

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

**REPORT ON IMPLEMENTATION IN PARAGUAY  
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>**

The Republic of Paraguay, according to Article 1 of its Constitution, is a rule of law state, which is unitary, indivisible, and decentralized; whose form of government is a representative, participatory, and pluralistic democracy.

For the purposes of the State's political and administrative framework, its national territory is divided into departments, municipalities, and districts, that within the limits established by the Constitution, these jurisdictions enjoy political, administrative, and regulatory autonomy to manage their interests, and independent authority to collect and spend their resources.

According to Article 3 of the Constitution, "The government is exercised by the legislative, executive, and judicial powers through a system in which the three branches of government are kept independent, balanced, coordinated and with mutual checks and balances. None of these branches may claim for itself or may grant to another branch, any individual, or group, either special powers or complete public powers."

The Constitution establishes other autonomous organs, such as the Attorney General's Office, Electoral Courts, the Public Defender, and the Comptroller General of the Republic.

The legislative branch is composed of the Senate and the Chamber of Deputies.

The executive branch is headed by the President of the Republic, in cooperation with his or her cabinet ministers, each of whom has full authority for government actions he or she endorses. There is also a Vice President.

The judicial branch consists of the Supreme Court, appellate tribunals, and lower courts.

The Attorney General's Office represents society in the State's courts. It consists of the Attorney General and State Attorneys.

Electoral justice consists of a Superior Electoral Tribunal, lower courts, and state attorneys, as well as other bodies established by law. Its functions include the calling of general, departmental, or

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1. This report was prepared by the Committee, in accordance with the provisions of Articles 3.g and 26 of its Rules of Procedure, at its plenary session of July 18, 2003, in the framework of its fourth meeting of July 14-18, 2003, held at OAS headquarters in Washington, D.C.

2. Reply of the Republic of Paraguay to the questionnaire, adopted by the Committee in the context of the first round of analysis.

At the request of the Republic of Paraguay, and pursuant to the Rules of Procedure, its replies to the questionnaire, together with the corresponding appendices, are published on the Internet at the following address. <http://www.oas.org/juridico/spanish/corresp.htm#>

municipal elections, as well as the judgment, organization, direction, and supervision of matters and actions related to elections.

The Public Defender is a congressional commissioner charged with defending human rights, channeling citizen complaints, and protecting community interests. In no case will he perform any judicial or executive function.

The Comptroller General of the Republic is the oversight body for the economic and financial activities of the State, Departments and Municipalities.

The current Constitution, with 291 articles, was adopted in 1992 and contains many regulations of specific aspects to the operation of the State and personal guarantees. It includes all the guarantees afforded to Paraguay's residents under the rule of law.

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

According to the official register of the OAS General Secretariat, the Republic of Paraguay ratified the Inter-American Convention against Corruption on November 29, 1996 and deposited the instrument of ratification on January 28, 1997.

In addition, the Republic of Paraguay signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001, on the occasion of the OAS General Assembly in San Jose, Costa Rica.

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

The Committee wishes to acknowledge the Republic of Paraguay's cooperation in the entire review process, and especially the assistance of the Technical Unit of the Council for Promotion of the National Integrity System (CISNI), which was evident in its response to the questionnaire and the effort put forth to collect and display all available data in that document in a succinct, systematic, and orderly manner. With its response the Republic of Paraguay sent the relevant provisions and documents, listed in the appendix of this report.

For its review the Committee took into consideration the information provided by the Republic of Paraguay up to March 13, 2003.

No documents or data were received from civil society within the time period set forth in Article 33 (b) of the Committee's Rules of Procedure.

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

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

##### **1.1 CONFLICTS OF INTEREST**

##### **1.1.1 Existence of a legal framework and/or other measures**

The Republic of Paraguay has a set of provisions governing standards of conduct, among which the following should be noted:

- Constitutional provisions applicable to all civil servants, such as the one in Article 105 of the Constitution that no public official may receive more than one salary.
- Constitutional provisions applicable to specific public officials, such as the ones concerning ineligibility and incompatibility for senior positions, as contained in the following articles of the Constitution: 196 to 199 (Senators and Deputies); 235 and 237 (President and Vice President of the Republic); 241 (Ministers); 245 (Solicitor General); 254, (Judges); 258 (Members of the Supreme Court); 263 (Members of the Council for Magistrates); 267 (Attorney General); 270 (State Attorneys); 278 (Public Defender); 284 (Comptroller and Deputy Comptroller of the Republic).
- Laws applicable to most civil servants, such as those contained in the Civil Service Law (1626/2000), Article 62 of which, in addition to creating the Civil Service Secretariat, which reports to the Office of the President of the Republic and is responsible for monitoring compliance with the law itself, establishes the general standards for public officials and employees in the various levels and agencies of the State, with the exception of high positions and special cases indicated in its Article 2, and whose Articles 14, 16, 17, and 57-62 contain rules to prevent conflicts of interest, especially in Articles 57 and 60, which specify important obligations and restrictions on the subject.
- Other laws applicable to specific categories of civil servants, such as those contained in Law 1066/1965, covering the National Maritime and Port Administration; Law 879/1981, which is the code for the Organization of the Court System; Law 1034/1983, governing merchants, which contains certain incompatibilities with public office; Law 1182/1985, which establishes “Paraguayan Petroleum”; Law 1084/1987, for the Jury for Trial of Magistrates; Municipal Organic Law 1294/1987 establishing disqualifications for town councilors and the Mayor; Law 276/1993, which organizes the functions of the office of the Comptroller General of the Republic; Law 296/1994 and its amendments, on the Council for Magistrates; Law 426/1994 of the Organic Regulations for Departmental Governments; Law 635/1995, which regulates the operation of Electoral Justice and provides for the immunities and incompatibility of the members and judges of the Electoral Tribunal, which are themselves judicial.

