

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

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 PERU OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE FRAMEWORK OF THE FIRST ROUND<sup>1</sup>

### INTRODUCTION

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

The Government of Peru is unitary, representative, decentralized, and organized according to the principle of the separation of powers. There are three branches of government, namely the Executive, the Legislative, and the Judiciary, and each of these branches is autonomous and independent.

The Executive Branch consists of the President and two Vice Presidents. The President carries out the functions of Head of State. He symbolizes and represents the country's ongoing interests. In turn, as Head of Government, he directs governmental policy, supported by the political-electoral majority.

The administration and management of public services are entrusted to the Council of Ministers (cabinet), with each minister responsible for matters within his or her portfolio.

The Ministry of Justice is responsible for providing legal advice to the Executive Branch and to the Council of Ministers in particular; for promoting an efficient and rapid administration of justice, linking the Executive Branch with the Judicial Branch, the Office of the Attorney General, and other entities; for coordinating the Executive Branch's relations with the Catholic Church and other creeds; for systematizing, publicizing and coordinating the legal system; for regulating and supervising registry, notary, and foundations functions; and for ensuring appropriate policies in the National Penitentiary System and the National Archives System.

The Legislature is a unicameral parliament with 120 congressmen or deputies. A deputy's role is a full-time position, and he or she is prohibited from holding any other position or

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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 reply of the Republic of Peru to the questionnaire, Introduction.

At the Republic of Peru's request, its replies to the questionnaire, together with the corresponding annexes and complementary information thereto, and the documents submitted by civil society organizations, in compliance with the terms of the *Rules of Procedure and Other Provisions*, can be found on the Internet at <<http://www.oas.org/juridico/spanish/corresp.htm>>.

practicing any other or trade during the hours that the Congress is in operation.

The mandate of a congressman is incompatible with the exercise of any other public function, except that of Minister of State, and the performance, with prior authorization from Congress, of special commissions of an international nature.

In addition, the power to administer justice emanates from the people and is exercised by the Judiciary through its hierarchical divisions in accordance with the Constitution and the law.

The Constitutional Tribunal is the body that exercises oversight on matters of constitutionality. It is autonomous and independent of the other constitutional agencies. It is subject only to the Constitution and its Organic Law.

The National Judiciary Council is an autonomous body independent of the other constitutional bodies and is responsible for selecting, appointing, confirming and removing judges and prosecutors at all levels, except when they are popularly elected, in which case it is only empowered to grant the title and impose the sanction of removal when appropriate under the law.

The People's Defender is responsible for defending the constitutional and basic rights of individuals and the community and for supervising the fulfillment of the duties of public administration and the delivery of public services.

The Office of the Attorney General is the autonomous state body whose principal functions are to defend legality, citizen rights and public interests, to represent society at law, for purposes of defending the family, minors, the disabled, and the interests of society, as well as to safeguard public morality, to prosecute crime, and to redress grievances. It must also seek to prevent crime within legal limitations and safeguard the independence of judicial bodies and the proper administration of justice and other areas entrusted to it by the Political Constitution of Peru and the country's legal system.

The Office of the Comptroller General is the technical body that directs the National Oversight System. It has administrative, functional, economic and financial autonomy and its mission is to efficiently and effectively direct and supervise governmental oversight, directing its actions toward strengthening and promoting transparency in the management of agencies, promoting the values and responsibilities of public officials and servants, and assisting the branches of government in decision-making and the citizenry in adequately participating in social oversight.

The purpose of the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration is to recommend national policy to prevent and combat corruption; to promote ethics and transparency in public administration; to prevent, evaluate and report to the Office of the Attorney General conduct that constitutes acts of corruption committed by individuals or legal entities involving public funds; to prepare the Annual Plan to Prevent and Combat Corruption; to

submit legislative or administrative proposals through the Cabinet Chief that help to reduce and prevent corruption, and to encourage transparency in public administration and administrative simplification. It reports to the Executive Branch on legal gaps that it is aware of, promotes international cooperation in the area of preventing and combating corruption, and promotes a culture of values in society, emphasizing ethical conduct on the part of citizens.

The basic purpose of the National Police of Peru is to guarantee, maintain and reestablish internal order. It provides protection to and assists individuals and the community. It guarantees compliance with laws and the security of public and private assets. It prevents, investigates and combats crime. It monitors and controls the nation's borders.

Finally, ratification of the Inter-American Convention against Corruption was provided through Supreme Decree No. 012-97-RE, and the Convention took effect for Peru as of July 4, 1997.

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

According to the OAS General Secretariat's official register the Republic of Peru ratified the Inter-American Convention against Corruption on March 29, 1996, and deposited its instrument of ratification on June 4, 1997.

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

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

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

The Committee wishes to recognize the cooperation it has received throughout the process of analysis from the Republic of Peru and, in particular, from the Ministry of Justice, made clear, *inter alia*, in the response to the questionnaire and in the constant willingness to clarify or complete its content. With its response, the Republic of Peru submitted the provisions and documents it deemed pertinent, a list of which is attached to this report.

In carrying out its review, the Committee took into account the information furnished by the Republic of Peru up until March 8, 2004, as well as the information requested by the Secretariat and the members of the review subgroup, in order to comply with their duties as stipulated in the Rules of Procedure and Other Provisions.

### **2. Document submitted by the civil society organization Transparency International**

The Committee also received, within the timeframe it established at its Third Regular Meeting,<sup>3</sup> and a document from “Proética”, which was submitted by the civil society organization Transparency International.<sup>4</sup>

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

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

#### **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 Peru has a series of provisions regarding the standards of conduct referred to, notably:

- Constitutional provisions applicable to all public officials, such as those contained in constitutional article 39, stating that all officials and workers are in the service of the nation, and 40, which prohibits a public official or employee from holding more than one compensated government position at a time, except when the second one is a teaching position.
- Constitutional provisions applicable to specific public officials, such as those establishing disqualifications and bans for high-ranking positions: for example, the terms of constitutional articles 92 and 126 for Members of Congress and Ministers of State.
- Legal provisions applicable to all public employees (defined as any officer, civil servant, or worker at the agencies of the public administration, at any hierarchical level, whether appointed, hired, designated, employed, or elected), such as those contained in Law 27815 of 2002, the Civil Service Code of Ethics Law, which sets out important principles and ethical duties for civil servants and places ethical bans thereon, such as maintaining conflicting interests, obtaining undue advantages, disseminating political propaganda, making improper use of privileged information, and pressuring, threatening, and harassing.
- Legal provisions applicable to most public employees, such as those contained in Legislative Decree No. 276 of 1984, Basic law of the civil service, Article 3, which establishes functional obligations, such as making individual interests subordinate to the common interest and to public service, and requiring that duties be performed with

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<sup>3</sup> Decision titled “Updating Questionnaire Responses.” This decision was adopted by the Committee of Experts at its February 13, 2003, session, during its Third Regular Meeting (February 10-13, 2003), held at OAS headquarters, Washington, D.C., United States of America.

<sup>4</sup> This document was received via e-mail on March 8, 2004. In addition, during an informal meeting with the members of the Committee, “Proética” made a presentation on this document.

honesty, efficiency, diligence, and dedication; Article 7, which places a ban on holding more than one public position or job, with the exception of teaching positions; and Chapter IV, which contains important obligations and bans intended to prevent conflicts of interest.

– Provisions applicable to most public employees are also to be found in Supreme Decree No. 005-90-PCM, the Civil Service Regulations, Chapter X, which contains obligations and bans; Law 27444 of 2001 – Law of general administrative procedure, Article V of Preliminary Title, which sets out the basic principles of administrative procedure; Law 26771 of 1997, regulated by Supreme Decree No. 021-2000-PCM, which places a ban on nepotism; Law 28024 of 2003, Law on handling interests in the public administration; and Law 28175 of 2004, Framework Law on public employment.

– Legal provisions applicable to high ranking state officials, such as those set forth in Law 27588 of 2001, regulated by Supreme Decree No. 019-2002-PCM, which places a series of bans on, for example, providing services, accepting paid representations, acquiring stock or shares, entering into civil or mercantile contracts, or intervening as a representative (in the situations described in the legislation) in private companies or institutions related to the scope of their public duties; and rules that govern particular public employees, such as those contained in the Parliamentary Code of Ethics (Legislative Resolution No. 021-2001-CR of 2002), in the Organic Law of the Judiciary (Supreme Decree No. 017-93-JUS of 1993), and in various Codes of Ethics belonging to specific agencies.

The Republic of Peru also has mechanisms for enforcing these standards of conduct, including:

– Law 27815 of 2002, Civil Service Code of Ethics Law, Article 10(1), which states that violation of the principles, duties, and prohibitions it contains are to be considered violations of the Code, creating responsibility subject to punishment; and Article 10(2), which states that the regulations to the Law are to establish the corresponding punishments.

– Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 25, which stipulates that public employees are subject to civil, criminal, and administrative responsibility for compliance with legal and administrative standards in the exercise of public service, without detriment to sanctions of a disciplinary nature for offenses they commit, with the applicable punishments set out in Article 26.

– Supreme Decree No. 005-90-PCM, Civil Service Regulations, Chapter XII, which sets out the disciplinary offenses and their punishments, and Chapter XIII, which regulates the applicable administrative disciplinary proceedings; Law 27444 of 2001 – Law of General Administrative Procedure, Article 242, which establishes a National Registry of Sanctions Involving Dismissal and Removal of any official or employee in public employment, preventing their return to any state agency within the following five years; Law 26771 of 1997, regulated by Supreme Decree No. 021-2000-PCM, Article 2, which

provides that agencies' Internal Oversight Bodies must monitor compliance with that law, without detriment to the oversight activities of the Office of the Comptroller General of the Republic; and Law 28024 of 2003, Law on Handling Interests in the Public Administration, which orders the creation of the Public Interest Handling Registry.

– The Criminal Code, Section IV, Chapter II (Arts. 393 to 401), which establishes criminal punishments for certain proscribed behaviors by public officials, such as bribery (either related to the official's professional activities or not), passive corruption and influence peddling.

– Supreme Decree No. 120-2001-PCM of 2001, which created the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration and assigned it important corruption prevention tasks intended to help prevent conflicts of interest, such as promoting ethics and transparency in the public administration (Art. 3.b).

– Supreme Decree No. 038-2001-JUS of 2001, which created the Decentralized Anticorruption Attorney Offices.

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

The provisions that exist in the area of standards of conduct for preventing conflicts of interest and the mechanisms to enforce them apply to all public employees; they also contain provisions for special cases, such as those involving high ranking state officials. All this is deemed relevant in pursuit of the Convention's goals.

Nevertheless, the Committee considers it appropriate to make some observations regarding the advisability for the Republic of Peru to consider strengthening the implementation of the laws and regulations applicable to these standards and mechanisms.

With respect to articles 92 and 126 of the Constitution of Peru, the Committee considers that it would be advisable for the Republic of Peru to analyze, given their legal-institutional framework, possible situations of conflict of interest that could arise from the constitutional authorization found in these norms that permits a Member of Congress to be appointed as a Minister of State, and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function. The Committee will formulate a recommendation accordingly.

One of the legal provisions with the greatest scope with respect to standards of conduct for preventing conflicts of interest is Law 27815 of 2002, Civil Service Code of Ethics Law, because it bears a direct relation to the topic and applies to all public employees. This law clearly aims at creating, maintaining and strengthening those standards, as described in Article III of the Inter-American Convention against Corruption, and it is

clearly relevant for the pursuit of those goals. The following comments, however, should be made:

– To date the regulations have not been issued, which are supposed to regulate the establishment of punishments for nonobservance (Art. 10.2) – an important issue for the law to be effective.

– According to the first of its complementary and final provisions, this Civil Service Code of Ethics, despite being an instrument with the status of a law, “is additional to the laws, regulations, and other procedural standards that exist; as long as they are not contradictory or in opposition, in which case the special provisions shall apply. This could curtail significantly its scope of application and give rise to contradictory interpretations with respect to the legal admissibility of the rules to be applied in a given case.”

