

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

FINAL REPORT

(Adopted in the plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE  
BOLIVARIAN REPUBLIC OF VENEZUELA  
OF THE CONVENTION PROVISIONS SELECTED FOR ANALYSIS WITHIN THE  
FRAMEWORK OF THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Legal-institutional system<sup>2</sup>**

In accordance with its juridical framework (the Constitution), the Bolivarian Republic of Venezuela is a democratic and social state of law and justice. The Constitution provides that the republic is a decentralized federal state and that sovereignty resides inalienably with the people, who exercise it directly in the manner provided in the Constitution and the law, and indirectly, by suffrage, through the organs of government (Articles 2 and 5 of the Constitution of the Republic).

Government powers are exclusive and are exercised based on the principles of honesty, participation, expeditiousness, efficacy, efficiency, transparency, accountability and responsibility, being fully subject to the law and the legal system (Article 141 of the Constitution of the Republic).

Government in Venezuela is structured according to the political-territorial framework of the country: at the level of the Republic, it corresponds to the national executive branch; at the State level, it corresponds to the state executive branch; and at the Municipal level, it corresponds to the municipal executive branch (Article 136 of the Constitution). National government is divided into five branches: legislative, executive, judicial, citizens' and electoral. The latter two branches were incorporated into the Constitutional regulations adopted in 1999. National government is regulated in accordance with the separation of powers.

The powers of the national legislative branch are exercised by the National Assembly, a unicameral parliamentary body made up of deputies elected in each of the 24 federal jurisdictions; deputies are elected for five-year terms based on proportional representation according to a percentage of the country's total population. Their functions include: legislating on matters of national jurisdiction and on the operation of the various branches of national government; proposing constitutional amendments and reforms; exercising oversight of the government and the civil service according to the provisions of the Constitution and of the law; and debating and approving the national budget.

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<sup>1</sup> This report was approved by the Committee, in accordance with Articles 3(g) and 26 of the *Rules of Procedure and Other Provisions*, during the plenary session held on July 30, 2004, within the framework of its Sixth Regular Meeting, held between the 26<sup>th</sup> and 30<sup>th</sup> of July, 2004, at OAS Headquarters, Washington D.C., United States of America.

<sup>2</sup> Updated Response of the Bolivarian Republic of Venezuela to the Questionnaire received by the General Secretariat on March 6, 2004 and related to the provisions selected for review by the Committee of Experts on the Mechanism for Follow-up of Implementation of the Inter-American Convention against Corruption within the framework of the first round. August 2002, pages 1, 2 and following of the *Response of the Bolivarian Republic of Venezuela to the Questionnaire, Response to the Questionnaire or Updated Response to the Questionnaire*. At the request of the Bolivarian Republic of Venezuela, its Response to the Questionnaire (including the corresponding appendices and complementary related information) has been posted on the following web site: [http://www.oas.org/juridico/spanish/corresp\\_ven.htm](http://www.oas.org/juridico/spanish/corresp_ven.htm).

The national executive branch consists of the President of the Republic, the Executive Vice-President, the Ministers, the Council of Ministers, the Office of the Attorney General and the Council of State. The duties and functions of this branch include complying with and ensuring compliance with the Constitution and national laws; directing the activities of the government, including foreign affairs; issuing decrees with the force of law prior to the adoption of enabling legislation; adopting legislation; managing the public treasury; concluding and ratifying international treaties, conventions or agreements; directing and exercising supreme command of the National Armed Forces; directing reports or special messages, in person or through the intermediary of the Executive Vice-President, to the National Assembly; and any other functions outlined in the Constitution or in law.

The Judiciary is responsible for the administration of justice, hearing cases and other matters falling under its jurisdiction based on procedures determined by law, and enforcing or ensuring the enforcement of judgments. The judicial branch is functionally, financially and administratively independent and is not empowered to establish rates, fees or to require any payment whatsoever for its services -free justice- (Article 254 of the Constitution).

The citizens' branch, autonomous and national in nature, is responsible for preventing, investigating, and punishing offences against public ethics and administrative standards, for oversight of proper administration and legality in the use of public property, and for compliance with and application of the principle of legality in all of the government's administrative activities. The functions of the citizen's branch are exercised by the Ethics Council, which is made up of the Ombudsman, the Attorney General and the Comptroller General. The bodies that make up the citizens' branch are the Ombudsman's Office, the Office of the Public Prosecutor, and the Office of the Comptroller General of the Republic (Article 273 of the Constitution).

The Ombudsman's Office, headed by the Ombudsman, is responsible for the promotion and protection of rights and guarantees established in the Constitution and in international human rights treaties, as well as the legitimate, collective and diverse interests of the citizens. The Ombudsman's functions include protecting human rights, ensuring the proper functioning of public services; filing actions alleging unconstitutionality, habeas corpus, habeas data and other actions and recourses necessary to carry out his or her functions (Articles 280 and 281 of the Constitution).

The Public Prosecutor's Office reports to the Attorney General. The Office's functions include: guaranteeing respect for constitutional rights and guarantees in legal proceedings as well as in international treaties, conventions and agreements subscribed by the State; ordering and directing criminal investigations in cases involving the perpetration of punishable offences (Articles 284 and 285 of the Constitution).

The Office of the Comptroller General is the body charged with controlling, supervising and auditing the income, expenditures, public property and national assets of the State, as well as transactions related to the foregoing (Articles 287 to 291 of the Constitution).

The electoral branch, independent and national in nature, consists of the National Electoral Council, which is the supreme body, as well as subordinate entities, including the National Electoral Board, the Civil and Electoral Registry Commission and the Commission on Political Participation and Financing (Articles 292 to 298 of the Constitution).

The state government, which consists of states as autonomous and equal political entities with legal status, is divided into the legislative and executive branches. The executive branch, concerned with carrying out the duties of government and administration in each state, is headed by a governor elected by popular suffrage. The legislative branch in each state is responsible for legislating on matters within the state's authority and approving the budget; it consists of the Legislative Council, composed of representatives elected proportionally to represent the state and the municipalities. Each state has a Comptroller's Office which is legally and functionally autonomous and which is charged with controlling, supervising, and auditing state income, expenditures and assets, without prejudice to the powers of the national Office of the Comptroller General (Articles 162 et seq. of the Constitution).

The municipal government consists of the municipalities and local entities, such as parishes, communities and metropolitan districts, and is also divided into executive and legislative branches. The executive functions are exercised by the municipal government and administration, under the responsibility of the mayor, who is elected by popular suffrage. The legislative function is exercised by the Municipal Council, composed of popularly elected council members. Each municipality has its own legally and functionally autonomous Municipal Comptroller's Office, which is responsible for the control and auditing of municipal income, expenditures and assets, without prejudice to the powers of the national Office of the Comptroller General.

Finally, the Constitution provides for Local Public Planning Councils headed by the mayor and composed of the council members, the presidents of the Parish Boards, representatives of community organizations and other representatives of civil society (Article 182 of the Constitution).

## **2. Ratification of the Convention and Endorsement of the Mechanism**

According to the official registry of the General Secretariat of the OAS, the Bolivarian Republic of Venezuela ratified the Inter-American Convention against Corruption on the 22nd of May 1997 and deposited the respective instrument of ratification on the 2nd of June of the same year.

Similarly, the Bolivarian Republic of Venezuela subscribed to the Declaration on the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption on the 4<sup>th</sup> of June 2001 at the 31<sup>st</sup> regular meeting of the General Assembly of the OAS, held in San José, Costa Rica.

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

The committee wishes to underline the cooperation received from the Bolivarian Republic of Venezuela during the entire review process and, particularly, from the Office of the Comptroller General of the Republic, which acted as a coordinating body; this cooperation was made evident, among other things, by its timely response to the questionnaire and its ongoing availability to clarify or complete the contents of said questionnaire.

In its response, the Bolivarian Republic of Venezuela appended a list of pertinent documents – tables, notes and information – and legal provisions, which have been included in the appendix to this report.

In carrying out its review in accordance with the Rules of Procedure, the Committee took into account information provided by the Bolivarian Republic of Venezuela up to the 8<sup>th</sup> of March 2004, as well as that subsequently provided to the Secretariat and to members of the review sub-group.

In addition, documents were received from a civil society organization that do not meet the requirements set forth in Article 33 of the Committee's Rules of Procedure and Other Provisions (See Appendix II to this Report).

## **II. REVIEW OF THE IMPLEMENTATION BY THE BOLIVARIAN REPUBLIC OF VENEZUELA OF THE PROVISIONS SELECTED**

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

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

##### **1.1.1. Existence and provisions of a juridical framework and/or other measures and mechanisms designed to enforce this framework.**

As detailed in its Response to the Questionnaire, the Bolivarian Republic of Venezuela has a set of standards of conduct at the constitutional, legal and regulatory levels, as well as mechanisms and other measures designed to prevent conflicts of interest that may occur within the public service.

The Constitution contains provisions that govern the conduct of public servants, including the principle of legality, honesty, transparency, impartiality, accountability, individual responsibility and prohibition from accepting any employment, honours or rewards from foreign governments without authorization from the National Assembly. The Constitution also provides for the incompatibility of holding two public positions simultaneously and for merit-based competitions as a basis for access to public service careers, including careers in the judiciary, in which citizen participation in the procedure for selecting and appointing judges is guaranteed (Articles 25, 66, 137, 139, 141, 144, 145, 146, 148, 149, 197 and 255 of the Constitution).

The Constitution also provides for ineligibilities, incompatibilities, restrictions and grounds for disqualification, with respect to the exercise of certain public functions, such as those of President of the Republic, Delegates, Members, Representatives of the National Assembly, Magistrates, Judges and Prosecutor's of the Public Prosecutor's Office (Articles 189 and 190, 191, 227, 229 and 256).

The Civil Service Statute is the main piece of legislation referring to conflicts of interest and governing relations of employment between public employees and national, state and municipal administrations. This Act provides for a system of restrictions, prohibitions and incompatibilities in the public service related to incompatible or conflicting links that public servants may have with respect to matters under their management, whether it be for reasons of family ties, friendship or commercial or work relationships (Articles 33 to 36).

That Act also establishes a disciplinary system that specifically provides for penalties for participation in political or proselytizing activities, or other infractions of a general nature such as failure to comply with one's duties, lack of probity or acts that undermine the reputation of the Administration, arbitrariness, material damage caused to the Administration, either intentionally or through negligence, etc. (Articles 82, 83, Numerals 6 and 7, and 84 to 88 of the Civil Service Statute).

This system establishes an eight-month statute of limitation with respect to infractions by public servants punishable by dismissal. The period commences as of the moment in which the highest-ranking official in the respective entity becomes aware of the infraction and fails to request initiation of the corresponding administrative proceedings (Article 88 of the Civil Service Statute).

The Act also provides for the creation and updating of a registry of employees in the national civil service (Article 9 of the Civil Service Statute).

In addition, there exist other standards with legal rank that reflect general principles mentioned in previous paragraphs, one of which is the Anti-Corruption Act. Article 13 of this Act establishes that public servants must be politically and economically impartial; Article 54 defines as a crime any behaviour of public servants who, for personal interests or for purposes contrary to those stipulated, results in mishandling, loss, deterioration or damage to property of the administration; and Article 68, which punishes the behaviour of civil servants who abuse their position to promote or harm a political group, party or candidate.

Similar provisions are to be found in sectoral legislation, enacted based on the principle of the operational autonomy of each public institution, such as the Organic Act<sup>3</sup> of the Executive Branch (Articles 27 onward), the Organic Act of the Office of the Public Prosecutor (Article 71), Code of Ethics for Public Servants in the employ of the Office of the Comptroller General (Article 1, Numeral 5), Personnel Statute of the Employees of the Office of the Comptroller General (Articles 83 Numeral 1 and 87), Code of Conduct for Public Servants, promulgated by the Executive Branch (Article 17), Civil Service Statute (Articles 33 to 36), Judicial Careers Act (Articles 10 and following), Citizens' Branch Organic provision (Article 45), National Public Treasury Organic Act (Articles 112, 113 and 123), Foreign Service Act (Articles 7, 16 and 17) and the Universities Act (Articles 162 to 166).

The Bolivarian Republic of Venezuela has provided for some mechanisms within its legal system to enforce compliance with the measures designed to prevent conflicts of interest. Among these mechanisms, particular mention should be made of the following:

- i The prevailing system of incompatibilities, as well as the system covering the penal, civil administrative and disciplinary liability of public servants.
- ii The established requirements for joining the public service.
- iii The public management activities carried out by the Human Resources offices of each state institution.
- iv The work carried out by the Office of the Comptroller General as the supreme audit body and the other bodies of fiscal control.
- v The work performed by the Offices of the Comptroller of each state under Article 163 of the Constitution, with legal and operational autonomy.
- vi The adoption of special laws that regulate the conduct of civil servants in public administration entities that enjoy organic and operational autonomy (legislative, judicial, citizens' and electoral branches).
- vii The jurisdictional control exercised by the agencies of the Judicial Branch.

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<sup>3</sup> The State under review has defined "organic laws" as those established by the Constitution or those which regulate public administration.

### **1.1.2 Adequacy of juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms reviewed in the area of conflicts of interest, based on the information made available to the Committee, are pertinent for promoting the objectives of the Convention. However, the Committee believes that it is appropriate to express a number of comments with respect to some aspects of these standards and mechanisms; the Committee will formulate recommendations in this regard in the final chapter of this report.

The general regime that covers all public servants is made up of the Constitution and the Civil Service Statute Act, which contain general provisions and standards of conduct for the correct, honorable and proper fulfillment of public functions that encompass the principles established in the Convention.

The Committee notes that provision is made within the Venezuelan legal framework, via the Constitution, for a system of incompatibilities, disqualifications and prohibitions in the public service. Specifically, the Committee notes the inclusion of provisions designed to: prohibit the concluding of contracts between the State and public servants, either by themselves or through an intermediary, except for cases stipulated under the law; limit the acceptance of employment, honors or rewards from foreign governments, without first obtaining National Assembly authorization; and ensure the incompatibility of holding two public positions simultaneously (Articles 145, 148 and 149 of the Constitution). The Committee believes that the above constitutes progress in implementing the Convention.

As mentioned in the preceding section of this report, the Constitution also provides for a system of incompatibilities, restrictions, disqualifications, and prohibitions with respect to the public service and limitations on senior officials of the executive, legislative and judicial branches hearing certain matters. Nevertheless, the Committee notes a lack of regulations concerning the provisions that apply to this system and that define the specific features and importance of these positions and the mechanisms for ensuring enforcement.

In this regard, it would be appropriate that such regulations provide for incompatibility in the exercise of public functions with respect to other public or private activities in which there could exist any circumstance that would compromise impartiality whether remunerated or not, while holding such positions; exceptions might be made for certain activities that in no way affect the independence of or absolute dedication to the position. It would also be desirable to strengthen the system of penalties through provisions that correspond to the level of responsibility of these positions, and to provide for a specific, fully autonomous body to ensure compliance with these regulations. The Committee will formulate a recommendation in this respect.

As for sectoral legislation, the Committee notes that most of the pertinent standards could be improved by strengthening or adding provisions that include a broader and more comprehensive list of the prohibitions, incompatibilities and disqualifications that can arise in the performance of public duties and that, because of their importance, could be dealt with in a more specific and detailed manner. For example, the Organic Act of the Public Prosecutor's Office is limited to one provision in Article 70 that establishes the incompatibility of public servants in this Ministry as regards the freedom to practice law and the prohibition against holding more than one public position at the same time; the Civil Servants' Code of Ethics, issued by the Office of the Comptroller General, contains a general article on the obligation of public servants to act with objectivity and impartiality in all decisions and matters in which they are involved (Article 1, paragraph 6); and Articles 112, 113 and 123 of the Organic Act of the National Public Treasury prohibit Treasury employees from holding direct or indirect interests in industrial sectors related to the revenues they administer, "*operating a credit agency*", drafting, presenting or processing any application or claim against the Office of the Treasury, and working in the same office

with individuals to whom they have ties of kinship or friendship. The strengthening that is suggested might include, among other elements, the following; the possibility of broadening these regulations by including other contingencies that may constitute conflicts of interests, and which because of their importance would be advisable to address in a more detailed and specific way; and the identification of a public servant or organ of government in charge of implementing these regulations. The Committee will formulate a recommendation in this respect.

With respect to Article 123 of the Organic Act of the National Public Treasury mentioned in the previous paragraph, the country under review indicates in its Response to the Questionnaire that: "*Failure to comply with this provision does not result in punishment within the existing legal framework.*"<sup>4</sup> In this regard, the Committee believes that it would be useful for the Bolivarian Republic of Venezuela to consider making certain to include an appropriate system of punishment in its legislation, applicable both to the above-mentioned provision of Article 123 as well as to other standards and provisions found to be in the same situation. The Committee will formulate a recommendation in this regard.

With respect to the eight-month statutory limitation period established in Article 88 of the Civil Service Statute, applicable to offences of public servants punishable by dismissal, and which the senior officer of the pertinent unit learned of but did not request the initiation of the pertinent administrative disciplinary investigation the Committee notes that it could be beneficial for the Bolivarian Republic of Venezuela to consider extending this period. When defining this period, note could be taken of the importance of providing the government with flexible and reasonable instruments that do not constitute obstacles to establishing individual liability on the part of the offending public servant and that are consistent in form and in purpose with other existing time limits, such as that established for the auditing of the accounts rendered by persons who administer public resources, the time limits for determining administrative liability, and those relating to bringing administrative, civil and criminal action. The Committee will formulate a recommendation in this regard.

In addition, the above law provides for the creation and updating of a registry of civil servants in the employ of the national civil service (Article 9 of the Civil Service Statute). On the basis of the information made available to the Committee, it is not possible to determine the objective and use made of this registry. The Committee believes that the registry could become a very useful instrument for preventing and punishing conflicts of interest in the public service. In this regard, the Committee suggests that the Bolivarian Republic of Venezuela take steps, if it has not already done so, to ensure that the registry can be used for this purpose. The Committee will formulate a recommendation in this regard.