The Republic of Paraguay also has mechanisms to enforce the abovementioned standards of conduct, among which the following should be noted:

- Article 106 of the Constitution, which provides that: “No public official or employee is exempt from liability for his actions. He will be held personally liable for any transgression, crime, or minor offense he may have committed while in office. This will not relieve the State from its collateral responsibility. The State, however, has the right to demand the reimbursement of payments made because of the official's wrongdoing.”
- Article 201 of the Constitution, which stipulates that senators and deputies can be removed from office for violation of the causes for ineligibility or incompatibility and improper use of influence.
- Article 225 of the Constitution, which provides that the President of the Republic, the Vice President, the ministers of the executive branch, the ministers of the Supreme Court, the Attorney General, the Public Defender, the Comptroller General, the Deputy Comptroller General, and the members of the Superior Court of Electoral Justice, may be impeached for malfeasance in office, for crimes committed in office, or for common crimes.

- The Civil Service Law (1626/2000), which provides in Article 64 that civil servants are administratively responsible for failure to perform their duties or for infraction of the restrictions established in the law, and are subject to the penalties specified; in Articles 70 and 71 the law establishes the authority of the director of the government department or the senior official of the agency where services are rendered to impose penalties for both minor and major offenses; in Article 74 ff. the law provides that for serious offenses, the official may request the Civil Service Secretariat to appoint a judge to investigate the case and to rule on the guilt or innocence of the party and the penalty.
- The Law for Trial of Magistrates (1084/1997), which governs the procedure for trial and removal of Judicial Magistrates.
- Law 635/1995, which regulates electoral justice and contains provisions for assuming authority to deal with offenses specified in the Electoral Code.

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

Constitutional provisions on standards of conduct aimed at preventing conflicts of interest and enforcement mechanisms cover all civil servants and contain specific provisions for special cases, such as senior government officials. All of this relates to the promotion of the purposes of the Convention.

Nevertheless, the Committee wishes to make some comments on the legal provisions to which these standards and mechanisms refer, to their meshing with the Constitutional provisions and the Convention, taking into account, among other considerations, that Paraguay itself in its reply<sup>3</sup> recommends “coordinating the legal and institutional framework for standards of conduct for civil servants and the use and protection of resources entrusted to public officials.”

The most significant legal regulation on standards of conduct to prevent conflict of interest is the Civil Service Law, because of its applicability to all civil servants and its direct relation to the subject. This law aims to create, maintain, and strengthen these standards as suggested by Article III of the Convention, and therefore represents progress in their implementation, but in this regard it is necessary to take the following points into account:

- As indicated by Paraguay in its response<sup>4</sup>, the constitutionality of many of the articles was challenged before the Supreme Court by agencies of the three branches of government, oversight bodies, and civil service unions, among others, and it issued a temporary injunction suspending the provisions until it rules. This suspension only favors the plaintiffs, but since the challenged articles include 145, which nullified Law 200 of 1970 of the Civil Service Regulations, the former law is again valid in certain cases. *Although the court order does not specify which articles of the Civil Service Law concerning standards to prevent conflict of interest are suspended, and what portion of civil servants will be affected by the suspension, it appears that if the order is sufficiently broad to render the Civil Service Law ineffective, this could affect the practical application of the standards of conduct, so that the only provisions still fully in force would be those for special cases contemplated in the Constitution and other laws.*

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<sup>3</sup> Reply of the Republic of Paraguay to the Questionnaire. p. 2, n.2.

<sup>4</sup> Ibid, page 6.

- Article 2 excludes applicability to senior government officials listed therein, which could affect the control of actual compliance with the constitutional and legal provisions concerning conflicts of interest that are applicable to them, especially considering that impeachment, which is contemplated for many of them in Article 225 of the Constitution, can only occur for malfeasance in office, for crimes committed in office, or for common crimes, and most of the above-mentioned provisions do not fall into these categories. It would be well to consider coordinating this Article 2 with Article 106 of the Constitution, which provides that no public official or employee is exempt from liability for his or her actions, and the reference in Article I of the Convention concerning applicability to all levels of the State hierarchy.

- No explicit rules are contemplated for preventing conflicts of interest subsequent to exercising public office, such as a ban on former civil servants intervening in official matters they were familiar with during their time in office or dealing with institutions they were recently connected with, and, in general, all situations that might lead to improper exploitation of one's status as a former civil servant.

