



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

Distr.: General
15 September 2009

Original: English

Third session

Doha, 9-13 November 2009

Item 2 of the provisional agenda*

Review of the 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/2009/1.

** 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 meetings on 11-13 May and 25 August to 2 September 2009.



Preamble

Pursuant to article 4, paragraph 1, of the United Nations Convention against Corruption¹ 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

¹ 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] experts²] [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.

² 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 Conference will assess the performance of the Mechanism and its terms of reference.

IV. Review process

A. Goals of the review

11. Consistent with the Convention, in particular article 63, the purpose of the review process shall be to assist States parties in their implementation of the Convention. In this regard, the review process, inter alia, shall:

- (a) Promote the purposes of the Convention as set out in its article 1;
- (b) Promote [and review] the implementation of the Convention including international cooperation by States parties;
- (c) Provide the Conference with the information on the measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so;
- (d) Help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance;
- (e) Promote and facilitate international cooperation in the prevention of and the fight against corruption, including in the area of asset recovery;

Option 1

- (f) Identify successes and challenges of States parties in implementing and using the Convention;

Option 2

- (f) Provide the Conference with information on successes and challenges of States parties in implementing and using the Convention;
- (g) 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 Mechanism shall be open to the participation of signatory States on a voluntary basis.] [Signatory States may participate in the Mechanism as a reviewed State on a voluntary basis and shall bear the costs associated with such participation.] 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.³ The Conference shall also determine the duration of each review cycle and decide on the number of States parties that shall participate in each year of the review cycle.

(Option of insertion of a definition of the review cycle)

[The country reviews to be carried out in a given review cycle shall be divided among the [multiple years] [three years] of the review cycle.] *or* [The length of the review cycle shall be determined taking into account the number of States parties to be reviewed as well as the scope of the review in that 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 the drawing of 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. A State party selected for review in a given year may defer participation to the following year of the review cycle [once] [twice] [in exceptional circumstances]. 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 focal points to coordinate that State party's participation in its review. Each State party shall endeavour to appoint focal points who possess the required substantive expertise on the provisions of the Convention under review.

³ 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.

[1. Country review]

(Option of creating subsection IV.B.1 (“Country review”) containing paragraphs 18-36)

Option 1

18. Each State party shall be reviewed by two other States parties. The review process shall actively involve the State party under review. The composition of the review team shall be [subject to the consent of the State party under review] [determined through consultations with the State party under review].

19. One of the two reviewing States parties shall, if possible, be a State with a legal system similar to that of the State party under review and be from the same [geographical] region as the State party under review. The selection of the reviewing States parties shall be carried out by the drawing of lots at the beginning of each cycle 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.

20. A State party under review may defer serving as a reviewing State party that same year. That same principle, mutatis mutandis, shall apply to reviewing States parties. In a review cycle, each State party must undergo its own review and perform a minimum of one review and a maximum of three reviews.

21. Each State party shall appoint governmental experts for the purpose of the review process. [The secretariat shall compile and circulate a list of such governmental experts, which shall include information on their expertise and qualifications.] [The secretariat shall request States parties to submit to it the names of such experts and information on their expertise and qualifications. The secretariat shall, at the beginning of each review cycle, compile and make available, upon request, the information on governmental experts received from States.] States parties shall endeavour to keep their national list of government experts up to date.

22. The review team shall be composed of governmental experts from the reviewing States parties, [shall actively involve] the reviewed State party and shall be supported by the secretariat.

Option 2 *(To replace paragraphs 18-22)*

18. The secretariat shall conduct the country reviews.

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].

Option 1

24. The review team shall carry out, in accordance with the uniform guidelines, a desk review of the response to the self-assessment checklist by the State party under review. [Such desk review shall entail a [preliminary] analysis of the checklist response and focus on measures taken to implement the Convention and successes in and challenges of such implementation.]

Option 2

24. 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

25. In accordance with the guiding principles and the uniform guidelines, the review team, supported by the secretariat, may request the State party under review to provide clarifications or additional information or to address supplementary questions related to the review. The ensuing constructive dialogue may be carried out, inter alia, by way of conference calls, videoconferences or e-mail exchanges, as appropriate.

Option 2

25. 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

26. The schedule and requirements of each country review shall be established by the secretariat in consultation with the review team and the State party under review and shall address all issues relevant to the review.

Option 2

26. 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.

27. 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.

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

Option 1

29. If [agreed] [requested] 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 the uniform guidelines.

Option 2

29. 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].

Option 3

29. The review team, in consultation with the secretariat, shall, on the basis of the draft report, complement the desk review with further means of direct dialogue such as a country visit using the uniform guidelines.

Option 4

Delete paragraph 29.

Option 1

30. 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.]

Option 2

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

(a) The desk review shall be based on the self-assessment checklist and any supplementary information provided by the State party under review.