With reference to the first of these comments, the Committee would like to note that the country undergoing analysis voluntarily acknowledged in its reply that the failure to issue the regulations posed a problem to the enforcement of the Civil Service Code of Ethics, stating that:<sup>5</sup>

“In addition, given that Law No. 27815 of 2002, on a Code of Ethics in Public Service has only recently taken effect, there are as yet no effective mechanisms ensuring compliance with such standards. However, the Law on a Code of Ethics in Public Service establishes the responsibility of the senior division in each public agency to disseminate the guiding principles embodied in the Code of Ethics. In addition, it is established that failing to comply with the guidelines on conduct embodied in the law would generate records in the National Registry of Sanctions involving Dismissal and Removal, as well as specific penalties envisioned in the law’s regulations. To date, said regulations have not yet been published.”

In addition, the document from “Proética” offers the following comment with respect to the second remark offered above:<sup>6</sup>

“In our opinion, however, the Civil Service Code of Ethics has been invested with relative effectiveness, since the very law by which it is established states that its application is subordinate to other provisions that already exist in the public administration and that serve to regulate behavior and/or enforce punishments – in other words, the code is not obligatory if other provisions of a similar nature already exist.”

Another important provision for preventing conflicts of interest, in terms of its coverage and content, is Legislative Decree No. 276 of 1984, the Basic Law of the Civil Service, Article 25, which lists the different types of responsibility applicable to public employees for noncompliance with public service legal and administrative rules. The Committee would like to keep in mind a comment offered by the country undergoing analysis in its

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<sup>5</sup> Updated reply of the Republic of Peru to the questionnaire, p. 6.

<sup>6</sup> Document from “Proética,” p. 10.

reply – “this standard is generic and thus has not been broadly applied”<sup>7</sup> – and to suggest that it would be appropriate for the Republic of Peru to consider evaluating the use and effectiveness of provisions governing compliance with legal and administrative rules applicable to conflicts of interest in the public administration, with a view to analyzing the adoption of measures to ensure their effectiveness.

The Committee believes that such an evaluation would be made easier by the fact that the Republic of Peru has adopted a National Anticorruption Program prepared by the Ministry of Justice (Supreme Resolution No. 160-2001-JUS), which orders, *inter alia*, a thorough analysis of corruption in the country. Consequently, in this undertaking, use could be made of the work already carried out or scheduled to be carried out under the aegis of this Program. In this connection it should be noted that the National Anticorruption Initiative Working Group, established there under, drew up a document that was included by the country under analysis in its reply as Appendix No. 24, titled, “A Peru without Corruption.” At one point, this document reads as follows: “Judging by a rapid overview of the main institutions of the State, it would seem that the chief problem was not a lack of legislation. The problem rather lies in the problems encountered in enforcing and abiding by the law. In other words, in the political will to demand, first, that the law be obeyed and, second, in the absence of punishments and incentives to reinforce such compliance. This is exactly where emphasis needs to be placed to create and apply mechanisms to ensure observance of the law.”<sup>8</sup>

One of the most notable mechanisms related to the effectiveness of the standards of conduct under discussion is the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, created by Supreme Decree No. 120-2001-PCM of 2001, which has been given a major role in preventing corruption.

Although this Commission is already operating, the Committee believes that, in light of the importance of its duties, the Republic of Peru would do well to consider strengthening it, granting it grater autonomy, and equipping it with more legal instruments and resources for discharging those functions.

In connection with this, the Committee believes it must be noted that the Commission itself has underscored the need for its strengthening in a draft legislative bill, drawn up in compliance with its functions, two sections of which read as follows:

“Consequently, there are historical, economic, moral, political, legal, and constitutional reasons for transforming the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration into a Decentralized Public Agency at the ministerial level, attached to the office of the Cabinet Chief, and for

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<sup>7</sup> Updated reply of the Republic of Peru to the questionnaire, p. 5.

<sup>8</sup> Appendix No. 24. Book “A Peru without Corruption,” p. 10.

it to enjoy technical, administrative, and economic autonomy in the performance of its duties and matters of its competence. It would also represent a line-item on the budget.”<sup>9</sup>

“This legislative initiative does not overlap with any other provision. Instead, it develops the normative mandate set forth in the Inter-American Convention against Corruption and in the agreements of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. It expands the scope of Supreme Decree No. 120-2001-PCM, of November 17, 2001, which created the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration and gave its existence legal standing. It enhances the enforcement of Law 27815, Civil Service Code of Ethics Law, and implements the provisions of the Constitution.”<sup>10</sup>

Similarly, one of the sections of the “Proética” document dealing with this Commission offers the following comment:

“However, we believe that this Commission does not enjoy and has not played a leading role in the fight against corruption, chiefly because it lacks the political autonomy needed to attain the goals it pursues.”<sup>11</sup>

The Committee would like to acknowledge the willingness of the country under analysis to make progress with strengthening this Commission, as indicated in the “Proética” document, which refers to the broad lines of the war on corruption presented by the Cabinet Chief on February 3, 2004, one of which is the “reactivation of the National Anticorruption Commission.”<sup>12</sup>

As to the detection and prosecution of acts of corruption, the Ministry of Justice has established Decentralized Anticorruption Attorney Offices, created by Supreme Decree 038-2001-JUS of October 2001, which are under the supervision of the Presidency of the State Judicial Defense Council, and the Anticorruption Attorney Office in Lima, which said Council has placed under the authority of the Public Attorney of the Ministry of Justice.

The aforementioned Anticorruption Attorney Offices are responsible for cases of corruption that have arisen under the current administration and together with Office of the Ad Hoc Attorney, the cases that occurred under the government of former President Alberto Fujimori and his advisor Vladimiro Montesinos. The aim is to institutionalize Anticorruption Attorney Offices within what would be the new State Defense Council, of which the congressional bill for its establishment has been pre-published by the Ministry of Justice in the Official Gazette “El Peruano” on July 22, 2004 and on the Ministry web

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<sup>9</sup>“Draft law creating the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration,” published on the Internet at <<http://www.cn-anticorruccion.gob.pe>>, p. 5.

<sup>10</sup> “Draft law creating the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration,” published on the Internet at <<http://www.cn-anticorruccion.gob.pe>>, p. 6.

<sup>11</sup> Document from “Proética,” p. 8.

<sup>12</sup> Document from “Proética,” p. 16.

site (www.minjus.gob.pe), in order to canvas opinions over a period of 60 calendar days from public and private entities concerned with such matters, as well as from the general public.

This new State Defense Council is proposed as a Decentralized State Body of the Justice Sector; its legal status would be that of a public entity with functional, budgetary and administrative independence, and it would have a six-member board of directors, one of whom would be responsible for criminal and anticorruption matters.

Article 242 of Law 27444 of 2001 (the Law of General Administrative Procedure) orders the creation of a National Registry of Sanctions involving Dismissal and Removal, covering all public employees, with the purpose of preventing their reentry to any state position during the following five years. The Committee believes that this Registry is an important instrument for preventing conflicts of interest, working by applying preliminary checks prior to civil service hires of individuals who, on account of their past histories, would not inspire the confidence needed to perform public duties. It therefore believes the Republic of Peru should consider implementing this Registry in such a way as to make it a useful tool for attaining this goal, making good use of new technologies to facilitate updates and timely consultation by users.

The Committee wishes to acknowledge the country's willingness to make progress with the implementation of this Registry, as indicated in the "Proética" document in its reference to the broad lines of anticorruption efforts announced by the Cabinet Chief on February 3, 2004, one of which was to pursue different administrative measures such as "launching a National Registry of Dismissed Civil Service Personnel attached to the office of the Cabinet Chief."<sup>13</sup>

It should be noted that many of Peru's provisions containing standards and mechanisms for preventing conflicts of interest have been introduced relatively recently, which indicates the country's willingness to modernize those standards and mechanisms.

In light of the updating of these standards and mechanisms that Peru has been pursuing, the country would do well to consider implementing outreach and training programs on this topic for civil servants, together with mechanisms for resolving any questions they may present in connection with it.

Bearing in mind these considerations, the Committee will offer a series of pertinent recommendations.

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

In the Republic of Peru's reply,<sup>14</sup> it states that: "Currently there is no information available regarding the results of implementing the ethical standards promulgated by each

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<sup>13</sup> Document from "Proética," p. 16.

<sup>14</sup> Updated reply of the Republic of Peru to the questionnaire, p. 6.

public agency until regulations are provided for Law No. 27815 on a Code of Ethics in Public Service. Given their newness, we feel that it is not yet possible to evaluate the results of their implementation.” It goes on to say that: “At present we have no statistical information that would allow us to objectively establish the results obtained in implementing the above standards and mechanisms.”<sup>15</sup>

The Committee believes that this absence of information prevents a comprehensive appraisal of the results in this area. Taking this circumstance into account, the Committee will make a recommendation.

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

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

The Republic of Peru has a series of provisions regarding the standards of conduct referred to, notably:

- Constitutional Provisions, such as those in Article 78 of the Constitution, which establishes that the Public Sector Budget must maintain an effective balance, and thus tax revenues must be reflected in expenditures made by the state.
- Provisions in laws governing the annual budget, such as those contained in Law No. 28128, Public Sector Budget Law for Fiscal Year 2004, which sets out measures for austerity, rationality and transparency in public spending.
- Law 27815 of 2002, Civil Service Code of Ethics Law, Article 7(5), which stipulates that public employees must protect and preserve the state’s property, using those assigned to them for the performance of their functions in a rational manner, avoiding abuse, misuse, and waste, not using or allowing others to use state property for personal ends or for purposes other than those for which they were specifically intended.
- Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 21(a) requires that public employees safeguard the interests of the state and make austere use of public resources; and Article 28(f) and (i), which establish, as disciplinary misdemeanors, the use or disposal of state property to personal benefit or the benefit of third parties, and the intentional causing of material damage to the premises, facilities, structures, machinery, equipment, documents, and other property belonging to the state or held thereby.
- Supreme Decree No. 005-90-PCM, Civil Service Regulations, Article 129, which stipulates that civil servants and public employees must act correctly and fairly in

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<sup>15</sup> Updated reply of the Republic of Peru to the questionnaire, p. 11.

carrying out their administrative duties, safeguarding the security and heritage of the state over which they have direct responsibility.

– Supreme Decree No. 012-2001-PCM of 2001, Single Consolidated Text of the Law on State Procurement and Contracting, which provides that public sector bodies must act with transparency and rationality and which states that procurement and contracting must be governed by principles such as morality, impartiality, efficiency, fair and equal treatment, etc.

The Republic of Peru also has mechanisms for enforcing these standards of conduct, including:

– Law No. 28128, Public Sector Budget Law for Fiscal Year 2004, which establishes that it is the sole responsibility of the chief of the budget unit or agency and of the authorizing officers to ensure that public funds are spent in accordance with the guidelines issued by the National Directorate of the Public Budget in compliance with Law No. 27209, State Budget Management Law, and the principles of legality, centralized standards and decentralized operations, and presumption of truthfulness.

– The aforesaid Law No. 28128, also provides that the Office of the Comptroller General of the Republic is responsible for overseeing compliance with the established provisions, and for centralizing and consolidating the evaluation reports issued by the Internal Auditing Bodies for their subsequent transmission to the Budget and General Accounting Committee of the Congress of the Republic, within five working days following the end of each quarter, and for the publication of the consolidated information on the web site of the Comptroller General's office.

– Article 2 of Law No. 27785 of 2002, Organic Law of the National Control System and of the Office of the Comptroller General of the Republic, , states that its purpose is to encourage the appropriate, timely and effective exercise of governmental control, to prevent and verify, through the application of principles, systems and technical procedures, the correct, efficient and transparent use and management of State resources and assets, the honest and upright performance of the functions and actions of public authorities, officials and employees, as well as fulfillment of the goals and results obtained by the institutions subject to its control, with the goal of contributing to and guiding improvements in activities and services to the benefit of the Nation.

– Law 27815 of 2002, Civil Service Code of Ethics Law, Article 10(1), which states that violation of the principles, duties, and prohibitions contained therein are to be considered violations of the Code, subject to punishment; and Article 10(2), which states that the regulations to the Law are to establish the corresponding punishments.

– Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 25, which stipulates that public employees are civilly, criminally, and administratively responsible for compliance with legal and administrative norms in the exercise of public service,

without prejudice to disciplinary offenses for offenses they commit, with the applicable punishments set out in Article 26.

– Supreme Decree No. 005-90-PCM, Civil Service Regulations, Chapter XII, which sets out the disciplinary misdemeanors and their punishments, and Chapter XIII, which regulates the applicable administrative disciplinary proceedings.

