review to the Conference.

2. At its first session, held in Amman, Jordan from 10 to 14 December 2006, the Conference took an important step in that direction by agreeing that it was necessary to establish an appropriate mechanism to assist it in reviewing the implementation of the Convention. In its resolution 1/1, the Conference established an open-ended, intergovernmental expert group to make recommendations to the Conference at its second session on appropriate mechanisms or bodies for carrying out the implementation review.

3. The Conference agreed on certain characteristics that the review mechanism should encompass. It should be transparent, efficient, non-intrusive, inclusive and impartial; it should not produce any form of ranking; it should provide opportunities to share good practices and challenges; and it should complement existing international and regional review mechanisms in order for the Conference to cooperate with them as appropriate and avoid duplication of effort.

4. At its first session, the Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and analysis of implementation efforts, and to report on those efforts to the Conference. During the session, several representatives expressed their Governments' readiness to support, on an interim basis, a review mechanism that combined the self-assessment component with a review process supported by the Secretariat. The United Nations Office on Drugs and Crime (UNODC) responded by developing a technical assistance project to offer adequate opportunities for testing possible means of reviewing the implementation of the Convention. The project entailed a limited review of the implementation of the Convention in countries 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. From the time of launching the programme, the following States participated: Argentina, Austria, Finland, France, Greece, Indonesia, Jordan, the Netherlands, Norway, Peru, Poland, Romania, Sweden, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania and the United States of America.

5. Each of these sixteen countries was reviewed by two other countries from the Pilot Review Group: one from their own regional group and one from another regional group. This was aimed at fostering closer regional dialogue and providing, where possible, benchmarks for review that could be situated in a comparable context. According to the terms of reference agreed upon by the Pilot Review Group at its meeting in July 2007, experts were to review the submitted checklist, prepare for dialogue by elaborating any questions or clarifications needed, review open source materials such as previously performed regional analyses, and engage in dialogue with designated focal points from the countries under review. In addition, conducting country visits was an option to supplement the experts' analysis where agreed upon by the country under review. Where requested, the experts would also prepare recommendations and/or action plans to assist the reviewed country in its implementation of the Convention. At the end of the process, there would be a report prepared by the experts for each country under review in close liaison with the focal points of those countries to ensure ownership and sustainability of the findings and recommendations. This report could be used by the country under review to serve as a tool for benchmarking future progress. The Secretariat was tasked with assisting the different review groups with their activities.

6. For the second session of the Conference, held in Bali, Indonesia in January 2008, the Secretariat prepared a background paper assessing the progress of the Pilot Review Programme (CAC/COSP/2008/9). Following the deliberations of the Conference at its second session, it was deemed appropriate that the Pilot Review Programme be open to the participation of additional countries wishing to participate. It was also decided that the Pilot Review Programme should be prepared to complete its analysis by the end of the second quarter 2009, and then prepare its final findings for presentation to the Conference at its third Session in Doha, Qatar in November 2009.

7. Following the call for new volunteer countries, 13 countries expressed an interest to join the programme. A meeting of the Pilot Review Group was held in May 2008 bringing together the original sixteen members and the new countries, amounting to a total of 29 members. The Pilot Review Programme was expanded and includes the following: Bolivia, Burkina Faso, Colombia, Croatia, Dominican Republic, Fiji, Mexico, Mongolia, Pakistan, Panama, the Philippines, Rwanda and Serbia.

8. The Pilot Review Group discussed the modalities for inclusion of those new countries in the pilot review process. It was agreed that each new country could observe one ongoing review, if desired and would be reviewed by one new member and one from the original group of participating countries. All reviews would have to be concluded by 2009, but it was anticipated that the good practices and lessons learned in the pilot review process to date would enable the new reviews to progress rapidly. The new countries were to follow the same preliminary steps, i.e. timely submission of the self-assessment checklist on the implementation of the Convention where this was not already the case, followed by active dialogue with the experts.

9. At the same meeting, the Group discussed and approved the terms of reference for the expanded review programme together with a country report blueprint. The terms of reference contained clear timeframes and actions to be taken by countries under review, experts and the Secretariat for every stage of the review process. In

particular, deadlines and action for country visits were detailed in order to guarantee optimal use of time and comprehensive activities during country visits.

10. Further meetings of the Pilot Review Group were held in October 2008 and April 2009. During those meetings, the Group discussed the progress in the reviews, experiences gained and lessons learned. On the occasion of the Group meetings, time was given to the review teams to hold trilateral meetings, allowing them to make progress in individual reviews.

