

# UNODC ACTIVITIES IN PROMOTING AND FACILITATING THE RATIFICATION AND IMPLEMENTATION OF THE UNCAC

*The Role of the Conference of the States Parties to the UNCAC, as well as its Working Groups*

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## I. A GENERAL OVERVIEW OF THE WORK OF UNODC IN THE ANTI-CORRUPTION FIELD

The UNODC, through its Thematic Programme on Action against Corruption and Economic Crime, acts a catalyst and a resource to help States ratify and effectively implement the provisions of the United Nations Convention against Corruption (hereinafter: UNCAC). The primary goal of the anti-corruption work done by UNODC is to provide States with practical assistance and build the technical capacity needed to ensure compliance with the requirements of the Convention. The main activities, in this connection, relate to:

- The support for the ratification and implementation of the UNCAC;
- The support for the development of anti-corruption policies and institutions, including preventive anti-corruption frameworks;
- The provision of expert legislative advice for the purpose of securing full implementation of domestic legislation in line with the Convention; and
- The provision of assistance to strengthen national capacity to apply such legislation.

In its capacity as the guardian of the UNCAC and Secretariat of the Conference of the States Parties to the Convention, UNODC is mandated to support the newly established mechanism for the review of implementation of the Convention and assist the Conference in identifying technical assistance priorities and developing appropriate responses to corruption.

## II. UNODC SPECIFIC SERVICES FOCUSING ON TECHNICAL ASSISTANCE NEEDS

The UNCAC provides a comprehensive framework for concerted action at the national and international levels to prevent and combat corruption. As such, the Convention can be used as a benchmark for the design, implementation and evaluation of technical assistance programmes and projects geared towards enhancing the capacity of Member States to deal effectively with the challenges posed by corruption. Bearing this in mind, UNODC has been developing a series of technical assistance services to meet the growing demands of Member States in this field. An indicative list of such services includes, inter alia, the following:

- Provision of ad-hoc and long-term advice and expertise to support the development of a wide range of policies and programmes of action to ensure the effective implementation of the UNCAC provisions on the prevention of corruption (such as national anti-corruption strategies and action plans, codes of conduct, asset declaration systems, conflict of interest policies and human resource management systems based on principles of efficiency, transparency and objective criteria);<sup>1</sup>
- Provision of ad-hoc and long-term advice and expertise to support the development of domestic legislation aiming at ensuring full compliance with the provisions of UNCAC. In addition to legal advisory services, the development of such tools as legislative guides, model legislation and electronic libraries is another pillar of legal assistance provided by UNODC;

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<sup>1</sup> See Chapter II of the UNCAC.

- Provision of specialized expertise and assistance to countries on the Convention's innovative provisions on asset recovery;<sup>2</sup>
- Provision of ad-hoc and long-term advice and expertise to support States Parties in setting up and strengthening the institutional framework required by UNCAC in the areas of prevention, investigation, prosecution and international co-operation to combat corruption, including asset recovery. UNODC assistance, in this connection, focuses on the creation or support of operationally and politically independent and adequately staffed and resourced anti-corruption bodies, specialized anti-corruption law enforcement, financial intelligence units and central authorities responsible for mutual legal assistance. Specific activities include advisory services on the design of the terms of reference of such institutions, the delineation of their mandate, powers and procedures, as well as assistance in building the professional skills and operational capacities of their staff. Once established, further support may be required in the management of the institutions, including the development of operational policies and procedures, the identification of priorities and human resources development;
- Assistance in building training capacities and programmes (through the development of training curricula, training manuals, training of trainers and the design of cost-effective methods and tools for the conduct of training, including computer-based training) to ensure that countries can build a body of highly skilled anti-corruption practitioners. The required skill-sets include the development and strategic planning of anti-corruption policies, the investigation, control and punishment of corruption, the preparation of requests for mutual legal assistance, the tracing, seizing, confiscation and return of the proceeds of corruption, the evaluation and strengthening of institutions, public service management, and the management of public finances;
- Provision of assistance to States Parties in enhancing the integrity, accountability and oversight of their criminal justice and security institutions with a view to enhancing their capacities to effectively carry out their mandate, implement the provisions of UNCAC and reduce their vulnerability to corrupt practices;
- Placement of anti-corruption advisors and mentors to ensure longer-term engagement and sustainability of day-to-day technical expertise and operational support;
- Facilitating the exchange of good practices in the various fields covered by the Convention through the support of international and regional associations of anti-corruption authorities as well as the organization of regional and sub regional workshops, meetings, and training events;
- Conduct of corruption risk assessments and strengthening of national capacities to carry out these assessments, in order to acquire a profound knowledge and understanding of the challenges posed by corruption (scope, nature, causes and contributing factors) as well as of the weaknesses of the laws, institutions, and policies in any given country, as a basis for sound policy development and technical assistance and as benchmarks for the evaluation of progress;<sup>3</sup>
- Provision of support to Governments in raising awareness about the negative impact of corruption through targeted information campaigns and effective work with the media;<sup>4</sup>
- Supporting elements of the civil society in strengthening the demand for good governance through the International Anti-Corruption Day campaign, awareness-raising about the negative impact of corruption in daily life and encouraging a more active stand against corruption;
- Building and strengthening partnerships between the public and the private sector against corruption, and promoting, in this regard, the business community's engagement in the prevention of corruption by, *inter alia*, developing initiatives to promote and implement public procurement reform and identifying elements of optimal self-regulation in the private sector;<sup>5</sup>

