

INTER-AMERICAN COOPERATION AGAINST CORRUPTION

20 years after the
adoption of the
OAS Convention
against
Corruption



OAS|MESICIC

FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION

Organization of American States
General Secretariat
Secretariat for Legal Affairs
Department of Legal Cooperation
The Follow-Up Mechanism for the Implementation of the
Inter-American Convention Against Corruption
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INTRODUCTION

With more than 20 years since the Inter-American Convention against Corruption (IACAC) came into force, and 16 years after the launch of the Follow-Up Mechanism for implementation thereof (MESICIC), the MESICIC Technical Secretariat has prepared this informative document on the institutional framework of the MESICIC, its mission and activities to meet its objectives, its outcomes, and the challenges identified as a result of its analysis. It also sets out the actions undertaken to strengthen inter-American cooperation against corruption in the framework of the MESICIC that arise from the guidelines, recommendations and decisions adopted by both its Conference of States Parties and its Committee of Experts. This information is provided pursuant to Article 9(i) of the Rules of Procedure of the MESICIC Committee of Experts, which allows the Technical Secretariat to disseminate information on the Mechanism.

The content of this document is based on the information contained in reports adopted by both the Conference of States Parties and Committee of Experts of the MESICIC, such as those containing recommendations from the four meetings held by the Conference and the hemispheric reports from the four rounds of review completed by the Committee. In this regard the following aspects will be set out:

CHAPTER 1

Highlights the importance that the OAS has placed on the Inter-American Convention against Corruption (IACAC) as a pioneering international legal instrument in its field. It also describes the comprehensive approach to the corruption problem on which the Convention's provisions are based; the commitments for public institutions, the private sector, and civil society arising from those provisions; and the call it makes for inter-American cooperation in addressing the problem effectively.

CHAPTERS 2, 3 AND 4

The document will refer to the institutional framework of the MESICIC as an instrument of horizontal cooperation between the States that comprise it, and will highlight the role of the Conference of States Parties as the governing body of the Mechanism, and of the Committee of Experts as the technical body thereof, conceived to help the MESICIC States parties fully implement the IACAC and follow-up on their commitments in this regard.

CHAPTER 5

Will discuss the extensive opportunities for participation in MESICIC activities afforded to civil society organizations, the private sector, professional associations, academics, and researchers, as well as other social actors, notwithstanding the inter-governmental character of the Mechanism.

CHAPTERS 6 AND 7

Will provide a brief description of the main outcomes achieved by the MESICIC Committee of Experts and will refer to acknowledgements of the usefulness of the Convention and the Mechanism, expressed not only by its member States, but also by different organizations and research centers that have made use of its analyses and results.

CHAPTERS 8 AND 9

Will discuss a number of challenges in the fight against corruption detected through the analyses carried out in the MESICIC, as well as a series of actions to enhance inter-American cooperation against corruption in the framework of the MESICIC that stem from the guidelines, recommendations, and decisions adopted by both its Conference of States Parties and its Committee of Experts.

CHAPTER 1

THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC)

1.1 A pioneering international legal instrument in its field

The Inter-American Convention against Corruption (IACAC) was the first international legal instrument in its field. It was adopted in 1996 at a Specialized Conference held under the aegis of the OAS in Caracas, and it set the precedent for later developments in this area that took place within the OECD, the Council of Europe, the African Union, and the United Nations.

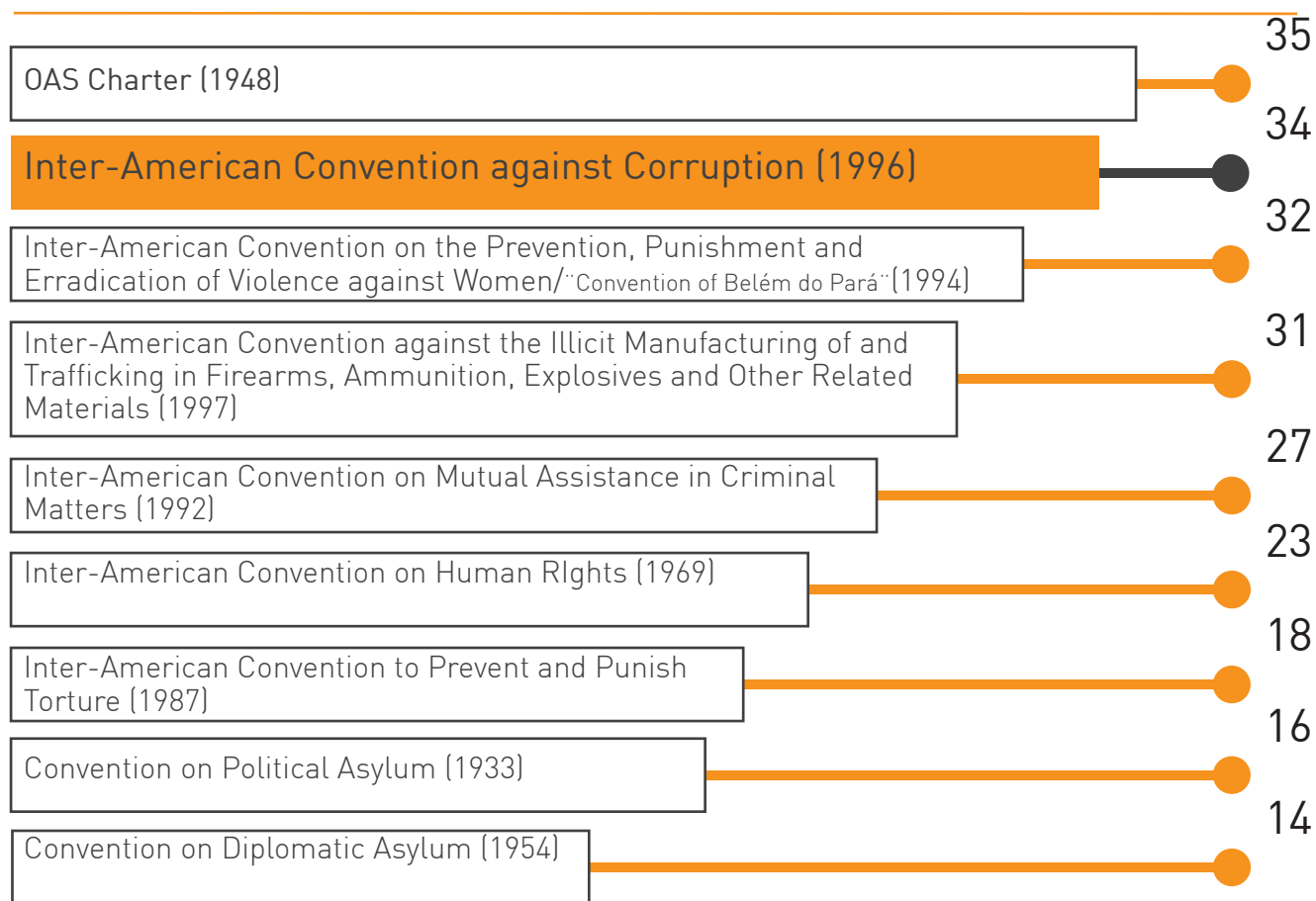
The adoption of the IACAC was a pioneering step that recognized the international scope of corruption and was the result of the high priority our countries had in regard to this problem when, at the First Summit of the Americas, held in Miami in 1994, they agreed to negotiate a hemispheric agreement on the topic within the OAS.

1.2 A Convention with the broadest acceptance by the American States

The IACAC also responds to the OAS Charter, which states that “representative democracy is an indispensable condition for the stability, peace, and development of the region,” in that with this instrument, the Member States have recognized that corruption is one of the most serious threats faced by democracies.

This can be seen in the broad acceptance of the IACAC among the States of the Americas, making it the most ratified inter-American treaty compared to both the OAS Charter itself and other treaties of equal importance, as can be seen on the following graphic.

Graphic comparing the IACAC and other Inter-American Treaties by number of States Parties



1.3 A comprehensive approach to the problem of corruption

The IACAC adopts a comprehensive approach to the problem of corruption and, accordingly, it contains measures for the prevention, detection, and investigation of acts of corruption, for punishing those who commit them, and for enabling States to recover the assets lost through those acts.

THE IACAC ESTABLISHES MEASURES TO:

PREVENT

Article III of the IACAC sets out measures intended to prevent corruption, such as standards for the prevention of conflicts of interest and the conservation of public resources; the understanding of those standards by public servants and the recognition of a public servant's right to equitable compensation; the hiring of public servants in accordance with the principles of openness, equity, and efficiency, and the procurement of goods, services, and works by the State in accordance with those same principles.

DETECT

Article III of the IACAC also establishes important measures for detecting acts of corruption, such as those that require public servants to report the perpetrators of such acts and that extend protection to whistleblowers, and those that establish systems requiring persons who perform public functions to register their incomes, assets, and liabilities, which can be of great use in detecting possible conflicts of interest and cases of illicit enrichment.

INVESTIGATE

With respect to the investigation of acts of corruption and recognizing the multilateral nature of the corruption problem, Article XIV

of the IACAC establishes measures to enable its States Parties to provide the broadest possible mutual assistance for the investigation and prosecution of those acts, in order to secure the evidence and pursue the formalities that such undertakings require.

PUNISH

The IACAC also sets out a series of measures to prevent impunity for those who commit acts of corruption, such as the adequate criminalization for these acts in the criminal legislation of States Parties (Articles VI, VII, and XI), as well as that of transnational bribery (Article VIII), and illicit enrichment (Article IX). In addition, Article XIII sets out provisions for streamlining the extradition of persons who have committed acts of corruption, and Article XVII provides rules for preventing asylum mechanisms from being abused to evade justice in such cases.

RECOVER

To enable States to recover property or proceeds obtained through acts of corruption, Article XV of the IACAC sets out measures for the identification, tracing, freezing, seizure, and forfeiture of property or proceeds obtained, derived from, or used in the commission of corruption offenses.

