

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

FINAL REPORT

(Adopted in the plenary session held on July 29, 2004)

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

## FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF BOLIVIA OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK OF THE FIRST ROUND<sup>1</sup>

### INTRODUCTION

#### 1. Legal-institutional framework<sup>2</sup>

Bolivia is constituted as a unitary, independent, free, sovereign, multiethnic, and multicultural republic. It has adopted representative democracy as its form of government.

The Constitution of Bolivia, amended February 20, 2004, establishes that the people deliberate and govern through their representatives and through the Constitutional Assembly, the Citizen Legislative Initiative, and the Referendum, all provided for in the Constitution and regulated by law.

The key state organs are the Legislature, Executive, and the Judiciary.

The Legislative branch is embodied in the National Congress, which is made up of a Chamber of Deputies (130 members) and a Senate (27 members). Its main function is to adopt, abrogate, derogate, modify and interpret the laws. It also oversees the activities of the executive branch, the local (municipal) governments and other autonomous state organs.

Executive authority is exercised by the President of the Republic together with the Ministers of State. The President and Vice-President of the Republic are elected by popular vote for a period of five years. The President of the Republic may be re-elected only once after at least one constitutional term.

The Judiciary is exercised by the Supreme Court of Justice, the Constitutional Court, and the Superior District Courts, corresponding to each department based on the country's geographic distribution, and by the courts and judges of first instance. Establishing exceptional courts or tribunals is not allowed.

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<sup>1</sup> This was adopted by the Committee in accordance with the provisions of Articles 3 (g) and 26 of its Rules of Procedure, at the plenary session held on July 29, 2004, at its sixth meeting, held at OAS headquarters in Washington, D.C., United States, July 26 – 30, 2004.

<sup>2</sup> Updated response of the Republic of Bolivia to the questionnaire. Introduction.

At the request of the Republic of Bolivia, its response to the questionnaire, along with the respective annexes and the information that supplements it, as well as the documents sent by civil society organizations, in keeping with the *Rules of Procedure and other Provisions*, are published at the following Internet address: <<http://www.oas.org/juridico/spanish/corresp.htm#>>.

The Supreme Court is the highest court of justice for regular, contentious, and contentious-administrative matters. It is made up of 12 ministers who are elected by the National Congress for a 10-year term. Constitutional review is entrusted to the Constitutional Court, which is made up of five judges designated by the National Congress. In addition there is a Judicial Council that serves as the administrative and disciplinary organ of the Judiciary.

In the Republic of Bolivia one also finds entities endowed with constitutional autonomy known as Municipal Governments (Gobiernos Municipales, or local governments), constituted by a mayor and a municipal council, all elected by popular vote. Constitutional autonomy for local governments consists of regulatory, executive and administrative and technical power within the scope of judicial authority and territorial jurisdiction of each local government. Based on their attributes and authorities, under their constitutional and statutory mandate, local governments have a direct link with the community.

Moreover, from a territorial standpoint, Bolivia is divided into nine departments in which the Executive branch is represented by the Departmental Prefects in a regime of administrative decentralization.<sup>3</sup> The departmental prefectures are also constituted by a Departmental Council whose members are delegated by local councils for each province.

In the context of the Constitution, several public entities are established that are undertaking important and vital activities for the country's development. These include the following:

- Office of the Comptroller-General of the Republic, entrusted with fiscal control of the operations of the autonomous and autarchic entities and the mixed-economy companies. The Comptroller-General is directly under the President of the Republic and is appointed by the President from a slate submitted by the Senate, and serves for a period of 10 years.

- The National Electoral Court, which is the main organ of the electoral regime whose composition, jurisdiction and scope of authority are established by special laws.

- The Public Ministry, which is in charge of promoting the various actions to defend legality, and the interests of the State and society. Its authority is exercised through the Committees designated by the legislative chambers, by the Attorney General of the Republic who is elected by two-thirds vote of the members present at the National Congress, and by all other employees who constitute it, in keeping with the special law.

- The Office of the Human Rights Ombudsman (Defensoría del Pueblo), whose essential power is to be watchful for the rights and guarantees of persons and the defense and promotion of

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<sup>3</sup> According to Article 109 of the Constitution:

I. In each Department, the Executive Branch is responsible for and administered by a Prefect, who is appointed by the President of the Republic.

II. The Prefect exercises the function of General Commander of the Department, appoints and supervises the Subprefects in the provinces and the magistrate in the cantons, as well as the departmental administrative authorities whose appointment has not been reserved to other authorities.

III. The remaining functions are established by law.

IV. The Senators and Representatives of Congress may be appointed Departmental Prefects, with their parliamentary functions suspended during the time they hold this position.

human rights.

## **2. Ratification of the Convention and adherence to the Mechanism**

According to the official registry of the OAS General Secretariat, the Republic of Bolivia ratified the Inter-American Convention against Corruption on March 29, 1996, and deposited the respective instrument of ratification on February 4, 1997.

In addition, the Republic of Bolivia signed the Declaration on the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, during the OAS General Assembly in San José, Costa Rica.

### **I. SUMMARY OF THE INFORMATION RECEIVED**

#### **1. Response from the Republic of Bolivia**

The Committee would like to note the collaboration received from the Republic of Bolivia throughout the process of analysis, especially from the Presidential Anticorruption Delegate, evidenced, among other aspects, in her response to the questionnaire and in her constant disposition to clarify or complete its contents. The Republic of Bolivia sent the provisions and documents it considered pertinent, a list of which is attached to this report, along with its response.

For its analysis, the Committee took into account the information provided by the Republic of Bolivia up to March 8, 2004, and that which was requested by the Secretariat and the members of the subgroup for analysis, to carry out its functions in keeping with its Rules of Procedure and other Provisions.

#### **2. Documents received from Transparency International, as a civil society organization**

The Committee also received, within the time set for this purpose at the Third Regular Meeting,<sup>4</sup> two documents from Fundación Ética y Democracia, which were forwarded to it by the civil society organization Transparency International.<sup>5</sup>

### **II. REVIEW OF THE IMPLEMENTATION OF THE SELECTED PROVISIONS BY BOLIVIA**

#### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)**

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<sup>4</sup> Decision titled "Updating of Responses to the Questionnaire." This decision was adopted by the Committee of Experts in the session of February 13, 2003, in the context of its Third Regular Meeting, held February 10-13, 2003, at OAS headquarters, in Washington, D.C., United States of America.

<sup>5</sup> These documents, entitled "Respuesta Preliminar el Cuestionario de Análisis de la Primera Ronda" and "Informe Preliminar," were received by email on March 8, 2004. In addition, during an informal meeting with the members of the Committee, the "Fundación Ética y Democracia" made a presentation on said documents.

## 1.1 CONFLICTS OF INTEREST

### 1.1.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms

The Republic of Bolivia has a set of provisions related to the standards of conduct, among which special note should be made of the following:

- Constitutional provisions applicable to all public servants,<sup>6</sup> such as those contained in Articles 43 and 45, which provide, respectively, that a special law will establish the Statute on Public Officials based on the fundamental principle that public officials and employees serve exclusively the interests of society, not any partial or political party interest whatsoever; and that said Statute will establish the rights and duties of officials and employees of the public administration, and shall contain provisions that guarantee the administrative career service as well as the dignity and efficacy of the civil service.

- Constitutional provisions applicable to certain public officials, such as those that provide for limitations, disqualifications, and incompatibilities for high-level posts, such as those contained in Articles 49, 50, and 54 of the Constitution, for senators and deputies; Article 89, for President and Vice-President; and 116, for magistrates and judges.

- Statutory provisions applicable to all public employees<sup>7</sup>, such as those contained in Law No. 2027 of 1999, the Statute on Public Officials, which establishes at Articles 8, 9, 11, and 14, important duties, prohibitions, and incompatibilities for public servants; Article 12 provides for principles and ethical values that should inspire public activity; and Article 13 enshrines the duty of every public entity to promote policies and standards of conduct governed by principles and ethical values that guide the personal and professional activity of public servants and their relationship with society; as well as the obligation to adopt a Code of Ethics developed by the entity or a similar entity, in keeping with the system of administrative organization, and to implement mechanisms that ensure a practical evaluation of the provisions set forth in that Code, so that the results can contribute to its development, strengthening and effective enforcement.

- Provisions applicable to all public servants are also found in Supreme Decree No. 25,749 of 2000, which regulates the Statute on Public Officials, and which at Articles 15 and 17 defines duties and incompatibilities for public servants; in Law 2,341 of 2002, the Law on Administrative Procedure, which at its Article 10 establishes that the competent administrative authority should recuse itself from an administrative procedure in the event of a conflict of interest with the applicant, or a family relationship, or business relationship or involvement with any business that is involved in the administrative process; and in Supreme Decree No. 27,328 of

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<sup>6</sup> According to Article 28(c) of Law 1178 of 1990, regulated by Supreme Decree 23318-A of 1992, the term “public servant” (“*servidor público*”) refers to dignitaries, officials and all other persons who provide services as employees of state authorities, regardless their source of remuneration. Under Article 4 of Law 2027 of 1999 (Statute on Public Officials), a public servant is any individual who, regardless of their seniority or status, provides services as an employee of an entity that comes under the scope of application of Law 2027. For the purposes of this Law, the term public servant also refers to dignitaries, officials, civil servants and all other persons who provide services as employees of state authorities, regardless their source of remuneration.

<sup>7</sup> Its general scope of application, with certain exceptions, is provided for in Article 3 of that law.

2004, on Processes for Procurement of Goods, Works, General Services and Consulting Services, which in Article 7 indicates who is disqualified from participating in such processes and in its annex it sets forth imperatives for the ethical conduct of public servants who are to intervene in the matter.

- Provisions applicable to the public servants of the Executive branch, such as those contained in Supreme Decree 26973 of 2003, which in Article 6 notes that: “the public servants of the Executive branch may not, until two years after termination of their duties, be representatives, administrators, directors, special internal auditors (*síndicos*), contractors, advisers, or employees of persons at private law, if it implies a conflict of interest with the agency in which said individual worked. An exception is made for university-level teaching.”

- Statutory provisions applicable to certain public servants, such as those contained in Law No. 1455 of 1993, Law on Judicial Organization, which at Articles 6 through 11 and 13 establishes incompatibilities, prohibitions and disqualifications for magistrates, judges and employees of the Judiciary; in Law No. 1600 of 1994, Law on the System of Sectoral Regulation (SIRESE), which at Article 6 provides that no one may be appointed Superintendent General of the SIRESE or Sectoral Superintendent who has a conflict of interest with companies engaged in activities subject to regulation by that system; and in Law No. 2028 of 1999, Law on Municipalities, which at Articles 30 and 46 establishes specific prohibitions on involvement in matters in which there may be conflicts of interest between their private interests and the public interest for Council Members and Mayors, respectively.

- Various provisions applicable to certain public servants, such as those contained in the Ethics Rules for Senators; the Ethics Rules for Deputies; the Rules Regulating Incompatibilities and the Unlawful Use of Influences, which apply to employees of the Judiciary; the rules issued by the Office of the Comptroller-General of the Republic that regulate the ethical conduct of its employees, other public servants who perform governmental monitoring, independent professionals or professionals associated with firms that provide public-sector auditing services; and other Codes of Ethics issued by various entities pursuant to Article 13 of Law 2027 of 1999.

The Republic of Bolivia also has mechanisms for enforcing those standards of conduct, including:

- Law 2027 of 1999, the Statute on Public Officials, Article 16, which provides that every public servant subject to its application assumes responsibility for his or her acts or omissions, and Article 17 provides that in case of a violation of its provisions, the Regime of Responsibility for the Public Function regulated by Law 1178 on Government Administration and Control, and its regulatory provisions, shall apply.

- Law 1178 of 1990, on Government Administration and Control (SAFCO Law), which establishes the liability regime that applies to persons in government service, providing for sanctions in the event that public servants engage in acts giving rise to the various types of responsibility as provided therein; and its regulatory provisions (Supreme Decrees 23318A of 1992; 26237 of 2001; 26319 of 2001; 26115 of 2001; and 27328 of 2004).

- The Criminal Code, which provides at its Titles II; III; and VI, chapter 1, sanctions for those who commit the offenses it defines in relation to certain forms of conduct that constitute conflicts of interest, such as the unlawful use of influences, benefits by reason of one's post, transactions incompatible with the exercise of public functions, and its perversion.
- Law 2445 of 2003, which establishes the procedure for conducting proceedings to hold liable the President of the Republic, the Vice-President of the Republic, the Ministers of State and the Departmental Prefects for any offenses they may commit in the performance of their duties.
- Law 2175 of 2001, the Organic Law of the Public Ministry, which contains the disciplinary regime for prosecutors; Law 1455 of 1993, the Law on Judicial Organization, which provides for offenses against the judicial function and sanctions for those who commit them; Law 1817 of 1997, the Law on the Judicial Council, which creates that organ and contains provisions on disciplinary matters and control of regular members, judges, support staff and administrative employees of the Judiciary; and the complementary and regulatory provisions of that Law, such as the Rules of Procedure for Disciplinary Proceedings of the Judicial Branch, the Rules of Procedure of the Judicial Career Service System, the Rules of Procedure of the Administrative Career Service for the administrative employees of the Judicial Branch, and the Rules of Procedure for Regulating Incompatibilities and the Unlawful Use of Influences.
- Law 1779 of 1997, Law on Modifications of the Electoral Regime, which establishes the Ethics Committees of the Legislative Branch (Deputies and Senators), which have the powers to take cognizance of, investigate, issue reports and decisions on, and characterizing the accusations of gross failure to observe and breach ethic rules by the legislators in the performance of their functions.