Scope of the Review

11. The “Pilot Review Programme” was strictly voluntary and limited in scope and time. The scope of review included 8 articles spanning the 4 chapters of the Convention (prevention, criminalization and law enforcement, international cooperation, and asset recovery): article 5 (preventive anti-corruption policies and practices); article 15 (bribery of national public officials); article 16 (bribery of foreign public officials and officials of public international organizations); article 17 (embezzlement, misappropriation or other diversion of property by a public official); article 25 (obstruction of justice); article 46 (mutual legal assistance), particularly paragraphs 9 and 13; article 52 (prevention and detection of transfers of proceeds of crime); and article 53 (measures for direct recovery of property).

Review Teams

12. When proposing the composition of the Review Teams, the Secretariat attempted to follow the principle of selecting one country from the same regional group and one country from a different regional group to the Review Team. This was not always possible, particularly in the initial phase of the Pilot Review Programme where the majority of the 16 initial countries were from the Western European and Others Group. When expanding the Pilot Review Group, an effort was made to follow the same principle, and also have one of the initial countries be a part of each new pairing in order to make use of their experiences with the process. These efforts resulted in the pairings below.

Country under review	Review Team	
Argentina	Peru	USA
Austria	Finland	Romania
Bolivia	Colombia	Netherlands
Burkina Faso	Rwanda	Greece
Colombia	Philippines	Argentina
Croatia	Dominican Republic	Romania
Dominican Republic	Mexico	Norway
Fiji	Serbia	France
Finland	France	Tanzania
France	Greece	Argentina
Greece	Sweden	Jordan
Indonesia	Jordan	UK
Jordan	Indonesia	France
Mexico	Panama	Tanzania
Mongolia	Pakistan	Sweden
Netherlands	Norway	Indonesia

Country under review	Review Team	
Norway	USA	Tanzania
Pakistan	Croatia	UK
Panama	Bolivia	Finland
Peru	Argentina	Norway
Philippines	Fiji	Peru
Poland	Romania	Finland
Romania	Poland	Austria
Rwanda	Burkina Faso	Poland
Serbia	Mongolia	US
Sweden	Netherlands	Peru
Tanzania	UK	Netherlands
UK	Austria	Greece
USA	Sweden	Poland

Processes

13. A total of 221 meetings were held as part of the Pilot Review Programme. Of these, 100 meetings were held in Vienna (includes trilateral, bilateral and telephone conferences), 114 meetings were conducted during on-site country visits with various national agencies, and 7 other forms of meetings were also held.

14. As of 21 October, all reports had been submitted in draft format to either the reviewing experts or the countries under review. It is expected that the vast majority of the reports would be finalized before the third session of the Conference of the States Parties in Doha. Where applicable, countries have developed action plans on the basis of the reports and have been submitted to national consultation processes for stakeholder input. In addition to this, on the basis of the observations made in the reports, follow-up activities in some cases involving concrete technical assistance programming have been initiated by various countries of the Pilot Review Group.

B. Good practices and lessons learned from the Pilot Review Programme

Self-assessment

15. The Pilot Review Group was in general agreement that the self-assessment checklist provided a useful basis and starting point for the review exercise, particularly for gathering information on legislation. However, It was perceived as less adequate for reviewing the implementation of such legislation or regulations in practice. It was also found that the process itself of filling out the checklist had been useful in terms of coordinating the relevant departments or agencies involved in national anti-corruption efforts. The checklist provided a written starting point for analysis of implementation, but experts also noted that, in respect of every self-assessment checklist submitted to the Secretariat, additional information and discussion had been necessary to explore further some of the “yes/no” answers provided.

16. As an example, most experts requested the provision of documentation concerning laws and regulations to support answers contained in the checklist. It was noted as well that an opportunity to correct or supplement information in the checklist should be factored in, as some countries had recognized errors or inconsistencies in their checklist submissions thanks to comments provided by reviewing experts. Experts played a vital role in this process as they requested explanations / clarifications / additional information where needed in regards to the answers that had been provided by the country under review.

Translation

17. The translation of checklist responses, supporting documents and the questions and answers was one of the major challenges to ensuring an effective review, whether at the stages of the desk review or during the country visit. In this context, a broader issue was documentation and the processing of the large volume of material generated by the review process, particularly if the experience within a group of limited size were to be projected to the ever-growing number of States parties to the Convention.