1.4. Recognition of the need to include institutions, the private sector, and civil society in efforts to address corruption

The IACAC's comprehensive approach to fighting corruption is not limited to the establishment of legal provisions. Although it is of the utmost importance for States to have suitable legal frameworks, if they lack the appropriate institutions for enforcement, and if those institutions do not have the cooperation of civil society and the private sector, they will be unable to tackle the problem effectively.

For that reason, Article III of the IACAC recognizes the key role that oversight bodies play in the prevention, detection, and punishment of corrupt acts and calls on States to strengthen them, so they can develop modern mechanisms to pursue those goals.

The IACAC also cites the private sector in this article, by establishing measures to counter bribery: such as requiring that companies maintain books and records that accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.

In addition, Article XVI contains rules to prevent bank secrecy from posing as an obstacle in proceedings in which acts of corruption are being investigated.

The IACAC also recognizes the role of civil society and nongovernmental organizations by calling, in Article III, for the creation of mechanisms to encourage their participation in anticorruption efforts.

1.5. A call for inter-American cooperation to fight corruption effectively

The logical consequence of the transnational nature of the corruption problem is the recognition that a State's isolated efforts alone are not enough for effectively tackling it. Therefore, although the IACAC's chief purpose is to promote the development, by each of its States Parties, of measures to prevent, detect, punish, and eradicate corruption, it enshrines as its secondary purpose, which is an indispensable complement to the first, the goal of promoting, facilitating, and regulating cooperation among States in order to ensure that those measures are effective.

In pursuit of this, Article XIV of the IACAC sets out measures whereby its States Parties can extend the broadest possible mutual assistance in the investigation and prosecution of acts of corruption and can render mutual technical cooperation on the best manner and methods to prevent, detect, investigate, and punish such actions, by encouraging exchanges of experiences in that area.

AMERICA TOGETHER AGAINST CORRUPTION



MESICIC STATES PARTIES:

1. Antigua & Barbuda
2. Argentina
3. Bahamas
(Commonwealth of the)
4. Belize
5. Bolivia
6. Brazil
7. Canada
8. Chile
9. Colombia
10. Costa Rica
11. Dominican Republic
12. Ecuador
13. El Salvador
14. Grenada
15. Guatemala
16. Guyana
17. Haití
18. Honduras
19. Jamaica
20. Mexico
21. Nicaragua
22. Panama
23. Paraguay
24. Peru
25. Saint Kitts & Nevis
26. Saint Vincent and
the Grenadines
27. Suriname
28. Trinidad & Tobago
29. United States of
America
30. Uruguay
31. Venezuela
(Bolivarian Republic of)



CHAPTER 2

THE FOLLOW-UP MECHANISM OF THE CONVENTION (MESICIC)

2.1. An instrument for horizontal cooperation among States

The commitment of the American States toward jointly tackling the problem of corruption as set out in the IACAC received a further impetus at the Third Summit of the Americas, held in Québec City in April 2001, when the Heads of State and Government agreed to support the creation of a mechanism to follow up on its implementation.

That agreement was finalized on June 4, 2001, at the Thirty-First regular session of the OAS General Assembly, held in San José, Costa Rica, which approved the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption (MESICIC) in the terms set out in the document known as the “Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention against Corruption,” which arose from the Conference of States Parties of the

IACAC held in the Argentine capital on May 2 to 4, 2001.

The MESICIC is an instrument for horizontal cooperation among its Member States, and accordingly its goal is to provide mutual assistance for the implementation of the IACAC; to follow up on the commitments made by the States Parties to the Convention and to study how they are being implemented; and to facilitate technical cooperation activities, the exchange of information, experiences, and best practices, and the harmonization of the legislation of the States Parties.

2.2. An intergovernmental mechanism in line with the purposes of the OAS

In addition, the MESICIC operates under the aegis of the goals and principles of the OAS Charter and it abides by principles such as sovereignty, nonintervention, and the juridical

equality of States; similarly, although it is intergovernmental in nature, it allows for the opinions of civil society to be heard.

It is characterized by impartiality and objectivity in its operations and in the conclusions it reaches, and by the absence of sanctions. This serves to ensure its seriousness and underscores the fact that its goal is not to assess or classify the participating States, but to strengthen cooperation among them in their efforts against the common enemy of corruption.

2.3. An expanding mechanism

When the Report of Buenos Aires was adopted on June 4, 2001, 20 State Parties of the IACAC signed on to participate in the MESICIC. By the start of the Third Round of Review, this grew to 28 States Parties, and subsequently, for the Fourth Round, with Antigua and Barbuda, Haiti and Saint Kitts and Nevis participating, the Mechanism now counts on 31 countries, which demonstrates the growing enthusiasm by the States Parties to the IACAC to participate in this instrument of cooperation.

The following chart demonstrates the increase in participation by the States Parties of the IACAC to the Mechanism, from its creation to the Fourth Round of Review:



2.4. Institutional framework

The MESICIC comprises of the Conference of the States Parties and the Committee of Experts. Support for the MESICIC's activities is provided, in accordance with the Report of Buenos Aires, by the OAS General Secretariat, through the Department of Legal Cooperation of the Secretariat for Legal Affairs, which provides the Mechanism with technical secretariat services.



CHAPTER 3

THE CONFERENCE OF STATES PARTIES OF THE MESICIC

3.1. A governing and political body to guide the work of the MESICIC

The Conference of States Parties is comprised of representatives of the Member States of the MESICIC and, in its capacity as a governing and political body, it has the general authority and responsibility to supervise implementation of this Mechanism and provide guidelines to the Committee of Experts to steer its work.

3.2. A forum for senior public officials from States to issue guidelines to update the role of the Mechanism

In the framework of the Conference of States Parties, the most senior public policy officials from States in the area of fighting corruption have been meeting and evaluating the operation of the Mechanism, making adjustments deemed necessary to improve it.

The Conference of States Parties has offered important guidelines to the Committee of Experts, which have helped it to more widely publicize its activities, broaden civil society participation therein, as well as better tools for its analyses, such as on-site visits.



CHAPTER 4

THE MESICIC COMMITTEE OF EXPERTS

4.1. A technical body made up of experts to assist States in implementing the Convention and following up on its commitments

The MESICIC Committee of Experts is the Mechanism's technical body and is responsible for the technical review of how the States Parties implement the Convention's provisions.

The Committee is comprised of experts on fighting corruption, appointed by each of the Mechanism's States Parties. Their professional training, background and direct and practical understanding of the different topics covered by the Convention ensures a rigorous review and pertinent recommendations.

To take maximum advantage of the Committee's work, a set of Rules of Procedure adopted by its members govern the essential aspects of its organization and duties – such as its functions; the powers of

its Chair, Vice Chair, and Technical Secretariat; the adoption of its decisions; the selection of the Convention provisions for review in each round and the procedure used for that review; and participation by civil society in its activities.

For its technical review of how the MESICIC States Parties have implemented the provisions of the Convention, the Committee conducts a process of reciprocal or mutual evaluation among the States, in successive “rounds.” During these rounds, the States review the way in which they are implementing the IACAC provisions selected for review in each round and – in accordance with the Rules of Procedure, a methodology, a questionnaire, and a uniform structure – they adopt country reports in which each State receives specific recommendations for addressing any detected regulatory shortcomings and for resolving any inadequacies found.

The reports also contain indicators for the objective determination of results so the States can identify challenges and adopt the necessary corrective measures.

In addition to this, the Committee is responsible for the important task of reviewing the progress made by the MESICIC States Parties in implementing the recommendations formulated to them in earlier rounds.

4.2. A forum for promoting the exchange of best practices and technical cooperation among States

The Committee of Experts has consolidated its position as the ideal forum for pursuing the goals of the MESICIC of facilitating technical cooperation activities, exchanges of information, experiences, and that of best practices among its Member States. This has been carried out by including, among its activities, the examination of topics of collective interest that the States have been utilizing in order to share their best practices in the different areas addressed by the Convention.

It should be noted that under the Methodology for Conducting On-site Visits, adopted by the Committee of Experts at its Eighteenth Meeting in March 2011, since the start of the Fourth Round, the countries have had new forums for exchanging best practices, as well as for presenting their difficulties and technical assistance needs, and for requesting or benefiting from

technical cooperation, which is consistent with the MESICIC's purpose as an instrument for horizontal cooperation among its Member States.

HOW IS THE ANALYSIS CARRIED OUT?

1. For its technical review of how the MESICIC States Parties have implemented the provisions of the Convention, the Committee conducts a process of reciprocal or mutual evaluation among the States, in successive "rounds."
2. During these rounds the States review the way in which they are implementing the IACAC provisions selected for review in each round and – in accordance with the Rules of Procedure, a methodology, a questionnaire, and a uniform structure – they adopt country reports in which each State receives specific recommendations for addressing any regulatory shortcomings detected and for resolving any inadequacies found.
3. The reports also contain indicators for the objective determination of results so the States can identify challenges and adopt the necessary corrective measures.
4. In addition to this, the Committee is responsible for the important task of reviewing the progress made by the MESICIC States Parties in implementing the recommendations formulated to them in earlier rounds.

CHAPTER 5

BROAD CIVIL SOCIETY PARTICIPATION IN THE MESICIC

As already noted, although the MESICIC is intergovernmental in nature, it is also empowered to hear the opinions of civil society. Thus, since its inception, the Committee of Experts has encouraged the participation of civil society organizations in its activities and, pursuant to Chapter V (Articles 33 to 36) of its Rules of Procedure, it has provided them with a forum for that participation.

» OPPORTUNITIES FOR CIVIL SOCIETY PARTICIPATION:

a. Those provisions afford civil society with broad possibilities for participation. For example, they may present specific proposals to be considered in determining important matters such as the Convention articles to be reviewed in a given round, the methodology to be used for this review, and the questionnaire to be applied to gather the necessary information.

b. They can also submit specific and direct information on the questions contained in the questionnaire on the implementation by a given State Party of the provisions selected for review in a round, and on the implementation of recommendations formulated in previous rounds.

C. These documents, provided they are submitted in the timeframes and fashion indicated in the Rules of Procedure, can also be presented in person by the organizations at the informal meetings that the Committee of Experts holds prior to the commencement of its formal sessions.

