



PERMANENT MISSION OF THE REPUBLIC OF INDONESIA
TO THE UNITED NATIONS AND OTHER
INTERNATIONAL ORGANIZATIONS IN VIENNA

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The Permanent Mission of the Republic of Indonesia to the United Nations and Other International Organizations in Vienna presents its compliments to the Secretary General of the United Nations and with reference to the note CU 2008/39 (A) has the honour to communicate, as attached herewith, the proposal of Indonesia for the terms of reference of the review mechanism of the UN Convention against Corruption.

The Permanent Mission of the Republic of Indonesia to the United Nations and Other International Organizations in Vienna avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

Vienna, 31 July 2008

Secretary General of the United Nations
c/o Secretariat of the Conference of the State Parties
United Nations Office on Drugs and Crime
Vienna International Centre
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**NON-PAPER
INDONESIAN PROPOSAL FOR A TERMS OF REFERENCE OF A REVIEW MECHANISM
FOR CONSIDERATION BY THE INTER-GOVERNMENTAL EXPERTS WORKING GROUP ON
REVIEW IMPLEMENTATION**

Background

1. Resolution 1/1 of the 1st Conference of State Parties to the United Nations Convention against Corruption (COSP-UNCAC), Amman, 10 – 14 December 2006, decided that any mechanism or bodies should be transparent, efficient, non-intrusive, inclusive and impartial; not produce any form of ranking; provide opportunities to share good practices and challenges; and complement existing international and regional review mechanisms in order that the Conference of State Parties may, as appropriate, cooperate with them and avoid duplication of effort.
2. Resolution 2/1 of the 2nd COSP – UNCAC, Bali, Indonesia, 28 January – 1 February 2008, further decided that such mechanism should also reflect, *inter alia*, the following principles: the objective to assist State Parties in the effective implementation of the Convention; take into account a balanced geographical approach; non-adversarial, non-punitive and 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 submission of the outcome to the Conference, which is the competent body to take action on such outcome; identify at the earliest stage possible, difficulties encountered by parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States Parties to implement the Convention; and be of technical nature and promote constructive collaboration, *inter alia*, in preventive measures, asset recovery and international cooperation.
3. Together with the resolutions related to review of implementation adopted at the 1st and 2nd COSP of UNCAC, Indonesia fully subscribes itself to the G-77 and China's further elaboration of the characteristics and principles of any mechanisms or bodies for review of implementation as a reply to the UNODC Secretariat's note CU/2008/39(A).

Characteristic and Principles of a Review Mechanism

4. In line with the view of the G-77 and China, Indonesia is of the view that the COSP is the sole body responsible for the review of implementation of the

UNCAC. Therefore, any mechanism or body to be established will have to be a subsidiary mechanism or body of the COSP. Indonesia is also of the view that the final recommendations and decisions on any report on the review of the implementation of the Convention will have to be made by the COSP and not by the mechanism itself. It is also important that all reports be submitted to the COSP for its consideration and only COSP is the competent body to approve and issue "Implementation Review Reports". The reports should be based on information provided by States Parties (and where appropriate by Signatory States) on their respective implementation status; such information should be used for analytical purposes only and cannot be disclosed to any person or entity without the prior consent of the State concerned; and the reports should not be used for other political, economic purposes, including trade related purposes.

5. Furthermore, in line with the view of the G-77 and China, Indonesia supports the view that the review mechanism should be an on-going process and well-focused based on a gradual approach to avoid overly hasty decisions; avoid bringing about political difficulties, or creating a kind of selectiveness between State Parties (and as appropriate Signatory States); States should enjoy equal footing; transparent and participatory; in compliance with the obligations set forth in the Convention in a manner consistent with the principle of State sovereignty; analyzes important issues such as asset recovery and shortcomings on technical assistance; subject to periodic evaluation by the COSP; and funded through the regular budget.

