



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

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**Open-ended Intergovernmental Working  
Group on Review of the Implementation of the  
United Nations Convention against Corruption**

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Item 2 of the provisional agenda\*

**Consideration of the draft terms of reference of the  
mechanism for the review of implementation of the  
United Nations Convention against Corruption**

**Draft terms of reference of the mechanism for the review of  
implementation of the United Nations Convention against  
Corruption: rolling text\*\***

**Working paper prepared by the Secretariat**

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\* CAC/COSP/WG.1/2009/4.

\*\* The present text reflects the progress achieved by the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption at its meeting on 15-17 December 2008, in informal consultations held on 26 and 27 February 2009 and at its meeting on 11-13 May 2009.



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## Preamble

Pursuant to article 4, paragraph 1, of the United Nations Convention against Corruption<sup>1</sup> which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and non-intervention in the domestic affairs of other States, the Conference of the States Parties to the United Nations Convention against Corruption [is invited to endorse] [established] the following mechanism to review implementation of the Convention.

### I. Definition [Introduction]

#### Option 1

1. [The Review Mechanism for the Implementation of the United Nations Convention against Corruption (hereinafter “the Mechanism”) shall be composed of the review process and the Implementation Review Group.] [The review process shall be guided by the principles contained in sections II and III and be carried out in accordance with the provisions contained in section IV. The composition and functions of the Implementation Review Group are set out in section V.]

#### Option 2

1. The Review Mechanism for the Implementation of the United Nations Convention against Corruption (hereinafter “the Mechanism”) includes a review process that shall be guided by the principles contained in sections II and III and be carried out in accordance with the provisions contained in section IV. The Mechanism also includes an Implementation Review Group as set out in section V. The Mechanism shall be supported by a secretariat as set out in section VI and be financed in accordance with section VII.

### II. [Guiding] principles and [characteristics] [purposes]

2. The Mechanism shall:
- (a) Be transparent, efficient, non-intrusive, inclusive and impartial;
  - (b) Not produce any form of ranking;
  - (c) Provide opportunities to share good practices and challenges;
  - (d) Assist States parties in the effective implementation of the Convention;
  - (e) Take into account a balanced geographical approach;
  - (f) Be non-adversarial and non-punitive and shall promote universal adherence to the Convention;
  - (g) Base its work on clear, established guidelines for the compilation, production and dissemination of information, including addressing issues of

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<sup>1</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146.

confidentiality and the submission of the outcome to the Conference, which is the competent body to take action on such outcome;

(h) Identify, at the earliest stage possible, difficulties encountered by States parties in the fulfilment of their obligations under the Convention and good practices adopted in efforts by States parties to implement the Convention;

(i) Be of a technical nature and promote constructive collaboration, inter alia, in preventive measures, asset recovery and international cooperation;

(j) Complement existing international and regional review mechanisms in order that the Conference may, as appropriate, cooperate with those mechanisms and avoid duplication of effort.

3. The Mechanism shall be an intergovernmental process.

4. In conformity with article 4 of the Convention, the Mechanism shall not serve as an instrument for interfering in the domestic affairs of States parties but shall respect the principles of equality and sovereignty of States parties, and the review process shall be conducted in a non-political and non-selective manner.

5. The Mechanism shall promote the implementation of the Convention by States parties, as well as cooperation among States parties.

Option 1

6. The Mechanism shall [promote [transparency and] participation and] provide opportunities [[for [intergovernmental] experts<sup>2</sup>] [for the States parties involved] [for States parties and experts involved]] to meet and exchange views and ideas, [thus contributing to strengthening cooperation among States parties in preventing and fighting corruption.]

Option 2

6. The Mechanism shall promote the principles set out in paragraph 2 and shall provide opportunities to exchange views, ideas and best practices, thus contributing to strengthening cooperation among States parties in preventing and fighting corruption.

7. The Mechanism shall take into account the levels of development of States parties, as well as diversities in judicial, legal, political, economic and social systems and differences in legal traditions.

8. The review of implementation of the Convention is an ongoing and gradual process. Consequently, the Mechanism shall endeavour to adopt a progressive and comprehensive approach.

### **III. Relationship of the Review Mechanism with the Conference of the States Parties**

9. The review of implementation of the Convention and the Mechanism shall be under the authority of the Conference in accordance with article 63 of the Convention.