It should be noted that at the Third Meeting of the Conference of States Parties of the MESICIC, held in Brasilia in December 2010, it was recommended that the Committee of Experts consider adopting measures to promote a broader and more diverse participation by civil society organizations in the activities of the MESICIC.

In line with that recommendation, the Methodology for Conducting On-site Visits provided new opportunities for participation by such organizations, including those from the private sector, professional associations, academics, and researchers. Very good use was made of those opportunities during the on-site visits made during the Fourth Round, as can be seen in the section of Chapter VI of this report that refers to those visits, as was recognized during the Fourth Meeting of the Conference of States Parties of the MESICIC, held in Washington, D.C. in December 2015, and as can be seen in Chapter VI, section 6.5 of this document, which refers to on-site visits.

This gave a new impetus for civil society participation in the activities of the MESICIC Committee of Experts, reflecting its willingness to promote the use of an increasingly broad opportunity of participation made available to different social actors. On this point, it should be noted that an analysis conducted by the U4 Anti-Corruption Resource Centre found that

the MESICIC was the mechanism that “contains the strongest formal requirements on civil society participation.”

OPPORTUNITIES FOR CIVIL SOCIETY PARTICIPATION



“The MESICIC is the mechanism that contains the strongest formal requirements on civil society participation.”

***An analysis conducted by the U4 Anti-Corruption Resource Centre**



CHAPTER 6

MESICIC RESULTS

6.1. Recommendations for strengthening a State's legal framework in the areas analyzed by the Convention

The MESICIC Committee of Experts has been formulating recommendations for its States parties so they can improve the legal frameworks they have in place to prevent, detect, and investigate acts of corruption, punish those who commit them, and recover for the public, the assets stolen by corrupt individuals, thereby securing more effective results in the fight against corruption.

In order to formulate the above recommendations, the Committee has been adopting reports for each of its States parties in which, in light of the gaps, deficiencies, and ineffective results observed in their laws and other regulations related to the provisions of the Convention selected to be examined in each round, it has proposed concrete measures to surmount them.

As of the time this document was prepared, the Committee has concluded four rounds of review in which it has adopted 114 reports; and, thus far in the Fifth Round, it has adopted 15 reports, for a total of 129 reports, with specific recommendations for each of its States parties.

The above reports, and recommendations that each contain, can be found on the Anti-Corruption Portal of the Americas, as well as the hemispheric reports from the first four rounds of review, which include a summary of recommendations.

The foregoing notwithstanding, for a better understanding of the importance of the Committee's recommendations for strengthening the legal frameworks of its States parties in the matters of the Convention reviewed thus far, the following is a summary:

HIRING OF PUBLIC SERVANTS:

Ensure that merit and integrity are effectively applied as a criteria for entering the public service and have in place transparent and impartial selection processes that make it possible to objectively select individuals who, because of their knowledge, experience, and high ethics, are better qualified to manage public affairs and safeguard the general interest.

STANDARDS OF CONDUCT TO PREVENT CONFLICTS OF INTEREST IN THE PUBLIC ADMINISTRATION:

Protect the general interest via measures such as impeding access to the public administration by individuals who, because of their backgrounds and particular interests, pose a risk to such safeguard; carefully regulate circumstances under which for this very reason, a public official should be kept out of a matter or out of the public service; and establish effective restrictions to prevent those who leave public service from improperly taking advantage of their position as former officials.

UNDERSTANDING OF THE RESPONSIBILITIES AND ETHICAL STANDARDS BY PUBLIC SERVANTS:

Ensure that not only is there a list of responsibilities for public servants, or standards or codes of conduct, but also that public servants accurately understand their functions and the risks of corruption inherent to the performance thereof, as well as clearly understand their ethical duties, implementing to this end, inter alia, in-person and virtual continuing training programs; authorities to respond to questions; and mechanisms to verify that they have understood the responsibilities and ethical standards.

EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE:

Ensure that objective and transparent criteria are established to determine compensation for public servants.

DISCLOSURE OF INCOME, ASSETS, AND LIABILITIES BY PERSONS WHO PERFORM PUBLIC FUNCTIONS:

Ensure that this is an effective tool for detecting cases of illicit enrichment among such persons, as well as potential conflicts of interests they may have, and that it enables the corresponding authorities to adopt whatever preventive or corrective measures necessary in a timely fashion.

DUTY OF PUBLIC OFFICIALS TO REPORT ACTS OF CORRUPTION:

Have the power to require effective compliance with this obligation by facilitating it via modern communication methods and eliminating formalities that prevent public servants from reporting.

PROTECTION OF INDIVIDUALS WHO REPORT ACTS OF CORRUPTION:

Ensure that such protection is broad and effective, in other words, that it assures the physical security, employment status, and safety of the whistleblower and his or her family and, where necessary, that international cooperation is available such that compliance with the duty to report corrupt individuals is duly protected by States and the international community.

STANDARDS FOR CONSERVING PUBLIC RESOURCES:

Ensure that such resources are not managed arbitrarily by those who administer them and that they are used exclusively to the public end for which they were allocated. To achieve this, the following must be implemented: Transparent budgeting systems for the scheduling and execution of government spending; impartial audits and objective accountability processes; criminal, civil, disciplinary, and fiscal liability for those who erode public assets; and effective measures to repair the latter.

PUBLIC PROCUREMENT:

Ensure the objective, impartial, and transparent selection of suppliers of goods, services, and works to States, by making the most of technology and using public tenders as a general rule for selecting contractors, after establishing clear rules that make it possible to determine with certainty the best offer for the State, thereby avoiding favoritism, collusion, and bribery in State contracting.

DENIAL OF TAX BENEFITS FOR PAYMENTS MADE IN VIOLATION OF ANT-CORRUPTION LAWS:

Prevent individuals from obtaining this type of benefit after disguising payments for acts of corruption (e.g., masquerading them as “market positioning expenses”), by, for example, implementing mechanisms that enable authorities to verify the veracity of information furnished to support the payments for which tax benefits are being sought.

MECHANISMS FOR ENCOURAGING CIVIL SOCIETY PARTICIPATION IN EFFORTS AIMED AT PREVENTING CORRUPTION:

Make available to the public extensive systems of public information that prioritize freedom of access thereto and codify procedures to guarantee protection of this right, in addition to mechanisms that make consultations with the public easier, encourage citizen participation in public management, and enable citizens to engage in monitoring, oversight, and control of such management.

PREVENTING BRIBERY OF LOCAL AND FOREIGN PUBLIC OFFICIALS:

Require companies to keep detailed records of their transactions, with internal controls that make it possible to prevent and detect this corrupt practice and preclude constructs like so-called “professional secrecy” from becoming obstacles, such that professionals like accountants or auditors can report any acts of corruption they uncover. Also require companies to adopt other measures such as campaigns to promote integrity aimed at their employees.

CRIMINALIZATION OF ACTS OF CORRUPTION:

Ensure that the offenses set out in criminal legislation—in relation to Article VI of the Convention—include all the elements necessary for the effective enforcement thereof, such that corrupt individuals will be unable to avoid being brought to justice and will receive criminal punishment commensurate with the seriousness of their crimes—crimes having to do with conduct such as requesting or receiving benefits in exchange for acts or omissions in the performance of the functions of public officials in order to illicitly obtain benefits for themselves or for third parties; and the malicious use or concealment of the proceeds of acts of corruption.

CRIMINALIZATION OF TRANSNATIONAL BRIBERY:

In order to guarantee effective enforcement, ensure that criminalization of this offense in criminal legislation includes all of the elements set forth in Article VIII of the Convention, which provides that each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, any article of monetary value, or other benefit, such as a gift, favor, promise, or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

CRIMINALIZATION OF ILLICIT ENRICHMENT:

In order to guarantee effective enforcement, ensure that the criminalization of this offense in criminal legislation includes the elements set forth in Article IX of the Convention, which describes it as a significant increase in the assets of a government official that cannot be reasonably explained in relation to that official's lawful earnings during the performance of functions.

MUTUAL TECHNICAL COOPERATION AND ASSISTANCE:

Make international technical cooperation between the States more effective through a more fluid exchange of information that enables them to share experiences and the measures they have adopted to fight corruption, in addition to providing more effective mutual assistance for investigating and prosecuting cases of corruption through central authorities that channel requests to that end in a more agile manner.

EXTRADITION OF THOSE WHO COMMIT ACTS OF CORRUPTION:

Use the Convention for purposes of extradition in cases of corruption and, in order to facilitate its use, implement measures such as training programs on the potential enforcement thereof designed specifically for administrative and legal authorities with jurisdiction in this area.

6.2. Recommendations for strengthening a States oversight bodies with jurisdiction in the fight against corruption

The Committee selected, as the Convention provision to be reviewed in the Fourth Round, Article III, paragraph 9, which deals with “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts.”