Other review mechanisms

18. With respect to the effective use of information generated by existing review mechanisms, the Pilot Review Programme decided to leave the decision on whether to use this information as background documentation to the individual experts, where relevant and as applicable. Several countries submitted reports from other review mechanisms as part of supporting or background documentation.

Composition of the Review Team

19. There was consensus that the overall method, as outlined above, of selecting the composition of the Review Team was the preferred method. However, some countries indicated that it might be desirable for no two countries to evaluate one another. Furthermore, it was agreed upon that guidelines would be useful to assist the Review Team in clearly understanding the methodology to be used for the review of implementation process.

The inherently positive approach of the Convention

20. The Pilot Review Programme took into account that the implementation of the Convention was a process that would have different requirements for different countries depending on, inter alia, their level of development. This factor would need to be similarly reflected in the development of the review mechanism as it would affect the pace of implementation and the resulting outcome of the review. The Pilot Review Programme was built on the inherently positive approach of the Convention which the Conference had already incorporated into the attributes of the review mechanism outlined in its resolution 1/1. It was important to find ways to foster and support national anti-corruption efforts rather than anticipating lapses in implementation or evaluating performance.

21. Therefore, any review mechanism would have to be structured in a similarly positive manner and not be oriented towards finding fault with compliance. Implementation of the Convention needed to be regarded in the context of each

country and reviewed at the individual country level. The current structure of the Pilot Review Programme, which was built around the self-assessment checklist, sought to establish benchmarks against which each country could measure its own progress. That approach inherently excluded any notion of comparison or ranking but instead aimed to support individual efforts and commitments, including by highlighting and acknowledging good practices.

Active dialogue

22. The Pilot Review Programme agreed that the active dialogue which had taken place during the review process was of immense value. The dialogue occurred at every phase and every level of the review process. The use of the self-assessment checklist as a basis for the review fostered discussion in the initial stages of the review process. Experts exchanged a wealth of communications around the checklist, including requests for clarification and additional documents. Those exchanges were carried out by e mail, telephone and video conferences and meetings in the context of the Pilot Review Group meetings. Experts noted the role of the Secretariat in facilitating such dialogue and recommended that that role be reinforced.

23. The experts also stressed the overall extremely positive experience of engaging in active dialogue with the country under review. The high volume of e-mail, telephone and face-to-face exchanges throughout the review process was hailed as one of the strongest features of the Pilot Review Programme. The active dialogue served to address issues concerning the checklist and to clarify certain aspects of national implementation. Planning for country visits was also undertaken, where relevant.

Depth of review and country visits

24. One of the limits to the Pilot Review Programme was the scope of the self-assessment checklist. The 15 UNCAC articles, spanning across the different chapters, captured the overall themes of the Convention, but the Pilot Review Group articulated that other articles might have been appropriate to included due to their thematic links (i.e. Articles 5 and 6, and also Articles 14, 23 and 52). Nevertheless, the Group also noted that the new self-assessment checklist that was to be endorsed by the Conference at its third session was to cover all of the substantive UNCAC articles. Accordingly, the Conference should think carefully about which articles might be included in a given review to make sure that interlinked issues are adequately covered.

25. The Pilot Review Programme noted that the reviews would generally benefit from more documentation and analysis than that contained in the checklist. In that respect, the experts noted that country visits were a good tool to allow for deeper analysis and assessment of national anti-corruption efforts by reviewing implementation through achievements and shortcomings on the ground. Such country visits were held only with the agreement of the country under review. The expert dialogue made possible by such country visits was generally seen as a good way to identify the means of fostering and supporting the national anti-corruption efforts referred to above.

26. In some cases, countries under review and reviewing countries determined that country visits were not necessary and agreed to finalize the review process through the existing channels of communication (see procedural information above). In other cases, where visits were suggested and agreed by the country under review, they were discussed and planned through telephone conferences and e-mail exchanges facilitated by the Secretariat. In addition, the tri-lateral meetings organized in the context of the Working Group meetings proved very useful in moving the processes forward with all concerned parties. Fostering active dialogue between experts and countries under review was viewed as an important factor enabling country visits to be used as a methodological tool for reviewing implementation, in particular by agreeing on terms of reference and details of visits and meetings to be organized.

27. In particular, the Pilot Review Group deemed the experience to be very fruitful, as it allowed for a deeper analysis and greater assessment of national anti-corruption efforts by the country under review. Country visits allowed the reviewing experts to not only pose questions, seek clarifications, request additional information or consider the practical implications of given provisions, but also provided opportunities for national stakeholders (including civil society and the private sector) to come together in considering the implementation of the relevant provisions of the UNCAC and to also engage the wider community (i.e. through media coverage) in the fight against corruption.