- There are no explicit mechanisms for training civil servants in, or disseminating, rules and regulations to prevent conflicts of interest, or for them to consult whether, in a specific case, they may be in such a conflict.

- Article 93 establishes the Civil Service Secretariat, which is responsible to the President of the Republic and is charged with enforcement of the Civil Service Law. To the degree that this organ is affected by the abovementioned injunction, it would hamper the main mechanism established to ensure effective application of standards of conduct for preventing conflicts of interest.

It should also be noted that in one point of Paraguay's response<sup>5</sup> it expresses the need to "Draft and adopt a national Code of Ethics, after clarifying the Civil Service Law and strengthening the mechanism for its enforcement."

In view of these considerations, the Committee will make the appropriate recommendations.

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

Paraguay's response on this point<sup>6</sup> presents some information on cases under consideration in the Civil Service Secretariat and the number of judges designated to try them, and on suspension and dismissal of officials ordered by the Supreme Court, and in one case, by way of example, on a declaration of ineligibility by the Superior Electoral Court. However, this information does not suffice to form an opinion on the objective results of the standards to prevent conflicts of interest and the enforcement mechanisms, because except for the case cited as an example, there is not enough detail to indicate which of these data are linked to the standards and mechanisms.

It should also be noted that Paraguay's response<sup>7</sup> states that the information is not available "...for lack of a central database or equivalent operational means of quantifying data," and adds that "The Civil Service Secretariat has a non-reimbursable technical cooperation project from the World Bank, in process of signature, one of whose components is the holding of a national census of government employees, which would include data such as those requested."

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5. Reply of the Republic of Paraguay to the Questionnaire. p. 25, n.1.

6. Ibid. pp. 11-12.

7. Ibid. p. 11.

In another section of its response<sup>8</sup> Paraguay comments concerning some of the regulations on background checks for those seeking to enter public service that "...given the situation of the Civil Service Secretariat in its start-up phase, it lacks the ability to do background checks on candidates and leaves this up to the agency where they are seeking to work." The lack of information and the limited nature of what is available make it impossible to fully assess results in this area. The Committee will therefore make a recommendation.

## **1.2 STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE**

### **1.2.1 Existence of legal framework and/or other measures**

The Republic of Paraguay has a set of norms concerning these standards of conduct, consisting of various legal provisions, including the following:

- Constitutional provisions, such as those contained in the Constitution's Articles 106, on the responsibility of public officials and employees; 216, on the National General Budget; 238, on the duties and powers of the President of the Republic concerning the management of resources; and 161, 168, 169, and 170, which govern certain powers of departmental and municipal governments in budgetary matters and management of resources.
- Legal provisions, among which the most important, because of their general application and their close relation to the subject, are the Government Financial Management Law (1535/1999), which establishes the Integrated Financial Management System (SIAF) and its regulatory decree 8127/2000.
- The Government Administrative and Financial Organization Law 1909, which establishes bases for the organization of the budget, accounting, treasury, public debt, procurement, receipt and investment of government resources, and reporting requirements (Article 8).
- The Civil Code (1183/1995), (Article 1845); and the Organic and Operational Law of the Comptroller General of the Republic (276/1993), (Article 9).

The Republic of Paraguay also has enforcement mechanisms for these standards of conduct, among which are the following:

- The Constitution, which states that it is the duty of the Solicitor General to represent and defend, both in court and out of court, the patrimonial interests of the republic (Article 246); establishes a Court of Audit (Article 265); provides among the duties of the Attorney General that of exercising public criminal action to defend the property of the public and society (Article 268); and assigns the Comptroller General of the Republic the responsibility for supervising State, departmental, and municipal economic and financial activities (Article 281).
- Law 1535/1999, the Government Financial Management Law, which establishes the liability of officials and employees who misappropriate public funds (Article 82); specifies conduct that constitutes a violation of rules for the management of resources (Article 83); and prescribes action to be taken for those infractions (Article 84). The law's Regulatory Decree 8127/2000 establishes liability for the special obligations of auditors or those delegated to perform that function, and of paymasters (Article 106).

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8. Ibid. p. 8.

- Law 276/1993, the Organic and Operational Law of the Comptroller General of the Republic, which among other provisions regulates that organ with functional and administrative independence for control of the economic and financial activities of the government (Article 1); states its objective (Article 2); describes its duties and powers (Article 9); establishes procedures for its operations, such as the requirement for reports and the review and audit of books, registers, and documents (Articles 10 and 15); and grants authority to obtain assistance from other authorities for carrying out its procedures of control and supervision (Article 20).

- The Government Administrative and Financial Organization Law 1909, which in Articles 139 ff. regulates the review of accounts and establishes important steps such as the possibility of garnishing the assets of a convicted employee (Article 158).

-The Civil Service Law (1626/2000), which in Article 57, paragraph o), specifies the obligation of public officials to conserve and protect public assets; and in Articles 64 ff. provides for investigation and punishment of noncompliance with such obligations.

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

The standards and mechanisms for conservation and proper use of public resources that have been reviewed by the Committee, based on the information at its disposal, are relevant for the promotion of the purposes of the Convention.

