

## **Key elements to be considered for the Inter-American Convention against Corruption review methodology**

8 April 2002

Transparency International and its chapters throughout the Americas are committed to follow the monitoring process of the Convention at its different stages according to Article 33 of the Rules of Procedures and Other Provisions of the Follow-up Mechanism of the Convention. The aim of our organisation is to make the best use of civil society's perspective to add value to the process, and to contribute to the design of reforms in those areas of anti-corruption measures where shortcomings have been detected through the review process.

Pursuant to Article 33 of the above mentioned document, Transparency International respectfully submits to the Committee of Experts, the following suggestions that we request be taken into account when elaborating the methodology and questionnaire for the first round of country reviews.

In the first place, Transparency International encourages the Committee of Experts to look **at the institutional framework of countries when drafting the questionnaire as the focus of the review needs to be on the institutional ability of countries to fulfil functions committed to under the Convention.** An example for this could be the "functional equivalence" approach used in the OECD Convention<sup>1</sup>. The focus should not be on a purely legalistic review of norms and procedures, but rather on clearly identifying whether the legal framework works in practice. Thus the methodology should be elaborated in a way that specific details be given by the countries under review on how the legal norms implementing the Convention are applied in practice in each national context.

In the second place, Transparency International further encourages the Committee of Experts to base the questionnaire **for each norm** under review on a **series of key elements**. Transparency International would like to suggest such key elements for the different norms included in Article III of the Convention. We believe that a successful implementation of these preventive measures, as part of a broader anti-corruption agenda at the national level, could make a meaningful contribution to the fight against corruption, maybe more so than other measures concentrating on sanctions.

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<sup>1</sup> Functional equivalence of the OECD Convention (Para. 2 in the Official commentaries [www.oecd.org](http://www.oecd.org)):  
"This Convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of the Party's legal system."

Suggestions regarding key elements for the norms under review:

**1. (Art.III, No. 1) “Standards of conduct for government officials for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest .....**”

The prevention of conflict of interest<sup>2</sup> should be understood in a broad sense in order to ensure that decisions concerning the public good and interest are made in the interest of the State, its aims and objectives.

The key elements are:

- Rules on disqualifications related to a) assuming public office (including rules on nepotism), b) exercising public office (including the obligation to excuse oneself in determined cases to participate in decision making; activities outside public office), and c) post-public service employment.
- Obligation to declare/disclose economic interests when assuming office.
- Prohibition of the acceptance of bribes and undue advantages.
- Prohibition of the use of classified and privileged information for private interest.
- Regulation of acceptance of gifts.
- Rules to prevent influence trafficking.

**“These standards shall be intended to ..... mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions.....”**

The key elements are:

- Obligation of personal indemnities for those public officials who are involved in the administration or use of public funds (like for financial directors, treasurers, procurement staff.
  
- Rules and sanctions on misuse of public funds.

**“These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions”.**

The key elements are:

- Legal and / or administrative obligation for public officials to file complaints.

**2. (Art. III, No. 2) “Mechanisms to enforce these standards of conduct.”**

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<sup>2</sup> A conflict of interest arises when a person makes a decision, or participates in the making of a decision, and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest or the private interest of an immediate member of his or her family.

#### General key elements:

- Organs that follow through with the application of the standards of conduct and that make sure that the standards of conduct are a practical tool internalised by the public officials in their behaviour (including permanent training and confidential advise on specific cases).
- Mechanisms to contest a questionable decision.
- Mechanisms to determine responsibilities and apply sanctions.
- Sanctions of different degrees, both administrative and criminal.
- Centralised data base on public officials (including information on administrative or criminal charges against them concerning corrupt practices).

#### Key elements to review mechanisms to enforce conflict of interest rules:

- Mechanisms to provide for transparency in the decision making process (including public access to information and the identity of decision-makers).
- Organs responsible to receive file and verify declarations of interests.
- Mechanisms to provide information (including statistics) on the cases detected.<sup>3</sup>

#### Key elements to review mechanisms to enforce the proper conservation and use of public funds:

- External and internal independent auditing bodies, whose tasks are different kinds of auditing: performance, financial, procedures; and random independent and external verification of the internal audits.
- Centralisation and dissemination of government procurement information.
- Data bases about public spending (including obligatory periodic reports by public officials and institutions about the use of public monies).
- Unification of norms with regard to public contracting and the use of funds in general.

#### Key elements to review mechanisms to enforce the obligation of public officials to report corrupt acts of other public officials that they know of

- Mechanisms that allow for a simple, speedy and safe filing of the report.
- Independent organs that receive and investigate the corruption reports.
- Mechanisms for incentives, including the protection of whistle blowers, witnesses and also victims.

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<sup>3</sup> The statistics should include not only cases dealt with by the tribunals but also those that led to administrative sanctions. As a major benefit for the public, these records should be divided in the following variables: (1) Agency/Unit/Process of government where the case occurred (in order to have a public administration corrupt-practices mapping), (2) Number of public servants involved in the case (in order to detect criminal networks), (3) Date when the suspected corrupt act took place (in order to determine frequency on time), (4) Oversight body that was responsible of that public servant, (5) Oversight body/citizen/agency that discovered the suspected act of corruption.

**3. (Art. III, No. 4) “Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.”**

Key elements to be considered for the review:

- Obligation of specific public officials to declare or disclose personal assets and liabilities as well as those of the spouses and/or dependants before assuming and when leaving office, also after certain periods of time (example every two years, at mid-term, etc).
- Prohibition to assume office before handing in the above-mentioned declaration.
- Organs that receive the declarations and are provided with administrative mechanisms to compare and monitor the development of assets and liabilities of public officials (including random checks and verifications).
- Establish rules and procedures for public access to the declarations of assets.

**4. (Art.III, No. 9) “Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”**

Key elements to be reviewed are:

- Functional independence (appointments without political influence from other state organs, no arbitrary removal).
- Administrative, budgetary and financial autonomy (for example a mandatory constitutionally defined budget) with a decentralised operative administrative structure.
- Competence/capacity to resolve and decide on probity.
- Impartiality in relation to decisions of those organs that are being controlled.
- Co-ordination and co-operation among the different oversight bodies.
- Ombudsman office.
- Perception/discussion/use of audit results by clients like (a) proper administration, (b) legislative, (c) attorneys.
- Consultation / co-operation with CSOs.

**5. (Art. III, No. 11) “Mechanisms to encourage participation by civil society and non-governmental organisations in efforts to prevent corruption.”**

Key elements to be reviewed are:

- Clear public access to information laws and procedures.
- Mechanisms for social control (public hearings, “veedurías”, etc.)
- Effective citizen complaint mechanisms, including monitoring the workflow of these complaints and specific sanctions for not responding under time and quality standards.
- Mechanisms for the state organs to provide adequate, timely and pertinent information to the public. There need to be administrative processes and filing techniques that allow public servants to reduce costs in making information available to the public.
- Whistle blower protection, as well as protection of witnesses and victims.
- Dissemination of the Inter-American Convention against Corruption and capacity building in its implications.