



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

Distr.: General

6 August 2007

Original: English

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

Vienna, 29-31 August 2007

Item 2 of the provisional agenda\*

**Consideration of appropriate mechanisms or bodies for  
reviewing the implementation of the United Nations  
Convention against Corruption and preparation of the  
terms of reference for such mechanisms or bodies**

## **Establishing a mechanism for reviewing the implementation of the United Nations Convention against Corruption**

**Background paper prepared by the Secretariat\*\***

### **I. Introduction**

1. In accordance with article 63 of the United Nations Convention against Corruption (General Assembly resolution 58/4, annex), the Conference of the States Parties to the United Nations Convention against Corruption was established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation. Pursuant to article 63, paragraph 1, of the Convention, the Conference is to acquire the necessary knowledge of the measures taken by States parties in implementing the Convention – and the difficulties encountered by them in doing so – through information provided by them and through such supplemental review mechanisms as may be established by the Conference. The Convention thus established the principle of review of implementation by the Conference, leaving decisions on the means of such review to the Conference.

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\* CAC/COSP/WG.1/2007/1.

\*\* Submission of the present document was delayed by the need for further information.



2. At its first session, held in Amman from 10 to 14 December 2006, the Conference took an important step in that direction by agreeing that it was necessary to establish an appropriate mechanism to assist it in reviewing implementation of the Convention. In its resolution 1/1, the Conference established an open-ended, intergovernmental expert group to make recommendations to the Conference at its second session on appropriate mechanisms or bodies for carrying out the implementation review.

3. In the interim and subject to the availability of voluntary contributions, the Conference requested the United Nations Office on Drugs and Crime (UNODC) to assist parties in their efforts to collect and provide information on their self-assessments and analyses of implementation efforts and to report on those efforts to the Conference at its second session.

4. At the first session of the Conference, representatives expressed their support for establishing an effective, well-focused review mechanism, but felt also that the mechanism should be an ongoing process and should adopt a gradual approach. They noted that the mechanism should be effective, efficient, transparent and non-intrusive and must have predictable funding. The review mechanism should enable the Conference to identify difficulties encountered and good practices adopted in efforts by States parties to implement the Convention. Representatives also stressed that an overly complex and resource-intensive review mechanism should be avoided and that the mechanism needed to be impartial and participatory. In that respect, the mechanism would have to gauge compliance with obligations under the Convention in a manner consistent with the principle of the sovereignty of States. Furthermore, the Conference highlighted the close link that existed between technical assistance and implementation, emphasizing that the review mechanism should enable States parties to identify gaps in their legislative and institutional frameworks so that such gaps might be closed, if necessary through the provision of assistance.

## **II. Establishing an appropriate review mechanism**

5. The establishment of an effective mechanism for reviewing implementation sits at the heart of the Convention against Corruption, as was the case with the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and the Protocols thereto (Assembly resolutions 55/25, annexes II and III, and 55/255, annex). The Conference of the Parties to the United Nations Convention against Transnational Organized Crime has not yet taken the decision to establish a full-fledged review mechanism and has used instead the method of plenary discussion based on information gathered by the Secretariat through two cycles of questionnaires. At its inaugural session, the Conference of the States Parties to the Convention against Corruption took stock of the shortcomings of this approach and sought to steer its own process towards a more vertical approach while reflecting the desire to learn from experience and make maximum use of available time. The Conference was sensitive also to the vigorous call from stakeholders to seize the moment and ensure that the high expectations created by the development and expeditious entry into force of the Convention did not end in disappointment.

6. From the outset, the Conference of the States Parties to the United Nations Convention against Corruption took a different approach to information-gathering than the Conference of the Parties to the United Nations Convention against Organized Crime, deciding to devote attention to both information-gathering (resolution 1/2) and the review of implementation (resolution 1/1). The Conference of the States Parties to the Convention against Corruption opted for that approach in recognition of two important factors:

(a) First, information is a *sine qua non* for a body such as the Conference to perform its functions. However, information-gathering presents a challenge in view both of the breadth of information required and of the limited capacity of States, which is not directly linked to level of development in any given case. Even so, providing information to the Conference is a clear and indisputable legal obligation of the parties to the Convention against Corruption. The experience of the Conference of the Parties to the Organized Crime Convention points clearly to the need to revisit the information-gathering methodology and to adopt more innovative approaches;

(b) Second, the process of establishing an appropriate mechanism for reviewing implementation needed to parallel the work on information-gathering. The important political decision of the Conference to take a crucial step forward by acknowledging the need for such a mechanism required immediate follow-up action, essentially because designing an appropriate mechanism would require careful analysis of a broad range of options and due consideration of all concerns – ranging from political to practical – that States may have. A further reason was the interest in sustaining and nurturing the strong momentum for cooperation and mutual understanding through an open and frank dialogue, in keeping with the spirit of both the Convention against Corruption and the Conference.

