

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

FINAL REPORT

(Adopted at the September 18, 2009 plenary session)

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

**REPORT ON IMPLEMENTATION IN THE PLURINATIONAL STATE OF BOLIVIA OF  
THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND,  
AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT  
COUNTRY IN PREVIOUS ROUNDS<sup>1/</sup>**

**INTRODUCTION**

**1. Contents of the report**

[1] This report presents, first, a review of implementation in the Plurinational State of Bolivia of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Plurinational State of Bolivia by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: [www.oas.org/juridico/english/mec\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mec_rep_blv.pdf) and [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

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

[3] According to the official register of the OAS General Secretariat, the Plurinational State of Bolivia deposited the instrument of ratification of the Inter-American Convention against Corruption on February 4, 1997.

[4] In addition, the Plurinational State of Bolivia signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001

**I. SUMMARY OF THE INFORMATION RECEIVED**

**1. Response of the Plurinational State of Bolivia**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Plurinational State of Bolivia and in particular from the Ministry of Institutional Transparency and Fight against Corruption, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Plurinational State of Bolivia sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_blv_sp.htm)

[6] For its review, the Committee took into account the information provided by the Plurinational State of Bolivia up to April 2, 2009, and that furnished and requested by the Secretariat and the members of

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1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on September 18, 2009, at its Fifteenth meeting, held at OAS Headquarters, September 14-18, 2009.

the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

## **2. Documents received from civil society organizations**

[7] The Committee also received, within the deadline established in the schedule for the third round, a document from “*Transparencia Bolivia*”, the national chapter of Transparency International, submitted by that organization.<sup>2/</sup>

## **II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND**

### **1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)<sup>3</sup>**

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

[8] The Plurinational State of Bolivia has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[9] - Law 2492 (Tax Code) of August 2, 2003,<sup>4</sup> which sets out the principles, institutions, procedures, and fundamental standards of the Bolivian tax system, which are applicable to national, departmental, municipal, and university taxes. Article 6 (3) of the Tax Code provides that tax exemptions, reductions, or benefits may only be granted and repealed by mandate of law, it being necessary where exemptions are concerned to specify the conditions and requirements for their applicability, the taxes that they cover, whether the exemption is total or partial, and, as appropriate, their duration (Article 19).

[10] Article 73 of Tax Code provides, furthermore, that it is the duty of authorities at all levels of the state apparatus, as well as of those who perform public functions in general, to furnish the Tax Administration with as much tax-related data and background information as the latter may require and to provide it and its officials with support, assistance, and protection in the exercise of their duties. This provision also imposes on them the obligation to report to the appropriate tax authority any tax offenses of which they become aware in the course of their duties.

[11] Article 79 of the Tax Code provides that tax-related information, including documents pertaining to tax obligations, may be submitted by means of any technology available in the country, including by computer, electronic, optical or any other technology, provided that they afford the possibility of ascertaining the identity of the person who submits the information and verifying the integrity of the information and data contained therein.

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2. This document was received electronically on April 2, 2009, and are available in Spanish at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

3. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

4. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_codtribut.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_codtribut.pdf)

[12] As regards tax control, verification, audits, and investigation, Article 100 of the Bolivian Tax Code, in keeping with Article 66 thereof,<sup>5/</sup> grants extensive powers to the Tax Administration for those purposes, including authority to request information from other domestic and foreign tax authorities, companies, and institutions, as well as international agencies.

[13] As regards tax offenses, Article 148 provides that these are constituted by any acts or omissions that violate material or formal tax rules as classified and sanctioned in the Tax Code and other fiscal regulations. In the country under review, tax offenses are categorized as misdemeanors (*contravenciones*) and felonies (*delitos*). One of the misdemeanors listed in Article 160 of the Tax Code is non payment, which, according to Article 165,<sup>6/</sup> constitutes undue procurement of fiscal benefits and assets. Tax felonies, for their part, are mainly punishable by imprisonment and, on a supplemental basis, a fine; confiscation of merchandise and modes or units of transportation; disqualification from the direct or indirect pursuit of activities connected with customs and foreign trade operations, whether for import or export, as well as loss of any concessions, benefits, exemptions, and prerogatives enjoyed by individuals or corporations under Article 176 of the Tax Code. Specifically, Article 175, *inter alia*, recognizes tax and customs fraud as felonies, and defines and penalizes undue procurement of tax benefits and assets in accordance with Article 177 of the Code.<sup>7/</sup>

[14] - Law 843 (Tax Reform Law),<sup>8/</sup> which governs, *inter alia*, Value Added Tax (VAT) on business profits, the bases for its calculation, its rates, and exemptions. Article 47 of this law recognizes as deductible for the purposes of determining net income, any expenditures necessary for the procurement of taxed profits and the preservation of the source that generates them, as well as mandatory contributions to regulatory and supervisory agencies, social insurance, and such national and municipal taxes as the regulations deem appropriate.

[15] - Law 2166 (National Taxation Service Law)<sup>9/</sup> and its Regulations (Executive Decree 26462),<sup>10/</sup> which creates the National Taxation Service (SIN)<sup>11/</sup> as an economically self-sufficient entity governed by public law with administrative, operational, technical, and financial independence, nationwide jurisdiction and authority, legal personality, and its own capital (Article 2). Its principal functions include improvement of domestic tax collection and oversight, guidance on and facilitation of compliance with tax obligations, and collection from and punishment of anyone who violates the provisions of the Tax Code (Article 3).

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5. Article 66 of the Tax Code sets out the specific powers of the Tax Administration, which include control, verification, oversight, and investigation.

6. Article 165 of the Tax Code classifies and penalizes nonpayment as follows: “*Anyone who by act or omission fails to pay a tax debt in full, fails to make withholdings as required, or unduly obtains tax benefits and assets shall be punished with a fine of 100% of the amount calculated for the tax debt.*”

7. Article 177 of the Tax Code classifies and penalizes tax fraud as follows: “*Anyone who maliciously, by act or omission, to the detriment of the right to of the Tax Administration to receive taxes, reduces or fails to pay a tax debt, fails to make withholdings as required, or unduly obtains tax benefits and assets in an amount greater than or equal to 10,000 (Housing Development Tax Units) UFV, shall be punished with three to six years of imprisonment and a fine equivalent to 100% of the tax debt determined in the assessment proceeding or preliminary hearing. These penalties shall be applied without prejudice to special disqualification. In the case of municipal taxes and taxes assessed on an annual basis, the amount must be greater than 10,000 UFV for each fiscal year. In determining the aforesaid amount, in the case of annually declared taxes, the amount defrauded shall be considered to be for each of the 12 months of the calendar year (120,000 UFV). In all other circumstances, the amount shall be understood to refer to each of the items for which a taxable act may be assessed.*”

8. Available at: [www.hacienda.gov.bo/tributaria/Downloads/LEY%20843.pdf](http://www.hacienda.gov.bo/tributaria/Downloads/LEY%20843.pdf)

9. Available at: [www.impuestos.gov.bo/Informacion/Normativa/upload/resos/L2166.pdf](http://www.impuestos.gov.bo/Informacion/Normativa/upload/resos/L2166.pdf)

10. Available at: [www.supertributaria.gov.bo/leyes/Decreto%2026462.pdf](http://www.supertributaria.gov.bo/leyes/Decreto%2026462.pdf)

11. See: [www.impuestos.gov.bo](http://www.impuestos.gov.bo)

[16] Furthermore, Title III of Law 2166 provides that citizens who obtain full-time positions in the SIN as public servants must be suitable and have the necessary capabilities (Article 22). They shall also be subject to the provisions of Law 2027 (Civil Service Statute),<sup>12/</sup> and be personally liable to the Treasury for any sums that the latter fails to receive as a result of any malicious or negligent actions on their part in the performance of their assigned duties, without prejudice to any civil or criminal proceedings that might appropriately be instituted against them (Article 23).

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

[17] With respect to the legal provisions governing the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[18] Nevertheless, the Committee deems it appropriate to comment on certain provisions in this regard, that the country under review could consider supplementing, developing and adapting, bearing in mind that, in addition to recognizing in its response to the questionnaire that it does not have specific laws in place in this respect, it mentions that is a priority for the Bolivian State “*to work toward the completion of all laws, including in the context of criminal law and in the areas of prevention and transparency, in accordance with the IACC, and then to take preventive steps against corruption by means of administrative measures that address corruption in the private sector (businesses), an area to which the measure provided in Article III (7) of the IACC applies.*”<sup>13/</sup>

[19] In this regard, the Committee considers it necessary for the Country under review to consider prohibiting the procurement of favorable tax treatment for payments made by any individual or corporation in violation of the anticorruption laws, which, in addition to complying with the provisions contained in Article III (7) of the Convention, would help to accomplish the purposes of that instrument to prevent, detect, punish, and eradicate acts of corruption, since it would leave no doubt that the conduct referred to in that article is prohibited (See Recommendation 1.1 (a), in Section 1.4 of this report).

[20] Furthermore, as mentioned in Section 1.1 above, Article 6(3) of the Bolivian Tax Code provides that tax exemptions, reductions, or benefits may only be granted and repealed by mandate of law. However, based on the information available to it, the Committee was unable to determine the grounds for eligibility for such favorable treatment. Therefore, it urges the Country under review to consider expressly determining and specifying those grounds, so as not to undermine the legitimate aim sought and to make it clear that in no event may those grounds be understood to include payments made by any individual or corporation in violation of the anticorruption laws. (See Recommendation 1.1 (b), in Section 1.4 of this report).

[21] Similarly, the Committee’s attention is drawn to the current wording of Article 47 of the Tax Reform Law, which recognizes as deductible for the purposes of determining net income, any expenditures necessary for the procurement of taxed profits and the preservation of the source that generates them, including mandatory contributions to regulatory and supervisory agencies, social insurance, and such national and municipal taxes as the regulations deem appropriate. Based on this wording, the provision could serve to obtain favorable tax treatment for sums paid for corruption or make it easier to mask or disguise such expenditures. Therefore, the Committee believes that it would be advisable for the Country under review to consider wording this provision precisely, so as to make it

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12. Available at: [www.oas.org/juridico/spanish/mesicic2\\_blv\\_ley\\_2027\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_blv_ley_2027_sp.pdf)

13. See Response of Bolivia to the Questionnaire for the Third Round of Review, p. 3.

clear that it would deny favorable tax treatment for expenditures made in violation of the anticorruption laws or to disguise such expenditures to that end (See Recommendation 1.1 (c), in Section 1.4 of this report).