### **1.1.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms**

The constitutional and statutory provisions in relation to standards of conduct aimed at preventing conflicts of interest and the mechanisms for enforcing those standards together constitute a harmonious body of pertinent measures for promoting the purposes of the Convention.

Those measures refer to all public servants and also contain provisions for special cases, such as high-level government officials, the President and Vice-President of the Republic, Cabinet Ministers, senators and deputies, Ministers of the Supreme Court of Justice, magistrates and judges.

Even so, the Committee considers it appropriate to make a few observations on the advisability of developing and complementing certain legal provisions that refer to those standards and mechanisms.

One of the legal regulations of greatest scope in the area of standards of conduct to prevent conflicts of interest is Law 2027 of 1999, the Statute on Public Officials, since it is directly related to the topic and its scope of application extends to public servants generally. This law and

its regulation, contained in Supreme Decree No. 25749 of 2000, clearly point to the creation, maintenance and strengthening of those laws, as provided for by Article III of the Inter-American Convention Against Corruption, thus it is relevant to attaining those aims. Nonetheless, the following observations are in order:

- Article 13 of that law does not set a time frame for the public entities to carry out the duty established therein to adopt a Code of Ethics, or to develop the obligation that this provision imposes, with respect to implementing mechanisms that ensure the practice evaluation of the provisions provided for in that Code, such that its results can contribute to its development, strengthening, and effective enforcement.

- Although Articles 9, 10, 11, and 12 of that law contain provisions on impediments, conflicts of interest, incompatibilities and principles that should inspire public activity, which can be applied generically to the whole spectrum of possible conflicts of interest that may arise, no specific provisions are set out for those cases in which the private interests of a public servant may enter into conflict with those of the entity where he or she works, which may stem from union interests or from circumstances such as belonging to a professional association or a non-governmental organization. Accordingly, it would be advisable for the country under analysis to consider the possibility of complementing the existing provisions by specifically regulating the circumstances deemed most relevant in such situations, whenever appropriate, bearing in mind that the different public entities may already have detailed regulations on the matter in their own internal regulations.

- This Law does not contain express standards to prevent conflicts of interest subsequent to the performance of public functions, such as prohibitions on those who performed them from taking initiatives in official matters a public servant had cognizance of, or vis-a-vis the entities in which he or she was recently employed, and, in general, all those situations that might entail improperly taking advantage of the status of former employee or official.

Although the Committee observes that in different provisions of Law 2027 of 1999 – the Statute on Public Officials, which the previous paragraph refers to, provides specific provisions for preventing conflicts of interest after the performance of public functions, such as that contained in Supreme Decree No. 26,973 of 2003, it would be advisable to complement it, to which end the Republic of Bolivia could consider, subject to compatibility with the constitutional right of the individual to freedom of work, analyzing the improvement and strengthening of appropriate and relevant restrictions for those who leave public sector employment and of measures to enforce them.

Accordingly, the Committee is of the view that it would be appropriate for the Republic of Bolivia to consider strengthening the implementation of laws and regulatory systems referring to those standards and mechanisms.

The Committee offers the foregoing considerations insofar as it considers it useful for strengthening the rules and mechanisms for preventing conflicts of interest, that the regulations on the topic be adequately detailed, as advisable, and broadly comprehensive in terms of addressing conflicts of interest that may arise before, during and after the performance of a



public function and vis-a-vis organized interest and pressure groups.

As regards the foregoing consideration, the Committee is of the view that one must bear in mind what was stated by Bolivia in its response,<sup>8</sup> in which it notes that “there are not yet sufficient standards on the subject,” and what was stated in the document “Preliminary Response to the Questionnaire for the First Round”<sup>9</sup> from the Fundación Ética y Democracia, indicating that “It is the opinion of the citizens that while efforts have been made in this area, there are serious failings in the implementation of the current standards, not to mention the need for specific standards that apply generally.”

Mindful of the foregoing considerations, the Committee will make recommendations in this regard.

### **1.1.3. Results of the legal framework and/or other measures and enforcement mechanisms**

The response from the Republic of Bolivia in this respect<sup>10</sup> is noted as follows:

“The results obtained by the Superintendency of Civil Service as an administrative organ entrusted with promoting the ethics codes and regulating possible conflicts of interest show that during the 2002-2003 period, a total of 20 cases of requests for authorizations to perform functions of public servants involving cases of incompatibility were handled. The results of these cases were as follows:

- Six of them concluded with an administrative resolution authorizing the performance of functions.
- Three concluded in an order denying the authorization.
- Nine were abandoned by the applicants.
- Two were not resolved, as a result of the resignations of the public servants making the requests.”

The Committee is of the view that the foregoing information provided by Bolivia could indicate compliance by the Superintendency of Civil Service with its functions of ruling on possible incompatibilities raised by public servants.

Given the important authority that Law 2027 of 1999, the Statute on Public Officials, vests in the Superintendency of Civil Service at Article 61(h), having to do with encouraging public agencies to adopt Codes of Ethics, the following information is contained in Bolivia’s response:<sup>11</sup>

“One should highlight, in addition, that in the context of the Statute on Public Officials (Article 12, “Ethical Principles,” and Article 13, “Promoting Codes of Ethics”), several agencies, including the Office of the Comptroller-General of the Republic, the National Customs, the Chamber of Deputies, the Senate, and the Supreme Court of Justice, among others, have

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<sup>8</sup> Response by the Republic of Bolivia to the questionnaire, p. 3.

<sup>9</sup> Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 3.

<sup>10</sup> Updated response from the Republic of Bolivia to the questionnaire, pp. 15 and 16.

<sup>11</sup> Updated response from the Republic of Bolivia to the questionnaire, p. 6.

prepared Codes of Ethics, Ethics Rules or Principles of Conduct that contain several provisions that promote ethical values and principles, regulating the performance and conduct of their employees in carrying out their official and administrative tasks.”

In addition, the document “Preliminary Response to the Questionnaire for the First Round,” from the Fundación Ética y Democracia, notes as follows:

“In the area of ethics, the provisions of the Statute on Public Officials, as well as the development of a series of promotion activities, some at the initiative of civil society, have led to the adoption of Codes of Ethics by 35 institutions. They were drawn up using different mechanisms, and with greater or lesser effort in implementation. Many of these are relevant and determinant for these institutions’ national mission, for example the Office of the Comptroller-General of the Republic or the Superintendencies of the Sectoral Regulation System.”<sup>12</sup>

“While there are significant achievements, one must consider that Bolivia has more than 600 public entities of different levels and sizes, and that even though there is a law that clearly establishes obligations in relation to the scope of the promotion of ethics, the vast majority have yet to comply with it. It is expected that the responsible entities will take actions, in the short term, aimed at replicating the positive experiences and implementing the policies they have in their portfolios.”<sup>13</sup>

It should be noted that communication COM.ET.020/03-04 of 2004<sup>14</sup>, by which the National Senate forwarded a copy of the Ethics Regulation of the Senate to the Presidential Anticorruption Delegate, states that the Committee on Ethics “has decided to draft a new Ethics Regulation that incorporates and corrects all the insufficiencies detected in the application of the current regulation, having to do with its summary processing, adequate terminology, due process, definitions of ethical conduct, sanctions, right to defense, probity, efficiency and compliance with the regulated ethical purposes; this effort is under way and should culminate during the present legislature.”

Mindful that, as indicated in section 1.1.2 of this Report, there is no deadline for public entities to comply with the obligations imposed in Article 13 of Law 2027 of 1999, the Statute on Public Officials, which may cause delay in adherence to such obligations, the Committee deems it advisable for the Republic of Bolivia to consider seeing to it that the competent authority set a deadline for public entities to adopt their Codes of Ethics and implement mechanisms that ensure a practical evaluation of the provisions set forth in those Codes, including those related to preventing conflicts of interest, so that their results can contribute to their development, strengthening and effective application.

The Committee recognizes the efforts that the country analyzed has made in this respect, which it has highlighted by stating that “there are 40 institutions in the Bolivian State that have drawn up their Codes of Ethics and six institutions that have an institutional structure, with an Ethics

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<sup>12</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 1.

<sup>13</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 2.

<sup>14</sup>Communication COM.ET.020/03-04 of 2004, from the National Senate, received with the updating of the response from the Republic of Bolivia.

Office.”<sup>15</sup>

In addition, considering that a review of the various Codes of Ethics or Ethics Regulations referred to in section 1.1.1 of this report indicates that there are differences in terms of the subject matter regulated, and their level of development; and mindful of what the Senate stated in its communication mentioned above with respect to insufficiencies detected in the Ethics Regulation of the Senate, the Committee considers it useful for the Republic of Bolivia to consider adopting, through the appropriate statutory or administrative act, minimum content standards or requirements for the ethics codes so as to ensure adequate development of the essential aspects to ensure it can attain its objectives, including those related to preventing conflicts of interest.

In keeping with the foregoing, the Committee also considers it advisable for the Republic of Bolivia to consider adopting, by the appropriate statutory or administrative act, guidelines to give direction to the public entities for complying with the obligation to establish mechanisms that ensure the practical evaluation of the provisions of the Code of Ethics, including those related to preventing conflicts of interest, so that their results can contribute to their development, strengthening and effective application.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

In addition, considering that the Committee does not have additional information that might enable it to make a comprehensive evaluation of the results of the standards and mechanisms in this area, it will make a recommendation in this respect.

## **1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PROPER CONSERVATION AND USE OF RESOURCES ENTRUSTED TO GOVERNMENT OFFICIALS**

### **1.2.1 Existence and provisions in the legal framework and/or other measures and enforcement mechanisms**

The Republic of Bolivia has a set of provisions regarding the standards of conduct referred to, including the following:

- Constitutional provisions, such as those contained in Article 8(h) of the Constitution, which enshrines the duty of every person to safeguard and protect the property and interests of the society; Article 96(6) and (7); Articles 146 and 147, which vests authority in the President of the Republic relating to the administration of national revenues, the determination of rules for preparing and submitting the proposed budget for the entire public sector, and of submitting to the legislature the proposed budgets for the federal government and the departmental governments; and Article 59(3), which gives the Legislative branch the power to set the

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<sup>15</sup> Response by the Republic of Bolivia to the Project and Comments on the Preliminary Report on Implementation of the Convention’s provisions to be analyzed in the First Round, page 5.

expenditures of the Public Administration for each fiscal year, following the submission of the draft budget by the Executive branch.

- The Law on the General Budget of the Nation, which for the fiscal year 2004 is Law 2627 of 2003, which approves the institutional budgets of the public sector for the respective fiscal year, and establishes the principles and policies for the use and management of public resources.

- Law 2027 of 1999, the Statute on Public Officials, which in Article 8(g) provides among the duties of public servants the duty to ensure the economic and efficient use of goods and materials for administrative activity, Article 9 of this Law prohibits them from making use of real property, movables or public resources for political, private or any other purpose not compatible with the specific activity of the public servant (section c), as well as engaging in or inciting actions that have a detrimental impact, harm or cause to deteriorate real property, movables or materials of the Administration (section d).

- Law 1178 of 1990, on Government Administration and Control (SAFCO Law), which provides for the creation of systems for administration and control of state resources under a regime of liability for the conduct of public affairs, for the purpose of ensuring the efficient programming, execution, control and use of those resources.

- Supreme Decree No. 27328 of 2004, on Procedures for Procuring Goods, Works, General Services or Consulting Services, which in its annex enshrines imperatives for the ethical conduct of public servants who are involved in this area, directed towards protecting public resources in good measure.

- Resolution CGR-1/173/2002 of 2002, by which the Office of the Comptroller-General of the Republic approves the "Guide for the Application of Principles, General and Basic Standards for Internal Governmental Control," which governs all public-sector entities and contains provisions on internal control that are useful for the preservation of public resources.

- There are also provisions targeted to safeguarding public resources in Law 1455 of 1993, the Law on Judicial Organization; Law 1817 of 1997, the Law on the Judicial Council; and in several regulations related to the various public entities, such as the General Rules of Procedure of the Chamber of Deputies and Senate in the Legislative branch.

The Republic of Bolivia also has mechanisms to enforce the standards of conduct referred to, which include:

- The Constitution, at Article 42(2), provides as grounds for suspension of citizen rights the defrauding of revenues collected from the public. Article 67(4), on the Legislative branch, provides that the chambers may remove, temporarily or permanently, any of their members for grave breaches committed in the performance of their functions.

- Law 2027 of 1999, the Statute on Public Officials, which at Article 16 provides that every public servant subject to it assumes responsibility for his or her acts or omissions, and at Article 17 that in the event of a violation of its provisions, the Regime of Liability for the Conduct of

Public Affairs shall apply, which is regulated by Law 1178 on Government Administration and Control and its regulations.

- Law 1178 of 1990, on Government Administration and Control (SAFCO Law), which establishes the Regime of Liability for the Conduct of Public Affairs, defining sanctions for those cases in which public servants trigger the various types of liability indicated; and its regulations (Supreme Decrees Nos. 23318A of 1992; 26237 of 2001; 26319 of 2001; 26115 of 2001; and 27328 of 2004).

- The Criminal Code, which at Titles II and VI (chapter 1) imposes criminal sanctions on those who commit offenses that it defines in relation to certain conduct that constitutes an attack on public property, such as peculation, (*peculado*) embezzlement, (*malversación*) and anti-economical conduct.

