



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

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Implementation Review Group

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Draft report

III. Review of implementation of the United Nations Convention against Corruption

A. Drawing of lots

1. In its resolution 6/1 the Conference requested the Group to, inter alia, hold intersessional meetings open to all States parties, for the purpose of the drawing of lots in accordance with paragraph 19 of the terms of reference of the Mechanism and without prejudice to the right of a State party to request that the drawing of lots be repeated at the Group's subsequent intersessional meeting or regular session.
2. In accordance with Conference resolution 6/1, an intersessional meeting of the Group open to all States parties was held on Friday, 24 May 2019.
3. With regard to the second cycle of the Mechanism, lots were drawn for the selection of the reviewing States parties for the fourth year of the second cycle. The selection of the reviewing States parties was carried out pursuant to paragraphs 19 and 20 of the terms of reference of the Mechanism. For each State party selected to be reviewed, one of the two reviewing States was selected from the same regional group and the second reviewing State was selected from a pool of all States parties (see annex II).¹
4. Some States deferred serving as reviewing States or requested redraws for the first and second review cycles in line with the terms of reference of the Mechanism. Those redraws were carried out during the tenth session of the Group.

B. First review cycle

5. A representative of the secretariat introduced the note by the Secretariat entitled "Set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption" (CAC/COSP/IRG/2019/3). The document had been prepared in accordance with Conference resolution 6/1, which requested the Group to analyse the

¹ The updated country pairings for the first and second cycles will be made available in a conference room paper entitled "United Nations Convention against Corruption: Country pairings for the first and second cycles of the Implementation Review Mechanism" (CAC/COSP/IRG/2019/CRP.8).



outcomes of the first cycle country reviews in terms of identified successes, good practices, challenges, observations and technical assistance needs, considering the thematic implementation reports, and to submit a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention to the Conference for its consideration and approval. In its decision 7/1, the Conference had taken note of the set of non-binding recommendations and conclusions, as reviewed by the Group at its resumed eighth session ([CAC/COSP/2017/5](#)). The note by the Secretariat ([CAC/COSP/IRG/2019/3](#)) was based on an analysis of over 6,000 individual recommendations and over 1,000 good practices identified in 167 completed country reviews of the first cycle, including 18 newly completed reviews since the Group's second resumed ninth session in November 2018, during which the set of non-binding recommendations and conclusions had been approved in principle. The note further reflected written submissions received from 27 States parties that provided comments in response to two notes verbales sent by the secretariat on 7 January 2019 and 29 June 2017. Overall, both in their written submissions and during the previous sessions of the Group, States parties expressed support for the set of non-binding recommendations and conclusions, bearing in mind that the measures were non-binding in nature and intended to be practical options for policymakers to consider, consistent with the fundamental principles of their legal systems and taking into account national priorities. The speaker reiterated that the non-binding measures provided a mere summary of the main observations, recommendations, conclusions and good practices identified in the country reviews of the first cycle, taking into account the levels of obligation of the Convention.

6. The representative of the secretariat further introduced the note by the Secretariat entitled "Explanatory note on Good Practices in relation to the set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the United Nations Convention against Corruption" ([CAC/COSP/IRG/2019/6](#)). The explanatory note contained additional information to elaborate on the good practices summarized in the set of non-binding recommendations and conclusions, which had been identified in the country reviews of the first cycle. The note had been prepared based on a request to the secretariat made during the second resumed ninth session of the Group, to elaborate on the conclusions reached and, in particular, the good practices identified in the first cycle country reviews, which would assist States in further clarifying the information in line with the corresponding provisions of the Convention.

7. During the ensuing discussion, speakers welcomed the set of non-binding recommendations and conclusions, which represented important results of the Group's collective work, and noted its advanced state, having undergone several rounds of consultations during the seventh session of the Conference and prior sessions of the Group. Speakers emphasized that States would benefit from drawing on the non-binding recommendations and conclusions, which demonstrated the positive impact of the Review Mechanism. It was noted that, although the conclusions and recommendations were non-binding in nature and did not create additional obligations for countries, States should consider putting them into practice, as they reflected common good practices and presented opportunities to enhance the implementation of the Convention. In this regard, several speakers noted that the conclusions and recommendations described went beyond the provisions of the Convention in that they described good practices in implementation of the Convention, which was seen as one of the benefits of the Mechanism. It was suggested that States could draw on specific measures described in the document in furtherance of domestic reforms and national priorities. Speakers highlighted the usefulness of specific recommendations and conclusions in the context of their national legal systems in this regard.

