

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

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 REPUBLIC OF PERU 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 the implementation in the Republic of Peru 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 Peru 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\\_per.pdf](http://www.oas.org/juridico/english/mec_rep_per.pdf) and [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

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

[3] According to the official records of the OAS General Secretariat, the Republic of Peru deposited its instrument of ratification of the Inter-American Convention against Corruption on June 4, 1997.

[4] In addition, the Republic of Peru 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 INFORMATION RECEIVED**

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

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Peru, and in particular from the Office of the President of the Council of Ministers, 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 Republic of Peru sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

[6] For its review, the Committee took into account the information provided by the Republic of Peru up to April 2, 2009; the information requested of it by the Secretariat and the members of the review

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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.

subgroup to carry out their functions<sup>2</sup> in keeping with the Rules of Procedure; and that which it furnished in accordance with said Rules of Procedure and the review Methodology.

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

[7] The Committee also received, within the time limit established in the schedule for the third round, a document from the civil society organization PROETICA (National Council for Public Ethics), which was submitted by that organization by electronic mail.<sup>3</sup>

### **I. 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<sup>4</sup> FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)**

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

[8] The Republic of Peru 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] - The Constitution of 1993, Article 74 of which provides that all taxes “*are created, amended or abolished, and exemptions established, exclusively by law or legislative decree in the case of delegation of powers, except for customs duties and public service charges, which are governed by executive decree*” and that any tax laws issued in violation of said article are null and void. In addition, Article 79 provides that “*tax-related laws concerning benefits or exemptions require a prior report from the Ministry of Economy and Finance.*”

[10] - Executive Decree 135-99-EF of 1999 (*Amended Consolidated Text of the Tax Code*), which also provides, at provision IV (b), that exemptions and other tax benefits, in the case of delegation, may only be granted by means of a law or a legislative decree.

[11] The above executive decree recognizes, at Article 50, the power of the Tax Authority (National Superintendency for Tax Administration - SUNAT) to administer domestic taxes and customs duties. For its part, Article 62 provides that the oversight function includes inspection, investigation, and control of compliance with tax obligations, including of persons who enjoy non liability, exemption, or tax benefits. This Article also lists the discretionary powers that the Tax Authority may use to that end. Furthermore, Article 108 provides that, having notified its decisions, the Tax Authority may revoke, amend, replace, or supplement them, *inter alia*, in cases of collusion between Tax Authority staff and a

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2. In the process of drafting this report, a videoconference was held between the experts from Peru and Mexico, who were able to directly exchange information, a practice that innovates with respect to the methodology of the mechanisms and which, undoubtedly creates opportunities for a better process of gathering and verifying information. The Committee takes note of this practice and encourages that it be continued with respect to the drafting of future reports.

3. This document was received on April 2, 2009 and is available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

4. 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.

tax debtor; and when the Authority finds that situations have arisen subsequent to their adoption that demonstrate them to be inappropriate.

[12] - Executive Decree 179-04-EF of 2004 (*Amended Consolidated Text of the Income Tax Law*), Articles 18 and 19 of which set out which persons are non liable as well as exemptions from income tax,<sup>5</sup> and at Article 37 provides that, in order to determine net third category income,<sup>6</sup> “(...) *such expenses shall be deducted from the gross income as are necessary to produce it and maintain its source,*<sup>7</sup> *as well as those connected with the generation of capital earnings, unless their deduction is expressly prohibited by this law(...).*” Accordingly, the following, *inter alia*, are deductible: “*organization expenses, initial preoperating expenses, preoperating expenses originated by the expansion of the company’s activities. In addition, at the taxpayer’s discretion, interest accrued during the preoperating period may be deducted in the first tax year or proportionally amortized over a maximum period of 10 years*” (Article 37 (g)); and “*entertainment expenses normal for the line of business, in a portion which, overall, does not exceed half a percent (0.5%) of the gross income, up to a maximum of 40 tax units*” (Article 37 (q)). This Law also lists, at Article 44, prohibited deductions, including, at section j), “*expenses whose supporting documentation does not meet the basic requirements and characteristics set forth in the Regulations on Payment Vouchers*<sup>8</sup>.”

[13] Article 52 also provides that “*increases in net worth that cannot be justified by the tax debtor shall be presumed to constitute net income not declared by the latter. Increases in net worth may not be justified by: a) Donations received or other gratuities that are not set down for the record in a notarized or some other authentic document; b) Profits arising from illicit activities; c) Foreign currency receipts whose origin is not suitably supported; d) Revenue received that was available to the tax debtor but which they did not access or collect, and amounts on hand in accounts in domestic or foreign financial entities that have not been withdrawn. e) Other revenue, inter alia, from loans that do not satisfy the requirements provided in the regulations.*”

[14] - Executive Decree 122-94-EF of 1994 (*Regulations on the Income Tax Law*), Article 21 (m) of which elaborates on Article 37 (g) of the Income Tax Law and provides that the following are considered normal entertainment expenses for the line of business: Those made by the company for the purpose of representation outside of its offices, premises, or facilities and expenses designed to present an image that enables it to maintain or improve its market position, including gifts and hospitality for clients. The aforesaid Article also provides that the concept of entertainment expenses does not include travel expenses or outlays that target the real or potential consumer public, such as advertising costs, and that expenses may only be deducted if they are credibly attested by means of payment vouchers that may legally be used to substantiate costs or expenses and provided that a relationship of causality between them and the taxed income can be demonstrated.

[15] - Legislative Decree 813 of 1996 (*Tax Offences Law*), Article 4 of which provides, “*Tax fraud shall be punished with no less than eight nor more than 12 years of imprisonment and a fine of between 730*

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5. See also Articles 7-9 of Executive Decree 122-94-EF (Regulations of the Income Tax Law).

6. Income from commerce, industry and other sources expressly recognized by the Law (Article 22 of the Amended Consolidated Text of the Income Tax Law. See also Article 28 of said law).

7. In respect of this provision, Article 37, paragraph 72, of the Amended Consolidated Text of the Income Tax Law states, “*In determining what expenses are necessary to produce and maintain the source, such expenses must be normal for the activity that generates the taxed income, as well as meeting certain conditions, such as reasonableness in relation to the taxpayer’s income and general application as regards the expenses referred to in sections l) and ll) of this Article, among others*”.

8. Superintendency resolution 007-99/SUNAT.

and 1460 days' pay when, a) tax exemptions or non liability, refunds, credit balances, fiscal credit, offsetting, reimbursements, benefits, or incentives are obtained, by simulating the existence of acts that permit enjoyment thereof (...)" and, at Article 6, provides that tax fraud offences, shall, in addition to the penalties provided therein, give rise to disqualification for no less than six months nor more than seven years from engaging, either directly or through a third party, in any professional, business, artistic, or industrial activity.

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

[16] With respect to the provisions that refer to 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.

[17] In this regard, the Committee notes that in its response to the questionnaire the Republic of Peru mentions the following:

[18] *"Strictly speaking, the tax regulations do not contain specific provisions that deny or prevent enjoyment of favorable tax treatment for persons involved in acts of corruption. A declaration of income from acts of corruption would imply a confession to offences punishable under our domestic system of laws."*<sup>9</sup>

[19] Nevertheless, the Committee 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 1.4 (a) in Chapter II of this report).

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

[20] With regard to results, the response of the Republic of Peru to the questionnaire says, *"As to the questions put in subparagraphs b) and c), given that they are conditional upon the existence in the tax regulations of specific provisions that deny or prevent enjoyment of favorable tax treatment for persons involved in acts of corruption, provisions which do not exist (as mentioned in the answer to the first question), it is pointless to address the questions posed in the aforementioned subparagraphs."*<sup>10</sup>

[21] Finally, 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 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 (see recommendation 1.4(b) in Chapter II of this report).

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9. See response of Peru to the Questionnaire in the Third Round, p. 1, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

10. See response of Peru to the Questionnaire in the Third Round, p. 4, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

[22] Based on the review conducted in the 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 III, paragraph 7 of the Convention:

**[23] The Republic of Peru has considered and adopted measures intended to create, maintain and strengthen standards on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in Chapter II, Section 1 of this report.**

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

[25] Strengthen standards on denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Republic of Peru could take the following measures into account:

- a) 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 1.2 of Chapter II of this report):
  - i. Handbooks, manuals, or guidelines on how to review said applications, so that they can ensure that they meet the established requirements, verify the accuracy of the information supplied therein, and confirm the origin of the expenditures on which they are founded.
  - ii. Possibility of accessing the necessary information sources for the above verification and confirmation, including the ability to request information from financial agencies.
  - iii. Computer programs that facilitate data consultation and crosschecking of information whenever necessary for the purpose of performing their functions.
  - iv. Institutional coordination mechanisms that enable them to obtain necessary collaboration from other authorities in a timely manner, such as opinions on the authenticity of documents supplied with applications.
  - v. Training programs specifically designed to alert them about the modalities used to disguise payments for corruption and to instruct them on how to detect such expenditures in applications.
  - vi. Channels of communication that enable them to bring promptly to the attention of those who must decide whether or not to grant the favorable treatment sought any anomalies that they detect or any irregularity that might have a bearing on the decision (see Chapter II, Section 1.2 of this report).
- b) 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 Chapter II, Section 1.3. 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**

[26] The Republic of Peru has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[27] - The Commercial Code of 1902, which applies to all publicly held companies, Article 33 of which requires traders to keep accounting records of their operations, which must be kept with the involvement of certified public accountants or business accountants (Article 35).

[28] Articles 37 and 38 provide that they must contain a record of every operation relating to expenditure and purchase of assets, as well as an exact list of all outstanding obligations and debts, and the money, securities, credits, bills receivable, movable and immovable property, merchandise, and every type of goods that comprise its assets.

[29] Article 43 provides that the books shall be kept in a clear manner, in chronological order of dates, contain no blank spaces, between-line entries, scratching-out, or amendments, and shall present no signs of having been altered by replacement or removal of pages, or otherwise. In turn, Article 44 provides that any necessary explanations or corrections in the books shall be done by means of express annotations.

[30] Article 45 prohibits ex officio inspections by a judge, court, or any authority to determine whether traders keep their books in accordance with the *Code*, or investigations or general reviews of accounts at the traders' offices or desks.<sup>i</sup>

[31] Article 49 requires the accounting records of companies be kept for at least five years after the winding up of all of their business activities and offices.

[32] - Decree Law 26002 of 1992 (*Notary Law*), Articles 112-116 of which govern legalization of books.

[33] - Law 26887 of 1997 (*Corporations Law*), which applies to all publicly held companies and associations, Article 223 of which provides that the financial statements of corporations shall be prepared and presented in accordance with the legal provisions in that regard and with generally accepted accounting principles in the country.<sup>ii</sup>

[34] Articles 221 and 224 provide that the financial statements of corporations must be made available to the shareholders sufficiently in advance, as prescribed by law, for the consideration of the obligatory annual meeting and that from the day following publication of the notice of the general meeting, any shareholder of a corporation may obtain, free of charge, at the corporation's offices copies of the financial statements and other documents mentioned in Article 221.

[35] Article 226 provides that the incorporation papers, bylaws, or a decision of the general meeting adopted by 10% of the subscribed voting stock, may order the corporation to undergo an annual external audit, whose auditors shall be appointed annually and shall submit their report accompanying the financial statements to the general meeting. In turn, Article 227 provides that in the case of corporations that do not undergo permanent external audits, the financial statements are reviewed by external auditors on behalf of the corporation, should that be requested by shareholders who represent at least 10% of the total subscribed voting shares or the holders of non-voting shares, by means of a written communication to the corporation.

[36] - Executive Decree 135-99-EF of 1999 (*Amended Consolidated Text of the Tax Code*), Article 87, paragraph 4, of which provides that tax debtors must keep books of account or other books and records required by laws, regulations, or SUNAT resolutions, and record any taxation-related activities or operations in accordance with the relevant standards; and that it constitutes a tax violation under the obligation to keep books and records, for the entries in the aforementioned books and records, respectively, to be out of date by more than the time limit permitted by the standards in force.

[37] Article 87, paragraph 7, requires tax debtors to keep books and records, whether by means of a manual, mechanized, or electronic system, as well as documents and background information on all situations that constitute acts apt to give rise to tax obligations or that are related thereto for so long as the tax has not lapsed; and that the tax debtor shall notify the Tax Authority within 15 business days of any loss or destruction of books, records, documents, and background information as a result of an accident, robbery, or other incident.

[38] - Executive Decree 135-99-EF of 1999 (*Amended Consolidated Text of the Tax Code*), Article 62 of which provides that SUNAT may require tax debtors to exhibit their books of account as well as the supporting documentation thereof, which shall be kept in accordance with the relevant standards.

[39] - Superintendency resolution 234-2006/SUNAT, Article 12 of which provides that for the purposes of the Income Tax Law, a full set of books of account consists of the following: a) Cash Book; b) Inventory and Balance Sheet Book; c) General Journal; d) Ledger; e) Purchase Book; f) Sales and Revenue Book. The minimum information that each of these books should contain is set out in Article 13.<sup>11</sup> Furthermore, the suppression, destruction, or concealment of documents is recognized as an offence in Article 430.

[40] - Superintendency resolution 007-99/SUNAT, Articles 8-10 of which set forth the requirements and characteristics to be met by payment vouchers.

[41] - Law 26126 of 1992 (*Consolidated Text of the Organic Law of the Companies and Securities Commission - CONASEV*), Article 2 of which accords CONASEV, inter alia, the following functions: to study, promote, and regulate the securities market and to control natural and legal persons that intervene in said market [Article 2 (a)]; ensure the transparency of securities markets [Article 2 (d)]; supervise compliance with the Corporations Law by the open stock corporations referred to in Legislative Decree No. 755, Title IX, Chapter III [Article 2 (i)]; issue standards on the preparation and presentation of individual and consolidated financial statements and any other supplementary information, ensuring that they reasonably reflect the financial position, results of operations, and cash flows of the companies and entities under its supervision, in accordance with the accounting standards in force in the country, as well as controlling compliance therewith [Article 2 (k)]; and monitor the activities of firms of auditors appointed by natural and legal persons under their supervision, impart to them rules on the contents of their reports, and order them to furnish any information or background data on the performance of their functions [Article 2 (l)].