[22] In the opinion of the Committee, it is important for the State to consider having basic requirements and formal conditions in place designed to ensure that anyone applying for favorable tax treatment supplies accurate and verifiable information. The purpose of these requirements would be basically to fully establish the identity of the applicant and for them to commit to being responsible by requiring them to sign the application, as well as to ensure that the grounds invoked are duly supported by means of documents or certificates, with the necessary safeguards to vouchsafe their authenticity, that serve to verify the origin of the expenditures on which the application is founded. Accordingly, the Committee considers that it could be beneficial for the Country under review to consider establishing the requirements to apply for already established or to-be-established favorable tax treatment, seeking to ensure that anyone who applies for it commits to being responsible and that the grounds invoked are duly substantiated by means of documents or certificates, with the necessary safeguards to vouchsafe their authenticity, that serve to verify the origin of the expenditures on which the application is founded (See Recommendation 1.1 (d), in Section 1.4 of this report).

[23] With respect to the detection of the procurement of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee acknowledges the efforts of the Country under review through the creation of the National Taxation Service (SIN) through the enactment of Law 2166 and its Regulations designed to curb tax evasion and tax fraud and offer legal security to taxpayers in complying with their formal obligations to the State, as well as to improve procedures and technology and ensure greater precision in the control, detection, and punishment of tax evasion. The Committee also believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (See Recommendation 1.1 (e), in Section 1.4 of this report).

[24] With respect to the investigation and punishment of the procurement of favorable tax treatment for expenditures made in violation of the anticorruption laws and for providing redress for the depletion of public resources that it causes, notwithstanding the punitive measures provided in the Bolivian Tax Code and described in Section 1.1 above, the Committee calls on the Country under review to consider introducing criminal and financial penalties, as appropriate, for any person or corporation that obtains or attempts to obtain favorable tax treatment based on expenditures made in violation of the anticorruption laws, including the adoption of the necessary measures to allow, whenever this occurs, any such benefits to revert to the State (See Recommendation 1.1 (f), in Section 1.4 of this report).

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

[25] The Country under review did not supply information on results in this area. In this regard, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto

#### 1.4. Conclusions and recommendations

[26] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[27] **The Plurinational State of Bolivia has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1.1 of Chapter II of this report.**

[28] In light of the comments formulated in the above-noted sections, the Committee suggests that the Plurinational State of Bolivia consider the following recommendation:

[29] - Strengthen the standards for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws.

[30] To comply with this recommendation, the Plurinational State of Bolivia could take the following measures into account:

- a) Prohibit, by such means as it deems appropriate, the procurement of favorable tax treatment for expenditures made by any person or corporation in violation of the anticorruption laws. (See Chapter II, Section 1.2 of this report).
- b) Expressly determine and specify, by such means as it deems appropriate, the grounds of eligibility for favorable tax treatment grounds, in a manner that does not undermine the legitimate aim sought and makes it clear that on no account may those grounds be understood to include payments made by any individual or corporation in violation of the anticorruption laws. (See Chapter II, Section 1.2 of this report).
- c) Expressly determine, by such means as it deems appropriate, the tax deductions permitted under Article 47 of Law 843 (Tax Reform Law), so as to make it clear that it would **deny** favorable tax treatment for expenditures made in violation of the anticorruption laws or to disguise such expenditures to that end. (See Chapter II, Section 1.2 of this report).
- d) Set, by such means as it deems appropriate, the requirements to apply for legally prescribed favorable tax treatment in order to ensure that anyone who applies therefore commits to being responsible and that the grounds invoked are duly substantiated by means of documents or certificates, with the necessary safeguards to vouchsafe their authenticity, that serve to verify the origin of the expenditures on which the application is founded. (See Chapter II, Section 1.2 of this report).
- e) Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following (See section 1.3 of chapter II of this report):
  - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to

confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.

- ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.
  - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
  - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications.
  - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
  - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- f) Introduce, by such means as it deems appropriate, criminal and financial penalties, as well as disqualifications, as appropriate, for any person or corporation that obtains or attempts to obtain favorable tax treatment based on expenditures made in violation of the anticorruption laws, including the adoption of the measures necessary to allow, whenever this occurs, any such benefits to revert to the State. (See Chapter II, Section 1.2 of this report).
- g) Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of chapter II of this report).

## **2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)**

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

[31] The Plurinational State of Bolivia has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[32] - The Commercial Code<sup>14/</sup> (Decree Law 14379 of February 25, 1977), which applies to all legal persons constituted as publicly held companies,<sup>15/</sup> Article 36 of which requires them to keep books in

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14. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_codcomer.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_codcomer.pdf)

15. Under Article 126 of the Commercial Code, commercial associations, regardless of their purpose, may only be constituted as: 1) general partnerships; 2) limited partnerships; 3) limited liability partnerships; 4) corporations; 5) limited stock companies, and, 6) joint ventures. Furthermore, cooperative associations shall be governed by a special law and in a subsidiary fashion, provided that they are not contrary thereto, by the provisions applicable to limited liability partnerships.

accordance with the nature, size, and structure of the enterprise on a uniform basis, that makes it possible to show the state of its business and clear justification of each and every act and operation subject to entry in the accounts. They are required, furthermore, to keep all the books, <sup>16/</sup> documents and correspondence that support them in good order. These accounts shall be maintained in books by legally qualified accountants, who shall be subject to the regulatory standards on liability, rules of conduct, remuneration, and client confidentiality, without prejudice to the liability of the trader to whom they provide their services (Articles 37 and 39).

[33] Article 40 describes how books should be presented, including, *inter alia*, their binding and page numbering in the presence of a notary public, while Article 42 prohibits any alteration to the consecutive order of dates of operations therein; spaces left blank; between-line or overlapping entries; scratching-out, deletions or amendments to any part of the account entries; or removal, alteration of the numbering, or mutilation of their pages.

[34] Article 44, which deals with the information to be recorded in the books, states that the journal shall record the transactions conducted on a daily basis in consecutive order, expressing the debit and credit accounts, with clear and precise notes on these operations and their amounts, including a mention of the persons involved and documents that support them. Furthermore, Article 52 requires traders to keep their books for at least five years counted from the closure thereof or the date of the last entry, document, or voucher, except in the case of certain documents for which a special provision might provide a different period.

[35] Article 54 provides that books and records of account shall be subject to verification (audit) by an auditor legally qualified for that purpose, *inter alia*, at the request of any person or entity entitled to do so, without prejudice to the express prohibition contained in Article 56 against ex officio inspections of such books and records except when conducted by judicial order. Notwithstanding, under Article 56, this prohibition does not restrict the statutory right of inspection of the partners or the persons who perform control, shareholder representation or audit functions in said publicly held companies (Articles 179, 190, 211, 332, 357 and other applicable provisions of the Commercial Code).

[36] As regards publicly held companies constituted abroad that routinely engage in acts of commerce in the country under review, Article 419 requires them to keep a complete set of books separate from their other operations and to follow the provisions of the Commercial Code.

[37] - The Reordered Text of Law 843 (Tax Reform Law), Article 45 of which requires all branch offices and other places of business of foreign companies, persons, or entities abroad to keep their records of account separate from those of their parent companies and other overseas branch offices or places of business.

[38] - The Tax Code (Law 2492 of August 2, 2003), Article 79 of which allows accounting books, records, and annotations, as well as documents necessary for discharging tax obligations, to be kept by any technological means available in the country, including computer, electronic, optical, or any other technology, provided they permit identification of the issuer and guarantee verification of the integrity of the information and data contained therein.

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However, should their aim be to engage in any commercial activity alien to their purpose, they shall be subject, as appropriate, to the provisions of the Commercial Code.

16. Article 37 of the Commercial Code makes it mandatory for all traders to keep a general journal, ledger, and general account book, unless they are specifically required by law to keep other books.

[39] - The Corporate Income Tax Regulations (Supreme Decree 24051), Article 2(a) of which, as part of the rules governing this tax, defines and indicates as persons required to keep accounting records, all companies that fall within the scope of the Commercial Code,<sup>17/</sup> in addition to one-person companies,<sup>18/</sup> de facto or irregular business associations, cooperatives, and mortgage savings and loan associations. Furthermore, Article 35 provides that persons required to keep such records shall comply with the applicable provisions contained in the Commercial Code in order to determine the results of their financial and bookkeeping movements attributable to the corresponding fiscal year, which shall be presented in accordance with Generally Accepted Accounting Principles.<sup>19/</sup>

[40] - Decision 370/2008<sup>20/</sup> of the defunct Superintendency of Companies (SEMP) Administrative,<sup>21/</sup> the first operative paragraph of which approves General Accounting Standard 1, which formally adopts the Generally Accepted Accounting Principles; and SEMP 240/2009,<sup>22/</sup> which formally adopts General Accounting Standards 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, all of which were issued by the Audit and Accounting Council (CTNAC), a body subordinate to the College of Auditors and Certified Public Accountants of Bolivia (CAUB). The foregoing standards are mandatory for all natural and legal persons governed by the SEMP throughout the national territory while the work on convergence of the Domestic Standards with International Accounting Standards (IAS) is being carried out.<sup>23/</sup>

[41] - The Voluntary Restructuring Law (Law 2495 August 4, 2003),<sup>24/</sup> Article 23 of which sets out the functions and powers of the SEMP, which are, *inter alia*, to regulate, control, and supervise publicly held companies to ensure that they carry out their activities transparently; issue, control and supervise the application of domestic and international accounting standards applicable to natural and legal persons subject to its jurisdiction and authority, and to control and determine the manner of presentation, frequency, and disclosure of their accounting statements.