8. Several speakers described how their legal and institutional frameworks had been brought in line with the measures described and summarized steps their countries had taken in response to the outcomes of the first cycle reviews. Speakers reported on

national reforms and developments, such as establishing specialized anti-corruption authorities, strengthening anti-corruption capacity in public institutions and the judiciary, developing and strengthening laws and mechanisms to counter corruption (including, specialized legislation, criminal and penal procedure laws, sanctions and penalty mechanisms, measures to protect witnesses, victims and reporting persons, regulations on the liability of legal persons, statutes of limitations, and laws on extraterritorial jurisdiction), strengthening procedures for inter-agency coordination, and enhancing measures on international cooperation. These developments had further contributed to strengthening national frameworks to prevent corruption and the dissipation of criminal proceeds abroad. In one State, consequent to the first cycle review recommendations, a Constitutional amendment had been adopted giving constitutional recognition to the Convention and entrusting the anti-corruption authority with implementing its provisions. In another State, the recommendations made in the first cycle had informed a set of reforms, such as the extension of non-conviction-based confiscation tools to corruption offences. As a measure of success of these reforms, the ability to provide a wide range of international assistance in conviction and non-conviction-based confiscation proceedings was noted as a good practice in the second cycle review of this State.

9. One speaker referred to a recent regional conference held in Colombia on fast-tracking the implementation of the Convention in Latin America and the Caribbean. The conference was aimed at building regional platforms and promoting initiatives to improve the implementation of the Convention, such as systems of integrity in the public sector, asset declarations, liability of legal persons, corporate governance, whistle-blowing and international cooperation. The outcome of that conference was the adoption by the participating States of a declaration committing to specific measures in these areas, and a discussion on steps to implement the declaration.

10. Commenting specifically on the set of non-binding conclusions and recommendations, one speaker suggested that the recommendation described in the document on the procedure for extradition and mutual legal assistance (art. 44, para. 9 and art. 46, para. 24) could be further refined, in light of countries' existing treaty obligations and due process requirements. In this context another speaker noted that the issue of simplifying procedures and evidentiary requirements on international cooperation should be further stressed in the recommendations. In response, the representative of the secretariat noted that the language of the recommendation mirrored the text of article 44, paragraph 9 of the Convention.

11. In regards to the scope of the measures described, one speaker suggested that the document should also cover the outcomes of the second review cycle, while others emphasized the need to focus on the outcomes of the first cycle reached to-date, to ensure their continued relevance.

12. This was also in line with the decision of the Conference to review chapters III and IV of the Convention in the first cycle. In response, the secretariat referred to the mandate contained in Conference resolution 6/1, which requested the Group to submit a set of non-binding recommendations and conclusions based on lessons learned regarding the implementation of chapters III and IV of the Convention to the Conference for its consideration and approval. One speaker positively noted that the observations and good practices had been formulated in order to make them more broadly applicable to a wider range of country-specific situations, without changing their overall content and meaning. He suggested that the document could be consolidated with the accompanying note by the Secretariat entitled "Explanatory note on good practices in relation to the set of non-binding recommendations and conclusions" ([CAC/COSP/IRG/2019/6](#)) and submitted to the Conference in one document.

13. Some speakers suggested that the set of non-binding recommendations and conclusions should be finalized and submitted by the Group to the Conference for its consideration, approval and further action, in line with resolution 6/1, in the form of

a draft resolution or decision, which could be discussed at the next meeting of the Group. Other speakers expressed caution regarding the proposal to transmit the document to the Conference in the form of a draft resolution or decision, in light of the non-binding nature of the measures. Some speakers noted that given the non-binding nature of the set of conclusions and recommendations which gave States the opportunity to exercise their prerogative not to follow all of the measures and good practices described.

14. It was suggested by some speakers that there be further discussion in the period leading up to the Conference on the most appropriate method of transmission and on any remaining substantive points. In this context, one speaker referred to States parties' obligations under article 65 of the Convention and emphasized that the purpose of the Conference under article 63 was to promote and review the implementation of the Convention and to acquire necessary knowledge of the measures taken by States parties in implementing this Convention and the difficulties encountered by them in doing so. Accordingly the speaker emphasized that it was necessary for the Group to transmit the document to the Conference for its further action, and that it was within the remit of the Conference to determine the most appropriate course of action.

