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Performance of the Mechanism for the Review of 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 would 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.

2. The Conference established the Implementation Review Group as an open-ended intergovernmental group of States parties that operates under the authority of the Conference and reports to it. Pursuant to paragraph 44 of the terms of reference, the Group's functions 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 effective implementation of the Convention. The thematic implementation reports serve as a basis for the Group's analytical work.

3. In order to assist the Group in carrying out its functions, documentation was prepared for each session of the Group, and oral updates provided, on progress in the country reviews. In addition, consolidated reports were provided to the

* CAC/COSP/IRG/2014/1/Add.1.



Conference at its fourth and fifth sessions, reflecting the action taken by the Group, measures to enhance the operation of the Mechanism and emerging practices with regard to the features of the country reviews. A background document on the impact of the Mechanism was also made available to the Conference at its fifth session.¹

4. The Conference, in its decision 5/1, adopted at its fifth session held in Panama, 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 in accordance with paragraph 48 of the terms of reference, following the completion of the first review cycle, and that the Group should include in its future sessions an agenda item allowing for the discussion of such information. The secretariat invited States to submit contributions in implementation of that decision and the responses received were compiled in document CAC/COSP/IRG/2014/CRP.2.² Those contributions contained comments on cross-cutting themes as well as specific features of the country review process.

5. Following consideration of this item by the Group at its fifth session, the secretariat was to provide a consolidated document that would draw on lessons learned, as well as provide ideas and suggestions for improvement based on both the experiences of the secretariat and on analysis of proposals made by States, for consideration at its resumed session.³

II. Assessment of the performance of the Mechanism

A. Outcome of the country review process

6. Starting from the resumed second session of the Group, thematic implementation reports on the two chapters under review in the first cycle, as well as regional supplementary addenda, were developed and made available. With the growing number of completed country review reports, these documents were updated and refined in order to reflect trends in implementation and additional information, in accordance with guidance provided by the Group. The Group also adopted a template for executive summaries at its third session in order to enhance consistency in reporting. A more detailed publication on implementation was made available as a conference room paper to the Conference at its fifth session, and an analytical document on recommendations made in country review reports was prepared for the Group at its fifth session.

¹ CAC/COSP/2011/5, CAC/COSP/2011/8, CAC/COSP/2013/13, CAC/COSP/2013/14 and CAC/COSP/2013/16.

² The following States parties submitted contributions: Armenia, Belgium, Chile, China, Ecuador, Egypt, El Salvador, France, India, Israel, Jordan, Latvia, Lebanon, Mexico, Pakistan, Romania, Russian Federation, Switzerland and United States of America. Among the contributions received, several also included references to the self-assessment checklist. States reiterated their comments at the fifth session of the Group and some additional comments were provided during the discussion.

³ Information on the average time each review stage had taken will be provided as an oral update to the information contained in the progress report of the Group, as well as further elements on the performance of the Mechanism.

7. Bearing in mind the guiding principles and characteristics of the Mechanism, in particular to assist States in effective implementation of the Convention and identifying difficulties and good practices, the production of analytical knowledge and information on implementation constituted a key feature of considerations taken with regard to the preparation and improvement of these documents.

8. Proposals on the substantive aspects and outcomes of the review process included one State highlighting the need for more case law to be included in the executive summaries instead of statistical information, and that a clear distinction should be made in the second cycle between mandatory and non-mandatory provisions of the Convention. One State presented its view that the scope of articles to be reviewed in the second cycle should be narrowed, while another underscored the need for recommendations in the report to ensure the feasibility of appropriate follow-up action.

9. With regard to the finalization of the first cycle, several States stated that an end-of-cycle product would be required, with one State noting that such a document could contain non-binding recommendations or guidelines on implementation and issues encountered as well as areas of focus for technical assistance and international cooperation. The same State also suggested the compilation of best practices and observations.

10. In addition, several States stressed the importance of following up the recommendations contained in the country reports and executive summaries. The development of national action plans was noted in this regard. In terms of reporting on follow-up, short oral presentations to the Group, possibly complemented by a follow-up report, were suggested as a useful means. One State indicated that the organization of regional thematic seminars on the outcome of the first cycle could be considered.

B. Technical assistance

11. In its resolution 3/1, the Conference decided that the Implementation Review Group should be in charge of following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance. Initially, the analysis of technical assistance needs was based on the responses to the comprehensive self-assessment checklist, but as a growing number of completed country review reports were finalized, the analysis of technical assistance needs was subsequently based on those outcome reports and provided a more accurate picture of the needs identified for the implementation of the chapters under review.

12. The Conference, in its resolution 4/1, recommended that States parties identify their technical assistance requirements, preferably prioritized and related to the implementation of the provisions of the Convention examined during a given review cycle, and decided that the Review Group should consider, on the basis of the outcome of the review process and consistent with the terms of reference of the Review Mechanism, priority areas for the provision of technical assistance, as well as consolidated information on trends in requirements for and provision of technical assistance. While information on such needs and the analysis thereof was reflected in documentation accompanying the thematic implementation reports, several issues

remained with regard to the follow up and provision of technical assistance as an outcome of the reviews.

13. In their contributions, several States highlighted the need for technical assistance, upon request, in the completion of the self-assessment. One State noted the limited provision of technical assistance as an outcome of the country reviews and suggested that providers could encourage States to integrate the review process in their overall anti-corruption efforts and ensure follow-up to needs identified through dialogue. Action plans for technical assistance delivery could also be developed. Two States indicated their preference for more information and increased discussion on concrete technical assistance needs in the framework of the Group.