[42] Article 253 provides that CONASEV is charged with supervision and control of publicly held companies. The same article also states that CONASEV has the authority, inter alia, to require open stock corporations to present financial information and adopt decisions on breaches of the *Corporations Law* and of rules issued by CONASEV, and to impose the respective penalties.

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11. Superintendency resolution 017-2009/SUNAT has temporarily suspended, from January 25, 2009 to December 31, 2009, the effects of Article 13 of Superintendency resolution 234-2006/SUNAT, with the exception of the provisions contained in subparagraph 5-A and paragraph 13(4) of said Article.

[43] - CONASEV resolution 055-2001-EF/94.10 of 2001, states at Article 8 that the organ empowered to impose penalties in accordance with the regulations and to order corrective measures is the CONASEV Administrative Tribunal.

[44] Articles 19-22 set out the penalties applicable in the securities market, which vary for infringements considered minor,<sup>iii</sup> serious,<sup>iv</sup> and very serious.<sup>v</sup>

[45]- CONASEV resolution 103-1999-EF/94.10 of 1999<sup>12</sup> (*Financial Reporting Regulations and Financial Report Preparation Handbook*), applicable to open stock corporations, which contains the standards to be observed by companies in the preparation and presentation of financial information, in order to ensure that said information meets certain basic conditions in accordance with generally accepted accounting principles.<sup>13</sup>

[46] - Law 28708 of 2006 (*General Law on the National Accounting System*), Article 4 of which provides that the objectives of the National Accounting System (SNC, by the acronym in Spanish) are, inter alia, to harmonize and standardize accounting in the public and private sectors through the approval of accounting standards; Article 5 provides that the SNC is made up, inter alia, of the National Public Accounts Office (DNCP, by the acronym in Spanish), the system's governing organ, and the Accounting Standards Board (CNC, by the acronym in Spanish); Article 14 states that the DNCP and the CNC, within their jurisdictions, issue and adopt accounting standards and procedures applicable to the public and private sectors, respectively; Article 15 of the Law grants the DNCP authority to adopt the necessary measures for the dissemination of, training in, and permanent updating of the accounting standards and procedures in force; and at Article 16(3) states that private sector entities shall keep an accounting record of their operations in accordance with the standards and procedures issued and approved by the CNC.

[47] - Law 28951 of 2007 (*Law Updating Law 13523, on Professionalization of Public Accountants and Creation of Colleges of Public Accountants*), Article 2 of which provides that membership of a professional association of public accountants is mandatory for the exercise of the public accountancy profession.

[48] Article 5 provides that one of the purposes of Colleges of Public Accountants is to ensure observance of and compliance with professional ethical standards. Article 10 says that any infringement of the Code of Ethics, statutes, internal rules of procedure, or resolutions issued by institutional organs, committed by chartered public accountants shall be punished in accordance with their statutes.

[49] - The Code of Professional Ethics of the College of Public Accountants of Peru, Article 12 of which provides that chartered public accountants have a duty to observe professional confidentiality and not to reveal for any reason any deeds, facts, or circumstances to which they are privy in the exercise of their profession, except for such information as they may be requested by the competent legal authorities to provide by law.

[50] Article 46 identifies the acts that bring the profession into disrepute,<sup>vi</sup> while Articles 47 and 48 set out the acts that constitute a gross breach of professional dignity and ethics. Furthermore, Article 50 provides that any chartered public accountant who commits a breach of the Code of Ethics shall be punished by the college of which they are a member, for which the penalty applied shall be commensurate with the seriousness of the breach, and may consist of a verbal reprimand; written reprimand; temporary suspension from the exercise of the profession of between one and 24 months; and

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12. As amended by CONASEV CEO resolution 010-2008-EF/94.01.2.

13. See endnote ii.

expulsion and permanent striking off the register of the respective College of Public Accountants (Articles 51 and 52).

[51]- Legislative Decree 635 of 1991 (*Criminal Code of Peru*), Article 199 of which criminalizes parallel bookkeeping in the following terms: “*Whomsoever, in order to obtain an undue advantage, keeps parallel books distinct from those required by law, shall be punished with not more than one year of imprisonment and with a fine of between 60 and 90 days pay.*”

[52] - Legislative Decree 813 of 1996 (*Tax Offences Law*), Article 5 of which provides that: “*Whomsoever is required by the tax regulations to keep books of account shall be punished with no less than two nor more than five years of imprisonment and with a fine of between 180 and 365 days’ pay should they: a) Completely fail to perform said obligation; b) fail to make a note of acts, operations, and revenues in the books of account; c) make false annotations of accounts, entries, amounts, names, and dates in the books of account; d) destroy or conceal any part of the books of accounts or tax-related documents.*”

[53] The country under review also has provisions, measures, and mechanisms in this regard, with different contents and scope in relation to control of other financial entities and agencies, such as those contained in the Amended Consolidated Text of the Stock Market Law (Executive Decree 93-2002), and the General Law of the Financial and Insurance Systems and Organic Law of the Superintendency of Banking and Insurance (Law 26702 of 1996).

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

[54] With respect to the constitutional and other legal provisions on 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.

[55] The Committee, nevertheless, deems it appropriate to express some comments regarding the advisability that the country under review consider supplementing, developing or adapting certain provisions in this regard.

[56] To begin with, notwithstanding that the *Corporations Law* provides the possibility of external audits for open stock companies at Articles 226 and 227, the Committee notes on the basis of the information available to it that there is no obligation for publicly held companies or associations of whatever type 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, to have internal accounting controls with respect to the nature of the business, as provided by Article III (10) of the Convention. The Committee also believes that it would be useful for Peru to consider using guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts and to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies to bring them to the attention of the legal representative and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense. The Committee will offer recommendations in that regard (see Recommendations 2.4 (a) and (b) in Chapter II of this report).

[57] Second, the Committee believes it necessary for the country under review to consider adopting, by such means as it deems appropriate, pertinent measures to ensure that “professional confidentiality” is

not an obstacle for professionals whose activities are governed by the Code of Ethics of the College of Public Accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work. The Committee will offer a recommendation in that regard (see Recommendation 2.4 (c) in Chapter II of this report).

[58] Third, the Committee believes that it would be advisable for the country under review to consider promoting training for individuals responsible for the entry of accounting records and for accounting for their accuracy, including awareness raising on the importance of abiding by the standards in force in order to ensure the veracity of said records and the consequences of their violation. The Committee will offer a recommendation in that regard (see Recommendation 2.4 (d) in Chapter II of this report).

[59] Fourth, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Recommendation 2.4 (e) in Chapter II of this report).

[60] Fifth, the Committee 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 (f) in Chapter II of this report).

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

[61] In the section on results of its response to the questionnaire, the Republic of Peru says, “It should be mentioned that as [the question in the questionnaire] is conditional upon the existence in the tax regulations of standards that specifically introduce provisions designed to prevent or deter bribery of domestic and foreign government officials, provisions which do not exist (as mentioned in the answer to the previous question), it is pointless to address the question posed in the aforementioned subparagraph,”<sup>14</sup> and also includes information on FONAFE (State Business Activity National Financing Fund).<sup>15</sup>

[62] In this regard, the Committee notes that the information submitted by the Republic of Peru refers to the existence of internal control standards for state-owned companies and does not include specific results on prevention or detection of bribery of domestic and foreign government officials.

[63] In turn, the document submitted by the civil society organization National Council for Public Ethics (PROETICA) notes the following: “*as regards the tax issue, SUNAT has not furnished statistics in this regard, which is a failing that this entity should remedy as soon as possible.*”<sup>16</sup> The PROETICA document also includes information on the results of the Financial Intelligence Unit with respect to money laundering, which are not specific to the issue under review.

[64] Finally, 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

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14. See response of Peru to the Questionnaire in the Third Round, p. 4, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

15 See response of Peru to the Questionnaire in the Third Round, p. 5, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

16 Document submitted by the National Council for Public Ethics (PROETICA), p.10, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and for ensuring 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 (g) in Chapter II of this report).

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

[65] Based on the review conducted in the 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 III, paragraph 10 of the Convention:

**[66] The Republic of Peru has considered and adopted measures intended 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.**

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

[68] - Strengthen standards on prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Peru could take the following measures into account:

- a) Adopt appropriate measures to make it an obligation for publicly held companies or associations of whatever type 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, to have internal accounting controls with respect to the nature of the business, as provided by Article III (10) of the Convention, and consider using guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts (see Chapter II, Section 2.2 of this report).
- b) Adopt the necessary measures to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies to bring them to the attention of the legal representative and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense (see Chapter II, Section 2.2 of this report).
- c) Adopt, in accordance with its legal framework, through the means as it deems appropriate, measures to ensure that “professional confidentiality” is not an obstacle for professionals whose activities are governed by the Code of Ethics of the College of Public Accountants to bring to the attention of the appropriate authorities any acts of corruption that they discover in the course of their work (see Chapter II, Section 2.2 of this report).
- d) Promote training for individuals responsible for the entry of accounting records and for accounting for their accuracy, including awareness raising on the importance of abiding by the standards in force in order to ensure the veracity of said records and the consequences of their violation (see Chapter II, Section 2.2 of this report).
- e) Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on

best practices that should be implemented to prevent corruption (see section 2.2 of Chapter II of this report).

- f) 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 (see section 2.2 of Chapter II of this report):
  - i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
  - ii. Handbooks, manuals, or guidelines for control organs or agencies that do not yet have them on how to review accounting records in order to detect sums paid for corruption.
  - iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
  - iv. Institutional coordination mechanisms that enable said organs or agencies easily to obtain timely collaboration needed from other institutions or authorities to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
  - v. Training programs for officials from the organs or agencies responsible for prevention and/or investigation of infringements of measures designed to ensure the accuracy of accounting records, specifically aimed at alerting them to the methods used to disguise payments for corruption through said records and at instructing them on how to detect them.
- g) 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 (see Chapter II, Section 2.3 of this report).

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

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

[69] The Republic of Peru has the following provision on transnational bribery:

[70] - Law 29316 of 2009 (*Law amending, adopting, and regulating various provisions in order to implement the Trade Promotion Agreement signed by Peru and the United States*), which include in the Peruvian Criminal Code Article 397-A, on offering of transnational bribes (transnational bribery), which provides, "*Whomsoever in any way, directly or indirectly offers, gives, or promises an official or public servant of another state or an official of a public international organization an undue gift, promise, advantage or benefit that results in their own gain or that of another person, in order to perform or omit*

*acts within the purview of their office or position, in violation of their duties or, though not in violation of their duties, in order to obtain or retain a business transaction or any other undue advantage international commercial or economic activities, shall be punished by no less than five nor more than eight years of imprisonment.”*

[71] - The Peruvian Criminal Code, Article 105 of which provides, “*Should the punishable act be committed in the performance of the activities of any legal person, or using their organization to aid or abet its commission, the judge shall apply any or all of the following measures:*

[72] *1. Temporary or permanent closure of its premises or facilities. A temporary closure shall not exceed five years.*

[73] *2. Dissolution or liquidation of the company, association, foundation, cooperative, or committee.*

[74] *3. Suspension of the activities of the company, association, foundation, cooperative, or committee for a period of not more than two years.*

[75] *4. A ban on the company, foundation, association, cooperative, or committee from engaging in the future in activities of the kind in which the offense was committed, aided, or abetted.*

[76] *The ban may be temporary or permanent. A temporary ban shall not exceed five years.*

[77] *When any of these measures is applied, the judge shall order the appropriate authority to arrange the intervention of the legal person in order to safeguard the rights of the legal person’s employees and creditors for up to two years.*

[78] *A change of trade name, legal status, or corporate reorganization shall not be an impediment to the application of these measures”.*

[79] Furthermore, Article 27 of the Peruvian Criminal Code states, “*Anyone who acts as a body authorized to represent a legal person, or as an authorized representative partner of a company which commits a legally recognized offense shall be held responsible as the perpetrator even if the particular elements on which the criminality of this offense is based were not committed by them but by the person they represent”.*

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

[80] With respect to the provision by which the Republic of Peru has classified transnational bribery, as provided in Article VIII of the Convention, as a criminal offense, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

[81] However, the Committee takes note that the country under review has considered clarifying what should be understood by the phrase *public official or servant of another State* (see Recommendation 3.4 (a) in Chapter II of this report).

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

[82] With respect to results, in its response to the questionnaire, the Republic of Peru says, “*There is no information available as this is a recently adopted provision.*”<sup>17</sup>

[83] In the absence of further information and bearing in mind that the criminal provision that classifies the offence of transnational bribery has only recently been adopted (January 14, 2009), the Committee will make a recommendation to the country under review that, through the organs or agencies charged with 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, 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 (see Recommendation 3.4 (b) in Chapter II of this report).

### 3.4. Conclusions and recommendations

[84] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provision contained in Article VIII of the Convention:

**[85] The Republic of Peru has adopted measures on the offense of transnational bribery provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

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

- a) Continue evaluating the possibility of clarifying the expression *public official or servant of another State* (see Chapter II, Section 3.2 of this report).
- b) Select and develop, through the organs or agencies charged with 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 (see Chapter II, Section 3.3 of this report).

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

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

[87] The Republic of Peru has the following provision on illicit enrichment:

[88] - Law 28355 of 2004 (*Law amending various articles in the Criminal Code and the law against money laundering*), which modifies Article 401 (on illicit enrichment) of the Peruvian Criminal Code, which provides:

[89] “*Any government official or public servant<sup>vii</sup> who unlawfully increases their assets above their lawful earnings during the performance of their functions and cannot reasonably justify said increase,*

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17. See response of Peru to the Questionnaire in the Third Round, p. 8, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

*shall be punished with not less than five nor more than 10 years of imprisonment and ineligibility pursuant to Article 36 (1) and (2) of the Criminal Code.*

[90] *If the agent is a government official who has held senior management positions in entities or agencies of the public administration or state-owned enterprises, or is subject to impeachment proceedings, the penalty shall be not less than eight, nor more than 18, years of imprisonment and ineligibility pursuant to Article 36 (1) and (2) of the Criminal Code.*

[91] *Indicia of illicit enrichment are deemed to exist when the increase in the assets and/or personal spending of the government official or public servant, bearing in mind their sworn declaration of assets and income, is clearly higher than it normally could have been based on their pay or emoluments received, or on any increases in their equity or income for any other lawful reason.”*

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

[92] With respect to the provision by which the Republic of Peru has classified illicit enrichment, as provided in Article IX of the Convention, as a criminal offense, the Committee notes that, on the basis of the information available to it, it may be said to be pertinent for promoting the purposes of the Convention.