– The Criminal Code, Section IV, Chapter II (Arts. 393 to 401), which establishes criminal punishments for certain proscribed behaviors by public officials, such as undue use of an official position or illegal enrichment.

– Law 27444 of 2001, Law of General Administrative Procedure, Article 242, which establishes a National Registry of Sanctions Involving Dismissal and Removal of any official or employee in public employment, with the objective of preventing their return to any state agency within the following five years.

– Supreme Decree No. 120-2001-PCM of 2001, which created the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration and assigned it important tasks for ensuring the conservation and proper use of public resources, such as those set down in Article 3(c) and (i) thereof, which address the prevention, evaluation, and reporting to the Office of the Attorney General acts of corruption committed by individuals or legal entities involving public funds; and informing the corresponding entities of specific indications of cases of corruption among civil servants, public employees, and private citizens when public funds are involved.

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

The standards and mechanisms for preserving and ensuring proper use of public resources that the Committee has examined, based on the information available to it, are relevant for pursuing the goals of the Convention.

Nevertheless, the Committee considers it appropriate to make some observations regarding the advisability for the Republic of Peru to consider strengthening the implementation of the laws and regulations applicable to these standards and mechanisms. These comments, referring to standards and mechanisms common to both the prevention of conflicts of interest and the conservation and proper use of resources allocated to public officials, were already made in section 1.1.2 of this Report; consequently, the Committee will refer back to them and indicate their relevance to this topic.

The first of these observations, dealing with the failure to issue regulations for Law 27815 of 2002, the Civil Service Code of Ethics Law, must be reiterated in this section of the Report, in that Article 7(5) of the Law, as described above, contains an important provision regarding the preservation and appropriate use of state property that would be affected for the same reasons set out when the comment was first made.

Similarly, this section of the Report must include the comment on Legislative Decree No. 276 of 1984 (Basic Law of the Civil Service), Articles 21 and 28, which contains, as stated above, important provisions for the protection and careful use of public resources, and Article 25, which is applicable to both this subject and to the prevention of conflicts of interest – therefore, the assessment of its effectiveness as proposed should also address the standards and mechanisms that protect public resources.

It is equally relevant to consider included in this section of the Report the comment regarding the strengthening of the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, taking into account its important role as proscribed under Article 3(c) and (i) in preserving and conserving public resources, as described above.

Also of relevance to this section of the Report is the comment regarding the establishment of the National Registry of Sanctions involving Dismissal and Removal applied to any public official or employee with the aim of preventing their reentrance into public service during the following five years, as established by Article 242 of Law 27444 of 2001 (Law of General Administrative Procedure), given the importance that those individuals who aspire to manage public resources guarantee the required trust for such functions with spotless records in their previous undertakings.

Furthermore, with respect to the rules that govern State contracting and procurement (Supreme Decree No. 012-2001-PCM of 2001), the Committee considers that it would be useful for the Republic of Peru to implement measures designed to optimize the use of technology in that area. It also considers it advisable to more widely publicize and disseminate announcements, as well as increase bidder participation, and it will formulate recommendations accordingly.

Finally, with respect to the provisions related to standards and mechanisms for ensuring the conservation and proper use of public resources that exist in Peru, it should be emphasized that most of them were enacted relatively recently. For this reason, the Committee believes it should, as it did with the standards intended to prevent conflicts of interest, acknowledge the country's willingness to modernize those standards and mechanisms; at the same time, it also believes that in light of that updating effort, the Republic of Peru would do well to consider implementing outreach and training programs on this topic for public officials, together with mechanisms for resolving any questions they may present in connection with it.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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

In the Republic of Peru's reply,<sup>16</sup> it states that: "There are no objective results available given that the year 2004 budget is now being executed."

The Committee believes that this absence of information prevents a comprehensive appraisal of the results in this area. Taking this circumstance into account, the Committee will make a recommendation.

### **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 Peru has a series of provisions regarding the standards of conduct and mechanisms referred to, notably:

– Law 27815 of 2002, Civil Service Code of Ethics Law, Article 11, which requires that any public employee who becomes aware of an action in breach of that Code is obliged to report to the Permanent Commission of Disciplinary Administrative Proceedings of the agency in question, or the entity that serves that function under its responsibility, for the relevant process to be followed..

– Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 21(g), which requires public employees to inform their superiors of immoral and/or criminal acts committed in the exercise of public duties; and Articles 25 *et seq.*, which establishes responsibility and disciplinary sanctions for failing to abide by this obligation.

– Supreme Decree No. 005-90-PCM, Civil Service Regulations, Article 133, which states that any person who learns of the commission of a criminal act in the workplace or in circumstances related directly to public duties is required to report the fact promptly to the competent higher authority; and Chapter XII, Articles 150 *et seq.*, which establishes disciplinary sanctions for failing to abide by this obligation.

– Article 407 of the Criminal Code, which stipulates that anyone who fails to report to the authorities what they know regarding the commission of an offense, when they are required to do so based on their profession or job, shall be punished with imprisonment of no more than two years and, if the non-reported offense is subject under the law to a prison sentence of more than five years, the penalty for failure to report shall be no less than two years and no more than four years in prison.

- Law 27378 of December 2000, which provides benefits for effective collaboration in connection with organized crime, affords protection measures for anyone who takes part as collaborators, witnesses, experts or victims in judicial proceedings connected with

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<sup>16</sup> Updated reply of the Republic of Peru to the questionnaire, p. 13.

crimes in which they have some involvement; which the judge rationally considers to place in serious danger the person, liberty or property of anyone who seeks to benefit from those measures, including their spouse or partner, or parents, children or siblings.

The protection measures are: police protection, which may include change of residence or concealment of whereabouts; withholding of identity, procedures to prevent their identification; fixing the competent Government Attorney's Office as their domicile, for the purposes of summonses and notifications; and protection of labor rights for public officials, civil servants, judges, and officers of the Attorney General's Office.

The regulations for this law, adopted by Supreme Decree 020-2001-JUS of July 2001, describe in greater detail the protection measures that may be adopted; and Supreme Decree 031-2001-JUS of October 2001, defines more precisely the protection measures in this respect.

– Law No. 26520 of 1995, Organic Law of the Office of the People's Defender, Article 1, which states that this office is responsible for defending the constitutional and basic rights of individuals and of the community and for overseeing compliance with the duties of the public administration, of which Article 9 provides major responsibilities in this respect.

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

On the basis of the information available to it, the standards and mechanisms relating to measures and systems to require public officials to report to the competent authorities regarding acts of corruption in public office that the Committee has examined are relevant to promoting the purposes of the Convention.

However, with regard to Law 27815 of 2002, Civil Service Code of Ethics Law, the Committee believes it should offer the same reasoning as it gave in section 1.2.1 of this report with regard to the failure to enact regulations for that Law; in this specific instance, this could undermine the effectiveness of the obligation of reporting violations thereof contained in Article 11.

The Committee also considers equally valid the comments offered in section 1.2.1 of this Report with respect to Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 21(g), which contains the important obligation of reporting criminal and immoral acts, of which Article 25 is applicable in this regard, and with reference to the prevention of conflicts of interest; it is thus relevant that the evaluation of effectiveness proposed therein also cover the standards and mechanisms governing the obligation of reporting acts of corruption.

The Committee also believes it would be useful for the Republic of Peru to consider strengthening the mechanisms it has in this area, in order to enable public employees to perform their duty of reporting acts of corruption and to grant them effective protection

from the threats or any other act of pressure or coercion they might face as a consequence of discharging those duties.

The Committee believes that the practicality of this strengthening aspect should be considered. The point was highlighted by the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration when, in exercise of the powers granted to it, said Commission prepared a draft Supreme Decree containing three sections that, in connection with the proposed measures, read as follows:

“One of the leading issues in anticorruption legislation is protection for those individuals who report actions or incidents within their agencies. Normally it is the workers themselves who are best informed about possible irregularities and corruption in the workplace. When they do not enjoy protection, however, it is difficult to require them to present complaints, since that often places them, their families, or their friends at risk. Therefore, the aim is to establish legal measures to protect those who present these complaints. With these measures, the workers act as extensions of the oversight bodies, while not requiring that the existing comptrollers, attorney generals, and public prosecutors increase their personnel.”<sup>17</sup>

“Public employees must be ready to file complaints when they see any sign of corruption or actions leading thereto, particularly when they could constitute criminal acts; and, in doing so, not feel pressured into silence by their superiors but instead receive support and guidance from those superiors in combating such functional irregularities.”<sup>18</sup>

“These measures of protection are geared toward counteracting any and all actions or practices, be they formal or informal, that directly or indirectly affects the personal integrity, property, contractual conditions, labor relations, personal and professional reputation, sexual freedom, and other dear and heartfelt values held by the protected persons and, in general, prevent the emergence of any form of harm or damage. Said protected individuals include public employees who file the complaint, their relatives, and other persons with ties of affection to them.”<sup>19</sup>

Furthermore, bearing in mind that the standards contained in Law 27378 of December 2000, Supreme Decree 020-2001–JUS of July 2001, and Supreme Decree 031-2001–JUS of October 2001 do not include persons who in good faith report crimes and have not participated in the commission of crimes, the Committee will make a recommendation in this regard.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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<sup>17</sup>Draft Supreme Decree on the Protection of Complaint Filers, published on the Internet at <<http://www.cn-anticorrupción.gob.pe>>, p. 1.

<sup>18</sup> Draft Supreme Decree on the Protection of Complaint Filers, published on the Internet at <<http://www.cn-anticorrupción.gob.pe>>, p. 3.

<sup>19</sup> Draft Supreme Decree on the Protection of Complaint Filers, published on the Internet at <<http://www.cn-anticorrupción.gob.pe>>, p. 5.

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

In the Republic of Peru's reply,<sup>20</sup> it states that: "Given that the Regulations for the Law on the Code of Ethics in Public Service have not been approved, it is impossible to determine the effectiveness of that law as an instrument for the reporting of corrupt acts in public office." It goes on to say that: "The requirement in the Penal Code mentioned above establishes that the respective report must be made to the competent authority, for which reason the corresponding levels would be determined for each specific case in the Judicial Branch."

It should, however, be noted that the reply<sup>21</sup> states that in February 2002, the Interior Ministry created the "Police Defense Office," whose functions include investigating complaints filed by police officers and civilians and thus offers a method for investigating acts of corruption within that agency. For the results attained by this Defense Office, the reply refers to a web site: (<http://www.mininter.gob.pe/defensoria/index.html>), where it can be seen that the Office has been active in dealing with a range of complaints, petitions and consultations.

The country's reply also states<sup>22</sup> that information on the Office of the People's Defender can be obtained on that agency's web site ([www.defensoria.gob.pe](http://www.defensoria.gob.pe)). Consulting this page indicates that the agency has played an active role in investigating irregular actions by civil servants reported by the citizenry. One example is the statement it issued in the official journal *El Peruano* on February 7, 2003, under the title "Against practices that encourage an environment of corruption and abuses of power," in which, after revealing that a given public institution had not fully investigated the allegations made by one citizen, it recommends that an exhaustive investigation be carried out.

Since, other than the details referenced above, the Committee has no additional information that would allow it to offer a comprehensive appraisal of the impact of the applicable standards and mechanisms, it will offer a recommendation in this regard.

## **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 Peru has a series of provisions regarding the systems referred to, notably:

– The Peruvian Constitution, Article 40, which requires the regular publication in the official journal of the income, from all sources, received, by senior officials and other

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<sup>20</sup> Updated reply of the Republic of Peru to the questionnaire, p. 16.

<sup>21</sup> Updated reply of the Republic of Peru to the questionnaire, p. 15.

<sup>22</sup> Updated reply of the Republic of Peru to the questionnaire, p. 15.

civil servants specified by the law by reason of their positions; and Article 41, which provides that the public officials and employees specified by law or who administer or manage government funds or the funds of government-supported agencies must make a sworn statement of assets and income upon assuming their positions, during their term of service, and upon leaving service, and that the respective publication must appear in the official journal in the manner and under the conditions indicated by law.

– Law No. 27482 of 2001, Law Regulating the Publication of Sworn Statements of Income, Property, and Revenues by State Officials and Civil Servants, which develops the aforesaid constitutional precepts and indicates which officials are required to submit such statements; their content; the occasions on which they are to be submitted; the agency that is to record them and to keep them on file as public documents; the agency responsible for publishing them in the official journal *El Peruano*; and the times when such publication is to take place.