However, the Committee would like to note, with regard to the provisions for conservation and proper use of resources contained in the Civil Service Law, such as the obligation to conserve and protect public assets that is established in paragraph o) of Article 57, that the analysis in the previous section of this report on the adequacy of the legal framework and measures to prevent conflicts of interest is also valid here: Many provisions of the law might be inoperable in practice because of their suspension.

The earlier analysis is also valid as regards the comments on the exclusion from coverage of the law for certain officials mentioned in Article 2, and the duties for enforcement of the law's obligations assigned to the Civil Service Secretariat, to the extent that they may be affected by the abovementioned suspension.

It should also be noted that Paraguay, in one part of its response<sup>9</sup>, expresses the need to "Coordinate the legal and institutional framework for standards of conduct for public officials and for the conservation and use of resources entrusted to public officials."

The Committee will make the pertinent recommendations in light of these observations.

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

According to Paraguay's response<sup>10</sup>, there is currently no information on the subject, and they "...are in the process of being collected."

The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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9. Reply of the Republic of Paraguay to the Questionnaire. p. 25, n.2.

10. Ibid. p.18.

### **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 a legal framework and/or other measures**

The Republic of Paraguay has a set of provisions concerning these standards of conduct and mechanisms, consisting of various kinds of regulations, among which the following should be noted:

- The Civil Service Law (1626/2000), which provides in Article 57, paragraph h), the obligation of all public officials to promptly report to police or appropriate authority any criminal offense or irregularity of which they become aware in the performance of their duties; and in Articles 64 ff. governs the investigation and punishment of noncompliance with obligations such as this one.
- Law 276/1993, the Organic and Operational Law of the Comptroller General of the Republic, which specifies in Article 9, paragraph g), among the duties and powers of that office, that of reporting to the police and the executive branch any offense of which they become aware by virtue of their specific functions, being fully liable for any omission or deviation with regard to the agencies subject to their control, when they act improperly or negligently.
- Resolution 0101/2001 of the Comptroller General of the Republic, which establishes procedures for the presentation of complaints to that agency, such as the full identification of the complainant, his or her address, and a clear and concise description of the facts, supported by data, information, and documents concerning the complaint.
- Law 1173/1985, the Customs Code, which in Article 238 specifically establishes the obligation of customs employees to report acts that could constitute a customs infraction or that they may have discovered in the course of their duties, and in Article 239 provides rewards for the whistle-blowers.
- Law 1562/2000, the Organic Law of the Attorney General, which in Article 10 provides for the Attorney General to protect those who cooperate with the justice system, and directs the establishment of a program for that purpose.

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

With regard to the provision of Article 57, paragraph h) of the Civil Service Law, which requires all civil servants to report offenses or irregularities of which they become aware—a step toward implementation of the Convention—the analysis in the previous section of this report on the adequacy of the legal framework and measures to prevent conflicts of interest is also valid here: Many provisions of the law might be inoperable in practice because of their suspension.

The earlier analysis is also valid as regards the comments on the exclusion from coverage of the law for certain officials mentioned in Article 2, and the duties for enforcement of the law's obligations assigned to the Civil Service Secretariat, to the extent that they may be affected by the abovementioned suspension.

The provisions contained in legal standards such as the Organic and Operational Law of the Comptroller General of the Republic or the Customs Code, which specifically establish the obligation of their employees to report irregular acts or misdeeds of which they become aware in the performance of their duties, can be considered relevant to the promotion of the purposes of the Convention, but it should be noted that these provisions only reflect the duty of specific officials, and are not a general obligation for all civil servants.



With regard to the procedures established by the Comptroller General of the Republic in its Resolution 0101/2001 for presentation of complaints, it raises the question whether the existence of the procedures could inhibit potential whistle-blowers, especially taking into account the fact that, as noted by Paraguay in its response<sup>11</sup>, the informant protection program that is supposed to be established according to Article 10 of the Organic Law of the Public Prosecutor has not yet been developed.

The Committee will make the pertinent recommendations in light of this situation.

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

Paraguay does not provide information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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

### **2.1 Existence of a legal framework and/or other measures**

The Republic of Paraguay has a set of provisions concerning these systems, consisting of various kinds of regulations, among which the following should be noted:

- Article 104 of the Constitution, which states: “Public officials and employees, including those holding an elective office, those working for state-owned, binational, self-supported or decentralized companies, and, in general, those who are regularly receiving remuneration from the State, must sign a sworn statement declaring their assets and income by no later than 15 days after their installation and within 15 days after stepping down.”
- Article 283, paragraph 6, of the Constitution, which specifies among the duties and powers of the Comptroller General of the Republic: to receive sworn statements on assets by public officials, to establish registries for such statements, and to issue opinions on the equivalence between the statement on assets public officials sign upon their installation and the one they sign at the end of their tenure.
- Law 276/1993, the Organic Law of the Comptroller General of the Republic, which in Article 9, paragraph f) directs that the entity will provide reports contained in the register upon express request from the executive branch, either chamber of Congress, the Attorney General, the Solicitor General, the Bicameral Commission for Investigation of Illicit Affairs, and the appropriate jurisdictional agency.
- The Civil Service Law (1626/2000), which in Article 57, paragraph i), establishes the obligation of public officials to submit a sworn declaration of assets and income in the time and manner established by the Constitution and the law; and in Articles 64 ff. provides for the investigation and punishment of noncompliance with such obligations.