### **1.2.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms**

The standards and mechanisms on preserving and ensuring the adequate use of public resources that the Committee has examined, based on the information it has had available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it appropriate to make some observations on the advisability of the Republic of Bolivia to considering strengthening the implementation of laws and regulatory systems regarding those standards and mechanisms. Those observations, which refer to standards and mechanisms common to preventing conflicts of interest and to ensuring the preservation and adequate use of the resources allocated to public officials, were already made in sections 1.1.2. and 1.1.3. of this Report and so the Committee will now refer to them, indicating their relevance to this area.

The first observation, regarding the advisability of the Republic of Bolivia in considering setting a deadline for the public entities to comply with the obligations established in Article 13 of Law 2027 of 1999, the Statute on Public Officials, should be taken into account in this section of the Report, insofar as the preservation and adequate use of public resources is also regulated by the Codes of Ethics that public entities must adopt and the mechanisms they must implement to ensure the practical evaluation of the provisions set forth in those Codes.

Similarly, the observation on the advisability of the Republic of Bolivia in considering adopting, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics, that make it possible to develop adequately the aspects that are essential for the attainment of their objectives, should be included in this section as well, as these are related to preserving and making adequate use of public resources.

Bearing in mind the reasons provided above, it is also reasonable to understand as incorporated in this section of the Report, the observation regarding the advisability of the Republic of Bolivia in considering adopting, by the appropriate statutory or administrative act, guidelines that give direction to the public entities in complying with the obligation to implement mechanisms that

ensure the practical evaluation of the provisions of the Code of Ethics, including those related to preserving the public resources, so that the results contribute to their development, strengthening and effective application.

Mindful of the foregoing considerations, the Committee will make recommendations in this area.

### **1.2.3. Results of the legal framework and/or other measures and enforcement mechanisms**

The response of the Republic of Bolivia on this point<sup>16</sup> refers to statistical information from the Office of the Comptroller-General of the Republic on the number of reports prepared and charges (presumption of responsibility) filed by this Office in relation to administrative, civil and criminal liability during the 2002 and 2003 fiscal years. This information is summarized as follows:

	Number of reports	Number of charges
Administrative Liability	185	1,380
Civil Liability	897	12,630
Criminal Liability	94	252

The Committee considers that such information would be useful for indicating that the Office of the Comptroller-General has actively developed its authority in relation to the matters to which it refers and that it merits recognition in this regard.

Furthermore, the document “Preliminary Response to the Questionnaire for the First Round,” from the Fundación Ética y Democracia, among other observations related to this subject matter, notes as follows:<sup>17</sup>

“In general, it is the opinion of citizens that in this particular area there are abundant provisions, although in many cases it does not respond effectively to the reality of the local conditions faced by the wide array of public-sector entities, which limits their application and effectiveness.

The Committee considers that as it does not have additional information, as initially alluded to in this section, that would make it possible to undertake a comprehensive evaluation of the results of the standards and mechanisms in this area, and bearing in mind what is stated in the document “Preliminary Response to the Questionnaire for the First Round,” from the Fundación Ética y Democracia, referred to above, it would be useful for the Republic of Bolivia to consider undertaking an evaluation of the use and effectiveness of the standards of conduct to ensure the preservation and adequate use of public resources and the mechanisms to enforce them in Bolivia, so as to consider adopting measures aimed at attaining their effectiveness. The Committee will make a recommendation in this regard.

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<sup>16</sup>Updated response of the Republic of Bolivia to the questionnaire, pp. 13, 19, and 20.

<sup>17</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 3.

### **1.3 MEASURES AND SYSTEMS REQUIRING PUBLIC OFFICIALS TO REPORT TO APPROPRIATE AUTHORITIES ACTS OF CORRUPTION IN THE PERFORMANCE OF PUBLIC FUNCTIONS OF WHICH THEY ARE AWARE**

#### **1.3.1. Existence of provisions in the legal framework and/or other measures and enforcement mechanisms**

The Republic of Bolivia has a set of provisions relating to the standards of conduct and the mechanisms referred to, of which special mention should be made of the following:

- Law 1178 of 1990, on Government Administration and Control (SAFCO Law), which Article 35 provides that when the acts or facts examined show indicia of civil or criminal liability, the public servant or auditor shall so inform the pertinent legal unit, and it, through the competent legal authority, shall go before the relevant judge to seek adoption of the appropriate precautionary measures and make preparations for filing a suit. or will report the facts to the Public Ministry. Article 31 of this Law provides that the civil liability arises when the act or omission of the public servant or of private natural or legal persons causes harm to the State that can be valued in monetary terms; and Article 34 determines that criminal liability arises when the act or omission of the public servant and of private persons is defined in the Criminal Code.

- Supreme Decree 23318-A of 1992, which at Article 61 establishes that the public servants or other hired professionals that have found circumstantial evidence that an offense was committed, will prepare, with due diligence and confidentiality, a report of these findings, informing the relevant legal unit<sup>18</sup>. That report should contain an account of the acts or omissions, attaching the evidence or indicating where it can be found.

- The Criminal Code, which at Article 178 notes that a judge or public official who by reason of his or her position is required to move forward the accusation or prosecution of criminal offenses and criminals, and fails to do so, will be punished by imprisonment of three months to one year or a fine of 60 to 240 days, unless he or she shows that his or her omission resulted from an insurmountable cause.

- The Code of Criminal Procedure, which at Article 286 includes among the persons under an obligation to report offenses against public administration (including crimes of public corruption), those public officials and employees who come to learn of the fact in the performance of their functions.

- Law 1817 of 1997, the Law on the Judicial Council, which at Article 42(2) defines as a serious breach, the failure to initiate a disciplinary action against the dependent assistant personnel when

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<sup>18</sup> According to Article 12 of Supreme Decree 23318-A of 1992, pertinent legal unit is: (a) the legal unit of the respective entity in the case of an audit by it or carried out by its internal audit unit, so long as its authorities or the members of those units are not involved in the results; (b) the legal unit of the entity that exercises oversight when the respective entity lacks a legal unit or when it is an audit directly by the oversight organ or contracted by it; (c) the legal service of the Office of the Comptroller-General of the Republic in the case of an audit of its own or contracted by it, or when the results of the internal audit or audit contracted by a unit involved authorities or members of its legal or audit unit.

it is learned that they have committed a serious breach; and Law 2175 of 2001, the Organic Law of the Public Ministry, which at Article 107(3) defines as a very serious breach the failure to report crimes committed by officials in charge of the criminal prosecution.

### **1.3.2. Adequacy of the legal framework and/or other measures and enforcement mechanisms**

The standards and mechanisms in relation to the measures and systems for demanding public officials to inform the competent authorities of acts of corruption in government services that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it useful for the Republic of Bolivia to consider strengthening its mechanisms in this area.

The Committee considers that to achieve this, it would be advisable for the Republic of Bolivia to consider, first, including among the duties established in Law 2027 of 1999, the Statute on Public Officials, or in the Codes of Conduct adopted by the public entities pursuant to Article 13 of that Law, the obligation to report any violation of the provisions provided for therein, and in those Codes, insofar as those provisions, in addition to being targeted to preventing acts of corruption, prohibit conduct that may itself constitute an act of corruption.

The Committee considers that the measure proposed would contribute to strengthening the mechanisms to enforce the obligation to report, as its breach would give rise to the application of the disciplinary regime referred to by Article 17 of Law 2027 of 1999, the Statute on Public Officials, which so provides for in situations that violate that Statute, the administrative legal order and the norms that regulate the functional conduct of each entity.

The Committee considers that as the obligation to report is among the duties whose infraction is governed by the above-referenced disciplinary regime, it should be clearly established that the procedure to be applied is that provided for in the Regime of Liability for Public Function regulated by Law 1178 of 1990, on Government Administration and Control (SAFCO Law) and in its regulations, as that is expressly provided for by Article 17 of Law 2027 of 1999 - the Statute on the Public Official. This ensures that a violation of the duty to report would not go without sanction, since there would be a general disciplinary regime that provides for sanctions and a procedure for imposing them, without prejudice to the availability of special provisions whose application calls for the competent authority of the country analyzed to effectuate the respective analyses, following the criteria of legal hermeneutics in terms of hierarchy and preferences of legal provisions.

The measure proposed would also complement, within the administrative disciplinary realm, Bolivia's criminal law measures in this area.

The Committee is of the view that as regards the foregoing consideration, one should bear in mind what Bolivia has said in its response,<sup>19</sup> to the effect that "There are no mechanisms for

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<sup>19</sup>Response by the Republic of Bolivia to the questionnaire, p. 5.



verifying compliance with the obligation of public servants to report, except in those cases in which, as a result of a criminal investigation, it were established that there had been a failure to do so, which would give rise to the processing of a criminal case.”

Second, the Committee considers that in order to encourage compliance with the duty to report infractions of the Code of Ethics as well as criminal offenses, it would be useful to take such steps as it deems appropriate to facilitate that compliance; and to adopt and implement measures of protection for those who report acts of corruption, so that they receive guarantees vis-a-vis threats or retaliation to which they may be subjected as a result of compliance with this obligation.

The Committee is of the view that as regards the foregoing consideration, one should bear in mind what Bolivia said in this respect:<sup>20</sup>

“While there is a provision that makes it possible to demand of public officials that they inform the competent authorities of acts of corruption in public service that come to their attention, and mechanisms to enforce it, some bills have already been forwarded to the national Congress for its consideration regarding this matter. These include the Bill for the Protection of Persons who Report Corruption by Public Officials.

“This Bill establishes the power of citizens, public officials and organizations to report acts of corruption in government and regulates a regime to protect those persons who in good faith report acts of corruption.”

It should be noted that the part corresponding to “Background and Justification” of that bill indicates, among other things, that “The struggle against corruption in Bolivia should include the institutionalization of a legal mechanism that provides protection to all citizens who report acts of corruption in government.”<sup>21</sup>

The Committee wishes to reiterate the importance that the country analyzed consider the possibility that, after the respective procedures, the draft referred to above be passed into law by the competent authority, including protecting the identity of whistleblowers, as well as putting in place adequate procedures for lodging reports of acts of corruption.

In addition, the document “Preliminary Response to the Questionnaire for the First Round” from the Fundación Ética y Democracia, among other observations related to this matter, notes as follows:<sup>22</sup>

“After the evaluation rendered, it is clear that there are no adequate mechanisms for promoting compliance with the existing standards, nor are there standards preventing reprisals, which is a disincentive to parties agreeing to comply with the rule on their own initiative.”

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<sup>20</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 23.

<sup>21</sup>“Proyecto de Ley de Protección a Personas que Denuncian Corrupción en el Ejercicio de la Función Pública,” p. 2.

<sup>22</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 5.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

### **1.3.3. Results of the legal framework and/or other measures and enforcement mechanisms**

In the response by the Republic of Bolivia in this regard,<sup>23</sup> it is noted that “To date no statistics are available on the total number of cases processed by the Office of the Attorney General of the Republic, in terms of the total number of reports received and processed.”

It should be added that the document from Fundación Ética y Democracia refers to an evaluation workshop held with citizens in attendance and it notes that “several of the citizens who attended the workshop to evaluate this topic were surprised on learning that there are standards in this area...”<sup>24</sup>

The Committee considers that although it does not have information that makes it possible to make a comprehensive assessment of the results of the standards and mechanisms in question, the document from Fundación Ética y Democracia, to which we have referred to above, should be taken into account to suggest the advisability of the Republic of Bolivia in considering training and raising the awareness of public officials in relation to the purposes of the duty to report any acts of corruption in government service that come to their attention to the competent authorities.

The Committee is also of the view that it is to be hoped that once the Law to Protect Persons who Report Corruption in the Performance of Public Duties is adopted, it being referred in the law referenced in section 1.3.2. of Chapter II of this Report, there will be a notable increase in the number of reports of infringement of the Code of Ethics and of criminal offenses.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

## **2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)**

### **2.1 Existence of provisions in the legal framework and/or other measures**

The Republic of Bolivia has a set of provisions relating to systems for declaring income, assets and liabilities, including the following:

- Article 45 of the Constitution, which establishes that every public official, whether civilian, military, or ecclesiastic, is under an obligation, before taking possession of a public office, to declare expressly and specifically his or her property or income, which are to be verified in the manner prescribed by law.

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<sup>23</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 23.

<sup>24</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 5.

- Law 2027 of 1999, the Statute on Public Officials: Article 53 provides for verifying the Statement of Property and Income, and its periodic updating; Article 54 enshrines the principles that should be observed in this area, including that the declarations submitted by elected officials, designated officials, freely-appointed officials and specially-determined career officers should be public; and Article 55 determines that the Office of the Comptroller-General of the Republic shall exercise the power to direct and control the System for the Declaration of Property and Income and to propose the respective regulation.

- Supreme Decree 26257 of 2001, modified by Supreme Decree 27349 of 2004, which regulates the System for the Declaration of Property and Income, provides the categories of the posts of all public officials, who must present that Declaration, the time period it is to be presented and updated yearly, its content or form of presentation, its publicity, mindful of the category of the official, the rules for its verification by the Office of the Comptroller-General of the Republic and the sanctions for failing to present it or to update it within the established time periods, such as being unable to assume the post, without prejudice to any administrative or criminal actions that may lie, in keeping with Articles 8 (duties of public servants) and 17 (disciplinary regime) of Law 2027 of 1999 - Statute on Public Officials.