– Supreme Decree No. 080-2001-PCM, which regulates Law No. 27482 of 2001; it also clearly identifies those individuals required to submit such sworn statements and the times at which they are due, details their content and requires they be submitted on a standardized form, indicates the authority responsible for receiving, recording, and filing received statements and for forwarding them to the Office of the Comptroller General, stipulates the penalties applicable for noncompliance with the obligation of submitting a sworn statement, establishes a procedure for resolving statements presented with material errors or omissions and measures applicable to statements containing false information, and regulates the procedure whereby they are to be published in the official journal *El Peruano*. It should be taken into consideration that a part of the information contained is confidential and should be filed and kept secret and, pursuant to the rights set forth in Article 2(5) and (6) of the Peruvian Constitution, may only be used by the oversight bodies or if requested by a court order.

– Legislative Decree No. 276 of 1984, Basic Law of the Civil Service, Article 22, which provides that the public officials specified by law or who administer or manage state funds must make a sworn statement of assets and income upon assuming their positions, at regular intervals during their term of service, and upon leaving those positions.

– Supreme Decree No. 005-90-PCM, Civil Service Regulations, Article 130, which stipulates that civil servants are to present sworn statements of their assets and income, as well as those responsible for overseeing, managing, and administering public funds; and that these statements, as mandated administratively, are to be made every two years in the first week of January, in addition to the requirement to file a statement upon assuming and leaving such a position.

– Resolution of the Office of the Comptroller General of the Republic No. 174-2002 of September 12, 2002, adopting Directive No. 02-2002-CG/AC, which contains rules for processing and evaluating sworn statements, covering, *inter alia*, the subsequent selective oversight to be carried out by the Office of the Comptroller General. It also contains rules for the verification that the General Administration Directorate, or its substitute body in

each entity, must carry out with respect to their contents, in order to detect material errors or omissions; the form to be used to present the information; and the authority of the Office of the Comptroller General to request additional document to back up the information contained on those forms.

– Article 401 of the Criminal Code, which establishes that an indication of illicit enrichment is considered to exist when the increase in the assets of an official or civil servant, in light of their sworn statement, is notably higher than what they could normally have obtained.

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

The Republic of Peru's rules governing the Sworn Statements of Income, Property, and Revenues of State Officials and Civil Servants, as examined by the Committee and on the basis of the information available to it, are relevant for pursuing the goals of the Convention.

However, the Committee believes the country would do well to consider complementing those provisions, to include the explicit requirement that these sworn statements incorporate issues relating to “liabilities,” and for this concept to be developed and its constituent elements indicated, specifying the information to be supplied.. This would be similar to that given by these same provisions to the concepts of “assets,” “income,” and “revenue,” as these “liabilities” are one of the three basic concepts, alongside “income” and “assets,” expressly identified in Article III, paragraph 4 of the Convention in dealing with the statements in question.

In addition to the foregoing, the Committee also believes that expressly establishing an obligation whereby those making statements are to furnish detailed and complete information on their “liabilities” – such as the nature of their obligations or debts and the terms thereof, together with the amounts, commencement dates, documents, details on the creditors, and the relationships that might exist therewith by reason of official duties – would facilitate the use of these sworn statements as a tool for detecting and preventing conflicts of interest. This would help achieve the purpose of sworn statements as envisioned by Directive No. 02-2002-CG/AC of the Office of the Comptroller General of the Republic: “an effective instrument, and a tool to prevent corruption at any level, providing the ability to verify, by means of technical procedures and the selection of the information reported, as to whether civil service staff members are behaving with honesty and not using their positions to secure improper economic benefits.”

The Committee offers these comments bearing in mind that in analyzing the provisions applicable to the Republic of Peru's systems for sworn statements of assets, income, and revenue, as described in Section 2.1, Chapter II, of this Report, it did not find the provisions governing the content of such statements any reference to the inclusion of the “liabilities” by those making the declaration; neither is this concept developed in great depth, in contrast to the concepts of “assets,” “income,” and “revenue,” and only on the “Single Form for Sworn Statements of Assets, Income, and Revenue” and in Appendix

No. 01 thereto is there a reference to “Debts and obligations owned,” which only requests that the type of debt and the amount thereof be indicated.

The Committee also believes that it would be useful for the Republic of Peru to consider including in the standards on sworn financial statements, the obligation to provide information on separate assets belonging to the official’s dependents; the assets belonging to his or her spouse; and to the assets jointly owned with his or her spouse or domestic partner, stating the provenance of said assets; and, furthermore, to list any positions they might have held, in order to detect possible cases of conflict of interest.

Finally, the Committee also deems it advisable for the country under analysis to consider including on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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

In the Republic of Peru’s reply,<sup>23</sup> the following comment is offered:

“The publication of sworn statements by officials and public servants has awakened interest among the citizens and there has been full compliance among public officials and employees in the civil service. In addition, in some cases, given the presumption in Article 401 of the Penal Code [which establishes that an indication of illicit enrichment is considered to exist when the increase in the assets of an official or public servant, taking into account their sworn statement, is notably higher than what they could normally have], these sworn statements have led to judicial investigations.”

The Committee believes that although the country’s declarations regarding the publication of sworn statements and the presumption set forth in Article 401 of the Criminal Code would demonstrate, in the first instance, compliance that the rules governing publication have attained and, in the second instance, the use of the statements in judicial investigations, it is not possible, on the basis of those declarations, to offer a comprehensive and objective appraisal of the results obtained in this regard.

Nevertheless, the Committee recognizes that the terms of Article 401 of the Criminal Code – establishing a presumption on the basis of the Sworn Statement – is in itself an indication that these statements have clearly been taken by the country’s legal system as being a useful instrument for detecting possible instances of illegal enrichment.

The Committee holds, in concordance with its comments in Section 2.2 of Chapter II of this Report, on the importance of including references to “liabilities” in the content of the Sworn Statement in order to facilitate its use as a tool for preventing conflicts of interest,

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<sup>23</sup> Updated reply of the Republic of Peru to the questionnaire, p. 19.

that it would be useful for the country under analysis to complement the use it has made in detecting possible cases of illegal enrichment by optimizing the analysis of the contents in order to make it a useful tool for preventing such conflicts.

For the foregoing purposes, the Committee also considers that it would be useful for the Republic of Peru to consider establishing systems for the effective verification of sworn financial statements; the establishment of a register of officials required to submit sworn financial statements; and the implementation of a computerized system to alert appropriate authorities to substantial changes in the content of an official's sworn statements.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

### **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 Peru has a series of standards applicable to the oversight bodies responsible for the tasks described in sections 1, 2, 4, and 11 of Article III of the Convention. These provisions include the following:

– Peru's Constitution, which contains provisions dealing with these bodies, such as those set forth in Articles 81 and 82 (Office of the Comptroller General of the Republic); 97, 99, 100, 101, and 102 (Congress of the Republic, and the Permanent Commission of Congress); 143 (Judiciary); 150 and 154 (National Judiciary Council); 158 and 159 (Public Prosecution Service); 161 and 162 (Office of the People's Defender); and 201 and 202 (Constitutional Court).

– Law No. 27785 of 2002, Organic Law of the National Control System and of the Office of the Comptroller General of the Republic, Article 1, which sets the law's purpose as establishing standards for regulating the scope, organization, powers and operations of the National Control System and of the Office of the Comptroller General of the Republic as the system's lead technical agency.

– The Organic Laws of the Judiciary (Supreme Decree No. 017-93-JUS of 1995); of the Public Prosecution Service (Legislative Decree No. 052 of 1981); of the Office of the People's Defender (Law No. 26520 of 1995); and of the Constitutional Court (Law No. 26435 of 1995).

– Law No. 28175 of 2004, Framework Law on Public Employment, the purpose of which is to establish general guidelines for promoting, consolidating, and maintaining a modern, hierarchical, professional, unitary, decentralized, and devolved public administration; and which creates the Higher Council of Public Employment as the agency responsible for overseeing compliance with its provisions, and the Public Employment Tribunal as the body charged with resolving conflicts that arise within the framework of that law.

– Resolution No. 331-2003-CG of 2003, of the Office of the Comptroller General of the Republic, approving the Policy Guidelines for the Formulation of the Annual Control Plan of the Organs of Institutional Oversight, and Directive No. 002-203-CG/PL “Annual Control Plan of the Organs of Institutional Oversight for the year 2004.”

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

The set of standards available to the Republic of Peru vis-à-vis the oversight bodies responsible for ensuring compliance with the terms of sections 1, 2, 4, and 11 of Article III of the Convention covers the provisions contained therein considering that there are bodies of such a nature with general or specific competence for overseeing that compliance; and this represents progress made with its implementation.

On the basis of the information that it has had available, the Committee notes that the Republic of Peru has, in this regard, relevant rules for promoting the aims of the Convention.

However, the Committee believes the Republic of Peru would do well to consider strengthening its higher oversight bodies, to ensure they have the necessary support and resources for full compliance with the tasks assigned to them in connection with the aforesaid provisions of the Convention, along with mechanisms for the effective institutional coordination of its actions and the ongoing evaluation and follow-up thereof.

In connection with this, the Committee believes note should be taken of the fact that the country undergoing analysis has addressed the advisability of strengthening its oversight system, as indicated by Supreme Resolution No. 160-2001-JUS of 2001, two of the introductory clauses of which read as follows: “acts of corruption involving high officials of the State have produced a situation of instability in the political institutions and have encouraged the moral and material impoverishment of the nation,” and “the situation arising from the current serious crisis reflects a weakness in the legal instruments intended to oversee public resources, along with the reduced institutionality that would enable proper oversight of public duties.”

Similarly, the Committee believes that the creation of new bodies with oversight responsibilities – such as those described in the recently enacted Framework Law on Public Employment – requires that mechanisms to ensure proper institutional coordination be devised.

The Committee would like to recognize the country’s willingness to progress in strengthening its oversight bodies; this can be seen in the “Proética” document, which refers to the broad lines of anticorruption action presented by the Cabinet Chief on February 3, 2004, including “Strengthening the Judicial System,” and “Amending the Law of the National Control System to encourage citizen participation in the oversight measures implemented by the Comptroller’s Office.”<sup>24</sup>

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<sup>24</sup> Document from “Proética,” p. 16.

Another major indication of Peru's willingness to progress in strengthening its oversight system was Resolution No. 331-2003-CG of 2003, of the Office of the Comptroller General of the Republic, which, among the goals set for the 2004-2006 period in the Policy Guidelines for the Formulation of the Annual Control Plan of the Organs of Institutional Oversight, includes "Strengthening the National Oversight System. Based on improvements in the technical and operational capabilities of the System and in its performance; on the integration and complementation of its actions with the technical overseeing body, improving planning, supervision, and evaluation; and on the appropriate dissemination of the results of this oversight so that society can perceive its benefits."

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

In the Republic of Peru's reply,<sup>25</sup> it states that: "information on the National Oversight System is found on the website of the Comptroller's Office at: <[www.contraloria.gob.pe](http://www.contraloria.gob.pe)>."

The Committee believes that the information set forth on that web site at the time of drafting this Report does not allow it to offer a comprehensive appraisal of the results obtained by the Higher Oversight Bodies vis-à-vis each of the provisions contained in sections 1, 2, 4, and 11 of Article III of the Convention, on an individual basis, in that it is not broken down adequately. Taking this circumstance into account, the Committee will make a recommendation.

## **4. MECHANISMS TO PROMOTE THE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. 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 Peru has a series of provisions regarding the mechanisms referred to, notably:

– Constitutional provisions, such as those set forth in Article 2 of the Peruvian Constitution, which include, among the rights of all individuals, the right to participate individually or collectively in the political, economic, social, and cultural life of the nation; and Article 31, which sets forth the right of citizens to elect and be elected and to participate in public affairs through referendums, legislative initiatives, removal or recall of authorities, and demands for accountability, and which establishes the right and duty of residents to participate in their local municipal government, further adding that the law governs and promotes direct and indirect mechanisms for their participation.

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<sup>25</sup> Updated reply of the Republic of Peru to the questionnaire, p. 23.

– Legal provisions, such as those set forth in Law No. 26300 of 1994, Law on the Right of Participation and Citizen Control; Law No. 27658 of 2002, Framework Law for the modernization of the state administration; Law No. 27783 of 2002, Law on the Bases for Decentralization; and Law 28056 of 2003, Framework Law on the Participation Budget.

