

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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**METHODOLOGY
FOR THE REVIEW OF THE IMPLEMENTATION OF THE PROVISION OF THE INTER-
AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE FOURTH
ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN
THE FIRST ROUND**

INTRODUCTION

The *Report of Buenos Aires*^{1/} and the *Rules of Procedure and Other Provisions*^{2/} of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires*, *Rules of Procedure*, *Committee*, *Mechanism*, and *Convention*) provide that the Committee shall “devise a methodology for the review of the implementation of the provisions of the *Convention* selected to be reviewed in each round, designed to ensure that sufficient reliable information is obtained.”

Within the framework of its eighteenth meeting, held from March 21 to 25, 2011, the Committee agreed, as a topic for review during the Fourth Round, on the comprehensive analysis of “oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts” (Article III, paragraph 9, of the *Convention*). In addition, in compliance with recommendation 9(a) of the Third Meeting of the Conference of States Parties of the MESICIC^{3/}, it was agreed that in the Fourth Round, the Committee “with regard to the follow-up of recommendations, that it concentrates exclusively on the follow-up of the recommendations formulated to the States Parties in their corresponding reports of the First Round and which were deemed to require additional attention in the reports of the Second and Third Rounds, including the consideration of any new and relevant information or developments that would allow the Committee to determine the continued validity of the recommendations and measures suggested in the reports of the First Round and, with regard to those deemed still valid, to assess whether the State has given them satisfactory consideration or whether additional attention is required or, when applicable, to restate or reformulate them.”

Furthermore, Article 29 of the *Rules of Procedure* provides that each state party shall submit information on the implementation of the recommendations in the standard format that the Committee shall provide as an annex to the Questionnaire. Article 29 also establishes that, “with respect to the implementation of recommendations, the State Party shall refer to any difficulties that may have arisen in the process,” and that, “should it deem it to be appropriate, the State Party may also identify the domestic agencies that have participated in implementing the recommendations, as

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1. The Report of Buenos Aires (document AG/RES. 1784 (XXXI-O/01)) is available at: www.oas.org/juridico/english/doc_buenos_aires_en.pdf
 2. The Rules of Procedure and Other Provisions of the Committee of Experts of the MESICIC (document SG/MESICIC/doc.9/04 rev. 4) are available at: www.oas.org/juridico/english/mesicic_rules.pdf
 3. The Recommendations of the Third Meeting of the Conference of States Parties of the MESICIC (document MESICIC/CEP-III/doc.4/10 rev. 1) are available at: www.oas.org/juridico/english/cepIII_recom_en.pdf

well as identify specific technical assistance or other needs connected with the implementation of the recommendations.”

In addition, within the framework of its Eighteenth meeting, and in compliance with recommendation 6 of the Third Meeting of the Conference of States Parties of the MESICIC, the Committee adopted the *Methodology for Conducting on-Site Visits*⁴, which, according to provision 2 thereof, constitute a stage in the Committee’s process of analyzing the implementation, within a round of review, of the corresponding selected provisions of the *Convention* and of the recommendations formulated to each of the States Parties in the previous round(s) regarding which follow-up is being performed, in compliance with the terms of the Report of Buenos Aires, Article 33 of the *Rules of Procedure*, and the decisions adopted by the Committee in connection with the respective round.

Taking the foregoing into account, this document contains the methodology for the review of the implementation of the provision of the *Convention* selected in the framework of the Fourth Round and for follow-up on the recommendations formulated by the Committee in the country reports adopted in the First Round. To this end, the document refers to the objective of the review in the Fourth Round, to its framework, and the general and specific criteria used to guide the review of the provision selected in the Fourth Round; considerations with respect to the scope of this review; the follow-up on the recommendations formulated in the country reports in the First Round; the identification of best practices by the States being reviewed; sources of information, the review process; responses to the questionnaire; country reports; the participation of civil society organizations and/or inter-alia, private sector organizations, professional organizations, academics, or researchers, and the application of this methodology to those countries that were not parties to the MESICIC in the First Round.