C. Comprehensive self-assessment checklist

14. Pursuant to its endorsement by the Conference at its third session and in accordance with the terms of reference of the Review 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 in the country reviews, as well as on comments from 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 and thus enhance the user-friendliness and effectiveness of the software. The updated version of the software facilitated the compilation of the self-assessment reports, as well as the analysis by governmental experts. The amendments streamlined the flow of questions so as to avoid duplication and several generic questions of the self-assessment checklist were rephrased and further adapted to the specific requirements of the provisions under review. Moreover, questions relating to technical assistance were moved from the paragraph level to the article level, thus avoiding the repetition of identical technical assistance needs for the implementation of the various paragraphs of a given article, while maintaining the possibility of indicating such specific needs.

15. With a view to finalizing the comprehensive self-assessment checklist for the second cycle of the Implementation Review Mechanism, the secretariat solicited comments from States parties on a 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, contained in document CAC/COSP/2013/3, and a draft for discussion of the revised self-assessment checklist for reviewing chapters II and V for the second cycle of the Implementation Review Mechanism, contained in CAC/COSP/2013/CRP.6. Responses received to these information circulars were compiled in conference room paper CAC/COSP/IRG/2014/CRP.1 for the Group at its fifth session.⁴

16. With regard to the mandate for the revision of the self-assessment checklist, one State specified that the draft should be prepared by the secretariat with the

⁴ The following States parties submitted comments on the revised version of the self-assessment checklist: Australia, Austria, China, Colombia, Ecuador, Egypt, El Salvador, Israel, Romania, Russian Federation, Slovenia, Switzerland and United States. Several States reiterated their comments at the fifth session of the Group and some additional comments were provided during the discussion.

authorization of the Conference or the Group on the basis of consultations with States parties and should be finalized, considered and adopted at the next session of the Conference.

17. Several States welcomed the streamlining of the self-assessment checklist and requested that paragraphs be merged, where suitable, to make better use of synergies within the checklist, while one State indicated its preference for keeping the question flow detailed and similar to the first cycle. Two States commented that the draft was too detailed.

18. Furthermore, some States expressed their preference for retaining an initial question on assessing the level of implementation of the Convention and indicating either full, partial or no compliance, while one State also suggested keeping the option of attaching legislative texts to the checklist, as it considered the provision of summaries as overly burdensome. One State stated that the questions should reflect the level of obligation as set forth in the Convention.

19. Concerning the guidance boxes introduced in the self-assessment checklist, which were welcomed by several States, some States stressed their recommendatory character and indicated their preference for entitling them “Information sought may include” instead of “Information sought includes”. One State suggested strictly limiting the guidance to the requirements of the Convention, while another State was of the view that introducing guidance boxes for each provision would result in repetitive and much longer answers. Another State encouraged the provision of more precise guidance.

20. Several States highlighted their preference for including reference periods for statistical information to be provided, and some States stated that referring to examples instead of evidence of implementation would be beneficial. One State suggested emphasizing concrete examples of implementation to allow for a qualitative review alongside the quantitative review.

21. Some States indicated their preference for referring to existing publicly released official reports, while another State invited the secretariat to include previous reporting by States. Another State highlighted its view that the focus should be on concrete data allowing for the analysis of the effectiveness of the implementation.

D. Process issues and funding

22. States agreed that the Implementation Review Mechanism had generally functioned well in its first cycle, and that the guiding principles and characteristics of the Mechanism had been respected.

23. With regard to procedural aspects, some States suggested using more efficient alternatives for determining initial steps of the reviews. For instance, the secretariat had overhauled the lists of governmental experts posted on the UNODC website to improve efficiency, and encouraged States under review in every given year to nominate their focal points early. Concerning the drawing of lots, several practical measures had already been taken by the Group, and one State suggested that the drawing of lots be conducted in the presence of the extended Bureau prior to

meetings of the Group in order to save time for deliberations of the Group on other issues.⁵

24. Many States highlighted issues concerning the indicative timelines. Some States suggested the prompt nomination of focal points, the timely submission of all supporting documentation and the preparation of the self-assessment prior to being selected for review as measures to avoid delays in the review process. Other States underscored the importance of finalizing reports as soon as possible. Several States noted the usefulness of direct dialogue in the country review process.

25. It was noted that the time required to carry out translations was sometimes long, and that the quality of the translations could be improved. Language issues posed serious challenges in a large number of reviews and the secretariat had taken measures to improve the timeliness and quality of translations but further efforts were to be undertaken, *inter alia*, by avoiding several rounds of translation over the course of a country review process.

26. Some States expressed their view that self-assessments and country reports should be published, while one State suggested officially launching and announcing the review process within States and publicizing the contact details of focal points. Furthermore, the sharing of information among States parties was to be encouraged.

27. Several States stressed the importance of adhering to the guiding principles and the terms of reference, the intergovernmental nature of the Mechanism and the voluntary nature of country visits as means of direct dialogue, while others underscored the importance of integrating civil society and the private sector into the work of the country reviews and the Mechanism. The Conference had taken action on this issue with the adoption of resolution 4/6 at its fourth session and the Group had held two briefings for non-governmental organizations on the margins of its fourth and fifth sessions.

28. With regard to the financing of the Mechanism, several States indicated their preference for the current mixed funding as they considered it vital to ensure the sustainability of the Mechanism, while others stated that the Mechanism should be entirely funded through the regular budget of the United Nations to ensure its impartiality. The secretariat had sought to adopt cost-saving measures with a view to enhancing the effectiveness of the Mechanism while preserving the quality of the review process.

III. Issues for further consideration

29. The Group may wish to consider requesting the secretariat to incorporate the proposals and suggestions provided by States parties in order to produce an updated version of the comprehensive self-assessment checklist in all official languages for consideration by the Group at its sixth session.

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

30. The Group may also wish to consider requesting the secretariat to continue collecting relevant information in order to facilitate the assessment of the performance and prepare an updated and consolidated document for the sixth session of the Group.