Exchange of good practices

28. The documentation gathered and exchanged during the pilot review process was considered very valuable and there was discussion about preserving the wealth of information and knowledge that the exercise was producing. In addition, the active dialogue between experts could in certain cases foster the exchange of good practices and allow for greater mutual understanding. Identifying good practices was seen as an important element of the reviews. Meetings of the Pilot Review Group provided a forum for the exchange of good practices and discussion on implementation challenges both during the review process and beyond, using the contacts developed throughout the Pilot Review Programme.

Coordination and the role of the Secretariat

29. The Pilot Review Programme emphasized the crucial role of coordination during the review process. Coordination was needed at various levels, including: at the national level; among the reviewing experts and between those experts and the country under review; and between the experts, the country under review and the Secretariat.

30. Coordination was necessary from the very inception of the process, with the completion of the self-assessment checklist at the national level. The Pilot Review Programme found the completion of the checklist already facilitated inter-agency coordination among the institutions responsible for corruption prevention, criminalization, asset recovery and international cooperation. Furthermore, the Pilot Review Programme found the appointment of focal points for each country under review an important factor to ensure liaison with the reviewing experts and the Secretariat. It was also pointed out that changes of focal points during the process had caused delays.

31. In order to ensure active dialogue throughout the review process, it was noted that coordination among the reviewing experts themselves was important. In some reviews, experts consolidated their comments for transmission to the country under review, prepared joint work plans for carrying out the review and agreed to draft consolidated reports either in their entirety or by dividing portions among themselves. This was considered a good practice.

32. A key lesson drawn from the Pilot Review Programme was that any review mechanism required substantial support from a well-resourced and professional Secretariat. More specifically, the Secretariat had a key role to play in coordinating, programming and supporting the review process and in ensuring timeliness and continuity through its involvement at all stages. The Secretariat was further considered instrumental because of its institutional duty to remain impartial and independent. Those were necessary attributes of a mechanism that would be not only fair and objective but also characterized by respect and equal treatment of all participating States.

33. The Secretariat also served to ensure standardization of techniques used during the review process and adherence to the terms of reference, to forestall any particular country from having been treated different from another participating country in the review process. Such characteristics were considered essential for the entire mechanism and in particular, its final product. The current resource level of the Secretariat of the Conference was clearly inadequate to allow it to perform those functions and therefore, one of the issues requiring close attention would be that of finding appropriate remedies to this problem.

Reports

34. Experts underscored the need to develop guidelines and procedures for the review process. In particular, the end product of the review would need to be streamlined in order to ensure balance and fairness. The Pilot Review Programme decided to adopt a blueprint for the final product of the review in order to facilitate the experts' work and ensure consistency in the presentation of the outcome and possible commitments by the countries under review, giving due consideration to the individual features of each country. The central element of the report was regarded to be ownership of the report by the country under review. For this reason, the country under review was able to exercise its discretion regarding whether it wished to publish the report.

35. It was suggested by the experts that the final report could include recommendations, conclusions or suggestions made by the experts and discussed and agreed with the country under review; and that it could contain commitments formulated by the country under review and any good practices identified during the review process. The follow-up to the reviews was also discussed in the context of the pilot programme and it was suggested that a framework to conduct follow-up activities was to be considered.

Technical assistance

36. The Pilot Review Programme underscored the need to identify technical assistance needs at all phases of the review process, including through the self-assessment checklist. That aspect of the Pilot Review Programme had only

recently been activated, and would be tied into a follow-up procedure. To properly test that aspect of the Pilot Review Programme's methodology, the respective activities would be incorporated into UNODC's technical assistance programme that is already ongoing.

C. Conclusion

37. The overall feedback received from the Pilot Review Group was positive regarding the UNCAC Pilot Review Programme. The self-assessment checklist provided for a solid foundation for the review exercise to begin. The composition of the Pilot Review Group, the active dialogue between the country under review and the review team, the depth of the review and (where selected by the country under review) country visits provided for a wealth of information and knowledge. One of the main issues to overcome was the need to translate the necessary documents. The Secretariat also played a vital role in coordinating and facilitating the entire review process. The final reports were deemed to be of great use to the country under review, particularly in assisting them to identify their technical assistance needs.