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<sup>2</sup> This concept may require further clarification.

10. The Conference shall be responsible for establishing policies and priorities related to the review process, [as well as processes for approval of reports emanating from the review process] [and be responsible for considering the [outputs of the review process] [review of implementation reports]]. [Following the completion of each review cycle,] the Mechanism will assess the performance of the Mechanism and its terms of reference.

## **IV. Review process**

### **A. Goals**

11. [In assisting States parties in their effective implementation of the Convention,] the principal goals of the review process shall be:

[(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively (art. 1 (a) of the Convention);]

[(a bis) To provide the Conference with information on the status of implementation of the Convention;]

(b) To review [the level of] compliance with the Convention by States parties, [including] [and] [the level of] international cooperation provided and received by States parties in accordance with the provisions of the Convention;

(c) To help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;

(d) To promote and facilitate international cooperation in the prevention of and the fight against corruption, including in the area of asset recovery;

(e) To identify successes and challenges of States parties in implementing and using the Convention;

(f) To promote and facilitate the exchange of information, practices and experiences gained in the implementation of the Convention.

### **B. Conduct of the review**

12. The Mechanism shall be applicable to all States parties. It shall gradually cover the implementation of the entire Convention. The phases and cycles of the review process, as well as the scope, thematic sequence and details of such review, shall be established by the Conference.<sup>3</sup> The Conference shall also determine the

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<sup>3</sup> Proposals related to these matters are contained in the note by the Secretariat on the draft elements for the terms of reference of a mechanism for reviewing the implementation of the United Nations Convention against Corruption (CAC/COSP/WG.1/2008/6, paras. 69-84). The secretariat believes that such matters may be more appropriately addressed in the resolution by which the Conference will establish the Mechanism and adopt its terms of reference. Their inclusion in the terms of reference was not considered appropriate because it would entail including a level of detail that would require periodic revisions of the terms of reference.

duration of each review cycle and decide on the number of States parties that shall participate in each year of the review cycle.

13. The review of all States that are parties at the start of a review cycle should be completed before a new review cycle begins. In exceptional cases, the Conference may decide to launch a new review cycle before the completion of all reviews of the previous cycle. No State party shall undergo a review twice in the same review cycle, without prejudice to the right of a State party to provide new information.

14. The selection of States parties participating in the review process in a given year of a review cycle shall be carried out by drawing lots within regional groups of the United Nations at the beginning of each review cycle. [The readiness and ability of each State party to participate in the review process in a given year shall be taken into account.] (*or*) [A State party selected for review in a given year may defer participation to the following year of the review cycle.] The number of States parties from each regional group participating in the review process in a given year shall be proportionate to the size of that regional group and the number of its members that are States parties to the Convention.

15. Each State party shall provide to the secretariat the information required by the Conference on its compliance with and implementation of the Convention, using the self-assessment checklist developed by the secretariat and endorsed by the Conference as an initial step for that purpose. States parties shall provide complete, up-to-date, accurate and timely responses.

16. Assistance in the preparation of the responses to the checklist shall be provided by the secretariat to States parties requesting such assistance.

17. Each State party shall appoint [competent] focal points to coordinate that State party's participation in its review process. Each State party shall endeavour to appoint focal points who possess the required substantive expertise on the provisions of the Convention under review.

#### Option 1

18. The review process shall be carried out as follows:

(a) Each State party shall be reviewed by two other States parties. The review process shall actively involve the reviewed State, [including with regard to the composition of the review team.] Each State party involved shall appoint governmental experts to undertake the coordination required for the review process. [The composition of the review team shall be subject to the consent of the State party under review];

(b) One of the two reviewing States parties shall be from the same region as the State party under review[, if possible with a legal system similar to that of the State party under review]. The selection of the reviewing States parties shall be carried out by drawing lots, on the understanding that States parties shall not undertake mutual reviews. The State party under review may request, a maximum of two times, that the drawing of lots be repeated.

#### Option 2

18. The secretariat shall conduct the reviews.

[18 bis. The review process shall [in principle] include the phases described in paragraphs 19-26 below.]