[42] - Supreme Decree 3911,<sup>25/</sup> elevated to the rank of law by mandate of the Law of October 5, 1957, of which Article 25, with regard to provisions 12, 13 and 14, requires all accountants and financial auditors, *inter alia*, to enroll in the National Register of Financial Auditors and Accountants and to register with the College of Economists of Bolivia or the National Accountants Federation.<sup>26/</sup>

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17. See Article 126 of the Commercial Code, *supra* note 15.

18. A single-person company is defined as an economic entity owned by one individual or an undivided estate that coordinates the production factors in the performance of for-profit economic activities.

19. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_contabilidad.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_contabilidad.doc)

20. As part of the Financial Regulation System (SIREFI) of Bolivia, Article 25 of the Bonosol Law (Law 2427 of November 28, 2002) created the Superintendency of Companies as a self-governing entity of indefinite duration under public law, with legal personality and its own capital. However, Article 137 of Executive Decree 29894 of February 7, 2009 (available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_ds29894.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_ds29894.doc)) abolished the Superintendency of Companies and provided that its responsibilities would be assumed by the Ministry of Productive Development and Plural Economy.

21. Available at: [www.auditorescontadoresbolivia.org/archivos/resolucionsemp3702008.doc](http://www.auditorescontadoresbolivia.org/archivos/resolucionsemp3702008.doc)

22. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_res24.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_res24.doc)

23. According to the website of the International Accounting Standards Board (IASB) ([www.iasb.org](http://www.iasb.org)), the International Accounting Standards are a set of guidelines developed by this Board, which is a privately funded independent agency that has its headquarters in London, whose mission is to develop, in the public interest, a single set of high quality, understandable and international financial reporting standards (IFRSs) for general purpose financial statements. The IASB also collaborates with domestic accounting standards agencies in working toward the harmonization of financial reporting standards throughout the world. (For more information visit [www.iasb.org](http://www.iasb.org))

24. Available at: [www.senado.bo/sitioweb/files/gacetaLeyes/2495.pdf](http://www.senado.bo/sitioweb/files/gacetaLeyes/2495.pdf)

25. Available at: [www.auditorescontadoresbolivia.org/archivos/lev3911.pdf](http://www.auditorescontadoresbolivia.org/archivos/lev3911.pdf)

26. The Fifth Special National Congress of Accountants decided to change the name from the National Federation of Accountants to the College of Accountants of Bolivia, reforming its Organic Statute as approved by Supreme Resolution 26134 of October 20, 1947.

[43] - The Organic Statutes of the National College of Accountants<sup>27/</sup> and of the College of Auditors or Public Accountants of Bolivia,<sup>28/</sup> which provide, *inter alia*, for the creation of the National Professional Ethics Tribunal and the National Ethics Tribunal, respectively, both of which are charged with the examination, judgment, and punishment, as appropriate, of the professional conduct of their members, in keeping with their respective statutes, rules of procedure, and codes of ethics.

[44] - The Professional Code of Ethics of the College of Accountants,<sup>29/</sup> Article 17 of which requires accountants to keep secret and confidential any acts of a private nature which their client or employer might have revealed to them, whether it be of a technical, financial, or personal nature. To do otherwise shall be considered a breach of trust, even if the relationship or agreement has concluded or terminated. According to the same provision, maintaining professional secrecy is both the accountant's duty and their right.

[45] - The Professional Code of Ethics of CAUB Public Accountants,<sup>30/</sup> Article 4(2) of which provides that public accountants must always observe professional secrecy unless a specific authority orders them to disclose the information, or when they have a legal or professional obligation to do so.

[46] - Furthermore, in its response, the country under review provides information on the existence of provisions, measures and mechanisms in this area, with different content and scope as regards control of other financial entities and agencies, such as the Stock Market Law (Law 1834 of March 31, 1998),<sup>31/</sup> the Insurance Law (Law 1883 of June 25, 1998),<sup>32/</sup> the Reordered Text of the Banks and Financial Entities Law (Law 1488 of May 5, 2004),<sup>33/</sup> and the Rules of Procedure of the Financial Intelligence Unit (Supreme Decree 24771 of July 31, 1997).<sup>34/</sup>

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

[47] With respect to the provisions governing the prevention of bribery of domestic and foreign government officials, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[48] The Committee nevertheless deems it appropriate to express certain comments regarding the advisability that the Country under review consider supplementing the legal framework and the measures now in force in this regard, bearing in mind, furthermore, that the document submitted by the civil

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27. According to its Organic Statutes (available at: [www.contadoresbolivia.org.bo/estatutos/estatuto.doc](http://www.contadoresbolivia.org.bo/estatutos/estatuto.doc)), the College of Accountants of Bolivia is a legally constituted professional institution governed by public law, established in accordance with the applicable standards of the Civil Code, whose legal personality is recognized by Supreme Resolution 208283 of October 25, 1990. The entity's membership is composed of accountants with a higher technical diploma and public accountants with a bachelor's degree (*licenciatura*), represented by nine Departmental Colleges.

28. According to its Organic Statutes (available at:

[www.auditorescontadoresbolivia.org/archivos/estatutoorganicoaub01.pdf](http://www.auditorescontadoresbolivia.org/archivos/estatutoorganicoaub01.pdf)) the College of Auditors or Public Accountants of Bolivia (CAUB) is a professional trade association, established in accordance with the applicable standards of the Civil Code, whose legal personality is recognized by Supreme Resolution 209343 of July 9, 1991. The entity represents the respective departmental colleges and, through them, the following professionals as its membership: public accountants or auditors and professionals of the accounting and financial sciences with a bachelor's university degree (*licenciatura*); accountants with a superior technical diploma, and firms of accountants, auditors and consultants.

29. Available at: [www.contadoresbolivia.org.bo/estatutos/codigodeeticaprofesional.doc](http://www.contadoresbolivia.org.bo/estatutos/codigodeeticaprofesional.doc)

30. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_codigo2.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_codigo2.pdf)

31. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_ley1834.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_ley1834.pdf)

32. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_ley1883.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_ley1883.pdf)

33. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_texto.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_texto.pdf)

34. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_ds24771.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_ds24771.pdf)

society organization *Transparency Bolivia* notes the following: “*The Bolivian State does not have specific provisions to prevent or deter bribery of domestic and foreign government officials. The standards in place are for financial reporting and tax purposes ...*”<sup>35/</sup>.

[49] Accordingly, the Committee believes it necessary, in order to comply with the purpose of Article III(10) of the Convention to prevent the bribery of domestic and foreign government officials, for the country under review to consider adopting appropriate measures to ensure that, as is the case for publicly held companies, all associations of whatever type, other than those covered by Articles 126 of the Commercial Code and 2(a) of the Corporate Income Tax Regulations (Supreme Decree 24051), which, in the pursuit of their corporate purpose, conclude agreements with the State, with other states, or with domestic or foreign entities with state-owned capital, or whose size, reflected by factors such as the possession of substantial proprietary capital or the considerable funds that they manage, makes it advisable, are regulated with respect to how they should maintain and protect their accounting records, and that the latter, in addition to being maintained by legally qualified accountants, in reasonable detail, accurately reflect the operations of such associations, particularly those related to acquisition and disposition of assets, and that they have sufficient internal accounting controls to enable their officers and partners to detect corrupt acts, in particular bribery (see Recommendation 2.4 (a) in Chapter II of this report).

[50] The Committee also notes the existence of provisions on internal accounting controls that publicly held companies and other types of associations are required under the Convention to establish in order to enable their officers to detect corrupt acts. Nevertheless, the Committee considers it important for the country under review to also consider having in place a general, obligatory accounting system. In that regard, as noted in Section 2.1 above, Bolivia has 14 General Accounting Standards issued by the Audit and Accounting Council of the CAUB and formally adopted by the defunct Superintendency of Companies in Administrative Decisions SEMP 370/2008 and SEMP 240/2009, the latter of which provides that the Standards are mandatory while the work on convergence of the Domestic Standards with International Accounting Standards (IAS) is being carried out.<sup>36/</sup> Therefore, in order to ensure that the information in the records of account of publicly held companies and other associations is accurately reflected in reasonable detail, the Committee urges the Country under review to continue its efforts to harmonize, as appropriate, its accounting system (see Recommendation 2.4 (b) in Chapter II of this report).

[51] The Committee also notes the existence of ethical standards of conduct to ensure the integrity and objectiveness of accountants in the performance of their work, specifically in the professional codes of ethics described in Section 2.1 above. However, it also observes that those standards do not include provisions that require accountants and financial auditors to bring any anomalies that they detect to the attention of the company’s management, legal representative and/or the partners or associates, and, in the event that they could constitute an offense, to report said anomalies to the appropriate authorities. Accordingly, the Committee believes it advisable for the Country under review to consider including, by the appropriate means, provisions of this type, and adopting the pertinent measures to ensure that “professional secrecy” does not stand in the way of the professionals described in Articles 6, 7, and 8 of Supreme Decree 3911 bringing to the attention of the proper authorities any acts of corruption that they discover in the course of their activities (see Recommendation 2.4 (c) in Chapter II of this report).

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35. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 12, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

36. See *supra*, note 22.

[52] Similarly, the Committee invites the Country under review also to consider holding awareness campaigns, which target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of those records and the consequences of their violation; as well as implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records on how to detect corrupt acts through those records (see Recommendation 2.4 (d) in Chapter II of this report).

[53] With respect to mechanisms to ensure the effectiveness of the standards and measures regarding the accuracy and reasonable detail to be reflected by financial statements of publicly held companies and other types of associations required to keep them, the Committee notes the existence of certain related provisions, such as the prohibitions contained in Article 42 of the Commercial Code described in the preceding section. However, it also finds insufficiency of penalties for those who violate this and other provisions designed to guarantee the accuracy of accounting records. Therefore, the Committee invites the Country under review to consider the adoption of pertinent measures to introduce a system of financial penalties for companies, as well as financial and criminal penalties for their legal representatives, accountants, auditors, and other officers who infringe these and other related provisions (see Recommendation 2.4 (e) in Chapter II of this report).