[93] However, the Committee notes that the criminal classification of illicit enrichment set forth in Article 401 of the Peruvian Criminal Code contains an additional element that is missing from Article IX of the Convention: that the increase in the assets of the government official or public servant has been obtained “unlawfully.” This would suggest the need to prove not only that there was an increase in the assets of the government official above their legitimate earnings, but also that said increase in assets was unlawful in origin; in other words, the crime of illicit enrichment would be a consequence of other wrongdoings, such as solicitation or acceptance of bribes or extortion, among others.

[94] In this connection, the Plenary Meeting of National Criminal Justice Authorities<sup>18</sup> held on June 21, 2008,<sup>19</sup> has reached the following conclusions with respect to the criminal classification of illicit enrichment as set forth in Article 401 of the Criminal Code of Peru:

[95] A determination that the crime of illicit enrichment has been committed, “(...) *requires the existence of a relationship of causality [between the illicit enrichment and the position of the government official], since the nature of the wrongdoing is such that the official had to have used their position in order unlawfully to increase their assets”.*

[96] *“The Office of the Attorney General [Ministerio Público] must prove that the government official enriched himself or herself illicitly during their period as such.”*

[97] Based on the foregoing, the Committee believes that it would be useful for the country under review to consider, subject to its Constitution and the fundamental principles of its legal system, adopting appropriate measures to align Article 401 of the Peruvian Criminal Code with the conduct of illicit enrichment as described in Article IX of the Convention, so that the “unlawfully” element provided in

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18. Under Article 116 of the Amended Consolidated Text of the Organic Law of the Judiciary of Peru, “the Judges of the Specialized Chambers may assemble in plenary meetings of justice authorities at the national, regional, or district level, in order to agree on jurisprudence in their area of specialization, at the behest of the support organs of the Judicial Branch.”

19 [www.pj.gob.pe/CorteSuprema/documentos/..%5C.%5CCorteSuprema%5Ccj%5Cdocumentos%5CConclusiones\\_Pleno\\_Jurisdiccional\\_Nacional\\_Penal\\_010708.pdf](http://www.pj.gob.pe/CorteSuprema/documentos/..%5C.%5CCorteSuprema%5Ccj%5Cdocumentos%5CConclusiones_Pleno_Jurisdiccional_Nacional_Penal_010708.pdf)

the former article is eliminated. The Committee will offer a recommendation in this regard to the country under review (see Recommendation 4.4(a) in Chapter II of this report).

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

[98] In the section on results of its response to the questionnaire, the country under review presents information supplied by the Minister of Justice to the Peruvian Congress in 2008 in connection with the criminal cases being pursued by the special anticorruption prosecutors.<sup>20</sup>

[99] In this regard, the Committee notes that the information submitted by the Republic of Peru concerns the crimes of embezzlement, corruption of government officials, extortion, and abuse of authority, among others, but does not include specific information on criminal proceedings connected with the crime of illicit enrichment.

[100] Finally, 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 or agencies charged with 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, 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 4.4 (b) in Chapter II of this report).

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

[101] Based on the review conducted in the 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:

[102] **The Republic of Peru has adopted measures on the offense of illicit enrichment provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.**

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

- a) Align, subject to its Constitution and the fundamental principles of its legal system, Article 401 of the Peruvian Criminal Code with the conduct of illicit enrichment as described in Article IX of the Convention, so that the “unlawfully” element provided in the former article is eliminated (see Chapter II, Section 4.2 of this report).
- b) Through the organs or agencies charged with 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, select and develop 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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20. See response of Peru to the Questionnaire in the Third Round, pp. 11-12, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

## **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**

[104] The Republic of Peru criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, after the date on which it ratified the Convention and notified the OAS Secretary General of said criminalization by Note 7-5-M/258 from the Office of the Permanent Representative of Peru to the Organization of American States dated May 18, 2009, in which it informed that by Law 29316 published on January 14, 2009, the offence of “international offering of bribes” or “international bribery” has been included in the Peruvian Criminal Code.

[105] The Republic of Peru also criminalized illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention.

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

[106] As regards notification of criminalization of transnational bribery and illicit enrichment, the response of the Republic of Peru to the questionnaire states the following:

[107] *“With respect to the crime of illicit enrichment, it should be mentioned that Peru ratified the Inter-American Convention against Corruption on April 6, 1997, and that illicit enrichment has been criminalized under our system of laws since April 8, 1991, the date on which it was published in the Criminal Code at Article 401, which was amended by Article 1 of Law 28355 published on October 6, 2004.”*<sup>21</sup>

[108] Bearing in mind that the Republic of Peru criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption after the date on which it ratified the Convention and that in May 2009 it notified the OAS Secretary General of said criminalization, in accordance with Article X thereof, the Committee shall not offer any recommendation in that respect.

[109] Likewise, bearing in mind that the Republic of Peru criminalized illicit enrichment as provided in Article IX of the Inter-American Convention against Corruption prior to the date on which it ratified the Convention, the notification provided in Article X thereof is not necessary and, therefore, the Committee will offer no recommendation in that regard.

### **5.3. Conclusions**

[110] Based on the review conducted in the foregoing sections, the Committee concludes that the Republic of Peru has complied with the provisions of Article X of the Convention.

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

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

[111] The Republic of Peru has a set of provisions related to extradition, among which the following should be noted:

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21. See response of Peru to the Questionnaire in the Third Round, p. 8, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

[112] - The Constitution of 1993, Article 37 of which provides, “*extradition is only granted by the executive branch based on a report from the Supreme Court, in accordance with the law and treaties, and in keeping with the principle of reciprocity (...)*”

[113] - Legislative Decree 957 of 2004 (*New Code of Criminal Procedure*), Article 508 of which provides: “*1. Relations of the Peruvian authorities with foreign authorities and with the International Criminal Court in the area of international judicial cooperation<sup>22</sup> are governed by international treaties concluded by Peru and, in the absence thereof, by the principle of reciprocity within a framework of observance of human rights. 2. Should a treaty exist, its provisions shall govern the international judicial cooperation procedure. The foregoing notwithstanding, the provisions under domestic law, and this Code in particular, shall serve to interpret said provisions and shall apply wherever not specifically provided otherwise by the Treaty.*”

[114] Article 517 sets out the grounds for refusal of extradition and does not include a prohibition against extradition of Peruvian nationals.

[115] In addition, Article 523 describes the procedure connected with provisional or pre-extradition detention.<sup>viii</sup>

[116] - Peru has extradition treaties in force with Chile, Mexico, Ecuador, United States, Panama, Paraguay, Brazil, and Argentina.<sup>23</sup>

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

[117] With respect to the provisions governing 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.

[118] However, the Committee believes it necessary, based on the provisions contained in Article XIII (6) of the Convention, 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 (a) in Chapter II of this report).

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

[119] With respect to results in this area, the response of the Republic of Peru to the questionnaire says the following:

[120] “*According to information supplied by the Ministry of Justice of Peru, from 2004 to 2008 there have been 102 extradition requests for corruption-related offenses under bilateral treaties, as well as under international instruments that facilitate judicial assistance and cooperation, such as the Inter-*

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22. Article 511 (a) of the New Code of Criminal Procedure includes extradition as an act of international judicial cooperation.

23. The texts of the bilateral extradition treaties signed by Peru are available for consultation at: [www.oas.org/JURIDICO/mla/en/per/index.html](http://www.oas.org/JURIDICO/mla/en/per/index.html)

*American Convention against Corruption and the Inter-American Convention on Mutual Assistance in Criminal Matters, among others.*”<sup>24</sup>

[121] Furthermore, in the annex to its response,<sup>25</sup> Peru provides information on the procedural status of the extradition requests submitted between 2004 and 2008 to other states parties, including Argentina, Brazil, Chile, United States, and Panama, in connection with acts of corruption criminalized in Peruvian laws in accordance with the Convention.

[122] Peru also reports that it has received no extradition requests for corruption cases since the creation in February 2006 of the International Judicial Cooperation and Extraditions Unit (UCJIE) of the Office of the Prosecutor General.<sup>26</sup>

[123] The Committee finds that the information referred to in this section of the report serves to demonstrate that the country under review has actively sought international cooperation to secure the return to the country for trial in its national courts of persons accused of acts of corruption who are outside its territory. However, the information is not sufficiently detailed to determine in which cases the country has relied on the Inter-American Convention against Corruption to support its arguments.

[124] Based on the foregoing, the Committee will make a recommendation to the country under review that, through the organs or agencies charged with processing extradition requests sent to and received from other countries, it develop procedures and indicators, when appropriate and where they do not yet exist, by which to present information on the use of the Inter-American Convention against Corruption as the legal basis for extradition requests presented to other states parties to the Convention, as well as information on the procedures initiated to attend to requests received by it from other states parties with the same purpose (see Recommendation 6.4 ( b) in Chapter II of this report).

[125] Finally, the Committee believes that it would be useful for the country under review to consider adoption of appropriate measures to benefit from a greater use of the Inter-American Convention against Corruption 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 Recommendation 6.4 ( c) in Chapter II of this report).

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

[126] Based on the review conducted in the 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:

[127] **The Republic of Peru has adopted measures on extradition, as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.**

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

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24. See response of Peru to the Questionnaire in the Third Round, p. 20, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

25. See annexes to the response of Peru to the Questionnaire in the Third Round, pp. 6-18, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

26. Response sent by electronic mail on May 25, 2009, in reply to a request for information from the Technical Secretariat in that regard.

- a) 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).
- b) Develop procedures and indicators, when appropriate and where they do not yet exist, by which to present information on the use of the Inter-American Convention against Corruption as the legal basis for extradition requests presented to other states parties (see Chapter II, Section 6.2 of this report).
- c) Adopt appropriate measures to benefit from a greater use of the Inter-American Convention against Corruption 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 FROM PREVIOUS ROUNDS**

#### **FIRST ROUND**

[129] With respect to implementation of the recommendations issued to the Republic of Peru 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 additional attention, and on the basis of the information available to it, referring to progress in implementation subsequent to that report, the Committee notes the following:

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

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

###### Recommendation 1.1.1:

*Strengthen the implementation of laws and regulations governing conflicts of interest.*

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round.<sup>27</sup>

- b) *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing conflicts of interest, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed.*

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27. See p. 26 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>28</sup>

- a) *Analyze possible situations of conflict of interest that could arise from the constitutional authorization (Articles 92 and 126 of the Constitution) that permits a member of Congress to be appointed as a Minister of State and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function.*
- c) *Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.*
- d) *Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on preventing conflicts of interest.*
- e) *Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public functions are discharged by honest individuals, making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.*
- f) *Establish prior consultation of the National Registry of Dismissals on Disciplinary Grounds as a procedure to be followed in determining eligibility for employment (Article 7(b) of Law 28175 of 2004).*
- g) *Clearly define, for each position, the technical and professional requisites to be met by those appointed to positions of confidence (Law 28175, Article 4 (2)).*
- h) *Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct applicable to conflicts of interest, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*
- i) *Evaluate the levels of use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring their effectiveness toward that end*

[130] In its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round that it considers related to measure a) of the foregoing recommendation.<sup>29</sup>

[131] The Committee reiterates the need for the country under review to give additional attention to measure a) of the foregoing recommendation.<sup>30</sup>

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28. See pp. 25-26 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

29. See response of Peru to the Questionnaire in the Third Round, p. 22, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

[132] In its response, the country under review did not refer to measure *c)* of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[133] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[134] *“This law has not been amended by the Peruvian Congress nor has a bill being introduced in this regard. Therefore, this measure has not being implemented.”*<sup>31 32</sup>

[135] With respect to measure *d)* of the foregoing recommendation, in its response, the country under review presents the following information, additional to that reviewed by the Committee in the Report from the Second Round:

[136] *“As to the strengthening of the National Anticorruption Commission, we should point out that this commission was disbanded in August 2008 by Executive Decree 057-2008-PCM, since when these activities have been taken up directly by the Office of the President of the Council of Ministers through its respective line organs.”*<sup>33</sup>

[137] Furthermore, in response to a request for additional information on said institutional changes, the Republic of Peru reported the following:

[138] *“The institutional changes in Peru have come about as a result of jurisdictional conflicts between constitutionally autonomous organs, namely the judicial branch and the Office of the Attorney General on one hand, and the National Anticorruption Office, on the other. Therefore, in order to correct these contretemps, the Office of the President of the Council of Ministers, through the Civil Service Secretariat, was assigned responsibility for implementation of anticorruption policies in areas such as ethics in public service, transparency, access to information, and citizen oversight, as core elements of the overall process of reform of the Peruvian state. For their part, all policies of a punitive nature or that are designed to penalize corruption are the responsibility of constitutionally autonomous organs and are distinct from the work of the executive branch.*

[139] *It should be mentioned that the Office of the President of the Council of Ministers is the top-ranking administrative entity in the Peruvian executive branch and its function is overall coordination of government policies. In light of the foregoing it has been assigned the task of overall monitoring of national anticorruption policy and of the National Anticorruption Plan, maintaining relations and coordinating with all the entities responsible in the executive branch, as well as with constitutionally*

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30. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that *“as to possible conflicts of interests, it should be borne in mind that Peru’s laws have not considered, as suggested by the Committee of Experts, to prohibit ministers who are also members of Congress from voting on matters connected with their administrative department by virtue of the fact that to do so would skew representation as there would be fewer votes in Congress”*.