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<sup>2</sup> See Chapter V of the UNCAC.

<sup>3</sup> The cornerstone of this work is the assistance to Member States in using the software-based comprehensive self-assessment checklist developed to assist States Parties in reporting on their implementation of UNCAC and in identifying challenges in implementation and technical assistance needs. This also includes the support to the UNCAC Review of Implementation Mechanism, based on the self-assessments submitted by reviewed countries and on a peer review, which will identify technical assistance needs and ensure that the gaps identified will be filled by prioritizing the delivery of technical assistance as an integral part of the mechanism (see below).

<sup>4</sup> See <http://www.unodc.org/yournocounts>.

<sup>5</sup> See <http://www.unodc.org/unodc/en/corruption/private-sector.html>.

### **III. THE CONFERENCE OF THE STATES PARTIES TO THE UNCAC: POLICY, GUIDANCE AND DECISIONS**

#### **A. Role and Mandate**

Pursuant to article 63 of the Convention, the Conference of the States Parties to the UNCAC was established to improve the capacity of and co-operation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation.

The Conference of the States Parties to the UNCAC is tasked with supporting State Parties and signatories in their implementation of the Convention, and provides policy guidance to UNODC for the development and execution of anti-corruption related activities. It has held three sessions to date (the last one in November 2009) and established working groups to assist it in its work in the fields of review of implementation, asset recovery, technical assistance and prevention.

The Conference has adopted far-reaching resolutions at each of its sessions and has mandated UNODC to implement them, including through the development of technical assistance projects.

#### **B. First Session: Amman, Jordan, 10-14 December 2006**

The Conference at its first session adopted eight resolutions aimed at strengthening the ratification and implementation of UNCAC.<sup>6</sup> In Resolution 1/1, the Conference paved the ground for the establishment, at a later stage, of the UNCAC Review of Implementation Mechanism by recognizing the necessity of such a mechanism and establishing an open-ended intergovernmental working group to make recommendations on how to best achieve this goal.

The Conference also decided to establish an information-gathering mechanism (Resolution 1/2) on the implementation of the UNCAC, using a self-assessment checklist, a tool which was later expanded and incorporated in a software-based application for the purposes of the review of the Convention.<sup>7</sup>

The Conference further called on States Parties and signatories to adapt their laws and regulations to bring them into conformity with the provisions of the Convention (Resolution 1/3).

In Resolution 1/4, the Conference decided to establish an open-ended intergovernmental working group on asset recovery to assist it in developing knowledge on the topic, to facilitate the exchange of information and to identify areas for capacity-building in requesting and carrying out mutual legal assistance for asset recovery.

The Conference, in Resolution 1/5 on technical assistance, also decided to establish an open-ended intergovernmental working group on technical assistance to review needs, provide guidance on priorities and promote co-ordination of technical assistance where provided, and recommended the convening of an international co-operation workshop on technical assistance (Resolution 1/6).

The Conference addressed the issue of bribery of public officials in Resolution 1/7 and invited UNODC, other relevant public international organizations, and States, to initiate an open-ended dialogue on the issue and report to the second session of the Conference.

In Resolution 1/8, the Conference decided to consider best practices in the fight against corruption at its next meeting.

#### **C. Second Session: Nusa Dua, Indonesia, 28 January-1 February 2008**

The Conference at its second session adopted five resolutions on, respectively, review of implementation, technical assistance, asset recovery, adapting legislation and regulations, and bribery of officials of public international organizations. These resolutions built upon the goals and achievements of implementation of its prior resolutions, in particular with recommendations formulated by each of the three established working groups.<sup>8</sup>

<sup>6</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session1-resolutions.html>.

<sup>7</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/self-assessment.html>.

<sup>8</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session2-resolutions.html>.