I. OBJECTIVE OF THE REVIEW IN THE FOURTH ROUND

Within the framework of the purposes of the *Convention* and the *Mechanism*, the objective of the review in the Fourth Round will be to follow up on the implementation in each State Party of the *Convention* provision selected in the Fourth Round, through the review of the existence of a legal framework and of other measures for the implementation of that provision and, providing they exist, of their adequacy for the purposes of the *Convention*, and by an initial review of their results and progress. Similarly, its purpose will also be to follow-up on progress, information, and new developments in relation to the recommendations formulated in the First Round, and which the Committee deemed required further attention in the reports from the Second and Third Rounds, in accordance with Article 29 of the *Rules of Procedure*, and taking into account what was agreed to by the Committee at its Eighteenth Meeting, pursuant to recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC.

II. FRAMEWORK FOR THE REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED IN THE FOURTH ROUND

The review of the implementation of the provision selected in the Fourth Round shall be conducted both within the framework of the provisions of the *Convention* as well as the *Report of Buenos Aires* and the *Rules of Procedure*, and, when applicable, the *Methodology for Conducting on-Site Visits*.

4. The Methodology for Conducting On-Site Visits (document SG/MESICIC/doc.276/11 rev. 2) is available at: www.oas.org/juridico/english/met_onsite.pdf

III. CRITERIA USED TO GUIDE THE REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISION SELECTED IN THE FOURTH ROUND

In addition to the principles outlined in the *Report of Buenos Aires* and the *Rules of Procedure*, information concerning the implementation of the provision of the *Convention* selected in the Fourth Round shall be reviewed taking into account, principally, the general and specific criteria described below.

A) GENERAL CRITERIA

The following three criteria shall guide the general and comprehensive review of the implementation of the *Convention* provision selected in the Fourth Round:

1. Equal treatment

In accordance with this criterion, and for the review of information on the implementation of the selected provision of the *Convention*, treatment shall be equal and consistent for all States Parties. With a view to ensuring compliance with this criterion, in particular, the following precautionary measures shall be adopted in addition to the principles outlined in the *Report of Buenos Aires* and the *Rules of Procedure*:

- a) All States Parties shall be reviewed within the framework of the round and in accordance with the same criteria and procedures;
- b) The questionnaire shall be the same for all States Parties;^{5/} and,
- c) All country reports shall have the same structure.^{6/}

2. Functional equivalency

The Committee shall review the measures taken by the State Party to implement specific provisions of the *Convention* to determine whether those measures seek to comply with the obligations and purposes of the *Convention*.

In this regard, the Committee shall review the information within the specific legal context and system of each State Party and the issue of whether the measures are uniform among the various States shall not be examined, but the Committee shall weigh the equivalency of the measures in achieving the stated purposes.

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5. Those countries that were not parties to the MESICIC during the First Round should not respond to section II of the questionnaire for the Fourth Round, with respect to the follow-up on the recommendations formulated in the First and Second Rounds. However, in accordance with article 28 of the Rules of Procedure, they should respond to the questionnaire adopted by the Committee for the First Round, except as it corresponds to oversight bodies, pursuant to what is provided in this regard in section XII of the methodology for the Fourth Round contained in this document.
 6. With respect to those countries that were not parties to the MESICIC during the First Round, the Committee will adopt a separate structure for their reports, which will include a review of the provisions selected for that round, and which will not include the follow-up of the recommendations related to the implementation that the Committee formulated to those countries that were parties to the mechanism at that time, pursuant to what is provided for in section XII of the methodology for the Fourth Round contained in this document.

3. Strengthening of cooperation

In accordance with this criterion, the Committee shall review the information received always taking into consideration that the purpose of both the *Convention* and the *Mechanism* is to promote, facilitate and strengthen cooperation among States Parties in the prevention, detection, punishment and eradication of corruption.