– Sundry provisions, such as those contained in Ordinance No. 102 of 1996 of the Metropolitan Municipality of Lima, which created the “Metropolitan Commission against Municipal Corruption”; in Resolution No. 443-2003-CG of 2003, from the Office of the Comptroller General, which established the “Complaint Attention Service”; and in Ministerial Resolution No. 297-2000-PROMUDEH, which created the “Transparency Commission” within the Ministry of Women’s Promotion and Human Development.

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

The constitutional provisions for this matter that exist in Peru and that are being analyzed are typical of a democratic state, with the Constitution establishing one of the characteristics of its government as being representative, and they are relevant to the pursuit of the Convention’s goal. The legal and other provisions listed above also point to that goal, and they will be taken into account in analyzing each of the participation mechanisms indicated in the classification contained in the methodology for analyzing implementation of Article III, paragraph 11, of the Convention.

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

In the Republic of Peru’s reply,<sup>26</sup> it states that: “As we indicated before, the provisions cited have been inadequate for promoting citizen participation in public activities. However, we can point out that some entities of the State (such as the Ministry of the Interior, the Ministry of Women and Development, the Municipality of Barranco, the PROINVERSIÓN program (in charge of privatization of state assets) and the National Office of Electoral Processes, etc.) have begun to invite civil organizations to monitor specific actions of public administration, primarily in connection with their most important procurement procedures.”

As indicated by the country undergoing analysis – that the provisions cited have been inadequate for promoting citizen participation – the Committee will offer the relevant remarks and formulate the recommendations it deems pertinent, in the section of this report dealing with mechanisms for encouraging participation in the public administration.

With respect to the statement that some bodies have already begun to invite civil organizations to join in the performance of various public functions, the Committee would like to note that the “Proética” document also<sup>27</sup> refers to civil society participation in matters such as the “Forum for the National Accord for Justice,” which is a process of national debate proposed by the Judiciary, to which representatives of civil society are

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<sup>26</sup> Updated reply of the Republic of Peru to the questionnaire, p. 27.

<sup>27</sup> Document from “Proética,” pp. 46, 47, and 48.

invited “to discuss proposals offered by the Commission for Restructuring the Judiciary, to gather together the different existing citizens’ initiatives and to propose, through a national coalition for legitimacy and sustainability in changes to the judicial system, state policies with a view toward structuring a system of justice that is independent, accessible, effective, predictable, and modern, to the benefit of the citizenry.”<sup>28</sup> The Committee believes that this situation reflects the willingness to open up forums for civil society participation that exists within these agencies.

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

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

The Republic of Peru has a series of provisions regarding the mechanisms referred to, notably:

- The Constitution, Article 2(5), which recognizes the right of all individuals to request, without explaining why, the information they require and to receive the same from any public agency, within the timeframe set by law and covering the cost incurred in processing the request, with the exception of information that affects personal privacy and expressly excluded by law or for reasons of national security; and Article 200(3), which stipulates that an Action for Habeas Data may proceed against any act or failure to act on the part of any authority, officer, or person who undermines or threatens that right.
- Law No. 27806 of 2002, Law on Transparency and Access to Public Information, amended by Law No. 27927 of 2003, and regulated by Supreme Decree No. 072-2003-PCM, which aims to promote transparency in state actions and to regulate the basic right of access to public information set forth in the Constitution, and in pursuit of that goal requires that all agencies of the public administration abide by the principle of public access. It also establishes the rules and deadlines to be observed by all such procedures, together with the types of information that, as exceptions, have confidential status; indicates the remedies admissible against a denial of information and sets out sanctions for failing to abide by its provisions.
- Supreme Decree No. 018-2001-PCM, which requires all agencies of the public administration to incorporate into their Sole Text of Administrative Procedures (TUPAs) a procedure for access to information and to establish guidelines for its use.
- Emergency Decree No. 035-2001, which requires that all public entities include, on their web sites, information regarding their budgets, finances and spending and on the members of their staffs.
- There are also provisions applicable to information access in Law No. 27658 of 2002, Framework Law for the Modernization of the State Administration; in Law 28056 of

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<sup>28</sup> Document from “Proética,” p. 46.

2003, Framework Law on the Participation Budget; and in Law 28024 of 2003, Law on Handling Interests in the Public Administration.

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

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

The Committee believes that with reference to the current provisions regulating the constitutional right to information, it should stress their relatively recent enactment and the possibilities they offer for the use of new communications technologies in facilitating access to information held or controlled by public agencies. This circumstance reflects the modernization that the country undergoing analysis has attempted to introduce in this area, and it makes it advisable for it to consider implementing training and dissemination programs in order to increase understanding among civil servants and the citizenry alike and in optimizing the use of the available technology.

Furthermore, the Committee considers it advisable for the Republic of Peru to consider analyzing the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of "public utility" mentioned in paragraph 2 of the above-cited article.

In light of the foregoing, the Committee will put forward a number of recommendations

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

In the Republic of Peru's reply,<sup>29</sup> it first states that between 1994 and 2000, the constitutional precept governing the right to information yielded no great results, but that in 2001 the initiative regulating the right was adopted; the following comment is then offered:<sup>30</sup>

“As for transparency, during the transition government, the Ministry of Economy and Finance adopted the important initiative of publishing relevant information on public finances on its website, in accordance with the provisions of Emergency Decree No. 035. Nonetheless, the website has not been updated.

In general, most public agencies have ignored the above-referenced Supreme Decree No. 018-2001– PCM and Emergency Decree No. 035-2001.”

In addition to the above, the reply refers to the web site of the Office of the People's Defender, <[www.ombudsman.gob.pe/informes](http://www.ombudsman.gob.pe/informes)>, and states that the agency has issued important reports and statistics, which can be reviewed on the website.

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<sup>29</sup> Updated reply of the Republic of Peru to the questionnaire, pp. 28 and 29.

<sup>30</sup> Updated reply of the Republic of Peru to the questionnaire, p. 29.

In the “Sixth report by the People’s Defender to the Congress of the Republic, 2002-2003,” which is the most recent of those published on the web site in question, with reference to the right of information access, in a section titled “general diagnostic,” the following is noted:<sup>31</sup>

“In spite of the enactment of Law No. 27444, Law on General Administrative Procedure, and of Law No. 27806, Law on Transparency and Access to Public Information, only certain institutions have implemented, in their Sole Texts of Administrative Procedures (TUPAs), the right of access to information and the procedures for exercising the same.”

That web site also contains information under the title, “Supervising Regional Governments’ Transparency Portals,”<sup>32</sup> showing the level of compliance shown, as of January 10, 2004, by those governments with respect to the obligation set forth in Law No. 27806 of 2002, the Law on Transparency and Access to Public Information, and its Regulations, whereby they are required to publish specific information on their web sites. From this it can be deduced that the level of compliance is low.

The Committee considers that the statements made by the country under analysis in its reply must be noted, when it indicated that most public agencies have ignored Supreme Decree No. 018-2001-PCM, which requires all public administration bodies to include a procedure for information access in their Sole Texts of Administrative Procedures (TUPAs), and Emergency Decree No. 035-2001, which requires all public institutions to include certain information on their web sites, and that it should offer a recommendation regarding compliance with those standards, and with the other provisions related thereto. The Office of the People’s Defender has also reported low compliance..

It should be added in this regard that the “Proética” document also deals with the problem of noncompliance with rules governing the right to information, stating in one of its sections that:<sup>33</sup>

“Investigations carried out by organizations such as the Peruvian Press Council have concluded that the level of compliance by official bodies with the Law on Transparency and Access to Public Information is minimal. According to Article 6, the 25 regional governments had a deadline of one year from the start of their administrations to create websites on which they were to provide quarterly updates of general information regarding the region, budgetary details, purchases of goods and services, official activities carried out by senior officials, and such additional information as the regional body deemed germane. The Peruvian Press Council states that with regard to this provision, as of January of this year, 13 of the 25 regional governments were in total noncompliance, 7 were complying with publication of their budgets and purchases, 17 were not reporting their recruitment and purchases, and no regional administration had identified the official responsible for updating the information on those websites.”

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<sup>31</sup> “Sixth report by the People’s Defender to the Congress of the Republic, 2002-2003,” pp. 101 and 102.

<sup>32</sup> “Supervising Regional Governments’ Transparency Portals,” pp. 1 and 2.

<sup>33</sup> Document from “Proética,” p. 52.

Additionally, the “Sixth report by the People’s Defender to the Congress of the Republic, 2002-2003,” referred to above, states, with reference to the right of information access, in a section titled “general diagnostic,” the following:<sup>34</sup>

“Although a campaign on access to public information was held in 2001, the culture of secrecy still exists, as can be seen in the limited possibilities that citizens have in accessing public information. This situation is worsening because most officials and civil servants, who are recently elected, are unaware of the legal provisions governing this right.

“The office the ombudsman in Piura noted that a large number of public institutions did not provide information requested by the citizenry on a timely and complete basis. This situation arises from the lack of knowledge described above, from the deficient organization of the public archives, and from the lack of necessary infrastructure. On repeated occasions, the Office of the People’s Defender had to press the authorities to provide the requested information, since it was not covered by the exceptions established for the right of access to information.”

The Committee believes that these comments by the Office of the People’s Defender should be taken into account in formulating a recommendation for the country undergoing analysis, whereby, in addition to giving due consideration to providing civil servants with the training needed for them to understand and apply the rules for information access properly, consideration would also be given to conducting an assessment exercise for identifying the causes that could be having an adverse affect on the effectiveness of their implementation, such as those that were suggested by that Office in referring to the deficient organization of public archives and the absence of an appropriate infrastructure; and that, as a result of that evaluation exercise, steps be taken in order to overcome those problems.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

### **4.3. CONSULTATIVE MECHANISMS**

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

The Republic of Peru has a series of provisions regarding the mechanisms referred to, notably:

- The Peruvian Constitution, Article 31, which states that citizens are entitled to participate in public matters through referendums, legislative initiatives, removing or recalling authorities, and demands for accountability; and Article 32, which provides those issues than can be addressed by means of a referendum.

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<sup>34</sup> “Sixth Report by the People’s Defender to the Congress of the Republic, 2002-2003,” pp. 100 and 101.

- Law No. 26300 of 1994, Law on the Right of Participation and Citizen Control, Article 37, which says that the referendum represents the right of citizens under the Constitution to express themselves regarding those issues brought before them for consultation, and which governs the terms for calling referendums and the effects of their results.
- Law No. 27783 of 2002, Law on the Bases for Decentralization, Article 17(2), which states that without prejudice to the political rights granted to all citizens under the Constitution and applicable laws, citizen participation is to be channeled through existing opportunities for consultation, coordination, collaboration and monitoring and those that regional and local governments may establish in accordance with the law.
- Law No. 27658 of 2002, Framework Law for the Modernization of the State Administration, Article 8, which provides that the State must promote and establish the mechanisms for achieving adequate participatory democracy for citizens, through direct and indirect participation mechanisms.
- Law No. 27867 of 2002, Organic Law of Regional Governments, Article 11, which establishes the Regional Coordination Council as a consultative and coordinating body between the regional government and the municipalities, made up of the provincial mayors and representatives of civil society; and Article 24, which requires regional governments to hold at least two regional public hearings a year – one in the regional capital and the other in a province – to report on the progress and achievements during that period.
- The Organic Law of Municipalities, Articles 80 to 84, which allows local residents to participate in municipal administrations; and Article 85, which establishes Communal Committees, to serve as organs for consultation and participation.
- Provisions applicable to these participation mechanisms can also be found in Law No. 27902 of 2003, which amended the Organic Law of Regional Governments; in Law 28056 of 2003, Framework Law on the Participation Budget; and in Law No. 28059, Framework Law for Promoting Decentralized Investment.

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

The provisions governing consultation mechanisms that the Committee has examined, based on the information available to it, are relevant for pursuing the goals of the Convention.

In spite of this, the Committee deems it appropriate for the country undergoing analysis to consider complementing the existing consultation mechanisms and, when appropriate, establishing procedures that will enable public consultations to be held prior to the final adoption of legal provisions.