The Committee notes a lack of regulation when it comes to those activities performed by public servants once they no longer exercise their public functions. The Committee believes it would be appropriate to adopt provisions such as prohibiting public servants from participating in the management of official matters of which they were aware or vis-à-vis entities in which they were recently involved; in general, the Committee believes it is important to make provision for situations that could lead to ex-civil servants taking undue advantage of their former position. The Committee wishes to highlight the appropriateness of developing regulations that, for example, limit or prohibit the holding of administrative or management posts in private institutions subject to the control or regulation of the state by individuals that have exercised a certain level of public jurisdiction in the pertinent oversight or regulating organization. This prohibition should cover a reasonable period of time following the departure of the civil servant.

Taking into account the above considerations, the Committee will formulate a number of recommendations in the final chapter of this report.

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<sup>4</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 15.

### **1.1.3 Results of the juridical framework and/or of other measures and of the mechanisms designed to ensure their enforcement**

In its Response to the Questionnaire, the Bolivarian Republic of Venezuela indicates that “*the Emergency Judicial Committee dismissed 25 officials from the judicial branch because they were directly related to judges and public defenders of prisoners who worked in the same court or Ombudsman’s Office, or who were related.*”<sup>5</sup>

In addition, the Bolivarian Republic of Venezuela presents a statistical chart from the Public Prosecutor’s Office<sup>6</sup> that shows the number of charges brought by that entity in cases where standards designed to prevent conflicts of interests were violated. The chart indicates that in the years 1999, 2000, 2001 and 2002 there were 4, 32, 67 and 89 charges respectively.<sup>7</sup>

The general nature of the information provided does not allow the Committee to assess comprehensively the results in this field. Taking into account this circumstance, the Committee will formulate a recommendation.

## **1.2. STANDARDS OF CONDUCT AND MECHANISMS TO ENSURE THE PRESERVATION AND PROPER USE OF RESOURCES ENTRUSTED TO PUBLIC SERVANTS.**

### **1.2.1. Existence and provisions of a juridical framework and/or other measures and mechanisms designed to enforce this framework.**

The legal framework of the Bolivarian Republic of Venezuela contains a set of standards and mechanisms designed to ensure the preservation and proper use of resources entrusted to public servants. In this respect, the Committee wishes to draw attention to the following comments.

The Constitution includes a series of provisions on the fiscal and monetary system. The Constitution stipulates that fiscal management will be governed and implemented based on principles of efficiency, solvency, transparency, responsibility and fiscal balance (Articles 311 to 320).

The Public Administration Organic Act regulates management commitments and creates mechanisms designed to promote participation and control over government policies and outcomes. This law enshrines the general principles of efficiency in the allocation and utilization of public resources; of adequacy, rationality and appropriateness of the means to the institutional ends; of fiscal responsibility; and of planned operations and control of management and results in the administration of public resources (Articles 17, 18, 20 and 21 of the Public Administration Organic Act).

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<sup>5</sup> Update to the Response to the Questionnaire by the Bolivarian Republic of Venezuela, page 20.

<sup>6</sup> NOTE OF CLARIFICATION REGARDING THE OFFICE OF THE PUBLIC PROSECUTOR: Under Article 285 of the Constitution of the state reviewed, the powers of the Office of the Public Prosecutor are to: i) ensure in judicial proceedings respect for the constitutional rights and guarantees, and for international treaties, conventions, and agreements signed by the Republic; ii) ensure the expeditiousness and proper administration of justice, preliminary proceedings, and due process; iii) order and direct criminal investigation of punishable acts to establish their perpetration and all circumstances that may affect the establishment of the guilt and liability of alleged perpetrators and other participants, and to determine the active and passive subjects involved in their perpetration; iv) pursue criminal proceedings on behalf of the state in cases where criminal proceedings need not be instituted or prosecuted by the state, except in the cases indicated in law; v) to institute admissible proceedings to establish civil, labor, military, criminal, administrative, or disciplinary liability that may have been incurred by civil servants in the exercise of their functions; and vi) all other powers conferred upon it by this Constitution and in law.

<sup>7</sup> Update to the Response to the Questionnaire by the Bolivarian Republic of Venezuela, page 20.

The Financial Administration Organic Act regulates the budget, public credit, the treasury, public accounting and internal audit. Title IX of this law refers to the various causes that give rise to liability on the part of employees entrusted with the financial management of the public sector.

The Procurement Act contains a set of standards which, according to the preamble to this law, is designed to modernize and streamline procedures for selecting contractors by applying principles of economy, transparency, honesty, efficiency, equality, competence, publicity and improvement of conditions, as well as the adoption of procurement policies that come to grips with the *“negative impact currently affecting industry in Venezuela.”*

The Organic Act of the Office of the Comptroller General and the National Fiscal Control System regulates the operations of the Office of the Comptroller General, the National Fiscal Control System and citizen participation in audit activities. According to Article 287 of the Constitution, this body is operationally, administratively and organizationally autonomous. In the course of its operations, it must audit the legality, quality and impact of the operations and management results of the agencies and entities under its jurisdiction. Public servants and private parties that administer, handle or have custody of resources earmarked to meet the objectives of the public interest, as well as those working for bodies subject to Office of the Comptroller General supervision, bear criminal, civil and administrative liability for acts and omissions committed in the performance of their duties that run counter to the provisions of this law (Articles 82 to 92 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System ).

The Civil Service Statute, the Civil Servants’ Code of Conduct and the Civil Servants’ Ethics Code, include standards that stipulate the obligation of public servants to act strictly in accordance with ethical values. For example, the Civil Service Statute expressly covers the duty to oversee, preserve and safeguard documents and assets of the civil service (Articles 33 of the Civil Service Statute, 17a. of the Civil Servants’ Code of Conduct and Article 1, numerals 2, 7 and 9 of the Civil Servants’ Ethics Code).

A number of the infractions related to administrative liability have to do with the failure to protect public property. For example, depending on the seriousness of the offence, the system provides for the imposition of fines, suspension without pay, dismissal or disqualification from holding a public post. Provision is also made for the making of reparations through administrative channels, with the objective of compensating for damage to public property and preventive measures designed to protect those assets when, in the course of an investigation, it is determined that such assets are clearly at risk (Articles 91, 103, 105 and 112 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System).

As regards the criminal liability of public servants, mention should be made of the offences related to public property covered in articles of the Anti-Corruption Act and the Penal Code, including peculation, misappropriation and embezzlement of public funds and the corruption of public servants (Articles 52 to 82 of the Anti-Corruption Act).

Article 96 of the Anti-Corruption Act provides that any public servant or employee that has been convicted of any of the crimes punishable under this law shall be barred from holding a post in the public service and shall not be able to stand for election or hold any public office for a period of five years following completion of their sentence.

Article 59 of the Anti-Corruption Act, which establishes an exception to the liability of the public servant, reads as follows: “A civil servant who exceeds budgetary provisions, ignores the legal provisions on public credit and incurs expenses or contracts debts or obligations of any nature that lead to claims against the State or against any of the entities or institutions indicated in Article 4 of this law, shall be sentenced to one to three years in prison. An exception shall apply in those cases where, in order to avoid paralysis of a department’s operations, the public servant obtains authorization for the expenditure from the President of the Republic in the Council of Ministers and notifies the Permanent Commissions on Finance and on Controllershship or, failing this, the Delegated Commission of the National Assembly of said authorization.”

The mechanisms designed to ensure enforcement of the above-mentioned standards can be summarized as follows:

- i. The obligation of public servants entrusted with administering and spending national revenues, or of receiving, safekeeping and handling public funds or property, to post a bond for the purposes of indemnifying the State for any possible damages incurred (Article 161 of the Financial Administration Organic Act ).
- ii. The obligation of those administering public resources to be accountable for their operations and results of their management to such fiscal control bodies as determined by the Office of the Comptroller General. Within their respective jurisdictions, these bodies are responsible for auditing, expressing an opinion on, and closing these accounts (Articles 51 and following of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System).
- iii. The obligation of each Treasury employee, upon being replaced, to provide a written declaration and inventory, file index, and other documents that clearly show the condition of the office (Article 127 of the LOHPN).
- iv. The work performed by the Office of the Comptroller General as the supreme oversight body in charge of auditing operations related to income, expenditures and public and national property.
- v. The prevailing system of civil, criminal and administrative liability provided for in Articles 79 to 81 of the LEFP; 91 and 112 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System; 52 to 82 of the Anti-Corruption Act.

#### **1.2.2. Adequacy of the juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms in the area of the preservation and proper use of resources entrusted to public servants, based on the information made available to the Committee, are pertinent for promoting the objectives of the Convention.

In fact, it should be pointed out that legal provisions of a criminal, fiscal and disciplinary nature exist that describe the misdemeanors or types of conduct that affect the national wealth, the corresponding punishment for those public servants and private parties responsible, and the mechanisms for the State to obtain reparations or indemnification for damage caused to public property by such behavior. The Office of the Comptroller General and the Public Prosecutor’s Office are mainly responsible for implementing said mechanisms, within the ambit of their respective jurisdictions.

Among the most important prevailing provisions are the principle of accountability enshrined in the Public Administration Organic Act and the provisions concerning the fiscal and monetary system contained in the Constitution.

With respect to the prevailing penal system as established mainly in the Penal Code and the Anti-Corruption Act, the Committee wishes to make three observations, as follows.

The first observation concerns the provision of constitutional rank contained in Article 271 that establishes the non-applicability of statutory limitations to crimes against public property. The Committee considers that this provision can be a valuable mechanism for safeguarding public property and constitutes progress in the implementation of the Convention. However, the Committee wishes to call attention to the need to develop this principle in the Penal Code, the Anti-Corruption Act and other related laws and legal standards, in order to ensure its effectiveness and applicability. The Committee will formulate a recommendation in this regard.

Secondly, Article 59 of the Anti-Corruption Act absolves public servants from criminal liability when they "*incur expenses or contract debts or obligations of any nature that lead to claims against the State or against any of the entities or institutions indicated*" in order to avoid paralysis of a department's operations, if the President of the Republic in the Council of Ministers authorizes such expenditures in advance.

In this regard, the Committee believes that when it comes to the preservation and conservation of public property, the legal system should contain provisions that clearly and precisely limit and establish the criteria and parameters that regulate the discretionary powers of public servants related to the management of this property. It is also necessary that the bodies that have those powers, control, oversee and audit management of this property. Finally, the Committee believes that the power conferred on the judicial branch to determine the liability of public servants for acts of corruption committed against public resources must be non-transferable. The Committee will formulate a recommendation in this regard.

Thirdly, the provisions of Article 96 of the Anti-Corruption Act establish a limit of five years of suspension from the exercise of public functions from completion of the sentence for civil servants who have been convicted of any of the crimes punishable under this law (misappropriation, embezzlement, peculation, etc.). The above is without prejudice to the disqualification period of up to 15 years that can be imposed by the Comptroller General of the Republic in an exclusive fashion, as established by Article 105 of the Organic Act of the Office of the Comptroller General and the National System of Fiscal Control. Taking into account the seriousness of these crimes and their negative impact on public property, the Committee believes that the Bolivarian Republic of Venezuela could benefit from establishing, in the Anti-Corruption Act and in the existing laws, a disqualification period preventing public servants from working in the public service for up to 15 years, as stipulated in the Organic Act of the Office of the Comptroller General and the National Fiscal Control System. The Committee will formulate a recommendation in this regard.

The Bolivarian Republic of Venezuela has enacted legislation and regulations in this area, such as Article 6 of the "*Law of Partial Reform of Public Tendering*" and the provisions of the "*Partial Regulation of the Decree of Partial Reform of the Law on Tenders, for Direct Adjudication in cases of Contracting for Works, Services or the Procurement of Goods that Conform to the Extraordinary Plan of Economic and Social Development Established to Promote Small and Medium-sized Business and other Alternative Businesses such as Associations, Cooperatives and Self-Managed Micro-enterprises, (sic) Must be Executed within a Period of One Hundred and Eighty Business Days*".

Article 6, mentioned in the previous paragraph, empowers the President of the Republic in the Council of Ministers to decree temporary measures to offset adverse or negative conditions that affect small and medium-sized businesses and cooperatives. These measures include “*the establishment of latitude as to category preferences or the amounts of reserved contracts*”.... “*the incorporation of human resources*” and others.

Article 1 of the Partial Regulation mentioned above, establishes the procedure of direct adjudication of contracts for works, services and procurement of goods to be executed within a time period of no more than one hundred and eighty days (Articles 1 to 13).

In view of the foregoing comments, the Committee notes that as important as limiting discretionary powers is to ensure that where those powers are exercised this is not done in an arbitrary manner. Other mechanisms may be used for purposes, such as greater ex post controls or transparency requirements.

Finally, since the Bolivarian Republic of Venezuela has been updating its standards and mechanisms of conduct for the preservation and appropriate use of public resources, it would be appropriate for the Bolivarian Republic of Venezuela to consider implementing programs designed to inform and train all public servants about the above-mentioned standards, as well as to enable periodic updating. The Committee will formulate a recommendation in this regard.

### **1.2.3. Results of the juridical framework and/or of other measures and mechanisms designed to ensure their enforcement**

With respect to the results of the juridical framework and/or of other measures and mechanisms designed to ensure their enforcement, the Bolivarian Republic of Venezuela indicates the following in its Response to the Questionnaire: “*To measure results obtained in implementing the above standards and mechanisms, information was requested from the state and municipal comptroller’s offices, as well as the internal audit units of the agencies that make up the central government, but as of the date of completion of this questionnaire no reply has been received.*”<sup>8</sup>

In addition to this information, statistical charts for the years 1988 to 2002 are presented containing the following data: i) number of statements rejected by the Office of the Comptroller General; ii) corrections ordered by the Office of the Comptroller General; iii) administrative investigations undertaken by the Office of the Comptroller General; iv) employees found guilty of administrative infractions by the Office of the Comptroller General; v) employees found guilty of administrative infractions by internal audit units; vi) employees suspended from their posts; vii) employees who received disciplinary sanctions from the Office of the Comptroller General; and viii) civil suits and charges filed by the Public Prosecutor’s Office, in cases of violation of standards to ensure proper use of public resources.

Although the above data has not been broken down, it can nevertheless be used as a basis for assessing the concrete results of the work carried out by the Office of the Comptroller General as the supreme oversight body. However, the general nature of the information provided does not allow the Committee to assess comprehensively the results in this field. Taking into account this circumstance, the Committee will formulate a recommendation.

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<sup>8</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 24 and 25.

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

#### **1.3.1. Existence and provisions of a juridical framework and/or measures and mechanisms designed to enforce this framework**

The Bolivarian Republic of Venezuela has a set of standards requiring public servants to report to appropriate authorities acts of corruption of which they are aware.

Article 287, paragraph 2, of the Penal Procedure Code, provides that the reporting by public officials is compulsory when “*in the course of their duties they become aware of any punishable offence.*”

Article 208 of the Penal Code establishes the penalty for those who fail to comply with the above obligations – a fine of from 50 to 1,000 Bolívares.

The Organic Act of the National Public Treasury also establishes the duty of all public servants and private parties to report acts of which they become aware that involve tax fraud. Violators of this law are subject to penalties established in the Penal Code.

The Code of Ethics for Civil Servants, in Article 1, paragraph 9, establishes the duty of public employees to report to the appropriate authority any activity contrary to the proper management of funds and the public interest.

Among the domestic regulations mentioned by the country under review in its Response to the Questionnaire was the Executive Order that promulgated the Civil Servants’ Code of Conduct. This Order establishes “*the duty of every civil servant to report any violation of regulations concerning the principles governing the duties and conduct of civil servants as far as the ethical values required in public service; the report is to be submitted to the heads of the agency where the alleged violator works.*”<sup>9</sup>

With respect to the mechanisms designed to enforce compliance with the above-mentioned standards, the Committee notes that the legal system of the country under review provides for the imposition of fines on public servants who fail to report acts of corruption of which they are aware (Article 208 of the Penal Code). As well, bodies such as the Public Prosecutor’s Office and the Office of the Comptroller General are obliged to take criminal or administrative action, as the case may be, to determine the liability of public servants for the acts stipulated in Article 24 of the Code of Penal Procedure, Article 44 of the Anti-Corruption Act and Article 96 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System.

Similarly, the Committee takes note of several standards of a general nature mentioned by the country under review in its Response to the Questionnaire that, broadly speaking, could apply to the protection of the physical integrity or property of public servants who report acts of corruption. Examples include Article 55, Paragraph 1 of the Constitution, Article 25 of the Scientific, Criminal, and Forensic Investigative Agencies Act and Article 86 of the Organic Act of the Public Prosecutor’s Office.

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<sup>9</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 29 and Article 2 of the Civil Servants’ Code of Conduct, Official Gazette No. 36.496 of July 15, 1998.

Finally, as pointed out by the country under review in its Response to the Questionnaire, with respect to the mechanism of interest to the Committee, mention should be made of the work carried out by the Citizens' Service Office of the Office of the Comptroller General.<sup>10</sup>

### **1.3.2. Adequacy of juridical framework and/or other measures and of the mechanisms designed to ensure their enforcement**

The standards and mechanisms related to the measures and systems that require public servants to report acts of corruption in the public service of which they are aware, as reviewed by the Committee based on the information made available, are pertinent for the promotion of the objectives of the Convention.

Primary among the regulations reviewed are the provisions of the Penal Procedure Code and the Organic Act of the National Public Treasury mentioned in the previous section of this report, both in terms of their legal rank and the fact that they apply in general terms to all public servants.