31. Document submitted by the National Council for Public Ethics (PROETICA), p. 19, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

32. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that *“nonetheless, the National Civil Service Authority, or SERVIR, was created in order to remedy all the problems associated with the management of the civil service in Peru. One of the main tasks of SERVIR, the governing entity in the area, is to draft a new Civil Service Law that unifies all government hiring systems”*.

33. See response of Peru to the Questionnaire in the Third Round, p. 22, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

*autonomous organs, such as the judicial branch, Office of the Ombudsman, Office of the Attorney General, and Office of the Comptroller General, among others.”*

[140] With respect to measure *d)*, the Committee notes the institutional change reported by the country under review and by civil society,<sup>34</sup> the upshot of which is that the commission to which the measure refers does not exist at present. However, in view of the information provided by the State with regard to the competencies of the Civil Service Secretariat of the Office of the President of the Council of Ministers, the Committee finds that this recommendation has been satisfactorily considered.

[141] With respect to measures *e)* and *f)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following as a step that leads it to conclude that the recommendation has been satisfactorily considered:

[142] ▪ Adoption of Ministerial Resolution 017-2007-PCM, which approved the Directive for the Use, Registration, and Consultation of the Electronic System of the National Registry of Sanctions involving Dismissal and Removal (RNSDD).<sup>35,36</sup>

[143] The Committee takes note of the satisfactory consideration by the country under review of measures *e)* and *f)* of the foregoing recommendation, in particular the adoption of Ministerial Resolution 017-2007-PCM, without entering into an in-depth analysis of its contents.

[144] With respect to measure *h)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[145] ▪ The creation of the National Civil Service Authority through Legislative Decree 1023 of June 21, 2008, whose functions include training for all State human resources.<sup>37</sup>

[146] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *h)* of the foregoing recommendation and the need for it to continue to give attention thereto, for which purpose it hopes that the country can overcome the implementation difficulties that it has mentioned in its response.<sup>ix</sup> Furthermore, the Committee has noted the information provided on the internal agencies that have participated in its implementation.<sup>38</sup>

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34. Document submitted by the National Council for Public Ethics (PROETICA), p. 20, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

35. See response of Peru to the Questionnaire in the Third Round, p. 22, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

36. In the Report from the Second Round, the Committee noted that the Republic of Peru had presented Ministerial Resolution 017-2007-PCM after the deadline for submitting the response to the questionnaire because it came into force on January 20, 2007, the date of its publication in the Official Gazette, *El Peruano*. That is the reason why no in-depth review of this provision was made on that occasion. See endnote xxvii of this report, available at

[www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

37. See response of Peru to the Questionnaire in the Third Round, p. 22, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

38. Response of the Republic of Peru to the Questionnaire in the Third Round, p. 7. They are the Congress of the Republic and the Civil Service Secretariat of the Office of the President of the Council of Ministers.

[147] Finally, due to the fact that the response of the Republic of Peru to the Questionnaire did not refer to measures *g)* and *i)* of the foregoing recommendation, the Committee reiterates the need for the country under review to give additional attention to its 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 1.2.1:

*Strengthen the implementation of laws and regulations for controlling public resources.*

Measure suggested by the Committee that was satisfactorily considered within the Framework of the Second Round:<sup>39</sup>

- a) Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the protection of public resources, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>40</sup>

- b) Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on preventing conflicts of interest.*
- c) Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public functions are discharged by honest individuals, making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.*
- d) Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct for ensuring the conservation and appropriate use of public resources, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*
- e) Evaluate the levels of use and effectiveness of the standards of conduct for ensuring the conservation and appropriate use of public resources and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring their effectiveness toward that end.*
- f) Optimize the use of existing technology for the purposes of designing a computerized public system for State procurement, contracting and resources.*

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39. See p. 28 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

40. See pp. 27-29 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

- g) *Include, at the time that the terms and conditions for public bidding competitions and procurements are prepared, standards that enable potential bidders and different civil society stakeholders to formulate observations on draft terms and conditions, making it possible to include opinions in the final terms and conditions, the foregoing process must meet the requirements of full publicity and dissemination.*
- h) *Without forgetting the media habitually used, such as the Official Gazette, El Peruano and daily newspapers with the largest circulation at the national or local level, the Republic of Peru should, with respect to publicity for announcements of terms and conditions for public bidding competitions and procurements, examine the possibility of using a larger number of dissemination channels, such as the Internet, associations, schools, chambers of commerce or other entities that act as a hub for purveyors or professionals connected with the object of the competition or procurement in question.*
- i) *Include on the web pages of all public entities information on their budget, finances, expenditures and human resource management, in accordance with Emergency Decree 035-2001*

[148] With respect to measure *b)* of the foregoing recommendation, in its response, the country under review presents the following information, additional to that reviewed by the Committee in the Report from the Second Round:

[149] *“As to the strengthening of the National Anticorruption Commission, we should point out that this commission was disbanded in August 2008 by Executive Decree 057-2008-PCM, since when these activities have been taken up directly by the Office of the President of the Council of Ministers through its respective line organs.”*<sup>41</sup>

[150] With respect to measure *b)*, the Committee notes the institutional change reported by the country under review and by civil society,<sup>42</sup> the upshot of which is that the commission to which the measure refers does not exist at present. However, in view of the information provided by the State with regard to the competencies of the Civil Service Secretariat of the Office of the President of the Council of Ministers (see pars. 138 and 139 above), the Committee finds that this recommendation has been satisfactorily considered.

[151] With respect to measure *c)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee highlights the following measure as a step that leads it to conclude that the recommendation has been satisfactorily considered:

[152] ▪ Adoption of Ministerial Resolution 017-2007-PCM, which approved the Directive for the Use, Registration, and Consultation of the Electronic System of the National Registry of Sanctions involving Dismissal and Removal (RNSDD).<sup>43, 44</sup>

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41. See response of Peru to the Questionnaire in the Third Round, p. 22, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

42. Document submitted by the National Council for Public Ethics (PROETICA), p. 20, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

43. See response of Peru to the Questionnaire in the Third Round, p. 25, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

[153] The Committee takes note of the satisfactory consideration by the country under review of measure *c)* of the foregoing recommendation, in particular the adoption of Ministerial Resolution No. 017-2007-PCM, without entering into an in-depth analysis of its contents.

[154] With respect to measure *d)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[155] ▪ The draft Regulations on Legislative Decree 1025 on Public Sector Training and Performance Standards, which will be pre-published prior to their adoption so that civil society organizations and members of the public and offer contributions.<sup>45</sup>

[156] ▪ The creation of the National Civil Service Authority through Legislative Decree 1023 of June 21, 2008, whose functions include training for all State human resources.<sup>46</sup>

[157] ▪ The preparation and prepublication of the National Capacity Building Plan, which matches the training services provided by different public entities to the needs of public servants. Among the Plan's specific objectives is the promotion of a civil service geared toward accountability in order to ensure a transparent administration.<sup>47</sup>

[158] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[159] *“There is no training mechanism in place for public officials on standards governing use of public funds, an area in which the State has a task pending. The new National Anticorruption Plan proposes that there will be an anticorruption training program in place by 2010”.*<sup>48</sup>

[160] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *d)* of the foregoing recommendation, in particular as regards the creation of the National Civil Service Authority and preparation of the draft Regulations on Legislative Decree 1025 on Public Sector Training and Performance Standards and the National Capacity Building Plan, without entering into an in-depth analysis of their respective contents. The Committee also takes note of the need for the country to continue to give attention to said measure, for which purpose it hopes that it can overcome the implementation difficulties that it has mentioned in its response.<sup>x</sup>

[161] With respect to measure *f)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second

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44. In the Report from the Second Round, el Committee noted that the Republic of Peru had presented Ministerial Resolution 017-2007-PCM after the deadline for submitting the response to the questionnaire because it came into force on January 20, 2007, the date of its publication in the Official Gazette, *El Peruano*. That is the reason why no in-depth review of this provision was made on that occasion. See endnote xxvii of this report, available at

[www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

45. See response of Peru to the Questionnaire in the Third Round, p. 25, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

46. See response of Peru to the Questionnaire in the Third Round, p. 22, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

47. See response of Peru to the Questionnaire in the Third Round, p. 25, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

48. Document submitted by the National Council for Public Ethics (PROETICA), p. 20, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

Round. In this regard, the Committee highlights the following measure as a step that leads it to conclude that the recommendation has been satisfactorily considered:

[162] ▪ The expansion of the Electronic Government Procurement System (SEACE) to 97% of public-sector agencies in Peru.<sup>49</sup>

[163] The Committee takes note of the satisfactory consideration by the country under review of measure *f*) of the foregoing recommendation.

[164] With respect to measure *g*) of the recommendation, the country under review provides the following information:

[165] *“As regards the possibility of granting members of the public the right enjoyed by the participants in a tender procedure of submitting queries and observations on the tender terms and conditions, the committee charged with drafting the new law and its regulations examined the issue and, taking into consideration cultural aspects and recent negative experiences, concluded that it was not advisable to allow that possibility, particularly in a context where the aim is to streamline government contracting by eliminating any factor that might needlessly obstruct or delay a procedure. Therefore, the right to submit queries and observations on tender terms and conditions continues to be restricted to the participants in the tender procedure; that is, those who, having become interested after reviewing the terms and conditions accompanying the tender announcement published in the SEACE, have registered to take part. Be that as it may, a study of making that possibility available to representative associations in the private sector has been left for a later juncture.”*<sup>50</sup>

[166] The Committee notes the need for that country under review to give additional attention to implementation of measure *g*) of the foregoing recommendation.

[167] Due to the fact that the response of the Republic of Peru to the Questionnaire did not refer to measures *e*),<sup>51</sup> *h*), and *i*) of the foregoing recommendation, the Committee reiterates the need for the country under review to give additional attention to its implementation.

[168] Furthermore, as regards implementation of measures *e*) and *i*) of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[169] - With respect to measure *e*):

[170] *“The State has not performed an evaluation of said legal instruments, nor is that task expressly provided for in the new National Anticorruption Plan.”*<sup>52</sup>

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49. See response of Peru to the Questionnaire in the Third Round, p. 37, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

50. See response of Peru to the Questionnaire in the Third Round, p. 38, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

51. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “with respect to measure *e*), a “Use of Public Property” bill was recently prepared and drawn attention to during the presentation of the President of the Council of Ministers to Congress on August 10 of this year. This proposed law would govern the preservation and proper use of vehicles, premises, computer equipment, etc, in order to prevent potential acts of corruption from being committed”.

52. Document submitted by the National Council for Public Ethics (PROETICA), p. 20, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

[171] - With respect to measure i):

[172] *“The Law on Transparency and Access to Public Information requires all public entities to perform this function. However, there are still difficulties in this area. In order to overcome them, the National Anticorruption Plan proposes to standardize all state transparency portals by 2010, and to have multilingual and oral versions of them by 2011.”*<sup>53</sup>

**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 1.3:

*Strengthen the mechanisms the Republic of Peru has in place to require public officials to report to the competent authorities on acts of corruption in public office of which they are aware.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>54</sup>

- a) *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the obligation of reporting breaches thereof, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed.*
- b) *Facilitate compliance with the obligation to report acts of corruption, through the channels deemed appropriate, regulating their use.*
- c) *Adopt and implement measures to protect whistleblowers, so that they enjoy guarantees in the face of threats or any other act of pressure or coercion to which they may be subjected as a result of compliance with this obligation.*
- d) *Include in the protection measures contained in Law 27378 of December 2000, Supreme Decree 020-2001-JUS of July 2001, and Supreme Decree 031-2001-JUS of October 2001 persons who in good faith report crimes and have not participated in the commission of crimes.*
- e) *Provide training to public officials on their responsibility to report to appropriate authorities any acts of corruption that come to their attention.*
- f) *Evaluate the levels of use and effectiveness of the measures and systems for requiring public employees to report acts of corruption, and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.*

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53. Document submitted by the National Council for Public Ethics (PROETICA), p. 21, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

54. See pp. 29-30 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

[173] With respect to measures *c)* and *d)* of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following measure as a step which contributes to progress in the implementation thereof:

[174] ▪ The preparation and unveiling in December 2008 of the National Anticorruption Plan, which at points 1.1.2 and 3.4.1 contains specific measures on protection of individuals who report acts of corruption.<sup>55</sup>

[175] The Committee takes note of the steps taken by the country under review to advance in its implementation of measures *c)* and *d)* of the foregoing recommendation and the need for it to continue to give attention thereto, for which purpose it hopes that the country can overcome the implementation difficulties that it has mentioned in its response<sup>56</sup> and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.<sup>57</sup>

[176] With respect to measure *e)* of the foregoing recommendation, the country under review provides the following information:

[177] *“As regards training, it should be treated as a permanent activity by the new National Civil Service Authority and included in the National Capacity Building Plan drawn up by the Office of the President of the Council of Ministers.*

[178] *In addition, it should be noted that the Civil Service Secretariat of the Office of the President of the Council of Ministers has initiated, as part of its functions, a national training program on ethics and transparency targeting 2000 government officials at all levels, which covers the procedural contents of penalties for infringements to the Civil Service Code of Ethics.”*<sup>58</sup>

[179] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *e)* of the foregoing recommendation and the need for it to continue to give attention thereto.

[180] In its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round which it considers related to measure *f)* of the foregoing recommendation.<sup>59</sup>

[181] The Committee reiterates the need for the country under review to give additional attention to measure *f)* of the foregoing recommendation.<sup>60</sup>

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55. See response of Peru to the Questionnaire in the Third Round, p. 26, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

56. Response of the Republic of Peru to the Questionnaire in the Third Round, p. 27. *“The main difficulties found have arisen in the coordinations with the Congress, which have led to a delay in the passage of the Whistleblower Protection Law.”*

57. Response of the Republic of Peru to the Questionnaire in the Third Round, p. 27. They are: The Office of the President of the Council of Ministers and the Office of the Comptroller General.