The Committee believes that in connection with this, notice should be paid to the content of the “Sixth Report of the People’s Defender to the Congress of the Republic, 2002-

2003,” which, in referring to the Law on the Right of Participation and Citizen Control (Law 26300 of 1994), states that: “an amendment thereof is necessary, both to amend aspects that have already been regulated and to incorporate new procedures,” and, with reference to this latter point, adds the following:<sup>35</sup>

“Particularly urgent among the new procedures to be incorporated is the regulation of the right of consultation enshrined in International Labour Organization Convention 169 on indigenous peoples in independent countries, on behalf of those sectors of the population. Under this Convention, the State is required to consult with indigenous peoples about administrative or regulatory measures that could affect them.

“Similarly, regulations must be introduced for popular consultation procedures for those who could be directly affected by administrative, regulatory, or legislative measures. These procedures should allow a dialogue between the different stakeholders, not only those of the people who are directly affected. Thus, the conditions should be set so that these consultations can produce universally verifiable results; and it should be specified which of those results are publicly binding and the responsibilities that could arise during the different processes.”

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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

In the Republic of Peru’s reply,<sup>36</sup> it states that: “Given the newness of the legislation, no objectives are being met as yet.”

The “Proética” document offers the following comments:<sup>37</sup>

“According to the Organic Law of Regional Governments, each such government must hold at least two public hearings per year. In this regard, we note that the regional governments of Ayacucho, Apurímac, Lambayeque, Huancavelica, Madre de Dios, Pasco, Ancash, Cajamarca, San Martín, and Lima have complied with that obligation, the aim of which is to increase the levels of transparency in state affairs and reduce the likelihood of acts of corruption.

“With respect to the Organic Law of Municipalities, however, there is no explicitly provision stipulating the frequency with which municipalities are to render accounts; thus, compliance with the obligation is not uniform.”

Although the Committee holds that the absence of information prevents it from offering a comprehensive appraisal of the results in this area, for which a recommendation will be offered, it also believes attention should be paid to the “Proética” document in

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<sup>35</sup> “Sixth Report by the People’s Defender to the Congress of the Republic, 2002-2003,” pp. 490 and 491.

<sup>36</sup> Updated reply of the Republic of Peru to the questionnaire, p. 30.

<sup>37</sup> Document from “Proética,” pp. 57 and 58.

recommending that the country undergoing analysis give consideration to expanding the public hearings mechanism or to developing other tools for holding public consultation in areas other than those already provided for. This would allow greater use of this form of citizen participation.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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

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

The Republic of Peru has a series of provisions regarding the mechanisms referred to, notably:

– Constitutional provisions, such as those set forth in Article 2 of the Peruvian Constitution, which include, among the rights of all individuals, the right to participate individually or collectively in the political, economic, social, and cultural life of the nation; and Article 31, which sets forth the right of citizens to participate in public affairs through mechanisms such as legislative initiatives and which establishes the right and duty of residents to participate in their local municipal government, further adding that the law governs and promotes direct and indirect mechanisms for their participation.

– Law No. 26300 of 1994, Law on the Right of Participation and Citizen Control, Article 2, which identifies the following as citizens' participation rights: the constitutional amendment initiative, the initiative for the drafting of laws, the referendum, the initiative for the drafting of municipal and regional ordinances, and other participatory mechanisms established by that law with regard to municipal and regional governments.

– Law No. 27658 of 2002, Framework Law for the Modernization of the State Administration, Article 4, which sets out as one of its objectives in the creation of a state with effective channels for citizen participation. Article 8 of this Law provides that the state must promote and establish the mechanisms for achieving adequate participatory democracy for citizens, through direct and indirect participation mechanisms; and Article 9 provides that citizens are entitled to participate in the processes of formulating the budget, oversight, execution, and supervision of the state administration through the mechanisms established by law.

– Law No. 27783 of 2002, Law on the Bases for Decentralization, Article 17, which states that regional and local governments are required to promote citizen participation in the formulation, debate and discussion regarding their development plans and budgets and in public management. To this end, it adds, they must guarantee that all citizens have access to public information, with the exceptions indicated by law, as well as create and facilitate opportunities and mechanisms for consultation, collaboration, control, evaluation and rendering of accounts.

– Provisions related to these participation mechanisms are also found in Law No. 28056 of 2003, Framework Law on the Participation Budget, and in its regulations, contained in Supreme Decree No. 171-2003-EF of 2003; and in Law No. 28059, Framework Law for Promoting Decentralized Investment.

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

The provisions governing the aforesaid mechanisms that the Committee has examined, based on the information available to it, are relevant for pursuing the goals of the Convention.

However, the Committee believes the Republic of Peru would do well to consider strengthening and continuing to implement mechanisms to encourage civil society and nongovernmental organizations to participate in public affairs.

The Committee believes that in connection with this, notice should be paid to the remarks made by the country undergoing analysis in its reply, in the section dealing with participation mechanisms in general,<sup>38</sup> which reads as follows:

“As we indicated before, the provisions cited have been inadequate for promoting citizen participation in public activities. However, we can point out that some entities of the State – such as the Ministry of the Interior, the Ministry of Women and Development, the Municipality of Barranco, the PROINVERSIÓN program (in charge of privatization of state assets), the National Office of Electoral Processes, etc. – have begun to invite civil organizations to monitor specific actions of public administration, primarily in connection with their most important procurement procedures.”

Additionally, the Committee also believes that the Republic of Peru would do well to consider conducting an evaluation of the rules governing citizen’s participation rights as set forth in Law No. 26300 de 1994, Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto.

The Committee believes that in connection with this, attention should also be paid to the content of a document included by the country undergoing analysis as Appendix No. 24 to its reply, titled “A Peru without Corruption,” drawn up by the Working Group of the National Anticorruption Initiative, established under the aegis of the National Anticorruption Program (Supreme Resolution No. 160-2001-JUS). One section of this document, which offers an analysis of “Citizen Vigilance and the Media,”<sup>39</sup> states that “a considerable segment of the population experienced demoralization and deep skepticism stemming from the idea that it was practically useless to face up to the omnipotent, hidden source of power but, in addition to that, in many cases the prevailing idea was that

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<sup>38</sup> Updated reply of the Republic of Peru to the questionnaire, p. 27.

<sup>39</sup> Appendix No. 24. Book “A Peru without Corruption,” pp. 17 and 18.

effectiveness was more important than honesty. Thus, the well known phrase *roba pero hace obra* ('he might steal, but he also builds') was brandished as a way to justify massive corruption. Additionally, the legal framework for citizen participation was not only inadequate, it had also been devised in such a complicated fashion as to be, in practice, almost impossible to apply." The document goes on to recommend "amending the Law on Participation and Citizen Control (Law 26300 as amended) to allow the realization of citizens' rights"; to this end, proposals were made, including "reviewing the prerequisites for exercising the right of legislative initiative and for congressional approval of such initiatives" and "reviewing the requirements and procedures for the right of referendum as a right of the citizens, independently of Congress. We recommend that requests for referendums be admissible when presented by 1% of the citizenry."

Moreover, the Committee, based on information gathered by its Secretariat under the established methodology for analyzing implementation of the selected provisions,<sup>40</sup> notes the existence in Peru's legal system of certain provisions that a report<sup>41</sup> by the office of the OAS's Rapporteur for Freedom of Expression referred to generically as "desacato" (contempt) laws, which could hinder participation by civil society and NGOs in efforts to prevent corruption.

The Committee believes it should refer to the relevant sections of this report,<sup>42</sup> which, it should be noted, does not refer solely to the Republic of Peru, but to all the countries of the Americas. With reference to country in question, it identifies the following provisions of the Criminal Code as constituting *desacato* laws:

"Article 374. Anyone who threatens, insults or in any way offends the dignity and decorum of a public official as a result of the exercise of his functions or when he is performing them, shall be subject to incarceration of no more than three years.

"If the offended party is the President of one of the Branches of Government, the penalty shall be no less than two and no more than four years.

"With reference to the crime of defamation, set forth in Article 132 of the Penal Code, the Penal Code allows for a defense of truth when the defamed individual is a public official."

The Committee believes it should recommend that the Republic of Peru, in accordance with the terms set forth in the relevant section of the Rapporteur's report,<sup>43</sup> progress toward repealing those provisions, believing that they could discourage civil society

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<sup>40</sup> "Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round," Chapter VI (Document SG/MESICIC/doc.21/02).

<sup>41</sup> Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III. This report can be found on the OAS's website.

<sup>42</sup> Report of the Special Rapporteur for Freedom of Expression 2000, Chapter III, p. 17. This report can be found on the OAS's website.

<sup>43</sup> Report of the Special Rapporteur for Freedom of Expression 2002, Chapter V, p. 8. This report can be found on the OAS's website.

participation on account of the possible fear of committing a *desacato* crime that could arise.

Bearing in mind these considerations, the Committee will offer a series of recommendations.

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

In the Republic of Peru's reply,<sup>44</sup> it states that: "Given the newness of the legislation, no objectives are being met as yet."

Although the Committee believes that this absence of information prevents it from making a comprehensive appraisal of the results in this area, with regard to which it will offer a recommendation, it also believes that attention should be paid to the contents of the "diagnosis" in the document "A Peru without Corruption," referenced in the previous section of this report, and recommends that the Republic of Peru should consider building public awareness about the problem of corruption and publicizing the participatory mechanisms that exist and how they are used.

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

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

The Republic of Peru has a series of provisions regarding the mechanisms referred to, notably:

- Constitutional provisions, such as the content of Article 31 of the Peruvian Constitution, which enshrines the citizens' right to participate in public affairs through mechanisms such as recalling or removing officials and demanding accountability.
- Law No. 26300 of 1994, Law on the Right of Participation and Citizen Control, Article 3, which establishes the following rights of control for citizens: recalling officials, removing authorities, demanding that accounts be rendered, and other control mechanisms set down in that law and applicable to municipal and regional governments.
- Law No. 27658 of 2002, Framework Law for the Modernization of the State Administration, Article 9, which rules that citizens are entitled to participate in the processes of formulating the budget, oversight, execution, and supervision of the state administration through the mechanisms established by law; and Article 11, which establishes among the requirements of civil servants and officials of the state to submit themselves to the permanent oversight of the citizenry, both as regards their handling of public affairs and with respect to their private assets and activities.
- Law No. 27783 of 2002, Law on the Bases for Decentralization, Article 17, which states

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<sup>44</sup> Updated reply of the Republic of Peru to the questionnaire, p. 31.

that regional and local governments are required to promote citizen participation in the formulation, debate, and discussion regarding their development plans and budgets and in public management. To this end, it adds, they must guarantee that all citizens have access to public information, with the exceptions indicated by law, as well as create and facilitate opportunities and mechanisms for consultation, collaboration, control, evaluation and rendering of accounts.

– Resolution No. 443-3-2003-CG of 2003 of the Office of the Comptroller General of the Republic, which created the “Complaint Attention Service” and regulates the submission and processing of complaints lodged by citizens with the National Oversight System.

– Ordinance No. 102 of 1996 of the Metropolitan Municipality of Lima, which created the “Metropolitan Commission Against Corruption,” empowered, *inter alia* and within the scope of its jurisdiction, to receive and analyze complaints of corruption for their subsequent conveyance to the competent bodies, in accordance with the law; and to hold public hearings to analyze cases of corruption, with a view toward issuing the applicable recommendations.

– Provisions related to these participation mechanisms are also found in Law No. 28056 of 2003, Framework Law on the Participation Budget, and in its regulations, contained in Supreme Decree No. 171-2003-EF of 2003.

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

The provisions governing the aforesaid mechanisms that the Committee has examined, based on the information available to it, are relevant for pursuing the goals of the Convention.

However, the Committee believes the Republic of Peru would do well to consider conducting an evaluation of the rules governing citizens’ control rights as set forth in Law No. 26300 of 1994, Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto.

The Committee believes that in connection with this, notice should be paid to the content of the “Sixth Report of the People’s Defender to the Congress of the Republic, 2002-2003,” which, in referring to the Law on Participation and Citizen Control (Law 26300 of 1994), states that “an amendment thereof is necessary, both to amend aspects that have already been regulated and to incorporate new procedures,” and, with reference to this former point, adds the following:<sup>45</sup>

“The first kind of amendment includes the need to modify the procedure for recalling mayors and town councilors, tying it in with demands for accountability, which could be established as a prior requirement, albeit with exceptions based on reasonable criteria. Additionally, determination of the total number of voters needed for a recall to proceed,

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<sup>45</sup> “Sixth Report by the People’s Defender to the Congress of the Republic, 2002-2003,” p. 490.

thus correcting the present interpretation, which renders it practically impossible in communities with large numbers of migrants.”