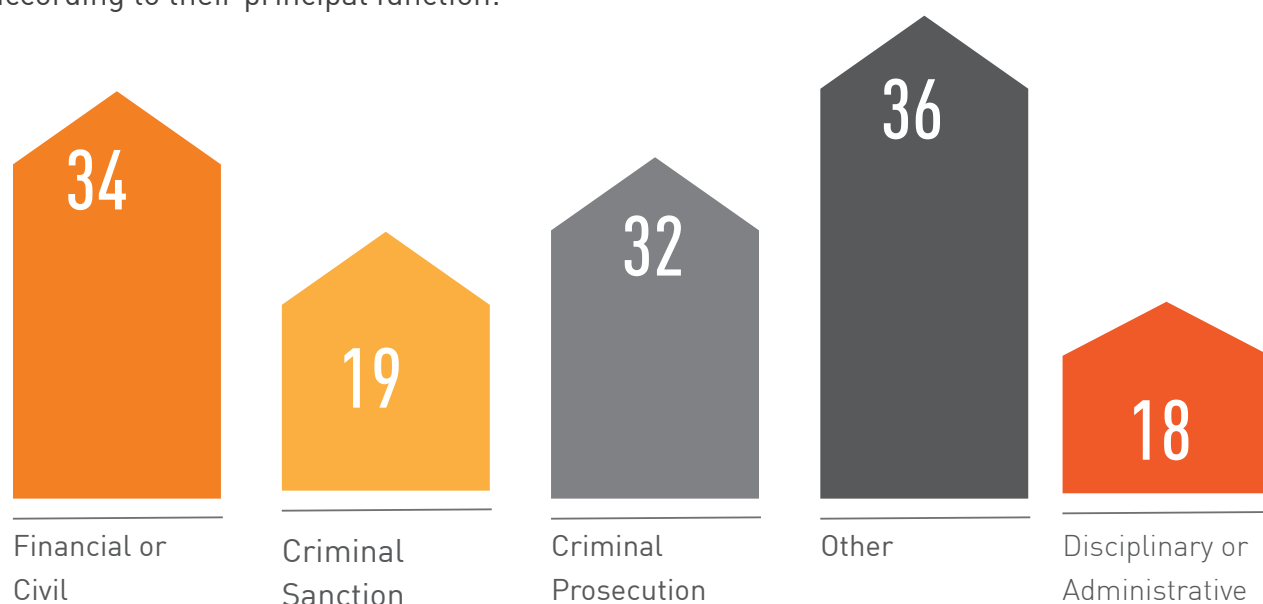
To ensure that the comprehensive review of those bodies focused on those that, by reason of their functions, have the greatest impact on anticorruption efforts, given that the MESICIC Member States have numerous oversight bodies charged with the duties set out in the aforesaid provision of the Convention, the methodology adopted for that review established that each country would select four or five such bodies, in consideration of their institutional importance and bearing in mind that their duties should cover one or more of the goals of preventing, detecting, punishing, and eradicating corrupt acts that trigger responsibilities of a disciplinary or administrative, financial or civil, or criminal nature.

This underscores the importance of the review of the implementation of the selected Convention provision carried out by the MESICIC Committee of Experts in this round, since it covers the main oversight bodies in the

Mechanism’s Member States charged with preventing, detecting, punishing, and eradicating corrupt acts and the different kinds of responsibility that they trigger for the perpetrators, enforcement of which falls to those bodies.

The following table notes the large number of oversight bodies that were reviewed (139) as well as the total number for each group to where they belong, classified according to their principal functions as regards the determination of the disciplinary or administrative, financial or civil, and criminal (prosecution and punishment) responsibility generated by corrupt acts (the category “other” is included for those bodies charged with duties such as preventing corruption).

Total number of oversight bodies reviewed according to their principal function:



As a result of the study of the aforementioned bodies, based on a methodology under which valuable data was examined that had been collected not only from the States, but also from civil society, the private sector, professional associations, academics, researchers, and other social actors by means of a questionnaire adopted by the Committee and through on-site visits, the Committee formulated specific recommendations for entities such as, Transparency or Public Affairs Secretariats; Offices of Prosecutors, Comptrollers, and Auditors; and judicial bodies (among them, Supreme Courts of Justice and High Councils of the Judiciary, etc.). Together, the recommendations call on these bodies—each

within its purview—to adopt the measures incumbent upon them to effectively prevent the commission of acts of corruption, detect such acts and investigate them swiftly when they are committed, punish the perpetrators with all the rigor warranted by the seriousness of the offense, and secure effective repair of the damage caused to the public treasury by them.

*The foregoing recommendations can be found on the Anti-Corruption Portal of the Americas, in each of the 31 country reports that were adopted for the MESICIC States parties by the Committee during the Fourth Round of Review. In these reports, the recommendations are formulated specifically and in detail for each of the 139 oversight bodies examined. A summary of these recommendations are broken down according to the function of these bodies, and is included in the hemispheric report for that round.

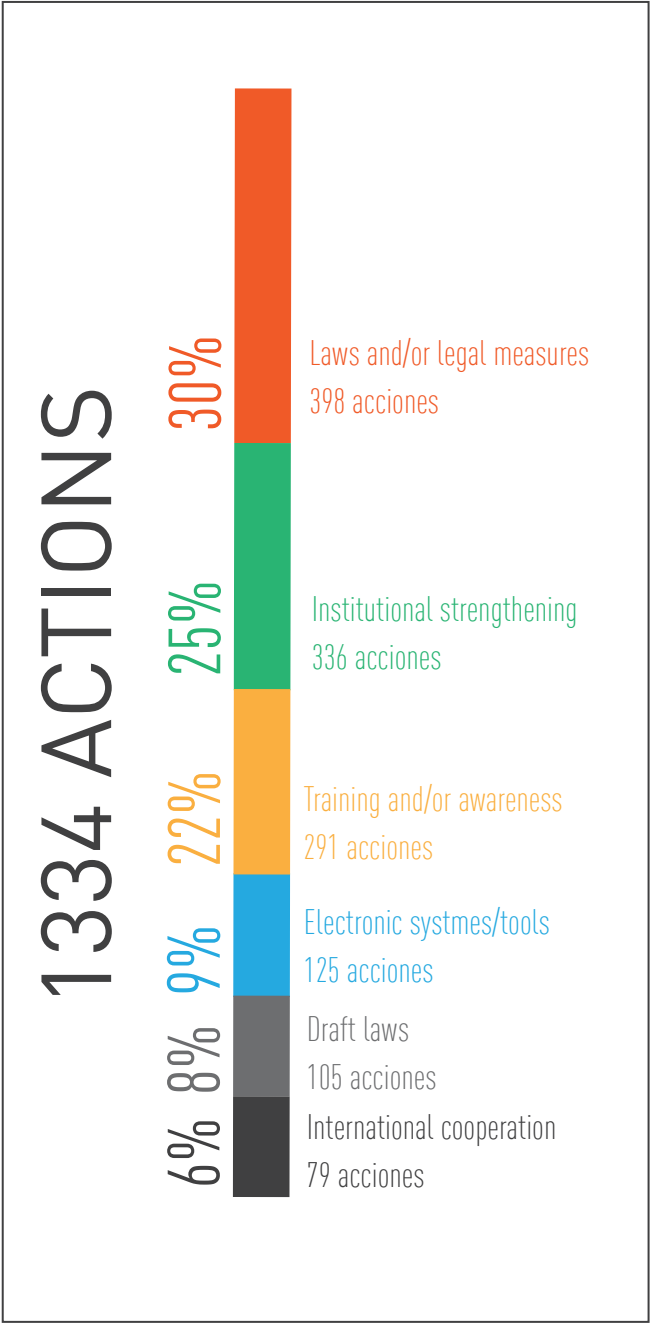
6.3. Progress in the implementation of the recommendations and their impact

The Committee’s Rules of Procedure stipulate that the hemispheric report adopted by the Committee at the end of each round shall contain a summary of the progress made by all of the countries in implementing the recommendations formulated by the Committee in previous rounds.

As a result of this monitoring, for example, it determined that at the completion of the Fourth Round of Review, the States Parties had made the following progress in implementing the recommendations issued in the First Round: 42% satisfactorily implemented; 38% with significant progress in their implementation; and 20% with no information on progress.

To provide an idea of the action taken by the States Parties in follow-up to MESICIC’s recommendations, it is enough to point out that, concerning those from the First Round, a total of 1,334 measures of a diverse nature were adopted, such as the adoption of laws and/or other legal measures, the preparation of draft bills, international cooperation activities, institutional strengthening programs, use of electronic tools or systems, and training and/or awareness-building activities.

The breakdown of those actions into the aforesaid categories can be seen on the following graphic:



Many of the laws and/or measures intended to strengthen the legal and institutional frameworks of the States Parties to the MESICIC for combating corruption (and/or the bills preceding their adoption) have expressly cited the IACAC and/or the MESICIC's recommendations in the rationale for the provisions they contain. This has provided them with a solid foundation and has facilitated their enactment. Likewise, they have also been cited as a basis for pronouncements of oversight bodies for investigation and/or punishment of acts of corruption. Some examples can be found in the Hemispheric Report of the Fourth Round, available at the Anti-Corruption Portal of the Americas.

6.4. COOPERATION TOOLS AVAILABLE TO STATES:

In order to assist the States in implementing the provisions of the Convention and the recommendations to that end formulated for them by the Committee, as well as in fostering collaboration among them in the fight against corruption, the following cooperation tools have been developed in the framework of the MESICIC:



DEVELOPMENT OF LEGISLATIVE HANDBOOKS

Pertaining to the provisions of the Convention reviewed during the first two rounds, to help the countries implement recommendations that require the passage or amendment of laws or associated legal measures with respect to matters such as the hiring of public servants; standards of conduct for public servants; access to public information and participation mechanisms for civil society; procurement of goods, services, and public works; mutual assistance and international cooperation; and designation of central authorities for this purpose.



DEVELOPMENT OF MODEL LAWS

With respect to two important aspects of the Convention: disclosure of assets and interests by those in public service and protection systems for whistleblowers who report acts of corruption.



DEVELOPMENT OF AN INSTRUCTION MANUAL

So that those designated by the States as experts to the MESICIC may fully understand how this mechanism operates.



DEVELOPMENT OF A COOPERATION PROGRAM

To help countries that voluntarily took part in it to implement the recommendations they were given in the first two review rounds; in the framework of the program, 17 workshops were held and attended by State authorities and civil society—as a result, an equal number of National Action Plans were drafted to meet the program’s objective.



ANTI-CORRUPTION NEWSLETTER

Dissemination, via a widely-circulated Anti-Corruption Newsletter, of developments in the context of the MESICIC, as well as of future activities in connection with fulfilling its objectives in order to achieve maximum use by all those interested in fighting corruption.



ANTI-CORRUPTION PORTAL OF THE AMERICAS

Development, on the OAS website, of the Anti-Corruption Portal of the Americas, which, in addition to giving the countries access to cooperation tools, makes it easier for them to obtain up-to-date information on all anti-corruption activities being carried out in the framework of the Organization and of the MESICIC; this information includes reports with recommendations for each country and the hemispheric reports from each review round adopted by this Mechanism.



HEMISPHERIC NETWORK FOR LEGAL COOPERATION ON CRIMINAL

The Hemispheric Network for Legal Cooperation on Criminal Matters placed at countries’ disposal for use in cases of corruption.