With respect to the *Executive Order* promulgating the Public Servants' Code of Conduct, the Committee notes the potential limitation posed by Article 2, which establishes the requirement for public servants to inform "*the heads of the agency where the alleged violator works.*"

Nevertheless, as established in Articles 29 of the Citizens' Branch Organic Act, Article 287 of the Penal Procedure Organic Code, Article 13 of the Organic Act of the National Public Treasury, and Article 1, numeral 9 of the Civil Servants' Ethics Code, this does not waive the duty of all public servants to file reports with the competent bodies. According to information supplied by Venezuela to the Committee, when any fiscal control entity receives a report that involves a high level public servant currently occupying his or her position, the report must be forwarded immediately to the Office of the Comptroller General, which in turn pursues the inquiry (Article 87 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System).

The Committee believes that limiting the presentation of reports to the heads of the agency involved could be an obstacle to such reports being presented in the first place. For example, this provision could prove to be ineffective when the parties involved in the act being reported are the heads of the agency themselves and when the report could in some way affect them or harm their interests. The aforementioned standard also seems to give agency heads the discretion to define and implement "the appropriate action" to be taken following receipt of a report. Nevertheless, the Committee notes that the Bolivarian Republic of Venezuela has regulations that allow public servants, in their capacity as citizens, to present reports to the appropriate bodies (Office of the Comptroller General, Office of the Public Prosecutor, Ombudsman's Office, etc.).

The punishment provided for public servants who fail to comply with this obligation takes the form of a fine. The Committee believes that the Bolivarian Republic of Venezuela could consider the possibility of incorporating other more severe administrative and criminal penalties, such as suspension of the public servant, dismissal and imposition of higher fines than those currently applied, depending on the seriousness of the offence. Taking such action could help to convince a larger number of public servants to comply with this obligation. The Committee will formulate a recommendation in this regard.

The Committee also notes a lack of sufficient regulations facilitating presentation of these reports and establishing presentation requirements that do not dissuade potential informers, such as protecting their identity.

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<sup>10</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 30 and 31.

There also appears to be a regulatory vacuum with respect to standards designed to protect public servants from possible reprisals as a result of a presenting a report against their superiors.

With respect to mechanisms for enforcing compliance with the above-mentioned standards, the Committee notes that the Venezuelan legal system contains provisions of a general nature designed to protect victims, witnesses and experts, although it lacks specific standards to protect informers or to personalize concrete protective measures, as detailed in the previous section of this report.

Taking into account the above observations, the Committee considers that the Bolivarian Republic of Venezuela could consider complementing and strengthening current standards and provisions related to the protection of witnesses and informers; this could take the form of regulations and the development of provisions and mechanisms that specifically protect public servants who inform authorities about unlawful conduct, including protection against possible reprisals that may result from a report that involves or affects their superiors. The Committee will formulate a recommendation in this regard.

With respect to the Order concerning reporting issued by the Office of the Comptroller General and mentioned by the country under review in its Response to the Questionnaire, the Committee notes that *“it is not directed especially at public employees but rather intended to encourage citizen participation in the fight against corruption.”*

The Committee notes the importance of updating the fines imposed by the Penal Code, as well as those set out in Article 208, taking into account the seriousness of corruption offenses in the public service. The Committee will formulate a recommendation in this regard.

In addition, the Committee notes a lack of regular training and refresher courses in relation to the obligation of public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware. Taking into account these circumstances, the Committee will formulate recommendations.

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

In its response, the Bolivarian Republic of Venezuela notes the following: *“As evidence of the objective results obtained from enforcement of the standards and mechanisms requiring public officials to report to appropriate authorities acts of corruption in public office of which they are aware, we present the following data from the Public Prosecutor’s Office.”* This is followed by a chart that shows the number of *“Complaints Processed by the Public Prosecutor’s Office concerning Alleged Acts of Corruption in Public Office.”* There were 967 such complaints filed in 1988; 1,234 in 1999; 1,307 in 2000; 1,649 in 2001; and 1,478 in 2002. This amounts to a total of 6,635 complaints filed between 1998 and 2002, according to the statistical chart presented.<sup>11</sup>

The country being reviewed also indicates that the *Citizens’ Service Office of the Office of the Comptroller General* has among its duties to provide personalized service and guidance to citizens who go to the Office of the Comptroller General to file complaints. This is followed by a chart that shows the number of complaints filed with this Office, including 413 in 2000; 367 in 2001 and 572 in 2002.<sup>12</sup>

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<sup>11</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 32.

<sup>12</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 36.

The Committee notes that the above data refer to complaints presented by citizens (without determining whether or not they are public servants), which are the object of this review; furthermore, according to the chart on the actions taken by the Office of the Comptroller General in carrying out its duties, provided by the country under review in its response, 52 and 20 complaints were verified in the years 2001 and 2002, respectively.<sup>13</sup>

The limited nature of the information provided does not allow the Committee to assess comprehensively the results in this field. Taking into account this consideration, the Committee will formulate a recommendation.

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

### **2.1 EXISTENCE AND PROVISIONS OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Bolivarian Republic of Venezuela has a set of standards and measures with respect to the disclosure of income, assets and liabilities. This system is provided for and regulated by the Organic Act of the Office of the Comptroller General and the National Fiscal Control System, and by the Anti-Corruption Act.

According to the Anti-Corruption Act, the officials required to make such disclosures are all elected, appointed or contracted (paid or unpaid) persons exercising a public function for the Republic, the States, the federal entities, the districts, the metropolitan districts, or the municipalities, autonomous state, district or municipal agencies, public universities, the Central Bank of Venezuela, or any other government agency or entity; all directors and administrators of civil and commercial corporations, foundations, civil associations and other entities ; and directors appointed as representatives of these organs and institutions, even if participation in these organizations is less than fifty percent (50%) of the capital or assets (Article 3 of the Anti-Corruption Act).

Without prejudice to the provisions of Venezuelan legislation, the Comptroller General of the Republic may periodically request sworn disclosure statements from officials, employees, and laborers of the public sector subject to its control, supervision and auditing, and has the power to periodically exempt certain officials, employees and other parties, in accordance with Article 78, part 2 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System.

The disclosure statements must be presented to the Office of the Comptroller General or to the officials designated by the Comptroller General. They can also be requested by the Public Prosecutor's Office or by courts with criminal jurisdiction when the investigation of the known facts provides indications that crimes contained in the Anti-Corruption Act have been committed (Articles 27 and 28 of the Anti-Corruption Act).

The sworn statement must be presented within 30 days of assuming public office and within 30 days after leaving public office (Article 23 of the Anti-Corruption Act).

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<sup>13</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 45.

As for the contents of the statement, the sole clause of Article 78 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System empowers the Office of the Comptroller General to establish the requirements that must be met when presenting such statements, through a resolution published in the Official Gazette. The Response to the Questionnaire filed by the country being reviewed indicates that: *“The order for presentation of the disclosure statement by the Office of the Comptroller General through Resolution N° 01-00-012 April 18, 2002, establishes the requirement to include assets of a spouse not legally separated, and those of minor children. It also provides that the declaration must include the declarant’s express and irrevocable authorization to the Office of the Comptroller General and the competent jurisdictional organ to investigate his or her foreign accounts and assets.”*<sup>14</sup>

The Office of the Comptroller General is also the body charged with *“receiving, accepting, analyzing, collating, verifying, organizing and archiving the sworn statements of assets presented,”* in addition to requesting that such statements be drawn up and presented by those required to do so (Article 41 of the Anti-Corruption Act).

The procedure for verifying these statements is regulated by the Anti-Corruption Act and is the sole responsibility of the Office of the Comptroller General. The procedure is designed to attempt to verify the *“sincerity”* of the data contained in the statement and to analyze thoroughly its sources of information in order to rule out the existence of any facts that may generate liability (Articles 29 to 32 of the Anti-Corruption Act).

In this regard, the law stipulates the obligation of declarants to facilitate this process. To this effect, they must permit the inspection of books, bank accounts, documents, invoices, waybills and other items that enable the Office of the Comptroller General to verify the contents of the statement. Individuals who possess said documents or information have similar obligations.

The Office of the Comptroller General is empowered to order any public or private sector agency or entity to supply specific information to verify the contents of the statements. It has the power to: i) directly request from embassies, in accordance with prevailing international law, items of proof required to carry out the procedure of verifying statements of income, assets and liabilities; ii) request a new statement of disclosure from ex-civil servants, even though they may no longer be employed in the public service iii) verify ex officio the net worth of persons who fail to present sworn statements, even though they are obliged to do so (Articles 27 and 29 of the Anti-Corruption Act).

In the event that the statements do not meet the established requirements or there are doubts as to the accuracy of the data, the Office of the Comptroller General can order the declarant to turn over the corresponding items of proof by a specified deadline (Article 30 of the Anti-Corruption Act).

In this respect, Article 44 of the Anti-Corruption Act states: *“when the Office of the Comptroller General ascertains the administrative liability of a public servant in conformity with this law, it shall turn over the results of its proceedings to the Public Prosecutor’s Office for appropriate action. The following Article of this law lists the powers of the Office of the Public Prosecutor in this regard, including: “to take such actions as necessary to enforce the criminal, civil, labor, military, administrative or disciplinary sanction applicable” and, among others, its duty to “to ensure the enforcement of the appropriate administrative and disciplinary penalties”*

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<sup>14</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 32 and 33.

With regard to the prevailing system of penalties, it should be pointed out that the Office of the Comptroller General or its delegates can impose fines, order suspension without pay, and the dismissal or disqualification of persons who fail to comply with the provisions. Included in the assumptions that give rise to the application of these penalties are, among others, failure to present a statement; hiding or falsifying data, or failing to include other data that should have been included; and failure to present the information requested by the applicable deadline (Articles 33 to 40 and 80 of the Anti-Corruption Act).

The Anti-Corruption Act also criminalizes illicit enrichment and the intentional falsification or concealment of data contained in the sworn statement or that should be contained therein (Articles 46, 73 and 76 of the Anti-Corruption Act).

Finally, it should be pointed out that the Anti-Corruption Act describes the various phases of the disciplinary administrative proceedings and states in this regard: *“when imposing punishment, the corresponding mitigating or aggravating circumstances shall be taken into account. Mitigating circumstances include lack of intent, malice or negligence on the part of the offender and not having been punished any time during the previous five years. Aggravating circumstances include relapses, repeat offences, resistance or reticence.”* (Article 35 of the Anti-Corruption Act).

## **2.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The standards and mechanisms related to systems for the disclosure of income, assets and liabilities regulated by Article III, Paragraph 4 of the Convention reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The main provisions in this regard are contained in the Organic Act of the Office of the Comptroller General and the Anti-Corruption Act; as pointed out above, these laws regulate the various aspects of this issue and represent major progress in the implementation of the Convention.

The Committee recognizes the broad powers granted to the Office of the Comptroller General – the body in charge of managing and administering the system of statements of income, assets and liabilities – and the significance of the tools made available to the Office to facilitate its work. Some of the more important tools include the possibility of ordering any public sector agency or entity to initiate specific proceedings with the objective of verifying the content of these statements; the obligation of public servants, or of the parties that possess them, to turn over books, bank accounts, documents, invoices, etc.; the possibility for the Comptroller General to request that the respective embassies, in accordance with the pertinent conventions and treaties, provide items of proof required for the verification process; and the support work carried out by the Office of the Public Prosecutor within the parameters of its jurisdiction (Articles 27 to 29 of the Anti-Corruption Act).

Nevertheless, the Committee also notes the broad discretionary powers of the Comptroller General to stipulate those public servants, employees and other parties that are exempt from presenting these periodic statements, the content and requirements, for their presentation, as well as the timing of their updates.

With respect to the parties that the Office of the Comptroller General can force to present such statements, the Committee notes the extensive list of civil servants and other officials required to do so or not, and that this possibility extends to these individuals (Article 23 of the Anti-Corruption Act and the sole clause of Article 78 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System). However, Article 78 of the latter Law states that: *“The Office of the Comptroller General may request sworn statements...”* It is the understanding of the Committee that the verb form

used in this standard implies the establishment of a power that the Office of the Comptroller General might or might not exercise, at its discretion, with respect to the public servants who are obliged to present such a statement under the prevailing rules. The Committee also notes the power accorded the Office to “*exempt officials, employees or other parties from presenting ... statements periodically.*”

With respect to the content and presentation requirements for these statements, Article 26 of the Anti-Corruption Act provides that the statements must conform to the requirements of Article 78 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System Office of the Comptroller General, which requires that these statements be made on ordinary paper, without stamps or seals, and reflect the true financial position of the declarant at the time of presentation, along with any other requirements that shall be indicated by “*the Comptroller General of the Republic through a resolution to be published in the Official Gazette of the Bolivarian Republic of Venezuela ...*” (Article 78 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System).

Deadlines for presentation are defined in Article 23 of the Anti-Corruption Act as follows: within 30 days of assuming public office and within 30 days after leaving public office.

In this regard, the Committee considers that the Bolivarian Republic of Venezuela could benefit from the implementation of such legal provisions and reasonable timelines and circumstances for updating them, without prejudice to the powers of the Comptroller General of the Republic to demand, at any time, the periodic presentation of a sworn statement of net worth from those parties obliged to do so. The Committee does acknowledge the existence of the provision in Article 78 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System that empowers the Office of the Comptroller General to require the periodic presentation of these statements. However, it would seem advisable that a provision of this nature not be left entirely to the discretion of one body or official. In this regard, the Committee refers the reader to the comments made in previous paragraphs concerning this discretionary power.

Article 78 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System also deals with this issue and establishes the power of the Office of the Comptroller General to require the “*periodic presentation of these statements.*” Correspondingly, the Committee is of the understanding that the Venezuelan legal system provides for three separate times for presentation: before, during, and upon ceasing the exercise of public duties. The Committee notes that the presentation of statements of income, assets and liabilities is mandatory in the first and third instances, and that the updating of such statements depends on the position adopted by the Office of the Comptroller General.

The Committee believes that the above-mentioned aspects are essential to establishing a system for disclosing income, assets and liabilities. It is advisable not only from the standpoint of legal security to specify and circumscribe – through a law or a regulation – the parties obliged to present such statements of income, assets and liabilities, the contents and the deadline for presentation, but furthermore, it is not appropriate to grant one administrative body or a single official discretionary powers to determine overarching matters on which the smooth operation of the system depends. A law or regulation such as the one being suggested here could help to remove room for discretionary behavior that could permit, facilitate or promote illegal acts against public property. Taking into account the above considerations, the Committee will formulate a recommendation.

The Committee recognizes the significance of ensuring that the human resource departments of the various bodies and entities that employ public servants obliged to present statements of income, assets and liabilities, require public servants to produce a proof of presentation attesting to the presentation of said statements, in accordance with the provisions of Article 26 of the Anti-Corruption Act. However,

provision should also be made concerning the consequences of failing to comply with this obligation and the action that these departments should then take. In this respect, the Committee considers that the Bolivarian Republic of Venezuela could benefit from strengthening the work carried out by the human resources departments of each institution; this could be accomplished by providing expressly for the obligation of these departments to inform the Office of the Comptroller General as soon as an employee fails to comply, so that the Office can take appropriate action.

The Committee notes that once the analysis of a statement has been concluded and its veracity established, the Office of the Comptroller General then archives the file (Article 32 of the Anti-Corruption Act). In this respect, the Committee also notes that there is no provision in the country's legal system with regard to publicizing such statements, when appropriate, and using them to avoid conflicts of interest in future.

Failing to publicize such statements limits the potential role that citizens can play in reporting unlawful acts against public property. Nor are there provisions that suggest the duty of the Office of the Comptroller General to maintain registers of those obliged to present statements of income, assets and liabilities that enable the presentation of such statements to be effectively controlled. It would therefore be appropriate for the Bolivarian Republic of Venezuela to consider implementing a registry system that: codifies the posts and persons obliged to present these statements; enables the registry to be periodically updated; facilitates the implementation of procedures to achieve effective control over compliance with this obligation; and finally, makes use of modern communication and information technologies to maximize efficiency in operating this registry. Taking into account these circumstances, the Committee will formulate recommendations in the final chapter of this report.

### **2.3. RESULTS OF THE LEGAL FRAMEWORK AND OF OTHER MEASURES**

With respect to the results of the legal framework and of other measures, the response indicates the number of statements of income, assets and liabilities received per year; the majority of these result from requests for periodic updates, as provided for in paragraph 1 of Article 78 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System. The data presented show that 346,863 statements were received in 2000, 148,340 in 2001 and 48,605 in 2002.<sup>15</sup>

The data reveal a drop of 58% in the total number of statements presented in 2001 compared to the year 2000, and a 67% decline in the number of statements received in 2002 compared to 2001.

On this point, Venezuela stresses the importance of bearing in mind that the legislation (Article 23 of the Anti-Corruption Act) requires the presentation of this instrument upon entering and leaving the public service. Consequently, the variation from one year to the next is caused by the arrival and departure of public service personnel and statements presented as a result of requests for updates formulated by the Comptroller General of the Republic, as stipulated in paragraph 1 of Article 78 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System.

The Committee considers it pertinent to note that, taking into account the extensive list of public servants obliged to present these statements and the number of public servants in the employ of the national administration, that the number of declarations received in 2002 was 48,604, which represents 37% of the total number of employees of the national civil service. According to the information made available by the analyzed country, which administration is made up of 132,133 civil servants. This number does not include the total number of civil servants in the civil services of the states, territories or federal dependencies, districts, or metropolitan districts who also must present this declaration.

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<sup>15</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 38.

For these same years, the Office of the Comptroller General requested declarants to correct errors and omissions and to supply additional information, as follows: 2,357 in the year 2001, 2,246 in 2002 and 2,242 in 2003.<sup>16</sup>

As well, statistics are provided concerning fines imposed for failing to provide the necessary information or documents required under the procedure for auditing net worth. The fines amounted to 55 million Bolivars in the year 2000; 134 million in 2001 and 70 million in 2002.<sup>17</sup>

On this point, the state reviewed should also consider that while such a reduction indeed exists, this may be due to the fact that these fines are imposed as a result of omissions in the presentation of the statements (Article 33 of the Anti-Corruption Act), or of errors in presentation, which limits the comparability of these data. Even if we take into account the reduction in fines in 2002 compared to 2001, this means that compliance was improved; in other words, the fact that less fines were levied indicates that compliance with this obligation increased.