(b) If the State party under review is a member of a competent international organization whose mandate covers anti-corruption issues or a regional or international mechanism for combating and preventing corruption, the review team may consider information relevant to the implementation of the Convention produced by such organization or mechanism.

[31. The use of and weight given to additional information considered pursuant to paragraph 30 (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].]⁴

Option 1

32. 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 for the purposes of the review process.

⁴ Retention of this paragraph is contingent on the decision of the wording of paragraph 30 (b).

Option 2

32. 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.

Option 1

33. Any information obtained in the course of the review process shall be kept confidential. However, the review team and the secretariat may disclose some information when necessary if the State party under review gives its prior consent.

Option 2

33. 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

34. The State party under review shall ensure the presentation of the views of civil society and the private sector in the preparation of its country review report.

Option 2

Move paragraph 34 to section V (“Implementation Review Group”).

Option 1

35. The costs associated with the participation of experts [from developing countries] in the review shall be borne by the Mechanism in accordance with section VII.

Option 2

35. 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 section VII.

36. The secretariat shall organize periodic training courses 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 [country] review process

(Option of making this subsection IV.B.2)

37. The review team shall, in accordance with the uniform guidelines and the blueprint, prepare a country review report in close cooperation and coordination with the State party under review and assisted by the secretariat. The report shall identify successes, good practices and challenges and make observations for the implementation of the Convention. Where appropriate the report shall include

identification of technical assistance needs for the purposes of improving implementation of the convention.

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

[39. The country review reports shall be made public [in the six official languages of the United Nations] [unless the State party under review opposes such action] [on the condition that the State party under review agrees]. [The State party under review shall determine the means by which the country review report will be made public].]

[40. [To complement individual country review reports,] [Consistent with paragraph 37 above,] the secretariat shall compile the most common and relevant observations, conclusions and recommendations contained in the country review 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 review report and the confidential nature of the country review report.] [In consultation with the State party concerned, the supplementary addenda may include, only for information or reference purposes, the complete country review report.]]

Option 1

41. 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

41. 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

41. *(This text would replace paragraphs 39, 41 and 42; there is a proposal to insert this paragraph following paragraph 45.)* 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].

42. [[Only] the [approved] summary report [of the Implementation Review Group] shall be made public as an official document of the Conference.] The secretariat shall compile the observations and conclusions contained in the country review report and include them, organized according to theme, in a review of implementation report, which shall be made available as an official document of the Conference.

D. Follow-up procedures

(Option of making this subsection IV.B.3)

Option 1

43. *(Proposed replacement for paragraphs 43-45)* 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

43. [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

44. 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

44. 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.

45. 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.]

(New options to replace paragraphs 43-45 above)

Option 1

43. The [Conference] [Implementation Review Group] shall determine procedures and requirements for providing appropriate follow-up to conclusions and observations emerging from the review process including in connection with [[the provision of] technical assistance identified in the review process.] [promoting and facilitating technical assistance.]

Option 2

43. Each State party shall, in the following review cycle, submit [to the secretariat] [in addition to its responses to the self-assessment checklist] [to the Mechanism] [review team] [Implementation Review Group], information

on progress achieved in connection with the observations contained in its country review report. As appropriate, States parties shall also provide information on [the status of] [whether] technical assistance needs identified in the respective country review report [have been met].

44. Each State party shall prepare and submit to the secretariat a country progress report in connection with the observations contained in the country review report. The country progress report shall be made public subject to the agreement of the State party.

V. Implementation Review Group

(Option of making this subsection IV.C)

46. 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.

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

Option 1

48. 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].

[49. 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.]

Option 2 *(To replace paragraphs 46, 48 and 49)*

48. The Implementation Review Group shall be an open-ended intergovernmental group of States parties. 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.

50. The Implementation Review Group shall hold meetings at least once a year in Vienna.

51. The Implementation Review Group shall [consider review outcome reports received from [...] and prepare] and submit [summary] [thematic] [aggregate] reports on the review of implementation to the Conference for its consideration and action.

VI. Secretariat

(Option of making this section V)

52. The secretariat of the Conference shall be the secretariat of the Mechanism and shall perform all tasks required for the efficient functioning of the Mechanism, including providing technical and substantive support, upon request, to States parties in the course of the functioning of the Mechanism.

[VII. Languages]

[53. The review process [shall] [can] be conducted in [all] [any of the] six official languages of the United Nations [as required] [if the languages used by the experts engaged in the review process makes it necessary.]]

VII. Funding

Option 1

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

Option 2

54. 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

54. 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.

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

[56. The Conference shall determine the methods for financing the Mechanism. In doing so, the Conference shall ensure that the funding of the Mechanism enables its efficient, continued and impartial functioning.]

[57. The secretariat shall be responsible for preparing a [biennial] [annual] proposed budget for the activities of the Mechanism. [The Conference shall be responsible for reviewing and approving the proposed budget.] [The Implementation Review Group shall be responsible for reviewing and approving the proposed budget.]]