15. The representative welcomed the suggestions and comments and indicated that there would be further opportunity at the Group's next session and in the period leading up to the Conference to discuss the most appropriate modalities of transmission of the document to the Conference, as well as any further substantive issues. The representative also clarified that any additional observations and good practices suggested by States in their written comments that were not reflected in the document had been summarized in its introduction, to the extent that these were not identified in the country reviews themselves.

C. Second review cycle

16. A representative of the secretariat presented an update on the most common and relevant information successes, good practices, challenges and observations based on the thematic report on chapter V (Asset recovery) prepared by the Secretariat ([CAC/COSP/IRG/2019/4](#)). She informed the Group that the thematic report was based on 20 finalized executive summaries and that initial trends in both challenges and good practices were emerging. Almost all countries with completed reviews had received recommendations for article 52, and more than half of the countries under review received recommendations for articles 53, 54, 55 and 57. The highest number of recommendations was issued for articles 52, 54 and 57 with 50 or over 50 recommendations per article. The highest number of good practices has been identified under article 52.

17. The representative of the secretariat further introduced challenges of common concern and good practices identified under each article of Chapter V of the Convention on asset recovery. She summarized that many States had that little experience and had not received international cooperation in the recovery of assets and that no requests for mutual legal assistance or issued such requests at the time of the conclusion of the review. In particular with regard to asset return, few States had reported on practical experience. In turn, many States had reported on the usage of various networks and agreements to facilitate international cooperation for asset recovery and the secretariat encouraged States to continue their efforts in implementing chapter V and to continue to share examples and statistics with the secretariat.

18. In reference to the implementation on chapter V of the Convention, several speakers referred to their countries' national legislation, mechanisms and practices in relation to asset recovery, including, inter alia, on easing the statute of limitations for corruption offences, establishing of a dedicated office for asset tracing and recovery, and using of non-conviction-based confiscation. A number of speakers also mentioned

that specialized asset recovery offices or asset forfeiture units had been established in their countries. One speaker indicated that amendments to the legislation on anti-money-laundering and proceeds of crime were introduced in his country to enhance FIU's asset-tracing ability, while another speaker shared information on the peer-to-peer technical assistance in asset recovery provided by her country to other States. In addition, some speakers referred to the significance of international cooperation in terms of asset recovery in line with the Convention, especially on the use of mutual legal assistance, and called on States to afford each other the widest measure of international cooperation in this regard.

Panel on challenges, good practices, and lessons and procedures allowing the confiscation of proceeds of corruption without a criminal conviction

19. A representative of the secretariat made an introductory statement on good practices and procedures allowing the confiscation of proceeds of corruption without a criminal conviction, which has been observed in a number of country reviews, either as a good practice or as an issue on which States parties require additional guidance. It was noted that, in many States, non-conviction-based confiscation mechanisms had a decisive role in the confiscation of the proceeds of corruption and addressing unexplained wealth. The representative also drew the attention of the Group to the note by the Secretariat entitled "Mutual recognition of non-conviction-based freezing orders and confiscation judgments" (CAC/COSP/WG.2/2019/CRP.1), which was prepared for the thirteenth session of the Open-ended Intergovernmental Working Group on Asset Recovery.

20. The panellist from China made a presentation on her country's national legislation for confiscation, assets subject to confiscation, types of confiscation orders and international cooperation and return of assets. The panellist highlighted that, pursuant to article 54 (1)(c) of the Convention, China's special confiscation procedure had been incorporated into the national Criminal Procedural Law. She explained the specific rules of the application of the procedure, including its scope, applicability, types of property subject to it, executing authorities, due process protection and procedural requirements. The panellist referred to compatible judicial interpretations, which were applicable to corruption-related crimes of a serious nature. The special confiscation procedure could be applied to suspects or defendants who escape or die, based on applications made by the People's Procuratorates to the courts of intermediate level or submissions by the police via the Procuratorates, which played an important role.