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11. Reply of the Republic of Paraguay to the Questionnaire. p. 20.

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

The Republic of Paraguay has a set of provisions that clearly establish the requirement that all public officials submit a sworn declaration of assets and income, which is relevant to the purposes of the provision of the Convention whose implementation is being reviewed.

However, the legal provisions studied do not demonstrate that some important aspects of the subject have been regulated in regard to the minimum content of the sworn declaration, and systems for verification, updating, use, and processing of the data.

In addition, with regard to the provisions on the subject in the Civil Service Law, which also has mechanisms to enforce the above-mentioned obligation because it establishes the corresponding disciplinary measures, the same observations made in other sections of this report are applicable here: The legal situation of suspension of many of its provisions could mean that they are in reality dead letter law.

It should also be noted that in Paraguay's response on the question<sup>12</sup>, it mentions that the Labor Commission of the Chamber of Deputies is in the process of debating a bill to improve the system, which is being coordinated with the Council for Promotion of the National Integrity System, and in another section of the response<sup>13</sup> it points out the need to "enact a new law on declaration of assets and liabilities and to equip and/or strengthen the organ that will be responsible for compliance."

The Committee will make the appropriate recommendations in light of these considerations.

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

Paraguay does not provide information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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

### **3.1 Existence of a legal framework and/or other measures**

The Republic of Paraguay has in place measures concerning oversight bodies for enforcement of the measures covered in paragraphs 1, 2, 4, and 11 of Article III of the Convention, among which the following should be noted:

- Constitutional provisions, such as those set forth in Articles 244, 245, and 246 (Solicitor General); 265 (Court of Audit); 266 (Attorney General); 281 and 284 (Comptroller General of the Republic).

- Legal provisions such as those contained in the Government Administrative and Financial Organization Law 1909; Law 276/1993, the Organic Law of the Comptroller General of the Republic; the Judicial Organization Code; Law 1562/2000, the Organic Law of the Attorney General; Law 1535/2000, on Government Financial Management; and the Criminal Code, referring to the oversight bodies mentioned.

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12. Reply of the Republic of Paraguay to the Questionnaire. p. 21.

13. Reply of the Republic of Paraguay to the Questionnaire. p. 25, n. 3.

- Legal provisions contained in the Civil Service Law (1626/2000), which gives the Civil Service Secretariat functions related to the effective compliance with some of the provisions of the Convention under review.

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

Paraguay's measures for oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2), (4), and (11) of the Convention satisfy those provisions, considering the existence of bodies with general or specific competence to ensure compliance, which constitutes progress in implementation of the Convention.

Based on the information at its disposal, the Committee considers that the Republic of Paraguay has relevant standards for promotion of the purposes of the Convention in this area.

However, with regard to the provisions on the duties of the Civil Service Secretariat contained in the Civil Service Law, the comments made in other sections of this report are applicable: The suspension of many of the provisions of the law could adversely affect the Secretariat's performance of the duties in question, to the degree that they are included in the suspension.

It should also be noted that Paraguay's response<sup>14</sup> states the need to "strengthen oversight mechanisms through harmonization of their functions," and notes that "In the institutional framework, there is need for a computerized database to link the various institutions involved in the processes."

Taking into account these considerations, the Committee will make the pertinent recommendations.

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

Paraguay does not supply information on this point in its response<sup>15</sup>, and notes "information is being gathered on the institutional framework and other aspects of the operation of each of these institutions." The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

## **4. CIVIL SOCIETY PARTICIPATION (ARTICLE III, PARAGRAPH 11)**

### **4.1 GENERAL PARTICIPATION MECHANISMS**

#### **4.1.1 Existence of a legal framework and/or other measures**

The Republic of Paraguay has a set of measures concerning these mechanisms, among which the following should be noted:

- Constitutional provisions, such as those contained in the Constitution's Article 1, which adopts a representative, participatory, and pluralistic democracy as the Republic of Paraguay's form of government; Article 28, which gives everyone free access to public sources of information; Article 38, which gives everyone the right to demand that public officials adopt measures to defend community interests, including property belonging to the community; Article 40, which provides that everyone, either individually or within a group, and without having to meet any special requirement,

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14. Reply of the Republic of Paraguay to the Questionnaire. p. 25, n. 4 and 6.

15. Reply of the Republic of Paraguay to the Questionnaire. p. 22.

has the right to make written petitions to government authorities; Article 117, which states that citizens have the right to participate in public matters, directly or through their representatives; Article 121, which provides for legislative referendum; and Article 123, which gives voters the right to propose draft laws to Congress through popular initiative.

- Legal provisions such as those contained in Law 635/1995 on Electoral Justice, whose Articles 34 and 35 deal with Civic Boards; and Law 834/1996, the Electoral Code, whose Articles 259 and 266 refer to referendum and popular initiative.

