



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

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Review of the implementation of the United Nations Convention against Corruption

Assessment of the performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption

Note by the Secretariat

I. Introduction

1. In its resolutions 1/1, 2/1 and 3/1, the Conference of the States Parties to the United Nations Convention against Corruption recalled article 63 of the Convention, in particular paragraph 7, according to which the Conference should establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention. In its resolution 3/1, the Conference adopted the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption. The goals of the review process are set out in section IV of the terms of reference and include the promotion of the purposes of the Convention and the provision of information on its implementation.

2. The Conference established the Implementation Review Group as an open-ended intergovernmental group of States parties that operates under the authority of and reports to the Conference. Pursuant to paragraph 44 of the terms of reference, the functions of the Group are to have an overview of the review process in order to identify challenges and good practices and to consider technical assistance requirements in order to ensure the effective implementation of the Convention.

3. In order to assist the Group in carrying out its functions, documentation was prepared for each of its sessions, and oral updates on progress made in the country reviews were provided. Furthermore, at the fourth and fifth sessions of the Conference, consolidated reports were provided, reflecting the action taken by the Group to enhance the operation of the Mechanism. A background document on the

* CAC/COSP/2015/1.



impact of the Mechanism was also made available to the Conference at its fifth session.¹

4. In its decision 5/1, the Conference decided that the Group should begin promptly to collect, with the support of the Secretariat, and discuss relevant information to facilitate the assessment of performance of the Mechanism in accordance with paragraph 48 of the terms of reference, following the completion of the first review cycle. In addition, the Conference decided that the Group should include in its future sessions an agenda item allowing for the discussion of such information. In line with this decision, the Secretariat solicited information from States parties about any action they had taken after the completion of their reviews or in follow-up to gaps or needs identified during the reviews.

5. States submitted contributions and the Group considered the assessment of the performance of the Mechanism at its fifth, resumed fifth and sixth sessions.² The present note aims to consolidate the information and suggestions received, as well as the outcome of discussions of the Group, for consideration by the Conference.

II. Assessment of the performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption

A. Outcome of the country review process

6. At the time of writing, 160 States had provided their responses to the self-assessment checklist, 140 direct dialogues had taken place, and 104 executive summaries had been finalized.³

7. Thematic reports on the implementation of the two chapters under review during the first cycle and regional supplementary addenda were developed and made available at the resumed second session of the Group. As more country review reports were completed, these documents were updated and refined in order to reflect trends in implementation and additional information, in accordance with guidance provided by the Group. Furthermore, an analytical document on the recommendations made in country review reports was prepared for the Group at its fifth session (CAC/COSP/IRG/2014/10). The above-mentioned documents were aimed at providing analysis and information on the implementation of the Convention, in accordance with the guiding principles and characteristics of the Mechanism, in particular to assist States in the effective implementation of the Convention and the identification of difficulties and good practices.

¹ CAC/COSP/2011/5, CAC/COSP/2011/8, CAC/COSP/2013/13, CAC/COSP/2013/14 and CAC/COSP/2013/16. These documents, as well as the regular progress reports to the Group, highlight the lessons learned and practical measures taken to enhance the work of the Mechanism.

² The following States provided information in this regard: Algeria, Australia, Colombia, Cuba, El Salvador, Finland, France, Iraq, Kuwait, Malaysia, Montenegro, Morocco, Paraguay, Portugal, Russian Federation, Sweden, United Kingdom of Great Britain and Northern Ireland, United Arab Emirates and United States of America.

³ Updated figures will be made available in a conference room paper (CAC/COSP/IRG/2015/CRP.7).