58. See response of Peru to the Questionnaire in the Third Round, p. 26-27, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

59. See response of Peru to the Questionnaire in the Third Round, p. 27, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

60. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that *“in this regard, it should be mentioned that, under the National Anticorruption Plan, government agencies are required*

[182] Furthermore, in view of the fact that the response of the Republic of Peru to the Questionnaire did not refer to measures a)<sup>61</sup> and b) of the foregoing recommendation, the Committee reiterates the need for the country under review to give additional attention to their implementation.

[183] Furthermore, as regards implementation of measures e) and i) of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following in relation to measure b):

[184] *“The Peruvian state has not yet enabled the computerized option for reporting acts of corruption, which hampers the receipt of complaints of this type without fear of reprisal for potential whistleblowers.”*<sup>62</sup>

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

### Recommendation 2.1:

*Expand the provisions governing the content of the sworn statement and its use in preventing and fighting corruption.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>63</sup>

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

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*to report monthly on progress on aspects of prevention and punishment of corruption, with a view to preparing reports and analyses of the mechanisms in place. Specifically on the question of mechanisms and/or measures to require citizens to report acts of corruption, shortcomings have been detected in the processes or protocols for implementing the system of complaints and adequately processing them. Accordingly, and in order to adopt appropriate corrective measures, the Office of the President of the Council of Ministers has been preparing draft regulations for the generalized application of a single procedure in this respect in order to overcome this weakness, including a computerized reporting mechanism, for example”.*

61. See Final Report on the Republic of Peru from the Second Round, available at:

[www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf).

62. Document submitted by the National Council for Public Ethics (PROETICA), p. 21, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

63. See pp. 30-31 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

- d) *Include, on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.*

[185] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>64</sup> In view of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.

[186] Furthermore, as regards implementation of the measures contained in the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[187] - With respect to measure a):

[188] *“As yet, there is no provision under Peruvian law that requires public officials to provide information on their liabilities or debts, much less specify what they consist of.”*<sup>65</sup>

[189] - With respect to measure b):

[190] *“The standards on sworn declarations of public servants do not yet provide for this option and it is left up to the official to provide this information if they see fit. This amendment is essential, bearing in mind that several cases of illicit enrichment concerning public servants have involved their immediate family members.”*<sup>66</sup>

[191] - With respect to measure c):

[192] *“Likewise, no provision is made for this in Peruvian law. There are cases of public officials who have previously worked for, sponsored, or lobbied the interests of companies which they now have to supervise or regulate, which creates potential or manifest conflicts of interest for said officials. This situation makes a stipulation in this regard essential. The declaration only refers to assets and income.”*<sup>67</sup>

[193] - With respect to measure d):

[194] *“This obligation has not been included in the standards on sworn declarations and it is urgent that it be so.”*<sup>68</sup>

#### Recommendation 2.2:

*Use sworn statements, by optimizing the analysis of their content, so as to provide a useful tool for detecting and preventing conflicts of interest, as well as detecting possible cases of illicit enrichment.*

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64. See p. 31 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

65. Document submitted by the National Council for Public Ethics (PROETICA), p. 23, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

66. Document submitted by the National Council for Public Ethics (PROETICA), p. 23, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

67. Document submitted by the National Council for Public Ethics (PROETICA), pp.23-24, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

68. Document submitted by the National Council for Public Ethics (PROETICA), p. 24, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>69</sup>

- a) *Establish systems for the effective verification of sworn financial statements, including a specific timetable and measures to overcome obstacles to access to required information, and establishing measures to overcome obstacles for accessing any information sources that may be required.*
- b) *Establish a register of officials required to submit sworn financial statements, and mechanisms for periodic updates of the register.*
- c) *Evaluate the possibility of implementing a computerized system to optimize capacity for the control of sworn financial statements, alerting appropriate authorities to substantial changes in the content of an official's sworn statements.*

[195] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>70</sup> In light of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.

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

#### Recommendation 3:

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

[196] With respect to the foregoing recommendation, in its response, the country under review presents the following information additional to that reviewed by the Committee in the Report from the Second Round:

[197] *“As regards oversight bodies, attention should be drawn to the institutional changes that followed the deactivation of the National Anticorruption Office last August, whereby certain functions of the latter were assigned to the Civil Service Secretariat of the Office of the President of the Council of Ministers, the supervising body in charge of the modernization of the state administration, one of the core elements of which is ethics and transparency in public administration.”*

[198] *As a result, anticorruption policy and the issues it addresses are steered from the highest level of government, and channels of coordination and communication have been strengthened with other public administration entities. Subsequently the National Anticorruption Plan has been unveiled, with seven*

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69. See pp. 31-32 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

70. See p. 32 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

*objectives covering multiple measures that are the responsibility of different government entities, for which the implementation deadline extends until 2011.*

[199] *It should also be mentioned that this Plan proposes to combine and link all ongoing anticorruption efforts, including the recommendations of the MESICIC Committee of Experts in the first and second review rounds, as well as the recommendations contained in the United Nations report on the Pilot Program on Implementation of the UN Convention against Corruption.”*

[200] As mentioned, the Committee notes the institutional changes reported by the country under review and by civil society,<sup>71</sup> the upshot of which is that the commission to which the measure refers does not exist at present. However, bearing in mind the information provided by the State with regard to the competencies of the Civil Service Secretariat of the Office of the President of the Council of Ministers (see pars. 138 and 139 above), the Committee finds that this recommendation has been satisfactorily considered.

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

##### Recommendation 4.1:

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

##### Recommendation 4.2:

*Strengthen mechanisms for guaranteeing access to public information.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>72</sup>

- a) *Adopt appropriate measures to ensure that those state agencies required to do so by the right-to-information rules incorporate into their Sole Texts of Administrative Procedures (TUPAs) the procedure for access to information (see Section 4.2.3 in Chapter II of this report).*
- b) *Adopt appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information publish on their Internet web sites the information required to appear thereon by the these norms (see Section 4.2.3 in Chapter II of this report).*
- c) *Implement training and dissemination programs dealing with the mechanisms for information access, in order to help public officials and citizens understand them and to optimize the use of available technology to that end.*
- d) *Conduct an evaluation to determine the factors that could be adversely affecting the enforcement of the norms governing the right to information and, as a result thereof, adopt measures to overcome those problems (see Section 4.2.3 in Chapter II of this report).*

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71. Document submitted by the National Council for Public Ethics (PROETICA), p. 20, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

72. See pp. 33-34 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

- e) *Optimize the system for the organization of public archives to facilitate public access to the information.*
- f) *Strengthen existing protections for the right to public information, so that access to such information cannot be denied or limited on grounds, or according to criteria, other than those established in the law.*
- g) *Analyze the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of “public utility” mentioned in paragraph 2 of the above-cited article.*

[201] In its response,<sup>73</sup> the country under review does not provide information additional to that reviewed by the Committee in the report from the First Round in connection with measure a) of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

[202] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[203] *“Most state agencies have included the procedure for access to information in their Consolidated Texts of Administrative Procedures (TUPA, by the acronym in Spanish). Further verification is needed to determine if all state agencies have included this procedure in these texts and, in particular, if the way in which they are presented is easy to understand for members of public.”<sup>74</sup>*

[204] With respect to measure b) of the foregoing recommendation, the country under review provides the following information:

[205] *“As regards the transparency portals required by the Law on Transparency and Access to Public Information (Law 27806), as part of the organizational changes described above, the Civil Service Secretariat has been assigned a supervisory role in aspects relating to compliance with the Transparency Law. In performance of these functions, the Civil Service Secretariat has issued Directive 004-2008-PCM-SGP “Transparency Portal Standardization Guidelines,” which sets out specific contents and parameters designed to facilitate the implementation of transparency portals.”<sup>75</sup>*

[206] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[207] *“The Law on Transparency and Access to Public Information requires all public entities to perform this function. However, there are still difficulties in this area. In order to overcome them, the*

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73. See response of Peru to the Questionnaire in the Third Round, p. 29, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

74. Document submitted by the National Council for Public Ethics (PROETICA), p. 26, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

75. See response of Peru to the Questionnaire in the Third Round, p. 29, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

*National Anticorruption Plan proposes to standardize all state transparency portals by 2010, and to have multilingual and oral versions of them by 2011.*<sup>76</sup>

[208] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *b)* of the foregoing recommendation and the need for it to continue to give attention thereto.

[209] With respect to measure *c)* of the foregoing recommendation, the country under review provides the following information:

[210] *“At present, training is being provided on a permanent basis to officials at all levels of government, through which specific knowledge is imparted that helps government agencies better to perform their obligations with respect to transparency and access to public information.”*<sup>77</sup>

[211] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *c)* of the foregoing recommendation and the need for it to continue to give attention thereto.

[212] With respect to measure *d)* of the foregoing recommendation, the country under review provides the following information:

[213] *“As regards evaluation to determine the factors that adversely affect enforcement of the Law on Transparency and Access to Public Information, this Law provides that the President of the Council of Ministers shall present an annual report to the Peruvian Congress on compliance with this rule. In keeping with this provision, the Office of the President of the Council of Ministers has in recent years been submitting this report in a timely manner, presenting information on all state entities and every level of government in the country. These reports provide statistics and analysis on access to information, identify problems, and propose solutions thereto.”*<sup>78</sup>

[214] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *d)* of the foregoing recommendation and the need for it to continue to give attention thereto.

[215] In its response,<sup>79</sup> the country under review does not provide information additional to that reviewed by the Committee in the report from the First Round in connection with measure *f)* of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.<sup>80</sup>

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76. Document submitted by the National Council for Public Ethics (PROETICA), p. 26, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

77. See response of Peru to the Questionnaire in the Third Round, p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

78. See response of Peru to the Questionnaire in the Third Round, p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

79. See response of Peru to the Questionnaire in the Third Round, p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

80. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “further to the foregoing, these aspects are emphasized to all officials who take part in the training on ethics, transparency, and access to information provided by the Civil Service Secretariat of the Office of the President of the Council of Ministers”.

[216] Due to the fact that the response of the Republic of Peru to the Questionnaire did not refer to measures *e)* and *g)* of the foregoing recommendation, the Committee reiterates the need for the country under review to give additional attention to its implementation.

[217] Furthermore, as regards implementation of measures *e)* and *g)* of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[218] - With respect to measure *e)*:

[219] *“While a National Archives System exists, there is no plan in place to systematize all of the historical information in the possession of the state that would facilitate access to public information”.*<sup>81</sup>

[220] - With respect to measure *g)*:

[221] *“In this respect, there is no congressional bill or initiative in the pipeline aimed at reconciling these measures and preventing destruction of essential information.”*<sup>82</sup>

#### Recommendation 4.3

*Supplement the existing consultation mechanisms and, when appropriate, establish procedures that will enable public consultations to be held prior to the drafting of public policies and the final adoption of legal provisions.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>83</sup>

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

[222] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>84</sup> In light of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.

[223] Furthermore, as regards implementation of the measures contained in the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

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81. Document submitted by the National Council for Public Ethics (PROETICA), p. 26, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

82. Document submitted by the National Council for Public Ethics (PROETICA), p. 27, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

83. See p. 35 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

84. See p. 35 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

[224] - With respect to measure a):

[225] *“In a small number of cases, the executive branch has made its legislative and policy proposals available to members of the public so that they might express their opinions in that regard. As a rule, this information is placed on the Internet portals of state agencies. However, in view of the reality of the country, where Internet access is still limited because of socioeconomic disparities, other information mechanisms are needed to keep the public informed about such proposals. Such was the case, for instance, with the National Anticorruption Plan. A law is also needed that would require the executive branch to publish legislative and policy proposals of this type on its web portals in order to ensure that citizen participation is not left entirely up to the authorities.”*<sup>85</sup>

[226] - With respect to measure b):

[227] *“There are no legal amendments in the pipeline to extend this mechanism or to create others for areas not already required to observe this practice. The only progress to report is the public hearings held in Congress on matters of public interest or law bills. However, this is not mandatory for all bills.”*<sup>86</sup>

#### Recommendation 4.4:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>87</sup>

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

[228] In its response,<sup>88</sup> the country under review does not provide information additional to that reviewed by the Committee in the report from the First Round in connection with measure a) of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.

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85. Document submitted by the National Council for Public Ethics (PROETICA), p. 27, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

86. Document submitted by the National Council for Public Ethics (PROETICA), p. 28, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

87. See p. 35 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

88. See response of Peru to the Questionnaire in the Third Round, p. 30, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

[229] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[230] *“The National Anticorruption Plan proposes the adoption of the following measures: -Promote the creation of citizen watchdog organizations and civil society surveillance committees that ensure the right to information and the obligation of the state to provide it: the rules and regulations will be issued in 2009 and access to public information would improve in 2010; - Efficient supervision, control, and punishment systems to enforce standards on access to public information: the system would be implemented in 2010; - Creation of citizen complaints and suggestions offices in all departmental capitals in the country, under agreements with the Office of the Attorney General, Office of the Comptroller General, and Ombudsman, where a simple and straightforward presentation and processing procedure will be established: the agreements would be signed in 2009 and the system implemented in 2010; - Promote the creation of community-based surveillance organizations in state entities: Promotion will begin in 2009;- Introduction of annual awards for institutions, officials, and civil society organizations, or individuals that play a prominent role in the fight against corruption and promotion of public ethics: It is proposed to hold the awards in 2009.”*<sup>89</sup>

[231] In its response, the country under review did not refer to measure b) of the foregoing recommendation. Accordingly, the Committee reiterates the need for the country under review to give additional attention to thereto.<sup>90</sup>

[232] In its response, the country under review did not refer to measure c) of the foregoing recommendation.<sup>91</sup> However, the civil society organization National Council for Public Ethics (PROETICA) presents the following objective information that leads the Committee to conclude that the measure has been satisfactorily considered:

[233] *“Article 375 of the Criminal Code, which recognized the crime of contempt in the Peruvian system of laws, was abrogated by Law 27975. Accordingly, this recommendation has been met.”*<sup>92</sup>

[234] The Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation, as regards the abrogation of Article 374 of the Criminal Code by Law 27975 of 2003, without entering into an in-depth analysis of its contents.