6.5. On-site visits and their importance to the review process

The Committee took an important qualitative step forward in its review process by incorporating the organization of on-site visits into the Fourth Round of Review. These visits allow an “on the ground” appreciation of the actions with which the countries are implementing the Convention provisions and the recommendations of the MESICIC, by gathering information not only from the authorities of the States visited, but also from representatives of civil society organizations and from the private sector, professional associations, academics, and researchers, in the way provided for in the Methodology for Conducting On-site Visits adopted by the Committee.

According to the Methodology, an on-site visit requires the consent of the MESICIC State Party involved. Thus, 30 of the 31 States formally extended their consent for on-site visits during the Fourth Round, and in the Fifth Round, each of the 15 countries reviewed thus far has given its consent and the respective on-site visits have been conducted.

On-site visits were made in connection with all the oversight bodies that were examined in the Fourth Round in the 30 States that granted consent, accounting for 134 of the total number of 139 bodies. As already noted in section 6.2 of this report, those bodies were of

different kinds, depending on the functions of preventing, detecting, and/or punishing corrupt acts assigned to them and to the disciplinary, financial, or criminal responsibility they are empowered to determine in the exercise of their powers.

In addition, however, since the on-site visits did not only gather information from the oversight bodies under review but also from other agencies in a position to provide complementary details about those bodies and about the implementation of the First Round recommendations, officials from another 41 bodies were also interviewed, with which the total number of bodies that participated in the on-site visits to the 30 States that granted consent rose to 180.

In total, 856 officials were interviewed at the 180 agencies that participated in the on-site visits, including such high-level authorities as chief justices and supreme court justices, comptrollers general and deputy comptrollers, auditors general, members of courts of accounts, legislators, ministers of justice, attorneys general and prosecutors, specialized prosecutors for anticorruption and public ethics matters, members of integrity commissions, members of public service commissions, transparency secretaries and directors of commissions for the prevention of corruption, ombudsmen and heads of access to information agencies, along with other officials with direct and practical knowledge of the topics identified for consideration at each of the meetings.

» ON-SITE VISIT PROCESS



Experts
examine documents sent by the
reviewed country



MESICIC State Party **provides its
consent** to receive an On-Site
Visit



MESICIC **experts visit** reviewed
country



Experts meet with **government
authorities**



Experts meet with
Civil Society

The names and positions of these officials are found in the agendas of the on-site visits, which are included in the annexes to the individual country reports and are available at the following link: Anti-Corruption Portal of the Americas.

In section 6.9 of this chapter we will discuss the contributions made by civil society, the private sector, and other social actors during the on-site visits, which demonstrate how they are making the most of these broad opportunities for participation offered by the MESICIC.

Regarding the on-site visits conducted thus far in the Fifth Round, it is important to note that there has also been broad participation by government authorities as well as civil society, the private sector, and other social actors; this will be reflected in the hemispheric report adopted at the conclusion of that round.

- **30 of 31 States** formally extended their consent for on-site visits during the Fourth Round.
- **180 bodies** the total number of bodies that participated in the on-site visits to the 30 States that granted consent.
- **856 officials** were interviewed at the 180 agencies that participated in the on-site visits, including such high-level authorities

The review process entails activities that involve all the experts who sit on the Committee and who, in that capacity, make up the review subgroups established for each country. It also involves the Mechanism's Technical Secretariat, which provides support for those activities to take place.

The experts who represent each country on the Committee play a very important role: not only as regards the decisions they are called upon to adopt in that capacity for the development of each round of review, but also in terms of their activities related to the preparation of their countries' responses to the questionnaire, their States' consent for on-site visits as well as the organization and support for those visits. Their important role also arises from their position as members of at least two review subgroups, such as approving the agenda for on-site visits and the draft preliminary reports on the countries examined by their subgroups, which are then referred to the Committee's plenary session, during which they participate actively, in conjunction with the other members of the Committee, in discussing and approving those reports.



» THE ROLE OF THE TECHNICAL SECRETARIAT

In accordance with the Committee's Rules of Procedure, the Technical Secretariat is responsible for preparing and compiling the preliminary draft reports for each country.

» PREPARING AND COMPILING THE PRELIMINARY DRAFT REPORTS

1. To carry out that task, following the methodologies for the review process and for conducting on-site visits adopted by the Committee, the Technical Secretariat first reviews the information provided in the responses to the questionnaire and in the comments submitted by civil society organizations, following the order determined by the Committee for reviewing the States, and then draws up the draft agendas for the on-site visits to those States that would be receiving visits, given that one of the purposes of that exercise is to obtain additional information.

It should be noted that these draft agendas, in addition to setting out in detail the topics to be addressed during the on-site visit, include provisions to ensure that the visit involves officials who, by reason of their direct and practical knowledge of those topics, are ideal for providing the information needed, and to ensure the active participation of representatives of civil society organizations and of the private sector, professional associations, academics, and researchers.

2. Second, the Technical Secretariat proceeds to review the information gathered through these methods, in consideration of the legal and institutional framework of each State, and to prepare the draft preliminary reports for each country. An extensive volume of information is gathered, comprising numerous legal provisions of different kinds and documents with multidisciplinary contents, and therefore, both its analysis and preparation of the aforementioned draft reports take the Technical Secretariat a considerable amount of time, in addition to the team work required in which all of its members participate actively.

In the aforementioned draft preliminary reports, a concise description is given of the legal framework in place in the respective State for implementing each of the provisions of the Convention selected for the corresponding round; an analysis is then done to determine whether that legal framework is adequate for achieving the aims the Convention sets out in each of the provisions and whether target objectives have been achieved that would make it possible to establish its effectiveness. Lastly, conclusions are drawn and appropriate recommendations are made for filling gaps, making adjustments to the unwanted developments observed, and improving the efficacy of the outcomes achieved.

3. As regards follow-up on the implementation of the recommendations formulated to the countries in the previous rounds, the draft preliminary reports review the progress, information, and new developments reported by the countries in connection with those recommendations, and they make proposals regarding which of them the Committee can deem to have been satisfactorily addressed, which have seen progress but still require additional attention, which are no longer applicable as a result of circumstances such as changes in a country's legal and institutional framework, and which should be restated or reformulated to bring them into line with the changes detected.

4. Finally, the draft preliminary reports are forwarded to the Committee experts that comprise the review subgroup and to the experts from the specific country under review, and thereafter a meeting is held with all of them during which, with the support of the Technical Secretariat, the draft and the observations made thereon by the experts are discussed. The version that comes out of this meeting is then submitted for consideration during the meeting of the full Committee, wherein all of its members actively participate to make the adjustments they deem necessary and then adopt the final version, preferably by consensus, as has been the case thus far.

6.7. Issues of collective interest

Given the MESICIC's status as the hemispheric forum for preventing and fighting corruption, the Rules of Procedure of its Committee of Experts provide for consideration of issues of collective interest for its States parties, with a view to strengthening cooperation among them within the framework of the Convention.

In addition to the MESICIC States parties being able to raise such issues during Committee meetings, the Committee may invite specialists to present studies or research on specific areas or recommend that certain studies, research, or analyses be conducted in order to have more information for considering a particular matter.

As a result of the foregoing, in the first four review rounds concluded by the MESICIC, and thus far in its Fifth Round, the vast majority of the States have made presentations on issues of collective interest in connection with important elements of the Convention such as government procurement, the hiring and training of public servants, systems for financial disclosure, and the participation of civil society in the fight against corruption, among others

It is important to note that one issue of collective interest the Committee has been giving special attention to is private sector responsibility in preventing and combating

corruption. For consideration of this issue, the Committee has had presentations in which many of its States parties have shared the regulations they have in place in this regard, in addition to the outcomes and challenges thereof. Moreover, the Committee has received very valuable information from civil society organizations, the private sector, professional associations, and academics and researchers it has invited to its meetings to give presentations on the studies, research, or analyses they have done in this area. Section 5.7(c) – “Topics of collective interest” –of the Hemispheric Report from the Fourth Round of Review, available on the Anti-Corruption Portal of the Americas, sets out the States and invited guests that have given presentations on this topic.

It also bears mentioning that during the Fifth Round, Brazil has given a presentation to the Committee, as a topic of collective interest, on its experiences with respect to a case of corruption of international prominence, namely the “Lava-Jato Case.”

6.8. Best practices shared

MESICIC States parties that wish to share the actions they consider to be best practices when it comes to preventing and fighting corruption may do so by submitting them alongside their response to the questionnaire adopted by the Committee for each round of review, working within a standard format adopted by the Committee to that end, which asks for a brief description and summary thereof, as well as an explanation as to why it should be considered a best practice; the grounds for developing it; identification of challenges to the implementation thereof; and its results, among other factors.

As an example of the foregoing, during the Fourth Round, the countries voluntarily reported on the actions they considered to be best practices with respect to oversight bodies with responsibilities for fighting corruption reviewed in that round. The actions in question are displayed in the table below wherein they have been broken down by type of activity and main function of the bodies whose actions were reported:

BEST PRACTICES	MAIN FUNCTION OF THE BODIES				
	Discipline or Administrative	Financial or Civil	Criminal	Others	Total
Enforcement of laws and/or legal provisions	0	0	3	2	5
Training and/or awareness raising	1	2	2	10	15
International Cooperation	0	1	1	2	4
Institutional strengthening	4	7	13	9	33
Technological systems or tools	6	9	2	4	21
Others	1	2	2	2	7
Total	12	21	23	29	85

Detailed information on the above actions as well as the documents provided by the countries for their consideration as best practices can be found on the Anti-Corruption Portal of the Americas, where they are shared as an integral part of the response of the State in question such that other States may make use of them.

As to the actions States have wanted to share as best practices thus far in the Fifth Round, it is worth noting that they have been as numerous as those in the Fourth Round and refer to matters that are equally important in the Convention, to wit: Hiring, training, and compensation for public servants; government procurement; criminalization of acts of corruption; and protection for whistleblowers. The results hereof will be reflected in the hemispheric report adopted when the Fifth Round concludes.