Option 1

19. The review team shall carry out a desk review of the checklist response of the State party under review. Such desk review shall entail a [preliminary] analysis of the response focused on the identification of normative gaps, as well as technical assistance and capacity-building needs. The desk review shall involve the secretariat and be supported and facilitated by it.

Option 2

19. The secretariat shall carry out a desk review of the checklist response of the State party under review. Such desk review shall entail a [preliminary] analysis of the response focused on the identification of normative gaps, as well as technical assistance and capacity-building needs.

Option 1

20. In accordance with the guiding principles, the review team may enter into a constructive dialogue with the focal points of the State party under review, with, where necessary and appropriate, the assistance of the secretariat, inter alia, by way of conference calls, videoconferences and e-mail exchanges, as required, and request the State party under review to provide, in a timely manner, clarifications or additional information or address supplementary questions related to the review.

Option 2

20. In accordance with the guiding principles, the Secretariat may, where necessary and appropriate, enter into a constructive dialogue with the focal points of the State party under review, inter alia, by way of conference calls, videoconferences and e-mail exchanges, as required, and request the State party under review to provide, in a timely manner, clarifications or additional information or address supplementary questions related to the review.

Option 1

21. The schedule for each review shall be established by the secretariat in consultation with the review team and the focal points of the State party under review and provide sufficient time and capacity to address all issues relevant to the review. Consistent with paragraph 12, reviews should ideally be designed to take no longer than six months.

Option 2

21. The schedule for each review shall be established by the secretariat in consultation with the focal points of the State party under review and shall allocate sufficient time and capacity to address all issues relevant to the review. Consistent with paragraph 12, reviews should ideally be designed to take no longer than six months.

[22. The review team shall have a [nominal leader] [principal liaison officer] to be responsible for communication and liaison between the review team and the State party.]

23. Reviews shall be conducted using a set of uniform guidelines to be developed by the secretariat in consultation with States parties [and endorsed by the Conference].

23 bis. The report shall be prepared based on a blueprint to be developed by the secretariat in consultation with the States parties [and endorsed by the Conference] to ensure consistency.

24. The desk review shall lead to the elaboration of a [draft] country report.

Option 1

25. If agreed by the State party under review, the review team, in consultation with the secretariat, may decide, on the basis of the draft report, to complement the desk review with further means of direct dialogue [such as a country visit using a set of uniform guidelines].

Option 2

25. If agreed by the State party under review, the secretariat may decide, on the basis of the draft report, to complement the desk review with further means of direct dialogue [such as a country visit using a set of uniform guidelines].

26. The desk review shall be carried out as follows:

(a) In the conduct of the desk review, in addition to the information provided through the self-assessment checklist and any supplementary information provided by the State party under review, information available from other existing anti-corruption review mechanisms in which the State party under review participates may be considered.

(b) [The use of information from other sources shall be subject to the agreement of the State party under review.] [In addition, the States parties may engage in a dialogue on the use of information from other sources.]

27. [The use of and weight given to additional information considered pursuant to paragraph 26 (b) above shall be subject to [the consent of the State party under review] [the provision to the State party under review of the opportunity to respond].]<sup>4</sup>

Option 1

28. The members of the review team and the secretariat shall ensure that all information obtained in the course of the review process is used only in pursuance of the principal goals of the review process as identified in paragraph 11 above.

Option 2

28. The secretariat shall ensure that all information obtained in the course of the review process is used only in pursuance of the principal goals of the review process as identified in paragraph 11.

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<sup>4</sup> Retention of this paragraph is contingent on the decision of the wording of paragraph 26 (b).

## Option 1

29. The members of the review team and the secretariat shall not disclose any information obtained in the course of, or used in, the review process [unless the State party under review gives its prior consent].

## Option 2

29. The secretariat shall not disclose any information obtained in the course of, or used in, the review process [unless the State party under review gives its prior consent].

