



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

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## Open-ended Intergovernmental Working Group on the Prevention of Corruption

### Third Session

Vienna, 27-29 August 2012

## Draft report

### I. Introduction

1. In its resolution 3/2, the Conference of the States Parties to the United Nations Convention against Corruption decided to establish an interim open-ended Intergovernmental Working Group, in accordance with article 63, paragraph 7, of the United Nations Convention against Corruption, and rule 2, paragraph 2 of the rules of procedure of the Conference of the States Parties, to advise and assist the Conference in the implementation of its mandate on the prevention of corruption.
2. The Conference decided that the Working Group should perform the following functions:
  - (a) Assist the Conference in developing and accumulating knowledge in the area of prevention of corruption;
  - (b) Facilitate the exchange of information and experience among States on preventive measures and practices;
  - (c) Facilitate the collection, dissemination and promotion of best practices in corruption prevention; and
  - (d) Assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption.
3. The Working Group, at its first meeting held on 13 to 15 December 2010, recommended that each of its future meetings focus on a specific and manageable number of substantive topics drawn from chapter II of the United Nations Convention against Corruption.
4. At its second meeting held on 22 to 24 August 2011, the Working Group noted with appreciation that many States parties had shared information on their initiatives and good practices on the topics considered, namely: awareness-raising policies and practices with special reference to articles 5, 7, 12 and 13 of the Convention; and



the public sector and prevention of corruption: codes of conduct (article 8 of the Convention) and public reporting (article 10 of the Convention). The Working Group requested States parties to continue to share with the Secretariat updated information on initiatives and good practices related to chapter II of the Convention, including, where possible, successes, challenges, technical assistance needs, and lessons learned in implementation. The Working Group further requested the Secretariat to prepare background papers synthesizing this information. It also noted that panel discussions should be held during its meetings, involving experts from countries who have provided written responses on the priority themes in question.

5. The Working Group recommended that, at its future sessions, it should continue to focus on a manageable number of specific substantive topics relevant to the implementation of the articles in chapter II of the Convention, and reiterated that the availability of adequate expertise on the topics being addressed would benefit the discussions. At its future meetings, the Working Group could focus its attention on the following topics:

(a) Implementation of article 12 of the Convention, including the use of public-private partnerships;

(b) Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention.

6. The Working Group requested the Secretariat to report to it at its third meeting on the activities undertaken pursuant to the recommendations made at its first two meetings.

7. In its resolution 4/3, the Conference of the States Parties decided that the Working Group should continue its work to advise and assist the Conference in the implementation of its mandate on the prevention of corruption. In the same resolution, the Conference also decided that the Working Group shall hold at least two meetings prior to the fifth session of the Conference. It was further decided that the future meetings of the Working Group will follow a multi-year workplan for the period up to 2015, when the second cycle of the Implementation Review Mechanism begins.

## **II. Organization of the meeting**

### **A. Opening of the meeting**

8. The Open-ended Intergovernmental Working Group on the Prevention of Corruption held its third meeting in Vienna from 27 to 29 August 2012. The meetings of the Working Group were chaired by the President of the Conference of the States Parties, Abdelaâdim Guerrouj (Morocco), Eugenio Curia (Argentina) and Matti Joutsen (Finland).

9. In opening the meeting, the Chair recalled resolution 4/3, entitled “Marrakech declaration on the prevention of corruption” in which the Conference stressed the importance of implementing articles 5 to 14 of the Convention, as well as of developing and sharing best practices in the prevention of corruption. In its resolution 3/2, the Conference had established this Working Group in order to assist in developing and accumulating knowledge, as well as facilitating the exchange of

information and experiences among States in the area of prevention of corruption, in facilitating the collection, dissemination and promotion of related best practices, and in encouraging the cooperation among all stakeholders and sectors of society in order to prevent corruption. He further noted that the Conference had requested the Secretariat to continue to act as an international observatory responsible for collecting existing information on good practices in the prevention of corruption, organizing in a rational way and disseminating information received from States parties, and determining good practices and their possible reproduction on that basis.

10. The Secretary of the Conference of the States Parties noted the importance of the Convention as a comprehensive, international instrument with currently 161 States parties. The provisions on preventive measures were a critical component of the Convention. He noted that the previous two meetings of the Working Group had focused on: public procurement; vulnerabilities to corruption in the public and private sectors; the alignment of financial and other public integrity rules of international organizations with the principles of the Convention; media coverage; integrity through youth; awareness-raising policies and practices; and public sector codes of conduct and public reporting.

