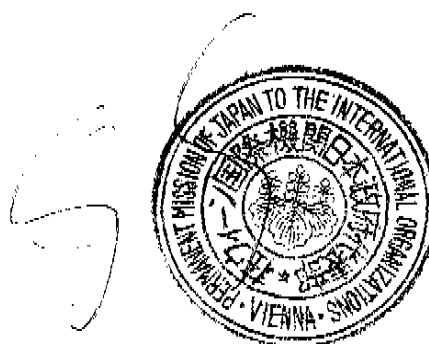


JPM/NV/98/08

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The Permanent Mission of Japan to the International Organizations in Vienna presents its compliments to the Secretary-General of the United Nations and, with reference to correspondence dated 29 April 2008 (Ref: CU 2008/39 (A)) has the honour to forward herewith Japan's proposal for the terms of reference of the mechanisms for consideration by the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption.

The Permanent Mission of Japan to the 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.



To: The Secretary-General of the United Nations

27 June 2008

Vienna

Terms of Reference for UNCAC review implementation mechanism

1. Introduction

It is extremely difficult to review all articles of the Convention for all States Parties because of the large number of articles which contain comprehensive anti-corruption measures to be taken by the States, and also because of the large number of States (117 States). Such an endeavor requires tremendous human and financial resources.

According to PP3 of the resolution 1/2, the review implementation is to be conducted step by step. The first step of the review must include only a limited number of items and contents of the convention. The review of the convention can be compared to that of the "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions".

Based on the aforementioned understanding, terms of reference for the first phase of the review implementation mechanism should be drawn as follows:

2. Purpose of the review mechanism: Phase I

- (1) According to Article 63 and OP1 of the resolution 1/1, the Conference of the States Parties to the Convention shall agree upon establishment of an appropriate and effective mechanism to assist in the periodical review of the implementation of the convention. The mechanism, as its first stage, must be limited to priority issues such as major obligatory articles of the convention, namely preventive measures, criminalization, the return of assets and international cooperation, for reviewing domestic preparation of legislation in each state. (The legislative process must come before implementation.)
- (2) To identify difficulties encountered by parties in the fulfillment of their obligations under the Convention and share good practices and challenges (resolution 1/1 OP3(c), resolution 1/2 OP3(e)), and to promote constructive collaboration, inter alia, in preventive measures, asset recovery and international cooperation. (resolution 1/2 OP3(f))

3. The following principles should be reflected in any review mechanisms, as adopted in resolution 1/1 and resolution 2/1.

- Be transparent, efficient, non-intrusive, inclusive, and impartial
- Not produce any form of ranking
- Be non-adversarial and non-punitive and promote universal adherence to the

Convention

-Be of a technical nature

4. Methodology

- (1) For the effective fight against corruption, the States Parties shall commit rigorously to the implementation process, based on their ownership. Therefore, the ownership must be observed at each stage of the review process.
- (2) In order to make a review, information related to the implementation is needed. States to be reviewed are requested to provide their reviewers with relevant information based on their ownership. In this respect, the self-assessment checklist, which is currently used, is a quite useful tool to encourage each State Party to assess itself and to identify gaps upon implementation; therefore, the checklist should be explored.
- (3) Each State Party should submit to the Secretariat results of the checklist, and the Secretariat should gather and analyze information provided. Subsequently, a report should be prepared on the implementing situation and submitted to the Conference of Parties.
- (4) The Member States will deliberate on the report at the Conference and adopt the report after plenary review.
- (5) With regard to in-depth review, including other less-prioritized issues of each State Party, Member States should establish an intergovernmental expert working group to conduct review work.(see paragraph 8 below) The results of such review will be reported in writing to the Conference through the Secretariat.

5. Information gathering

(1) Checklist

- (a) The self-assessment checklist is the most appropriate tool to be used for gathering information. Answers to the checklist should be submitted to the Conference through the Secretariat.
- (b) Contents of the current checklist are already limited to obligatory parts of the convention, such as the aforementioned priority issues. Contents may be expanded by the Conference of Parties.
- (c) It is important for the checklist to identify difficulties encountered by parties in the fulfillment of their obligations under the Convention, and to pinpoint specific needs for technical assistance.

(2) Information sharing with the Regional/International Organizations

The Secretariat is requested to gather a broader range of information from regional/international organizations that are combating corruption. It is also important to allow Member States to provide the Secretariat relevant data and information on counter-corruption efforts which have also been provided to regional/international organizations. In addition, reviewed states would be allowed to have opportunities to address their comments or objections to reviewers, and the Secretariat should include these comments/objections in the report they prepare for submission to the Conference.

6. Role of the Secretariat: Gathering answers to the checklist and analyzing results

- (1) The Secretariat has the important tasks of receiving, analyzing, and reporting on information provided by answers to the checklist and regional/international organizations. During the process, the Secretariat should analyze the domestic preparation of legislation in reviewed States, then examine necessary measures or actions based on the results identified through the analysis. The Secretariat is also requested to propose appropriate projects for technical assistance according to its mandate to promote the ratification and implementation process of the Convention.
- (2) The Secretariat should prepare a report on the implementation status and a report on needs of technical assistance. These reports should focus, not on individual states, but on regional efforts and situations after accumulating certain number of reviews. However, this is not to suggest that reports should exclude mention of any outstanding individual efforts. Furthermore, the report, should include outcomes of WG meetings, which will conduct in-depth individual reviews.

7. Role of the Conference

(1) Plenary Review

The Conference will conduct review work on the status of implementation with respect to legislation and technical assistance, based on reports provided by the Secretariat. While deliberating on the situation of implementation, the Conference should focus on good practices and experiences in order to identify effective counter measures to challenges. Opportunities for Member States to clarify those mentioned in the reports to the Secretariat must be allowed during the Conference.

(2) Adoption of reports

Based on the deliberation mentioned above, the Conference will adopt the reports submitted by the Secretariat.

8. Role of Open-ended Intergovernmental Expert Working Group

- (1) Establishment of an open-ended intergovernmental expert working group is proposed to make individual reviews which are too difficult for the Conference to address. This group would replace the current tentative intergovernmental expert working group for review implementation as its developed forum.
- (2) The WG meeting will be convened during the Conference. If necessary, the meeting would be convened annually in Vienna, for experts from States Parties to gather and conduct review work.
- (3) Since review of all countries at once is quite difficult, it is proposed to nominate a certain number of reviewing countries as well as reviewed countries from each geographic group, maintaining a balance between the regions.
- (4) The nature of the WG should be open-ended (open to all the Member States), so that any country can participate in the review mechanism. This does not exclude the possibility of closed sessions between reviewed countries and reviewing countries, in order to adjust their results of reviewing based on facts and by mutual consent.

9. Guidelines

It is important to draw up procedural guidelines in order to establish rules for every stage of the review mechanism. The guidelines must be procedural and technical, and must not have binding effect.

The guidelines include points mentioned in OP3 (d) of resolution 1/2, ways to deal with information such as compilation, production, and dissemination of information, as well as procedures for submission of information to the Conference and to WG meetings, deliberation, reporting, and participation.

10. Funding

- (1) Funding must be accumulated by voluntary contribution. It includes cost for interpretations, papers, and other needs for the WG mentioned above, as well as individual face-to-face meetings when necessary.
- (2) Regarding the checklist, the software is available in all official languages. Members that submit any information to the Secretariat should translate it into English at their expense.