#### Recommendation 4.5:

*Strengthen and continue to implement mechanisms to encourage civil society and nongovernmental organizations to participate in the monitoring of public affairs.*

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89. Document submitted by the National Council for Public Ethics (PROETICA), p. 28, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

90. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “as to Recommendation b), in June the Peruvian state signed the Ibero-American Charter on Citizen Participation in Public Administration, which sets out a series of public policy implementation guidelines in this area. Therefore, in the framework of the implementation of this international instrument and of the national plan for compliance with the recommendations of MESICIC, Peru proposes to conduct a review of the mechanisms and procedures that the Peruvian state has in place with respect to citizen participation. We request that the paragraph be modified”.

91. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “the progress report of the VIII Meeting of the Committee of Experts of MESICIC expressly noted for the record the repeal of the so-called “contempt laws” by Law 27975, which recommends the amendment of the Criminal Code”.

92. Document submitted by the National Council for Public Ethics (PROETICA), p. 29, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>93</sup>

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

[235] With respect to measure a) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes the following measures as steps which contribute to progress in the implementation thereof:

[236] *“The Plan of Action for implementation of the recommendations of the MESICIC Committee of Experts provides for a specific study to be carried out in this regard, which remains pending. However, it should be mentioned that important discussions have been held on the scope of the existing laws, in particular of the Law on the Right of Citizen Control and Participation, and, indeed, recent amendments have been made to the law, such as those contained in Law 29313 adopted in January of this year.”*<sup>94 95</sup>

[237] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[238] *“The State has not performed an evaluation of said legal instruments, nor is that task expressly provided for in the National Anticorruption Plan.”*<sup>96</sup>

[239] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the recommendation, as regards the approval of Law 29313 of 2009, which introduces regulations on the right of the citizenry to remove from office elected mayors, councilors, regional presidents, regional vice presidents, regional councilors, and justices of the peace, without entering into an in-depth analysis of its contents. The Committee also notes the need for the state to continue to give attention to this recommendation.

[240] With respect to measure b) of the recommendation, the country under review provides the following information:

[241] *“As regards training activities for disseminating these mechanisms, in recent years, through partnerships between international cooperation agencies, public-sector entities, and civil society*

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93. See p. 36 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

94. See response of Peru to the Questionnaire in the Third Round, p. 31, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

95. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “it should also be noted that this measure is consistent with the measures for implementing the Ibero-American Charter on Citizen Participation in Public Administration, which the Peruvian state recently signed”.

96. Document submitted by the National Council for Public Ethics (PROETICA), p. 29, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

*organizations, various initiatives have been introduced aimed at strengthening civil society capacities to promote adequate exercise of the rights of participation and control.*

[242] *Thus, for instance, there is the Comun@s Project, which, with cooperation provided by USAID, is at work in 84 rural districts, providing training on aspects connected with transparency, access to information, and effective exercise of rights. Another important effort is the “Project on Governance and Transparency through improved effectiveness in quality and coverage of basic public services,” in which nongovernmental organizations such as PRISMA, ESAN University and the Consensus-Building Committee against Poverty are involved. A specific component of this project is training and capacity building public officials and civil society organizations in public administration for social development at the regional and local level. The project covers 121 provinces and 638 districts in 14 regions of the country and will continue over the next five years.*

[243] *Attention should also be drawn to the fact that in the framework of the Millennium Challenge Account Threshold Plan an ambitious cooperation program has been undertaken, one of the pillars of which is the fight against corruption. In this context the Ombudsman is promoting citizen watchdog efforts, one component of which is work with community-based organizations to improve the exercise of their rights in the area of public administration as a means to prevent acts of corruption.”<sup>97</sup>*

[244] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[245] *“The National Anticorruption Plan indicates that this goal must be met this year since community-based surveillance organizations in state entities will be promoted.”<sup>98</sup>*

[246] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *b)* of the foregoing recommendation and the need for it to continue to give attention thereto.

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

### **Recommendation 5.1:**

*Continue its efforts to exchange technical cooperation with other states parties regarding the best ways and methods for preventing, detecting, investigating and punishing acts of corruption.*

[247] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>99</sup> In light of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.<sup>100</sup>

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97. See response of Peru to the Questionnaire in the Third Round, p. 31, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

98. Document submitted by the National Council for Public Ethics (PROETICA), p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

99. See p. 36 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

100. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “the main efforts in this regard are linked to multilateral cooperation mechanisms. Thus, Peru is one of the promoter countries of the Pilot Program to Follow-up on Implementation of the UN Convention against Corruption, and its evaluation report has been approved. Furthermore, this year and the next Peru will Chair the Anticorruption Group of the

[248] Furthermore, as regards implementation of this recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[249] *“Peru will promote the creation in 2010 of the Inter-American Organization of Government Procurement Institutions, with legal personality under international law. Furthermore, in 2009, according to the National Anticorruption Plan, the state is required to report on recovered assets and promote the signing of international cooperation agreements against corruption.”*<sup>101</sup>

Recommendation 5.2:

*Design and implement a comprehensive dissemination and training program for the competent authorities and civil servants, to ensure that they have knowledge and can apply the mutual assistance provisions that exist for the investigation and prosecution of acts of corruption in the Convention and in other treaties entered into by the Republic of Peru. In addition, we recommend training the relevant officials to ensure the broadest mutual technical and legal cooperation for preventing, detecting, investigating, and punishing acts of corruption.*

[250] In its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round which it considers related to this recommendation.<sup>102</sup>

[251] Furthermore, as regards implementation of this recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[252] *“There is no training mechanism for public officials on mechanisms for mutual assistance in the fight against corruption, an area in which the state has a task pending. The National Anticorruption Plan proposes that there will be an anticorruption training program in place by 2010”.*<sup>103</sup>

[253] Therefore, the Committee notes the need for the Republic of Peru to give additional attention to implementation of the foregoing recommendation.

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

[254] The Committee did not formulate recommendations on this provision of the Convention to the country under review because it noted with satisfaction that the Republic of Peru complied with Article XVIII of the Convention by appointing the Ministry of Justice as the central authority for the purposes of the assistance and international cooperation provided for in the Convention.

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*Andean Community of Nations. Peru also takes part in the Anticorruption and Transparency Group of the Asia-Pacific Economic Cooperation forum (APEC) and has submitted a request to accede to the OECD Anti-Bribery Convention”.*

101. Document submitted by the National Council for Public Ethics (PROETICA), p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

102. See response of Peru to the Questionnaire in the Third Round, p. 31-32, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

103. Document submitted by the National Council for Public Ethics (PROETICA), p. 29, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

## 7. GENERAL RECOMMENDATIONS

### Recommendation 7.1:

*Design and implement, when appropriate, training programs for the civil servants responsible for enforcing the system, standards, measures and mechanisms referred to in this report, in order to ensure that they are adequately understood, managed and put into practice.*

[255] – With regard to Recommendation 7.1, the state under review offers the following information on training:

[256] “*[T]here is the Comun@s Project, which, with cooperation provided by USAID, is at work in 84 rural districts, providing training on aspects connected with transparency, access to information, and effective exercise of rights. Another important effort is the “Project on Governance and Transparency through improved effectiveness in quality and coverage of basic public services,” in which nongovernmental organizations such as PRISMA, ESAN University and the Consensus-Building Committee against Poverty are involved. A specific component of this project is training and capacity building public officials and civil society organizations in public administration for social development at the regional and local level. The project covers 121 provinces and 638 districts in 14 regions of the country and will continue over the next five years.*

[257] *Attention should also be drawn to the fact that in the framework of the Millennium Challenge Account Threshold Plan an ambitious cooperation program has been undertaken, one of the pillars of which is the fight against corruption. In this context the Ombudsman is promoting citizen watchdog efforts, one component of which is work with community-based organizations to improve the exercise of their rights in the area of public administration as a means to prevent acts of corruption.*”<sup>104</sup>

[258] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and the need for it to continue to give attention thereto.

### Recommendation 7.2:

*Select and develop procedures and indicators, as appropriate, for verifying the follow-up of the recommendations contained in this report, and report back to the Committee, through the Technical Secretariat, on the steps taken. For this purpose, Peru could consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee, together with information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.*

[259] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>105</sup> In light of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.

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104. See response of Peru to the Questionnaire in the Third Round, p. 31, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

105. See p. 37 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

[260] Furthermore, as regards implementation of this recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes, inter alia, the following:

[261] *“As yet, the Peruvian state has not directly implemented mechanisms that would enable a complete monitoring of compliance with the obligations under the Convention and help to notify the Committee of progress in this area. Nor has it done so on the basis of earlier reports.*

[262] *However, on March 17, 2009, the Office of the President of the Council of Ministers installed a High-Level Commission charged with proposing measures to ensure effective implementation of the National Anticorruption Plan, which contains measures that are consistent with several of the Committee’s recommendations (...)*

[263] *Furthermore, Ministerial Resolution 051-2009-PCM of January 31, 2009, approved the Guidelines for monthly reporting on progress in implementation of anticorruption measures and for resolution of complaints,” which will be another mechanism for follow-up on these matters.”<sup>106</sup>*

Recommendation 7.3:

*Develop, as appropriate and where they do not yet exist, procedures designed to analyze the mechanisms mentioned in this report, as well as the recommendations contained in this report.*

[264] The country under review did not refer in its response to the above-transcribed recommendation, which requires additional attention as indicated in the Report from the Second Round.<sup>107</sup> In light of the foregoing, the Committee reiterates the need for the Republic of Peru to give additional attention to its implementation.

[265] Furthermore, as regards implementation of this recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[266] *“As yet, the Peruvian state has not implemented mechanisms that would enable a complete monitoring of compliance with the obligations under the Convention and help to notify the Committee of progress in this area.*

[267] *However, as noted in the preceding point, on March 17, 2009, the Office of the President of the Council of Ministers installed a High-Level Commission charged with proposing measures to ensure effective implementation of the National Anticorruption Plan. By the same token, the approval of the above-cited Ministerial Resolution 051-2009-PCM should also be mentioned.”<sup>108 109</sup>*

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106. Document submitted by the National Council for Public Ethics (PROETICA), pp. 30-31, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

107. See p. 38 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

108. Document submitted by the National Council for Public Ethics (PROETICA), p. 31, available at:

[www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

109. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that *“the aforesaid High-Level Commission charged with proposing measures to ensure effective implementation of the National Anticorruption Plan, was set up as a ministerial body chaired by the President of the Council of Ministers with the task of monitoring progress in measures under the Plan. This Commission also created a working group composed of representatives from all ministries and civil society organizations who constantly carry out activities to report on progress in the Plan’s implementation”*.

## SECOND ROUND

[268] The Committee offers the following observations with respect to the implementation of the recommendations made to the Republic of Peru in the Report from the Second Round, based on the information available to it:

### 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 government hiring systems.*

##### Measures suggested by the Committee:

- a) *Enhance Law 28175 (Public Employment Framework Law), bearing in mind the legislative initiatives in place, in order to develop sufficiently the structure of the civil service career system and the provisions on public servant recruitment procedures based on the principles of merit and equality, with respect to stages, timeframes, competent organs, disclosure, and the possibility to challenge bidding conditions.*
- b) *Establish the Higher Council on Public Employment, the civil service policy-making body.*

[269] With respect to measure a) of the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measures as steps which contribute to progress in its implementation:

[270] *“As part of SERVIR [National Civil Service Authority], the Human Resources Management Policy Department (GPGRH, by the acronym in Spanish) is the body in charge of formulating proposed regulations for the Human Resources Administration System. At present it is working to identify and prepare a compilation of every civil service rule. This exercise will initially lead to the drafting of an Amended Consolidated Text of Civil Service Rules in order to organize and act as a guide for the principal aspects of public-sector employment (public sector entrance requirements, entrance mechanisms, public sector career characteristics, promotion, and termination, etc.). At a later stage it would allow us to introduce a proposed Civil Service Law which would govern public servant recruitment procedures based on the principles of merit and equality. In this way, SERVIR seeks to ensure the principle of equal opportunity in entry to the public sector.”<sup>110</sup>*

[271] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[272] *“As yet, this standard has not been implemented by means of a law that would permit entry to the public sector career system in a transparent manner, on an equal footing, and in keeping with the*

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110. See response of Peru to the Questionnaire in the Third Round, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

*merit principle. A Public Employment Bill was presented to Congress but its discussion is still pending (...).*"<sup>111</sup>

[273] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *a)* of the foregoing recommendation and the need for it to continue to give attention thereto.

[274] With respect to measure *b)* of the foregoing recommendation, in its response, the country under review presents information in respect of which the Committee highlights the following measure as a step that leads it to conclude that the recommendation has been satisfactorily considered:

[275] ▪ The creation by Legislative Decree 1023 of June 21, 2008, of the National Civil Service Authority, the governing body of the State Human Resources Administration System.<sup>112</sup>

[276] The Committee takes note of the satisfactory consideration by the country under review of measure *b)* of the foregoing recommendation, without entering into an in-depth analysis of the aforesaid law.