11. The representative of the Secretariat introduced the documents of the session. The reports, entitled “Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention” (CAC/COSP/WG.4/2012/3) and “Implementation of article 12 of the United Nations Convention against Corruption, including the use of public-private partnerships” (CAC/COSP/WG.4/2012/2), were based on responses submitted by Member States following the request of the Secretariat for information. She mentioned that these reports reflected the information received by 7 June 2012 from 27 Member States and that submissions after that date had been posted on the website of UNODC, together with submissions received earlier. She further referred to the document, “Report on the status of implementation of resolution 4/3, entitled “Marrakech declaration on the prevention of corruption”” (CAC/COSP/WG.4/2012/4) that outlines action taken to implement the Marrakech Declaration and to assist the Working Group in mapping the way towards effective efforts to prevent corruption.

12. Several speakers regretted the lack of participation of non-governmental organizations in the Working Group, as they believed that non-governmental organizations had a particular contribution to make in the consideration of prevention-related issues. The Secretary stated that the Conference of the States Parties had discussed extensively and taken a decision on the participation of non-governmental organizations in the Implementation Review Group. However, the Conference had not addressed the question of participation of non-governmental organizations in its working groups. Therefore, due to a lack of sufficient clarity, non-governmental organizations had not been invited to the working group. Several other speakers expressed the view that the intergovernmental nature of the working groups precluded the participation of non-governmental organizations in their sessions.

## **B. Adoption of the agenda and organization of work**

13. On 27 August, the Working Group adopted the following agenda:
  1. Organizational matters:
    - (a) Opening of the meeting;
    - (b) Adoption of the agenda and organization of work.
  2. Implementation of Conference resolution 4/3, entitled “Marrakech declaration on the prevention of corruption”, and of the recommendations made by the Working Group at its meeting in August 2011:
    - (a) Good practices and initiatives in the prevention of corruption:
      - (i) Thematic discussion on conflict of interests, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the United Nations Convention against Corruption;
      - (ii) Thematic discussion on the implementation of article 12 of the United Nations Convention against Corruption, including the use of public-private partnerships;
    - (b) Other recommendations.
  3. Future priorities and establishment of a multi-year workplan.
  4. Adoption of the report.

## **C. Attendance**

14. The following States parties to the Convention were represented at the meeting of the Working Group: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Guatemala, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Libya, Luxembourg, Malaysia, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, Thailand, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe.

15. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

16. The following States signatories to the Convention were represented by observers: Czech Republic, Germany, Japan and the Syrian Arab Republic.

17. The following observer States were also represented: Oman.
18. Palestine, an entity maintaining a permanent observer mission to the United Nations, was represented.
19. The following Secretariat units, United Nations bodies, funds and programmes, institutes of the United Nations Crime Prevention and Criminal Justice Programme network, specialized agencies and other organizations of the United Nations system were represented by observers: the Office of the United Nations High Commissioner for Human Rights, the United Nations Commission on International Trade Law, the United Nations Office on Drugs and Crime and the United Nations Development Programme.
20. The following intergovernmental organizations were represented by observers: the Council of Europe, the International Anti-Corruption Academy, the International Centre for Migration Policy Development, the Organisation for Economic Co-operation and Development and the Organization for Security and Co-operation in Europe.
21. The Sovereign Military Order of Malta, an entity maintaining a permanent observer office at Headquarters, was represented.

### **III. Implementation of Conference resolution 4/3, entitled “Marrakech declaration on the prevention of corruption”, and of the recommendations made by the Working Group at its meeting in August 2011**

#### **A. Good practices and initiatives in the prevention of corruption**

##### **(i) Thematic discussion on conflict of interests, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the United Nations Convention against Corruption**

22. The Chair introduced the first substantive discussion, in relation to which the Secretariat had prepared a background note, entitled “Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention” (CAC/COSP/WG.4/2012/3). The Secretariat noted with appreciation the information received from Member States which was compiled in the note. In order to facilitate the sharing of good practices and initiatives on the implementation of this topic, the Working Group was invited to address it in two parts. Firstly, it would address the related issues of conflict of interests and asset declaration and, secondly, the issue of the reporting acts of corruption.

23. The representative of the Secretariat introduced the substantive discussion on conflicts of interest and asset declarations. Conflicts of interest, pursuant to article 7, paragraph 4, of the Convention, were addressed by numerous States through the adoption of written standards and, specifically, codes of conduct for public officials. Such standards included positive declaratory values or principles, and a range of restrictions or prohibitions, particularly in relation to activities in the private sector. The information also provided evidence of implementation of articles 8 (Codes of conduct for public officials) and 9 (Public procurement and management of public

finances) of the Convention. He outlined the diverse manner in which conflict of interest standards had been implemented, namely through proactive measures, divestiture of assets and the increasing use of central enforcement authorities.