- The Rule on External Control of the Office of the Comptroller-General of the Republic CE/17 of 2003, which contains the procedure for “Notification of Incorporations and Resignations of Public Servants for the Control of Declarations of Assets and Income,” establishing a mechanism that enables said oversight office to determine, based on the information that should be provided periodically by the public entities, the incorporations and resignations in them, so as to be able to verify compliance with the obligation to submit a Declaration of Assets and Income and to adopt the corresponding measures in the event of non-compliance.

## **2.2 Adequacy of the legal framework and/or other measures**

The standards in relation to the systems for the declaration of income, assets, and liabilities that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

Nonetheless, the Committee is of the view that it would be useful for the Republic of Bolivia to consider strengthening the provisions regarding verification of the content of the Declarations of Assets and Income by the Office of the Comptroller-General of the Republic, established in Supreme Decree 27349 of 2004, so as to be able to have systems that make it possible to give impetus to and carry out timely verification, using methods such as sampling, or determining circumstances in which that entity should proceed to perform the verification, or empowering the authorities it deems appropriate, such as the aforementioned agency and the Presidential Anticorruption Delegation, with the support of the entities it considers necessary, to request the verification, goal setting and deadlines for those purposes.

The foregoing, pursuant to Article V of the above-noted Supreme Decree, is due to the fact that only the Office of the Comptroller-General of the Republic has the authority to verify the content of the Declarations of Assets and Income, and only the Financial Investigation Unit and the judicial organs and organs of the Public Ministry are authorized to request verification, so long

as its made within a formal proceeding, which could mean that full use is not made of the system for submitting sworn statements as a useful instrument for preventing corruption.

The Committee also deems it advisable to note that the Republic of Bolivia could consider increasing the number of officials whose Declaration must be made public, bearing in mind the category and/or the nature of their functions, so as to be able to learn of and sanction false statements, in addition to including not only the respective public official, but also his or her spouse and third persons related to him.

Moreover, in the document “Preliminary Response to the Questionnaire for the First Round” from the Fundación Ética y Democracia, the following is noted among other observations related to this matter:<sup>25</sup>

“While the standards are in force, including with sanctions for non-compliance, the mechanisms for verification of the information provided are not clearly defined, thus the effectiveness of the information is subject to the good or bad will of a whistleblower.”

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

### **2.3 Results of the legal framework and/or other measures**

On this matter, the response from the Republic of Bolivia<sup>26</sup> notes that “the most objective, relevant results to date have been the successful implementation of the SDJBR at the national level, with more than 250,000 declarations certified by the system.”

Right after that text, referring to the System of Sworn Declarations of Assets and Income, figures corresponding to the number of declarations submitted in the various cities of the country are set forth, for a total of 252,204 declarations.

The following is also stated in that response:<sup>27</sup>

“Furthermore, the Rule on External Control entitled ‘Procedure for Notification of Incorporations and Resignations of Public Servants for Control of the DJBRs’ (CE/17) establishes a mechanism for the person in charge of human resources designated by the highest-level executive authority to report the incorporations and resignations of public servants, in established time frames, for the purpose of keeping the information on this obligation up-to-date, making it possible to enforce criminal and administrative liabilities arising from omission. At present, 42% of public servants at the national level have been registered using this mechanism, and it is anticipated that 100% will be by the end of June of this year.”

The Committee recognizes as positive the implementation to date of the System of Sworn

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<sup>25</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 6.

<sup>26</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 26.

<sup>27</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 26.

Declarations of Assets and Income nationwide, as expressed by Bolivia in its response, but in relation to the mechanism provided for in the Law on External Control called “Procedure for Notification of Incorporations and Resignations of Public Servants for the Control of the DJBRs” (CE/17), it observes that although there is a will to complete its implementation in a short time, it would be advisable for the Republic of Bolivia to consider adopting the pertinent measures to ensure that those public servants who, as per the Law on External Control, are under an obligation to provide the information required by that mechanism, do so within the time periods provided for in it, so that the competent organ can adopt the measures to enforce the criminal and administrative liabilities emerging from the failure to present the declaration.

In the same section of the response, on the results obtained in this area, the following is stated:<sup>28</sup>

“In terms of the use presently made of it, it has been used for information in criminal proceedings instituted against public servants who committed a crime in the performance of their functions. As of January 1, 2002, and to date, no more than 20 requests from the Judicial branch have been handled, since the previous law did not promote the use of the information from the SDJBR.

To date, the law recently promulgated provides for the use of this means, making it possible to deliver this information at the express request of the Financial Investigations Unit and at the request of the competent judicial organs and the Public Ministry, so long as it is made in the context of a formal proceeding.”

In the communication from the Office of the Comptroller-General of the Republic provided by Bolivia when it updated its response, the following is stated regarding the results obtained:<sup>29</sup>

“The most relevant result to date has been the successful implementation of the SDJBR at the national level, where more than 250,000 declarations have been certified by the system. Nonetheless, there is a need to adopt laws that make it possible to use the declarations in investigations to make determinations where there are indicia of corruption.

“While there are norms regulating the compulsory nature of the DJBR, statutory rules are needed to make better use of these declarations. To this end, the proposal by the CGR includes promoting the adoption of such laws, which should define the crime of illicit enrichment and the investigation of fortunes.”

The Committee is of the view that the foregoing should be taken into account for proposing that the Republic of Bolivia consider optimizing the systems for analyzing the content of the Sworn Declarations on Assets and Income, and adopt the appropriate measures, such that those declarations can serve as a useful tool for detecting and preventing conflicts of interest, and to detect possible cases of illicit enrichment (once it has been classified as a crime), as well as any other acts of corruption.

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<sup>28</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 27.

<sup>29</sup>Communication from the Office of the Comptroller-General of the Republic sent with Bolivia’s updated response, p. 4.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

### **3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4, AND 11 OF THE CONVENTION)**

#### **3.1 Existence of provisions in the legal framework and/or other measures**

The Republic of Bolivia has a set of standards with respect to the high-level oversight organs that are in charge of performing functions having to do with carrying out the measures provided for in sections 1, 2, 4, and 11 of Article III of the Convention, among which special mention should be made of the following:

- The Constitution, which contains provisions on said organs, such as those provided for at Articles 67 (National Congress), 119 to 121 (Constitutional Court); 122 and 123 (Judicial Council); 124 to 126 (Public Ministry); 127 to 131 (Human Rights Ombudsman); 154 and 155 (Office of the Comptroller-General of the Republic).

- Law 1178 of 1990, on Government Administration and Control (SAFCO Law), which at Article 23 provides that the Office of the Comptroller-General of the Republic is the lead agency of the Governmental Control System, which has jurisdiction over all public sector entities. Article 15 of this Law defines the Internal Audit Units of those entities as important instruments for internal control that should be exercised in each of them.

- Law 2027 of 1999, the Statute on Public Officials, which at Articles 58 to 64 creates the Superintendency of Civil Service and grants it important functions with respect to the enforcement of that law, such as promoting the adoption of the Codes of Ethics in the entities subject to its jurisdiction; granting technical assistance to them for the proper interpretation and enforcement of their rules; and promoting and supervising the implementation of training programs.

- Law 1779 of 1997, the Law Modifying the Electoral Regime, which at its Article 225 provides, in relation to the Legislative branch, the establishment in each chamber of a Permanent Committee on Parliamentary Ethics, whose function will be to take stock of and characterize the reports on grave breaches committed by legislators in the performance of their functions.

- Law 1817 of 1997, the Law on the Judicial Council, which at Article 1 indicates that said Council is the administrative and disciplinary organ of the Judiciary; and in its following articles it establishes its structure, organization, and operation and the administrative, disciplinary and human resources systems, and the economic-financial regime.

- Law 2235 of 2001, the Law on National Dialogue 2000, which sets out Social Oversight Mechanisms at the national, departmental and municipal levels for the purposes provided for in that Law, including the Oversight Committees.

- Presidential Decree No. 27214 of 2003, which attributes to the Ministry without Portfolio

Responsible for Popular Participation the functions of formulating policies to strengthen popular participation and municipal development, foster municipal partnerships and formulate and oversee the execution of public policies to improve administrative decentralization.

- There are also provisions on this matter in Law 2175 of 2001 - the Organic Law of the Public Ministry; Law 1551 of 1994, the Law on Popular Participation and its Amending Law 1701 of 1996; Law 2028 of 1999, the Law on Municipalities; Supreme Decree 26564 of 2002, which regulates the Law on National Dialogue; and Supreme Decree 23215 of 1992, which contains the Regulation on the Exercise of the Attributes of the Office of the Comptroller-General of the Republic.

### **3.2 Adequacy of the legal framework and/or other measures**

The set of standards that the Republic of Bolivia has in the area of high-level oversight organs entrusted with performing functions related to compliance with the provisions in sections 1, 2, 4, and 11 of Article III of the Convention covers those provisions, if one bears in mind that there are such organs with general or specific jurisdiction to oversee such compliance, which constitutes progress in its implementation.

Based on the information available to it, the Committee observes that the Republic of Bolivia has provisions in this area that are relevant to promoting the purposes of the Convention.

Nonetheless, the Committee considers it important to highlight the need for stronger coordination and articulation among upper-level oversight organs in performing their particular functions, with a view to designing unitary public policies to fight corruption. Mindful of this consideration, the Committee will make a recommendation.

### **3.3 Results of the legal framework and/or other measures**

In the response of the Republic of Bolivia in this respect,<sup>30</sup> the following is noted:

“The statistical data expressed in Chapters I, II, and IV of this document are applicable to the purposes required in this chapter (though that information is not broken down by entities), as they emerge precisely from the authorities of control and supervision exercised by the entities indicated above in coordination with other entities with similar powers and capacities.”

The Committee is of the view that the information referred to in Bolivia’s response does not make it possible to evaluate comprehensively the results obtained by each of the high-level oversight organs in particular vis-a-vis each of the provisions set forth in sections 1, 2, 4, and 11 of Article III of the Convention, considered individually, as it is not sufficiently broken down. A recommendation will be made in this regard.

Nonetheless, the Committee considers, based on the analyses in this Report in relation to the above-cited provisions of the Convention, that it would be advisable for the Republic of Bolivia to consider strengthening said high-level organs of control and their institutional coordination

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<sup>30</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 30.

mechanisms.

Based on the foregoing, strengthening the Superintendency of Civil Service would foster effective compliance with the measures provided for in sections 1 and 2 of the Convention, since, as noted above, that organ has important attributes for enforcing Law 2027 of 1999, the Statute on Public Officials, such as promoting, in the entities subject to its jurisdiction, the adoption of Codes of Ethics, which would require greater coordination and additional technical assistance for them, bearing in mind that most of those entities have yet to issue such Codes.

Similarly, the strengthening of the provisions regarding verification of the contents of and the timely submission of the Sworn Declarations on Assets and Income, whose usefulness was already noted by the Committee in Chapter II, section 2.2 of this Report, would make it advisable to strengthen the Office of the Comptroller-General of the Republic, which is the competent organ for doing so, and which would foster compliance with the measure contemplated at section 4 of the Convention.

The Committee wishes to recognize Bolivia's will to move forward in strengthening the oversight organs, which has been made clear in its response, which notes:<sup>31</sup>

“At present the office of the ‘Presidential Anticorruption Delegate’ is analyzing the mechanisms to be established for the anticorruption struggle and/or the tasks for strengthening specialized institutions with legal authority to prevent, investigate, indict and judge the unlawful acts of public officials.”

The Committee also considers it appropriate to acknowledge the gains made by the Ministry without Portfolio for Popular Participation, which are summarized in a document attached to the response of the country analyzed, called "Mecanismo de Participación de la Sociedad Civil<sup>32</sup>," and mentioned in the text of that response, which is transcribed in section 4.1.3 of the present Report, on the results of participation mechanisms generally.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

#### **4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)**

##### **4.1 GENERAL PARTICIPATION MECHANISMS**

###### **4.1.1 Existence of provisions in the legal framework and/or other measures**

The Republic of Bolivia has set of provisions with regard to the mechanisms referred to,

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<sup>31</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 30.

<sup>32</sup> Document “Mecanismo de Participación de la Sociedad Civil,” February 26, 2004, of the Ministry without Portfolio Responsible for Popular Participation, pages 3 and 4.



including:

- The Constitution, which under Article 4 provides that the people deliberate and govern through its representatives and through the Constitutional Assembly, the Citizen Legislative Initiative, and the Referendum, established by the Constitution and regulated by law (constitutional reform of February 20, 2004).
- Law 1551 of 1994, the Law on Popular Participation, whose objectives include recognizing, promoting, and consolidating the process of popular participation, integrating indigenous, farming and urban communities in the country's legal, political and economic life.
- Law 1654 of 1995, the Law on Administrative Decentralization, which establishes the Departmental Councils, with citizen representation and functions of consultation, control and oversight.
- Law 2235 of 2001, the Law on National Dialogue 2000, which provides for Social Oversight Mechanisms at the national, departmental and municipal levels, for the purposes provided for in that law, including the Surveillance Committees (Comités de Vigilancia).
- Supreme Decree 26564 of 2002, Regulation of Social Oversight Mechanisms, which regulates the procedures, mechanisms and instances for the National Social Oversight Mechanism, the Departmental Social Oversight Mechanisms, their representatives, examiners, and Surveillance Committees, in representation of the civil society organizations and institutions, exercise the right to take stock of, supervise and evaluate the results and impact of the policies regarding the conduct of public affairs, the experiences involving participatory decision-making and the right to access to information at the municipal, departmental and national levels.
- Supreme Resolution 222070, on the basis of which the Presidential Anticorruption Delegate is furthering the process of organizing and implementing the Citizen Anticorruption Networks, which, as noted in the answer<sup>33</sup>, are charged with incorporating and strengthening civil society in preventing and fighting corruption, in the context of their functions and rights; to contribute to regaining the population's trust in its institutions through actions aimed at preventing acts of corruption, improving the conduct of public affairs and demand transparent management of resources in the public administration, strengthening actions and initiatives of the social oversight mechanisms; jointly giving impetus to processes by which the attributes, campaign, and mechanisms for preventing, controlling, and sanctioning ethics breaches, acts of corruption, and impunity; to develop jointly actions aimed at motivating the population to participate in plans, programs and projects in the context of efforts to prevent and right corruption, access to information, participatory decision-making procedures and other means of consolidating democracy.
- There are also provisions related to social participation in Law 2028 of 1999, the Law on Municipalities, which regulates the regime of the municipalities, or local governments; Supreme

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<sup>33</sup> Response by the Republic of Bolivia to the Project and Comments on the Preliminary Report on Implementation of the Convention's provisions to be analyzed in the First Round, pages 10 and 11.