In Resolution 2/1, the Conference called upon States Parties and signatories to submit proposals for terms of reference for a review mechanism and the working group on review of implementation was tasked to review these proposals and submit draft terms of reference to the Conference at its third session for its consideration, action and possible adoption.

The Conference welcomed the analysis of the information gathered and collated using the self-assessment checklist on the implementation of the UNCAC in Resolution 2/2, requesting the working group on technical assistance to continue developing recommendations on how best to meet the needs identified.

The Conference also requested the working group on asset recovery to continue engaging in this highly innovative and technical field (Resolution 2/3).

It further renewed its call for adaptation of laws and regulations to be in full compliance with the provisions of the UNCAC in Resolution 2/4 and requested UNODC in Resolution 2/5 to focus on methodologies of co-operation between public international organizations and States parties in investigations of corruption involving international public officials.

#### **D. Third Session: Doha, Qatar, 9-13 November 2009**

The Conference at its third session, held in November 2009, adopted landmark Resolution 3/1 on the review of the implementation of the Convention. In that Resolution, the Conference established a review mechanism aimed at assisting countries to meet the objectives of the Convention through a peer review process. A more analytical overview of the mechanism is presented separately in this paper. It should be mentioned, however, at this point, that the experience of a voluntary pilot review programme carried out by UNODC from 2007 to 2009 had provided the Conference with lessons learned on methods for reviewing implementation of the Convention and several features of the pilot programme were introduced into the terms of reference of the review mechanism.<sup>9</sup>

Emphasis was also placed by the Conference on preventive measures (Resolution 3/2), establishing a working group to further explore good practices in this field. In this respect, the importance of building public-private partnerships was highlighted, because businesses are now lagging behind Governments in fighting corruption, especially after the establishment of the Review Mechanism.

Resolution 3/3 on asset recovery welcomed the recommendations of the working group on asset recovery and the work undertaken by the Secretariat to implement those recommendations. It emphasized the ongoing importance of international co-operation for asset recovery and urged States to take a proactive approach when using the provisions of the Convention. The Conference renewed the mandate of the working group on asset recovery and tasked it, *inter alia*, to develop best practices in asset recovery including through the studies produced by the Stolen Asset Recovery Initiative.<sup>10</sup>

Resolution 3/4 on technical assistance welcomed the work of UNODC, in particular efforts to gather and analyze information through the self-assessment checklist, and the recommendations of the working group on technical assistance. The Secretariat was also, *inter alia*, tasked with further developing its database of anti-corruption experts and forging partnerships with assistance providers as well as the public and private sectors. In view of its decision to establish the review mechanism, the Conference decided to fold the mandate of its working group on technical assistance into the work of the mechanism.<sup>11</sup>

<sup>9</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html>.

<sup>10</sup> With a view to encouraging and facilitating systematic and timely return of assets stolen through acts of corruption, under the framework of UNCAC, UNODC established in 2007 a partnership with the World Bank Group under the joint Stolen Assets Recovery (StAR) Initiative. The StAR initiative has been focusing on lowering the barriers to asset recovery; building national capacity for asset recovery; and providing preparatory assistance in the recovery of assets.

<sup>11</sup> For an overview of the Resolutions adopted by the Conference at its third session, see <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3-resolutions.html>.

#### **IV. THE WORKING GROUPS ESTABLISHED BY THE CONFERENCE: AN UPDATE ON THEIR WORK**

##### **A. Working Group on Technical Assistance**

As mentioned above, in its resolution 1/5, the Conference of the States Parties to the UNCAC decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in the implementation of its mandate on technical assistance.

In the same resolution, the Conference also decided that the working group should perform the following functions:

- Review the needs for technical assistance in order to assist the Conference on the basis of the information provided by States to the Conference;
- Provide guidance on priorities, based on programmes approved by the Conference and its directives;
- Consider information gathered through the self-assessment checklist approved by the Conference;
- Consider information, as appropriate and readily available and in the areas covered by the Convention, on technical assistance activities of the Secretariat and States, including successful practices, as well as on projects and priorities of States, other entities of the United Nations system and international organizations;
- Promote the co-ordination of technical assistance in order to avoid duplication.<sup>12</sup>

Throughout its work, the working group has stressed the crucial role of technical assistance in promoting the implementation of the Convention and reiterated that delivery of such assistance had to be based on needs identified by the recipient State. In addition, it has reaffirmed that the delivery of technical assistance had to be informed by the guiding principles on aid effectiveness contained in the Paris Declaration on Aid Effectiveness. Those principles included flexibility, transparency and respect for priorities identified by recipient States.