As well, according to Venezuela, it is noteworthy that the amounts of the fines imposed with respect to the provisions of Article 33 vary between 50 and 500 tax units (13,200 Bolivars for the year 2001 and 14,800 for 2002, per tax unit), depending on the seriousness of the offence; qualifying the amount of the fine within this range results in the link between the quantity and total amount of these fines being lost.

According to the information provided by the country being reviewed, the following numbers of audits were carried out: 11 in the year 2000, 9 in the year 2001 and 20 in 2002. Of these, the following number of cases showed evidence of unlawful acts under the corresponding laws and were turned over to the Public Prosecutor's Office: 5 in the year 2000, 6 in 2001, and 14 in 2002. The remaining files were archived in the absence of any such evidence.<sup>18</sup>

The number of audits is remarkably limited, considering the number of civil servants obliged to present these statements (132,133 from the national administration, apart from the civil services of the state, municipalities, etc. who are also obliged to present these statements). The number of declarations is equivalent to 0.015% of public servants in the national civil service.

The Committee considers that although the information corresponding to the statements of net worth reveals the possibility that this mechanism could be used to detect possible behavior and situations that run counter to the principles of administrative probity and public property, an analysis of its results shows that it is not an effective mechanism for deterring corrupt practices. While the scope of the task and the resources devoted to it surely explain these shortcomings to some extent, there is no adequate background information for determining the causes of this situation. Taking into account this circumstance, the Committee will formulate a recommendation.

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<sup>16</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 38.

<sup>17</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 39.

<sup>18</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 39 and 40.

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

#### **3.1. EXISTENCE OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Bolivarian Republic of Venezuela has a series of standards and measures with respect to oversight bodies charged with the responsibility of ensuring compliance with the provisions of numerals 1, 2 and 4 of Article III of the Convention, consisting of various types of provisions.

It is pertinent to point out the existence of constitutional provisions relating to the oversight bodies described in the following paragraphs, among them Articles 284 to 286 referring to the Office of the Public Prosecutor and Articles 287 to 291 referring to the Office of the Comptroller General.

Senior oversight bodies include, as the highest control body of the National Fiscal Control System, the Office of the Comptroller General. The Office of the Comptroller General is responsible for external oversight. In accordance with Article 273 of the Constitution and Article 2 of its Organic Act, it is one of the organs of the citizen's branch, with responsibility for control, monitoring, and supervision of income, expenditures, public assets and national assets, as well as operations involving them. Its chief serves for seven years and is appointed as provided in Article 279 of the Constitution, and must meet the requirements of Article 11 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System.

In the exercise of its functions, the Office of the Comptroller General is not subject to any other government agency. It enjoys functional, administrative and organizational autonomy and the power to issue regulatory standards on matters within its jurisdiction (Article 3 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System). As described in Article 289 of the Constitution, its duties include inspecting and auditing public sector organs; ordering the start of investigations into irregularities involving public assets; requesting the Chief Prosecutor to initiate appropriate legal action in the case of infractions and offenses against public assets that become known to it in the exercise of its powers; exercising management control and evaluating compliance with and results of public policy decisions made by public sector organs and entities subject to its control with regard to their income, expenditures and assets.

In addition to the Office of the Comptroller General, the National Fiscal Control System consists of the comptrollers' offices of the states, municipalities, districts and metropolitan districts; the internal audit units of public agencies; the Office of the National Superintendent of Internal Audit; the senior officials, directors and managers of public entities; and the citizens, exercising their right to participate in the oversight of public administration. Its principal objective is to promote unity in the direction of control systems and procedures for attainment of the general objectives of the various agencies and organs subject to the System, as well as the proper functioning of civil service (Articles 4, 24 and 26 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System).

Internal control in each public institution is carried out by the senior officials in the hierarchy of each agency, particularly through each institution's internal audit unit. This system is also supported by the work carried out by the comptrollers' offices in the states, municipalities, districts and metropolitan districts, which carry out the control, monitoring, and supervision of the income, expenditures and assets of the organs within their sphere of competence.

Also to be noted in this regard is the role of the Office of the National Superintendent of Internal Audit, which is provided for and governed by the Organic Act for the Financial Administration of the Public Sector. The objective of this Office is to promote efficient collection and use of public resources, compliance with legal standards for State operations, reliability of information produced and disclosed concerning them, and improved administrative ability to evaluate the management of State resources, as well as other functions.

With regard to mechanisms to promote participation by civil society and nongovernmental organizations in anti-corruption efforts, the Committee notes that although the country does not have an oversight body in the terms of Article 3, paragraph 11 of the Inter-American Convention Against Corruption, which guarantees the right of access to information, the Constitution of the Republic establishes the recourse of habeas data, which may be invoked before the judicial bodies (Article 28 and Article 281, number 3 of the Constitution of the Republic), and that may be employed in defending the right.

Finally, mention should be made of the jurisdictional oversight role carried out by the agencies of the Judicial Branch, particularly the Office of the Public Prosecutor through the Prosecutor's Office, in enforcing the system in force with respect to the civil, criminal and administrative liability of public officials in terms of the provisions that are the subject of review in this first round.

### **3.2. ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The standards and mechanisms in the area of oversight bodies in relation to the selected provisions that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

The series of standards that the Bolivarian Republic of Venezuela has in the area of oversight bodies responsible for functions relating to compliance with the provisions contained in paragraphs 1, 2, 4 and 11 of Article III of the Convention, cover said provisions. This is particularly true if we take into account that there are bodies of this nature with general or specific jurisdiction to monitor that compliance, which represents progress made in implementing the Convention. These institutions include the Office of the Comptroller General – and within this the Citizens' Service Office – the Office of the National Superintendent of Internal Audit, the Chief Prosecutor's Office and the other institutions mentioned in the previous section of this report.

### **3.3. RESULTS OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The response given by the Bolivarian Republic of Venezuela in the questionnaire states: *“With the entry into force of the laws envisioned in the Constitution, such as the Organic Act of the Office of the Comptroller General and the National Fiscal Control System, the Organic Act for Financial Administration of the Public Sector, and the Organic Act of the Citizens' Branch, the old standards that regulated action of public officials have been updated, cleaned up, streamlined, and perfected. In addition, all governmental agencies in their respective hierarchy and authority are progressively adapting their internal and operational structures to respond properly to the demands of the ever more active participation of citizens and non-governmental organizations (NGOs).*

*Since the implementation of these regulations is fairly recent, it is difficult to measure results. Only now are we beginning to receive data to determine quantitative and qualitative indicators of effectiveness.*"<sup>19</sup>

Nonetheless, the country under review has presented a table that shows "*the objective results of the Office of the Comptroller General, the oversight body responsible for enforcing compliance with the provisions of paragraphs 1, 2, 4 and 11 of Article III of the Convention.*" The table shows the type and number of actions taken by the Office of the Comptroller General, in carrying out its duties, from 1998 to 2002. In this respect, it indicates that in the years 2001 and 2002 there were, respectively, 122 and 27 "*operational and financial audits,*" 533 and 610 "*account reviews,*" 52 and 20 "*verifications of complaints,*" 0 "*special actions,*" "*evaluations/reviews of State Comptroller's Offices,*" 45 and 5 "*follow-ups of corrective action,*" 8 and 7 "*management audits,*" 4 "*reviews,*" in each year, and 0 "*unprogrammed activities.*"<sup>20</sup>

Regarding the evaluation or diagnosis of State Comptroller's Offices, the Committee notes that despite the essential role they play within the National Fiscal Control System, no reviews of their work were conducted during 2001 and 2002, compared with 23 and 18 evaluations conducted during 1999 and 2000. This seems to suggest that it would be advisable to strengthen the work developed by the Office of the Comptroller General as the agency responsible for the oversight and monitoring of these agencies and to consider the possibility of strengthening supervision over them, either by increasing the number of annual evaluations or diagnoses to review their operations or by implementing other mechanisms considered appropriate to achieve this objective. The Committee will formulate a recommendation in this regard.

The Committee also notes the discrepancy between the number of "*operational and financial audits*" performed - 122 and 27 during 2001 and 2002, respectively - and "*follow-ups of corrective action*" - 45 and 4 during the same years. The Committee feels that the Bolivarian Republic of Venezuela could benefit by strengthening the work of the Office of the Comptroller General as the oversight body with respect to policies and concrete actions that would make possible appropriate follow-up of those corrective actions that the Office of the Comptroller General suggests to the entities within its sphere of competence. The Committee will formulate a recommendation in this regard.

The Committee recognizes that one factor that may contribute to the limited nature of the information presented is the recent promulgation of the laws governing the matters that are the subject of review in this first round. Therefore, the limited nature of the information available to the Committee does not allow a comprehensive evaluation of the results in this field. The Committee will formulate a recommendation in this regard.

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<sup>19</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 44.

<sup>20</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 44.

#### **4. MECHANISMS TO ENCOURAGE THE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11)**

##### **4.1. MECHANISMS FOR PARTICIPATION IN GENERAL**

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

The Bolivarian Republic of Venezuela has a variety of provisions and measures that differ in terms of their nature, characteristics and scope, with respect to the participation of civil society and non-governmental organizations in public activities, among them the following.

Pertinent articles in the Constitution include Articles 28, 51, 62, 70, 168, 173, 184 (2), 187 (4), 253, 255 and 294. The first of these establishes that all citizens have the right to access information and data that appears in official or private records concerning themselves or their assets, as well as to know the use to be made of and the reasons for such information, as well as the right to seek to update, correct, or destroy, information contained in court records and files. Those provisions also give a citizen the right to other documents, whatever their nature, containing information of interest to communities or groups of persons.

Article 51 of the Constitution establishes that anyone has the right to submit or direct petitions to any authority or public official on matters within their jurisdiction and to obtain a timely and satisfactory response. An official who violates this provision may be subject to dismissal.

Article 62 refers to the right of all citizens to participate in public affairs, directly or through their representatives. It also provides that the participation of the people in developing, carrying out and controlling the management of public affairs is necessary to achieve their involvement to ensure their full development and that it is the duty of the State to create the most favorable conditions for this participation.

Article 70 of the Constitution refers to the means whereby the people participate and become involved in the exercise of their sovereignty, *“in political affairs: voting to fill public offices, referendum, consultation of public opinion, mandate revocation, legislative, constitutional and constituent initiative, open forums and meetings of citizens whose decisions shall be binding, among others; in social and economic affairs: citizen service organs, self-management, co-management, cooperatives in all forms, including those of a financial nature, savings funds, community enterprises, and other forms of association guided by the values of mutual cooperation and solidarity.”*

Articles 168, 184, 187 (4), 253 and 294 of the Constitution also guarantee the participation of civil society in the exercise of specific State functions. Articles 168 and 184 refer to the municipal public power and the role that municipalities play in promoting the inclusion of citizen participation in matters under their administration; Article 187 (4) indicates among the functions of the National Assembly that of organizing and promoting citizen participation in matters within its competence; Article 253 indicates that the power to administer justice emanates from the citizens and is imparted in the name of the Republic as authorized by law; and Article 294 indicates that one of the principles guiding the electoral branch is that of guaranteeing citizen participation in elections procedures.

With respect to the participation of the non-governmental organizations, the Bolivarian Republic of Venezuela in its first response to the questionnaire indicated: *“Finally, for Venezuela, the participation of non-governmental organizations in activities related to the control of public affairs in the country, and therefore their participation in the follow-up mechanism for the implementation of the Inter-American Convention against Corruption, is limited to Venezuelan civil society organizations that do not receive external funding”*.<sup>21</sup>

This same position was reiterated in the update of the response to the questionnaire, where it indicated: *“in Venezuela the participation of non-governmental organizations in activities related to the control of civil service in the country is recognized in the Constitution, laws, as well as jurisprudence relating to national civil society organizations”*.<sup>22</sup>

In legal terms, there are regulations that elaborate the constitutional principles referred to in the first section of this report. Article 6 of the Administrative Procedures Organic Act establishes that civil service shall develop its activities and shall be organized in such a way that individuals may *“resolve their issues, be assisted in the formal preparation of administrative documents, and receive information of general interest by telephone, computer, and fax ... may easily access up-to-date information on the organizational scheme of the bodies and entities of civil service, as well as informative guides on administrative procedures, services and benefits provided.”*

Article 7 of the same law lists some of the rights of citizens, among them the right to access information; the right to receive guidance on legal or technical requirements imposed by the provisions; as well as the right to free access to the files of the civil service, in accordance with legal provisions in force.

Article 59 of the same law expressly establishes that everyone has the right to examine information relating to an administrative procedure they must carry out. Documents classified as confidential are excluded from this right.

Note should be made of Articles 8 to 10 of the Anti-Corruption Act establishing the public nature of public information; the obligation, on the part of State entities, to provide information on the resources that comprise the public assets they are charged with administering and to create a detailed report on these resources; as well as the person’s right to have access to and obtain documents and files from civil service, in accordance with the respective provisions.

Various organic acts contain provisions directed to promoting citizen participation. These include the Organic Act of the Office of the Comptroller General and the National Fiscal Control System, the Organic Planning Act, the Municipal System Organic Act, etc.

Finally, notable among provisions in force is the order that the Office of the Comptroller General issued, in the exercise of its power, which encourages citizens to file complaints when they are aware of irregularities relating to the management of funds or public assets.

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<sup>21</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 24 and jurisprudence of the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela. File No. 00-1728: "The representatives of civil society are Venezuelan associations, groups and institutions (without external subsidy), which as a result of their purposes, continued presence, number of members or supporters and continuous activities, have been working from different angles of that society to improve the quality of life of Venezuelan society, without ties to the government or political parties."

<sup>22</sup> Response to the Questionnaire by the Bolivarian Republic of Venezuela, page 49.

With respect to the mechanisms for enforcing the legal framework described above, the Bolivarian Republic of Venezuela indicates in the Response to the Questionnaire that: *“they are only now emerging because of the recent date of the new Constitution, adopted in December 1999.”*<sup>23</sup>

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

The standards and mechanisms in the area of participation by civil society in general that the Committee has examined, based on the information available, are pertinent to promoting the purposes of the Convention. These standards and measures will be taken into account when analyzing each of the participation mechanisms indicated in the classification provided in the methodology for review of the implementation of Article III, paragraph 11 of the Convention (hereinafter “methodology”).

In this regard, the Committee suggests that the Bolivarian Republic of Venezuela, within the framework of the Inter-American Convention Against Corruption, analyze existing legal norms, for the purposes of identifying provisions that could be adversely affecting these rights, including those provisions related to the requirement concerning sources for funding civil society organizations and for the purposes of making changes that are deemed relevant. In this regard, the Committee will formulate a recommendation.

Taking into account the above considerations, the Committee, in accordance with the participation mechanisms provided in the methodology<sup>24</sup> and/or the questionnaire, will formulate specific recommendations in this regard, in the following sections of this report.

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

In its response, the Bolivarian Republic of Venezuela refers to specific results from participation mechanisms in general and mentions activities it has promoted in this regard and that can be summarized as follows:

- Dissemination of information on the content of the new Constitution, in particular the Citizen’s Branch.
- Use of the complaint mechanism by citizens as a tool for monitoring State organizations.
- Creation of the National Citizens’ Service Office within the Office of the Comptroller General to assist civil society in the fight against corruption.
- Creation, in 270 municipalities, of Local Public Planning Councils as a tool for citizen participation to provide the population with mechanisms for oversight of municipal management.
- Creation of the Victim Service Unit in all judicial districts, within the Prosecutor General’s Office.
- Creation of 36 Citizen Service Offices, community comptrollers or similar entities.

The Committee recognizes, based on the data cited above, that programs have been promoted and offices have been created that could be considered mechanisms for citizen participation in the fight against corruption.

However, the general nature of the existing information and of the indicators available to the Committee, does not allow a comprehensive evaluation of the results in this field. The Committee notes

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<sup>23</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 46.

<sup>24</sup> Methodology for the review of the implementation of the provisions of the Convention selected within the framework of the first round, Chapter V, D (Document SG/MESICIC/doc.21/02).

that this situation could, in part, be due to the promulgation in 1999 of a new Constitution that establishes a new legal framework and the incipient nature of the mechanisms implementing it, as the country under review notes in its Response to the Questionnaire.<sup>25</sup> Bearing these considerations in mind, the Committee will formulate a recommendation.

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

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

The Bolivarian Republic of Venezuela has a series of provisions regarding mechanisms providing access to information, consisting of various types of provisions, notably the following.

A citizen's right of access to information is established in various articles of the Constitution. Article 28, described in section 4.1.1 of this report, establishes that everyone has the right to gain access to and know the information and data concerning him or her or his or her assets that appear in official or private records, save for exceptions stipulated by law, and the use made of that information, and the right to petition the courts to update, correct or destroy such information. Citizens are also given the right to access other documents containing information of interest to communities or groups of persons.

Article 51 of the Constitution establishes that everyone has the right to petition any authority or public official regarding matters within their competence, as well as the right to obtain a timely and satisfactory response. This provision is supported by the penalty provided, which includes the dismissal of an official who violates this right.

Article 58 of the Constitution states that *"Everyone has the right to timely, truthful and impartial information, without censorship in accordance with the principles of this Constitution ... Children and adolescents have the right to receive adequate information for purposes of their overall development."*

In addition, Article 143 establishes the right of every citizen to be properly informed by the civil service regarding the status of proceedings in which they have a direct interest. It also establishes the right that citizens must have to access administrative files and records *"without prejudice to the limits acceptable in a democratic society in matters relating to internal and external security, criminal investigation and privacy, in accordance with law regulating the matter of the classification of documents with contents that are confidential or secret. No censorship of public officials reporting on matters for which they are responsible shall be permitted."*

In terms of law, there are provisions that elaborate the above constitutional principles relating to the matter that concerns us. The principle of accountability is found in Article 11 of the Public Administration Organic Act.