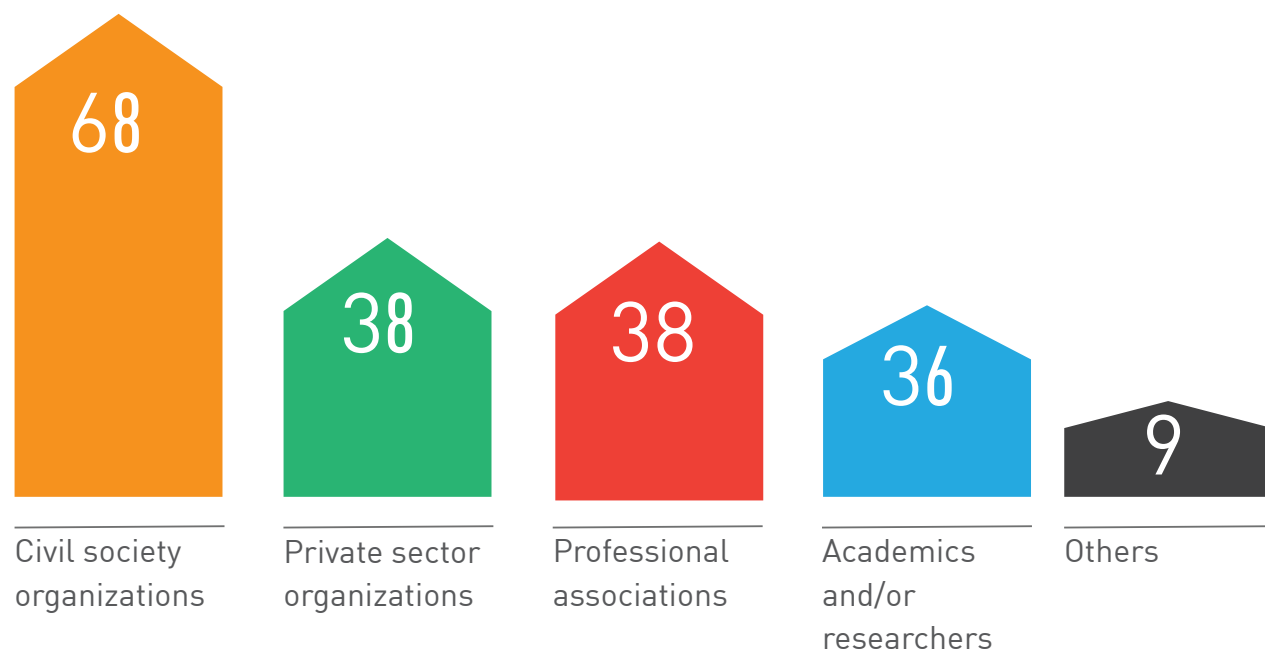
As the result of this, the 30 on-site visits that were conducted in the Fourth Round involved the participation of a total of 189 civil society organizations, private sector organizations, professional associations, and academics and researchers.

6.9. Contributions from civil society, the private sector, and other social actors during on-site visits

As stated in Chapter V of this report, while the MESICIC is intergovernmental in nature, it affords broad opportunities for participation by civil society. For the on-site visits, those opportunities are enshrined in Provisions 26 and 27 of the corresponding Methodology, which provide, respectively, that during the visits, meetings will be held with the civil society organizations that presented documents with information on the questions posed to the States in the Questionnaire, and that invitations to those meetings may also be extended to other civil society organizations and/or, inter alia, organizations representing the private sector, professional associations, academics, and researchers

As the result of this, the 30 on-site visits that were conducted in the Fourth Round involved the participation of a total of 189 civil society organizations, private sector organizations, professional associations, and academics and researchers, the names of which are found in the agendas of the on-site visits annexed to the corresponding country reports, available at the Anti-Corruption Portal of the Americas,. The diversity of those participants can be seen in the following chart:

Number of civil society organizations, private sector organizations, professional associations, academics, researchers and others that participated in the on-site visits during the Fourth Round



Among the 68 civil society organizations that participated in the on-site visits were the national chapters of Transparency International, organizations, such as Article 19, and others that work in the area of access to information, and numerous other important organizations in the countries visited.

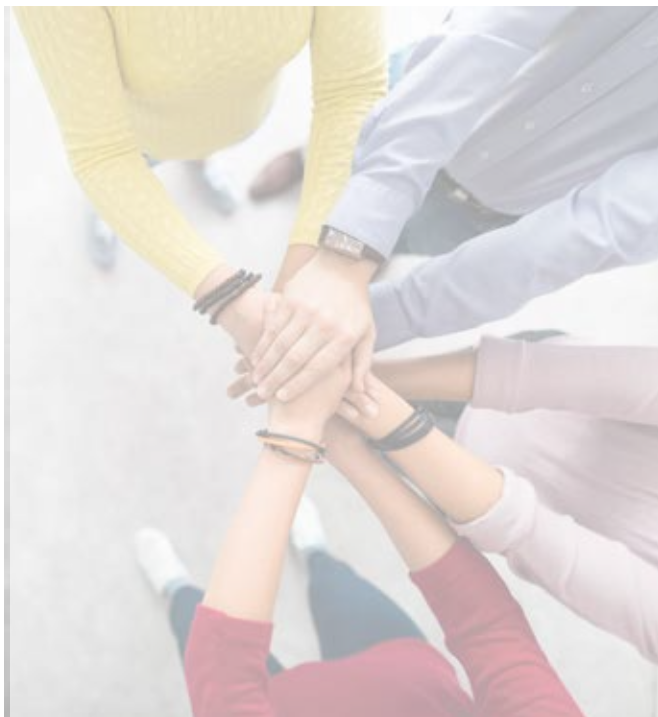
The 38 private sector organizations that participated were mainly chambers of trade and industry and other leading business associations in the countries visited.

The 38 professional associations interviewed included bar associations and colleges of accountants, trade unions, professional

women's associations, and associations of judges and magistrates.

36 academics and researchers with recognized expertise in the topics addressed during the on-site visits were interviewed. In addition, another 9 civil society bodies participated in the on-site visits, including press associations and representatives of the media.

Annex I of the Hemispheric Report from the Fourth Round, available on the Anti-Corruption Portal of the Americas, contains a list of the civil society participants in the on-site visits, classified according to the categories indicated in the previous paragraphs.



Representatives of civil society that participated in the on-site visits unquestionably enriched the review process significantly inasmuch as they furnished very valuable information to the Committee gleaned directly from tremendously diverse and highly qualified sources, thereby providing it a better basis for formulating realistic and useful recommendations. All of the documents with studies, analyses, opinions, and suggestions provided by the representatives during the on-site visits have

been posted on the aforementioned Portal. It is important to note that the contributions made by civil society participants during the on-site visits conducted to date during the Fifth Round have been equally valuable to the Committee; these will be reflected in the hemispheric report adopted when the round concludes.

6.10. Diagnostic analyses in the MESICIC hemispheric reports and recommendations for all States

The Committee's Rules of Procedure provide that this body will adopt a hemispheric report at the end of each round of review of the implementation of the provisions of the Convention selected to be evaluated in the framework thereof, and stipulate that the hemispheric report will be composed of two parts, as follows:

A) A general, comprehensive review that includes, among other things, the conclusions arrived at in the country reports and the recommendations of a collective nature, both as regards following up on the results of said reports and regarding the recommended actions for consolidating or strengthening hemispheric cooperation on the issues addressed in the provisions under consideration in each round or closely related to them; and,

B) A summary of progress made by the countries overall in implementing the recommendations made by the Committee in previous rounds.

In fulfillment of the above, the Committee has already adopted hemispheric reports for the first four rounds of review: The first in 2006, the second in 2008, the third in 2011, and the fourth in 2015. These reports can be found on the Anti-Corruption Portal of the Americas. These reports include the two parts referred to above, in the following manner:

First, the criteria the Committee used to formulate recommendations to the countries with respect to each of the Convention provisions selected for the respective round are clearly set out, and, to this end, are summarized and fully presented for all of the States reviewed. At the same time, indication is given of the frequency with which such recommendations have been made to those States, thereby enabling a diagnostic analysis of the need to improve legal and institutional frameworks across the hemisphere, in every one of the areas of the Convention reviewed in each round.

Second, the headway made by all of the countries in implementing the recommendations made by the Committee in previous rounds can be clearly seen, with indications given of: the number and percentage of recommendations considered to have been satisfactorily implemented;

those for which there has been progress, but that still require additional attention; and recommendations for which no progress has been made. This makes it possible to have a hemisphere-wide assessment of the progress made in implementing the recommendations formulated by the MESICIC in previous rounds. In addition to the foregoing, the hemispheric reports contain highly useful information for understanding efforts in the hemisphere, in the framework of the MESICIC, to fight corruption, as well as pending tasks. In the case of the latter, the importance of implementing the recommendations made by the Mechanism is reiterated, with specific measures suggested to the countries for doing so, such as:

- Adequately and broadly disseminate the country reports, so that the authorities or bodies responsible for implementation, and civil society, are made aware of the information and recommendations they contain.
- Identify a body, authority, or agency to be responsible for pursuing the process of recommendation implementation.
- Clearly identify the tasks that each of the competent authorities and agencies is to perform in pursuit of recommendation implementation, so they can undertake the activities required for performance of those tasks.

- Make the authorities or agencies charged with implementing the recommendations more aware of the responsibilities incumbent on them in compliance with their country's commitment to the international community.
- Design and develop a plan of action or other procedure for planning the activities required to implement the recommendations, establish execution responsibilities, and monitor their performance.
- Adopt indicators for objective measuring of progress with the tasks needed for implementation of the recommendations.

6.11. Other activities

It is worth noting that in the framework of the MESICIC, in addition to the activities described above, other ones have been carried out that are also important to the aims of the Convention and the Mechanism when it comes to promoting international cooperation in the fight against corruption.

Among these actions it is important to highlight those having to do with the sharing of information and development of joint activities in areas related to preventing and fighting corruption with other international organizations such as the United Nations, the Organization for Economic Cooperation and Development (OECD), the Inter-American

Development Bank (IDB), the Council of Europe, and the World Bank.