The Committee believes that in connection with this, notice should also be paid to the content of the document already referred to in this report titled “A Peru without Corruption,” in which one of its sections, containing an analysis of “Citizen Vigilance and the Media,”<sup>46</sup> notes that: “the legal framework for citizen participation was not only inadequate, it had also been devised in such a complicated fashion as to be, in practice, impossible to apply.” The document goes on to recommend “amending the Law on Participation and Citizen Control (Law 26300 as amended) to allow the realization of citizens’ rights”; to this end, proposals were made, including “improving exercise of the right to recall elected officials, by extending it to members of the national Congress, the election of regional and judicial authorities, as established in the Constitution, and the review of procedures for recalling mayors and councilors”, “regulating the right to remove appointed officials at all levels of government (central, regional, and local) and in state agencies,” and “reviewing the requirements and procedures applicable to the right to demand accountability, to establish flexible criteria that enable, and do not hinder, the exercise of those rights.”

Bearing in mind these considerations, the Committee will offer a series of recommendations

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

In the Republic of Peru’s reply,<sup>47</sup> it states that: “Given the newness of the legislation, no objectives are being met as yet.”

Although the Committee believes that this absence of information prevents it from making a comprehensive appraisal of the results in this area, with regard to which it will offer a recommendation, it also believes that in light of the newness of the legislation, the Republic of Peru would do well to consider implementing programs to publicize these participation mechanisms and to provide training in how they are used.

### **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 Peru has a series of applicable provisions, comprising of the treaties entered into with other states on judicial assistance in criminal matters and extradition and a number of multilateral extradition agreements, which it lists in its reply.<sup>48</sup>

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<sup>46</sup> Appendix No. 24. Book “A Peru without Corruption,” pp. 17 and 18.

<sup>47</sup> Updated reply of the Republic of Peru to the questionnaire, p. 31.

<sup>48</sup> Updated reply of the Republic of Peru to the questionnaire, pp. 32 to 38.

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

The provisions listed by the Republic of Peru in its reply are capable of furthering achieving the purposes of the Convention in promoting and facilitating mutual assistance among the states parties, and they may serve its specific goals vis-à-vis the investigation and prosecution of acts of corruption, when used to that end.

It should also be noted that in its reply, the Republic of Peru says that it has “no specific treaties, agreements or conventions on matters of corruption, but rather treaties on judicial assistance in criminal matters with various States,”<sup>49</sup> and that it has neither submitted nor received requests for reciprocal assistance, as set forth in the Convention, within the framework thereof.<sup>50</sup>

The Committee would like to stress the importance of ensuring that the mutual assistance treaties signed by the Republic of Peru, together with the Inter-American Convention against Corruption itself, are applied to specific cases of corruption; this presupposes a proper understanding of their provisions on the part of those responsible for enforcing them. Taking this into account, the Committee will make a recommendation.

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

No information is contained in the Republic of Peru’s reply. The Committee believes that this absence of information prevents a comprehensive appraisal of the results in this area. Taking this circumstance into account, the Committee will make a recommendation.

## **5.2. MUTUAL TECHNICAL COOPERATION**

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

In this regard, the reply of the Republic of Peru states that: “Legislative Decree No. 719 promulgates the International Technical Cooperation Law, establishing general provisions governing the international technical cooperation provided through State agencies and that comes from foreign sources of a public and/or private nature. However, there is no specific law on technical cooperation on matters of corruption but rather a framework law that covers the most effective ways and means to prevent, detect, investigate and punish acts of corruption.”<sup>51</sup>

Under the terms of Article 1 of that Law, it is the responsibility of the Peruvian State to ensure that agreements, conventions and other legal instruments relating to international technical cooperation with foreign governments, international organizations, and institutions are entered into in accordance with national law.

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<sup>49</sup> Updated reply of the Republic of Peru to the questionnaire, p. 32.

<sup>50</sup> Updated reply of the Republic of Peru to the questionnaire, p. 39.

<sup>51</sup> Updated reply of the Republic of Peru to the questionnaire, p. 39.

Article 3 of the Law defines international technical cooperation as the means whereby Peru receives, transfers, and/or exchanges human resources, assets, services, capital and technology from foreign cooperating sources, the objective of which is to supplement and contribute to national efforts in the area of development, directed to various fields that are listed therein.

In the Republic of Peru's reply<sup>52</sup> reference is also made to different technical cooperation programs, agreements, and projects related to the fight against corruption. These have been implemented with the support of international organizations and cooperation agencies, or in partnership with foreign governments, and include an agreement signed with USAID for the project "Public and citizen control in the fight against corruption"; a "Project for Transparency and Reforms in Fiscal, Social, and Justice Policy," financed with funds from the IADB; an agreement signed with the UNDP to carry out a project for "Anticorruption Attorneys' Offices" within the Ministry of Justice; a "Commitment between the Presidents of Peru and Costa Rica for strengthening democracy and fighting corruption and impunity"; and a "Memorandum of understanding for technical assistance in the fight against corruption and organized crime signed between the government of the Republic of Peru and the United Nations Office on Drugs and Crime."

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

The Committee deems it positive that the Republic of Peru has a Law on International Technical Cooperation, which, in that it is used to implement the mutual technical cooperation referred to in the Convention, is capable of furthering its goals in this area.

The Committee also deems it positive that the Republic of Peru is pursuing different technical cooperation programs, agreements, and projects relating to the fight against corruption, with the support of international organizations and cooperation agencies or in partnership with foreign governments.

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

In the Republic of Peru's reply,<sup>53</sup> it says that the government has neither submitted nor received requests for reciprocal assistance from other states parties, as set forth in the Convention, within the framework thereof.

As noted in section 5.2.2 of this report, the Committee commends the Republic of Peru for pursuing anticorruption cooperation programs, and it believes those efforts should continue. However, bearing in mind the statements made by the country undergoing analysis with respect to absence of requests for mutual technical cooperation as provided for in the Convention, it will offer recommendations in that regard.

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

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<sup>52</sup> Updated reply of the Republic of Peru to the questionnaire, pp. 40 and 41.

<sup>53</sup> Updated reply of the Republic of Peru to the questionnaire, p. 40.

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

Although the Republic of Peru's reply<sup>54</sup> states that no central authorities have been appointed for channeling the mutual assistance and mutual technical cooperation provided for by the Convention, the country under analysis informed the General Secretariat of the OAS, in accordance with the prescribed formalities, of the designation of the Ministry of Justice 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 Ministry of Justice as the central authority for the purposes provided in the Inter-American Convention against Corruption.

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

In the Republic of Peru's reply,<sup>55</sup> it states that the Ministry of Foreign Relations has, up to March 2004, directed 125 letters rogatory to state parties. It also adds, "of the letters rogatory sent to those countries invoking the Convention as the legal basis, 40% of the letters rogatory have been declared not viable, 30% have been declared viable, and 30% are in process. The largest number of rejected letters rogatory are those seeking the lifting of bank secrecy. Unfortunately, that state party declared the request not viable since the Peruvian authorities did not provide sufficient information to locate and block the accounts."<sup>56</sup>

The reply from the Republic of Peru also states that it has not received, at least not through diplomatic channels, requests for international legal assistance from Convention states parties in connection with acts of corruption in which the Convention is invoked.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

Based on the analysis conducted in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding the implementation in the Republic of Peru of the provisions of Article III, (1) and (2), (standards of conduct and mechanisms to enforce them), Article III (4) (systems for registering income, assets and liabilities), Article III (9) (oversight bodies, only in those areas relating to the exercise of functions by such bodies with respect to compliance with the provisions of paragraphs 1, 2, 4, and 11 of Article III of the Convention), Article 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 for analysis in the first round.

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<sup>54</sup> Updated reply of the Republic of Peru to the questionnaire, p. 41.

<sup>55</sup> Updated reply of the Republic of Peru to the questionnaire, p. 42.

<sup>56</sup> Updated reply of the Republic of Peru to the questionnaire, p. 42.

## **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 Peru has considered and adopted measures to create, maintain, and strengthen standards of conduct to prevent conflicts of interest and mechanisms to enforce compliance, as indicated in Chapter II, Section 1.1, of this report.**

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

Strengthen the implementation of laws and regulations governing conflicts of interest. To comply with this recommendation, the Republic of Peru, given its legal-institutional framework, could give consideration to the following measures:

- a. Analyze possible situations of conflict of interest that could arise from the constitutional authorization (articles 92 and 126 of the Constitution of Peru) that permits a member of congress to be appointed as a Minister of State, and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function.
- b. Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing conflicts of interest, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (see section 1.1.2 of Chapter II of this report).
- c. Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.
- d. Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on preventing conflicts of interest (see section 1.1.2 of Chapter II of this report).

- e. Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public functions are discharged by honest individuals, making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.
- f. Establish prior consultation of the National Registry of Dismissals on Disciplinary Grounds as a procedure to be followed in determining eligibility for employment (article 7(b) of Law 28175 of 2004).
- g. Clearly define, for each position, the technical and professional requisites to be met by those appointed to positions of confidence (Law 28175, article 4(2)).
- h. Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct applicable to conflicts of interest, to resolve their questions thereon, and to provide regular training and updates regarding those standards.
- i. Evaluate the levels of use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.

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

**The Republic of Peru has considered and adopted measures intended to create, 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 stated in Chapter II, Section 1.2, of this report.**

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

Strengthen the implementation of laws and regulations for controlling public resources. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the protection of public resources, and specifying the way in which its provisions are to apply in conjunction with other relevant rules,

ensuring that the scope of its application is not curtailed (see section 1.2.2 of Chapter II of this report).

- b. Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on protecting public resources (see section 1.2.2 of Chapter II of this report).
- c. Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public funds are administered by honest individuals; making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.
- d. Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct for ensuring the conservation and appropriate use of public resources, to resolve their questions thereon, and to provide regular training and updates regarding those standards.
- e. Evaluate the levels of use and effectiveness of the standards of conduct for ensuring the conservation and appropriate use of public resources and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring the effectiveness of them toward that end.
- f. Optimize the use of existing technology for the purposes of designing a computerized public system for State procurement, contracting and resources.
- g. Include, at the time that the terms and conditions for public bidding competitions and procurements are prepared, standards that enable potential bidders and different civil society stakeholders to formulate observations on draft terms and conditions, making it possible to include opinions in the final terms and conditions. The foregoing process must meet the requirements of full publicity and dissemination.
- h. Without forgetting the media habitually used, such as the Official Gazette, *El Peruano* and daily newspapers with the largest circulation at the national or local level, the Republic of Peru should, with respect to publicity for announcements of terms and conditions for public bidding competitions and procurements, examine the possibility of using a larger number of dissemination channels, such as the Internet, associations,

schools, chambers of commerce or other entities that act as a hub for purveyors or professionals connected with the object of the competition or procurement in question.

- g. Include on the web pages of all public entities information on their budget, finances, expenditures and human resource management, in accordance with Emergency Decree 035-2001 (see Section II, 4.2.1., penultimate paragraph, of this Report).

### **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 Peru has considered and adopted measures intended to create, maintain and strengthen standards of conduct and mechanisms relating to measures and systems that require public officials to report to appropriate authorities regarding acts of corruption in public office of which they are aware, as indicated 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 Peru consider the following recommendation:

Strengthen the mechanisms the Republic of Peru has in place to require public officials to report to the competent authorities on acts of corruption in public office of which they are aware. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the obligation of reporting breaches thereof, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (see section 1.3.2 of Chapter II of this Report).
- b. Facilitate compliance with the obligation to report acts of corruption, through the channels deemed appropriate, regulating their use.
- c. Adopt and implement measures to protect whistleblowers, so that they enjoy guarantees in the face of threats or any other act of pressure or coercion to which they may be subjected as a result of compliance with this obligation.
- d. Extend the protection measures contained in Law 27378 of December 2000, Supreme Decree 020-2001–JUS of July 2001, and Supreme Decree

031-2001–JUS of October 2001, persons who in good faith report crimes and have not participated in the commission of those crimes.

- e. Provide training to public officials on their responsibility to report to appropriate authorities any acts of corruption that come to their attention.
- f. Evaluate the levels of use and effectiveness of the measures and systems for requiring public employees to report acts of corruption, and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.