[54] Furthermore, and notwithstanding that the responsibilities of the defunct Superintendency of Companies were assumed by the Ministry of Productive Development and Plural Economy pursuant to Article 137 of Executive Decree 29894 of February 7, 2009<sup>37/</sup>, the Committee, based on the information available to it, observes the absence of any organ or entity to ensure proper compliance with the measures designed to safeguard the accuracy of accounting records and the internal accounting controls of publicly held companies and other types of associations required to establish them. The foregoing is further supported by an observation made by the civil society organization *Transparency Bolivia*, which mentions in its document that “*at present [in Bolivia] there is no administrative authority for commercial matters with powers to examine the information contained in the accounting records of companies.*”<sup>38/</sup>

[55] In view of the foregoing, the Committee believes it necessary for the Country under review to consider establishing a body, or provide additional authority to an existing body, to prevent or investigate violations of the measures designed to safeguard the accuracy of accounting records and ensure that corporations and other types of associations required to establish internal accounting controls do so in the proper manner; as well as to impose thereon the appropriate financial or other penalties, in addition to those of a criminal and financial nature provided for their legal representatives, accountants, auditors or other employees responsible for their infringement (see Recommendation 2.4 (f) in Chapter II of this report).

[56] The Committee also believes that it would be beneficial for the country under review to consider the adoption of such measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records. (see Recommendation 2.4 (g) in Chapter II of this report).

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37. See *supra*, nota 19.

38. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption”, submitted by *Transparency Bolivia*, p. 15.

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

[57] The Country under review did not supply information on results in this area. However, it furnished certain data regarding the regulatory activity of the oversight agencies in the area of banking, insurance, and securities.<sup>39/</sup> In the absence of further information presented in a manner that would allow it to make an overall assessment of results in this area, the Committee will make a recommendation to the country under review so that, through the organs and agencies responsible for the prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 2.4 (h) in Chapter II of this report).

### **2.4. Conclusions and recommendations**

[58] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review of the provisions contained in Article III (10) of the Convention:

[59] **The Plurinational State of Bolivia has considered and adopted measures to create, maintain and strengthen standards on prevention of bribery of domestic and foreign government officials, as described in Chapter II, Section 2 of this report.**

[60] In light of the comments formulated in that section, the Committee suggests that the Country under review consider the following recommendation:

[61] - Strengthen standards on prevention of bribery of domestic and foreign government officials.

[62] To comply this recommendation, the Plurinational State of Bolivia could consider the following measures:

- a) Adopt appropriate measures to ensure that all associations of whatever type, other than those covered by Articles 126 of the Commercial Code and 2(a) of the Corporate Income Tax Regulations, which, in the pursuit of their corporate purpose, conclude agreements with the State, with other states, or with domestic or foreign entities with state-owned capital, or whose size, reflected by factors such as the possession of substantial proprietary capital or the considerable funds that they manage, makes it advisable, are regulated with respect to:
  - i. Maintenance and protection of accounting records, so that the latter, in addition to being maintained by legally qualified accountants, in reasonable detail, accurately reflect the operations conducted, particularly those related to the acquisition and disposition of assets.
  - ii. Establishment of sufficient internal accounting controls to enable their officers and partners to detect corrupt acts, in particular bribery. (See Chapter II, Section 2.2 of this report).

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39. See response of Bolivia to the Questionnaire for the Third Round of Review, p. 25.

- b) Continue its efforts to harmonize its accounting system. (See Chapter II, Section 2.2 of this report).
- c) Introduce, through the appropriate means, provisions that require the professionals described in Articles 6, 7, and 8 of Supreme Decree 3911 to bring any anomalies that they detect in the course of their activities to the attention of the management, legal representative, and/or the partners or associates, and, in the event that they could constitute an offense, to report said anomalies to the appropriate authorities to the attention of the proper authorities, adopting the pertinent measures to ensure that “professional secrecy” does not stand in the way of the performance of this duty. (See Chapter II, Section 2.2 of this report).
- d) Hold awareness campaigns, which target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force in order to ensure the veracity of those records and the consequences of their violation; and implement training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records on how to detect corrupt acts through those records. (See Chapter II, Section 2.2 of this report).
- e) Take the necessary steps to adopt, through the appropriate means, a system of financial penalties and disqualifications for publicly held companies and associations, as well as financial and criminal penalties for their legal representatives, accountants, auditors, and other officers who violate the standards and measures regarding the accuracy and reasonable detail which their accounting records should reflect. (See Chapter II, Section 2.2 of this report).
- f) Establish a body, or strengthen an existing one by granting it additional authority to prevent or investigate violations of the measures designed to safeguard the accuracy of accounting records and ensure that corporations and other types of associations required to establish internal accounting controls do so in the proper manner; as well as to impose thereon the appropriate financial or other penalties, in addition to those of a criminal and financial nature provided for their legal representatives, accountants, auditors or other employees responsible for their infringement. (See Chapter II, Section 2.2 of this report).
- g) Consider adopting the measures it deems appropriate to facilitate the work of the organs or bodies responsible for preventing or investigating noncompliance with measures for safeguarding the accuracy of accounting records, and to help them detect amounts paid for corruption that are concealed in those records, such as the following:
  - i. Review methods, such as accounts inspections and analysis of periodically requested information; investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities.

- ii. Manuals, guidelines or directives on the manner in which accounting books should be reviewed to detect sums paid for corruption.
  - iii. Computer programs that allow ready access to the information needed to verify the truthfulness of accounting records and their substantiating documentation, and the possibility of obtaining information from financial institutions for this purpose.
  - iv. Institutional coordination mechanisms to facilitate timely collaboration from other institutions or authorities as necessary to perform such verification or to establish the authenticity of the substantiating documentation.
  - v. Training programs for their employees, designed specifically to alert them to the methods used to disguise bribes in accounting records, and to instruct them on ways of detecting such payments. (See Chapter II, Section 2.2 of this report).
- h) Select and develop, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 2.2 of this report).

### **3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)**

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

[63] The Plurinational State of Bolivia has not yet adopted a set of provisions on transnational bribery as provided in Article VIII of the Convention.<sup>40/</sup>

[64] However, Article 138 of the Code of Criminal Procedure (Law 1970 of March 25, 1999) provides,<sup>41/</sup> in relation to Article VIII (3), that the Country under review shall provide as much assistance as possible in connection with requests from foreign authorities, provided that such requests are in accordance with the Constitution, international conventions and treaties in force, and the provisions of this Code.

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

[65] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct of transnational bribery as described in Article VIII of the Convention. (See Recommendation 3.4.1 in Chapter II of this report).

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40. The Committee notes the existence of the proposed Law on Corruption, Illicit Enrichment, and Investigation of Fortunes (also known as the Marcelo Quiroga Santa Cruz Law) (Bill 510/2007), mentioned both in the response of the State, and in the documents submitted by the civil society organization *Transparency Bolivia*, which includes proposals on these matters.

41. Available at: [www.senado.bo/sitioweb/files/gacetaLeyes/1970.pdf](http://www.senado.bo/sitioweb/files/gacetaLeyes/1970.pdf)

[66] Similarly, the Committee believes it advisable for the Country under review to consider the possibility of adopting the measures necessary to ensure, with respect the provisions that would, in due course, prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (See Recommendation 3.4.2 in Chapter II of this report).

[67] Furthermore, the Committee urges the country under review to consider adopting, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties that are applicable to persons connected thereto who are found to have been involved in the commission of acts that constitute that conduct. (See Recommendations 3.4.3 and 3.4.4 in Chapter II of this report).

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

[68] The lack of standards in this area precludes an appraisal of results in this respect. In addition, in its response, the country under review noted, “*In spite of the fact that Bolivia has standards that facilitate and permit international cooperation and assistance, including standards in its domestic laws, there are no data or information available on requests for international cooperation and assistance made to Bolivia under Article XIV of the Inter-American Convention against Corruption.*”<sup>42/</sup> Bearing both of these circumstances in mind, the Committee will offer a recommendation in this regard. (See Recommendation 3.4.5 in Chapter II of this report).

### **3.4. Conclusions and recommendations**

[69] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

**[70] The Plurinational State of Bolivia has adopted certain measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

[71] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another state, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction, in exchange for any act or omission in the performance of that official's public functions. (See Chapter II, Section 3.2 of this report).

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42. See Response of Bolivia to the Questionnaire for the Third Round of Review, p. 29.

- 3.4.2. Consider the possibility of adopting the necessary measures to ensure, with respect to the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (See Chapter II, Section 3.2 of this report).
- 3.4.3. Adopt, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons connected thereto who are found to have been involved in the commission of acts that constitute that conduct. (See Chapter II, Section 3.2 of this report).
- 3.4.4. Adopt, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any government official or employee who commits the crime of transnational bribery, notwithstanding the penalties to which the person or persons connected thereto who are involved in the commission of the acts that constitute said conduct might be liable.
- 3.4.5. Select and develop, through the organs and agencies that would, in due course, be responsible for the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 2.3 of this report).

#### **4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)**

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

[72] The Plurinational State of Bolivia has not yet adopted a set of provisions on illicit enrichment as provided in Article IX of the Convention.<sup>43/</sup>

[73] However, as noted in Section 3.1 above, Article 138 of the Code of Criminal Procedure (Law 1970 of March 25, 1999) provides, in relation to Article IX (3), that the Country under review shall provide as much assistance as possible in connection with requests from foreign authorities, provided that such requests are in accordance with the Constitution, international conventions and treaties in force, and the provisions of this Code.

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43. The Committee once more notes the existence of the proposed Law on Corruption, Illicit Enrichment, and Investigation of Fortunes (also known as the Marcelo Quiroga Santa Cruz Law) (Bill 510/2007), again mentioned both in the response of the State, and in the document submitted by the civil society organization *Transparency Bolivia*, which includes proposals on these matters.

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

[74] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct described in Article IX of the Convention. (See Recommendation 4.4.1 in Chapter II of this report).

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

[75] The lack of standards in this area precludes an appraisal of results in this respect. In addition, in its response, the country under review notes, “*In spite of having domestic standards that facilitate international cooperation and assistance, there are no data or information available on requests for international cooperation and assistance made to Bolivia.*”<sup>44/</sup> Bearing both of these circumstances in mind, the Committee will offer a recommendation in this regard. (See Recommendation 4.4.2 in Chapter II of this report).