## Option 1

30. In accordance with articles 5 and 13 of the Convention, the Mechanism shall provide representatives of civil society [having consultative status with the Economic and Social Council] and the private sector with formal channels for making contributions to the review process, in conformity with rule 17 of the rules of procedure for the Conference.<sup>5</sup>

## Option 2

30. (*Proposal to move paragraph 30 to section V ("Implementation Review Group").*)

## Option 1

31. The costs associated with the participation of experts [from developing countries] in the review teams shall be borne by the Mechanism in accordance with paragraph 47 below.<sup>6</sup>

## Option 2

31. The costs associated with the participation of experts from [the State party under review] [from a State party under review that is a developing country] in meetings of the Implementation Review Group shall be borne by the Mechanism in accordance with paragraph 47 below.<sup>6</sup>

32. The secretariat shall organize periodic training courses, including induction training, for experts who participate in the review process, in order to familiarize them with the uniform guidelines and increase their capacity to participate in the review process.

### C. Outcome of the review process

33. The review team shall prepare a [draft] country review report in close cooperation and coordination with the State party under review and assisted by the Secretariat. The report shall identify [normative and policy] gaps in the implementation of the Convention and ways and means and actions necessary to

<sup>5</sup> Inclusion of this paragraph may make subparagraph 26 (b) redundant.

<sup>6</sup> The secretariat intends to prepare and submit to the Working Group cost estimates in relation with this paragraph and with the other components of the Mechanism. The secretariat is also in the process of collecting information, for submission to the Working Group, on the funding modalities of other review mechanisms.

remedy such gaps. The report shall further include priorities and actions identified by the State party under review to improve implementation of the Convention and technical assistance needs for that purpose. The report shall also highlight successful experiences and good practices.

[33 bis. [To complement individual country review reports,] [Consistent with paragraph 33 above,] the secretariat shall compile the most common and relevant observations, conclusions and recommendations contained in the country reports and include them thematically in an [annual] [periodic] implementation report and five regional supplementary addenda for submission to the [open-ended] [intergovernmental] implementation review group, [taking into account that the State party under review shall be the addressee of the country report and the confidential nature of the country report.] [In consultation with the State party concerned, the supplementary addenda may include, only for information or reference purposes, the complete country report.]]

Option 1

34. The draft country review [[review outcome] [summary] [aggregate]] reports shall be submitted to the [Implementation Review Group] for its consideration and approval. The [Implementation Review Group] shall submit to the Conference [summary reports] [the approved reports] focusing on achievements and gaps in implementation as well as on ways and means to address such gaps and technical assistance requirements for that purpose.

Option 2

34. The review outcome reports shall be submitted to the Conference for its consideration. Only the Conference shall be competent to approve and issue implementation review reports.

Option 3

34. *(This text would replace paragraphs 34-36; there is a proposal to insert this paragraph following paragraph 38.)* The [open-ended] [intergovernmental] Implementation Review Group shall submit [analytical reports with] [its] recommendations and conclusions to the Conference for its consideration, focusing on the achievements and gaps in the implementation of the Convention, [as well as on ways and means to address such gaps and the technical assistance requirements for that purpose].

Option 1

35. *(Insert this paragraph after paragraph 33.)* The review outcome reports shall be made public [unless the State party under review opposes such action] [on the condition that the State party under review agrees].

Option 2

35. Only the [approved] summary report [of the Implementation Review Group] shall be made public as an official document of the Conference.

Option 3

35. With the purpose of promoting national implementation of the Convention, the State party under review shall determine the means by which the finalized report will be made public].

35 bis. The country review report shall be declared finalized upon agreement between the review team and the State party under review.

## D. Follow-up procedures

### Option 1

36. *(Proposed replacement for paragraphs 36-38.)* States parties shall, in the following reporting cycle, submit information on the progress achieved in the implementation of the observations and recommendations addressing gaps in the implementation of the Convention that were identified in the previous reporting cycle, and report on whether the technical assistance needs identified in the previous reporting cycle have been met.

### Option 2

36. [The States parties shall design] [The Mechanism shall contain] follow-up procedures for each [of the reports referred to in paragraphs [...]] [approved [outcome] [summary] [aggregate] report] [an implementation action plan].

### Option 1

37. States parties [shall] [may] submit periodic reports on the progress achieved in the implementation of their action plans addressing gaps in the implementation of the Convention, submitting the first periodic progress report two years or less after the completion of the review, at the request of the reviewed State party. Each report shall be reviewed by the review team, which shall make recommendations to the Implementation Review Group.

### Option 2

37. States parties shall report, at their subsequent implementation reviews, on the progress achieved in the implementation of their action plans addressing gaps in the implementation of the Convention.