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

**The Republic of Peru has considered and adopted certain measures to create, maintain, and strengthen systems for registering income, assets, and liabilities by those who perform public functions in the positions established by law and for the disclosure of such statements when appropriate, as 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 Peru consider the following recommendations:

2.1 Expand the provisions governing the content of the sworn statement and its use in preventing and fighting corruption. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Expand the provisions governing the content of sworn statements of income, property, and revenues by state officials and civil servants, so that they also explicitly oblige said employees to provide information on their “liabilities,” and develop this concept by indicating the elements it comprises and the information that is to be supplied in connection with it (see section 2.2 of Chapter II of this report).
- b. Include in the standards on sworn financial statements the obligation to provide information on the separate assets belonging to the official’s dependents; the assets belonging to his or her spouse; and to the assets jointly owned with his or her spouse or domestic partner, stating the provenance of said assets.
- c. Include a section in the sworn statement for the declaration of any positions or appointments the official may have held (in public or private activity) prior to assuming the position in connection with which the sworn financial statement

is being submitted; and use this declaration for the purposes of detecting possible conflicts of interest.

- d. Include, on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.
- 2.2. Use sworn statements, by optimizing the analysis of their content, so as to provide a useful tool for detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment. In following this recommendation, the Republic of Peru may wish to consider the following measures:
- a. Establish systems for the effective verification of sworn financial statements, including a specific timetable and measures to overcome obstacles to access to required information, and establishing measures to overcome obstacles for accessing any information sources that may be required.
  - b. Establish a register of officials required to submit sworn financial statements, and mechanisms for periodic updates of the register .
  - c. Evaluate the possibility of implementing a computerized system to optimize capacity for the control of sworn financial statements, alerting appropriate authorities to substantial changes in the content of an official's sworn statements.

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

**The Republic of Peru has considered and adopted measures intended to create, maintain, and strengthen oversight bodies that carry out functions relating to the effective enforcement of the provisions selected for review within the framework of the first round (Article III, paragraphs 1, 2, 4 and 11 of the Convention), as stated in Chapter II, Section 3, of this report.**

In view of the comments made in that section, the Committee suggests that the Republic of Peru consider strengthening the oversight bodies with respect to the functions they perform in overseeing effective compliance with the provisions set out in paragraphs 1, 2, 4, and 11, in order to ensure the effectiveness of that oversight, by providing them with the resources needed to fully discharge their functions; ensuring that they have greater support from policy makers and society; and establishing mechanisms to allow institutional coordination of their actions and their continuous evaluation and follow-up.

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

**The Republic of Peru has considered and adopted measures intended to create, maintain, and strengthen mechanisms to encourage the participation of civil society and nongovernmental organizations in efforts to prevent corruption, as stated in Chapter II, Section 4, of this report.**

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

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

In compliance with the methodology adopted by the Committee, no recommendations are offered in this section.

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

Strengthen mechanisms for guaranteeing access to public information. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Adopt appropriate measures to ensure that those state agencies required to do so by the right-to-information rules incorporate into their Sole Texts of Administrative Procedures (TUPAs) the procedure for access to information (see section 4.2.3 of Chapter II of this report).
- b. Adopt appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information publish on their Internet web sites the information required to appear thereon by the these norms (see section 4.2.3 of Chapter II of this report).
- c. Implement training and dissemination programs dealing with the mechanisms for information access, in order to help public officials and citizens understand them and to optimize the use of available technology to that end.
- d. Conduct an evaluation to determine the factors that could be adversely affecting the enforcement of the norms governing the right to information and, as a result thereof, adopt measures to overcome those problems (see section 4.2.3 of Chapter II of this report).
- e. Optimize the system for the organization of public archives to facilitate public access to the information.
- f. Strengthen existing protections for the right to public information, so that access to such information cannot be denied or limited on grounds, or according to criteria, other than those established in the law.

- g. Analyze the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of "public utility" mentioned in paragraph 2 of the above-cited article.

### **4.3 Consultative mechanisms**

Supplement the existing consultation mechanisms and, when appropriate, establish procedures that will enable public consultations to be held prior to the drafting of public policies and the final adoption of legal provisions. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Establish procedures, when appropriate, for allowing interested parties to inquire into the design of public policies and the drafting of bills, laws, decrees, and resolutions by the executive branch.
- b. Extend the practice of public hearings or develop other mechanisms for allowing public consultation in areas other than those already provided for.

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

Strengthen and continue to implement mechanisms to encourage civil society organizations and NGOs to participate in the public administration and to make progress with repealing rules that could discourage such participation.

To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Establish mechanisms, in addition to those that already exist, for strengthening civil society and NGO participation in efforts to prevent corruption and heighten public awareness about the problem, and to encourage awareness about the participation mechanisms that exist and how they can be used.
- b. Conduct an evaluation of the rules governing citizen's participation rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto (see section 4.4.2 of Chapter II of this report).
- c. Make progress with repealing its *desacato* laws (see section 4.4.2 of Chapter II of this report).

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

Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to participate in the monitoring of public affairs. To comply with this recommendation, the Republic of Peru could give consideration to the following measures:

- a. Conduct an evaluation of the rules governing citizens' control rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto (see section 4.5.2 of Chapter II of this report).
- b. Design and implement programs for disseminating the mechanisms for participating in the monitoring of the public administration and, when appropriate, training and providing civil society and NGOs with the tools needed to use those mechanisms.

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

**The Republic of Peru has adopted measures in the areas of mutual assistance and mutual technical cooperation, in accordance with Article XIV of the Convention, and as described and analyzed in Chapter II, Section 5, of this report.**

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

- 5.1 Continue its efforts to exchange technical cooperation with other states parties regarding the best ways and methods for preventing, detecting, investigating and punishing acts of corruption.
- 5.2 Design and implement a comprehensive dissemination and training program for the competent authorities and civil servants, to ensure that they have knowledge and can apply the mutual assistance provisions that exist for the investigation and prosecution of acts of corruption in the Convention and in other treaties entered into by the Republic of Peru. In addition, we recommend training the relevant officials to ensure the broadest mutual technical and legal cooperation for preventing, detecting, investigating, and punishing acts of corruption.

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

The Republic of Peru has complied with Article XVIII of the Convention, by designating the Ministry of Justice as the central authority for the purposes of international assistance and cooperation under the Convention, as indicated in Chapter II, Section 6, of this report.

## **7. GENERAL RECOMMENDATIONS**

Based on the analysis and the contributions made in this report, the Committee suggests that the Republic of Peru give due consideration to the following recommendations:

- 7.1 Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed and put into practice.
- 7.2 Select and develop procedures and indicators, as appropriate, for verifying the follow-up of the recommendations contained in this report, and report back to the Committee, through the Technical Secretariat, on the steps taken. For this purpose, Peru could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.
- 7.3 Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.

## **8. FOLLOW-UP**

The Committee shall consider the periodic reports from the Republic of Peru regarding progress made in implementing the above recommendations, in the framework of the plenary sessions of the Committee, in accordance with the provisions of Article 30 of the Rules of Procedure.

In addition, the Committee will review the progress made in implementing the recommendations offered in this report, in accordance with the provisions of Article 31 and, when appropriate, Article 32 of the Rules of Procedure.

The Committee wishes to note the Republic of Peru'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 PERU'S REPORT ON ITS IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION SELECTED FOR ANALYSIS IN THE FIRST ROUND**

– The Republic of Peru submitted, along with its reply, annexes containing the following provisions and documents:

1. Supreme Decree No. 012-97-RE, “Ratification of the Inter-American Convention against Corruption.”
2. Legislative Decree No. 276, “Basic Law of the Civil Service and its Remunerations.”
3. Supreme Decree No. 005-90-PCM, “Regulations of the Civil Service Law.”
4. Law No. 26771, “Law Prohibiting the Appointment and Contracting of Civil Servants when Family Relationships are Involved.”
5. Supreme Decree No. 021-2000-PCM, “Regulations to the Law Prohibiting the Appointment and Contracting of Civil Servants when Family Relationships are Involved.”
6. Law No. 27588, “Law setting Bans and Incompatibilities on Civil Servants and Public Officials, and on Persons Contracted by the State in any Fashion for the Provision of Services.”
7. Law No. 27482, “Law Regulating the Publication of Sworn Statements of Income, Property, and Revenues by State Officials and Civil Servants.”
8. Supreme Decree No. 080-2001, “Regulations on the Publication of Sworn Statements of Income, Property, and Revenues by State Officials and Civil Servants.”
9. Law No. 26300, “Law on the Right of Participation and Citizen Oversight.”
10. Comptroller’s Resolution No. 092-95-CG of June 21, 1995, “Procedural Norms to be Followed in the Citizens’ Complaints and Suggestions Program.”
11. Supreme Decree No. 120-2001-PCM, of November 17, 2001, “Ordering the Creation of the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration.”
12. Law No. 27785, “Organic Law of the National Oversight System and of the Office of the Comptroller General of the Republic.”
13. Law No. 27573, “Public Sector Budget Law for Fiscal Year 2002.”
14. Emergency Decree No. 030-2002, “Complementary Austerity and Rationality Measures for Fiscal Year 2002 Public Spending.”
15. Law No. 27658, “Framework Law for the Modernization of the State Administration.”
16. Law No. 27783, “Foundation Law for Decentralization.”
17. Legislative Decree No. 719, “International Technical Cooperation Law.”
18. Comptroller’s Resolution No. 172-2001-CG, approving the agreement entered into with USAID for execution of the project “Public and Citizen Oversight in the Fight Against Corruption.”
19. Ministerial Resolution No. 144-2001-EF-10, approving the structure of the “Project for Transparency and Reforms in Fiscal, Social, and Justice Policy” under the aegis of the sectoral program referred to by D.S. No. 068-2001-EF.
20. Supreme Resolution No. 160-2001-JUS, approving the National Anticorruption Program.

21. Law No. 27806, Law on Transparency and Access to Public Information.
22. Law No. 27815, Civil Service Code of Ethics Law.
23. Book titled “Working Documents,” published by the National Anticorruption Initiative (INA).
24. Book “A Peru Without Corruption,” published by National Anticorruption Initiative (INA).

– In response the requests made by the Committee’s Technical Secretariat the Republic of Peru also sent the following annexes:

1. Political Constitution of the Republic of Peru.
2. Law 27444 of 2001, Law on General Administrative Procedure.
3. Law 28024 of 2003, Law on Handling Interests in the Public Administration
4. Law 28175 of 2004, Framework Law on Public Employment.
5. Supreme Decree No 019-2002-PCM, regulating Law 27588 of 2001.
6. Law No. 26520 of 1995, Organic Law of the Office of the People’s Defender.
7. Resolution of the Office of the Comptroller General No. 174-2002 of September 12, 2002, approving Directive No. 02-2002-CG/AC, on sworn statements, and a copy of the “Single Form for Sworn Statements of Assets and Income.”
8. Resolution of the Office of the Comptroller General No. 331-2003-CG of 2003, on the Annual Control Plan of the Organs of Institutional Oversight.
9. Resolution of the Office of the Comptroller General No. 443-2003-CG of 2003, on the “Complaint Attention Service.”
10. Law No. 27927 of 2003, amending the Law on Transparency and Access to Public Information (No. 27806 of 2002), and Supreme Decree No. 072-2003-PCM, regulating that Law.
11. Supreme Decree No. 018-2001-PCM, dealing with Sole Text of Administrative Procedures (TUPA).
12. Emergency Decree No. 035-2001, dealing with the information to be placed on the web sites of government agencies.
13. Organic Law of Regional Governments, and its Amendment Law, No. 27902 of 2003.
14. Organic Law of Municipalities.
15. Law 28056 of 2003, Framework Law on the Participation Budget.
16. Law No. 28059, Framework Law for Promoting Decentralized Investment.
17. Supreme Decree No. 030-2002-PCM, regulating Law No. 27658 of 2002, the Framework Law for the Modernization of the State Administration.
18. Supreme Decree 012-2001-PCM of 2001- Single Ordered Text of the Law on Government Contracting and Procurement.
19. Law No. 28128 – Law on the Public Sector Budget for Fiscal Year 2004.
20. Law No. 27209 – Law on Budgetary Management of the State.
21. Supreme Decree No. 038-2001 – JUS of 2001.
22. Law No. 27378 of 2000.
23. Supreme Decree No. 020-2001 – JUS of 2001.
24. Supreme Decree No. 031-2001 – JUS of 2001.