As examples of the above, since it was launched, the MESICIC has been involved in cooperation activities with international organizations like the OECD and the IDB in forums like the one that took place in May 2004 in Rio de Janeiro, organized jointly with these two organizations and the Government of Brazil. The forum covered "conflicts of interest in the public sector in Latin America and the Caribbean."

In 2006, the MESICIC took part in the conference and technical workshop on cooperation against transnational bribery put on by the OECD in Santiago, Chile.

In July 2010, the MESICIC participated in the Latin American Conference on Corporate Responsibility for Promoting Integrity and Fighting Corruption, organized in São Paulo by the OECD and the Government of Brazil.

With the United Nations, the MESICIC has been engaging in cooperation activities, bearing in mind the importance of its Convention in this area and the Convention's follow-up mechanism in the joint fight against corruption.

The MESICIC took part, for example, in the High-level Regional Seminar for the Ratification and Implementation of the United Nations Convention Against Corruption, held

in Costa Rica in 2006; in the regional training course for government experts for the mechanism to examine the implementation of that Convention, held in Panama City in October 2010; and in the Fifth Session of the Conference of States Parties to the United Nations Convention against Corruption, in Panama City, Panama, on November 26, 2013. In addition, the MESICIC has signed cooperation agreements on fighting corruption with the three aforementioned international organizations as well as with the Council of Europe, which enables us to engage in joint activities in this area in an organized and coordinated way.

Lastly, it is also important to note the agreement signed between the MESICIC and the International Anti-Corruption Academy (IACA), headquartered in Vienna, Austria, which is the main international institution for training in this area created in the framework of the UN.





CHAPTER 7

RECOGNITION OF THE USEFULNESS OF THE IACAC AND OF THE MESICIC

The usefulness of the IACAC and of the MESICIC Committee of Experts have received explicit acknowledgment and can also be seen in the numerous actions undertaken by the Member States to tackle corruption, inspired by the terms of the IACAC and by the recommendations for their full implementation issued by the Committee. In addition, this acknowledgement is also seen in studies on the phenomena of corruption carried out by academics, research centers, and other organizations, which have made use of the review undertaken by the Committee and the content of the reports

In the meetings of the Conference of States Parties of the MESICIC, the States unanimously expressed their satisfaction with the progress made through this mechanism. Specifically, they spoke of such aspects as the Committee's recommendations and the support for their implementation given to the countries by its

Technical Secretariat by means of such legal cooperation tools as model laws and legislative guides on the topics addressed by the IACAC.

Recognition of the value of the MESICIC has not only come from its States parties. Various organizations and research centers have stated that they have used its analyses in their studies about the phenomenon of corruption and have had very positive things to say about it. Below are some examples:

A study by the U4 Anti-Corruption Resource Centre titled “How prepared are we to assess real implementation of anti-corruption conventions? Lessons from the Americas” underscores the usefulness of the IACAC and of the experience of the follow-up mechanism as it related to the implementation of the United Nations Convention. In addition, it states that: “With regard to the real effects that MESICIC generates in the States Parties, it can be affirmed that government actors and civil society in several countries have used the recommendations to encourage debate, reach political agreements and ultimately strengthen the transparency and anti-corruption agendas.”

Another study by the Latin America Program of the Open Society Foundations, titled “Effectiveness of International Anticorruption Conventions on Domestic Policy Changes in Latin America,” states: “Data shows that the Inter-American process has more advantages for anticorruption advocates in the region than other international instruments. For instance, it has provided a number of intangibles which contribute to national-level advocacy, such as institutional workspaces and contact with home public officials as well as technical capabilities to engage these officials.”

In turn, the Freedom of Information Advocates Network (FOIANet) said, in a 2013 study titled “Global Right to Information Update – An Analysis by Region,” that: “The oversight body for the Inter-American Convention against Corruption, MESICIC, also contributed to the movement for RTI [Right to Information] due to the fact that the questionnaires used in the oversight of implementation included questions on access to information and regular recommendations were made calling for a right to information.”

Finally, an article published in the George Mason Journal of International Commercial Law in 2013, titled “Conflicting Trends: Lessons from Current Evaluative Mechanisms in International and Regional Anticorruption Systems Regarding Conflicts of Interest,” stated: “It should be noted that the MESICIC review round reports are by far the most comprehensive of the reviews discussed in this article. Therefore, the MESICIC reports provide the greatest insight into the successes and failures in implementing a conflict of interest regime at the domestic and regional levels.”



CHAPTER 8

SOME CHALLENGES IDENTIFIED VIA MESICIC ANALYSES

8.1. The evolution of corruption and delays in adapting legal frameworks to tackle new and increasingly sophisticated types of corruption.

Acts of corruption that undercut public resources and the general interest come in increasingly sophisticated and varied forms, as does the concealment of proceeds stemming from such acts.

Regrettably, legal frameworks in our countries designed to prevent, detect, investigate, and punish illegal acts of corruption in a timely and effective manner, or to rapidly track the proceeds of such acts in order to fully redress the harm caused to the public treasury and the general interest, are not being adapted quickly enough, in the face of the creativity and audacity with which corrupt individuals couch large scale payments of bribes to the most senior officials in legality; transcend borders to

engage in this same type of conduct with officials from other countries; co-opt institutions in an effort to get them to respond to their illegal interests; evade justice; and conceal their illicit enrichment.

The foregoing is reflected in the considerable number of recommendations formulated by the MESICIC Committee of Experts to the States that comprise this Mechanism in an effort to encourage the adoption of new regulations in connection with the provisions of the Convention that have been analyzed. The recommendations also call for existing laws to be adapted in order to fill vacuums or correct shortcomings that corrupt individuals take advantage of to commit their acts of corruption, and for the overly lengthy period of time it generally takes for lawmakers in our countries to adopt or update such laws to be addressed. In light of this situation, from the very moment it issued the Hemispheric Report for the First Round, the Committee has emphasized the importance of proactive

and timely participation by the different branches of government for implementation of its recommendations, and above all, the essential role of legislatures with respect to recommendations that require the passage or amendment of laws and regulations.

8.2. The need to strengthen institutions responsible for preventing, investigating, and punishing acts of corruption and for assuring effective redress of the harm caused to the public treasury by such acts.

The MESICIC Committee of Experts is also aware that simply adopting new laws in connection with fighting corruption or bringing those that already exist up to date in order to secure positive results in this area is not enough. It is essential that State institutions responsible for enforcing laws aimed at preventing, investigating, and punishing acts of corruption and assuring effective redress of the harm caused to the public treasury do so fully, so that these aims can be achieved. Because of the foregoing, as has already been noted in Chapter VI, section 6.2, of this document, the Committee selected the provision set forth under Article III, paragraph 9 of the Convention—“Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts”—as the provision whose implementation was to be reviewed during the Fourth Round.

The comprehensive analysis of the 139 oversight bodies from the 31 States parties of the MESICIC reviewed during the Fourth Round that have jurisdiction in the areas of preventing, detecting, investigating, or punishing corrupt practices that lead to disciplinary, financial, or criminal liability, revealed the need to strengthen such bodies, to a greater or lesser degree depending on the existing levels of institutional development in the countries, as is evident in the recommendations formulated to this end by the Committee for each of the States and which have already been referred to in Chapter IV, section 6.2, of this document.

8.3. Lack of indicators to objectively ascertain the results of efforts to prevent and fight corruption.

The analyses conducted by the MESICIC Committee of Experts regarding implementation of Convention provisions have revealed a lack, in many of the MESICIC States parties, of indicators that would enable the Committee to objectively ascertain the results States have achieved in enforcing laws and other measures to develop those provisions. This was envisioned in one of the criteria established in the analysis methodology adopted by the Committee, which is very important for detecting vacuums or inadequacies related to such laws or measures, or inefficiencies in their enforcement, and for proceeding, as a result, with the formulation of the corresponding recommendations aimed at surmounting these deficiencies.

For their part, the countries must have these indicators in place, not just to be able to objectively report the aforementioned results to the Committee and measure any progress made in the implementation of the Committee's recommendations, but also such that their authorities may promptly detect challenges and difficulties that must be addressed in order to effectively prevent and fight corruption and adopt appropriate corrective measures. Such indicators would also enable citizens to monitor outcomes achieved in this area based on clear,

up-to-date, and verifiable information they are able to access easily, for the sake of the transparency and accountability that should inspire the relationship between the government and its citizens.

The lack of the above-mentioned indicators has been expressly acknowledged by the Committee inasmuch as it included in each of the country reports adopted in the framework of the First Round a recommendation aimed at urging the countries to adopt the procedures and indicators necessary for analysis of the outcomes of the systems, laws, measures, and mechanisms considered in those reports, and in order to verify implementation of the recommendations formulated therein. In this context, the Conference of States Parties of MESICIC has also recommended that the MESICIC Technical Secretariat, within its existing resources, develop a standard methodology with a set of these indicators, and that these indicators be made available to the countries, and their use encouraged.

8.4. The urgency to streamline and make more effective international cooperation to prevent and combat corruption.

Even though countries may individually implement internal measures to fight corruption, given the transnational nature of the problem, such measures will not suffice on their own to take on corruption effectively. Corruption does not recognize borders and often, acts of corruption involve citizens or businesses from different countries; corrupt individuals make the most of geographical boundaries to mask their criminal behavior, evade justice, and conceal the proceeds of their corrupt acts.

On the basis of the analysis conducted in the First Round with respect to implementation of the provisions of the Convention that refer to the cooperation the States parties should provide one another in order to prevent and fight corruption, the transnational nature of corruption has been expressly recognized by the Convention and the MESICIC Committee of Experts. The analysis made it clear that there is a need to enhance this cooperation by means of specific actions such as a more fluid exchange of information that enables the countries to share experiences, best practices, and laws and measures devised to tackle this problem. Countries should also provide one another with more agile and effective assistance for the investigation and prosecution of acts of corruption and, as the case may be, the expeditious extradition of

perpetrators thereof based on the Convention in order to ensure that they serve out the sentences they are given for their criminal conduct.