Free access to information is also guaranteed in various regulations that recognize it expressly or impose on public entities the obligation to guarantee easy and timely access to information on their administrative procedures, services, benefits, files, organizational schemes and informative guides on administrative procedures, activities and services provided. Similar regulations are also seen in the municipal system (Article 6(3) paragraphs 155 to 159 of the Public Administration Organic Act, Article 6, 7 of the Administrative Procedures Organic Act, Articles 75 paragraphs 4, 168, 169 and 170 of the Municipal System Organic Act and Article 9 of the Anti-Corruption Act.)

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<sup>25</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 46.

As an exception to this principle and with respect to information relating to administrative procedures, Article 59 of the Administrative Procedures Organic Act exempts from such access “documents classified as confidential by the hierarchical superior, which shall be archived separately from the file. Classification as confidential must be based on a reasoned decision.” Exceptions are made to protect sources of information gathered by journalists and other professions, as determined by law. (Article 28 of the Constitution of the Republic).

The principle of publicizing regulations is also governed in Venezuelan law, and extends, in addition to regulations, provisions and administrative acts of a general nature, to charters, by-laws and amendments of State foundations and corporations (Articles 13, 102 and 110 of the Public Administration Organic Act, Administrative Procedures Organic Act, Articles 33 and the onward.)

There are other general principles directed to affording citizens an understanding of and allowing them to implement established administrative procedures. As part of these principles, express consideration is given to the duty of some public institutions to assist individuals so that they can effectively settle their concerns. In some situations, provision is even made regarding the support and guidance that some State agencies must provide concerning the legal and technical requirements imposed by the provisions, applications or actions under their administration; this includes the obligation to help citizens prepare administrative documents (Articles 6 and 22 of the Public Administration Organic Act).

Finally, it should be noted that Articles 8 to 10 of the Anti-Corruption Act establish the public nature of State information, the obligation on the part of State agencies to provide information on the resources that make up the public assets they are responsible for administering and creating a detailed report on these resources, as well as the right of the person subject to administration to have access to and obtain copies of documents and files in civil service, in accordance with the respective provisions and the duty of public entities to create offices open to the public or Citizens’ Service offices.

With respect to mechanisms for enforcing the right that concerns us here, there are provisions that constitutionally guarantee the right of free access to timely, truthful and impartial information and indicate the disciplinary action applicable to officials who when required to honor this right refuse to fulfill their obligation, as described in earlier paragraphs.

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

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

Notable in the Venezuelan legal system is a series of provisions for constitutional guarantees on access to public information. These include Articles 28, 51, 58 and 143 of the Constitution, guaranteeing the right to petition for and obtain both private and general information that is held by the civil service and the Government.

There are also laws that specifically describe the type of information to which citizens have access. These include information on public assets; standards and provisions in force; the organizational structure of State agencies; the activities of State companies and foundations; development plans, programs and projects; and administrative files within their jurisdiction. There is also the right to access and obtain photocopies of administration files. Of particular note is Article 8 of the Anti-Corruption Act, which categorizes information on State assets as “public”, with exceptions as may be established by the Constitution and law for reasons of security and defense.

In accordance with the standards the Committee has had available to it, the list of information to which citizens have access is broad and includes information recorded in administrative archives or files. However, the Committee feels that the Bolivarian Republic of Venezuela could consider expanding that list to include other types of information such as information on the current status of a matter or proceeding or information referring to action taken by the public agency that does not necessarily appear in the file or archive. Taking this into account, the Committee will formulate a recommendation.

The Committee is pleased to recognize the breadth of the Venezuelan legal system in regulating the active legitimacy of those who are empowered to exercise this right, a concept that encompasses all individuals or citizens. Nevertheless, the Committee notes the various types of provisions that refer to reasons of security, national defense, criminal investigation and privacy (Article 143 of the Constitution and Article 8 of the Anti-Corruption Act.) that limit citizen's access to information. The Committee will make a recommendation in that regard.

However, there seem to be no regulations regarding the aforementioned reasons that would set out the specific circumstances that would provide a basis for invoking an exception. In this regard, the Committee will formulate a recommendation.

The Committee feels that the Bolivarian Republic of Venezuela could benefit from promulgating and systematizing in a single regulatory text all the provisions that deal with access to information. This would take into account the importance that protection of the exercise of this right has taken on in modern society and the need for the right to be generally known, by both citizens and public servants. An instrument of this type could help to provide better understanding and handling by citizens and public servants of the right to information and would help to provide more systematic and comprehensive treatment of this subject.

The Committee also feels that the Bolivarian Republic of Venezuela could consider further strengthening the guarantees surrounding the right of access to information, by creating and regulating a procedure designed exclusively to protect the exercise of this right. It could include aspects such as processes for accepting requests and responding to them in a timely way; the agencies or offices charged with this process; the determination of an oversight body to ensure compliance with these regulations; the requirements for consideration and acceptance of a request and the consequences of ignoring those requirements; the reasons a request may be rejected; and the communication of the decision ; prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to information being sought; and the drafting of regulations which define sanctions covering a broad spectrum of circumstances that could hamper, delay or prevent the exercise of this right. Taking the above into account, the Committee will formulate a recommendation.

The Committee also recognizes that the legal system of the Bolivarian Republic of Venezuela shows progress in this area. Of particular note is that Article 9 of the Anti-Corruption Act requires public agencies to create citizens' service offices. Based on the information available to the Committee, it is not possible to determine whether the entities required to do this have complied. According to the information sent to the Committee by the analyzed country, there is no up to date information on the number of institutions that have complied with this rule.<sup>26</sup> Bearing in mind the importance of the work that these entities could carry out in processing and facilitating requests submitted, the Committee feels that the country under review could benefit from implementing this provision, if it has not yet done so. Taking the above into account, the Committee will formulate a recommendation.

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<sup>26</sup> Answer to the questions that were submitted by the Technical Secretariat, to the Bolivarian Republic of Venezuelan, e-mail of May 4<sup>th</sup> 2004.

Taking into consideration what has been stated by the Bolivarian Republic of Venezuela in other sections of its response regarding the recent promulgation of the new Constitution and the incipient development of some of the mechanisms developing the Constitution, the Committee feels that the country under review—could consider the implementation of training and dissemination programs on the standards and mechanisms that protect the right of access to public information, in order to contribute to an understanding of them on the part of both public officials and citizens. The Committee will formulate a recommendation in this regard.

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

*According to the response from the Bolivarian Republic of Venezuela, “All these regulations, which have afforded individuals and non-governmental organizations access to administrative registers and files, documents of various types, and any other information of interest to them that is in the possession of or controlled by public agencies, explain the increase in accusations, petitions, complaints, etc., which has contributed to making public officials more diligent and responsible in the exercise of their duties. In addition, the public entities have complied with the aforementioned legal standards by setting up web sites, on which individuals can access the desired information. It is quite difficult to measure these results statistically because of the recent establishment, amendment and implementation of these standards. Nevertheless, each entity involved has begun data gathering to quantify the effectiveness of the results.”*

The Committee recognizes the effort made by the Bolivarian Republic of Venezuela through the creation of web sites that contain public information and encourages it to continue with and improve upon this work. The Committee will formulate a recommendation in this regard.

The limited nature of the information available to the Committee and the lack of information on objective results in this field prevent a comprehensive evaluation. Bearing this in mind, the Committee will formulate a recommendation regarding the need to have more accurate information on this subject.

### **4.3. MECHANISMS FOR CONSULTATION**

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

The Bolivarian Republic of Venezuela has provisions and mechanisms that enable those who carry out public functions to consult with civil society and non-governmental organizations on matters relating to the activities within their competence. The following provisions and mechanisms are to be noted.

The mechanisms for consultation provided in the Venezuelan legal system are the consultative referendum, consultation of public opinion, open forums, and citizens’ meetings. The first four are found in the Constitution. Article 71 of the Constitution provides that certain important matters at the national, state, municipal or parish levels may be submitted for consultative referendum. Referenda on matters of national importance are carried out at the initiative of: the President of the Republic in the Council of Ministers by resolution of the National Assembly, approved by a majority vote of its members; or upon the petition of at least 10% of the registered voters. Referenda on matters at the state, municipal and parish levels are carried out at the initiative of the respective Parish Council (Board), the Town Council or the Legislative Council by a vote of two-thirds of its members; the Mayor; the Governor or upon the petition of at least 10% of the registered voters of the respective constituency.

The Municipal System Organic Act also provides for this mechanism and Article 175 authorizes convening a referendum on certain ordinances of the Municipal Council City Council on matters of collective interest.

Article 211 of the Constitution indicates that when debating and approving bills, the National Assembly, or the standing committees, shall consult the other organs of the State as well as the citizenry and organized society to discuss drafts submitted for their consideration. Under the terms established by the Regulations of the National Assembly, organized society has the right to be heard.

The consultation procedure is also provided for in the context of Articles 136 and 137 of the Public Administration Organic Act, which establishes a procedure that voids regulations which have been adopted without the appropriate consultation. This procedure applies to public bodies or entities that propose the adoption of legal, regulatory or other types of standards. Public entities must submit drafts for consultation with the organized communities and non-government public organizations entered in the registry maintained for this purpose by each public body or entity. In this process “*anyone*” may submit observations and comments in writing. The result is not binding.

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

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

In this respect, the Committee is pleased to detail the following aspects of the Venezuelan legal system. First, the variety of consultative mechanisms provided, in particular, according to what was stated in the previous section of this report, the consultative referendum, the consultation of public opinion, open forums and citizens’ meetings. Second, those provisions that have not been submitted to consultation are rendered void. (Articles 136 and 137 of the Public Administration Organic Act). Third, the requirement that the Executive submit for public consultation drafts of the Multiyear Budget Framework Act and the Annual Budget Act, before submitting them to the National Assembly (Article 11 of the Anti-Corruption Act).

The Committee notes that the above provisions and mechanisms could be strengthened by facilitating consultations with interested sectors with respect to the development of public policies. Bearing this in mind, the Committee will formulate a recommendation.

It is also noted that the Bolivarian Republic of Venezuela could benefit from the incorporation of regulations and mechanisms that allow for conducting such consultations on subjects relating to the performance of administrative functions as distinct from draft laws, for which consultations are already provided.

It is noted that the country under review has already made progress in this respect, by considering in its legislation the power of the citizens to formulate opinions regarding the management of the bodies and entities of the civil service. However, we note that there are no consultation mechanisms that guarantee and facilitate the channeling of these opinions in the process of decision-making or defining public policies. This seems to suggest the advisability of improving the current legal system by defining and implementing mechanisms designed specifically to facilitate and channel the opinions of society in these processes. The Committee recognizes that there are some provisions along these lines in the Venezuelan legal system. However, they are limited to the local sphere because they deal with provisions intended only for municipalities and not the national arena. Taking the above into account, the Committee will formulate a recommendation.

The Committee also notes the existence of some discretionary areas that could make it difficult to implement some of the regulations in force. Article 71 of the Constitution, for example, states that "*matters of special national importance*" may be submitted to a consultative referendum. The regulation of this provision could resolve differences that could arise regarding the interpretation and scope of that terminology. Similarly, Article 137, paragraph 2 of the Public Administration Organic Act, empowers the President of the Republic, governors and mayors in emergency situations relating to the security and protection of society to authorize the adoption of regulations without prior consultation. In this case, an appropriate regulation could limit the criteria or situations in which this power can be exercised, thereby removing or narrowing the areas of discretion and creating legal certainty and security. Taking the above into account, the Committee will formulate a recommendation.

Similarly, the Committee feels that the Bolivarian Republic of Venezuela could further strengthen these mechanisms through other provisions that regulate and define, as appropriate, aspects such as the treatment and value to be given to suggestions, information and results produced in the context of public consultation processes. The Bolivarian Republic of Venezuela could also establish a system for the imposition of a regimen of administrative or other penalties for public officials or other individuals who hinder or obstruct the conduct of these processes. Taking the above into account, the Committee will formulate a recommendation.

As expressed in other sections of this report, the incipient nature of some of these mechanisms seems to suggest that it is important for the Bolivarian Republic of Venezuela to design and implement dissemination programs on consultation mechanisms and, when appropriate, to train and assist civil society, non-governmental organizations, as well as public officials and employees, in the utilization of these mechanisms. Taking this circumstance into account, the Committee will formulate a recommendation.

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

Regarding information on objective results, the Bolivarian Republic of Venezuela stated the following in its response to the questionnaire: "*Because of the large number of entities in the public sector, as of this date it has not been possible to get statistics to measure the effectiveness of these mechanisms. However, all laws enacted by the National Assembly since its inception have been referred to civil society, based on the above-mentioned constitutional provisions.*"<sup>27</sup>

Based on this information, the Committee is pleased to recognize that all laws adopted by the National Assembly have been the subject of public consultations.

However, the limited information available to the Committee does not allow for a comprehensive evaluation of results in this field. Taking the above into account, the Committee will formulate a recommendation.

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

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

The Bolivarian Republic of Venezuela has a series of different types of provisions on mechanisms to encourage active participation in public administration. The following provisions are to be noted.

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<sup>27</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 46.

In Article 135, the Public Administration Organic Act establishes the obligation of the agencies and entities of civil service to promote citizen participation. To this effect, it empowers administrators, through communities or legally constituted non-governmental organizations, to submit proposals<sup>28</sup> and formulate opinions on the management of public agencies and entities. Sectoral provisions, such as Article 59 of the Organic Planning Act, also include standards establishing the obligation of these entities to promote citizen participation in matters within their competence.

Article 135 of the Public Administration Organic Act establishes that: *“For purposes of their participation in consultations regarding policies and standards for the regulation of the respective sector, each public agency or entity shall maintain a registry of organized communities and non-governmental organizations that have objectives relating to the sector and that freely seek to be registered.”* (Article 135 of the Public Administration Organic Act).

In addition, as mentioned in section 4.3 of this report, Article 136 of the Public Administration Organic Act establishes the mechanism for consultation on sectoral laws or regulations and Articles 138 and 139 establish the obligation of national, state and municipal administrations to provide the population the broadest and most timely information on their activities.

Encouraging citizen participation, according to Article 6 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System, is one of the duties of the agencies that comprise the Fiscal Control System. Consequently, Article 75 of the same law delegates responsibility to the Comptroller General for handling community initiatives in the participation process; arranging, directing, systematizing and evaluating citizen complaints; establishing strategies to promote citizen participation in order to contribute to the monitoring of fiscal management; and promoting citizen oversight mechanisms in projects with high economic, financial and social impact. Article 76 of the same law then provides that organized communities and organizations representing sectors of society may suggest candidates to head the fiscal control units of the entities subject to this law.

Finally, particular note should be made of the provisions on this subject contained in the Anti-Corruption Act and that establish the rights of individuals and organizations in society to participate in budgetary formulation, evaluation and execution, according to the respective political level and in accordance with legislation in force, as well as the duty of these institutions to report on the utilization of their assets and budgets (Articles 9 and 11 of the Anti-Corruption Act).

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

The standards and mechanisms for encouraging active participation in public administration that the Committee has examined, based on the information available to it, are pertinent for promoting the purposes of the Convention.

The Committee considers it appropriate to highlight the relevance of the mechanism established in Articles 135 et seq of the Public Administration Organic Act regarding the procedure for consultation on sectoral regulations, to achieve the purposes provided in Article III, paragraph 11 of the Convention. It encourages the Bolivarian Republic of Venezuela to continue strengthening and improving mechanisms

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<sup>28</sup> In this first sense, sectoral provisions establish the obligation of governors and mayors to use a percentage of the annual budget to finance projects designed and submitted by organized communities, neighborhood associations and non-governmental organizations (Article 20 of the Act for Partial Reform of the Law on Special Economic Allocations to the States from Mining and Hydrocarbons and Article 24 of the Law Establishing the Intergovernmental Fund for Decentralization.)

of this type that encourage participation in the public administration on the part of civil society organizations and non-governmental organizations in efforts intended to prevent corruption. The Committee will formulate a recommendation in this regard.

The Committee emphasizes that it is important for the Bolivarian Republic of Venezuela to move ahead with comprehensive and permanent institutionalization and regulation of mechanisms such as that mentioned in the above paragraph, particularly considering what the country under review has stated in its Response to the Questionnaire that such mechanisms are at an early stage of development “*given the recent date of the new Constitution, adopted in December 1999.*”<sup>29</sup>

The Committee notes that the participation process, set out in Article 135 onward of the Public Administration Organic Act, provides, with respect to the policies and provisions for each sector, that each public agency or entity related to that sector must maintain a registry of the community associations and non-governmental organizations or associations whose purpose relates to that sector and that freely seek to register. Even though the Public Administration Organic Act expressly establishes that during this process anyone may submit observations and comments, without the need to be entered in the registry to which we refer, which in practice might discourage or fail to encourage some civil society and non-governmental organizations with respect to participation in these processes. The Committee will formulate a recommendation in this regard.

With respect to Article 76 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System, which authorizes community associations and organizations representing sectors of society to submit candidates to head the fiscal control units of the entities subject to that law, the Committee notes that, according to the comments made by the country under review in its Response to the Questionnaire<sup>30</sup>, this aspect has not been fully developed. On this basis, the Committee suggests that the Bolivarian Republic of Venezuela promote the measures it deems necessary so that civil society and non-governmental organizations can make effective use of the power given to them by the article analyzed here, as a mechanism for participation in public administration. The Committee will formulate a recommendation in this regard.

In the framework of the Inter-American Convention Against Corruption, the country reviewed might take into consideration the importance of detecting regulations that may adversely influence the effectiveness of these rights, including relationships between civil society organizations and their sources of funding, and promote the pertinent adjustments.

The Committee will formulate a recommendation in this regard.