21. The panellist from Guatemala presented a newly introduced law governing a non-conviction-based confiscation proceedings. A new law established a national commission for confiscation, chaired by Guatemala's Vice-President and included representatives from the Supreme Court, Prosecutor General's Office and the Ministry of Justice. The law covered all the relevant aspects of seizure, confiscation, administration and management of seized and confiscated assets. Public prosecutors of a special Prosecutor Office were able to more effectively seize assets based on the new legislation. The National Commission determined whether the property could eventually be subject to confiscation. The panellist also reported that, due to the new legislation, national authorities had seized and confiscated a large number of illicit proceeds. The panellist highlighted the continuing practical challenges in the areas of management of seized assets and asset recovery at the national and international levels.

22. The panellist from the Russian Federation made a presentation on measures taken in his country to monitor the expenses of public officials and their family members with a view to detecting any discrepancies between their income and expenses. A detailed overview of the process, such as the procedure to apply for monitoring of expenses of public officials, the scope of public officials covered, the temporal scope of the monitoring, and ways to receive information by the competent authorities on relevant expenses was provided. The application for monitoring was regulated by civil procedural rules and that the measures had successfully survived

constitutional challenges. He noted that the Constitutional Court had made references to the United Nations Convention against Corruption. An example of international cooperation based on the new measures and transmitted pursuant to article 43 of the Convention was highlighted. The panellist provided statistical information and outlined the steps that the authorities intended to take to strengthen the measures.

23. The panellist from the United Kingdom spoke about a new civil confiscation tool on unexplained wealth orders, introduced in 2018, which was designed to address challenges with obtaining evidence in specific suspicious cases that were often related to foreign mutual legal assistance requests and corruption and organized crime. The order required the respondent to provide information or evidence on lawful ownership of a specific property and means used to obtain it. Based on the response to the order or lack thereof, competent authorities could decide whether to pursue a criminal investigation or civil recovery. With regard to the latter, he spoke in detail about the relevant court proceedings and available interim measures that could be applied to the property to secure its eventual confiscation. He highlighted that the tool had a number of other potential uses in corruption cases, including in relation to individuals entrusted with prominent public functions and asset return.

24. The panellist from Germany described a recent reform of the German asset recovery legislation aimed at significantly strengthening and streamlining the effective confiscation of assets under criminal law. The reform introduced a new form of non-conviction-based confiscation in cases of serious crime, such as money-laundering or concealing unlawfully obtained financial benefits. Assets of unclear origin could now be confiscated without evidence of a specific criminal offence and without a conviction if they had been seized in proceedings brought for the suspicion of serious crime and if the court was satisfied that the assets had originated from an unlawful act. Guidance was provided to the courts for establishing said satisfaction, inter alia, a major disparity between the value of the seized assets and the legal income of the person concerned. The speaker referred to several successful ongoing cases of the application of the new legislation.

25. In the ensuing discussion, speakers stressed that corruption remained a global challenge and reported on a wide range of measures taken by their countries to implement the requirements of the Convention. Speakers welcomed the thematic report by the Secretariat on the implementation of chapter V of the Convention, and encouraged States to adopt further measures to strengthen the chapter's practical implementation. It was noted that the lack of political will, differences in legal systems, and strict dual criminality and limitation periods on the recoverability of assets must be addressed in a common sense manner on an urgent basis and that onerous conditions for the tracing and return of confiscated assets to the requesting countries continue to burden the effective recovery of assets.

26. Reference was made to the need to introduce non-conviction-based confiscation mechanisms, in order to more effectively fight corruption. Several speakers described how the concept of confiscation was understood and applied in law and practice in their countries and urged States to ensure that non-conviction-based confiscation mechanisms were consistent with internationally recognized rights of the accused as well as of victims, in particular, with the principle of the presumption of innocence. They also stressed the importance of distinguishing different approaches to confiscation proceedings, which could be either punitive or restorative.

27. One speaker noted that the report highlighted gaps in the implementation of subparagraph 1(c) of article 54 of the Convention and requested the secretariat to consider the possibility of conducting further research on good practices and possible ways to strengthen the implementation of this provision of the Convention.

28. In response to questions raised, the panellists described the measures adopted by their countries in greater detail, including a number of important safeguards, to ensure that due process was followed, while applying provisional measures and issuing confiscation orders.

29. Speakers requested that the presentations by the panellists be made available to this Group as well as the Working Group on Asset Recovery.