B) SPECIFIC CRITERIA

The implementation by a State Party of the selected provision shall be reviewed based upon the following specific criteria:

1. Existence of a legal framework and/or of other measures

The Committee shall determine, based on this criterion, whether a State Party possesses a legal framework and other measures for the implementation of the respective provision of the *Convention*.

2. Adequacy of the legal framework and/or of other measures

If a State Party possesses a legal framework and other measures for the implementation of the respective provision of the *Convention*, the Committee shall review whether they are appropriate to promote the purposes of the *Convention*: to prevent, detect, punish and eradicate corruption.

3. Results of the legal framework and/or of other measures

Taking this criterion into account, a preliminary review shall attempt to examine to what extent objective results have been generated by the application of the legal framework and of other measures existing in the State Party related to the implementation of a respective provision of the *Convention*.

The review of information on results shall seek to focus on the current situation in the country under review, avoiding the inclusion of information referring to the period prior to the date of ratification of the *Convention* by the State Party.

When a state provides statistical data in its response to the questionnaire, it shall seek to ensure that such information refers to the five years prior to the date of its response.

4. Level of progress in the implementation of the Convention

Based on this criterion, the Committee shall review the progress made and shall identify the areas, if any, that require progress in the implementation of the *Convention*.

The recommendations formulated by the Committee will be specific and will deal with areas in which a need for adjustments has been detected in order to attain the objectives of the Convention, avoiding the formulation of recommendations that are abstract or that imply continuity, save, in the latter case, when strictly necessary in light of the nature of the topic under review and when specific actions have been taken that the Committee believes should be further developed.

In addition to the foregoing, in its review the Committee may, where appropriate, take into consideration any elements contained in the provisions of the *United Nations Convention against Corruption* that refer to the subject matter of the provisions of the *Inter-American Convention against Corruption*, the implementation of which is under review, in keeping with the recommendation 42 of the Third Meeting of the Conference of States Parties to the MESICIC

IV. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISION SELECTED IN THE FOURTH ROUND

- OVERSIGHT BODIES, WITH A VIEW TO IMPLEMENTING MODERN MECHANISMS FOR PREVENTING, DETECTING, PUNISHING, AND ERADICATING CORRUPT ACTS (ARTICLE III (9) OF THE CONVENTION)

With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed “to create, maintain and strengthen” oversight bodies, with a view to implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts, as provided in Article III (9) of the *Convention*.

To that end, first, note will be made of the oversight bodies in the country concerned that would be relevant for the purposes of the above provision of the *Convention*, that is, for preventing, detecting, punishing, and eradicating corrupt acts.

Second, bearing in mind that in the States Parties to the MESICIC there are numerous oversight bodies that have been assigned the aforementioned purposes, each country will select four or five such bodies, taking into account their institutional importance and that their assigned functions encompass one or more of the purposes of preventing, detecting, punishing, and eradicating corrupt acts that trigger disciplinary; administrative; financial or civil; and criminal responsibility:

Third, bearing in mind that the Committee determined at its Eighteenth Meeting that the review of oversight bodies should be comprehensive in relation to each of the bodies selected by each country, to the extent that is possible, aspects such as the ones indicated more precisely in the questionnaire will be reviewed regarding their objectives and functions, and their autonomy in carrying them out; the scope of their functions; the way in which their decisions are adopted, reviewed, and put into effect; the way in which the positions of their top-ranking officers are filled and how they are held accountable; the way in which they are supplied with the human resources necessary for their operations, the rules governing their obligations, and their training^{7/}; existence of manuals or other documents that describe the functions of their personnel, and also indicating whether regular training is given in connection with those functions; the existence of documented procedures for carrying out their work; institutional strengthening or quality improvement measures implemented; implementation of modern technologies or systems to facilitate their work; the way in which the public is informed about their objectives and functions and are offered guidance on how to complete formalities with them; mechanisms of internal control and for presenting complaints, grievances, or charges in connection with the fulfillment of their objectives and performance by staff of their duties; the way the budgetary resources necessary for their operations are ensured; coordination mechanisms for harmonizing their functions with those of other oversight bodies or branches of government, as well as for securing assistance from other authorities and from the public for the proper performance of their functions; accountability mechanisms for the performance of their functions; the way in which the necessary information to that end is compiled and

7. In the case of information that has not been reviewed in country reports in previous review rounds.

processed; and information issued to that end,^{8/} and the way in which it is made public and how members of the public may access it.