7. UNODC has actively supported States parties in their information-gathering efforts. Specifically, the Secretariat has prepared a self-assessment checklist designed to comply with resolution 1/2, using as a model the draft self-assessment checklist proposed at the first session of the Conference (CAC/COSP/2006/L.3). To further enhance the quality of information collected and facilitate the process for States, the Secretariat also organized an expert group meeting in March 2007 to discuss the review of implementation, in particular information-gathering. In parallel, the Secretariat developed a computer application for the collection of self-assessment information based on the checklist.

8. It might be useful for the Open-ended Intergovernmental Working Group on Review of the Implementation of the United Nations Convention against Corruption, in its deliberations, to consider the most common methods of information-gathering used by other implementation bodies (CAC/COSP/2006/5, para. 7):

<i>Information-gathering method</i>	<i>Advantages</i>	<i>Disadvantages</i>
<b>Questionnaires</b>	A good way to collect initial and first-level information on implementation	Can be lengthy when addressing complex issues and problems can occur for Governments when inputs from various departments are needed, both of which can lead to low or inadequate response rates
<b>Country reports</b>	Sense of ownership for Governments; can be used by Governments as a tool to assess their own progress	Lengthy documents, which are not always compatible; time-consuming and difficult for the Secretariat to analyse; requires good guidelines to be complete
<b>Self-assessments</b>	Sense of ownership; can be used by Governments as a tool to assess their own progress	Problems can occur when inputs from various departments are needed; requires good guidelines to be complete
<b>Open sources</b>	Information easily available for the Secretariat	Government prerogative to be the authentic source of information not respected; information may be inaccurate or biased; additional workload for the Secretariat to validate and make information complete

9. It may also be useful to recall that existing review mechanisms are generally of the following types, or a combination of those types (CAC/COSP/2006/5, para. 8):

<i>Review mechanism</i>	<i>Advantages</i>	<i>Possible shortcomings</i>
<b>Independent body</b>	Provides good substantive and expert analysis	Depending on the composition of the body, limited sense of ownership; the issue of selection requires careful consideration
<b>Peer review</b>		
<b>(a) Plenary review</b>	Some sense of peer pressure and opportunities for States to learn from each other	Can be lengthy and difficult to remain focused; for practical reasons, review can only be superficial
<b>(b) Expert review</b>	Sense of ownership and peer pressure	Requires careful determination of the composition and method of selection to overcome political difficulties, especially in the context of a global body

### III. Characteristics of a review mechanism

10. In its resolution 1/1, the Conference of the States Parties underlined that any review mechanism would have to encompass a certain number of characteristics. Namely, it 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 may, as appropriate, cooperate with them and avoid duplication of effort.

#### **A. Transparent, efficient, non-intrusive, inclusive and impartial mechanisms**

11. At the first session of the Conference of the States Parties, it was made clear that the review mechanism needed to take into account the sensitive and complex nature of anti-corruption efforts, the requirements – both political and financial – of such efforts and their potential effects in the context of the overall situation of a State. Those issues would also need to be considered carefully in conjunction with the principles of sovereignty and of non-intrusion in domestic affairs. All that was especially important in view of the political nature of the Conference and the desire to keep it from becoming a world forum fraught with controversy, as that would run counter to the spirit of its mandate.

12. The Conference must therefore strike a delicate balance between ensuring the fullest possible implementation of the Convention against Corruption and respecting the prerogative of States parties to determine the best way to discharge their obligations to implement the Convention. The strength of the Conference derives equally from the comprehensive nature of its mandate, its multiple functions and responsibilities, and the fact that all parties are on an equal footing. Viewed in that light, the concept of peer review acquires a different dimension, becoming a collective effort to seek the highest common denominator in full awareness of the requirements involved and with a collective determination to meet those requirements.

13. Transparency is an essential element of any review mechanism and can exist on various levels. It may relate to the actual review process and whether it offers opportunities for input from a broad range of sources. It may also relate to the output of reviews. For example, findings, reports and discussions can be made public or made available to other States undergoing the review process.