24. In reference to asset declarations, as outlined in article 8, paragraph 5, of the Convention, the Secretariat highlighted the common themes that had emerged from the information provided. These included the prevalence of central, independent authorities charged with monitoring the implementation of asset declaration requirements and the increasing use of information technology tools to carry out these tasks.

25. The panellist from the United States of America provided a presentation on proactive measures in relation to conflicts of interest, also introducing a paper, which the United States had submitted entitled “The United States of America executive branch financial disclosure system” (CAC/COSP/WG.4/2012/CRP.2). One particular measure highlighted was the use of an Ethics Agreement between public authorities and public officials outlining the measures that must be taken, following the submission of an asset declaration form, in order to resolve any potential conflict of interests prior to that individual commencing employment with that public authority.

26. The panellist from Argentina provided a presentation on the financial disclosure system applicable to public officials. That system was used to identify both conflicts of interest and illicit enrichment. Specific focus was placed on the use of information technology for the submission and processing of asset declaration forms. During the presentation, Argentina highlighted the problems they had encountered when using a paper-based system for asset declarations and noted the benefits of moving to an automated system, including the quick transmission of information, increased security, increased efficiency, greater public access to information and the swifter identification of potential conflicts of interest. The panellist also highlighted the use of a centralized body for the receipt and processing of asset declarations.

27. The panellist from Japan explained the proactive measures that had been taken in relation to conflicts of interest, based on evidence obtained through questionnaires completed by public officials previously found to be in breach of conflict of interest regulations. He highlighted the important role that the training of public officials can play in the identification and resolution of conflicts of interest. In this regard, the Japanese authorities had new training tools including re-enactment DVDs, and e-learning tools to be used for the training of public officials. Comparisons between different Ministries and agencies were used to motivate them to improve existing ethics training practices.

28. Speakers noted with appreciation the documentation prepared and presentations given by the Secretariat. Some speakers noted that there are difficulties in addressing the issue of conflicts of interest and requested specific examples and guidance in order to assist States in the lead up to the second cycle of the Implementation Review Mechanism. One speaker suggested that UNODC may wish to work with States to develop a form of common standards or framework in relation to conflicts of interest that could take the form of a model law or a common regulatory framework.

29. Codes of conduct were identified by a number of speakers as an effective measure in addressing conflicts of interest, in accordance with Article 8 of the Convention (Codes of Conduct for Public Officials). Specifically, a number of speakers highlighted the development of specialized codes of conduct and standards for specific areas of public administration.

30. Several speakers spoke of measures adopted in relation to public procurement, pursuant to Article 9 of the Convention (Public procurement and management of public finances). E-procurement was highlighted by a number of speakers as an effective method of reducing the opportunities for corruption in the procurement process. One speaker referred to the e-procurement system of CompraNet, noting the reduction in costs of procurement and the number of bid protests since its establishment.

31. One speaker highlighted national reform efforts to simplify the regulatory framework and administrative procedures, thereby reducing opportunities for corruption and allowing for significant cost savings.

32. A diverse range of approaches were discussed by speakers in relation to asset declarations. A number of speakers noted that only senior officials were subject to asset declaration requirements. Other speakers referred to an expansion of the scope of those requirements, which may be applied to all public officials and even those who work with the public sector such as consultants. A number of speakers noted that family members and close associates were also required to complete asset declarations. It was agreed that enhanced communication between governmental agencies (i.e. revenue authorities, authorities responsible for asset declarations) was important in order to identify potential irregularities. One speaker further highlighted the need to consider assets abroad and therefore to work with international counterparts.

33. Speakers reported a difference in the use of asset declarations, which may be limited to the identification of conflicts of interest or expanded to include possible illicit enrichment. Several speakers referred to the sanctions applicable where an individual failed to meet asset declaration requirements, which could be either criminal or administrative in nature. One speaker referred to an additional requirement for public officials to provide declarations of expenditure in addition to asset declarations.

34. In considering the second issue of reporting acts of corruption, pursuant to Article 8, paragraph 4 of the Convention, a representative of the Secretariat provided a substantive overview of the submissions of Member States on their experiences and good practices. A number of different measures were outlined, including the legal obligation to report acts of corruption, proactive measures to facilitate reporting (such as centralised and decentralised reporting mechanisms, training and awareness-raising activities), and the protection of individuals who report such acts, provided for under Article 33 of the Convention (Protection of Reporting Persons). He also noted that many of these tools reported by States were available both to public officials and to members of the public, thereby furthering implementation of Article 10 of the Convention (Public Reporting).