Fourth, the review will examine the objective results of the oversight bodies selected, to which end it will take into account the purposes of prevention, detection and punishment of corrupt acts assigned to each, based on the information to which each country has access, if possible, for the last five years, and, to the extent that is possible, on the results indicators suggested in section (D) of the questionnaire in order to facilitate the presentation of that information by the countries and its comprehension and review by the Committee, as well as to move forward in the manner indicated in that regard in recommendation 21 of the Third Meeting of the Conference of States Parties to the MESICIC.

Fifth, the review will take note of difficulties in achieving the purposes of preventing, detecting and punishing corrupt acts mentioned by countries in relation to each of the selected oversight bodies, bearing in mind their functions, and also the specific technical cooperation needs of each of those bodies.

V. BEST PRACTICES

Country reports will refer to no more than one best practice for each oversight body selected for review in the Fourth Round, when the country under review has voluntarily expressed its wish to share that practice with the other MESICIC member countries and could be beneficial to other States Parties, thereby helping to strengthen cooperation and exchange of information and experience among States Parties. To that end, the States may furnish the relevant information, as they deem appropriate, in the standard form that is suggested as a guideline for presenting that information and is attached to the questionnaire as Annex II thereto.

The above will contribute to progress in the consolidation of the MESICIC as a best practices forum, as envisaged in the *Report of Buenos Aires*, which provides that one of its purposes is to facilitate the exchange of information, experience, and best practices, something that is also consistent with what recommendation 34 of the Third Meeting of the Conference of States Parties of the MESICIC indicates that regard.

8. In the event that the information in this regard is contained in a document, the country will be requested to provide a copy thereof or an electronic link by which it may be accessed. If the information is contained in several reports or if the latter are released periodically, the country will be requested to provide a copy of those issued in the last five years or an electronic link by which they may be accessed.

VI. FOLLOW-UP ON PROGRESS AND NEW AND RELEVANT INFORMATION AND DEVELOPMENTS WITH REGARD TO THE IMPLEMENTATION OF RECOMMENDATIONS SUGGESTED IN THE COUNTRY REPORT IN THE FIRST REVIEW ROUND^{9/}

In accordance with Article 29 of the *Rules of Procedure*, and taking into account what the Committee agreed to at its Eighteenth Meeting, pursuant to recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC, in the Fourth Round the review will follow up on progress, information, and new developments^{10/} made by the countries in relation to the recommendations that were formulated and the measures that were suggested by the Committee for implementation in the reports from the First Round, and with respect to which the Committee deemed that additional attention was required in the reports from the Second and Third Rounds.

In order to advise countries as to which recommendations and measures suggested by the Committee require additional attention, based on its analysis in the reports from the Second and Third Rounds, the Technical Secretariat will send each country, at least three months before the deadline for responding to the questionnaire, an individualized form clearly identifying the recommendations and measures concerned, so that States can report on progress, information, and new developments in their implementation. This individualized form will be prepared by the Technical Secretariat based on the standard form attached to the questionnaire as Annex I thereto.

The Committee will examine the progress, information, and new developments in the respective country in connection with the relevant recommendations and measures, and will proceed to take note of those that have been satisfactorily considered and those that require additional attention from the country under review. In addition, where appropriate, it will address the continued validity of those recommendations and measures and, as applicable, restate or reformulate them pursuant to the decisions adopted by the Committee at its Eighteenth Meeting, in accordance with recommendation 9(a) of the Third Meeting of the Conference of States Parties to the MESICIC.