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

The constitutional provisions on the subject under review are appropriate for a State whose Constitution adopts a representative, participatory, and pluralistic democracy as the form of government, and are relevant for the achievement of the purposes of the Convention.

With regard to the legislation, although some of the laws represent progress in the implementation of the Convention's provision on participation, and could be useful for achieving its objectives, they represent a partial development of a legal framework for participation that is broader in the above-mentioned Constitutional provisions. This point can be deduced from the country's response<sup>16</sup>, which notes that the constitutional provisions are of general application and have not been the subject of regulation. For the same reason, it is not appropriate to make a separate analysis of each of the four categories of mechanisms for participation contemplated in the methodology for review of the implementation of Article III, paragraph 11 of the Convention<sup>17</sup>.

It should also be noted that Paraguay's response<sup>18</sup> points out the need to "implement mechanisms for participation at all levels."

However, it should be recognized that efforts are being made in this regard, as Paraguay's response on the subject in question states<sup>19</sup>, "CISNI plans to present a bill on citizen participation."

In light of the foregoing considerations, the Committee will make appropriate recommendations in accordance with the categories of mechanisms for participation established in the review methodology.

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

Paraguay does not provide information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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16. Ibid, p. 22.

17. 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).

18. Reply of the Republic of Paraguay to the Questionnaire. p. 25, n. 5.

19. Ibid, p. 23.

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

### **5.1. MUTUAL ASSISTANCE**

#### **5.1.1. Existence of a legal framework and/or other measures**

The Republic of Paraguay has a set of provisions on this subject, consisting of “Multilateral and Bilateral Treaties for International Judicial Cooperation” signed with various states, which are listed in its response<sup>20</sup>, and legal provisions contained in the Criminal Procedure Code concerning letters rogatory, extradition, and provisional measures (Articles 146 to 150).

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

The treaties listed by Paraguay in its response can contribute to achievement of the Convention objectives to encourage and facilitate mutual assistance among the states parties, and can contribute specifically to the investigation and prosecution of corrupt acts, if they are used for that purpose.

The legal provisions of the Criminal Procedure Code are relevant for the achievement of the purposes of mutual assistance set forth in the Convention, if they are applied, and the supplemental submission in extradition, applying international law and the rules of reciprocity, is a positive step.

It should also be noted that Paraguay said in its response<sup>21</sup> that “Paraguayan judicial authorities have not made nor received any request for mutual assistance under the Convention through the Ministry of Foreign Affairs” and also stated in the reply<sup>22</sup> that it is necessary to “Publicize the treaties for assistance and cooperation and implement them with concrete action, starting with the provisions of the Inter-American Convention Against Corruption.”

In light of the Paraguay comments the Committee wishes to stress that in order for the treaties signed by the Republic of Paraguay on mutual assistance, and the Inter-American Convention Against Corruption, to be applied to specific cases of corrupt acts, it is necessary for those entrusted with their application to be thoroughly familiar with their provisions.

In light of these observations, the Committee will make the pertinent recommendations.

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

The Republic of Paraguay has neither made nor received any request for mutual assistance within the framework of the Inter-American Convention Against Corruption. In light of this circumstance, the Committee will make a recommendation.

## **5.2 MUTUAL TECHNICAL COOPERATION**

### **5.2.1 Existence of a legal framework and/or other measures**

Paraguay’s response does not separate information on mutual assistance from that dealing specifically with mutual technical assistance, and under the same heading of “Assistance and Cooperation” in

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20. Ibid, p. 24.

21. Reply of the Republic of Paraguay to the Questionnaire. p. 24.

22. Ibid, p. 25, n. 7.

chapter 5 of the reply<sup>23</sup> it lists the “Multilateral and Bilateral Treaties for International Judicial Cooperation” that it has signed, so it is considered that they are Paraguay’s provisions in the area of mutual technical assistance.

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

These “Multilateral and Bilateral Treaties for International Judicial Cooperation” are relevant for promotion of the objectives of the Convention for mutual technical cooperation, to the extent they are used to that end. The Committee will make the appropriate recommendation.

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

Paraguay does not provide information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light of this circumstance, the Committee will make a recommendation.

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

### **6.1. Existence of a legal framework and/or other measures**

According to the information provided by Paraguay in its response<sup>24</sup>, “The Council for Promotion of the National Integrity System (CISNI) is the central consultative authority for the Convention. .Decree 16.735, March 19, 2002.”

The Attorney General’s Office is the Central Authority of the Convention for judicial questions, a role already granted to it in 1997, as duly communicated to the OAS through Note VMRE/DT/E/No. 46/97 dated March 20, 1997.<sup>25</sup>

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

The fact that the Republic of Paraguay has designated central authorities for the Convention is a step toward its implementation, because of the importance attached to the carrying out, by the designated authorities, of the duties assigned to them.

The Committee also considers it appropriate to stress that the central authority or authorities designated to channel this assistance and cooperation must have the necessary legal and budgetary resources for the job, and that notification of the designation of the central authority or authorities must be made to the OAS General Secretariat, in accordance with the prescribed procedures.

In light of these considerations, the Committee will make the appropriate recommendations.