#### **4.4. Conclusions and recommendations**

[76] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

**[77] The Plurinational State of Bolivia has adopted certain measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

[78] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 4.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention, which defines it as a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions. (See Chapter II, Section 4.2 of this report).
- 4.4.2. Select and develop, through the organs and agencies that would, in due course, be responsible for the investigation and/or prosecution of the offense of illicit enrichment, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 4.3 of this report).

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44. See Response of Bolivia to the Questionnaire for the Third Round of Review, p. 32.

## **5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)**

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

[79] The Plurinational State of Bolivia has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, as was noted in Chapter II, Sections 3 and 4 of this report.

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

[80] Bearing in mind that the country under review has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, should it do so, the Committee will recommend that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (See the recommendation in Chapter II, Section 5.3 of this report).

### **5.3. Conclusions and recommendations**

[81] On the basis of the analysis conducted in foregoing sections 5.1 and 5.2, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article X of the Convention.

**[82] The Plurinational State of Bolivia has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention. Accordingly, should it do so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.**

## **6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)**

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

[83] The Plurinational State of Bolivia has a set of provisions related to extradition, among which the following should be noted:

[84] - The Constitution,<sup>45/</sup> Article 257 of which provides that ratified international treaties have the rank of law in the domestic legal system.

[85] - The Criminal Code,<sup>46/</sup> Article 3 of which provides that no person subject to the jurisdiction of Bolivian law may be delivered by extradition to another state, unless otherwise provided for under an international treaty or convention of reciprocity.

[86] - The Code of Criminal Procedure<sup>47/</sup> (Law 1070 of March 25, 1999), Article 149 of which states that extradition shall be governed by the international conventions and treaties in force and on a subsidiary basis, by the standards contained in this Code or by the rules of reciprocity when no applicable standards exist. Article 151 sets out the grounds on which extradition is inadmissible, which do not include being a national of the country under review. Article 154 grants the Supreme Court of

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45. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_constpolitica.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_constpolitica.pdf)

46. Available at: [www.oas.org/juridico/spanish/mesicic2\\_blv\\_cp\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_blv_cp_sp.pdf)

47. See *supra* note 39.

Justice the power,<sup>48/</sup> in ruling on extradition requests, to order preventive detention for up to six months, provided the existence of a conviction or an arrest order issued by a judicial authority is shown; it may also order provisional detention for up to 90 days if not all of the documents required for extradition to be found admissible have been presented.

[87] - Bilateral extradition treaties signed with Brazil, Chile, Ecuador, Peru, United States, and Venezuela; as well as multilateral treaties in this area to which the country under review is party, such as the Extradition Agreement between the Southern Cone Common Market (MERCOSUR), Bolivia and Chile.<sup>49/</sup>

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

[88] With respect to the provisions on extradition, the Committee notes that, on the basis of the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

[89] The foregoing arises from the fact that no legal impediment whatever was found in the country under review that prevents the Convention, pursuant to Article XIII (1-4) thereof, from being the legal basis for extradition with regard to the offenses that the Country under review has criminalized pursuant to said Convention.

[90] However, with respect to Article XIII (6), the Country under review notes in its response that: “*Bolivia has no laws in regard*” and, “*therefore, it is not obliged to bring the case to the attention of its domestic authorities for prosecution, much less report the final outcome to the requesting country.*”<sup>50/</sup> In light of this situation, the Committee believes it necessary for the country under review to consider adopting pertinent measures to send a report in due course to the requesting state to which it refuses an extradition request for an offense that it has criminalized in accordance with the Convention, because it deems that it has jurisdiction, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution. (See Recommendation 6.4.1 in Chapter II of this report.)

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

[91] The country under review states in its response that “*...it does not have information on enforcement of these domestic provisions on extradition in connection with offenses recognized in the Inter-American Convention against Corruption.*”<sup>51/</sup> Bearing this circumstance in mind, the Committee will formulate a recommendation in this regard. (See Recommendation 6.4.2 in Chapter II of this report.)

[92] Finally, the Committee believes that it would be useful for the country under review to consider adopting appropriate measures in order to benefit from a greater use of the Convention in cases of extradition, which could include, inter alia, the implementation of training programs on the possibilities for its application, specifically designed for judicial and administrative authorities with jurisdiction over such matters. (See Recommendation 6.4.3 in Chapter II of this report.)

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48. According to Article 184 of the Constitution, the Supreme Court of Justice is the organ that, at sole instance, examines and decides extradition proceedings and submits extradition requests.

49. Some of these documents are available for consultation in the section on Bolivia in the Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition ([www.oas.org/juridico/MLA/sp/bol/index.html](http://www.oas.org/juridico/MLA/sp/bol/index.html)) or the website of the Ministry of Foreign Affairs of the country under review ([www.rree.gov.bo](http://www.rree.gov.bo)).

50. See Response of Bolivia to the Questionnaire for the Third Round of Review, p. 36

51. Ibid., p. 37

#### **6.4. Conclusions and recommendations**

[93] On the basis of the analysis conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[94] **The Plurinational State of Bolivia has adopted measures on extradition, as provided Article XIII of the Convention, as described in Chapter II, Section 6 of this report.**

[95] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 6.4.1. Adopt pertinent measures to send a report in due course to the requesting state to which it refuses an extradition request for an offense that it has criminalized in accordance with the Convention because it deems that it has jurisdiction, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution. (See Chapter II, Section 6.2 of this report).
- 6.4.2. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to follow-up on the recommendations made in this report in relation to such matters and to analyze objective results obtained with respect to extradition requests made to other states parties to the Convention for the purposes of investigation or prosecution of the offenses that the country under review has criminalized in accordance therewith as well the procedures initiated to attend to requests received by it from other States Parties with the same purpose.
- 6.4.3. Adopt appropriate measures to benefit from a greater use of the Convention in cases of extradition, which could include, inter alia, implementation of training programs on the possibilities for its application, specifically designed for judicial and administrative authorities with jurisdiction over such matters. (See Chapter II, Section 6.3 of this report).

### **III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FOR PREVIOUS ROUNDS**

#### **FIRST ROUND**

[96] With respect to the implementation of the recommendations issued to the Plurinational State of Bolivia in the report from the first round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed further attention, and on the basis of the information available to it, referring to progress in their subsequent to that report, the Committee notes the following:

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

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

▪ Recommendation:

*“Strengthen the implementation of laws and regulatory systems concerning conflicts of interest.”*

▪ Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>52/</sup>

- a) *Complement the existing rules, regulating, as appropriate, certain eventualities that could constitute conflicts of interest and which, in view of their importance, should receive more detailed and specific treatment.*
- b) *Subject to compatibility with the constitutional right of the individual to freedom of work, to examine the improvement and strengthening of appropriate and relevant restrictions for those who leave public sector employment and of measures to enforce them.*
- c) *Through the competent authority, set a time period for public entities, pursuant to the law, to adopt their Codes of Ethics and implement mechanisms that guarantee a practical evaluation of the provisions of those Codes, including those related to preventing conflicts of interest, such that the results contribute to their development, strengthening and effective application.*
- d) *Adopt, through the appropriate statutory or administrative act, minimum content standards or requirements for the Codes of Ethics that make it possible to adequately develop the aspects essential for attaining their objectives, which include those related to preventing conflicts of interest.*
- e) *Adopt, through the appropriate statutory or administrative act, guidelines to give direction to the public entities in carrying out the obligation to establish mechanisms that ensure a practical evaluation of the Codes of Ethics provisions, including those related to preventing conflicts of interest, such that their results contribute to their development, strengthening and effective application*

[97] In its response,<sup>53/</sup> the Country under review presents additional information to that analyzed by the Committee in the report from the Second Round, with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measures a), b) and d), the following:

[98] - Articles, 236, 238, and 239 of the new Constitution,<sup>54/</sup> which establish prohibitions for government servants, grounds for ineligibility for elected public office, and acts that are incompatible with the exercise of public office; and

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52. See pp. 26 to 28 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf).

53. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 4 to 6, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

54. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_constpolitica.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_constpolitica.pdf)

[99] - Articles 129 and 130 of Executive Decree 29894,<sup>55/</sup> which provide, respectively, that it is incompatible with the positions of cabinet minister, vice minister, and director general to simultaneously hold any other public post at any level, or to act as representative for private companies or civic entities, and that it is prohibited, for a period of two years, for any public servant who has served in a freely appointed management or executive post in decentralized institutions, or as a cabinet minister, vice minister, or director general, to hold senior positions in private companies connected with the sector that they managed.

[100] In addition, with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states: “*We are unaware of any specific progress in terms of standards governing conflicts of interest that civil servants may encounter before, during, and after their period in office. The provisions contained in the Statute on Public Officials and its supplementary decrees remain unchanged, with no new standards introduced in the past three years that take into account the specific aspects requested in the recommendations.*” The document also notes that “*the Republic of Bolivia moved forward with the initiative of creating a Code of Ethics with basic parameters and ensuring that more government entities have a code; however, there are no standards that set deadlines and conditions for their implementation. In spite of the efforts made since 2007, these standards of conduct are not fully in effect. Around 52 public sector entities have move ahead with the development of these instruments and implemented them to varying degrees.*”<sup>56/</sup>

[101] The Committee takes note of the steps taken by the Country under review to progress with the implementation of measures a), b) and d) of the foregoing recommendation, as well as of the need for it to continue to give further attention thereto.

[102] In its response,<sup>57/</sup> the Country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to measures c) and e) of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to give additional attention to their implementation.

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

### ▪ Recommendation:

*“Strengthen the implementation of statutes and regulatory systems with respect to control over the resources of the public administration.”*

### ▪ Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>58/</sup>

a) *Set, by means of the competent authority, a period for the public entities, in complying with the law, to adopt their Codes of Ethics and implement mechanisms that assure the practical*

55. Available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_ds29894.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_ds29894.doc)

56. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 31, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

57. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 3 to 6, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

58. See pp. 28 and 29 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

*evaluation of the provisions in those Codes, including those related to the preservation of public resources, such that their results contribute to their development, strengthening and effective application.*

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

[103] In its response,<sup>59/</sup> the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, that it considers is related to the measures of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to pay additional attention to their implementation.