Decree 26130 of 2001, which regulates the transfer of resources to the activities of the Surveillance Committees; Supreme Resolution 216961 of 1997, on participatory planning in the local governments.

#### **4.1.2 Adequacy of the legal framework and/or other measures**

Based on the information available to it, the Committee observes that the Republic of Bolivia has standards and measures such as those highlighted in the previous section, regarding the participation of civil society and non-governmental organizations in public activities which, in principle, seek to encourage or have the effect, direct or indirect, of facilitating corruption prevention.

Despite the above, and bearing in mind the classification referred to by the methodology for the review of the implementation of Article III, paragraph 11<sup>34</sup> of the Convention, in each of the corresponding sections, the Committee will express some considerations and in the final Chapter will make some specific recommendations related to this subject, among which, the Committee considers that it would be useful for the Republic of Bolivia to periodically evaluate the application of the powers that have been accorded to the Citizen Anticorruption Networks mentioned in section 4.1.1 of this Report.

#### **4.1.3 Results of the legal framework and/or other measures**

In its response, Bolivia notes as follows:<sup>35</sup>

“In the context of applying the provisions set out above, objective results have been attained in terms of the participation of civil society, reflected essentially in the organization and operation of the organizations provided for legislatively. In this regard, 314 Surveillance Committees have had their legal status recognized, one for each municipality in the country, giving rise to the creation of the National Confederation of Surveillance Committees of Bolivia.

In addition, more than 18,000 Grassroots Territorial Organizations (OTBs) in the municipalities have been recognized.

Of the 18,000 OTBs recognized, 2% belong to the indigenous peoples and/or communities, 73% to farming communities and 25% to neighborhood associations in the various cities of Bolivia, all exercising oversight over the local governments, which handle the resources for popular participation.”

Next, reference is made in the answer to actions such as the constructive vote of censure (change of mayor because of questions being raised as to the conduct of the local government); the freezing of fiscal accounts (due to allegations of corruption lodged by the Surveillance Committee, and processed by the Ministry of Finance and the National Senate); and judicial proceedings arising from responsibilities stemming from government service determined by the Office of the Comptroller-General of the Republic, it being stated that they are actions of citizen

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<sup>34</sup>Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention against Corruption Selected within the Framework of the First Round, Chapter V, D (Document SG/MESICIC/doc.21/02).

<sup>35</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 33.

representatives that emerge from the application of the provisions indicated, and that while they are not statistically set forth, they represent an effective mechanism for controlling corruption.

It should be noted that as regards the freezing of fiscal accounts, to which the previous paragraph refers, there are procedural rules governing such situations, contained in Law 1551 of 1994, on Popular Participation (Article 11); Supreme Decree 23813 of 1994 (Articles 7 and 8); Supreme Decree 24447 of 1996 (Article 63); and Law 2624 of 2003, and Signatures for Transparency and Recovery of Municipal Investment (Articles 1 and 2).

The Committee wishes to recognize the gains made in the aforementioned areas by the Ministry without Portfolio Responsible for Popular Participation, which are described not only in the sections of the answer outlined, but also in a document attached to it, entitled "Mecanismo de Participación de la Sociedad Civil."<sup>36</sup>

Finally, the section of the response describing the results in the area under analysis notes as follows:<sup>37</sup>

“Moreover, 15 workshops have been held with the participation of 1,091 citizens to organize citizen anticorruption networks, and there are now 15<sup>38</sup> groups promoting Territorial Citizen Anticorruption Networks, with 33% women’s and 12.3% indigenous participation. In terms of participation of civil society organizations, 36% of the organizations have a presence in the rural areas.”

The Committee is of the view that the information provided by the Republic of Bolivia indicates that active steps have been taken related to the organization and operation of the organizations that the legislation conceives of as instances of citizen participation, for the purposes provided for in it, and that citizen activities have been carried out that could be considered instances of civil society participation to fight corruption.

Based on the information provided by the country analyzed, it appears that it has accorded importance to and bestowed strength upon the civil society institutions that are concerned about issues of public interest generally, and corruption in particular. This has helped bring about a major change in that the public is beginning to be perceived by the members of Bolivian society as a matter of collective interest, such that the objective results attained by Bolivia in implementing the legal framework and other measures aimed at fostering the participation of civil society and non-governmental organizations in efforts aimed at preventing corruption, as stipulated in Article III(11) of the Inter-American Convention against Corruption, have been positive.

## **4.2 MECHANISMS FOR ACCESS TO INFORMATION**

### **4.2.1 Existence of provisions in the legal framework and/or other measures**

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<sup>36</sup> Document “Mecanismo de Participación de la Sociedad Civil,” February 26, 2004, of the Ministry without Portfolio Responsible for Popular Participation, pages 3 and 4.

<sup>37</sup> Updated response by the Republic of Bolivia to the questionnaire, p. 34.

<sup>38</sup> This number was provided by the Republic of Bolivia at the plenary session of July 26, clarifying what was originally provided.

The Republic of Bolivia has a set of provisions regarding such mechanisms, among which special mention is made of the following:

- Law 2341 of 2002, the Law on Administrative Procedure, which at Article 16(j) and (k) enshrines the right of persons to obtain certificates and copies of the documents in the hands of the Public Administration, and to accede to administrative records and archives in the manner provided by law; and which at Article 18, reiterates that right. It also provides that any limitation or classification of information should be specific and be regulated by express legal provision or determination of the administrative authority with legal authorization established for that purpose, identifying the level of limitation and indicating the cases in which said right cannot be exercised.
  
- Supreme Decree 27329 of 2004, whose purpose is to seek Transparency and Access to Governmental Information, which at Article 3, establishes that all institutions of the Executive branch must make public, through the respective websites and/or by any other alternative means of each ministry, prefecture and de-concentrated entity, certain characteristics and indicators of the entity; Article 4 provides for a procedure for persons to be able to request specific information with respect to the foregoing, that includes the possibility of recurring to the constitutional remedies (*habeas data*) and judicial actions established in the legal order if the petition is denied; and Articles 5, 6, 7, and 8 indicate what information is considered classified.
  
- Supreme Decree 26564 of 2002 – Regulation of the Social Oversight Mechanisms, which at Article 4 provides that the corresponding authorities should, along with the Social Oversight Mechanisms, establish the frequency and technical-administrative procedures that would make it possible to ensure access to information they may request to exercise their powers as provided for in the Law on National Dialogue.
  
- Supreme Decree 23318-A of 1992, which at Article 5(d) establishes that the transparent performance of functions by public servants involves, among other actions mentioned, providing information already processed to every individual or collective entity that has a legitimate interest and that requests it; and it adds that any limitation of transparency should be specific for each class of information, and not general, and be expressly established by law.
  
- Supreme Decree 26449 of 2001, on the State Contracts Information System (SICOES), which establishes the obligation to remit to that System all information regarding the contracting of goods and services by state entities; this information is public and can be accessed by citizens at the website of the Gaceta Oficial de Convocatorias (official registry of calls for bids), which is: [sicoes@gov.bo](mailto:sicoes@gov.bo)
  
- There are also provisions on access to information in certain areas in Law 1333 of 1992, the Law on the Environment, as regards information referring to the enterprises regulated by the different Sectoral Superintendencies; and in Supreme Decree 26581 of 2002, Ordered Text of Law 1488 of 1992, as regards financial information that is subject to the provisions of the General Law on Banks.

#### **4.2.2 Adequacy of the legal framework and/or other measures**

The standards regarding access to information that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for Bolivia to consider strengthening the mechanisms to ensure access to public information, such that civil society can have processes that guarantee the timely processing of the requests for information in the hands of or under the control of the public institutions, i.e., within the reasonable, pre-established time frames, and that facilitate appealing decisions denying such requests through mechanisms that are easy to access that resolve the remedies in timely fashion, and providing for sanctions in the event of non-performance of the obligation to provide information.

The Committee is of the view that the Republic of Bolivia can consider the foregoing measure when discussing the legal initiatives in this area to which it refers in its response, which notes that “there are two bills to facilitate access to information, but they were not yet approved, and their discussion did not include civil society.”<sup>39</sup> In response to the request of the analysis subgroup, Bolivia reported that the Presidential Anticorruption Delegation is currently preparing a bill on access to information, in consultation with civil society organizations. The Committee acknowledges these efforts.

The Committee would also like to highlight the existence of recently-issued standards in respect of access to information, in order to facilitate the supply of information. This circumstance reflects the modernization that Bolivia has wanted to introduce in this area, and makes it advisable that it consider implementing training and dissemination programs in this respect in order to facilitate its understanding by public servants and citizens, and to optimize the use of the available technology.

Mindful of the foregoing considerations, the Committee will make recommendations in this regard.

#### **4.2.3 Results of the legal framework and/or other measures**

In the response by the Republic of Bolivia in this regard, the following is noted:<sup>40</sup>

“While there are no statistical data on the application of the provisions indicated above, it is important to mention that the main public institutions, i.e. ministries, departmental prefectures, the main municipalities, Superintendencies, Office of the Comptroller-General of the Republic, Central Bank, National Customs, Internal Revenue, as well as the National Congress and the main organs of the Judiciary have websites that allow for access to general information for citizens, without any restrictions.”

The Committee is of the view that what is noted by Bolivia in its response reflects, as stated above, the modernization it has wanted to introduce in this area, but due to the lack of additional

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<sup>39</sup>Response by the Republic of Bolivia to the questionnaire, p. 7.

<sup>40</sup>Updated response by the Republic of Bolivia to the questionnaire, pp. 35 and 36.

information on the number of requests, denials, in process, etc., it cannot make a comprehensive assessment of the results of the standards and mechanisms in this area. Mindful of this circumstance, the Committee will make a recommendation.

The Committee deems it advisable for the Republic of Bolivia to consider the possibility of measuring, evaluating, and analyzing the objective operation of access to public information, so as to ensure that said procedure will allow access to this information.

The Committee also considers it useful for the Republic of Bolivia to consider training public officials, civil society representatives and all citizens generally in the principles and contents of the access-to-information legislation, and as to the existence of the web pages, so as to help get out the word nationwide, which is considered fundamental, for the right to information is of no use if no one is aware that it is a right.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

### **4.3 CONSULTATIVE MECHANISMS**

#### **4.3.1 Existence of provisions in the legal framework and/or other measures**

The Republic of Bolivia has a set of provisions with regard to the mechanisms mentioned, including the following:

- The Constitution, which at Article 4 enshrines the Referendum among the mechanisms available to the people provided for by the Constitution and regulated by statute.
- Law 1551 of 1994, the Law on Popular Participation, which at Article 10(c) provides among the powers of the Surveillance Committees of the municipalities, the ability to make determinations as to the budget of resources for popular participation and the rendering of accounts of expenditures and investments made by the local government, which should be made public by any means of communication, one copy being sent to the Executive branch to ensure that it acts in keeping with the powers conferred to it by the Constitution.
- Law 1654 of 1995, the Law on Administrative Decentralization, which at Articles 10 and 11 establishes the Departmental Councils, with citizen representation and functions of consultation, control and oversight.
- Law 2235 of 2001, the Law on National Dialogue 2000. Article 1(f) provides, among its objectives, the establishment of the National Dialogue as a permanent mechanism for social participation in the design, monitoring and adjustment of policies aimed at reducing poverty.
- Law 1333 of 1992, the Law on the Environment, which at Article 8 provides for the creation of Departmental Environmental Councils (CODEMA), with community participation and as top-level decision-making and consultation organs at the departmental level in the context of the national environmental policy.

#### 4.3.2 Adequacy of the legal framework and/or other measures

The provisions in relation to the mechanisms of consultation that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

The Committee recognizes the efforts made by the Republic of Bolivia in this area. The recent constitutional reform (of February 20, 2004) merits special mention. It introduced the mechanism of the referendum, yet at the same time the Committee is of the view that it would be advisable for Bolivia to consider complementing the existing mechanisms of consultation, strengthening, as appropriate, procedures that make possible public consultations prior to the final adoption of legal provisions.

This is because the Committee observes that the consultation mechanisms provided for in the first two laws described in section 4.3.1. of this Report (Law on Popular Participation and Law on Administrative Decentralization) refer to the *municipios* and the *departamentos*; and those provided for in the last two (Law on National Dialogue and Law on Environment) are limited to the specific issues addressed by those laws.

It should be noted that the document “Preliminary Response to the Questionnaire for the First Round” of the Fundación Ética y Democracia states as follows with regard to the query in the questionnaire on the existence of mechanisms of consultation:<sup>41</sup>

“No, these mechanisms are not provided for the public institutions generally; in the case of the local governments such mechanisms do exist, and in the prefectures as well, albeit in more limited form.”