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23. Reply of the Republic of Paraguay to the questionnaire. p. 24.

24. Ibid, p. 25.

25. This information was provided by the Republic of Paraguay on July 14, 2003. Since it involves a concrete and relevant fact officially on record with the OAS since 1997, with prior formal confirmation, the Committee decided to incorporate it in this report.

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

Paraguay does not provide information on this matter in its response. The lack of information makes it impossible to fully assess results in this field. In light 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 recommendations regarding implementation by the Republic of Paraguay of the provisions of Article III, paragraphs 1 and 2 (standards of conduct and mechanisms to enforce them); III.4 (systems for registering income, assets, and liabilities); III.9 (oversight bodies, solely with respect to the exercise by such bodies of functions related to compliance with the provisions contained in Article III. 1, 2, 4, and 11 of the Convention); III.11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption); Article XIV (Assistance and Cooperation) and Article XVIII (Central Authorities) of the Convention, which were selected in the context of the first round.

### **1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (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 Paraguay has reviewed the applicability of, and adopted, measures to establish, maintain, and strengthen standards of conduct aimed at preventing conflicts of interest and mechanisms to enforce them, as noted in section 1.1 of Chapter II of this report.**

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

- 1.1.1. Ensure that the laws concerning conflicts of interest are fully in effect, implementing recommendations 7.1 when appropriate, and that they are applicable to all public officials and employees, so that they permit practical and effective application of a public ethics system.

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measures:

- Coverage for all government officials and employees, in all levels, branches, and organs of the State (see section 1.1.2, Chapter II of this report).
- Coverage of all instances in which conflicts of interest could be seen or could arise: prior to assuming public functions; during the performance of public office; and after leaving public office, establishing adequate restrictions for those who leave public office (see section 1.1.2 of Chapter II of this report).
- Establish mechanisms to ensure effective compliance with the regulations to prevent conflicts of interest, determining the responsible agencies or authorities for

monitoring compliance, and setting forth the application of measures or sanctions in the case non-compliance.

- Designing and implementing mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, and to provide further training or periodic updating regarding them.
- Develop and implement codes of ethical conduct for all public officials and employees.

## **1.2. Standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions and mechanisms to enforce compliance**

The Republic of Paraguay has reviewed the applicability of and adopted certain measures intended to establish, maintain, and strengthen standards of conduct to ensure the conservation and proper use of resources entrusted to public officials in the performance of their functions, as indicated in section 1.2 of Chapter II of this report.

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

### **1.2.1 Strengthen control systems within the public administration.**

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measures:

- Ensure that the laws on protection of public property are fully in effect, applying, where appropriate, recommendations 7.1 and 7.2, and that they are applicable to all public officials and employees.
- Design and implement mechanisms to publicize and provide training on the standards of conduct to all government officials and employees, and to provide further training or periodic updating regarding them.

### **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 Paraguay has reviewed the applicability of, and adopted, certain measures to establish, maintain, and strengthen 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, as noted in section 1.3 of Chapter II of this report.

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



- 1.3.1 Strengthen the mechanisms that Republic of Paraguay has for requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measures:

- Ensure that the laws requiring public officials and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware are fully in effect, implementing recommendations 7.1 and 7.2 when appropriate, and that they are applicable to all public officials and employees.
- Facilitate compliance with that requirement, such as permitting that the report be made by any means of communication that are considered pertinent, regulating their use, and eliminating formalities that may inhibit reporting, and develop the protection program established in Law 1562/2000 so that whistle-blowers are protected from threats or retaliation to which they may be subject because of their compliance with this requirement.
- Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

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

**The Republic of Paraguay has reviewed the applicability of, and adopted, measures intended to establish, maintain, and strengthen systems for registration of income, assets, and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public, as noted in section 2 of Chapter II of this report.**

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

- 2.1. Strengthen the systems for registration of income, assets, and liabilities

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measures:

- Implement the provisions of Articles 104 and 283, paragraph 6 of the National Constitution in regard to sworn declaration of assets and income; ensuring that there are regulations governing such aspects as their minimum contents; mechanisms, where necessary, for evaluating and verifying, as well as updating the data ; the use and disclosure of those declarations and penalties for noncompliance.

- Establish systems to ensure compliance with the requirement by all public officials and employees, including high-level civil servants; determine the minimum content, expressly requiring data needed to comply with the purpose, including the detection and prevention of conflicts of interest; establish systems, where necessary, for evaluating and verifying, as well as updating the data contained in the declaration; and regulate the use of the contents of the declaration and its disclosure.
- Use the financial disclosure reports for detecting and punishing illicit acts.

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

The Republic of Paraguay has reviewed the applicability of, and adopted measures to establish, maintain, and strengthen oversight bodies for effective compliance with the provisions selected for analysis in the first round (Article III, paragraphs 1, 2, 4, and 11 of the Convention), as noted in section 3 of Chapter II of this report.

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

- 3.1 Strengthen the system for monitoring implementation of the aforementioned selected provisions and its oversight bodies.