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

- Recommendation:

*“Strengthen the Republic of Bolivia’s mechanisms for requiring public officials to report to the competent authorities any acts of corruption in government service that come to their attention.”*

- Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>60/</sup>

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

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59. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 4 to 6, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

60. See pp. 29 to 31 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

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

[104] In its response,<sup>61/</sup> the Country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, that it considers is related to the measures of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to pay additional attention to their implementation.

[105] In addition with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states, “*There is not an adequate system for protecting public officials who report acts of corruption and all of the consequences arising therefrom that were considered in the First and Second Review Rounds.*” The organization also reports, “*The proposed law on Protection of persons who report alleged acts of corruption by public officials was not passed.*”<sup>62/</sup>

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

### ▪ Recommendation:

*“Strengthen the systems for registration of income, assets and liabilities.”*

- Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>63/</sup>
  - a) *Strengthen the provisions with respect to verifying the content of the Sworn Declarations on Assets and Income by the Office of the Comptroller-General of the Republic, established in Supreme Decree No. 27349 of 2004, such that there can be systems that make it possible to give impetus to and timely carry out such verification (see Chapter II, section 2.2 of this Report).*
  - b) *Examine the advisability of the Office of the Comptroller-General of the Republic, as the agency responsible for verifying Sworn Statements on Assets and Income, carrying out a*

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61. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 4 to 6, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

62. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

63. See pp. 31 and 32 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

*periodic review of those Statements, even though this may not include all of them. For example, acting on its own initiative, it could select a random number of declarations to be reviewed each year, in order to exercise effective control as its mandate provides.*

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

[106] In its response,<sup>64/</sup> the Country under review presents additional information to that analyzed by the Committee in the report from the Second Round, with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of measure c), the following:

[107] - The existence of the proposed Law on Corruption, Illicit Enrichment, and Investigation of Fortunes (also known as the Marcelo Quiroga Santa Cruz Law)<sup>65/</sup> (Bill 510/2007), one of the provisions of which would criminalize illicit enrichment.

[108] The Committee takes note of the steps taken by the Country under review to progress with the implementation of measure c), as well as of the need for it to continue to give further attention thereto.

[109] In its response,<sup>66/</sup> the Country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to measures a), b), d), e), f) and g) of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to give additional attention to their implementation.

[110] In addition, with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states: “*As yet no progress has been made with regard to improving and refining the System for Sworn Declarations of Assets and Income; random verification systems have not been approved. There has been no progress with respect to the responses provided in 2007*”. The document also notes that “*as to the inclusion of the crime of illicit enrichment in*

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64. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 9 and 10, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

65. See *supra* note 40.

66. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 10, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

*this report, an extensive explanation is provided in the response to the questionnaire for the Third Round.”*<sup>67/</sup>

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

- Recommendation suggested by the Committee that requires information on its implementation or which required further attention within the framework of the Second Round:<sup>68/</sup>

- Recommendation:

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

[111] In its response,<sup>69/</sup> the Country under review presents additional information to that analyzed by the Committee in the report from the Second Round, with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in its implementation, the following:

[112] - The measures adopted to consolidate the institutional anticorruption and prevention framework following the approval of the new Constitution, which created new entities and institutions in this regard, which, according to the country under review, will operate with their own resources and means. These new agencies are the Office of the Prosecutor General (*Procuraduría General del Estado*) and the Ministry of Institutional Transparency and Fight against Corruption, whose structures, functions, and powers are set out in Articles 229 and 231 of the Constitution and Articles 26, 27, and 28 of Executive Decree 29894, respectively.

[113] The Committee takes note of the steps taken by the Country under review to progress with the implementation of this recommendation, as well as of the need for it to continue to give further attention thereto.

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

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

[114] The Committee did not formulate any recommendations in this section.

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67. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

68. See pp. 32 and 33 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

69. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 10 to 16, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segumim.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segumim.pdf)

#### 4.2. Mechanisms for access to information

- Recommendation:

*“Strengthen the mechanisms for ensuring access to public information.”*

- Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>70/</sup>

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

[115] In its response,<sup>71/</sup> the Country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the measures of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to give additional attention to their implementation.

[116] In addition, with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states: *“The Bolivian Congress did not pass the Access to Information Law. No efforts have been made to take advantage of the Executive Decree in place or the voluntary transparency strategies that were already underway. Matters have returned to the drawing board on several occasions. A review of government agency web sites revealed delays in providing information at some, while the information on others was out of date, in some cases by as much as two years; in some instances there were no links to websites at the official information page, [comunica.gov.bo](http://comunica.gov.bo)”*<sup>72/</sup>

#### 4.3. Mechanisms for consultation

- Recommendation:

*“Complementing existing mechanisms of consultation, establishing procedures, when appropriate, so as to allow for making public consultations prior to designing public policies and prior to the final adoption of legal provisions.”*

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70. See pp. 33 and 34 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

71. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 16, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

72. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

- Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:<sup>73/</sup>

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

[117] Taking into account that the report from the Second Round noted that the foregoing measure is continuous in nature and should continue to be developed, the Committee looks forward to the country under review reporting on actions developed in this regard, in the annual progress reports provided for by Article 32 of the Committee’s Rules of Procedure.

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

- Recommendation:

*“Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the conduct of public affairs.”*

- Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>74/</sup>

- a) Establish mechanisms, additional to the existing ones, to strengthen civil society and non-governmental organizations in their efforts to prevent corruption and develop public awareness as to the problem; and promote awareness of the mechanisms of participation established and how to use them.*
- b) Regulate the functioning of the Citizen Legislative Initiative mechanism provided for in the Constitution, through the appropriate legal act, for the purposes of the citizenry being able to make effective use of it.*
- c) Consider the possibility, as appropriate and in accordance with its body of domestic laws, of abolishing so-called desacato laws (see Chapter II, section 4.4.2 of this report).*
- d) Periodically evaluate the development of the powers that have been accorded to the Citizen Anticorruption Networks mentioned in section 4.1.1. of this Report.*

[118] In its response,<sup>75/</sup> the country under review presents additional information to that analyzed by the Committee in the report from the Second Round, with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which contribute to progress in the implementation of measure a), the following:

[119] - Article 242 of the new Constitution, which states, *inter alia*, that, in addition to the provisions recognized under the Constitution and the law, public participation includes having a say in government policy; supporting the legislature in collective law making; knowing and expressing opinions on the performance reports of government organs and functions; collaborating in public observation procedures

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73. See pp. 34 and 35 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

74. See pp. 35 and 36 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

75. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 9 and 16 to 22, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

for the appointment of public officials, where appropriate; and supporting the electoral organ in ensuring transparency in the election of candidates who stand for public office, as appropriate.

[120] - Work Priority No.1 (“Strengthening Citizen Participation”) of the National Policy on Transparency and Fight against Corruption (PNTLCC) contained in the Transparency in Government Program,<sup>76/</sup> which includes, *inter alia*, promotion of citizen participation and partnership; enhancement of citizen participation in government; leadership promotion, and implementation of citizenship training programs.

[121] The Committee takes note of the steps taken by the country under review to progress with the implementation of measure a) of the foregoing recommendation, as well as of the need for it to continue to give further attention thereto.

[122] In its response,<sup>77/</sup> the country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to measures b), c), and d) of the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to give additional attention to their implementation.

#### **4.5. Mechanisms for participation in the follow-up of public administration**

▪ Recommendation:

*“Strengthen and continue implementing mechanisms that encourage civil society and non-governmental organizations to participate in the monitoring of the conduct of public affairs.”*

▪ Measures suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>78/</sup>

a) *Promote ways, when appropriate, for those who carry out public functions to allow, facilitate or help civil society and non-governmental organizations to develop activities to monitor their public performance.*

b) *Design and start up programs for disseminating the mechanisms of participation for monitoring the conduct of public affairs, and, when appropriate, train in and facilitate the tools needed by civil society and non-governmental organizations to make adequate use of such mechanisms.*

[123] In its response,<sup>79/</sup> the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, with respect to measures a) and b) above. In this regard, the Committee notes, as steps which contribute to progress in their implementation, the following:

[124] - Article 241 of the new Constitution, which provides, *inter alia*, that civil society organizations shall exercise societal oversight of public administration at all levels of the state and that public sector

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76. Available at: [www.transparencia.bo/documentos\\_pagweb/transparencia/doc\\_programatransparencia.pdf](http://www.transparencia.bo/documentos_pagweb/transparencia/doc_programatransparencia.pdf)

77. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 10, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

78. See pp. 36 and 37 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

79. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 16 to 22, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

entities shall create fora to enable societal participation and oversight by the public. Furthermore, Article 242 of the Constitution provides that societal oversight entails, *inter alia*, carrying out that oversight at all levels of government and in all autonomous, autarchic, and decentralized subnational entities; the formulation of reports supporting motions for the recall of mandates in accordance with statutory procedures; coordination of planning and oversight of government organs and functions, and lodging of complaints with the relevant agencies for investigation and prosecution of cases where this is deemed appropriate.

[125] - The Transparency in Government Program launched in 2007,<sup>80/</sup> which works, *inter alia*, to implement societal control and public accountability of government and the regular activities of entities subject to intervention. As regards adoption of mechanisms to enable public participation in follow-up on public administration, the Program implements a series of follow-up measures aimed at the institutionalization of public oversight with a view to strengthening societal audit and oversight tools; incorporation of a citizen complaints system; introduction of public accountability hearings on government decisions; inclusion of societal oversight on government procurement; inclusion of compulsory public accountability mechanisms; facilitation of consensus-building fora to enrich government policy; adoption of institutional commitments with social stakeholders and civil society organizations, and training, education, and awareness-raising on accountability, among other measures.