The working group acknowledged that the implementation of the Convention at the country level should be a gradual and ongoing process, to be mainstreamed into the development agenda. That would allow for technical assistance needs to be addressed on a long-term basis and in a more coordinated and effective manner.

The working group also recognized the need to establish or strengthen mechanisms to promote the coordination of technical assistance in support of States' efforts to implement the Convention. While acknowledging the value of existing mechanisms, the working group stressed that for co-ordination to be effective, it had to be pursued at the national level and had to involve donors, partner States and UNODC. In this connection, the group supported initiatives to further promote co-ordination among technical assistance providers, in particular the use of a matrix to map needs identified through the self-assessment checklist, and to facilitate the delivery of technical assistance to meet identified needs.

As the identification of technical assistance needs and priorities, and the subsequent delivery of assistance, were seen as directly linked to the mechanism to review the implementation of the Convention, the Conference of the States Parties to the UNCAC decided, in its resolution 3/1, that the Implementation Review Group, the mechanism established by the Conference in accordance with article 63, paragraph 7, of the UNCAC to assist it in the effective implementation of the Convention, should be in charge of following up and continuing the work of the working group on technical assistance.

##### **B. Working Group on Asset Recovery**

As mentioned above, the Conference of the States Parties to the UNCAC adopted at its first session resolution 1/4, in which it decided to establish an interim open-ended intergovernmental working group to advise and assist the Conference in implementing its mandate on the return of proceeds of corruption.<sup>13</sup>

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<sup>12</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/working-group3.html>.

<sup>13</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/working-group2.html>.

Reaffirming that Chapter V of the Convention presented a unique framework for asset recovery, the working group has devoted part of its discussions to challenges to the asset recovery process in practice. It has paid particular attention to a series of practical problems and obstacles hampering assistance and efficient co-operation in this field, including those related to divergences in legal systems. In addition, the working group placed emphasis on ways to address the lack of capacity of prosecutors, investigators and financial intelligence units to deal with asset recovery cases. It found that the exchange of information between investigative and prosecutorial authorities of requesting and requested States was often hindered by a deficit in trust between institutions at the national and international levels. Another challenge noted was the excessive length of proceedings.

The working group has further discussed positive examples, good practices and areas for action in the field of asset recovery. It has been stressed throughout its work that States should strive to have the most comprehensive legal frameworks in place and take all necessary steps to enable practitioners to make the best possible use of the legal tools in place. Moreover, particular attention was devoted to the need to develop a common understanding of standards for procedural and evidentiary requirements in requesting and requested States and to make use of modern information technology in evidentiary procedures and for the fast-tracking of information processing.

The working group has further discussed technical assistance approaches to supporting asset recovery such as capacity-building and training, gap analyses, the drafting of new laws where necessary, the facilitation of the mutual legal assistance process, knowledge dissemination and the provision of practical tools such as case management systems. In this vein, it was noted that urgent and concerted action was necessary to build or strengthen trust among co-operating States and to promote informal channels of communication through, *inter alia*, the establishment of a network of focal points. Those focal points would be designated officials with technical expertise in international co-operation and be in a position to assist their counterparts in effectively managing requests. Further, the establishment of regional networks similar to the Camden Asset Recovery Inter-Agency Network (CARIN) was encouraged.

The working group noted with appreciation the work of the StAR initiative in developing practical guides and practitioners' tools and the work of UNODC in establishing a knowledge management consortium and a legal library on anti-corruption issues. It further discussed the importance of adopting an operational, practical and analytical approach to developing knowledge products and of ensuring broad consultations with experts from States from all regions and representing all legal systems. Moreover, it underlined the importance of co-ordinating efforts between existing initiatives in order to maximize the use of expertise and resources, and forge further partnerships for asset recovery and technical assistance.

### **C. Working Group on Prevention**

As briefly mentioned above, the Conference of the States Parties to the UNCAC decided at its third session to establish an interim open-ended intergovernmental working group to advise and assist it in the implementation of its mandate on the prevention of corruption. The Conference also decided that the working group should perform the following functions:

- Assist the Conference in developing and accumulating knowledge in the area of prevention of corruption;
- Facilitate the exchange of information and experience among States on preventive measures and practices;
- Facilitate the collection, dissemination and promotion of best practices in corruption prevention;
- Assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption.<sup>14</sup>

<sup>14</sup> See <http://www.unodc.org/unodc/en/treaties/CAC/working-group4.html>.