## **1.2. Systems for government procurement of goods and services**

### Recommendation 1.2.1:

*Strengthen government procurement through public competitive bidding and calls for bids.*

### Measures suggested by the Committee:

- a. Recognize to entities authority to terminate contracts unilaterally or to reserve the right to withhold their award, as appropriate, when they discover irregularities in procedures, such as overvaluation of the contract or collusion between participating companies. In such cases, the power of entities to reinstate the tender procedure for procurement of goods or services in accordance with the general rules should also be recognized or the selection and contracting with the provider that received the second-best appraisal in the procedure in question, to the extent that said provider complies with the requirements for contract execution set out in the bidding conditions.*
- b. Amend Article 148 of the Regulations on the Government Procurement Law (Supreme Decree 084-2004-PCM) in order to make it mandatory in exempt procurement and contracting procedures to invite two or more registered providers that meet the requirements contained in the bidding conditions, except in the case of contracts for strictly personal services or when there is only one provider in the national market, in the case of goods or services for which there is no available substitute.*
- c. Consider measures to reduce the variations that occur at present between amounts programmed in annual procurement and contracting plans and amounts actually executed by different entities.*

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111. Document submitted by the National Council for Public Ethics (PROETICA), p. 31, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

112. See response of Peru to the Questionnaire in the Third Round, p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

Evaluate and adjust the government procurement system in order to make competitive bidding the general rule for contract tendering procedures in the State system for procurement of goods and services, taking into account the diversity of needs and budgetary scope of State entities and agencies

[277] With respect to measure *a*) of the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measures as steps which contribute to progress in its implementation:

[278] *“As a general framework, it should be borne in mind that Peru recently amended its contracting standards by adopting a new State Contracting Law and its regulations (Legislative Decree 1017 and Executive Decree 184-2008-EF).*

[279] *Pursuant to Article 56 (second paragraph) of this new law, the head of the contracting entity shall declare a selection process void should they discover, prior to the signing of the contract, irregularities, such as overvaluation of the contract or collusion between participating companies, among others circumstances included in the grounds provided. Once the contract has been signed, the entity may only declare the process (and the contract) void if it is found that the contractor was ineligible to contract with the state or has violated the presumption of veracity, and also when the contract is signed without a selection procedure having been held or when an appeal is in process.*

[280] *Furthermore, paragraph 1 of the aforesaid Article 56 provides that the nullity decision shall indicate the stage to which the procedure should revert. In that connection, if the effect of the nullity is disqualification of the winning bidder, the contract shall be awarded to the next bidder in order of precedence. For its part, Article 44 of the new law provides that if a works contract is rescinded, the part that remains to be executed may, as advisable, be awarded to the bidder who came second in the tender procedure or to another entity, or be completed by the entity itself. When a goods or services contract is rescinded, the contract shall not be awarded to the supplier who came second; rather, a new tender shall be called of the type appropriate to the amount (whether total or partial) that remains to be executed.”<sup>113</sup>*

[281] The Committee takes note of the satisfactory consideration by the country under review of measure *a*) of the foregoing recommendation, without entering into an in-depth analysis of the aforesaid standards.

[282] With respect to measure *b*) of the recommendation, the country under review provides the following information:

[283] *In relation to the second measures suggested, attention should be drawn to Article 135 (second paragraph) of the new Regulations (Article 148 of the previous Regulations), whereby an exoneration refers only to the omission of the tender procedure (second phase of the contracting process), and therefore, any preparatory acts and contracts in consequence thereof (first and third phases, respectively) must satisfy the respective requirements, conditions, formalities, demands, and guarantees that would have applied had the relevant tender procedure been carried out. In that regard, Article 12 of the new Regulations provides that the study or assessment of market conditions that is a mandatory part of the preparatory acts must be based on at least two sources. Therefore, it should be understood that the*

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113. See response of Peru to the Questionnaire in the Third Round, p. 34-35, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

*invitation to which Article 135 (formerly 148) refers will be made to the supplier that represents the best alternative.*"<sup>114</sup>

[284] The Committee takes note of the satisfactory consideration by the country under review of measure *b*) of the foregoing recommendation, without entering into an in-depth analysis of the aforesaid standards.

[285] With respect to measure *c*) of the recommendation, the country under review provides the following information:

[286] *"In order to reduce variations between the values programmed in the Annual Contracting Plans (PAC, by the acronym in Spanish) and those actually executed, the new standards introduce a number of provisions the purpose in mind:*

[287] • *Reduction of the time-limit between the approval and publication of the PAC from 30 to 15 business days after the institutional budget is approved (Article 8 of the new Regulations).*

[288] • *Obligation to include in the PAC the "forecast" date of the call for bids (Article 7 of the new Regulations), rather than the "probable" date of the call for bids (Article 23 of the previous Regulations).*

[289] • *Obligation for the head of the entity to assess the progress of the PAC every six months and adopt appropriate corrective measures to meet the institution's goals and objectives.*"<sup>115</sup>

[290] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *c*) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that it will be necessary to analyze the results of the new standards to determine if they have helped to reduce the variations between amounts programmed in annual procurement and contracting plans and amounts actually executed by different entities.

[291] With respect to measure *d*) of the foregoing recommendation, the country under review provides the following information:

[292] *"As to the suggested measure -d)-, it should be borne in mind that, notwithstanding the names given to the various types of tender procedures recognized by Peruvian government contracting standards, under Article 52 of the new Regulations, all tender procedures, without exception, shall be public and open, and allow the participation of any provider (whether Peruvian or foreign) who, as a result of having taking cognizance through the SEACE of the rules of a tender procedure, is interested in submitting their bid therein. This was previously not the case with selective direct contracts and small contracts, for which there was a somewhat restrictive system in place, given that they were only open to providers who had been invited and also any SMEs that wished to take part in response to an indirect invitation made to them as a result of the notification of PROMPYME (Small and Micro Enterprise Promotion Agency) of the call for bids.*

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114. See response of Peru to the Questionnaire in the Third Round, p. 34-35, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

115. See response of Peru to the Questionnaire in the Third Round, p. 35, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

[293] *Furthermore, bearing in mind that many entities in Peru—in particular very small district municipalities and public charities—only tender small contracts, it is not possible to impose a cap on tender procedures of this type of 15% of the budget of each executing unit.*

[294] *In any event, the only exceptions to the aforesaid general rule are the exemption scenarios expressly recognized in Article 20 of the new Law, for which the statutory procedure must be observed, including the issuance of a signed decision by the head of the entity, which power is inalienable.”<sup>116</sup>*

[295] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[296] *“Legislative Decree 1017, which approved the State Contracting Law, states that there are two main contracting procedures: public competitive bidding, for goods, supplies, and works contracts; and public calls for bids, for services contracts. The exceptions to this rule are the direct contract, for contracting activities of individual entities within the margin specified by the budget; and the small contracts procedure, for contracts where the amount is less than one-tenth of the minimum limit set in the budget for cases in which public competitive bidding or a public call for bids would be appropriate. Small contracts will be conducted electronically and, gradually, the other types of contracting procedures will also be done in this way”.*<sup>117</sup>

[297] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *d)* of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that it will be necessary to analyze the results of the new standards to determine if public competitive bidding does indeed constitute the general rule for contract tendering procedures in the State system for procurement of goods and services.

#### Recommendation 1.2.2:

*Strengthen oversight mechanisms in the government procurement system.*

#### Measure suggested by the Committee:

- *Review the sanctions provided in Article 294 of the Regulations on the Government Procurement Law (Supreme Decree 084-2004-PCM), in order to establish an appropriately long disqualification period for providers, participants, bidders, or contractors that incur the penalties set forth therein, as well as to review the other sanctions established in Article 294, in order that they be commensurate with the seriousness of the violation.*

[298] With respect to the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measures as steps which contribute to progress in its implementation:

[299] *“To begin with, the provisions concerning the grounds for imposition of penalties on providers, bidders, and contractors contained in Article 294 of the previous Regulations are recognized in Article 51 of the new law, and therefore now have the rank of law. Furthermore, in order to set temporary disqualification periods commensurate with the seriousness of offenses committed, the minimum penalty*

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116. See response of Peru to the Questionnaire in the Third Round, p. 35, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

117. Document submitted by the National Council for Public Ethics (PROETICA), p. 33, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

*to be imposed has been increased from three to six months, while the maximum penalty has risen from two to three years.*"<sup>118</sup>

[300] The Committee takes note of the satisfactory consideration by the country under review of the foregoing recommendation, without entering into an in-depth analysis of the aforesaid law.

Recommendation 1.2.3:

*Widen the use of electronic media and information systems for government procurement.*

Measures suggested by the Committee:

- a. *Establish the obligation requiring the public disclosure, whether electronically or through other communication media, of decisions authorizing adjustments of contracts.*
- b. *Follow up on the expansion of the SEACE aimed at bringing all entities within the scope of the Government Procurement Law.*

[301] With respect to measure a) of the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measures as steps which contribute to progress in its implementation:

[302] *"In order to create the obligation requiring public disclosure of decisions authorizing adjustments of contracts, Article 45 requires all entities, on their liability, to register in the SEACE all decisions adopted in each tender procedure that they hold, in addition to the contracts signed and their execution. For its part, Article 287 of the new Regulations provides that the details to be contained in the information required to be reported through the SEACE shall be determined in a directive issued by the State Contracting Supervising Agency (OSCE, by the acronym in Spanish) (formerly CONSUCODE). At this writing, the above-mentioned directive was under preparation. However, it was ascertained that the information required to be reported includes that which concerns adjustments made to the originally contracted amounts, whether on account of additional services, reductions, penalties, or partial cancellation of the contract.*

[303] *At the same time, Article 287, paragraph 2 of the new Regulations provides that the obligation to disclose information via the SEACE also covers contracting by entities under special regimes or national and international agreements.*"<sup>119</sup>

[304] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the State Contracting Supervising Agency (OSCE) has yet to issue the directive referred to in Article 287 of the Regulations of the new State Contracting Law.

[305] With respect to measure b) of the recommendation, the country under review provides the following information:

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118. See response of Peru to the Questionnaire in the Third Round, p. 36, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

119. See response of Peru to the Questionnaire in the Third Round, p. 36, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

[306] “As regards the expansion of the SEACE, 2,670 of the 2,746 (97%) entities in Peru used the SEACE in 2008. The remaining 76 entities comprise very small district municipalities and public charities whose procurements are very small and lie outside the scope of government contracting standards. It should also be noted that in 2009 no entity has availed itself of the possibility of exempting themselves from using the SEACE provided by the Second Transitory Provision of the law still in force (Sixth Transitory Supplementary Provision of the New Regulations).”<sup>120</sup>

[307] The Committee takes note of the satisfactory consideration by the country under review of measure *b*) of the foregoing recommendation, bearing in mind that the information available in the Report from the Second Round indicates that on that occasion, the Electronic Government Procurement System (SEACE, by the acronym in Spanish) covered 2,242 (82.28%) of the total number of entities that comprise the Peruvian public sector.<sup>121</sup>

Recommendation 1.2.4:

*Strengthen the system for public works contracting contained in Supreme Decree 083-2004-PCM and its Regulations.*

Measures suggested by the Committee:

- a. Consider implementation of individual systems of control for each public works contract, in particular in any which, by reason of the size of the project, would allow civic oversight or citizen control or demand regular reporting on contract progress, notwithstanding any internal and external institutional oversight systems.*
- b. Study the possibility of granting the general population the power now enjoyed by bidders to present inquiries and comments on tender rules in accordance with the terms of Articles 27 and 28 of the Law.*
- c. Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereof.*

[308] With respect to measure *a*) of the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measures as steps which contribute to progress in its implementation:

[309] “Although the senior management of the OSCE has made provision for the implementation of civic watchdog bodies as an additional control mechanism for state contracting activities, the existence of new standards makes it necessary to initiate an intensive training program on their application, in which the participation will be promoted of members of the public and representatives of civil society organizations who wish, or who are required, to intervene as observers in tender procedures for the execution of large works projects. In other words, although the measure has not yet been implemented, the new supervising agency for government contracting in Peru plans both to set up civic watchdog bodies in each state institution, and to invite civil society organizations and independent agencies to participate as observers in large tenders.

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120. See response of Peru to the Questionnaire in the Third Round, p. 37, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

121. See p. 11 of this report, available at [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_per.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_per.pdf)

[310] *The foregoing notwithstanding, in keeping with the functions assigned to the new agency (Article 58 of the new Law: supervise and inspect, selectively or at random, any contracting procedures carried out under this law and its regulations, and suspend contracting procedures and inform the Office of the Comptroller General when it observes breaches of the standards, provided there is reasonable evidence, inter alia, of financial loss to the state or that an offense has been committed), a new area (the Supervision and Inspection Department) will be created within the structure of the OSCE (Regulations on Organization and Functions adopted by Executive Decree 006-2009-EF, published on January 14, 2009 in the Official Gazette, El Peruano) to exercise the increased oversight powers that this agency will have.”<sup>122</sup>*

[311] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation and the need for it to continue to give attention thereto.

[312] With respect to measure b) of the recommendation, the country under review provides the following information:

[313] *“As regards the possibility of granting members of the public the right enjoyed by the participants in a tender procedure of submitting queries and observations on the tender terms and conditions, the committee charged with drafting the new law and its regulations examined the issue and, taking into consideration cultural aspects and recent negative experiences, concluded that it was not advisable to allow that possibility, particularly in a context where the aim is to streamline government contracting by eliminating any factor that might needlessly obstruct or delay a procedure. Therefore, the right to submit queries and observations on tender terms and conditions continues to be restricted to the participants in the tender procedure; that is, those who, having become interested after reviewing the terms and conditions accompanying the tender announcement published in the SEACE, have registered to take part. Be that as it may, a study of making that possibility available to representative associations in the private sector has been left for a later juncture.”<sup>123</sup>*

[314] The Committee notes the need for that country under review to give additional attention to implementation of measure b) of the foregoing recommendation.

[315] With respect to measure c) of the recommendation, the country under review provides the following information:

[316] *“As to publication of preliminary bidding terms and conditions, Article 37 of the new Regulations provides that the terms and conditions approved for a tender procedure may be republished in the SEACE and on the Web portal of the convening entity, but clarifies that said possibility does not represent an additional stage, and therefore any query or observation on the contents of the terms and conditions may only be submitted at the appropriate stage of the process. The purpose of the measure is to give more time to interested parties to analyze the terms and conditions and so present queries or observations within the time limits established in the schedule published in the tender announcement”.*<sup>124</sup>

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122. See response of Peru to the Questionnaire in the Third Round, p. 37, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

123. See response of Peru to the Questionnaire in the Third Round, p. 38, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

124. See response of Peru to the Questionnaire in the Third Round, p. 38, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

[317] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure *c)* of the foregoing recommendation and the need for it to continue to give attention thereto, bearing in mind that the purpose of publishing preliminary bidding terms and conditions is to enable interested parties to acquaint themselves with them and submit observations thereon before the terms and conditions of the tender are published.