In addition, based on the information gathered by the Secretariat according to the *Methodology*<sup>31</sup> the Committee notes the existence of current laws that punish offensive remarks made to public officials, known as “contempt laws.” Such laws could limit or inhibit the participation of civil society and non-governmental organizations in efforts intended to prevent corruption.

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<sup>29</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 62.

<sup>30</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, page 46.

<sup>31</sup> Methodology for the Review of the Implementation of the Provisions of the Convention Selected within the Framework of the First Round, Chapter IV (Document SG/MESICIC/doc.21/02).

As the Committee has stated in other reports, these laws could create a disincentive to such participation, as they include the penalty of imprisonment for those who insult or offend in any way the reputation or decorum of public officials. Presumably, in some cases, the fear of being sanctioned would inhibit or discourage civil society and non-governmental organizations, thereby preventing them from participating in efforts to prevent corruption.

The Committee notes that Articles 223, 225, 226, 227, 228 and 229 of the Penal Code establish provisions of this type. In addition, Articles 502 and 505 of the Code of Military Justice as provisions with scope similar to the preceding provisions.<sup>32</sup>

In this regard, Article 223 of the Penal Code provides that: “*Whoever offends in any way, by word or deed, the honor, reputation or decorum of a member of the National Assembly or other public officials shall be punished as follows ...*”; Articles 225 and 226 represent variations on the same criminal offense; and Article 227 states “*In the cases stipulated in the preceding articles, the offending party may not present any proof as to the truth or notoriety of the acts or errors with which the party is charged*”; and Articles 502 and 505 of the Military Justice Code punish those who threaten, offend, injure or disparage the guard, the national armed forces or any of their units.

Taking the reservations regarding these provisions into account, it would be advisable for the Bolivarian Republic of Venezuela to consider making the appropriate decisions to analyze and review these provisions, in order to keep them from becoming an obstacle to the participation of civil society and non-governmental organizations in efforts designed to prevent corruption. Taking this situation into account, the Committee will formulate a recommendation.

Finally, taking into consideration the recent adoption of the new Constitution and of some provisions developing it, as well as the early stage of the participation mechanisms in force in the Venezuelan legal system that have been referred to in other sections of this report, the Committee suggests that the Bolivarian Republic of Venezuela design and put into operation programs to disseminate the mechanisms encouraging participation in public administration and, when appropriate, to train and provide the necessary tools to civil society, non-governmental organizations, as well as public officials and employees for the use of such mechanisms. Taking these circumstances into account, the Committee will formulate a recommendation.

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

With respect to the results of the legal framework and other measures, the information submitted by the Bolivarian Republic of Venezuela in its Response to the Questionnaire refers to the creation of offices and entities whose purpose is to assist civil society and non-governmental organizations in the use of mechanisms for oversight of the civil service as well as to inform civil society and channel its complaints. The institutions created include: the Citizens’ Service Office within the organic structure of the Office of the Comptroller General; the Local Public Planning Councils in 270 of the 335 existing municipalities; and the Victim Service Unit within the Chief Prosecutor’s Office, with offices in all judicial districts.<sup>33</sup>

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<sup>32</sup> Report of the Special Rapporteur for Freedom of Expression, 2000. Report for Freedom of Expression of the IACHR. Office of the Special Rapporteur for Freedom of Expression, Chapter III, page 19.

<sup>33</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, pages 60 and 61.

The response also refers to the creation of a total of 36 Citizens' Service Offices, as well as Community Comptrollers or similar units by governors' offices, mayors' offices, and state and municipal comptrollers' offices, among them the Community Comptroller's Office (Nueva Esparta State); the Societal Comptroller's Offices, the Local Planning Council (Mayor's Office of Zamora Municipality, Guatire), the Societal Comptroller's Office of Iribarren Municipality (Lara State), the Community Comptrollers (appointed by the communities of Mérida State); and the Societal Comptroller's Office, Women's Bank.<sup>34</sup>

Also mentioned is the training seminar directed to the "Societal Comptrollers' Offices" and organized by the Office of the Comptroller General. This activity was carried out in the States of Mérida, Lara, Aragua and Carabobo, where there are already more than 700 Societal Comptrollers' Offices.<sup>35</sup>

Based on the above information, the Committee recognizes the efforts made by the Bolivarian Republic of Venezuela to create and facilitate opportunities for the participation of civil society and non-governmental organizations in public administration.

However, the limited nature of the information that the Committee has had available to it prevents a comprehensive evaluation of the results of the legal framework and other measures. Taking this situation into account, the Committee will formulate a recommendation.

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

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

The Bolivarian Republic of Venezuela has a series of provisions relating to follow-up mechanisms for public administration, consisting of various types of provisions. The following are to be noted.

In this respect, it is pertinent to mention the provisions referred to in section 4.2.1 of this report on access to public information, as well as other provisions of a general nature such as Articles 51 and 62 of the Constitution, which establish the right of the governed to petition and obtain a timely response, and to participate freely in public affairs, directly or through their elected representatives.

There are special provisions guaranteeing accountability to which the administration is subject, among them Article 9 of the Anti-Corruption Act, which provides that it is the duty of the heads of agencies and entities that make up government to inform citizens regarding the use of assets and the expenditure of resources that comprise the public property they are responsible for administering. For this purpose, they are required to publish quarterly and make available to anyone at the public service or citizen service offices a detailed report that is easy to handle and understand on the property they administer, with the description and justification of its use and expenditure.

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

The standards and mechanisms in the area of participation in the follow-up of the civil service that the Committee has examined, based on information available to it, are pertinent for promoting the purposes of the Convention.

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<sup>34</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, pages 60 and 61.

<sup>35</sup> Response to the Questionnaire from the Bolivarian Republic of Venezuela, pages 60 and 61.

However, the Committee feels it is advisable for the Bolivarian Republic of Venezuela to consider strengthening and continuing to implement mechanisms that encourage civil society and non-governmental organizations to participate in the follow-up of public administration.

The Committee also feels that the country under review has indicated its desire to move ahead in the direction indicated above, by referring in its Response to the Questionnaire to a series of entities and organizations recently created with the objective of guiding and facilitating this participation. Taking this circumstance into account, the Committee will formulate a recommendation.

Finally, the Committee notes an absence of public awareness and training programs on the mechanisms mentioned in this section, to provide the necessary tools to civil society as well as public officials and employees concerning the use of such mechanisms. Taking these circumstances into account, the Committee will formulate a recommendation.

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

The Response of the Bolivarian Republic of Venezuela cites, as results of the legal framework and other measures, the information included in section 4.4.3 of this report on mechanisms to encourage participation in public administration, and the Committee thus refers to the considerations presented there.

Other than the above, the absence of more information does not allow a comprehensive valuation of objective results in this field. Taking this into account, the Committee will formulate a recommendation.

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

#### **5.1. MUTUAL ASSISTANCE**

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

The Bolivarian Republic of Venezuela has a set of provisions and measures that refer to the mutual legal assistance outlined in Article XIV, Paragraph 1, of the Inter-American Convention Against Corruption, including Articles 69 and 271 of the Constitution on extradition; Articles 395 to 402 of the Penal Procedure Organic Code on mutual assistance; Article 21, paragraph 13 of the Organic Act of the Public Prosecutor's Office, which establishes that one of the powers and duties of the Attorney General is to express an opinion on procedures involving the execution of acts involving foreign authorities, extradition, and when any special law provides for his or her intervention; and a large number of agreements and conventions in this area mentioned by the country under review in its Response to the Questionnaire,<sup>36</sup> and which have now become law through their adoption in the respective enacting legislation.

In its Response to the Questionnaire, the Bolivarian Republic of Venezuela indicates that the formulation and/or receipt of requests for mutual assistance depend on the provisions of the respective bilateral treaties or agreements; however, according to Article 396 of the Penal Procedure Organic Code, the Ministry of Foreign Affairs is responsible for making a request for extradition.

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<sup>36</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 64 and 65.

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

The standards and mechanisms on mutual assistance reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

These include the provision contained in Article 271 of the Constitution, which stipulates that in no case can requests for the extradition of foreigners responsible for crimes against public property be denied. The Committee is pleased to acknowledge the existence of a standard of this scope and legal rank designed to facilitate extradition among States Parties to the Convention. The Committee notes that Article 69 of the Constitution prohibits the extradition of Venezuelan nationals. The Committee will formulate a recommendation in this regard.

In this regard, the Committee considers that the Bolivarian Republic of Venezuela could benefit from compiling in a single text, of the provisions or standards related to international treaties on mutual legal assistance in criminal matters.

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

In its Response, the country being reviewed mentions two bilateral extradition treaties signed with Uruguay and Mexico following the subscription and entry into force of the Inter-American Convention Against Corruption. However, according to the comments made by the Bolivarian Republic of Venezuela, *“these treaties do not expressly provide for the crimes included in said Convention.”*<sup>37</sup>

In this instance, the Committee considers that it could be beneficial for the Bolivarian Republic of Venezuela to analyze the possibility of including the acts of corruption referred to in the Inter-American Convention Against Corruption in any bilateral legal cooperation treaties it may conclude in the future, particularly in those treaties concluded with other States Parties to the Inter-American Convention Against Corruption. The Committee will formulate a recommendation in this regard.

The Committee also notes a lack of information on requests for cooperation, particularly for requests related to acts of corruption covered in the Convention. The above suggests that it might be useful for the Bolivarian Republic of Venezuela to consider, design and implement an information system enabling it to provide permanent follow-up on this type of cooperation. The Committee will formulate a recommendation in this regard.

In addition, the Committee considers that, as a means of ensuring the effective application of the provisions on mutual legal assistance contained in the Inter-American Convention Against Corruption and in other treaties subscribed by the Bolivarian Republic of Venezuela, the country being reviewed could consider, design and implement a comprehensive information and training program specifically for the competent authorities, to ensure that they are aware of these provisions and are able to apply them in concrete cases brought to their attention. Venezuela should also consider deepening internal coordination given that the Ethics Council is responsible for international assistance and cooperation under the Inter-American Convention against Corruption; the Ministry of Foreign Affairs is responsible for extradition; and the Ministry of Justice and the Interior is responsible for Mutual Legal Assistance. The Committee will formulate recommendation in this regard.

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<sup>37</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 65 and 66.

## **5.2. MUTUAL TECHNICAL COOPERATION**

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

The Bolivarian Republic of Venezuela has international cooperation agreements that establish mechanisms for enabling mutual technical cooperation with other States Parties to the Convention, as established in Article XIV, Paragraph 2 of the Convention.

According to the Response provided by the country being reviewed, the mechanisms that enable mutual technical cooperation with other States Parties to the Inter-American Convention Against Corruption “*generally take the form of international cooperation agreements and other related activities.*”<sup>38</sup>

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

The standards and mechanisms on mutual technical cooperation reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Convention.

The Committee wishes to point out that the Bolivarian Republic of Venezuela has experience in the exchange of technical assistance with other States Parties on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption, as described in section 5.2.3 of this report below. This will assist in implementing the provisions of the Inter-American Convention Against Corruption. The Committee urges the Bolivarian Republic of Venezuela to continue these efforts.

The Committee also considers that it would be useful for the Bolivarian Republic of Venezuela to strengthen even further its capacity for preventing, detecting, investigating and punishing acts of corruption by determining specific areas in which it would be helpful to receive technical cooperation, either from other States or from institutions and funding agencies involved in providing international technical cooperation in the required areas. The Committee will formulate a recommendation in this regard.

### **5.2.3. Results of the juridical framework and of other measures**

The Bolivarian Republic of Venezuela, in its Response to the Questionnaire, indicates that it participated in 16 activities within the framework of the inter-institutional relationships it maintains with supreme audit institutions and audit institution organizations (OLACEFS and INTOSAI). For example, the Response notes the participation in several OLACEFS general assemblies and other international meetings, high-level meetings, workshops, seminars, conventions and congresses on corruption, control and auditing activities related to public property.<sup>39</sup>

With respect to the programs and projects developed by the Bolivarian Republic of Venezuela, the country under review indicates that the Office of the Comptroller General, as the supreme audit body, has conducted a number of activities in the area of the fight against corruption. They include: the signing of two cooperation agreements with OLACEFS and the Office of the Secretary General of the OAS, and with the Comptroller Generals’ Offices of Bolivia, Ecuador, Panama and Peru; participation, jointly with other institutions, in three initiatives to support projects related to ethics and the fight against corruption; and finally, participation in the sub-regional workshop “Ethics and Transparency: Initiatives in the Supreme Audit Institutions of the Andean Community”<sup>40</sup>

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<sup>38</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 67.

<sup>39</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 67 to 70.

<sup>40</sup> Update to the Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 70 and 71.

The lack of greater information in this area makes it difficult to make a comprehensive assessment of the results of the juridical framework and/or of other measures, particularly on the part of other entities and organs of the Venezuelan State. Taking into account this circumstance, the Committee will formulate a recommendation in the final chapter of this document.

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

### **6.1 EXISTENCE AND PROVISIONS OF A LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The Bolivarian Republic of Venezuela has designated the Ethics Council (*Consejo Moral Republicano*) as central authority for the objectives of international assistance and cooperation provided for in the Convention. This designation was duly communicated to the Office of the Secretary General of the OAS.

### **6.2 ADEQUACY OF THE LEGAL FRAMEWORK AND/OR OF OTHER MEASURES**

The standards and mechanisms in the area of central authorities reviewed by the Committee, based on the information made available, are pertinent for the promotion of the objectives of the Inter-American Convention against Corruption.

In particular, the Committee records that the Bolivarian Republic of Venezuela has designated the Ethics Council (*Consejo Moral Republicano*) as central authority for the international cooperation and assistance objectives outlined in the Convention.

The Committee notes that the Central Authority is identifying mechanisms for cooperation in the design and implementation of anti-corruption mechanisms for academic research centers and requests that the Bolivarian Republic of Venezuela keep the Committee apprised of the progress. The Committee will make a recommendation in this regard.

### **6.3 RESULTS OF THE LEGAL FRAMEWORK AND OF OTHER MEASURES**

The lack of information on the results in this area do not allow for a comprehensive assessment of the results of the legal framework and of other measures. Taking into account this circumstance, the Committee will formulate a recommendation.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

Based on the review carried out in Chapter II of this report, the Committee makes the following conclusions and recommendations with respect to the implementation, in the Bolivarian Republic of Venezuela, of the provisions contained in Articles III, 1 and 2 (standards of conduct and mechanisms to enforce these standards); III, 4 (systems for the disclosure of income, assets and liabilities); III, 9 (oversight bodies, only insofar as it concerns the exercise by these bodies of functions related to compliance with the provisions contained in Paragraphs 1, 2, 4 and 11 of Article III of the Convention); III, 11 (mechanisms to stimulate the participation of civil society including non-governmental organizations in efforts to prevent corruption); XIV (assistance and cooperation); and XVIII (central authorities) of the Convention, which were selected for review within the framework of the first round.

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

### **1.1. Standards of conduct designed to prevent conflicts of interest and mechanisms to enforce these standards**

**The Bolivarian Republic of Venezuela has considered and adopted some measures to establish, maintain and strengthen standards of conduct with respect to the prevention of conflicts of interest and enforcement mechanisms, as described in Chapter 2, Section 1.2 of this report.**

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

Strengthen the implementation of laws and regulatory systems related to conflicts of interest, in order to permit the effective and practical enforcement of a system of public ethics.

To comply with this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a) Review and analyze the possibility of regulating the system of prevention of conflicts of interest, incompatibilities, restrictions, disqualifications and prohibitions relating to the senior posts of the state, taking into account the specificities and importance of these posts, as well as the mechanisms to enforce said regulations. Considering, among other aspects, the provision of incompatibility in the exercise of public functions with respect to other public or private activities in which there could exist any circumstance that would compromise impartiality; strengthening the sanctions system; and provision of a fully autonomous body to oversee full compliance with these regulations.
- b) Review and analyze the possibility of broadening and strengthening the system of legal impediments, prohibitions, incompatibilities and disqualifications contained in the sectoral laws related to conflicts between private and public interests. In doing so, consider making provision for and broadening certain assumptions that could shape conflicts of interest and that, because of their importance, it would be appropriate to deal with in a more detailed and specific manner; determining the entities or officials in charge of ensuring compliance; and applying measures and penalties in case of non-compliance.
- c) Ensure the validity and imposition of penalties on public servants who violate the standards regulating conflicts of interest, including, among other provisions, the assumptions regulated by Article 123 of the Organic Act of the National Public Treasury.
- d) Extend the statutory limitation period established in Article 88 of the Civil Service Statute, taking into account the importance of strengthening instruments currently available to the administration, so that they do not constitute an obstacle to determining the individual disciplinary liability of public servants who commit offences, and the need for the above-mentioned period to be consistent with and fulfill the same purpose as other existing time limits, as noted in section 1.1.2 of this report.
- e) Ensure that the registry of civil servants in the employ of the national civil service, provided for in Article 9 of the Civil Service Statute, is used for the prevention and punishment of conflicts of interest.

- f) Review and analyze the possibility of incorporating a regulation that limits or prohibits the participation of ex-civil servants in the management of certain activities, and that in general covers situations that can lead to individuals taking undue advantage of their status as former public servants.

**1.2 Standards of conduct designed to ensure the preservation and proper use of resources entrusted to public servants in the performance of their duties, and mechanisms to enforce these standards.**

**The Bolivarian Republic of Venezuela has considered and adopted measures designed to establish, maintain and strengthen standards of conduct to ensure the preservation and proper use of resources entrusted to public servants in the performance of their duties, as mentioned in Chapter 2, Section 1.2 of this report.**

In view of the comments made in the above-mentioned section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendations:

- 1.2.1 Continue to bring the Penal Code in line with the provisions of Article 271 of the Constitution, which stipulates the non-applicability of statutory limitations on crimes against public property.
- 1.2.2 The possibility of extending the five-year disqualification period for public service, established in Article 96 of the Anti-Corruption Act, to any official or public employee punished for one or other of the crimes stipulated in this Act, to 15 years, pursuant to Article 105 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System.
- 1.2.3 Strengthen the power of the Judiciary so that it retains the power to determine the liability of public servants for crimes of corruption, notwithstanding laws that allow other bodies to take administrative or other actions.