## **V. THE IMPLEMENTATION REVIEW MECHANISM OF THE UNCAC: STRUCTURE, MAIN FEATURES AND GOALS AND GUIDING PRINCIPLES**

### **A. Legal Mandate**

As briefly mentioned above, the Conference of the States Parties to the UNCAC adopted a landmark resolution at its third session held in Doha, Qatar from 9 to 12 November 2009, to establish a Mechanism for the Review of Implementation of the UNCAC. Resolution 3/1 sets out the Terms of Reference for the Mechanism (annexed to the resolution), marking the achievement of negotiations which were initiated at the first session of the Conference in 2006. With this Mechanism, States Parties have undertaken to review their implementation of UNCAC provisions through a peer review process. Reviews will be conducted on the basis of each State's self-assessment, submitted through the comprehensive self-assessment checklist endorsed by the Conference at its third session.

### **B. Structure and Terms of Reference: A Brief Overview**

The Terms of Reference (TOR) of the Review Mechanism specify that:

- The UNCAC will be reviewed by way of a peer review process – each State Party shall be reviewed by two other States Parties, with the State Party under review being actively involved.
- The selection of the State Party under review and of the reviewing States will be carried out by drawing of lots. Each State will be reviewed by a State from its own regional group and one from another.
- Each review phase shall be composed of two review cycles of five years each and all States Parties must undergo the review within the cycle.
- The first review cycle will cover UNCAC Chapters III (criminalization and law enforcement) and Chapter IV (international co-operation).
- The second review cycle will cover Chapter II (preventive measures) and Chapter V (asset recovery).
- An initial desk review will be based on the responses to the comprehensive self-assessment checklist. States under review shall endeavour to conduct broad consultations including all relevant stakeholders when preparing their responses.
- Active dialogue between the country under review and the reviewers is a key component of the process.
- Country visits will be conducted when agreed by the State under review, and States shall facilitate engagement with all relevant stakeholders.
- A country review report will be prepared under the ownership of the country under review. The executive summary of this report will be an official United Nations document.
- The Mechanism has an Implementation Review Group (IRG) which shall have an overview of the review process and provide recommendations and conclusions to the Conference.

### **C. Goals and Objectives of the Review Process**

The review of implementation of the Convention and the Mechanism are under the authority of the Conference, in accordance with article 63 of the Convention. Consistent with the Convention, in particular article 63, the purpose of the review process shall be to assist States Parties in their implementation of the Convention. In this regard, the review process, *inter alia*, shall:

- Promote the purposes of the Convention as set out in its first article;
- Provide the Conference with information on the measures taken by States Parties in implementing the Convention and the difficulties encountered by them in doing so;
- Help States Parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;
- Promote and facilitate international co-operation in the prevention of and the fight against corruption, including in the area of asset recovery;

- Provide the Conference with information on successes, good practices and challenges of States parties in implementing and using the Convention;
- Promote and facilitate the exchange of information, practices and experiences gained in the implementation of the Convention.

#### **D. Guiding Principles and Characteristics of the Review Mechanism**

The Mechanism is an intergovernmental process which shall:

- Be transparent, efficient, non-intrusive, inclusive and impartial;
- Not produce any form of ranking;
- Provide opportunities to share good practices and challenges;
- Assist States parties in the effective implementation of the Convention;
- Take into account a balanced geographical approach;
- Be non-adversarial and non-punitive and shall promote universal adherence to the Convention;
- Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such an outcome;
- Identify, at the earliest stage possible, difficulties encountered by States Parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;
- Be of a technical nature and promote constructive collaboration, *inter alia*, in preventive measures, asset recovery and international co-operation;
- Complement existing international and regional review mechanisms in order that the Conference may, as appropriate, co-operate with those mechanisms and avoid duplication of effort.

In conformity with Article 4 of the UNCAC, the Mechanism shall not serve as an instrument for interfering in the domestic affairs of States Parties but shall respect the principles of equality and sovereignty of States parties. Furthermore, the review process shall be conducted in a non-political and non-selective manner.

The Mechanism shall also promote the implementation of the Convention by States Parties, as well as cooperation among States Parties. It shall further provide opportunities to exchange views, ideas and good practices, thus contributing to strengthening co-operation among States parties in preventing and fighting corruption.

The Mechanism shall 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.

The review of implementation of the Convention is perceived as an ongoing and gradual process. Consequently, the Mechanism shall endeavour to adopt a progressive and comprehensive approach.

#### **E. Guidelines for Governmental Experts and the Secretariat in the conduct of Country Reviews**

The Conference of the States Parties to the UNCAC also adopted in its resolution 3/1 Guidelines for governmental experts and the secretariat in the conduct of country reviews, as well as a Blueprint for the country review report, which were then finalized by the Implementation Review Group at its first meeting from 28 June to 2 July 2010.<sup>15</sup>

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<sup>15</sup> CAC/COSP/IRG/2010/7, Annex I and Appendix.