



A.091/08

The Permanent Mission of the Republic of South Africa presents its compliments to the United Nations Office on Drugs and Crime and, with reference to Note CU 2008/39 (A) of 29 April 2008, has the honour to submit South Africa's proposals to the Working Group for the Terms of Reference on the Review Mechanism for the United Nations Convention Against Corruption for consideration by the Working Group.

The Permanent Mission of the Republic of South Africa avails itself of this opportunity to renew to the United Nations Office on Drugs and Crime the assurances of its high consideration.



VIENNA
1 July 2008

The United Nations Office
on Drugs and Crime
VIENNA



INPUT BY THE REPUBLIC OF SOUTH AFRICA

SUBJECT: DRAFT TERMS OF REFERENCE ON THE REVIEW MECHANISM FOR THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

A. BACKGROUND

1. South Africa welcomes the work of the Secretariat in taking forward resolutions 1/1 and 2/1 of the Conference of the States Parties (COSP) to the United Nations Convention against Corruption (UNCAC). Resolutions 1/1 and 2/1 of the COSP provides for the establishment of the mechanism to assist the Conference in reviewing the implementation of the Convention.
2. In its resolution 2/1, the COSP decided that the Open-ended Intergovernmental Working Group on Review of the Implementation of the Convention should prepare terms of reference for a review mechanism for consideration, action and possible adoption by the Conference at its third session.

B. GENERAL COMMENTS

3. In view of the provisions of the Convention and the above resolutions, South Africa is of the view that discussions pertaining to the drafting of the terms of reference for the review mechanism should be preceded by discussion regarding the structure of the review mechanism and the format of the review process. The structure of the review mechanism, i.e. whether it a peer review, a body of experts or a combination of both methods is important and is the first step that needs to be agreed upon before commencing with the drafting of the terms of reference for the review mechanism.
4. Also, the review process should be allowed to evolve over time as experience develops. This will be greatly enhanced by making available the results of the voluntary

pilot programme during the upcoming Open-ended Intergovernmental Working Group on Review of Implementation.

5. The issue of how the review mechanism will be funded is also an important matter that needs to be addressed. The review mechanism requires adequate and dependable funding for it to be successful in carrying out its work. The pilot programmes and other ongoing activities can continue to be funded through voluntary contribution. However, the review mechanism should be funded from the UN regular budget.

C. CHARACTERISTICS OF THE REVIEW MECHANISM

6. In its resolution 1/1, the Conference underlined that any review mechanism need to encompass a number of characteristics, namely, that it should: (a) be transparent, efficient, non-intrusive, inclusive and impartial; (b) not produce any form of ranking; (c) provide opportunities to share good practice and challenges; (d) complement existing international and regional review mechanisms. In its resolution 2/1, the Conference further elaborated upon the general principles of the review mechanism.

7. It is very important and fundamental that the above characteristics are elaborated upon and serve as general principles that will guide the work of the review mechanism. The guiding principles are elaborated below and have been expanded on:

Objective: The purpose of the review mechanism is to assist the COSP with reviewing the implementation of the Convention. The COSP is the sole body responsible for reviewing implementation of the Convention. Any mechanism or body to be established in accordance with resolution 1/1 and 2/1 of the COSP, will only assist the COSP in carrying out its mandate. Its work, recommendations, decisions and approval of any reports on the review of the implementation of the Convention, will be taken by the COSP and not by the mechanism/body itself.

Efficient: The review should be holistic and systematic in ensuring that States Parties are effectively implementing the Convention and ensuring that the mechanism is not burdensome to parties. This matter is closely related to the call for the gradual development of the review mechanism.

Transparency: The issue relates not only to the kinds of documentation, reports or findings that will be reviewed and made public but should also include transparency of the review mechanism itself. How the review mechanism is constituted is significant and the review process should also address participation of civil society and the private sector. The issue of transparency also relates to how the review mechanism will be funded. Funding of the review mechanism should be fair and transparent.

Non-intrusive: The mechanism should not intrude in the sovereignty of the Parties and how they discharge their obligations in terms of implementing the Convention.

Impartial: The review mechanism must also be fair and treat all States Parties equally.

Non-adversarial: The review mechanism should not be adversarial and dissuade non-State Parties to accede to the Convention but should rather promote universal adherence to the Convention.

Non-punitive: The review mechanism should promote adherence to the Convention and measure progress regarding implementation of the Convention in a manner that does not penalize non-compliance and application.

Effectiveness: The review should be holistic and systematic and provide an objective assessment of whether the Parties have implemented the Convention.

Cost efficient: The review process should be efficient, realistic and not overly burdensome to the Parties. The need to come up with funding procedures especially for developing countries is evident.

Not produce any form of ranking: The review mechanism would only measure progress made regarding implementation of the Convention. The nature of the review must be developmental as to assist Parties to fully implement the Convention.

Provide opportunities to share good practices: The review mechanism should provide a platform for sharing good practices regarding implementation of the Convention.

Coordination with regional and international instruments: The ultimate objectives of the various regional and international instruments is to prevent and combat corruption albeit the differences in the scope of their respective efforts and specific objectives. There is a need to ensure synergy and alignment in order to avoid duplication of effort in implementation, review and reporting.

Public information: Consideration should also be given to provision of factual and accurate information from other sources besides governments such as civil society and the private sector. The Secretariat will be responsible for collecting and analyzing the information. The public should be provided with information regarding implementation of the Convention.

D. MANDATE OF THE REVIEW MECHANISM

8. The COSP is the sole body responsible for the review of the implementation of the Convention. Any mechanism or body to be established in accordance with resolution 1/1 and 2/1 of the COSP, will only assist the COSP in carrying out its mandate. Its work, recommendations, decisions, approval and dissemination of any reports and information relating to the review of the implementation of the Convention, will be taken by the COSP and not by the mechanism/body itself.

9. The review mechanism or body should have the following terms of reference:

- i) Its primary objective should be to assist COSP in helping the States Parties to effectively implement the Convention.
- ii) Will be responsible for making recommendations regarding the review process including development of clear guidelines for the compilation, production and dissemination of information. The guidelines should also address issues of confidentiality and submission of the outcomes to the Conference as the competent body to take action regarding such outcomes.
- iii) Further refinement of the information-gathering process and development of implementation tools to assist countries with difficulties encountered by parties in the fulfillment of their obligations under the Convention.
- iv) Will be responsible for undertaking the review process with the assistance of the Secretariat and participation of States Parties.
- v) The review mechanism will be responsible for receiving information and any other related information submitted to it by the States Parties.
- vi) Will be responsible for undertaking the reviews of the implementation of the Convention;
- vii) The Secretariat will support the review mechanism through technical and secretarial support.
- viii) It should avoid selectiveness among Member States and it should not undermine the universality of the Convention or dissuade the accession of new countries to it.
- ix) Make recommendations and provide oversight regarding the review process with a view to ensuring the independence, professionalism and credibility of the review process.
- x) The review mechanism should also be responsible for promoting collaboration, *inter alia*, in preventative measures, asset recovery and international cooperation.
- xi) The composition of any mechanism or body should be based on equitable geographical distribution.
- xii) All its reports must be submitted to the COSP for its consideration and adoption. Only the COSP will be competent to approve and issue Implementation Review Reports.
- xiii) It should be funded from the Regular Budget to ensure its efficient and transparent functioning.
- xiv) It should have close cooperation with donor and technical agencies in order to promote technical assistance and alignment of efforts.
- xv) Development of procedures and facilitation of cooperation with other monitoring mechanisms of other anti-corruption legal instruments..

xvi) Compilation and dissemination of good practices regarding implementation of the Convention.