38. The follow-up procedure of the Mechanism shall be [designed to further the goals set out in paragraph 11 above. The procedure may include reviewing] [used to review] whether the technical assistance priorities identified in the outcome reports have received adequate attention from the international cooperation community.]

## V. Implementation Review Group

[39. The Implementation Review Group shall] operate under the authority of, and report to, the Conference. The rules of procedure of the Conference shall apply, mutatis mutandis, to the Implementation Review Group.<sup>7]</sup>

<sup>7</sup> Consideration may be given to the development of more detailed rules of procedure (or

[39 bis. The functions of the Implementation Review Group shall be to assist the Conference in analysing the results of the [country review reports] [review of implementation aggregate reports] with a view to identifying and recommending priorities and initiatives for enhancing the implementation of the Convention.]

Option 1 (*for subparagraph 40 (a)*)

40. [(a) The Implementation Review Group shall be composed of [10] [15] [20] [40] experts in the areas covered by the Convention, from States parties of all regions [on the basis of equitable geographical distribution]. All States parties shall enjoy equal standing in the Implementation Review Group.

Option 2 (*for subparagraph 40 (a)*)

40. (a) (*Alternative option for subparagraph 40 (a).*) The Implementation Review Group shall be composed of [40] [60] [governmental] experts appointed by States parties on the basis of equitable geographical distribution. Each regional group shall be allotted a position on the Implementation Review Group [in proportion to its number of members and the number of States parties in the regional group] [equal distribution]. [Representatives of the States parties participating in the review process and representatives of the respective review teams [shall be present when the reports of the States concerned are discussed] [shall also participate in the Implementation Review Group if they are not already members].]

[40. (b) The members of the Implementation Review Group shall be nominated by [States parties] [the secretariat in consultation with relevant States parties] and be approved by the Conference. They shall be selected from a wide range of institutions, including governmental institutions, international organizations and universities. Their selection shall be based on the criterion of professional excellence and reflect regional diversity. The experts shall work independently and not as representatives of their respective Governments.]

Option (*To replace paragraphs 39, 40 (a) and (b) and 41.*)

40. The Implementation Review Group shall be an open-ended intergovernmental group of States parties [and signatories]. It shall operate under the authority of and report to the Conference. The rules of procedure of the Conference shall apply, mutatis mutandis, to the Implementation Review Group.

[41. The members of the Implementation Review Group shall be elected by the Conference for [two-] [three-] [four-] year terms (for a maximum of two terms). The Conference shall establish an appropriate rotation of the members of the Implementation Review Group to ensure that all States parties have an equal standing in the Mechanism.]

42. The Implementation Review Group shall hold meetings at least [twice] a year, or more frequently as required, in Vienna. It shall [consider review outcome reports received from [...]] and prepare] and submit [summary] [thematic] [aggregate]

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guidelines) for the Group if generic reference to the application of the rules of procedure for the Conference to the Implementation Review Group, mutatis mutandis, is deemed insufficient.

reports on the review of implementation to the Conference for its consideration and action.

## **VI. Secretariat**

43. The secretariat of the Conference shall be the secretariat of the Mechanism.

44. The secretariat shall be responsible for the management of the Mechanism and provide, upon request, technical and substantive support to States parties in the course of the functioning of the Mechanism. [The secretariat shall be responsible for preparing all relevant documentation necessary and the preliminary analyses as a basis for desk reviews].

45. The secretariat shall help facilitate that [review outcome reports] are [impartial,] streamlined and consistent and fulfil all relevant tasks [mandated to it] [identified] in the present terms of reference [and any other tasks required for the efficient functioning of the Mechanism].

46. Adequate financial and human resources must be provided to the secretariat to enable it to perform the functions assigned to it in the terms of reference.

## **VII. Funding**

### Option 1

47. The requirements of the Mechanism and its secretariat shall be funded from the regular budget of the United Nations.

### Option 2

47. The requirements of the Mechanism and its secretariat shall be funded by the [States parties] [States signatories] through assessed contributions to be determined on the basis of the United Nations scale of assessment.

### Option 3

47. The requirements of the Mechanism and its secretariat shall be funded through voluntary contributions by [States parties] [Member States], which shall be free of conditions and influence.

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