It is suggested that a review and analysis be made of the possibility of developing regulations that clearly delimit the scope of the expression in "order to avoid paralysis of service operations" contained in article 59 of the Anti-Corruption Act, with a view to limiting room for discretionary decision-making in implementing the said standard and the procedure to be followed, specifying the moment when such authorization must be produced.

- 1.2.4 Take relevant measures to ensure that the discretion allowed in several provisions related to public tenders, as well as in Article 59 of the Anti-Corruption Act, does not constitute an element that affects or could prompt a public servant to engage in illicit conduct or to make arbitrary decisions, in relation to the preservation and proper use of public resources, as mentioned in Section 1.2.3.
- 1.2.5 Design and implement mechanisms to inform and train all public servants with respect to the standards of conduct mentioned in this section, and to handle enquiries about the standards, as well as provide periodic training and updating with regard to said standards.

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

**The Bolivarian Republic of Venezuela has considered and adopted measures designed to establish, maintain and strengthen standards of conduct and mechanisms related to measures and systems that require public servants to report to the appropriate authorities acts of corruption in the public service of which they are aware, in accordance with the comments in Chapter 2, Section 1.3 of this report.**

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

- 1.3.1 Develop regulations and mechanisms in order to facilitate and promote the reporting of acts of corruption. This should be complemented by measures that protect public servants who report these acts, in particular when these acts involve managers or superiors.
- 1.3.2 Consider the possibility, in the case of employees who fail to comply with the obligation to report, of imposing punishment of a criminal or administrative nature that is more severe than the current system of fines, including loss of employment, among other penalties, depending on the seriousness of the offence.
- 1.3.3 Update the financial penalties set forth in the penal code, taking into account the seriousness of corruption offenses in the public service.

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

**The Bolivarian Republic of Venezuela has considered and adopted measures designed to establish, maintain and strengthen systems for the disclosure of income, assets and liabilities of persons who perform public functions in certain posts as specified by law, in accordance with the comments in Chapter 2, Section 2.1 of this report.**

In view of the comments made in the above-mentioned section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendation:

Broaden and complement the systems for disclosing income, assets and liabilities by adopting pertinent legal regulations.

To comply with this recommendation, the Bolivarian Republic of Venezuela could consider the following measures:

- a) Promulgate legal provisions and other pertinent measures in order to establish clearly those parties from whom the Comptroller General of the Republic may request the periodic presentation of a sworn statement of net worth, to ensure that these provisions include senior officials within the public administration and those who, given the importance and nature of their posts, could facilitate or generate illicit enrichment or other unlawful acts against public property, and to determine the deadlines for presenting said statements, their contents and formal requirements.

- b) The appropriateness of requiring sworn statements at times other than those already provided for, establishing reasonable timelines for updating them or circumstances under which it would be advisable to require their presentation.
- c) Strengthen the role afforded to officials in charge of human resources units under Article 26 of the Anti-Corruption Act. This could be achieved by stipulating the obligation of these units to immediately notify the Office of the Comptroller General whenever an individual obliged to do so fails to present proof of presentation of the statement of income, assets and liabilities, and by specifying/detailing the corresponding actions to be taken by the Office of the Comptroller General in such situations.
- d) Regulate the conditions, procedures and other appropriate aspects related to the publicizing of sworn statements of income, assets and liabilities, as applicable.
- e) Use sworn statements of income, assets and liabilities to detect and prevent conflicts of interest.
- f) Implement a register of those obliged to present sworn statements of income, assets and liabilities and mechanisms for the periodic updating of said register.
- g) Implement the necessary procedures for achieving effective control over compliance in presenting these statements, in accordance with the recommendation made in point f) above.
- h) The possibility of adjusting prevailing legislation to make use of modern information and communications technologies to administer and manage these statements.

### **3. OVERSIGHT BODIES IN RELATION TO THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 and 11 OF THE CONVENTION)**

**The Bolivarian Republic of Venezuela has considered the applicability of and has adopted measures designed to create, maintain and strengthen oversight bodies to develop functions with respect to effective compliance with the provisions selected for review in the context 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.**

Taking into account the considerations expressed in that section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendations:

- 3.1 Strengthen the supervisory work carried out by the Office of the Comptroller General, as the lead body for oversight and monitoring of state comptroller's offices, considering the possibility of conducting a larger number of evaluations or diagnoses on their activities, or using the mechanisms or instruments deemed appropriate to verify their proper operation.
- 3.2 Strengthen the work of the Office of the Comptroller General by putting into practice policies and concrete actions to check follow-up and implementation by entities under its supervision of corrective actions suggested during audits, diagnoses or evaluations.

#### **4. MECHANISMS FOR ENCOURAGING THE PARTICIPATION OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ART. III, PARAGRAPH 11).**

The Bolivarian Republic of Venezuela has considered and adopted measures to establish, maintain, and strengthen mechanisms to promote the participation of civil society and non-governmental organizations in efforts to prevent corruption, as noted in section 4 of Chapter II of this report.

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

##### **4.1. Participation mechanisms in general**

Analyze existing legal norms, for the purposes of identifying provisions that could be adversely affecting these rights, including those provisions related to the requirement concerning sources for funding civil society organizations and for the purposes of making changes that are deemed relevant to assuring that in the existing juridical structure, there are no provisions that put a limit on their participation in the prevention of corruption.

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

Institute legal standards and measures to support access to public information. To comply with this recommendation, the Bolivarian Republic of Venezuela could consider the following measures:

- a) Strengthen the guarantees provided on the exercise of the right to public information, including the possibility of accessing a type of information other than that already provided for; and consider the implementation of provisions that ensure that access to such information can only be denied for reasons explicitly regulated and determined by law.
- b) The advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.
- c) Establish a specific procedure to protect the right of citizens to access public information, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) an entity or offices charged with this function and an oversight agency that should monitor the implementation of these regulations; iii) requirements on admissibility and consequences when such requirements are not met; iv) reasons why a request may be denied; v) method for communicating with the governed; vi) prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to the information being sought; and vii) an increase in the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.
- d) Implement, if this has not yet been done, the provision of Article 9 of the Anti-Corruption Act relating to the creation of public or citizen service offices, ensuring that they have sufficient resources to carry out their work.

- e) Implement training and dissemination programs on mechanisms for access to public information held by the State, in order to facilitate the understanding thereof by public officials and citizens and optimize the use of the technology available for this purpose.

#### **4.3 Consultation mechanisms**

Strengthen and continue implementing procedures, as applicable, that make it possible to conduct public consultations.

To comply with this recommendation, the Bolivarian Republic of Venezuela could consider the following measures:

- a) Carry out processes to allow consultation with interested sectors with respect to the design of public policies and the preparation of draft laws, decrees or resolutions in the sphere of the Executive Branch.
- b) Develop suitable mechanisms for conducting public consultations on subjects relating to the performance of administrative functions of a type other than the regulatory activity of the Administration, based on what was stated in section 4.3.2 of this report.
- c) Regulate the pertinent provisions to eliminate areas of discretion that appear to exist in some provisions now in force, as indicated in section 4.3.2 of this report.
- d) Supplement regulations, when appropriate, on participation mechanisms provided in national legislation, so as to define aspects such as the value to be given to consultations and information and the results produced and the consequences for failure to comply with obligations relating to existing consultation mechanisms, such as penalties for violators.
- e) Design and implement programs to disseminate consultation mechanisms and, when appropriate, train and provide necessary tools for civil society and non-governmental organizations, as well as public officials and employees in the use of such mechanisms.

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

Strengthen and continue implementing mechanisms to encourage civil society and non-governmental organizations to participate in public administration.

To comply with this recommendation, the Bolivarian Republic of Venezuela could consider the following measures:

- a) Strengthen and continue rules and mechanisms that encourage the participation of civil society and non-governmental organizations in public administration efforts to prevent corruption. Also, consider establishing a legal structure that systematically increases, promotes and includes such aspects as other methods of participation, distinct from those already anticipated, as well as other mechanisms that promote, facilitate, consolidate and assure this participation.
- b) Adopt the legal provisions and measures considered appropriate to ensure that the registry of organized communities and non-governmental organizations is not used as a restrictive tool to discourage the participation of civil society and non-governmental organizations in efforts designed to prevent corruption.

- c) Regulate Article 76 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System which grants civil society and non-governmental organizations the right to suggest candidates to lead fiscal control units in the institutions subject to this law.
- d) Take steps towards the abolition of “contempt laws”, taking into account the problems mentioned in section 4.4.2.
- e) Design and implement programs as well as to disseminate the information so as to encourage participation in public administration and, when appropriate, training and providing tools necessary to civil society, non-governmental organizations, as well as to public officials and employees for the use of such mechanisms.

#### **4.5 Participation mechanisms in the follow-up of public administration**

Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the follow-up of public administration.

To comply with this recommendation, the Bolivarian Republic of Venezuela could consider the following measures:

- a) Promote and continue implementing methods, when appropriate, so that those who carry out public functions will allow, help and assist civil society and non-governmental organizations to develop activities to follow-up government actions.
- b) Consider the implementation of dissemination programs directed to civil society and non-governmental organizations on the aspects dealt with in sections 4.1 to 4.5.

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

The Bolivarian Republic of Venezuela has adopted measures in relation to mutual technical cooperation and mutual assistance, in accordance with the provisions of Article XIV of the Convention, as described and reviewed in Chapter 2, Section 5 of this report.

In view of the comments made in the above-mentioned section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendations:

- 5.1 Analyze the possibility of including the acts of corruption referred to in the Inter-American Convention against Corruption in bilateral legal cooperation treaties subscribed in the future, especially those involving other States Parties to the Inter-American Convention against Corruption.
- 5.2 Promote the harmonization of domestic legislation with the provisions of the Inter-American Convention against Corruption pertaining to extradition, and compile in a single text the provisions and standards relating to international treaties on mutual legal assistance in criminal matters.
- 5.3 Consider deepening internal coordination among the various bodies responsible for Mutual Legal Assistance.

- 5.4 Determine and prioritize specific areas in which the Bolivarian Republic of Venezuela considers that technical cooperation from other States Parties is necessary to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.
- 5.5 Design and implement a comprehensive information and training program for applicable authorities and officials, with the objective of ensuring that they are aware of the mutual legal assistance provisions and can provide assistance needed for investigation and/or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by the Bolivarian Republic of Venezuela.

It is also recommended that the appropriate public servants be trained to ensure the broadest possible mutual legal and technical cooperation to prevent, detect, investigate and punish acts of corruption.

- 5.6 Design and implement an information system that enables authorities of the Bolivarian Republic of Venezuela to ensure ongoing follow-up of requests for legal assistance in reference to acts of corruption and, in particular, to those covered in the Inter-American Convention against Corruption.
- 5.7 Continue ongoing technical cooperation exchanges with other States Parties and consider holding discussions with other States on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.

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

The Bolivarian Republic of Venezuela has complied with Article XVIII of the Convention by designating the Ethics Council (*Consejo Moral Republicano del Estado Venezolano*) as the central authority for the purposes of international assistance and cooperation outlined in the Convention.

The Committee is pleased to note that the Central Authority is identifying mechanisms for cooperation in the design and implementation of anti-corruption mechanisms for academic research centers and requests that the Bolivarian Republic of Venezuela keep the Committee apprised of the progress.

## **7. GENERAL RECOMMENDATIONS**

Taking into account the comments made throughout this report, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendations:

- 7.1. Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.
- 7.2. Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, 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; as well, consider 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 determine the effectiveness of the systems and mechanisms mentioned in this report.

## **8. FOLLOW-UP**

The Committee will consider the periodic update reports submitted by the Bolivarian Republic of Venezuela concerning progress in implementing the above recommendations, within the framework of the plenary meetings of the Committee, and in accordance with the provisions of Article 30 of the Rules of Procedure.

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

The Committee wishes to place on record the request made by the Bolivarian Republic of Venezuela to the Secretariat to publish this report on the Mechanism's Web page and by any other means of communication, in accordance with the provisions of Article 25, paragraph g) of the Rules of Procedure.

**APPENDIX I TO THE FINAL REPORT ON THE IMPLEMENTATION BY THE  
BOLIVARIAN REPUBLIC OF VENEZUELA OF THE PROVISIONS OF THE CONVENTION  
SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND**

The Bolivarian Republic of Venezuela appended a series of provisions and documents to its Response, as follows:

1. Agreement between Venezuela and Colombia
2. Code of Conduct of the Public Servants of the Executive Branch.
3. Civil Servants' Code of Conduct
4. Civil Servants' Ethics Code promulgated by the Office of the Comptroller General
5. Penal Procedure Organic Code
6. Penal Code
7. Constitution of the Bolivarian Republic of Venezuela
8. Decree on the Reorganization of the Judicial Branch and the Penitentiary System
9. Personnel Statute of the Employees of the Office of the Comptroller General
10. Order from the Office of the Comptroller General on presentation of the Sworn Statement of Net Worth, Res.01-00-014 dated April 30, 2001
11. Order from the Office of the Comptroller General on reports of irregular acts with respect to the handling of public funds or property.
12. Organic Act on the designation and dismissal of the Comptroller General
13. Act Approving the Agreement between Venezuela and Paraguay
14. Act Approving the Agreement between Venezuela and the Dominican Republic
15. Act Approving the Cooperation Treaty between Venezuela and Mexico
16. Act on State Councils for Public Policy Planning and Coordination
17. Anti-Corruption Act
18. Judicial Careers Act
19. Universities Act
20. Public Tenders Act
21. Scientific, Criminal, and Forensic Investigative Agencies Act
22. Act of Partial Reform of the Act Approving the Agreement between Venezuela and the United States of America
23. Act of Partial Reform of the Act on Special Economic Allocations for States Derived from Mines and Hydrocarbons
24. Civil Service Statute
25. Act Concerning the Statute on the Retirement and Pension System for officials or employees of the National Public Administration of States and Municipalities
26. Foreign Service Act
27. Organic Act on the Financial Administration of the Public Sector
28. Public Administration Organic Act
29. Organic Act of the Office of the Comptroller General and the National System of Fiscal Control
30. Organic Act of the National Public Treasury
31. Organic Act on Planning
32. Organic Act on Administrative Procedures
33. Municipal System Organic Act
34. Public Prosecutor's Organic Act
35. Judicial Branch Organic Act
36. Citizens' Branch Organic Act
37. Act Creating the Intergovernmental Fund for Decentralization
38. Retirement and Pension System of the Office of the Comptroller General

39. Resolution 108 of the Ministry of Foreign Affairs
40. Resolution of the Office of the Comptroller General on the single points system governing the competition for appointment as Comptroller General
41. Organizational Resolution 1 of the Office of the Comptroller General
42. Extradition Treaty between Venezuela and Mexico
43. Treaty between Venezuela and Uruguay.
44. Interior Regulation and Regulation of the National Assembly.
45. Rules regarding oral participation by the representatives of organizations of civil society in National Assembly sessions, meetings of commissions and subcommissions.

**APPENDIX II TO THE FINAL REPORT  
ON THE IMPLEMENTATION IN THE BOLIVARIAN REPUBLIC OF  
VENEZUELA OF THE PROVISIONS OF THE CONVENTION SELECTED FOR REVIEW  
WITHIN THE FRAMEWORK OF THE FIRST ROUND**

The purpose of this appendix is to set forth the arguments supporting the inclusion of the paragraph transcribed below, in Section I, "summary of information received" of the Report on the Implementation in the Bolivarian Republic of Venezuela of the Provisions of the Convention Selected for Review Within the Framework of the First Round:

*"In addition, documents were received from a civil society organization that do not meet the requirements set forth in Article 33 of the Committee's Rules of Procedure and Other Provisions".*

**1. CONDITIONS THAT MUST BE MET BY CONTRIBUTIONS FROM CIVIL SOCIETY ORGANIZATIONS UNDER ARTICLE 33 OF RULES OF PROCEDURE AND OTHER PROVISIONS OF THE COMMITTEE**

Article 33 of the Rules of Procedure and Other Provisions of the Committee governs the participation of civil society organizations in its activities. Specifically, the article lists the requirements that must be met in full by such organizations in order for their contributions to be eligible for consideration by the Committee of Experts.

According to Article 33, the conditions that must be met by these civil society organizations may be summarized as follows:

- Compliance with the "*Guidelines for the Participation of Civil Society Organizations in OAS Activities*"(CP/RES. 759 (1217/99)) (hereinafter, the "Guidelines");
- Compliance with the condition "*in accordance with the internal legislation of the respective State Party*";
- Compliance with the condition governing the content of documents, requiring that they contain "*specific and direct information related to the questions that are referred to in the questionnaire*"; and
- Compliance with the Committee's established deadlines for the presentation of documents.

The following paragraphs offer an analysis of each one of these conditions.

**1.1 Conditions set in the *Guidelines for the Participation of Civil Society Organizations in OAS Activities* (CP/RES. 759 (1217/99))**

The Plan of Action of the Second Summit of the Americas (1998), instructed the OAS to promote programs suitable for encouraging greater participation in public affairs by civil society. Under this mandate, several actions were taken toward devising guidelines to encourage civil society participation in OAS activities. One of the results of this process was the creation, under the aegis of the Organization's Permanent Council, of a Committee that was entrusted with, *inter alia*, drafting a guidelines document;

this proposal was later adopted by the OAS Permanent Council in resolution CP/RES.759 (1217/99), entitled *Guidelines for the Participation of Civil Society Organizations in OAS Activities*.

The adopted document sets out the forms of participation, principles, eligibility conditions, and procedures that must be observed by civil society organizations interested in participating in the activities carried out within the framework of the Organization.