The Committee wishes to express its recognition to the Republic of Bolivia for having regulated the operation of the mechanism of the referendum, provided for in the constitutional reform, so that the citizenry may make effective use of it.

The Committee considers that Bolivia took into account the importance of having the above-mentioned regulation, as it noted in its response that “while there is not yet a law regulating the functioning of the referendum and its forms, conceptually it is a legal measure that will make it possible for the citizenry to make clear its views on a policy or decision to be implemented by the government,”<sup>42</sup> and adding that “... to date the congress has on its agenda a draft law that regulates the referendum mechanism, which in this case would be applicable to an issue of great importance, as is Bolivia’s policy with respect to fossil fuels and energy issues.”<sup>43</sup> In this regard, the Committee took note of the adoption of the Referendum Law (Law 2769 of July 6, 2004) and the July 18, 2004 referendum on public policies related to hydrocarbons. More than 60% of

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<sup>41</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 9.

<sup>42</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 37, footnote 34.

<sup>43</sup> Response by the Republic of Bolivia to the Project and Comments on the Preliminary Report on Implementation of the Convention’s provisions to be analyzed in the First Round, page 16.

citizens eligible to vote participated in this process.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

#### **4.3.3 Results of the legal framework and/or other measures**

In the response from the Republic of Bolivia in this respect,<sup>44</sup> it is noted that “There is no specific statistical information that establishes objective results on this issue.”

The Committee considers that this lack of information does not make it possible to render a comprehensive assessment of the results in this area. Mindful of this circumstance, the Committee will formulate a recommendation.

### **4.4 MECHANISMS TO ENCOURAGE PARTICIPATION IN PUBLIC ADMINISTRATION**

#### **4.4.1 Existence of provisions in a legal framework and/or other measures**

The Republic of Bolivia has a set of provisions regarding the mechanisms in question, among which special mention should be made of the following:

- The Constitution, which at Article 4 enshrines the Citizen Legislative Initiative among the mechanisms available to the people established by the Constitution and regulated by statute.
- Law 1551 of 1994, the Law on Popular Participation, which at Article 1 includes among its objectives the recognition, promotion, and consolidation of the process of popular participation, integrating the indigenous, farming and urban communities into the legal, political and economic life of the country.
- Law 1654 of 1995, the Law on Administrative Decentralization, which at Article 5(k) indicates among the powers of the Prefect, who is in charge of the Executive branch in the departments, the promotion of popular participation and channeling the requests and relations of the indigenous, farming and neighborhood organizations through the appropriate mechanisms of the Executive branch.
- Supreme Decree 26564 of 2002, which regulates the Law on National Dialogue 2000, and which provides at its Article 3 that in the context of the laws in force, individuals, organizations, and institutions of civil society who exercise the right and mandate to social oversight at the municipal, departmental, and national levels, enjoy constitutional guarantees for the exercise of their powers.
- Law 1333 of 1992, the Law on the Environment, which at Article 92 provides that every individual or collective person has the right to participate in environmental management in the terms of that law, and the duty to intervene actively in the community for the defense and/or conservation of the environment, and, if necessary, to make use of the rights granted by that law.

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<sup>44</sup>Updated response by the Republic of Bolivia to the questionnaire, p. 37.



- There are also provisions on encouraging social participation in Law 2028 of 1999, the Law on Municipalities, which regulates the regime of the local governments; in Supreme Decree 26,130 of 2001, which regulates the transfer of resources for the activities of the Surveillance Committees; and in Supreme Resolution 216961 of 1997, on participatory planning in the local governments.

#### **4.4.2 Adequacy of the legal framework and/or other measures**

The standards with respect to the above-referenced mechanisms that the Committee has examined, based on the information available to it, are relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for the Republic of Bolivia to consider strengthening and continuing to implement mechanisms that encourage civil society and non-governmental organizations to participate in the conduct of public affairs.

This is due to the fact that the Committee observes that the mechanisms of consultation provided for in the first two laws described in section 4.4.1 of this Report (Law on Popular Participation and Law on Administrative Decentralization) have to do with the municipal and departmental spheres; and those provided for in the statutory and regulatory provisions mentioned there are limited to the specific areas covered by those laws.

It should be noted that the document “Preliminary Response to the Questionnaire for the First Round” of the Fundación Ética y Democracia states as follows on this matter:<sup>45</sup>

“The clearest references are to be found in the Law on Popular Participation, which, based on the possibility of citizens intervening in the allocation of the resources of those local governments that account for a large proportion of public spending, enables citizens to become involved in setting priorities and in decision-making.

In addition, the so-called national dialogue laws (sic) contain mechanisms by which the funds from the cancellation of the external debt are allocated and prioritized with citizen participation.

Outside of these cases, citizens do not participate actively in other decision-making and management of public matters.”

The Committee also considers it pertinent for the Republic of Bolivia to consider fostering greater public awareness of the problem of corruption, and promoting awareness of the mechanisms of participation established, and how to use them, so as to attain the more active participation of part of the citizens in this respect.

The Committee also considers it useful for the Republic of Bolivia to consider regulating the functioning of the Citizen Legislative Initiative mechanism provided for in the constitutional

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<sup>45</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, pp. 9 and 10.

reform, through the appropriate legal act, for the purpose of the citizens making effective use of it.

Finally, the Committee, based on the information received by its Secretariat as per the methodology for analyzing the implementation of the selected provisions,<sup>46</sup> takes note of the existence in the Bolivian legal order of some provisions which, in a report<sup>47</sup> by the Rapporteur for Freedom of Expression of the OAS, are generically known as “*desacato* laws,” which would be inappropriate as they tend to inhibit the participation of civil society and non-governmental organizations in efforts aimed at preventing corruption.

The Committee considers that it should refer to the pertinent sections of that report,<sup>48</sup> which, it should be noted, does not refer exclusively to the Republic of Bolivia in particular, but to all the countries of the Americas generally, and which in the case of Bolivia considers as “*desacato* laws” the following provisions of the Criminal Code:

“Article 162. Persons who by any means slander, libel or insult a public official in the performance of his functions or by reason of them shall be punished by imprisonment ranging from one month to two years.

“If the previous acts were directed against the President or Vice-President of the Republic, State Ministers, or members of the Supreme Court or of Congress, the punishment will be enhanced by half.

“The Penal Code also provides for two-month to four-year prison sentences or labor sentences for libel, defamation, slander or offense to the memory of the deceased. Article 286 establishes a defense of truth to defamation or libel proceedings when the injured party is a public official and the offense relates to his or her duties.”

The Committee considers that it should recommend to the Republic of Bolivia that, along the lines indicated in the title of the Rapporteur’s report,<sup>49</sup> it should move to derogate the provisions transcribed above, as they could constitute a disincentive to civil society participation, out of fear that reporting corruption might lead one to be charged with violating the “crime of *desacato*.”

The Committee recommends that the Republic of Bolivia consider the possibility, as appropriate and in accordance with its body of domestic laws, of abolishing so-called *desacato* laws.

Mindful of the foregoing considerations, the Committee will make recommendations on this point.

#### **4.4.3 Results of the legal framework and/or other measures**

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<sup>46</sup>Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention against Corruption Selected within the Framework of the First Round, Chapter VI (Document SG/MESICIC/doc.21/02).

<sup>47</sup>Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III. This report can be accessed at the OAS website.

<sup>48</sup>Id., pp. 7 and 8.

<sup>49</sup>Id., p. 8.

In the Republic of Bolivia's response in this respect,<sup>50</sup> it is noted "There is no specific statistical information setting forth objective results in this area."

The Committee considers that this lack of information stands in the way of making a comprehensive assessment of the results in this area. Mindful of this circumstance, the Committee will make a recommendation.

#### **4.5 PARTICIPATION MECHANISMS IN THE FOLLOW-UP OF PUBLIC ADMINISTRATION**

##### **4.5.1 Existence of provisions in a legal framework and/or other measures**

The Republic of Bolivia has a set of provisions on the mechanisms in question, among which special mention can be made of the following:

- Law 1551 of 1994, the Law on Popular Participation, which at Article 7 provides, among the rights of the Territorial Grassroots Organizations, which are made up of members of the communities, the rights to propose, request, control and supervise the completion of works and the delivery of public services in keeping with community needs, in certain areas; as well as the rights to represent and/or obtain the modification of actions, decisions, works or services provided by the public organs, when contrary to the community interest.

- Law 1654 of 1995, the Law on Administrative Decentralization, which establishes the Departmental Councils, with citizen representation and functions of consultation, control and oversight.

- Law 2235 of 2001, the Law on National Dialogue 2000, which provides for Social Oversight Mechanisms, at the national, departmental and municipal levels, for the purposes provided for in that law, including the Surveillance Committees.

- Supreme Decree 26564 of 2002, Regulation of the Social Oversight Mechanisms, which regulates the procedures, mechanisms and instances for the National Social Oversight Mechanism, the Departmental Social Oversight Mechanisms, their representatives, examiners, and Surveillance Committees, in representation of the organizations and institutions of civil society, to exercise the right to learn of, supervise, and evaluate the results and impact of the policies for the conduct of public affairs, the participatory decision-making processes, as well as the right of access to information at the municipal, departmental and national levels.

- Supreme Decree 26255 of 2001, the System for Monitoring Results-based Public Management, which is aimed at fostering the reform and modernization of the entities of public administration, so that they can perform their functions effectively, efficiently and transparently in the framework of a results-based management approach that allows civil society to exercise social oversight. It includes aspects such as preparing assessments and institutional strategies and the implementation of government administration and control systems. It is required for the Ministries, Prefectures, Investment and Development Funds, and entities under their direction

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<sup>50</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 37.

and oversight. It has a mechanism responsible for its promotion and coordination, which is the Ministry of the Presidency, and the support of an entity responsible for its promotion and coordination, i.e. the Ministry of the Presidency, and the support of Management and Reform Units in the different entities, as well as an Inter-institutional Reform Council, as a mechanism for coordination, exchange and negotiation of the strategies, systems, instruments and results-based management methods, and institutional reform of the public entities.

- In addition, there are provisions related to these mechanisms in Law 2028 of 1999, the Law on Municipalities; and in Law 1333 of 1992, the Law on the Environment.

#### **4.5.2. Adequacy of the legal framework and/or other measures**

The standards related to the mechanisms that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

Nonetheless, the Committee considers it advisable for the Republic of Bolivia to consider strengthening and continuing to implement mechanisms that encourage civil society and non-governmental organizations to participate in monitoring the conduct of public affairs.

This is because the Committee observes that the monitoring mechanisms provided for in the first two laws described in section 4.5.1 of this Report (Law on Popular Participation and Law on Administrative Decentralization) refer to the municipal and departmental levels; and those provided for in the subsequent statutory and regulatory provisions mentioned there are limited in scope or circumscribed to the specific subject matter addressed by those laws.

It should be noted that in the document ““Preliminary Response to the Questionnaire for the First Round” of the Fundación Ética y Democracia, the following, inter-alia, is stated in this regard:<sup>51</sup>

“...In the case of other state offices, there are no legal instruments that regulate citizens’ access to mechanisms for control and monitoring.”

The Committee also considers it useful for the Republic of Bolivia to consider designing and starting up programs for disseminating mechanisms for participating in monitoring the conduct of public affairs and to train and provide the necessary tools to civil society and non-governmental organizations to make adequate use of those mechanisms.

Mindful of the foregoing considerations, the Committee will make recommendations in this regard.

#### **4.5.3. Results of the legal framework and/or other measures**

The response from the Republic of Bolivia on this point<sup>52</sup> notes “There is no specific statistical information establishing any results on the matter.”

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<sup>51</sup>Document “Respuesta Preliminar al Cuestionario de Análisis de la Primera Ronda,” by the Fundación Ética y Democracia, p. 10.

<sup>52</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 38.

The Committee considers that this lack of information stands in the way of being able to make a comprehensive assessment of the results in this area. Mindful of this circumstance, the Committee will make a recommendation.

## **5. ASSISTANCE AND COOPERATION (ARTICLE XIV)**

### **5.1 MUTUAL ASSISTANCE**

#### **5.1.1 Existence of provisions in the legal framework and/or other measures**

The Republic of Bolivia has a set of provisions in this area, made up of legal provisions such as those contained in the Criminal Code and the Code of Criminal Procedure, Supreme Decree 24771 of 1997, and Laws 1445 of 1993, the Law on Judicial Organization, and 2175 of 2001, the Law on the Public Ministry; as well as those conventions to which it refers in its response.<sup>53</sup>

#### **5.1.2 Adequacy of the legal framework and/or other measures**

The provisions referred to by the Republic of Bolivia in its response may contribute to attaining the purposes of the Convention of promoting and facilitating mutual assistance among the States Party, and may serve its specific purposes with respect to the investigation and prosecution of acts of corruption, to the extent that they are used for this purpose.

The Republic of Bolivia notes in its response<sup>54</sup> that there is no record of requests for assistance received or made to other state parties.

The Committee wishes to highlight the importance of the provisions the Republic of Bolivia has adopted for mutual assistance, as well as the Inter-American Convention Against Corruption itself, being applied to specific cases of acts of corruption, which presupposes adequate knowledge of their provisions by those vested with the authority to apply them.

Mindful of the foregoing considerations, the Committee will make recommendations in this respect.