The Way Forward: "A Mechanism for Review"

6. In line with the characteristics and principles adopted by the G-77 and China and bearing in mind resolution 1/1 of the 1st COSP UNCAC and resolution 2/1 of the 2nd COSP UNCAC, Indonesia is of the view that a mechanism could be drawn based on those characteristics and principles. In practical terms, a mechanism is more feasible to undertake rather than creating or establishing a body to review the implementation of the Convention. This would support the view that the COSP is the sole body and principle organ for the review of implementation.
7. Such mechanism in support of the work of COSP should bear in mind the characteristic set forth, namely a balance geographical approach, equal footing, transparent and participatory. This would in effect incur the need to create a lean and efficient mechanism. A regional mechanism is thus foreseen

to evaluate and analyze implementation of the Convention. However, such a regional approach should not be based on existing regional mechanism or body, for the reasons that the UNCAC is a global treaty which is far-reaching and broader in in scope. Therefore, Indonesia proposes that such mechanism adopts itself with the current profile of regional offices and centre of the work of the United Nations Office on Drugs and Crime (UNODC).

8. Currently UNODC has 9 (nine) regional offices and 1 (one) regional centre. This would highlight the need to strengthen and empower the existing regional offices and centre. The task of the regional offices and centre would be to analyze reports related to implementation of commitments of the State Parties (and Signatory States as appropriate). The report should be based on information provided by State Parties (and Signatory States as appropriate) through the "self-assessment checklist" . In the same line, when drafting the report the regional office and centre should establish a dialogue and channel of communication between the State Parties (and Signatory States as appropriate), which would open the possibility of country missions conducted by expert and/or experts from the regional offices and centre.
9. In this regard, to analyze information provided by State Parties (and Signatory States as appropriate) the regional offices and centre should be equipped with necessary tools. At the moment such tools can be obtained by utilizing the "legislative guide". Therefore, as Indonesia is supporting the view that the mechanism is a gradual process, and as a matter of priority, the legislative guide would serve the purpose of identifying gaps between national legislations and the provisions of UNCAC. To kick off the process, the regional offices and centre would be conducting "gap analysis" with its corresponding States of the regional office or centre. This process should follow the strict procedure of the agreement of the corresponding States, in particular the agreement on the substance and analysis of the report.
10. Once the reports have been compiled and agreed upon by all the corresponding States to the regional offices or centre and in furthering the principle of a regional process. A meeting of the corresponding States (State Parties and Signatory States) of the regional office or centre is suggested, for the reasons to promote a sense of regionalism, participation, ownership, sharing of good practices and challenges. The need for States corresponding to the regional office or centre to conduct a meeting is the establishment of a culture of dialogue. This would be the basis for the corresponding States to look into and discuss in an open and frank manner progresses made, including good

practices and challenges faced by States in the implementation of the Convention. Through this process of dialogue, this would also enable a better understanding of the needs of States corresponding to the regional office or centre. The meeting should be facilitated by the regional office or centre, and is open to States corresponding to the regional office or centre to host the meeting. The report of the meeting together with the reports of the corresponding States to the regional offices or centre should be submitted to COSP, based on the decision of the meeting itself. Therefore, this meeting should be held once before the COSP.

11. Furthermore, this would mean that the COSP would not deal with specific country by country reports, due to the fact that it would be almost impossible, creating an abundant work, and time consuming (bearing in mind that the COSP meets only 5 days every two years). The COSP should mainly focus on the regional reports submitted by States through the regional offices and centre.
12. These are the processes for the review of implementation mechanism that Indonesia is proposing.

Challenges

13. If the proposal is accepted there is a need to strengthen and empower the capacity of regional offices, including regional centre of the UNODC. Some regional offices may not have the capacity and the expertise to undertake the activities.
14. Strengthening and empowering the capacity and expertise of regional offices including regional centre of the UNODC will definitely impact on the budget. However, such activity should be borne by the regular budget.
15. Tools available to assess is limited. The legislative guide can only be utilized for the purpose of "gap analysis". This necessitates the need to complete the technical guidelines for the implementation of the UNCAC, to be utilized as a tool for an in-depth assessment.