[126] In addition with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states: “*The Bolivian State promotes public participation in a variety of ways, including the new Constitution, which provides for the creation of civil society oversight systems. In addition a decree was passed that provided for the creation of a special committee for representatives of civil society organizations, which has not exercised its functions in the past two years.*”<sup>81/</sup>

[127] The Committee takes note of the steps taken by the country under review to progress with the implementation of measures a) and b), as well as of the need for it to continue to give further attention thereto.

## 5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

- Recommendations suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>82/</sup>

- Recommendation 5.1

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

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

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80. See *supra*, note 80.

81. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

82. See pp. 37 and 38 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

▪ Recommendation 5.2

*“Continue the efforts to exchange technical cooperation with other state parties as to the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption.”*

▪ Recommendation 5.3

*“Design and implement a comprehensive program for dissemination and training for competent authorities and officials, for the purpose of them learning and being able to apply the mutual assistance provisions for investigating or prosecuting acts of corruption provided for in the Convention and in other treaties signed by the Republic of Bolivia.*

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

▪ Recommendation 5.4

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

[128] In its response,<sup>83/</sup> the country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the foregoing recommendations. In this regard, the Committee reiterates the need for the country under review to give additional attention to the implementation thereof.

## **6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)**

[129] The Committee did not formulate recommendations in the section.

## **7. GENERAL RECOMMENDATIONS**

▪ Recommendations suggested by the Committee that require information on their implementation or which required further attention within the framework of the Second Round:<sup>84/</sup>

▪ Recommendation 7.1

*“Design and implement, when appropriate, programs to train public servants responsible for implementing the systems, laws, measures and mechanisms considered in this report, for the purpose of guaranteeing they are adequately known, administered, and implemented.”*

[130] In its response,<sup>85/</sup> the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the foregoing recommendation. In this

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83. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 22 and 23, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

84. See pp. 38 and 39 of this report, available at: [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

85. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 23 to 31, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

regard, the Committee notes, as steps which lead to a determination that this recommendation has satisfactorily considered, those taken with respect to:

[131] - The design and implementation of the National Transparency Training Plan by the Ministry of Institutional Transparency and Fight against Corruption,<sup>86/</sup> which is aimed at achieving compliance with Article 8 of the new Constitution. The training workshops provided under the National Plan mainly target civil servants and civil society organizations. The Plan includes modules that cover different themes, such as transparency and access to information, public ethics, societal oversight, and government accountability.

[132] - The Comprehensive Training Program (PIA-2009),<sup>87/</sup> which combines efforts by the Office of the Attorney General, Office of the Comptroller General, Financial Intelligence Unit, and Ministry of Institutional Transparency and Fight against Corruption to prevent and detect acts of corruption in the public sector and to prosecute persons who commit such acts. The Program has three components: in-house training,<sup>88/</sup> joint training,<sup>89/</sup> and preventive training.<sup>90/</sup>

[133] In addition with respect to the implementation of the foregoing recommendation, the document sent by the civil society organization *Transparency Bolivia* states: “*We have no knowledge of any training programs for civil servants that cover standards and mechanisms that the Bolivian state has in place for implementing the Inter-American Convention against Corruption... We are not aware of any comprehensive public awareness and training program.*”<sup>91/</sup>

[134] The Committee takes note of the satisfactory consideration by the country under review of the recommendation, which, given its nature, requires continuity.

▪ Recommendation 7.2

*“Select and develop procedures and indicators, when appropriate, that make it possible to verify follow-up on the recommendations made in this report and to communicate to the Committee, through the Technical Secretariat, in this regard. For the purposes indicated, it may take into account the list of the most widely used indicators, applicable in the inter-American system, which were available for the selection indicated by Bolivia, which has been published by the Technical Secretariat of the Committee at the website of the OAS, as well as information derived from the analysis of the mechanisms developed in keeping with recommendation 7.3, which follows.”*

[135] In its response,<sup>92/</sup> the country under review presents additional information to that analyzed by the Committee in the Report from the Second Round, that it considers is related to the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to pay additional attention to its implementation.

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86. See: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_plan.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_plan.doc)

87. See: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_prog.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_prog.doc)

88. See: [www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Interna](http://www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Interna)

89. See: [www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Comun](http://www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Comun)

90. See: [www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Preventiva](http://www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Preventiva)

91. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

92. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 3 to 6, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segumim.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segumim.pdf).

▪ Recommendation 7.3

*“Develop, when appropriate and when they do not yet exist, procedures for analyzing the mechanisms mentioned in this report, as well as the recommendations contained herein.”*

[136] In its response,<sup>93/</sup> the country under review did not present additional information to that analyzed by the Committee in the Report from the Second Round, with respect to the foregoing recommendation. In this regard, the Committee reiterates the need for the country under review to give additional attention to implementation thereof.

## SECOND ROUND

[137] Based on the information made available to the Committee on the implementation of the recommendations formulated for the Plurinational State of Bolivia in the Report in the Second Round of Review, the Committee observes the following:

### 1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

#### 1.1. Systems of government hiring

▪ Recommendation 1.1.1:

*Strengthen the systems for hiring public servants.*

▪ Measures suggested by the Committee:

- a) *To continue strengthening the provisions related to the stages of the processes of recruitment and selection of personnel for public service, by adopting the provisions and criteria that better define the announcements, their dissemination and requirements, as well as the holding and the terms and conditions for merit-based competitive hiring procedures and/or competitive examinations.*
- b) *Develop, through the corresponding procedures, the modality of recruitment by direct invitation of what are known as freely-appointed public servants based on the principles of merit, competence, equality, and transparency, ensuring its publicity, equity, and efficiency in hiring.*
- c) *Adopt, through the corresponding procedures, rules and mechanisms that regulate the hiring into the public administration of temporary personnel, and the provisions of specific or specialized services that ensure the reliable verification of the suitability, merits, competences, and labor attitudes appropriate for the performance of their functions.*
- d) *Promote, in keeping with the NB-SAP, the preparation and updating of the Specific Regulation of the System of Personnel Management in the public sector entities indicated in the SAFCO Law and in the EFP and, at the same time, grant the SNAP, as the lead agency of the system, the monitoring powers needed to verify adequate fulfillment of this obligation.*

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93. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 16 to 22, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

- e) *See to it that the corresponding authority adopts provisions aimed at preventing and punishing nepotism in public service.*
- f) *Continue strengthening the lead agencies of the SAP, especially the National System of Personnel Management (SNAP) and the Superintendence of the Civil Service (SSC), in the functions they perform with respect to the administration and control of the systems for hiring public servants, endowing them with the resources needed for properly performing their functions and establishing mechanisms that make possible the institutional coordination of their actions and an ongoing evaluation and monitoring of these.*
- g) *Implement preliminary training programs and courses so that those who enter the public service know their duties of probity and the functions inherent to their position.*

[138] In its response<sup>94/</sup> the country under review offers no information on implementation of the measures mentioned in the foregoing recommendation. However, it notes that, “*following the approval of the new Constitution, the country has been developing a new legal framework that sets out the principles and standards that would govern the functions of the country's national public administration. The Public Administration Law... shall provide the general framework for development and regulation of government hiring and training systems.*”

[139] Furthermore, with respect to the implementation of these measures, the document submitted by the civil society organization *Transparencia Bolivia* notes that “*... there has been no specific progress in response to the recommendations of the Committee of Experts... The new Constitution includes conditions that were already provided in the SAFCO Law on control of the public administration and the Statute on Public Officials, without assuring merit-based recruitment and public calls for candidates... The Civil Service Superintendency, charged with administration of the civil service career in the public sector, is being disbanded and it is not known where these responsibilities, which are of the utmost importance for consolidating a meritocracy-based civil service career, will come to rest.*”<sup>95/</sup>

[140] The Committee takes note of the need for the country under review to give additional attention to implementation of the measures of the foregoing recommendation.

- Recommendation 1.1.2:

- Strengthen the systems for contracting public servants in the Legislative branch.*

- Measure suggested by the Committee:

- Have the corresponding authority adopt clearer and more specific provisions that regulate the system for hiring public servants in the legislature based on the principles of merit and equality, including oversight mechanisms and lead authorities or administrators of the system; mechanisms for disseminating vacancies to be filled; as well as challenge remedies that seek to clarify, modify, or overturn substantive acts in selection processes.*

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94. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

95. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparencia Bolivia*, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

[141] In its response,<sup>96/</sup> the country under review presents information that it considers is related to the measure of the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

▪ Recommendation 1.1.3:

*Supplement the systems for hiring public servants in the judicial branch.*

▪ Measure suggested by the Committee:

*Adopt, through the corresponding procedures, mechanisms that establish clearly defined criteria on the dissemination of job opportunities in the Judicial branch or the vacancies or positions to be filled, their content and form, as well as the lead time with which they must be published, it being possible to use the mass media, such as national circulation newspapers and/or websites.*

[142] In its response,<sup>97/</sup> the country under review did not refer to the measure of the foregoing recommendation. In this regard, the Committee takes note of the need for the country to pay additional attention to its implementation

▪ Recommendation 1.1.4:

*Supplement the systems for hiring public servants in the Public Ministry.*

▪ Measure suggested by the Committee:

*Implement, by the corresponding authority and based on the principles of due process and legality, mechanisms for bringing challenges that seek to clarify, modify, or overturn substantive acts in the processes for selection of personnel in the Public Ministry.*

[143] In its response,<sup>98/</sup> the country under review did not refer to the measure of the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

▪ Recommendation 1.1.5:

*The SSC should maintain the registry of information on the entry, evaluation, permanence, mobility, and retirement of career service staff, in coordination with the SNAP, in keeping with Article 61(e) of the EFP.*

[144] In its response,<sup>99/</sup> the country under review did not refer to the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation

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96. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

97. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

98. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

99. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

## 1.2. Government systems for the procurement of goods and services

### ▪ Recommendation 1.2.1:

*Strengthen the systems for government procurement of goods and services.*

### ▪ Measures suggested by the Committee:

- a) *See to it that the corresponding authority develops the grounds for exceptions to the public bidding requirement provided for at Article 33 of the consolidated text of Supreme Decree No. 27328 and Article 71 of the Regulation (Ministerial Resolution No. 760) for the purpose of impeding its improper and/or discretionary use.*
- b) *See to it that the corresponding authority establishes the parameters that enable public entities to set, in their specific regulations, the objective amounts for being able to proceed with the modality of direct procurement.*

[145] In its response,<sup>100/</sup> the country under review presents information that it considers is related to the measures of the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to their implementation.