Furthermore, in accordance with recommendation 9(c) of the Third Meeting of the Conference of States Parties to the MESICIC, the Committee will continue to review application and enforcement of the measures adopted, in addition to implementation de jure.

The Committee will also take note of any difficulties in implementing the above recommendations and measures to which the State in question may have drawn attention, as well as of its technical cooperation needs to that end.

9 Section VI of this methodology, concerning review of the recommendations offered in the First Round, does not apply to countries that were not party to the MESICIC when that Round was carried out. With respect to those countries, the Committee will analyze their implementation of the provisions that were selected for review in the First Round, using the methodology adopted by the Committee for that Round, except where their oversight bodies that are under review in the Fourth Round are concerned. Furthermore, in its review the Committee will also take into account the provisions of Section XII of the methodology for the Fourth Round contained in this document.

10. For the purposes of following-up on the recommendations formulated in the First Round provided for in section VI of the methodology, it is understood that the new information and developments refer to new provisions and/or measures adopted in relation to the subject of the recommendations and measures suggested by the Committee, or provisions and/or measures that have an impact on their validity, or which could lead to their reformulation.

Finally, pursuant to what is provided for in recommendation 11 of the Third Meeting of the Conference of States Parties to the MESICIC, for the purposes of follow-up on the implementation of the above recommendations and measures, the Committee will take into account, to the extent it deems relevant, developments in connection with national plans of action for those States that have carried out this technical cooperation initiative.

VII. SOURCES OF INFORMATION

The review shall be carried out based on the answers to the questionnaire by the respective State Party, documents presented by civil society organizations in accordance with the *Rules of Procedure*, and any other pertinent information that the Secretariat and members of the Committee may obtain.

In their responses, States Parties may refer to information they have provided to other mechanisms, forums, or organizations in connection with the topics under review.

In the event that the country under review has granted its consent for an on-site visit, the information obtained on that visit will be included in the relevant sections of the report on the country concerned, and the agenda of meetings held within the framework of the on-site visit and the names of the institutions or organizations that participated at each will be included as an annex to said report, in accordance with provision 34 of the *Methodology for Conducting On-Site Visits*.

When an on-site visit reveals the need for the country under review to submit new information, the State may present that information to the Secretariat within two weeks of the date on which the on-site visit was concluded.

Should a State adopt a law subsequent to the deadline for submitting its response to the questionnaire, it may send that law to the Secretariat up to one month before the meeting of the review subgroup, so that the Secretariat may relay it to the members of the review subgroup.

VIII. REVIEW PROCESS

The review shall follow the process outlined in the *Rules of Procedure*, in keeping with the *Report of Buenos Aires*.

IX. RESPONSES TO THE QUESTIONNAIRE

The States shall respond to the questionnaire in accordance with the provisions of Article 21 of the *Rules of Procedure* and within the deadlines set by the Committee in the timetable adopted for the Fourth Round.

For the purposes of the provisions of Article 26 of the *Rules of Procedure*, States Parties are recommended to append to their response additional documents they consider to be necessary, preferably in electronic format, which they shall submit for the attention of the members of the Committee in the original language. To that end, States Parties may also attach translations of those appendices in the other working languages of the Committee.

Once it has received the responses to the questionnaire from the States Parties, the Technical Secretariat shall publish them on the *Anti-corruption Portal of the Americas*.

X. COUNTRY REPORT

In accordance with Article 25(g) of the *Rules of Procedure*, once the country report is approved by the Committee, the Technical Secretariat shall publish it on the *Anti-corruption Portal of the Americas*. Pursuant to what is provided in recommendation 10 of the Third Meeting of the Conference of States Parties to the MESICIC, the Committee will adopt a summary thereof, covering the recommendations formulated on the *Convention* provision selected for review in the Fourth Round and progress made in the implementation of the recommendations offered in the First Round, which will also be published on the Portal.