#### **5.1.3 Results of the legal framework and/or other measures**

In the response from the Republic of Bolivia in this respect,<sup>55</sup> after it is noted that there is no record of requests for assistance received by or made to other states party, reference is made to the processing of some requests for extradition in 2001 and 2002, but no additional information is provided so as to make possible a comprehensive assessment of the results in this area. Mindful of this circumstance, the Committee will make a recommendation.

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<sup>53</sup>Updated response of the Republic of Bolivia to the questionnaire, pp. 38-40.

<sup>54</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 40.

<sup>55</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 40.

## **5.2 MUTUAL TECHNICAL COOPERATION**

### **5.2.1 Existence of provisions in the legal framework and/or other measures**

The response from the Republic of Bolivia in this respect<sup>56</sup> notes that in the area of technical cooperation, Bolivia has entered into several agreements and made many contacts for establishing a network for sharing of experiences in various matters of national interest, and it is mentioned that one interesting initiative in the area of corruption is the Inter-institutional Agreement for Mutual Assistance signed by the Institutional Reform Project (Bolivia) and the Anticorruption Office of the Government of the Argentine Republic.

It is added, in that answer,<sup>57</sup> that some technical cooperation programs have been developed on the aspects referred to in the Convention, and it is stated that one of the most noteworthy has been the National Integrity Plan, whose three components are described, including “the Struggle against Corruption.”

The components of the National Integrity Plan are described as follows in the response:

"The Judicial Reform component focuses its efforts on seeking to resolve structural aspects of justice that stand in the way of the efficient development of the judicial system, and is also aimed at reforming or establishing certain provisions that would make it essential to have expeditious and transparent judicial procedures.

The modernization-of-the-state component is aimed mainly at improving the systems for public administration and checks and balances in the government, strengthening the implementation, under the principle of responsibility, of results-based management. The objectives of this component are also aimed at instituting a rational system for human resources management in the public administration.

The component involving fighting corruption is designed to establish specific and short-term measures to attack corruption and give direction to the establishment of mechanisms that ensure compliance with the provisions in force.”

The response from the Republic of Bolivia also notes “work has been done with the World Bank, the Inter-American Development Bank, the UNDP, as well as Dutch and Danish cooperation.”<sup>58</sup>

### **5.2.2 Adequacy of the legal framework and/or other measures**

The Committee considers it positive that the Republic of Bolivia, as stated in its response, has entered into technical cooperation agreements and activities related to fighting corruption, and that it has joined forces, to that end, with international organizations and cooperation agencies, and other States party to the Inter-American Convention Against Corruption, which it considers relevant for the purposes provided for by the Convention in this area.

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<sup>56</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 41.

<sup>57</sup>Updated response of the Republic of Bolivia to the questionnaire, pp. 41-43.

<sup>58</sup>Response of the Republic of Bolivia to the questionnaire, p. 9.

### **5.2.3 Results of the legal framework and/or other measures**

The response from the Republic of Bolivia<sup>59</sup> notes that there is no record that any request regarding the technical cooperation referred to in the Convention has been made to other states party, or that any had been received from them.

The Committee, as noted in section 5.2.2 of this Report, considers it positive that cooperation programs have been carried out in the Republic of Bolivia related to fighting corruption, and considers it advisable for the efforts this entails to continue to be made, but mindful of what was stated by Bolivia in relation to the lack of requests for the mutual technical cooperation referred to in the Convention, it will make recommendations in this regard.

The Committee believes it would be useful for the Republic of Bolivia to consider the possibility of measuring, evaluating, and analyzing the results obtained from technical cooperation, so as to ensure its effectiveness and efficiency, and to continue obtaining technical assistance from international organizations and cooperation agencies in fighting corruption. The Committee will make a recommendation mindful of this consideration.

## **6. CENTRAL AUTHORITIES (ART. XVIII)**

### **6.1 Existence of provisions in the legal framework and/or other measures**

The response from the Republic of Bolivia<sup>60</sup> notes, when the questionnaire asks about the designation of the central authority for channeling the reciprocal assistance provided for under the Convention, that “The Republic of Bolivia has designated the Presidential Anticorruption Delegate as the central authority for the purposes of the Inter-American Convention Against Corruption.”

That response also notes,<sup>61</sup> with respect to the designation of the central authority for channeling the mutual technical cooperation provided for in the Convention, that “The Republic of Bolivia has designated the Presidential Anticorruption Delegate as the central authority for the purposes of channeling the mutual technical cooperation provided for in the Inter-American Convention Against Corruption.”

On the other hand, the country under analysis provided to the Secretariat General of the OAS, in accordance with the prescribed formalities, with the designation of the Presidential Anticorruption Delegate as the central authority for the purposes of the Inter-American Convention against Corruption.

### **6.2 Adequacy of the legal framework and/or other measures**

The Committee considers appropriate the designation of the Presidential Anticorruption Delegate

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<sup>59</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 41.

<sup>60</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 44.

<sup>61</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 44.

as the central authority for the purposes provided in the Inter-American Convention against Corruption, considering in addition that the response by the Republic of Bolivia also notes that “The General Treasury of the Nation shall allocate the resources essential to the functioning of the Presidential Delegate.”

### **6.3 Results of the legal framework and/or other measures**

Bolivia’s response on this point<sup>62</sup> does not include information on results, and, as noted therein, no requests have been processed regarding the assistance and cooperation provided for in the Convention. Mindful of this circumstance, the Committee will make a recommendation.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

Based on the review in Chapter II of this report, the Committee offers the following conclusions and makes the following recommendations regarding the implementation, in the Republic of Bolivia, of the provisions contained in Articles III (1) and (2) (standards of conduct and mechanisms to enforce them); III (4) (systems for registering incomes, assets, and liabilities); III (9) (oversight bodies, exclusively in relation to their performance of functions in relation to compliance with the provisions provided for in paragraphs 1, 2, 4 and 11 of Article III of the Convention); III(11) (mechanisms for encouraging the participation of civil society and non-governmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities) of the Convention, all of which were selected within the framework of the first round.

### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE THEM (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)**

#### **1.1 Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms**

**The Republic of Bolivia has considered and adopted measures aimed at creating, maintaining, and strengthening standards of conduct geared to preventing conflicts of interests and mechanisms to enforce them, in keeping with what is stated at Chapter II, section 1.1 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendation:

Strengthen the implementation of laws and regulatory systems concerning conflicts of interest. To carry out this recommendation, the Republic of Bolivia could consider the following measures:

- a. Complement the existing rules, regulating, as appropriate, certain eventualities that could constitute conflicts of interest and which, in view of their importance, should

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<sup>62</sup>Updated response of the Republic of Bolivia to the questionnaire, p. 44.



receive more detailed and specific treatment (see Chapter II, section 1.1.2 of this Report).

- b. Subject to compatibility with the constitutional right of the individual to freedom of work, to examine the improvement and strengthening of appropriate and relevant restrictions for those who leave public sector employment and of measures to enforce them (see Chapter II, section 1.1.2. of this Report).
- c. Through the competent authority, set a time period for public entities, pursuant to the law, to adopt their Codes of Ethics and implement mechanisms that guarantee a practical evaluation of the provisions of those Codes, including those related to preventing conflicts of interest, such that the results contribute to their development, strengthening and effective application.
- d. Adopt, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics that make it possible to adequately develop the aspects essential for attaining their objectives, which include those related to preventing conflicts of interest.
- e. Adopt, through the appropriate statutory or administrative act, guidelines to give direction to the public entities in carrying out the obligation to establish mechanisms that ensure a practical evaluation of the Codes of Ethics provisions, including those related to preventing conflicts of interest, such that their results contribute to their development, strengthening and effective application.

## **1.2 Standards of conduct and mechanisms to ensure the conservation and proper use of resources entrusted to public officials**

**The Republic of Bolivia has considered and adopted measures aimed at creating, maintaining, and strengthening standards of conduct geared to ensuring the preservation and adequate use of the resources earmarked to public officials in the performance of their functions, in keeping with Chapter II, section 1.2 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendation:

Strengthen the implementation of statutes and regulatory systems with respect to control over the resources of the public administration. To carry out this recommendation, the Republic of Bolivia could take into account the following measures:

- a. Set, by means of the competent authority, a period for the public entities, in complying with the law, to adopt their Codes of Ethics and implement mechanisms that assure the practical evaluation of the provisions provided for in those Codes, including those related to the preservation of public resources, such that their results contribute to their development, strengthening and effective application.

- b. Adopt, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics that make it possible to achieve adequate development of the aspects essential to the attainment of their objectives, including those related to the preservation of public resources.
- c. Adopt, through the appropriate statutory or administrative act, guidelines that give direction to the public entities in complying with the obligation to implement mechanisms that ensure the practical evaluation of the Codes of Ethics provisions, among them those related to the preservation of public resources, such that their results contribute to their development, strengthening and effective application.
- d. Perform an evaluation of the use and effectiveness of the standards of conduct for ensuring the preservation and adequate use of public resources and of the mechanisms for compliance with them in Bolivia, as instruments for preventing corruption, and as a result of that evaluation, consider adopting measures to promote, facilitate and consolidate or ensure their effectiveness for that purpose.

**1.3 Standards of conduct and mechanisms concerning measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware**

**The Republic of Bolivia has considered and adopted measures aimed at maintaining and strengthening standards of conduct and mechanisms related to the measures and systems that require public officials to report to the appropriate authorities regarding acts of corruption in the performance of public functions of which they are aware, in accordance with the comments in Chapter II, section 1.3 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendation:

Strengthen the Republic of Bolivia's mechanisms for requiring public officials to report to the competent authorities any acts of corruption in government service that come to their attention. To carry out this recommendation, the Republic of Bolivia could consider the following measures:

- a. Include among the duties established in Law 2027 of 1999, the Statute on Public Officials, or in the Codes of Ethics adopted by the public entities in compliance with Article 13 of that law, the obligation to report any violation of its provisions and those of the Codes.
- b. Facilitate compliance with the duty to report acts of corruption, through such steps as are considered appropriate; and adopt and implement protection measures for whistleblowers, so that they receive guarantees vis-a-vis threats or retaliation to which they may be subjected as a result of compliance with this obligation.

- c. Train public officials as to the existence and purpose of the responsibility to report to the competent authorities acts of corruption in the public administration that come to their attention.
- d. Implement a system of protection that includes protection of identity, for public officials, who in good faith report acts of corruption.
- e. Implement adequate procedures to foster the reporting of such acts.
- f. Consider the possibility, once the necessary procedures have been carried out, of the adoption by the competent authority, of the Proposed Law to Protect Persons who Report acts of Corruption in the Performance of Public Functions mentioned in Chapter II, section 1.3.2 of this Report.

## **2. SYSTEMS FOR REGISTRATION OF INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)**

**The Republic of Bolivia has considered and adopted measures designed to establish, maintain, and strengthen systems for registering income, assets and liabilities by those persons who perform public functions in those posts specified by law and, where appropriate for making such registrations public, in keeping with what is stated in Chapter II, section 2 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendation:

Strengthen the systems for registration of income, assets and liabilities. To carry out this recommendation, the Republic of Bolivia could consider the following measures:

- a. Strengthen the provisions with respect to verifying the content of the Sworn Declarations on Assets and Income by the Office of the Comptroller-General of the Republic, established in Supreme Decree 27349 of 2004, such that there can be systems that make it possible to give impetus to and timely carry out such verification (see Chapter II, section 2.2 of this Report).
- b. Examine the advisability for the Office of the Comptroller-General of the Republic, as the agency responsible for verifying Sworn Statements on Assets and Income, to carry out a periodic review of those Statements, even though this may not include all of them. For example, acting on its own initiative, it could select a random number of declarations to be reviewed each year, in order to exercise effective control as its mandate provides.
- c. Classify illicit enrichment as a crime, given that it is closely related to this issue.

- d. Adopt the pertinent measures to ensure that public servants who, according to the Law on External Control called “Procedure for Notification of Incorporations and Resignations of Public Servants for the control of the DJBR” (CE/17) are under an obligation to do so, to provide the information requested by the control mechanism in that law, in the time periods established therein.
- e. Optimize the systems for analyzing the content of the Sworn Declarations of Assets and Income, and adopt the appropriate measures, such that those declarations can be a useful tool for detecting and preventing conflicts of interest, as well as for detecting possible cases of illicit enrichment, once it has been classified as a crime.
- f. Increase the number of officials whose Declaration must be made public, bearing in mind the category and/or the nature of their functions.
- g. Examine the possibility of declarations of assets and income covering not only the public official, but also his or her spouse, close relatives and third persons related to him or her.

### **3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)**

**The Republic of Bolivia has considered and adopted measures designed to establish, maintain and strengthen oversight bodies for effective compliance with the provisions selected for analysis in the first round (Articles III, paragraphs 1, 2, 4, and 11 of the Convention), in keeping with the provision in Chapter II, section 3 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider strengthening the high-level oversight organs, as regards the functions they carry out in relation to controlling effective compliance with the provisions in sections 1, 2, 4, and 11 of the Convention, to ensure the efficacy of such oversight, endowing them with the resources needed for the proper performance of their functions; seeking to ensure that they have greater political and social support to this end; and establishing mechanisms that make possible the institutional coordination of their actions and an ongoing evaluation and monitoring of them.

### **4. MECHANISMS TO ENCOURAGE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11)**

**The Republic of Bolivia has considered and adopted measures aimed at creating, maintaining and strengthening mechanisms to encourage the participation of civil society and non-governmental organizations in efforts aimed at preventing corruption, in keeping with Chapter II, section 4 of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Bolivia consider the following recommendations:

#### **4.1 General participation mechanisms**

In keeping with the methodology adopted by the Committee, no recommendations are formulated in this section.