14. Impartiality is a key component of the effectiveness and legitimacy of any review mechanism. Impartiality can be attained through a rigorous procedure of determining the composition of a review body according to detailed criteria that would not be derogated from, especially in the case of appointment of groups of experts. Impartiality is also guaranteed by the overall independence of the review process, including through sustainable and predictable funding.

#### **B. Unsuitability of ranking**

15. A number of corruption indices, rankings or classifications exist at the regional and global levels. The Conference of the States Parties was of the view that implementation review mechanisms should seek not to stigmatize certain States and praise others but rather to ensure effective implementation within each specific national context. The ultimate objective would be to measure the progress made in implementing the Convention against previously established benchmarks reflecting

the situation of anti-corruption efforts in the country under review at the beginning of the process. Creating a ranking for the review of implementation would be at odds with the objective of the Conference as the States parties to the Convention would obviously be at significantly different stages of implementation according to national exigencies. Therefore, established initial benchmarks will already reasonably differ according to specific national contexts. Rather than a general ranking system, actual progress or lack thereof by the States parties can be measured using these initial benchmarks.

### **C. Opportunities for sharing good practices and challenges**

16. The exchange of experiences involving good or successful anti-corruption measures is central to the mission of the Conference, as enshrined in article 63 of the Convention against Corruption. Paragraph 6 of that article provides that each State party is to provide the Conference with information on its programmes, plans and practices and on its legislative and administrative measures to implement the Convention. With a view to an efficient and fruitful exchange of experiences at the national and regional levels, the Working Group may wish to recommend options for the provision and analysis of such information. As the role of the Secretariat in the collection and analysis of such information should also be taken into account, the Working Group may wish to recommend appropriate ways to make the best use of limited human and material resources in fulfilling reporting obligations.

### **D. Complementarity and non-duplication**

17. As outlined in an earlier background paper on the review of the implementation of the Convention against Corruption (CAC/COSP/2006/5), a number of mechanisms for reviewing the implementation of other, non-global instruments already exist. The Conference thus felt strongly that any mechanism to review the implementation of the Convention should not duplicate those experiences. At the same time, there is much to be learned from other monitoring or review mechanisms, and the Working Group may wish to make recommendations on possible areas of synergy and uses of findings gathered under them. Similarly, an in-depth analysis of the experiences and lessons of other mechanisms may help to avoid pitfalls in the mechanism for reviewing the Convention.

18. The relevant regional and sectoral anti-corruption mechanisms are relatively recent and vary in depth. For instance, the Working Group on Bribery of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force in 1999, has an elaborate monitoring process that includes elements of self-assessment and mutual evaluation through peer review. A legal gap analysis is conducted and detailed information is collected through questionnaires, with follow-up being provided through subsequent country visits. The secretariat prepares a draft report that is discussed with the State under review and submits to the Working Group a final report that includes, where possible, the State's observations. That procedure offers an additional opportunity for dialogue and discussion between examiners, the State under review and other members of the Working Group.

19. The region of Asia and the Pacific has been gradually taking stock of anti-corruption efforts within the framework of the 1999 Asian Development Bank/OECD Anti-Corruption Initiative for Asia and the Pacific, under the Anti-Corruption Action Plan for Asia and the Pacific endorsed by States of the region in 2001. Participating States prepare self-assessment reports that undergo mutual review in steering committees; the results of those reports provide benchmarks for measuring subsequent progress or lack thereof in the implementation of anti-corruption policies formulated under the Action Plan.

20. The Council of Europe is the custodian of a range of legal instruments against corruption and has itself adopted a comprehensive Programme of Action against Corruption. The Group of States against Corruption (GRECO) of the Council of Europe monitors compliance with those instruments through a process of mutual evaluation and formulates recommendations for the evaluated States. GRECO subsequently assesses the implementation of such recommendations through a separate compliance procedure.

21. The Inter-American Convention against Corruption (E/1996/99), which entered into force in 1997, was subsequently endowed with a peer-review monitoring mechanism that is coordinated by the General Secretariat of the Organization of American States. The mechanism is composed of two bodies: a conference of the States parties; and a committee of experts, which is responsible for the technical analysis of information provided by States under review through a questionnaire and supporting documentation.

22. Together, those mechanisms generate a body of information, knowledge and analysis that could be drawn upon as a secondary source of information for reviewing compliance with some of the provisions of the Convention against Corruption. In particular, recommendations of the various bodies with regard to legislative implementation or policies formulated under action plans may provide guidance when establishing benchmarks for measuring progress in the implementation of the Convention.