8. With regard to the finalization of the first cycle, several States indicated that an end-of-cycle product would be required. The Group noted the efforts of the Secretariat in preparing an analytical study on the implementation of chapters III and IV of the Convention, entitled *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, which will be made available to the Conference at its sixth session.
9. Many States underscored that the work of the Mechanism had created a renewed impetus for the implementation of the Convention and noted that the country review process had been a catalyst for national anti-corruption reforms. States welcomed the country reviews as an opportunity to establish and enhance domestic coordination efforts and reported that improved inter-institutional coordination had been a key outcome of their participation in the Mechanism. During sessions of the Group, some States reported that such domestic coordination was crucial when implementing the outcome and observations of the country review report. Another positive by-product of undergoing country reviews had been the establishment or strengthening of national data collection and statistical systems.
10. In reporting on their national implementation efforts, many States shared updates on progress achieved during and following their reviews. Most States provided information on legislative amendments that had been adopted or were under consideration, institutional changes that had been introduced and measures for inter-institutional and international cooperation that had been strengthened.
11. With regard to legislative amendments, many States indicated that they had introduced or were in the process of introducing new legislation in order to strengthen their anti-corruption frameworks in accordance with the observations made during the reviews. Such amendments covered a wide array of topics, including the inclusion of third-party beneficiaries and the indirect commission of the offence in bribery offences, and the criminalization of trading in influence, money-laundering, illicit enrichment and obstruction of justice. Several States also informed about amendments made to the criminal liability of legal persons, the statute of limitations, the protection of reporting persons and asset declaration systems. In addition, one State reported the establishment of a single hotline staffed by specialized personnel, which could be used for making complaints in corruption matters. Several States also underscored the amendments made or under consideration in order to strengthen their witness protection systems.
12. Concerning changes introduced to the institutional framework, one State indicated that its central anti-corruption office had been moved to the Ministry of Justice from the Ministry of Finance in order to facilitate inter-institutional cooperation, while another State reported plans to establish an office dedicated to interaction with reporting persons. One State had established a national body to fight corruption through law enforcement in response to observations made during its review, while another State indicated that its law enforcement bodies charged with fighting financial crimes and suppressing fiscal crime had been merged and their resources doubled.
13. Referring to cooperation among national authorities, several States highlighted how participation in the Mechanism had facilitated such cooperation through the joint work required in the preparation for and during the reviews. Some States

highlighted their experience in establishing committees to address the implementation of the observations made during the reviews, underscoring the importance of such bodies in facilitating cooperation and addressing the implementation gaps identified during the reviews. One State indicated that it had concluded inter-institutional agreements relating to the fight against corruption. In addition, some States reported measures taken to increase cooperation with the private sector.

14. With regard to statistics and data collection, several States highlighted changes made to their data collection systems, as well as the introduction of new case management systems allowing for the collection of statistical information on anti-corruption offences. One State indicated that it was developing software for the collection of such information and a database for the collection of court decisions, while another State reported on assistance received in the development of such a system.

15. Concerning international cooperation, several States reported that they had concluded or were in the process of concluding further bilateral or multilateral instruments on extradition and mutual legal assistance in order to facilitate cooperation. One State highlighted its transition from list-based extradition treaties to an all-crimes approach in line with the observations made during the review, which had resulted in such treaties being negotiated within a shorter time frame. One State noted the increased use of the Convention as the legal basis for soliciting mutual legal assistance, having made 10 requests for mutual legal assistance on the basis of the Convention in the period 2013-2014.

16. One State highlighted that it had streamlined its mutual legal assistance processes in line with the observations made and increased the range of law enforcement tools available for national authorities to assist in mutual legal assistance cases. It could therefore now facilitate the provision of assistance through videoconferences, use surveillance devices and carry out forensic procedures in response to a formal request for mutual legal assistance. One State also indicated that it had introduced the use of special investigative techniques for corruption offences.

17. Underscoring the benefits of their participation in the Mechanism, several States stressed its importance in fostering domestic cooperation. In addition, they described how they had benefited from interaction with governmental experts from other States parties. Several States highlighted how their experience of being reviewed and acting as reviewing States had given them an insight into the good practices adopted by other States, which they in turn had decided to implement domestically. Other States highlighted the role of the Mechanism in building the capacity of their governmental experts. Some States also referred to the role of the Mechanism in initiating technical assistance and their experiences in providing such assistance as a result of the reviews.

B. Technical assistance

18. In its resolution 3/1, the Conference decided that the Group should be in charge of following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance. Pursuant to paragraph 11 of the terms of reference, one of the goals of the Mechanism is to help

States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance. In accordance with paragraph 44 of the terms of reference, the Group is tasked with considering technical assistance requirements in order to ensure the effective implementation of the Convention.

19. In its resolution 4/1, the Conference recommended that States parties identify technical assistance requirements, preferably prioritized and related to the implementation of the provisions of the Convention examined during a given review cycle. It further decided that the Group should consider, on the basis of the outcome of the review process and consistent with the terms of reference of the Mechanism, priority areas for the provision of technical assistance, as well as consolidated information on trends in the requirements for and provision of technical assistance.

20. Further analysis of technical assistance needs emerging from the country reviews of the first cycle of the Mechanism and information on technical assistance delivered in support of the implementation of the Convention can be found in documents CAC/COSP/2015/4 and CAC/COSP/2015/2, respectively.