#### **4.2 Mechanisms for access to information**

Strengthen the mechanisms for ensuring access to public information. To carry out this recommendation, the Republic of Bolivia could consider the following measures:

- a. Develop and regulate processes for receiving applications, for responding to them in timely fashion and for appeals in the event that the requests are denied, and that establish sanctions in case of failure to provide information. In this regard, it is suggested that the country consider the possibility, once the necessary procedures have been carried out, of the adoption by the competent authority, of the bill on access to information mentioned in Chapter II, section 4.2.2. of this Report.
- b. Implement training and dissemination programs on the mechanisms for access to information, for the purpose of facilitating their understanding by public officials and citizens, and optimizing the use of available technology to that end.
- c. Measure, analyze, and evaluate the operation of the procedure for gaining access to public information, so as to ensure that the procedure is actually operational.

#### **4.3 Consultative Mechanisms**

Complementing existing mechanisms of consultation, establishing procedures, when appropriate, so as to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions. To carry out this recommendation, the Republic of Bolivia could consider the following measure:

- a. Strengthen, as appropriate, procedures to make it possible to consult interested sectors in relation to the design of public policies and the drafting of proposed legislation, decrees or resolutions in the Executive branch.

#### **4.4 Mechanisms to encourage participation in public administration**

4.4.1 Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the conduct of public affairs. To carry out this recommendation, the Republic of Bolivia could consider the following measures:

- a. Establish mechanisms, additional to the existing ones, to strengthen civil society and non-

governmental organizations in their efforts to prevent corruption and develop public awareness as to the problem; and promote awareness of the mechanisms of participation established and how to use them.

- b. Regulate the functioning of the Citizen Legislative Initiative mechanism provided for in the Constitution, through the appropriate legal act, for the purposes of the citizenry being able to make effective use of it.
- c. Consider the possibility, as appropriate and in accordance with its body of domestic laws, of abolishing so-called *desacato* laws (see Chapter II, section 4.4.2 of this report).
- d. Periodically evaluate the development of the powers that have been accorded to the Citizen Anticorruption Networks mentioned in section 4.1.1 of this Report.

#### **4.5 Mechanisms for participation in monitoring public administration**

Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the monitoring of the conduct of public affairs. To comply with this recommendation, the Republic of Bolivia could consider the following measures:

- a. Promote ways, when appropriate, for those who carry out public functions to allow, facilitate or help civil society and non-governmental organizations to develop activities to monitor their public performance.
- b. Design and start up programs for disseminating the mechanisms of participation for monitoring the conduct of public affairs, and, when appropriate, train in and facilitate the tools needed by civil society and non-governmental organizations to make adequate use of such mechanisms.

### **5. ASSISTANCE AND COOPERATION (ARTICLE XIV)**

**The Republic of Bolivia has adopted measures in relation to mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, as described and analyzed in Chapter II, section 5 of this report.**

In view of the comments made in this section, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 5.1 Determine and prioritize specific areas in which the Republic of Bolivia considers that it needs the technical cooperation of other state parties to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.

In addition, the Republic of Bolivia should determine and prioritize the requests for mutual assistance for investigating or judging cases of corruption.

- 5.2 Continue the efforts to exchange technical cooperation with other state parties as to the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.
- 5.3 Design and implement a comprehensive program for dissemination and training for competent authorities and officials, for the purpose of them learning and being able to apply the mutual assistance provisions for investigating or prosecuting acts of corruption provided for in the Convention and in other treaties signed by the Republic of Bolivia.

It is also recommended that the competent officials be trained to attain broader mutual technical and legal cooperation to prevent, detect, investigate and punish acts of corruption.

- 5.4. Measure, analyze and evaluate the results of the technical cooperation that Bolivia has obtained, so as to guarantee its effectiveness and efficiency, and to continue securing technical assistance from international organizations and cooperation agencies to fight corruption.

## 6. CENTRAL AUTHORITIES (ARTICLE XVIII)

**The Republic of Bolivia has complied with Article XVIII of the Convention by designating the Presidential Anticorruption Delegate as the central authority for the purposes of assistance and international cooperation provided for in the Convention, in keeping with what is stated at Chapter II, section 6 of this Report.**

## 7. GENERAL RECOMMENDATIONS

Based on the analysis and the contributions that appear throughout this report, the Committee suggests that the Republic of Bolivia consider the following recommendations:

- 7.1 Design and implement, when appropriate, programs to train public servants responsible for implementing the systems, laws, measures and mechanisms considered in this report, for the purpose of guaranteeing they are adequately known, administered and implemented.
- 7.2 Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report and to communicate to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, it may take into account the list of the most widely used indicators, applicable in the Inter-American system, which were available for the selection indicated by Bolivia, which has been published by the Technical Secretariat of the Committee at the website of the OAS, as well as information derived from the analysis of the mechanisms developed in keeping with recommendation 7.3, which follows.
- 7.3 Develop, when appropriate and when they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.

## **8. FOLLOW-UP**

The Committee will consider the periodical reports from the Republic of Bolivia on progress in implementing the foregoing recommendations, in the context of its plenary meetings, in keeping with Article 30 of the Rules of Procedure.

In addition, the Committee will analyze progress in implementing the recommendations made in this Report, in keeping with the provisions of Article 31 and, whenever appropriate, Article 32, of the Rules of Procedure.

The Committee wishes to note the Republic of Bolivia's request, made to the Secretariat, to publish its country report on the Mechanism's Internet website or by any other means of communication, pursuant to Article 25 (g) of the Rules of Procedure and Other Provisions.



## **ANNEX TO THE REPORT ON THE IMPLEMENTATION IN BOLIVIA OF THE CONVENTION PROVISIONS SELECTED FOR ANALYSIS IN THE FIRST ROUND**

- The Republic of Bolivia sent, along with its response, attachments corresponding to the following provisions and documents:

1. Law No. 2027 of 1999 - Statute on Public Officials
2. Supreme Decree No.25749 of 2000 - Regulation of the Statute on Public Officials
3. Law No. 2341 of 2002 - Law on Administrative Procedure
4. Supreme Decree No. 27328 of 2004, on Processes for Contracting Goods, Works, General Services, and Consulting Services
5. Law No. 1455 of 1993 - Law of Judicial Organization
6. Law No. 1600 de 1994 - Law on the SIRESE
7. Law No. 2028 de 1999 - Law on Municipalities
8. Ethics Regulation of the Senate
9. Ethics Regulation of the Chamber of Deputies
10. General Rules of Procedure of the Chamber of Deputies
11. Administrative Resolution SSC - 01/2002 - Regulation on Incorporation to the Administrative Career Service
12. Administrative Resolution SSC - 02/2002 - Regulation on Authorizing and Certifying Private Entities Specialized in the Selection of Personnel for the Public Sector
13. Administrative Resolution SSC - 03/2002 - Regulation for Authorizing on an Exceptional Basis the Exercise of Public Functions in the Event of Incompatibility due to Relationship of Marriage
14. Regulation of Incompatibilities and the Improper Use of Influences (Judicial branch), Decision No. 43/99
15. Rules of Procedure for Disciplinary Proceedings in the Judicial Branch (Decision No. 32 of 2000)
16. Regulation of the Judicial Career Service System (Decision No. 239/2003)
17. Regulation of the Administrative Career Service in the Judiciary (Decision No. 247/2003)
18. Specific Regulation on Personnel Administration (Judicial branch, Judicial Council)
19. Ethics Code of the Governmental Auditor (CE/03/1)
20. Ethics Code of the Office of the Comptroller-General of the Republic (R/AR-006)
21. Regulation of the Ethics Code of the CGR (R/AR-008)
22. Functioning of the Ethics Committee of the CGR (P/AR-171)
23. Election of Members for the Ethics Committee of the CGR (P/AR-170)
24. Recusals and Excuses of Personnel of the CGR in Government Audits (P/SL-046)
25. General and Basic Principles and Standards for Internal Governmental Control (CI/08)
26. Law No. 1178 of 1990, on Government Administration and Control (SAFCO Law), and its regulatory provisions, Decrees 23215 of 1992; 23318A of 1992; 26237 of 2001; 26319 of 2001; and 26115 of 2001
27. Decree Law 14933 of 1977 - Approving the Organic Law of the Office of the Comptroller-General of the Republic, the Law on the Fiscal Control System, and the Law on Fiscal Coercive Procedure
28. Law No. 1768 of 1997 - Law Modifying the Criminal Code
29. Law No. 24771 of 1997 - Regulation of the Financial Investigations Unit

30. Law No. 2175 of 2001 - Organic Law of the Public Ministry
31. Law No. 1836 of 1998 - Law on the Constitutional Court
32. Law No. 1779 of 1997 - Law Reforming and Supplementing the Electoral Regime
33. Resolution CGR-1/1732002 of 2002 - Guideline for the Application of the General and Basic Principles and Standards for Internal Governmental Control
34. Standards for Government Audits (CE/10)
35. Law No. 1817 of 1997 - Law on the Judicial Council
36. Law No. 25 of 1999 - Law on the Code of Criminal Procedure
37. Supreme Decree No. 26257 of 2001 - Regulation of the System for Sworn Declarations of Assets and Income
38. Supreme Decree No. 27349 of 2004 - Modifying the Regulation of the System for Sworn Declaration of Assets and Income
39. Supreme Decrees Nos. 26774 of 2002; 26855 of 2002; 26921 of 2003; 27042 of 2003; and 27351 of 2004, on aspects related to the Sworn Declaration of Assets and Income
40. Law No. 2235 of 2001 - Law on National Dialogue 2000
41. Supreme Decree No. 26564 of 2002 (Regulation of the Law on National Dialogue 2000) - - Regulation of the Social Oversight Mechanisms
42. Law No. 1551 of 1994 - Law on Popular Participation
43. Law No. 1701 of 1996 - Modifying the Law on Popular Participation
44. Supreme Decree No. 26130 of 2001 - Transfer of Resources to the Watch Committees
45. Supreme Decree No. 27329 of 2004 - Transparency and Access to Government Information
46. Supreme Decree No. 26449 of 2001 - Information System on State Contracting (SICOES)
47. Law No. 1333 of 1992 - Law on the Environment
48. Supreme Decree No. 24176 of 1995 - Regulation of the Law on the Environment
49. Supreme Decree No. 27172 of 2003 - Regulation of the SIRESE Law
50. Supreme Decree No.26581 of 2002 - Ordered Text of Law 1488 of 1993
51. Supreme Decree No. 26255 of 2001 - System for Monitoring Public Management by Results
52. Document “Mechanism of Civil Society Participation,” of February 26, 2004, of the Ministry without Portfolio Responsible for Popular Participation
53. Document “Social Oversight Mechanism”
54. Document “Meeting on the Inter-American Convention Against Corruption,” Report prepared by the Public Ministry
55. Document from the Office of the Comptroller-General of the Republic “Measures and Mechanisms in the area of Standards of Conduct for the Proper Performance of Public Functions - Article III, sections 1 and 2 of the Convention”
56. Document “Inter-institutional Agreement on Reciprocal Assistance between the Institutional Reform Project (Bolivia) and the Anticorruption Office of the Government of the Argentine Republic
57. Communication COM.ET.020/03-04 of February 20, 2004, by which the National Senate forwards its Ethics Regulation to the Presidential Anticorruption Delegate
58. Communication PRES.195/04 of February 27, 2004, sent by the President of the Supreme Court of Justice and of the Superior Judicial Council to the Presidential Anticorruption Delegate

59. Communication OEA/STM CJ/28/04 of March 7, 2004, sent by the Permanent Mission of Bolivia to the OAS to the General Secretariat of the Organization
60. Document "Reports of Acts of Corruption in Local Governments, 2003-2004," Ministry without Portfolio Responsible for Popular Participation
61. Document "Report of Cases of Public Corruption handled in the District Prosecutorial Offices," Public Ministry of the Nation - Office of the Attorney General of the Republic
62. Document "Project: Platform for Service to the Public" – Public Ministry - Office of the Attorney General of the Republic
63. Document "Project: Program for Inspections in the Public Ministry," Public Ministry - Office of the Attorney General of the Republic"
64. Document "Project: Anticorruption Units" – Public Ministry - Office of the Attorney General of the Republic
65. Document "Project : Protection for Victims, Witnesses, and Public Officials" - Public Ministry - Office of the Attorney General of the Republic
66. Document "Project: Human Rights Units" – Public Ministry - Office of the Attorney General of the Republic
67. Document "The Bangalore Principles on Judicial Conduct"
68. Document "Circulars Issued by the Supreme Court of Justice on Application of the New Code of Criminal Procedure"
69. Document "Data on Extraditions 1992-2002 and Supplicatory Exhortations 1995-2002"

- In response to the request from the Technical Secretariat of the Committee, the Republic of Bolivia sent the following documents:

1. Constitution
2. Supreme Decree No. 10426 of 1972, approving various Codes, including the Code of Criminal Procedure
3. Law No. 2445 of 2003 - On Trials for Responsibility of High-level Officials
4. Bill to Protect Persons who Report Corruption in the Performance of Government Service
5. Standard for External Control entitled "Procedure for Notification of Incorporations and Resignations of Public Servants for the Control of DJBRs (CE/17)
6. Law No. 1654 of 1995 - Law on Administrative Decentralization
7. Supreme Resolution No. 216961 of 1997 - Approving the Standard for Participatory Planning
8. Law 2769 of 2004 (Referendum Law)