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measures:

- Strengthening oversight bodies through harmonization of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, providing them with necessary legal instruments and resources for the complete development of its functions; making sure that they have greater political and social support.
- Ensuring that the laws governing oversight bodies are fully in effect, implementing, where appropriate, recommendations 7.1 and 7.2 and that they are applicable to all public officials and employees.

### **3. CIVIL SOCIETY PARTICIPATION (ARTICLE III, PARAGRAPH 11)**

The Republic of Paraguay has reviewed the applicability of, and adopted measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

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

#### **4.1 Mechanisms to ensure access to information:**

4.1.1. Institute legal norms supporting public access to government information.

In meeting this recommendation, the Republic of Paraguay may wish to take into account the following measure:

- Developing procedures for acceptance of requests, for response to requests in a timely fashion, for appeal procedures in the case of denials, and for penalties concerning failure to comply with obligations to provide information.
- Strengthening systems to ensure that the public has access, when appropriate, to information on governmental organizations and their financial and program activities, particularly with respect to oversight bodies that concern themselves with the subjects covered in this report.

**4.2 Consultation mechanisms**

4.2.1. Develop standards and procedures to support consultation mechanisms to enable civil society organizations and citizens to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

4.2.2 Design and implement programs to publicize the consultation mechanisms and, when appropriate, to train and provide the necessary tools to civil society, nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms.

**4.3 Mechanisms to encourage active participation in public administration**

4.3.1 Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

4.3.2 Design and implement programs to publicize the mechanisms for encouraging participation in public administration and, when appropriate, to train and provide the necessary tools to civil society and nongovernmental organizations, as well as to public officials and employees so that they can use such mechanisms.

4.4 Mechanisms for participation in monitoring public administration

4.4.1 Develop standards and procedures to support mechanisms to encourage civil society and nongovernmental organizations to participate in monitoring public administration and to generate opinions and proposals to be taken into account in preventing, investigating, and punishing corruption.

4.4.2 Design and implement programs to publicize the mechanisms for encouraging participation in monitoring public administration and, when appropriate, to train and provide the necessary tools to civil society and non-governmental organizations, as well as to public officials and employees so that they can use such mechanisms.

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

**The Republic of Paraguay has adopted measures dealing with mutual assistance and technical cooperation, in accordance with the provisions of Article XIV of the Convention, as noted and reviewed in section 5 of Chapter II of this report.**

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

- 5.1. Review comprehensively the specific areas in which the Republic of Paraguay might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Paraguay to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.
- 5.2. Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption.
- 5.3. Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Paraguay, and may apply them to concrete cases.

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

The Committee wishes to recognize with satisfaction that the Republic of Paraguay has complied with Article XVIII of the Convention by undertaking the measures to designate the central authority or central authorities as referred to in said article.

In light of the comments made in section 6 of Chapter II of this report, the Committee suggests that the Republic of Paraguay consider the following recommendation:

- 6.1 That the Republic of Paraguay grant the designated central authorities the legal and budgetary resources they need to completely fulfill their functions.

## **7. GENERAL RECOMMENDATIONS**

Based on the review and the contributions made throughout this report, the Committee suggests that the Republic of Paraguay consider the following recommendations:

- 7.1 Develop and implement new standards and systems for the appropriate treatment of the topics analyzed throughout this report if the standards and systems, as regulated in the current Civil Service Law, are declared unconstitutional.

- 7.2 Encourage review and adaptation, as appropriate, of the current provisions regulating civil service, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish their obligations in the performance of their duties.
- 7.3 Develop procedures to ensure that the public officials and employees who are responsible for implementing the systems mentioned in this report receive the training they need to effectively carry out their duties.
- 7.4 Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the inter-American system that may be available for the aforementioned selection by the State under review.

## **8. FOLLOW-UP**

The Committee will consider the periodic reports from the Republic of Paraguay on its progress in implementing the above recommendations in the framework of the Committee's plenary meetings, as prescribed in Article 30 of the Rules of Procedure.

It is further recommended that the Committee review the progress made in implementing the recommendations contained in this report, as provided in Articles 31 and, when appropriate Article 32 of the Rules of Procedure.

The Committee wishes to place on record the Republic of Paraguay's request, made in writing to the Chair of the Committee on July 18, 2003, to publish this 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.



**APPENDIX TO THE REPORT ON IMPLEMENTATION IN PARAGUAY  
OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW  
IN THE FRAMEWORK OF THE FIRST ROUND**

Together with its reply, the Republic of Paraguay sent attachments on the following provisions and documents:

1. National Constitution of the Republic of Paraguay
2. Civil Service Law (No. 1626/2000)
3. Government Financial Management Law (No. 1535/1999)
4. The Organic and Operational Law of the Office of the Comptroller General of the Republic (No. 276/1993)
5. The Government Administrative and Financial Organization Law (1909)
6. Municipal Organic Law (No. 898/1996)
7. Law 635/1995 on Electoral Justice and laws No. 744/1995 and 1346/1998, which amend it.
8. Decree No. 16.735/2002, *“Designating the Council for Promotion of the National Integrity System as the central consultative authority for talks on combating corruption in the Republic of Paraguay and establishing the Inter-Institutional Technical Support Committee.”*