C. Comprehensive self-assessment checklist

21. Pursuant to its endorsement by the Conference at its third session and in accordance with the terms of reference of the Mechanism, the comprehensive self-assessment checklist was to be used by all States parties under review as the first step of the review process. Building on the experience gained and comments made by several States parties over the course of the first year of reviews, an updated version of the software was developed to address and resolve technical issues, thus making it more user-friendly and effective. It also facilitated the compilation of the self-assessment reports and analysis thereof by governmental experts. The amendments streamlined the flow of questions so as to avoid duplication. Several generic questions were rephrased and further adapted to the specific requirements of the provisions under review. Moreover, questions relating to technical assistance were asked with respect to entire articles rather than the individual paragraphs, thus avoiding the repetition of technical assistance needs, while maintaining the possibility of indicating such specific needs.

22. At the fifth session of the Conference, with a view to further improving the comprehensive self-assessment checklist for the second cycle of the Mechanism, the Secretariat solicited comments from States parties on a draft self-assessment checklist.⁴

23. The Group requested the Secretariat to continue collecting and consolidating comments and input from States on the draft in order to provide the Group with an

⁴ Draft outline of the flow of questions and the proposed thematic structure of the revised self-assessment checklist for reviewing chapters II (Preventive measures) and V (Asset recovery) of the Convention (CAC/COSP/2013/3) and draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Implementation Review Mechanism (CAC/COSP/2013/CRP.6). Responses received were compiled in conference room paper (CAC/COSP/IRG/2014/CRP.1) made available at the fifth session of the Group.

updated version of the comprehensive self-assessment checklist in all official languages of the United Nations for consideration at its sixth session.

24. In response to this request, the Secretariat incorporated the comments received into the draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Mechanism and recirculated this updated draft revised checklist for further comments and consideration by the Group (CAC/COSP/IRG/2015/CRP.1).

25. The updated draft included several improvements to the comprehensive self-assessment checklist, such as the introduction of guidance boxes, which provide additional information on the type of information sought in relation to the provisions under review, and improved categories for the identification of technical assistance needs. In addition, the self-assessment checklist was streamlined, while maintaining its key characteristics and methodology.

26. The Group discussed the revised draft self-assessment checklist at its sixth session, during which the Secretariat provided an overview of the developments and consultations in this regard. Several States welcomed the revised draft and indicated their readiness to recommend that the Conference endorse it, while some States expressed their preference for using for the second cycle the same self-assessment checklist as was used during the first cycle. Some States continued to voice concern about the length and level of detail of the revised draft.

27. The Group discussed the streamlining of the draft self-assessment checklist and the amendments made to the guidance boxes to highlight that those were intended as sources of information and guidance only. Some States highlighted their preference for merging further paragraphs in order to benefit from synergies within the checklist, while one State expressed its preference for keeping the questions as they were formulated during the first cycle. Some suggestions were made with regard to introducing a clear distinction between the different levels of obligation set forth in the Convention and restricting the scope of articles to be reviewed. In addition, the Group discussed including in the checklist questions on good practices.

D. Process issues and funding

28. At the sixth session of the Group, several States highlighted the merits of the Mechanism and indicated that it had played a crucial role in assisting States parties in identifying challenges and good practices, exchanging ideas and experience, and considering technical assistance requirements. It was agreed that the Mechanism had proved useful in assessing the implementation of the Convention and enhancing cooperation among States. States commended its flexibility, non-intrusiveness, impartiality and non-adversarial character.

29. In this regard, several States indicated that the terms of reference of the Mechanism continued to provide an adequate and appropriate framework, and should be fully and consistently complied with during the review process. Some States also referred to the guiding principles of the Mechanism, in particular to its intergovernmental nature, while others underscored the importance of involving civil society and the private sector in the country reviews and, more generally, the

work of the Mechanism. Several States also highlighted the important role of broad consultations at the national level in the context of the Mechanism.

30. With regard to procedural aspects, the Group discussed several suggestions to improve practical processes that did not require amending the terms of reference, such as using more efficient alternatives for determining the initial steps of the reviews. For instance, the Secretariat had overhauled the lists of governmental experts posted on the United Nations Office on Drugs and Crime website to improve efficiency and encouraged States under review in a given year to nominate their focal points early on in the process. Several practical measures concerning the drawing of lots had already been taken by the Group.⁵ It was suggested that the drawing of lots be conducted by the bureau or extended bureau of the Conference prior to meetings of the Group instead of during the meetings, in order to save time for deliberations on other issues and allow for consultations. It was further suggested that the bureau could also conduct the drawing of lots between sessions in order to mitigate the effects of the potential unresponsiveness of States or to facilitate the beginning of reviews for new States parties.

31. In addition, the Group welcomed the cost-saving measures taken by the Secretariat, in particular with regard to translations required for the functioning of the Mechanism. Many governmental experts had been willing to work in a language other than their preferred language, and focal points had been proactive in providing concise information in order to facilitate translation. Focal points were to undertake further efforts to limit extensive documentation and the information provided in addition to the replies to the self-assessment checklist.