XI. PARTICIPATION BY CIVIL SOCIETY ORGANIZATIONS AND/OR, INTER ALIA, PRIVATE SECTOR ORGANIZATIONS, PROFESSIONAL ASSOCIATIONS, ACADEMICS, OR RESEARCHERS

In accordance with Article 34(b) of the *Rules of Procedure*, civil society organizations may present, through the Technical Secretariat, documents with specific and direct information related to the questions that are referred to in the questionnaire with respect to the implementation by a State Party of the provision selected for review in the Fourth Round.^{11/} They may also present documents with information related to implementation of the recommendations formulated by the Committee to the State Party in the First Round.

In keeping with the second paragraph of Article 36 of the *Rules of Procedure*, the Committee will invite civil society organizations to give verbal presentations, in informal meetings, of the documents they presented in accordance with the provisions in the preceding paragraph and in Article 34(b) of the *Rules of Procedure*.

Documents submitted by civil society organizations in accordance with this section shall be published on the *Anti-corruption Portal of the Americas*.

For the purposes of this section, civil society organizations shall submit documents, together with their corresponding electronic copies, within the same time limit established for the respective States Parties to present their responses to the questionnaire.

In addition to the foregoing, in the event that the country under review has granted its consent for an on-site visit, the provisions contained in chapter IV of the *Methodology for Conducting On-Site Visits* will be applied, which chapter contains the provisions for holding meetings with civil society organizations and/or, inter alia, private sector organizations, professional associations, academics, or researchers.

XII. APPLICATION OF THIS METHODOLOGY TO STATES THAT WERE NOT PARTY TO THE MESICIC IN THE FIRST ROUND

States that were not party to the *Mechanism* during the First Round of Review shall be subject to the methodology adopted by the Committee for that Round, insofar as the review of the *Convention* provisions that were selected for that Round are concerned, except with regard to their oversight bodies, which will be analyzed according to the methodology adopted by the Committee for the

11. With respect to those States that were not parties to the MESICIC during the First Round, they may also present information in relation to the questions contained in the questionnaire for the First Round, which these States must submit pursuant to Article 28 of the Rules of Procedure.

Fourth Round, taking into account that the Committee agreed at its Eighteenth Meeting that those bodies would be analyzed comprehensively.

The foregoing notwithstanding, the review will take note of any difficulties in the implementation of the provisions selected for the First Round and of the technical cooperation needs of those States, in addition to no more than one best practice voluntarily identified by them in connection with each one of those provisions. To that end, the Technical Secretariat will include the questions concerning these aspects in the questionnaire for the First Review Round, which is to be answered by the States in accordance with Article 28 of the *Rules of Procedure* and which it shall send them at least three months before the deadline for responding to the questionnaire according to the timetable adopted for the Fourth Round.

In the event that the country under review has granted its consent for an on-site visit, said visit will also cover the *Convention* provisions selected for the First Round, and therefore the information obtained on that visit will be included in the sections of the report on the country concerned that pertain to those provisions. In addition, the agenda of meetings held within the framework of the on-site visit and the names of the institutions or organizations that participated at each will be included as an annex to said report, in accordance with provision 34 of the *Methodology for Conducting On-Site Visits*.

All of the foregoing will be reflected in the respective country reports, according to the format for the country reports that will be prepared in the framework of the Fourth Round for States that were not party to the *Mechanism* in the First Round, in respect of which the Committee will adopt a summary covering the recommendations formulated on the *Convention* provisions selected for review in the First Round and on the *Convention* provision selected for review in the Fourth Round, which will be published on the *Anti-corruption Portal of the Americas* together with the relevant report.

Insofar as the review of the *Convention* provision that was selected for the Fourth Round is concerned, it will be analyzed in full according to the methodology adopted by the Committee for this round through this document.

What is provided in section XI of this document will also apply with respect to the review of the implementation of the *Convention* provisions that were selected for the First Round.