### ▪ Recommendation 1.2.2:

*Continue strengthening the lead agency of the SABS, especially its General Bureau of Governmental Administration Systems of the Vice-Ministry of Budget and Accounting as regards the activities for administration and control of the system, endowing it with the resources needed to adequately perform its functions.*

[146] In its response,<sup>101/</sup> the country under review presents information that it considers is related to the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

### ▪ Recommendation 1.2.3:

*Strengthen the mechanisms of control in the processes of procuring goods, works, general services, and consulting services.*

### ▪ Measures suggested by the Committee:

- a) *Develop and implement a sanctions regime for contractors and public servants who breach or violate the principles and provisions of the consolidated text of Supreme Decree No. 27328 and its Regulation.*
- b) *Adopt, through the corresponding authority, provisions that provide for the selection of an entity that carries out work of intervention, control, and oversight in contracts of a certain amount or complexity that so require.*

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100. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

101. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

- c) *Encourage the creation of citizen review mechanisms to perform oversight and monitoring of the pre-contractual phase, and of the execution of those contracts which, based on their nature, importance, and/or magnitude, so require.*

[147] In its response,<sup>102/</sup> the country under review presents information that it considers is related to the measures of the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to their implementation.

[148] In addition, as regards implementation of this recommendation, the document submitted by the civil society organization *Transparency Bolivia* mentions, “*There are neither new mechanisms nor improvements to existing mechanisms to ensure effective control of goods and services procurement. The use of special mechanisms took public opinion by surprise in the case of the state petroleum company, whose president is in prison and being prosecuted by the executive branch. A variety of mechanisms have been created for road building contracts and other goods and services procurement and works contracting processes that make it possible to circumvent the standards on government procurement. The State has not introduced a citizen watchdog system to monitor the stages before, during, and after the execution of government contracts.*”<sup>103/</sup>

▪ Recommendation 1.2.4:

*Implement, through the corresponding entities of the leading agency of the SABS, the Public Registry of Suppliers provided for at Article 4 of the consolidated text of Supreme Decree No. 27328, it being possible to use computer technology to set it up, update it, and consult it.*

[149] In its response,<sup>104/</sup> the country under review presents information that it considers is related to the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

▪ Recommendation 1.2.5:

*Continue strengthening the electronic media and information systems for government procurement.*

▪ Measures suggested by the Committee:

a) *Adopt the special regulation for electronic procurement provided for at Article 34 of the consolidated text of Supreme Decree No. 27328, centralizing as far as possible the public dissemination of government procurement and observing the principles of publicity, equity, and efficiency provided for in the Convention and facilitating the best conditions for the commercial operations of the State.*

b) *Continue developing and strengthening the SICOES, especially its website [www.sicoes.gov.bo](http://www.sicoes.gov.bo), for the purpose of ensuring transparency, publicity, equity, and*

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102. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

103. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

104. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

*efficiency in the government systems for procurement of goods and services provided for in the Convention.*

[150] In its response,<sup>105/</sup> the country under review presents information that it considers is related to the measures of the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to their implementation.

[151] Furthermore, as regards implementation of this recommendation, the document submitted by the civil society organization *Transparency Bolivia* indicates, “*Not all government contracts are posted on the website of the Office of the Comptroller General. The standards that these contracts are required to observe for their legal consolidation are not entirely clear and in many cases, even when they are known, they are not met.*”<sup>106/</sup>

▪ Recommendation 1.2.6:

*Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon.*

[152] In its response,<sup>107/</sup> the country under review did not refer to the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

▪ Recommendation 1.2.7:

*Strengthen systems for the procurement of public works.*

▪ Measure suggested by the Committee:

*Consider implementing control systems for each public works contract in particular which, mindful of its magnitude, provides for the performance of intervention tasks or direct supervision of execution of the contract by the contracting entity or whoever it designates; make it possible to have civic oversight mechanisms or citizen review activities; impose the duty of periodically rendering accounts on the performance of the contract; and that make it possible to determine whether the cost-benefit relationship anticipated was actually attained and whether the quality of the works was in line with what was agreed upon.*

[153] In its response,<sup>108/</sup> the country under review did not refer to the measure of the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

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105. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

106. “Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption” submitted by *Transparency Bolivia*, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

107. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

108. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

▪ Recommendation 1.2.8:

*Promote, in keeping with Article 5 of the consolidated text of Supreme Decree No. 27328, the preparation of the Specific Regulation of the System for the Administration of Goods and Services in the public sector entities that have failed to fulfill this obligation.*

[154] In its response,<sup>109/</sup> the country under review did not refer to the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

▪ Recommendation 1.2.9:

*Perform periodic comprehensive evaluations that make it possible to assess the use and effectiveness of the system for procurement of goods and services, and, based on its results, define and consider adopting specific measures that make it possible to ensure transparency, publicity, equity, and efficiency.*

[155] In its response,<sup>110/</sup> the country under review did not refer to the foregoing recommendation. In this regard, the Committee takes note of the need for the country to pay additional attention to its implementation.

**2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)**

▪ Recommendation:

*Implement systems to protect public servants and private citizens who, in good faith, report acts of corruption.*

▪ Measure suggested by the Committee:

*Adopt, through the corresponding authority and taking into account the existing legal initiative, a comprehensive regulation on protection of public servants and private citizens who, in good faith, report acts of corruption, including protecting their identity, in keeping with the Constitution and the fundamental principles of the domestic legal order, which could include, among others, the following aspects:*

- (a) Protection for those who report acts of corruption who may be subject to administrative or judicial investigation;*
- (b) Measures of protection, aimed not only at the physical integrity of the whistleblower and his or her family, but also at protection of their employment situation, especially in the case of a public servant and when the acts of corruption may involve his or her superior or colleagues;*

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109. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

110. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

- (c) *Reporting mechanisms, such as reporting with protection of one's identity, so as to guarantee the personal safety and confidentiality of identity of public servants and private citizens who, in good faith, report acts of corruption;*
- (d) *Mechanisms for reporting threats or reprisals to which a whistleblower may be subjected, indicating the authorities competent to process requests for protection and the mechanisms responsible for providing it;*
- (e) *Mechanisms for protecting witnesses that give them the same guarantees as public servants and private persons;*
- (f) *Mechanisms that facilitate, when appropriate, international cooperation on the foregoing matters, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance;*
- (g) *A simplified whistleblower protection application process.*
- (h) *Provisions to punish noncompliance with protection rules and/or obligations;*
- (i) *The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.*

[156] In its response,<sup>111/</sup> the country under review did not refer to the measure of the foregoing recommendation. In this regard, the Committee takes note of the need for the country under review to pay additional attention to its implementation.

### **3. ACTS OF CORRUPTION (ARTICLE VI OF THE CONVENTION)**

▪ **Recommendation 3.1:**

*Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention.*

▪ **Recommendation 3.2:**

*Repeal the second paragraph of Article 172 of the Criminal Code, which exempts those who aid and abet their ascendants, descendants, or spouse from punishment.*

▪ **Recommendation 3.3:**

*Amend Article 132 of the Criminal Code to require a minimum of two people for commission of the crime of criminal association.*

[157] In its response,<sup>112/</sup> the country under review presents information that it considers is related to the foregoing recommendations. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to their implementation.

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111. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

#### 4. GENERAL RECOMMENDATIONS

▪ Recommendation 4.1:

*To continue designing and implementing, when appropriate, training programs for public servants responsible for managing and implementing the systems, standards, measures and mechanisms considered in this report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.*

[158] In its response,<sup>113/</sup> the country under review presents information with respect to the foregoing recommendation. In this regard, the Committee notes, as steps which lead to a determination that this recommendation has satisfactorily considered, those taken with respect to:

[159] - The design and implementation of the National Transparency Training Plan by the Ministry of Institutional Transparency and Fight against Corruption,<sup>114/</sup> which is aimed at achieving compliance with Article 8 of the new Constitution. The training workshops provided under the National Plan mainly target civil servants and civil society organizations. The Plan includes modules that cover different themes, such as transparency and access to information, public ethics, societal oversight, and government accountability.

[160] - The Comprehensive Training Program (PIA-2009),<sup>115/</sup> which combines efforts by the Office of the Attorney General, Office of the Comptroller General, Financial Intelligence Unit, and Ministry of Institutional Transparency and Fight against Corruption to prevent and detect acts of corruption in the public sector and to prosecute persons who commit such acts. The Program has three components: in-house training,<sup>116/</sup> joint training,<sup>117/</sup> and preventive training.<sup>118/</sup>

[161] The Committee takes note of the satisfactory consideration, by the country under review, of the foregoing recommendation, which, given its nature, requires continuity.

▪ Recommendation 4.2:

*Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this report, and to follow-up on the recommendations made herein.*

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112. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)

113. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, pp. 23 to 31, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf).

114. See: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_plan.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_plan.doc)

115. See: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_prog.doc](http://www.oas.org/juridico/spanish/mesicic3_blv_prog.doc)

116. See: [www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Interna](http://www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Interna)

117. See: [www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Comun](http://www.transparencia.gov.bo/index.php?Modulo=Transparencia&Opcion=Comun)

118. "Considerations of Civil Society Representatives on the Questionnaire for the Third Round of Review on Implementation of the Inter-American Convention against Corruption" submitted by *Transparency Bolivia*, p. 32, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_inf_sc_sp.pdf)

[162] In its response,<sup>119/</sup> the country under review presents information that it considers is related to the foregoing recommendation. Nevertheless, the Committee takes note of the need for the country under review to pay additional attention to its implementation

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119. See Section II of the Response of Bolivia to the Questionnaire for the Third Round of Review, p. 39, available at: [www.oas.org/juridico/spanish/mesicic3\\_blv\\_segum.pdf](http://www.oas.org/juridico/spanish/mesicic3_blv_segum.pdf)