32. The Group also welcomed the voluntary contributions made by some States parties in support of direct dialogue, such as providing interpretation or covering costs related to the travel and accommodation of governmental experts. By limiting the rounds of comments on draft reports and executive summaries, and avoiding retranslation of text already available, further costs were saved and the duration of the reviews was shortened. A streamlined practice for approving country review reports and executive summaries also contributed to ensuring the efficiency of the reviews.

33. With regard to the financing of the Mechanism, States welcomed the estimate of the resource requirements for the functioning of the second cycle of the Mechanism, which was presented to the Group at its sixth session. Several States underlined the importance of sufficient and predictable funding in order to allow the Mechanism to function impartially and objectively. Several States also expressed their satisfaction with the overall cost-effectiveness of the Mechanism, while some States called for continued implementation of measures to increase cost efficiency. Several States indicated their preference for the current mixed-funding model, which they considered vital in ensuring the sustainability of the Mechanism, while others stated that the Mechanism should be entirely funded through the regular budget of the United Nations.

⁵ In Conference resolution 4/1, the Conference endorsed the practice followed by the Group with regard to the procedural issues arising with regard to the drawing of lots. The Secretariat prepared a compilation of procedural requirements and practice regarding the drawing of lots for the Conference at its fifth session (CAC/COSP/2013/16).

E. Implementation by the Implementation Review Group of Conference decision 5/1

34. To implement Conference decision 5/1, the Group began promptly to collect, with the support of the Secretariat, and discuss relevant information to facilitate the assessment of performance in accordance with paragraph 48 of the terms of reference, following the completion of the first review cycle.

35. The Group discussed the importance of introducing measures for the follow-up to the observations emanating from the country review reports with a view to strengthening the effective implementation of the Convention by States parties. More specifically, it discussed options such as the provision of oral reports, discussions during the sessions of the Group or short written updates to be provided to the Group. The introduction of a specific agenda item on the follow-up to such observations was also suggested, in order to facilitate discussions during the sessions of the Group. In this regard, national action plans for the further implementation of the Convention were regarded as a useful tool for implementing the observations. The Group underscored that the first follow-up measure to a completed review must be an offer of technical assistance, upon request, in order to meet the needs identified during the review process.

36. With regard to the scope of the second cycle, several States indicated that it should remain as determined by the Conference in resolution 3/1 and include both chapters II and V of the Convention, while other States expressed their preference for focusing on one of these chapters or on specific selected provisions of the Convention, with the remaining provisions to be reviewed in a subsequent cycle.

37. States reiterated their readiness to launch the second cycle of the Mechanism at the sixth session of the Conference. Some States expressed their preference for the drawing of lots to be conducted at the seventh session of the Group, while others indicated that it should take place at a later time. In this regard, the Group concluded that States whose reviews were likely not to be completed by the seventh session of the Group would need to be considered by the Conference.

38. States indicated that the Conference might wish to reconsider the architecture of its subsidiary bodies in order to better align substantive discussions with those of the Group. Several proposals for avoiding overlap were made, including refocusing the existing working groups on issues related to criminalization and international cooperation in order to follow up on the observations emanating from the first cycle and having the Group consider thematic discussions on prevention and asset recovery; maintaining the current working groups and focusing the discussions of the Group on progress and process issues; and establishing additional working groups to consider follow-up to the implementation of chapters III and IV of the Convention.

III. Issues for further consideration

39. The Conference may wish to consider providing specific guidance to the Secretariat on concluding the work on the revised draft self-assessment checklist and to endorse its use, in all official languages of the United Nations, for the reviews of chapters II and V of the Convention in the second cycle.

40. The Conference may wish to consider providing guidance to the Group and the Secretariat on the completion of reviews in the first cycle and on how to conduct reviews in the second cycle.
 41. The Conference may wish to consider encouraging States to use the outcome of the reviews to strengthen their anti-corruption framework, including through technical assistance, where requested, and to follow up on observations made in relation to the implementation of chapters III (Criminalization and law enforcement) and IV (International cooperation) during the reviews.
 42. The Conference may wish to consider providing guidance to the Group and the Secretariat in relation to the documentation required on the impact of the Mechanism.
 43. The Conference may also wish to consider providing guidance to the Group and the Secretariat with regard to analysing the needs for technical assistance identified during the country reviews, as well as the technical assistance provided, upon request, to respond to such needs.
 44. The Conference may wish to consider launching the second review cycle at its sixth session.
 45. The Conference may wish to consider encouraging the use of information emanating from the Mechanism as a basis for assessing the achievement of relevant sustainable development goals.
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