8.5. The need to effectively involve civil society, the private sector, and different social actors in the prevention of and fight against corruption.

The analyses conducted by the MESICIC Committee of Experts with respect to implementation of the Convention provision that calls for the States to have mechanisms to encourage the participation of civil society and non-governmental organizations in preventing corruption have revealed that this problem cannot be addressed successfully without effectively involving civil society, the private sector, different social actors, and the public in general.

Corruption only benefits a few corrupt individuals, to the detriment of the vast majority of the people of our countries.

Citizens bear, on a daily basis, the disastrous consequences of corruption, which appropriates resources that are needed to provide health services, education, or basic infrastructure, especially for the neediest, and robs them of their peace of mind as it is frequently employed as a tool for committing crimes that threaten citizens' resources and personal safety.

Corruption also puts the private sector at risk by robbing business people of opportunities to compete on a level playing field, with rules of the game that, when obeyed by all, serve to ensure that, for example, activities as significant as government procurement and the selection of contractors are carried out objectively and without the competing parties having to incur additional costs that only favor those who are corrupt, and always undermine the common good.

In light of the foregoing, it is very important to raise awareness among the public and the business community regarding the fact that corruption is a problem that affects us all. And because of this, solving corruption should not be left to government authorities alone and mechanisms must be instituted to ensure that the public and business community are able to be actively involved in preventing and fighting it. The recommendations formulated by the MESICIC Committee of Experts have been aimed at doing the above and reflect the need, to this end, for the States to make available to the public extensive public information systems that promote free access to such information and formalize in the law procedures to guarantee protection of this right. The recommendations also call for the States to implement mechanisms that encourage public consultations, promote citizen participation in public management, and enable the public to engage in monitoring,

oversight, and control of such management and enjoy full and effective protection when they report acts of corruption.

Notwithstanding the States adopting measures under their purview to prevent and punish national and transnational bribery, the MESICIC Committee of Experts' recommendations reflect the need for businesses themselves to strengthen or establish internal control mechanisms that enable them to detect and eradicate bribery as a means to win government concessions or to be awarded contracts for the execution of public works or provision of goods and services to state entities. It is important for business people to always bear in mind that probity in the private sector is, in addition to being a legal imperative, a social duty, and that they, too, need to be part of the solution to the problem of corruption.

In addition to the private sector, other important social actors such as civil society organizations, professional associations, trade unions, academics and researchers, universities, and forums that examine and discuss social issues also have much to contribute to solving the problem of corruption. This is why it is necessary for States to have mechanisms in place that enable these stakeholders to share their opinions, analyses, studies, and proposals on the topic such that these can be fully taken into account.

It bears mentioning, as an example of how beneficial the above is, that the input provided to the MESICIC Committee of Experts by civil society organizations, the private sector, professional associations, academics and researchers, and other social actors in the forums the Committee has offered them has been very useful to it, as set out in Chapter VI, section 6.9, of this document.

Lastly, it is important to emphasize the important role played by the media, who are called upon to bring to the attention of the public, in a serious and responsible manner, the acts of corruption they uncover as a result of objective investigative journalism; this must be counterbalanced by protection for journalists provided by the State.



CHAPTER 9

SOME PROPOSED ACTIONS TO STRENGTHEN COOPERATION FOR PREVENTING AND FIGHTING CORRUPTION IN THE FRAMEWORK OF THE MESICIC

Even though the analyses and recommendations of the MESICIC have been highly useful to its States parties when it comes to substantiating the adoption of different types of laws and measures aimed at preventing and fighting corruption, modernizing institutions with jurisdiction in this area, fostering cooperation among the States, and broadening opportunities for citizen participation, it is important to recognize that a long way still remains before the desired results can be achieved, in terms of fighting corruption effectively.

Participants to both the Conference of States Parties of the MESICIC and its Committee of Experts have always been aware of the challenges that lie in finding solutions to a problem as complex as corruption, and therefore, their guidelines, recommendations, and decisions reflect the need to more forcefully fight corruption and take an increasing number of actions in the framework of the Mechanism in order to fight corruption effectively.

Below is a list of actions aimed at enhancing inter-American cooperation against corruption in the framework of the MESICIC so it can help its States parties to effectively prevent and fight corruption; these actions are rooted in the guidelines, recommendations, and decisions adopted by the Conference of States Parties and the Mechanism's Committee of Experts:

1. STRENGTHEN international cooperation to confront new challenges arising from corruption.

For this, in the framework of the MESICIC as the forum for information exchange and mutual cooperation among the States Parties, pay special and constant attention to the discussion of new challenges arising from the evolving phenomenon of corruption, such as the emergence of new, diverse, and increasingly sophisticated ways of committing acts of corruption and for hiding these acts. States Parties can exchange their opinions, knowledge, developments and best practices in this regard and discuss the new measures that will be necessary to strengthen international cooperation, in order to effectively confront these new challenges.

2. STRENGTHEN the MESICIC as a repository of and forum for sharing best practices for preventing and fighting corruption.

To this end, with the support of its Technical Secretariat, adopt a methodology that facilitates the presentation of best practices, their compilation by thematic areas, their dissemination, and the promotion of their use, so that the States Parties can benefit from the responses and solutions offered by these best practices to meet the challenges they face.

3. PROMOTE the exchange of practical experiences on cases of corruption of international importance.

For this purpose, with support from its Technical Secretariat, adopt a methodology for presenting such cases to ensure that the presentations share experiences that are beneficial for the consideration of similar cases and strengthen the international cooperation that their transnational nature merits.

4. PROMOTE international legal cooperation in non-criminal matters in the fight against corruption.

To this end, with the support of its Technical Secretariat, consider a methodology for identifying the requirements and procedures in place in each State Party in order to provide that cooperation to the other States Parties, when appropriate and consistent with the domestic legal system of the respective State.

5. PROMOTE the use of technology.

That will permit streamlined and secure communications among officials from different States who have authority in the field of international cooperation to address acts of corruption. Under this proposal, encourage use of the Hemispheric Network for Legal Cooperation on Criminal Matters, which operates under REMJA, for cases of corruption.

6. UTILIZE the MESICIC as a forum to inform States of studies and research on the problem of corruption, its challenges and possible solutions

advanced by education centers, think tanks, academics and researchers, in order to enable States to take advantage of these studies, as well as to serve as a contact between its authors and the States, for this purpose.

7. CONTINUE the in-depth review of institutional legal instruments

for preventing, detecting, investigating, and punishing acts of corruption, making on-site visits to them for this purpose; issue the necessary recommendations for ensuring their effectiveness; and follow-up on their implementation to ensure that they are used to the best advantage.

8. ASSIST States on PREVENTING corruption

impulsando la implementación de las recomendaciones del MESICIC relativas a la prevención de la corrupción, y dentro de este propósito, darle prioridad a la adopción de una ley modelo para la prevención de los conflictos de intereses, sin perjuicio de que el MESICIC se siga ocupando de otras materias de la CICC con incidencia en este campo, como la contratación estatal y la vinculación de servidores públicos, su capacitación sobre las normas éticas que los rigen y sobre sus responsabilidades y los riesgos de corrupción inherentes a las mismas.

9. ASSIST States on DETECTING corruption

with the implementation of the MESICIC recommendations on detecting corruption, and as part of this process, promote their use of the Model Law on the Declaration of Interests, Income, Assets, and Liabilities of Persons Performing Public Functions adopted by MESICIC, which contains provisions for the timely and effective detection of illicit enrichment and conflicts of interest among public servants.

10. STRENGTHEN oversight bodies

pursuant to the MESICIC recommendations, to make these bodies more effective in investigating and punishing acts of corruption and repairing the damage caused by them, thereby fighting impunity and permitting full recovery from the harm to the national treasury caused by the perpetrators.

11. Encourage responsibility by the private sector in the prevention of corruption

based on the recommendations of the MESICIC, which are aimed at businesses to establish internal controls to prevent acts of corruption such as national and transnational bribery; that the public and private sectors interact in relation to the solution of this problem; and to the realization of integrity promotion campaigns in this sector. In addition, promote the exchange of best practices in this area in the MESICIC forum.

12. Encourage the engagement of civil society organizations and the public in general, in preventing corruption

pursuant to the MESICIC recommendations, which are designed to enable States to possess effective measures in which citizens have easy access to public information, can be consulted on matters of public interest, exercise control over public administration, and require public institutions to report on the fulfillment of their mission.

13. Provide full and effective protection for whistleblowers and witnesses of acts of corruption

pursuant to MESICIC's recommendations, and promote the States's use of the Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses, adopted within the framework of MESICIC.

14. DEVELOP indicators to support States in the determination, dissemination and monitoring of anti-corruption results.

For this, develop a standard methodology with indicators that facilitates the presentation and monitoring of the results achieved and action taken by the States Parties with respect to the matters of the IACAC, and makes it possible to identify areas that need improvement and determine the necessary technical assistance.

15. MODERNIZING the web-based Anti-Corruption Portal of the Americas

for wider dissemination of information on MESICIC's activities and those of its member states, civil society, the private sector, and other social stakeholders to prevent and fight corruption.

16. SERVING as an instrument for coordination and collaboration with other international mechanisms

tasked with fighting corruption, and generating synergies to enable them to take mutual advantage of their activities in this field.

17. STRENGTHEN the Technical Secretariat of the MESICIC so that it can continue to help States fully implement the provisions of the IACAC

By providing tools to facilitate implementation of the recommendations issued to them for this purpose; and serve as a forum for hemispheric cooperation and the sharing of best practices in preventing and fighting corruption, and at the same time ensure that it is in a position to take new action required by the challenges facing the countries of the Americas from the new, varied, and increasingly sophisticated means of committing acts of corruption. As part of this, strengthen the MESICIC Technical Secretariat to ensure that it has the necessary resources to provide the support required to take such action, allocating to it, among other things, sufficient financial resources in the regular fund of the OAS General Secretariat, bearing in mind that fighting corruption has been designated a priority area in the Organization's new strategic vision.



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FOLLOW-UP MECHANISM FOR THE IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION

Organization of American States

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