Thus, under the guidelines, civil society bodies are entitled to attend OAS activities, to make presentations, to provide information at the request of the organs, agencies, and entities of the OAS, and to provide specialized advisory services when so requested. They can also participate in operational activities relating to the design, functioning, and execution of cooperation programs, in accordance with the applicable current rules.

In this regard, two forms of participation are defined, each with a different set of requirements and scope. The first of these two mechanisms applies to those organizations that have requested permission to participate in the day-to-day activities or business of the OAS. For this purpose, they must submit the relevant application in a communication to the OAS Secretary General. The Secretary General refers these applications to the Permanent Council's *Committee on Civil Society Participation in OAS Activities*, which proceeds to analyze them, formulates the recommendations it deems pertinent, and sends its conclusions to the Permanent Council, which then adopts a final decision as it sees appropriate.

As a part of this process, there is a set of conditions that these organizations must satisfy in order to be accepted; these include indicating its name or corporate identity and identifying the work areas that it agrees to support. Applications must also be accompanied by the following documents: articles of incorporation, statutes, most recent annual report, organizational mission statement, and financial statements from the year previous to the application, including funding sources (public and private).

Organizations accepted by the Permanent Council by means of the above procedure are recorded in the register kept for this purpose by the General Secretariat. These organizations may appoint representatives to attend the public meetings of the Permanent Council and its subsidiary bodies. To this end, the OAS Secretariat is obliged to inform them of the calendar of public meetings and the order of business of the individual sessions.

The second form of participation refers to requests lodged by those civil society organizations that are not recorded in the appropriate register and which refer to participation in one specific activity carried out by the OAS. In such cases, as under the previous mechanism, applications are addressed to the OAS Secretary General, who refers them to the competent Permanent Council Committee. However, unlike the first procedure, this Committee simply conducts a preliminary examination of the application and conveys it to the group or committee responsible for organizing the activity. It is that group or committee, and not the Permanent Council as in the previous procedure, that is responsible for making the final decision regarding the civil society organization's participation in the activity in question.

In spite of the overlaps between the requirements that civil society organizations must meet in order to participate under either of the two above mechanisms, those organizations that are recorded in the register have a series of responsibilities that do not apply to those that wish merely to attend one specific event. These obligations include: attending to queries presented by the organs, agencies, and entities of the OAS; disseminating, among their members, information on the Organization's activities; and submitting to the General Secretariat, before December 31 of each year, a report, including an executive summary, describing its participation in OAS activities over that year, indicating its financial situation and sources of funding, and listing the activities it plans to carry out over the following year. These

reports are submitted to the General Secretariat, which forwards them to the Permanent Council committee responsible for such matters.

Finally, it should be noted that being recorded in the register allows organizations to participate at specific activities, such as a conference or a meeting, by simply indicating the name of the person or persons who will be representing it on that occasion.

**1.2 Condition established in Article 33 of the Rules of Procedure and Other Provisions of the Committee with respect to “accordance with the internal legislation of the respective State Party”**

Another of the requirements established by Article 33 of the Rules of Procedure and Other Provisions of the Committee which places restrictions on civil society organization participation in the analysis process carried out by the Committee of Experts, is that any such participation be carried out "*in accordance with the internal legislation of the respective State Party.*"

It should be noted that the first draft version of the Committee’s Rules of Procedure and Other Provisions, as discussed at the first regular meeting, contained no reference to this condition. It was, however, included following an express proposal made by the delegation of the Bolivarian Republic of Venezuela during the discussion and adoption of the Rules of Procedure. During the discussion of Article 33, that delegation explained that in accordance with their domestic laws, only those civil society organizations that received no funding from foreign sources could participate.

At that time the Committee considered the reasons given by the delegation of Venezuela and, in light thereof, resolved to incorporate into the approved text of the Rules of Procedure and Other Provisions a condition whereby civil society participation in the review process conducted by the Committee had to be "*in accordance with the internal legislation of the respective State Party.*"

With reference to this matter, in its first reply to the questionnaire, the Bolivarian Republic of Venezuela stated:

*Finally, for Venezuela, the participation of nongovernmental organizations in activities related to the control of public affairs in the country, and therefore their participation in the follow-up mechanism for implementation of the Inter-American Convention against Corruption, is limited to civil society organizations that are national in scope, with no external subsidy.*<sup>41</sup>

In the update of its reply, submitted within the deadline set by the Committee (March 8, 2004), it repeated this position and included a paragraph similar in scope to the previous one, and stating as follows:

*Finally, in Venezuela the participation of nongovernmental organizations in activities related to the control of public administration in the country is recognized in the Constitution, laws, and jurisprudence for civil society organizations of national scope. This is based on the jurisprudence of the Supreme Court, which grants this type of authority exclusively to Venezuelans, and in accordance with the principles of the OAS Charter in the framework of respect for sovereignty and the juridical order of the states, nonintervention, and the juridical equality of states.*<sup>42</sup>

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<sup>41</sup> Bolivarian Republic of Venezuela’s original reply to the questionnaire, page 22.

<sup>42</sup> Bolivarian Republic of Venezuela’s updated reply to the questionnaire, page 35

As stated in the previous paragraph, attached to the updated reply (Appendix No. 1 thereto) was a ruling from the Supreme Court of Justice, Venezuela's highest court for constitutional matters, which stated the following in connection with the matter at issue:

*"The representatives of civil society are Venezuelan associations, groups, and institutions (without external subsidy) which as a result of their purposes, continued presence, number of members or supporters and continuous activities, have been working from different angles of that society to improve the quality of life of Venezuelan society, without ties to the government or political parties."<sup>43</sup>*

Taking into consideration the background to the incorporation of the *in accordance with the internal legislation of the respective State Party* condition into the Committee's current Rules of Procedure; the content of the ruling handed down by Venezuela's highest court of constitutional interpretation; and the domestic law of that State, it is necessary to conclude that, in the specific case of Venezuela, to be able to participate in the MESICIC analysis process, a civil society organization may not be a recipient of foreign funding.

**1.3 Condition referring to the content of documents submitted by civil society organizations, requiring that they contain "specific and direct information related to the questions that are referred to in the questionnaire"**

Article 33(b) of the Rules of Procedure and Other Provisions of the Committee requires that all documents presented by civil society organizations under the aegis of this mechanism, must contain *specific and direct information related to the questions that are referred to in the questionnaire*.

This is therefore another element that must be studied in order to determine the appropriateness of any possible contribution by civil society organizations in this process, with respect to the Bolivarian Republic of Venezuela.

**1.4 Compliance with the deadlines set by the Committee for the presentation of civil society contributions**

In the decision adopted by this Committee of Experts titled "*Updating Replies to the Questionnaire*"<sup>44</sup>, which set deadlines for States Parties to update their replies, it was decided that the same deadlines would apply for documents submitted by civil society organizations, in accordance with the terms of Article 33(b) of the Committee's Rules of Procedure and Other Provisions.

In compliance with Article 33(b) of the Rules of Procedure and Other Provisions, during the Fifth Regular Meeting of the Committee, it was agreed that March 8, 2004, would be the common deadline for the four States facing analysis at the Committee's Sixth Regular Meeting to update their replies to the questionnaire and for civil society organizations to submit their documents.

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<sup>43</sup> Judgment of the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, handed down on June 30, 2000. Case file No. 00-1728.

<sup>44</sup> This decision was adopted by the Committee of Experts at its February 13, 2003, session during its third regular meeting of February 10-13, 2003, held at OAS headquarters, Washington, D.C.

## **2. DOCUMENTS RECEIVED FROM CIVIL SOCIETY ORGANIZATIONS IN CONNECTION WITH VENEZUELA**

On March 4, 2004, the Technical Secretariat received, via e-mail, a communication signed by Ms. Mercedes De Freitas, expressly stating that the communication was being made on behalf of the civil society organization *Transparencia Venezuela*. According to the documents submitted, this organization is one of the "contact points of *Transparency International*" (TI).

According to that same information, until December 2003, *Transparencia Venezuela* was known as *Mirador Democrático*. The first paragraph of the communication received reads as follows:

*"Enclosed herewith we are submitting a communication regarding the evaluation of the report presented by Venezuela in response to the CICC follow-up questionnaire. In the report we offer a number of appendixes, which we have sent via fax to Dr. Kohn."*

On that same date – March 4, 2004 – the Technical Secretariat received a fax signed by Ms. Diane Kohn, of *Transparency International*, the first paragraph of which states:

*"Enclosed I am remitting appendixes for the submission made by *Transparencia Venezuela (Mirador Democrático)* to the Follow-Up Mechanism to the Inter-American Convention Against Corruption".*

Together with these communications, copies of the following documents were received: (i) two letters signed by *Mirador Democrático*, addressed to the Office of the Comptroller General of the Republic, dated October 14 and November 5, 2003, requesting the country's reply to the questionnaire; (ii) a reply to that organization, signed by the Assistant Comptroller and dated November 4, 2003; (iii) a letter dated March 3, signed by *Transparencia Venezuela* and addressed to the Committee of Experts; (iv) a Spanish-language article titled "*The Effectiveness of the Inter-American Convention against Corruption*", written by Rogelio Pérez Perdomo; (v) a Spanish-language document titled "*Presentation and the International Seminar on Power and Corruption*", written by Mr. Eduardo Roche Lander; (vi) a Spanish-language article published in volume 20, No. 9, of *VenEconomía Mensual*, June 2003, titled: "*The Law Against Corruption and the Persistence of the Phenomenon*"; and (vii) a paragraph titled "*Rogelio Pérez Perdomo, Short Résumé.*"

## **3. ANALYSIS OF COMPLIANCE WITH THE CONDITIONS SET IN ARTICLE 33 OF THE COMMITTEE'S RULES OF PROCEDURE AND OTHER PROVISIONS, WITH SPECIFIC REFERENCE TO THE DOCUMENTS RECEIVED FROM CIVIL SOCIETY ORGANIZATIONS IN VENEZUELA**

In order to determine whether or not participation by the civil society organization *Transparencia Venezuela (Mirador Democrático)* in the Committee's review process is permissible, the following paragraphs analyze, one by one, the conditions that, under Article 33 of the Committee's Rules of Procedure and Other Provisions, must be met by civil society organizations wishing to participate in this process: (i) compliance with the "*Guidelines for Participation by Civil Society Organizations in OAS Activities*"; (ii) compliance with the condition "*in accordance with the internal legislation of the respective State Party*"; (iii) compliance with the condition governing the content of documents, requiring that they contain "*specific and direct information related to the questions that are referred to in the questionnaire*"; and (iv) compliance with the Committee's established deadlines for the submission of documents.

**3.1 Analysis of compliance with the conditions set in the *Guidelines for the Participation of Civil Society Organizations in OAS Activities* (CP/RES. 759 (1271/99))**

As indicated in the "*Guidelines for the Participation of Civil Society Organizations in OAS Activities*" and section 1.1 of this appendix, there are two procedures whereby civil society participation in Organization activities can be allowed.

The first of these applies to organizations that have been duly registered, for which purpose they must follow the procedure and meet the conditions mentioned in section 1.1 of this appendix. As was noted at that point, if an organization that is already registered has submitted an application, has had it analyzed and approved by the Permanent Council committee responsible for handling such matters, and has had it adopted by the Permanent Council, it may attend a conference, meeting, or activity by simply notifying the names of the individuals who will be representing it at the event.

In the case at hand, according to the consultation made to the officer responsible for the register of civil society organizations at the OAS, neither *Transparencia Venezuela* nor *Mirador Democrático* appear in that register.

With respect to organizations that are not registered, the Guidelines also establish the procedure and conditions described in section 1.1 of this document, that they must meet in order to participate in specific OAS activities. According to this procedure, a request must be lodged with the OAS Secretary General, which then refers the application to the responsible Permanent Council committee. This committee conducts a preliminary examination of the request, formulates a recommendation, and forwards it to the working group responsible for organizing the meeting or conference, which then makes a final decision and accredits the participating organization, when appropriate.

According to the information available, neither *Transparencia Venezuela* nor *Mirador Democrático* has completed the formalities described in the paragraph above. Consequently, and in light of the communications purportedly sent to the Secretariat by those organizations, it can be seen that they have not met the condition set in Article 33 of the Committee's Rules of Procedure and Other Provisions, whereby they are required to abide by the "*Guidelines for the Participation of Civil Society Organizations in OAS Activities*".

In addition, for that purpose and in order to streamline, facilitate, and encourage civil society participation in the activities carried out under the aegis of MESICIC, the documents could be considered as having been submitted by *Transparency International*. This deduction could be based on the communication itself, which expressly states that the organization *Transparencia Venezuela* or *Mirador Democrático* acts as a contact point for *Transparency International*. In addition, notice could be taken of the support that *Transparencia Venezuela* or *Mirador Democrático* receives from that organization, which is apparent in the transmission of the documents prepared. If this position is adopted, then it may be concluded that they do meet the conditions set forth in the aforesaid *Guidelines*, since TI is registered with the OAS.

However, it must be noted that even under such an assumption, the requirements set forth in sections 3.2 to 3.4 below must also be met.

### **3.2 Analysis of compliance with the condition set in Article 33 of the Committee's Rules of Procedure and Other Provisions with respect to "accordance with the internallegislation of the respective State Party"**

As indicated in the analysis in section 1.2, Venezuela's highest constitutional court has ruled on the conditions to be met by civil society organizations in order to be considered as such, and one of those conditions was the absence of external funding.

With regard to *Transparencia Venezuela* or *Mirador Democrático*, no information was available that would allow a determination regarding compliance with this requirement. However, taking into consideration the result indicated by the analysis in the previous section with respect to the noncompliance with the conditions set by the *Guidelines*, it was not deemed appropriate to proceed with this aspect of the analysis.

If it is assumed that the document was presented by *Transparency International*, it must be pointed out that the 2003 Annual Report<sup>45</sup> published by that organization indicates some of its funding sources, including donations from Switzerland, Germany, Finland, Netherlands, the United Kingdom, the United States, and others.

In light of the above remarks, it can be seen that *Transparency International* is in noncompliance with the condition contained in Article 33 of the Committee's Rules of Procedure and Other Provisions, whereby the domestic law of the state party at issue must be observed.

### **3.3 Analysis of compliance with the condition regarding the specific and direct content of documents submitted by civil society organizations**

With reference to the condition set in Article 33 of the Committee's Rules of Procedure and Other Provisions, referring to the specific and direct nature of the documents submitted, the following points are of relevance:

In the documents received by the Technical Secretariat and described in section 2 of this document, it can be seen that the contribution submitted by *Transparencia Venezuela (Mirador Democrático)* and related to the questionnaire consists of three articles that, while relevant and related to the Inter-American Convention against Corruption and the fight against corruption, do not refer directly and specifically to the questions set forth in the questionnaire. The possible exception is the document titled "*The Law Against Corruption and the Persistence of the Phenomenon*", which deals with that piece of legislation and is germane to some of the questions asked in the questionnaire. However, as is to be expected of an article of that nature, it makes no specific reference to the questionnaire.

This situation is in contrast to what has happened with the civil society organization contributions made with respect to the States already analyzed and those presented in connection with the other three States that are to be reviewed at the Committee's Sixth Regular Meeting. Unlike the documents submitted by civil society organizations from the other countries, the articles presented by *Transparencia Venezuela (Mirador Democrático)* for consideration by the Committee seem to have been prepared with a lower standard of care and in accordance with different drafting methods. Unlike the earlier contributions, it does not appear that these documents were drafted with the specific purpose of being submitted for consideration by the Committee; this is even more evident with respect to the article on the anticorruption law that was published in the magazine *VenEconomía Mensual* and placed before the Committee for review.

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<sup>45</sup> Annual Report of Transparency International, 2003; pp. 24-25.

Neither does the methodology used seem to coincide with that used for the other contributions received to date by the Committee from the civil societies of other States. The others explicitly cited the questions to which the observations and comments specifically referred. In most cases, they also followed the order of the questionnaire and answered the questions one by one.

In connection with this, *Transparencia Venezuela* acknowledges that:

*"...we were unable to prepare a critical analysis, whereby you, the Committee of Experts, would have received an independent assessment of Venezuela's compliance with the Convention's mandates based on the replies given... that prevented us from making the relevant observations in a detailed and precise fashion."*

*Transparencia Venezuela (Mirador Democrático)* explains in its letter to the Committee that this situation resulted from their lack of access to the replies to the questionnaire prepared by the country. In this regard, it could be said that the Committee's Rules of Procedure do not require States to publish their replies, nor does it set such publication as a prerequisite for participation by civil society organizations in the Committee's analysis process.

Taking into consideration the above reasons, it could be concluded that the documents submitted by *Transparencia Venezuela* do not meet the condition established by Article 33 of the Committee's Rules of Procedure and Other Provisions, whereby they must contain specific and direct information related to the questions posed in the questionnaire.

### **3.4 Analysis of compliance with the deadline set by the Committee for civil society organizations to submit their contributions**

As indicated in section 1.4 of this document, the deadline of March 8, 2004, for document submissions – both by countries and civil society bodies – was set by the Committee of Experts at its Third and Fifth Regular Meetings.

The communications sent by *Transparencia Venezuela (Mirador Democrático)* to the Technical Secretariat, as can be seen, were sent on March 4, 2004. It can therefore be concluded that those documents meet the condition regarding the timeliness of the submissions of civil society contributions.

It must also be noted that even in the event that the remaining conditions set out in the Committee's Rules of Procedure and Other Provisions are complied with, any other document presented by civil society after the established deadline would have been extemporaneous and could not have been considered.

## **4. CONCLUSION**

In light of the above analysis, it can be concluded that the documents received from the organization *Transparencia Venezuela* on March 4, 2004, known as *Mirador Democrático* until December 2003, the national contact for *Transparency International*, do not meet the conditions set forth in Article 33 of the Rules of Procedure and Other Provisions of the Committee governing the participation of civil society organizations in the activities of the Committee of Experts.