#### **IV. Existing opportunities for review: the pilot programme of the United Nations Office on Drugs and Crime**

23. In line with paragraph 4 of resolution 1/1 of the Conference of the States Parties, UNODC developed a technical assistance project intended to offer adequate opportunities to test possible means for reviewing implementation of the Convention against Corruption. The project adopts a review method that combines self-assessment, group review and expert review as a possible mechanism for reviewing the implementation of the Convention in countries that have volunteered to participate. The aim is to test the effectiveness and efficiency of the approach, thus assisting the Conference in reaching a decision on the establishment of an appropriate review mechanism.

24. The main substantive focus of the review will be on the extent to which the existing regulatory and legislative frameworks of participating States comply with selected provisions of the Convention. The narrow focus will make it easier to draw useful conclusions on the feasibility and effectiveness of the piloted methodology,

and it will facilitate the delivery of interim results in time for the second session of the Conference.

25. An initial planning meeting and the first meeting of experts designated by the participating States (the review group) were held in Vienna to discuss substantive and organizational matters regarding the project, including the scope of the review, methodology, evaluation and execution modalities. The reports of both meetings are available to the Working Group.

26. The review group discussed methodological options for conducting the review, using the self-assessment checklist prepared by the Secretariat and distributed to all States parties as a starting point. The States participating in the pilot project will answer all the questions on the checklist, both the optional and the mandatory ones, and the expert review group will then analyse the responses. Emphasis was placed on the importance of active dialogue between the States under review and the experts. Under the pilot, each State will participate in reviews with another State in its regional group and with a third State in an effort to foster closer regional dialogue and, when possible, to place benchmarks and review efforts in comparable contexts. Experts may also conduct country visits to validate the findings of their analysis. A final report on the findings of the pilot project will be presented to the Conference at its second session. While the preliminary results of those findings will not yet be known, the discussions among the experts of the review group may be of interest and use at that stage. The Working Group may thus wish to offer suggestions to the pilot review group in order to better test the different options for review.

27. A further opportunity for synergy is the project that UNODC is currently implementing in three West African Countries with funding from the United Nations Democracy Fund. Information on the preliminary progress and findings of the project, which uses the Convention as a blueprint for anti-corruption efforts, will be presented to the Conference at its second session.

## **V. Review of implementation and technical assistance**

28. Pursuant to its resolution 1/5, the Conference of the States Parties has established a working group on technical assistance to review technical assistance needs, provide guidance on priorities, consider information gathered through the self-assessment checklist, consider information relevant to technical assistance activities and promote the coordination of activities with a view to avoiding duplication. The work of the Working Group on Review of the Implementation of the United Nations Convention against Corruption and of the Working Group on Technical Assistance is closely related, as the latter will examine the responses to the checklist, which includes questions on technical assistance in every provision and an initial reminder that technical assistance is available for completing the checklist itself.

## **VI. Other issues for further consideration**

29. In addition to the issues noted above, the Working Group may wish to bear in mind that the design of the review mechanism should take into account the



likelihood that the membership of the Conference will increase rapidly over the coming years. A continually changing membership will be an important consideration as it poses a special challenge for endowing a mechanism with the necessary flexibility and agility. In this respect, the issue of predictable and sustainable funding for the review mechanism is of primordial concern.

30. The Working Group may wish to give thought to how to make the best use of the experiences of other regional and sectoral mechanisms. In particular, it may wish to consider how to utilize the results of other reviews and evaluations without impinging on the integrity of the provisions of the Convention as a whole or the legitimacy of the process.

31. When considering how to design the review mechanism, the Working Group may wish to draw on the discussion above of the main characteristics agreed upon by the Conference and then tailor the mechanism to the specific exigencies of reviewing a global instrument such as the Convention. The review process should have precise terms of reference and a clear distribution of roles in order to ensure those characteristics. The role of the Secretariat in supporting the review process also needs to be addressed. In this connection, the Working Group may wish to provide guidance on any tools that the Secretariat may produce to facilitate and enhance the review of implementation of the Convention. The Working Group may also wish to discuss the composition of any review body placed at the helm of the process in order to ensure impartiality and effectiveness.

32. Ownership of the review process by States parties is of paramount importance. The Working Group may wish to advise the Conference on modalities for reporting on the results and findings with respect to States that have undergone the review process.