35. A panel of speakers made presentations on measures and systems to facilitate the reporting by public officials of corruption to appropriate authorities. The panellist from Poland described the work of the Central Anti-Corruption Bureau

(CBA), which brought together operational and investigative anti-corruption work with preventive and educational efforts. He reported the publication of the Anti-Corruption Guidebook for Civil Servants, which was distributed to central and local government institutions as well as the general public. In addition, Poland had produced the Anti-Corruption Guidebook for Entrepreneurs, for members of the private sector who interact with public sector officials. Training courses to further implement those guidebooks had been delivered and were ongoing. He noted that all public officials had an obligation to report criminal acts, including corruption, or risk being charged with a criminal offence.

36. The panellist from Ecuador reported that the 2008 Constitution of that country incorporated a fundamental principle that citizens live in a society free from corruption and have a duty to report acts of corruption. Under the Constitution, the State had additional responsibilities related to transparency and social oversight. It was reported that the Council for Citizens Participation and Social Control included representatives of grass-roots organizations and received and investigated complaints of corruption from citizens, who were protected by anonymity, and produced reports regarding potential civil or criminal liability. Numerous public awareness activities were described, including advertising campaigns, outreach efforts, training programmes and post-graduate public service courses offered at various universities.

37. The panellist from France noted that while the Criminal Code imposed an obligation upon all civil servants to report any criminal offence, there were challenges in charging a person with aiding and abetting a corruption-related offence for failure to report information. He also highlighted the importance of public education and training to anti-corruption efforts. He noted that a legal mechanism to provide protection for public sector whistleblowers was not yet in place in France. Focus had been placed instead on protection of whistleblowers in the private sector, due to a perception that they were more vulnerable to retaliation and other negative consequences as a result of reporting corruption.

38. Several speakers expressed appreciation for the work undertaken by UNODC and for the background paper prepared by the Secretariat. Speakers noted the importance of a legal duty on public servants to report acts of corruption through an established mechanism. Different approaches were taken, however, as to the legal basis and formulation of that obligation. Some States noted that a general obligation to report all crimes was applicable, while others highlighted that a specific obligation to report acts of corruption had been introduced. Amongst those with more general provisions, several speakers reported that they were presently considering legal reforms to introduce more specific obligations. Speakers reported that the legal consequences for public officials who failed to comply with the duty to report may be either criminal or administrative. It was emphasized that a lack of adequate protections could result in reporting persons later recanting their reports. One speaker also identified the challenge of malicious or false reports of corruption being used to undermine superiors or political opponents.

39. Speakers outlined a wide range of mechanisms used to facilitate the reporting of acts of corruption. These included the establishment of a centralized body for the receipt of reports and the use of an array of reporting mechanisms such as in-person, hotlines, websites and SMS submissions. Other speakers pointed out the advantages of a decentralized reporting mechanism in certain contexts. Several speakers also



highlighted the link between encouraging the reporting of acts of corruption and ensuring the protection of those public persons or members of the public who come forward to provide such reports. Measures aimed at providing protection also demonstrated implementation of article 32 (Protection of witnesses, experts and victims) and article 33 of the Convention (Protection of Reporting Persons). Several speakers emphasized the importance of preserving the reporting person's anonymity throughout the investigation and judicial process. Other speakers described practices of requiring reporting persons to identify themselves to the relevant authority, but preserving confidentiality. One speaker referred to its "Secret User" programme that promoted citizen participation in the detection of acts of corruption in public procurement.

40. Speakers noted that the implications of the duty to report on the private sector should be explored further. Several speakers pointed out that under article 13 of the Convention (Participation of society), States should incorporate the public in anti-corruption efforts and encourage reporting of corruption by the general public, and not only civil servants. It was pointed out that the media could also be a source of information for reporting corruption in both the public and private sectors, as well as avenues for public outreach and awareness-raising efforts. The involvement of civil society organizations in reporting acts of corruption was also highlighted. One speaker outlined incentives for the private sector to self-report internal acts of corruption, with the State offering reduced sentences or penalties.

41. The representative from the United Nations Development Programme ("UNDP") shared findings of surveys conducted jointly with the Government of Viet Nam with regard to public administration and governance outputs. He noted that surveys found that many citizens declined to report corruption because of a belief that nothing would be done in response to their reports. Other impediments to reporting included the fear of retaliation and the lack of awareness of reporting mechanisms. Similar findings were identified with regard to reporting by the private sector of acts of corruption.

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