Recommendation 1.2.5:

*Continue to conduct periodic comprehensive evaluations in order to evaluate the use and effectiveness of the government procurement system and, based on the findings, identify and consider the adoption of specific measures through which to ensure the transparency, openness, equity, and efficiency of the system.*

[318] With respect to the foregoing recommendation, the country under review provides the following information:

[319] “In 2008, with the support of the World Bank and the Inter-American Development Bank, the Peruvian government conducted the first assessment of the Peruvian state contracting system, using the measurement instruments designed by the Organization for Economic Cooperation and Development (OECD). *The assessment involved not only national and international experts, but also, significantly, officials from procuring entities and the agencies that comprise the Peruvian government contracting system, as well as from institutions representing civil society. The results of the assessment will shortly be published on the OSCE website following their official presentation to the relevant authorities. It is proposed that, in future, this assessment should be carried out periodically.*

[320] *Furthermore, since 2007, CONSUCODE has been preparing quarterly executive reports on the performance of the state contracting system, which are available for consultation on the CONSUCODE website (<http://www.consucode.gob.pe/opcion.asp?ids=11&ido=68>). These reports contain, inter alia, data on the actual execution of Annual Contracting Plans; demand by type of tender procedure; PETROPERU purchases; the various forms of tender (reverse auction, corporate procurement, and master pricing agreement); the main state suppliers; observations and challenges, and approved exemptions.*

[321] *It should also be mentioned that it is proposed, within the organizational structure of the OSCE, to strengthen an economic analysis area that would perform the function of proposing strategies and conducting studies aimed at ensuring the efficient use of public funds and reducing costs, as provided in Article 58( ñ) of the new Law.”*<sup>125</sup>

[322] The Committee takes note of the satisfactory consideration by the country under review of the above-transcribed recommendation, which, by its nature, requires a continuation of efforts.

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125 See response of Peru to the Questionnaire in the Third Round, p. 38-39, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm)

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

### Recommendation 2.1:

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

### Measure suggested by the Committee:

- *Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, which could include, among others, the following aspects:*
  - a. *Coverage for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation;*
  - b. *Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers;*
  - c. *Provisions to punish noncompliance with protection rules and/or obligations;*
  - d. *A simplified whistleblower protection application process;*
  - e. *Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption;*
  - f. *Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection;*
  - g. *Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens;*
  - h. *Mechanisms to facilitate international cooperation in the above areas, when appropriate, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance;*
  - i. *The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.*

[323] With respect to the foregoing recommendation, in its response, the country under review presents information in regard to which the Committee notes the following measure as a step which contributes to progress in its implementation:

[324] ▪ The preparation and unveiling in December 2008 of the National Anticorruption Plan, which at points 1.1.2 and 3.4.1 contains specific measures on protection of individuals who report acts of corruption.<sup>126 127</sup>

[325] Furthermore, as regards implementation of this measure of the recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[326] “*The National Anticorruption Plan provides for the adoption by 2010 of a law that protects persons who report acts of corruption. At present no such law exists. A congressional bill (Bill 0083/2006-CGR – Whistleblower Protection Law) has been introduced that would provide protection for persons who report acts of corruption. At present this bill is pending discussion. In addition, the National Anticorruption Plan provides for the implementation by 2009 of a protection program for collaborators, witnesses, and expert witnesses.*”<sup>128</sup>

[327] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation and the need for it to continue to give attention thereto, for which purpose it hopes that the country can overcome the implementation difficulties that it has mentioned in its response.<sup>129</sup> The Committee also notes the information provided on the internal agencies that have participated in the process of implementing said recommendation.<sup>130</sup>

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

#### Recommendation a):

*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.*

[328] The country under review did not refer in its response to the above-transcribed recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Peru to give additional attention to its implementation.

#### Recommendation b):

*Amend and/or expand Article 425 of the Criminal Code, which concerns the definition of government officials and public servants, in such a way as to include those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, even if they have not taken up the position or office.*

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126. See response of Peru to the Questionnaire in the Third Round, pp. 26 and 40, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_per_sp.htm).

127. The state under review reported, in its comments on the draft preliminary report on Peru for the third round of review, that “*it should also be mentioned that in his presentation to the Congress on August 10, the President of the Council of Ministers expressly called for the prompt passage of the Whistleblower Protection Bill currently before the Peruvian Parliament*”.

128. Document submitted by the National Council for Public Ethics (PROETICA), p. 36, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

129. Response of the Republic of Peru to the Questionnaire in the Third Round, p. 27. “*The main difficulties found have arisen in the coordinations with the Congress, which have led to a delay in the passage of the Whistleblower Protection Law.*”

130. Response of the Republic of Peru to the Questionnaire in the Third Round, p. 27. They are: The Office of the President of the Council of Ministers and the Office of the Comptroller General.

[329] The country under review did not refer in its response to the above-transcribed recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Peru to give additional attention to its implementation.

[330] Furthermore, as regards implementation of the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[331] *“As yet, this law has not been amended or strengthened. Accordingly this recommendation has not been met”*.<sup>131</sup>

Recommendation c):

*Consider publication, on the web site of the Supreme Court of Justice, of the contents of the judgments it issues as the court of last resort for criminal matters.*

[332] The country under review did not refer in its response to the above-transcribed recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Peru to give additional attention to its implementation.

[333] Furthermore, as regards implementation of the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[334] *“This recommendation has only been partially implemented for two reasons. First, only certain judgments adopted by the Supreme Court of Justice and by the anticorruption subsystem have been published. The second reason is that they are difficult to locate because, save for a handful of exceptions, they can only be identified by their case number.”*<sup>132</sup>

#### **4. GENERAL RECOMMENDATIONS**

Recommendation 4.1:

*Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that the said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.*

[335] The country under review did not refer in its response to the above-transcribed recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Peru to give additional attention to its implementation.

[336] Furthermore, as regards implementation of the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[337] *“As mentioned throughout this report, one of the tasks pending in the area of the fight against corruption is training for public servants on compliance with the provisions contained in the Convention and in Peru’s anticorruption laws. According to the Office of the President of the Council of Ministers,*

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131. Document submitted by the National Council for Public Ethics (PROETICA), p. 37, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

132. Document submitted by the National Council for Public Ethics (PROETICA), p. 37, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

*in keeping with the National Anticorruption Plan there will be a full training program on these matters in place for public servants by 2010.*<sup>133</sup>

Recommendation 4.2:

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

[338] The country under review did not refer in its response to the above-transcribed recommendation. In light of the foregoing, the Committee takes note of the need for the Republic of Peru to give additional attention to its implementation.

[339] Furthermore, as regards implementation of the foregoing recommendation, the civil society organization National Council for Public Ethics (PROETICA) notes the following:

[340] *“As yet, the Peruvian state has not implemented mechanisms that would enable a complete monitoring of compliance with the obligations under the Convention and help to notify the Committee of progress in this area.*

[341] *On this point it should also be noted that on March 17, 2009, the Office of the President of the Council of Ministers installed a High-Level Commission charged with proposing measures to ensure effective implementation of the National Anticorruption Plan. By the same token, the approval of the above-cited Ministerial Resolution 051-2009-PCM should also be mentioned.*”<sup>134</sup>

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133. Document submitted by the National Council for Public Ethics (PROETICA), p. 37, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf)

134. Document submitted by the National Council for Public Ethics (PROETICA), p. 38, available at: [www.oas.org/juridico/spanish/mesicic3\\_per\\_inf\\_sc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic3_per_inf_sc_sp.pdf).

## ENDNOTES

<sup>i</sup> Furthermore, Article 2 (10) of the Constitution of Peru provides, “*Everyone has the right: (...) to have the confidentiality and inviolability of their private communications and documents respected.*

*Communications, telecommunications, or their instruments, may only be opened, seized, intercepted, or tapped by order of a judge, with observance of all the statutory guarantees. All matters not related to the act that gave rise to their examination shall be kept secret.*

*Any private documents obtained in breach of this rule shall carry no legal weight or effect.*

*All books of account, payment vouchers, and accounting and administrative documents are subject to inspection or oversight by the competent authority as provided by law. Any measures adopted in that regard shall not include their removal or seizure except by judicial order*

<sup>ii</sup> Pursuant to Article 1 of Accounting Standards Board resolution 013-98-EF/93.01, published on July 23, 1998, the generally accepted accounting principles to which the text of Article 223 of the Corporations Law refers essentially comprise the International Accounting Standards (IAS), as officially recognized by resolutions of the Accounting Standards Board, and the standards introduced by oversight and control agencies for the entities in their area, provided that they are compatible with the theoretical framework on which the International Accounting Standards are based.

The International Accounting Standards (IAS) are a set of guidelines developed by the International Accounting Standards 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)). A list of the IAS officially recognized and in force in Peru is available at: <http://cpn.mef.gob.pe/cpn/Libro3/nics/nics.htm>

<sup>iii</sup> Among the minor infringements is that of “*failure to provide, tardy provision, incomplete provision, or provision in a manner incompatible with the rules and regulations, to CONASEV, the stock exchange, the commodities exchange, the entity in charge of the centralized trading mechanism, or any other entity or person in the securities or commodities market, of audited consolidated or individual financial information, consolidated or individual interim financial statements, additional audit information, significant facts, annual reports, and in general any other documents or information which they are required to furnish under the regulations or on request by CONASEV*” (Annex I, 3.1).

<sup>iv</sup> Serious infringements include “*refusal or delay in the delivery of books, documents, and other information requested by CONASEV in the course of inspections or investigations; failure to grant the facilities that CONASEV requests in the implementation of any oversight and control measures that it orders; and presentation of documentation with the intention of delaying the procedure or otherwise obstructing oversight and control measures*” (Annex I, 2(3)); and “*presentation to CONASEV, the Stock Exchange, the Commodities Exchange, the entity in charge of the centralized trading mechanism, investors, and, in general, any other participants in the securities or commodities market, of financial information prepared in disregard of the International Accounting Standards in Peru, technical regulations issued by the body of professional accountants in the country, accounting standards introduced by oversight and control organs, and the standards contained in the Financial Reporting Regulations*” (Annex I, 2(13)).

<sup>v</sup> Very serious infringements include “*presentation to CONASEV, the Stock Exchange, the Commodities Exchange, the entity in charge of the centralized trading mechanism, investors, and, in general, any other person in the securities or commodities market, of inaccurate, false or misleading information; or disclosure of that information in the market. This includes presentation or dissemination of documents whose translation does not match the correct meaning as expressed in the original*” (Annex I, 1(4)).

<sup>vi</sup> Article 46 of the Code of Professional Ethics of the College of Accountants of Peru refers to the following acts: a) concealment of a significant event in the knowledge that it is necessary to provide their express opinion, in order to induce erroneous conclusions; b) failure to express any significant fact of which they have knowledge in the financial statements and/or in their reports; c) commission of negligence in issuing the relevant report on their work, without having observed the accounting or auditing standards, techniques, and procedures required in the circumstances, in order to substantiate their professional work on the matter entrusted to them, or expression of their opinion when the constraints on the scope of their work are such that

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they hinder them from issuing such an opinion; d) failure to disclose, despite their knowledge thereof, any material deviation from the principles, standards, and procedures that govern the exercise of the profession, or any significant omission applicable in the circumstances; e) inducement to falsification of financial statements or any other information in their area of responsibility.

<sup>vii</sup> - Article 425 of the Criminal Code of Peru, as amended by Law 26713 of 1996 provides, “*The term ‘government official’ or ‘public servant’ applies to: 1. Anyone in the civil service career. 2. Anyone in policy-making positions or positions of trust, even if those positions are elected by popular vote. 3. Any person who, regardless of the labor regime under which they work, has employment or contractual ties of any kind with State entities or agencies by virtue of which they perform functions in said entities or agencies. 4. Receivers and depositaries of assets attached or deposited by competent authorities, even though they might belong to private individuals. 5. Members of the Armed Forces and the National Police. 6. Any other persons mentioned in the Constitutions and the law.*”

<sup>viii</sup> Article 523 of the New Code of Criminal Procedure provides:

“1. *The provisional arrest of an individual sought by foreign authorities shall be admissible when:*  
a) *It has been formally requested by the central authority of the country concerned;* b) *The individual seeks to enter the country while pursued by the authorities of a neighboring country;* c) *The whereabouts of the individual have been fully ascertained within the national territory and they are urgently wanted through the International Criminal Police Organization (ICPO) (...)* 4. *The judge shall issue a provisional arrest order provided that the putative criminal offense is also a criminal offense in Peru and carries a penalty, in any of its extremes, of at least one year of imprisonment. If more than one criminal offense is invoked, it shall suffice for one of them to meet that requirement for arrest to be admissible with respect to the other offenses. The state prosecutor shall be notified of the decision, which shall also be communicated to the Office of the Attorney General and the local Interpol office. (...)* 6. *The provisional arrest having been ordered, the Preparatory Investigation Judge shall hold a hearing of the arrested individual within 24 hours and shall appoint a defense attorney for them unless they appoint one of their own choosing. The judge shall lift the arrest order if at first they find that the conditions indicated in paragraph 4) of this article are not met and issue instead a summons together with a travel ban. The arrest shall cease should it be found that the arrested man is not the wanted individual, or should the 30-day period provided for formal presentation of the extradition petition expire.* 7. *When the arrested individual is released because the extradition request was not submitted in time, they may be newly detained for the same offence provided that a formal extradition request is received. (...)* 9. *The arrested individual may obtain provisional liberty if the legal time limits contained in the treaty or the law on which the extradition request is founded expire, or if the extradited individual satisfies the procedural requirements for this measure. In the latter case, a travel ban shall be imposed and the individual’s passport withheld, without prejudice to any other control measures that the judge may decide to adopt at their discretion. The procedure provided for the cessation of pre-trial detention shall be pursued...”*

<sup>ix</sup> Response of the Republic of Peru to the Questionnaire in the Third Round, pp. 22-23: “*We should remember that it is only a few weeks since SERVIR began its operations and that the functions of the Authority’s various line units are still in the process of implementation.*

*Furthermore, as regards human resources, the State lacks systematized information from which to formulate personnel and human capital development policies, determine the basic competencies and needs for each position in the public administration, or even identify what benefits or incomes public servants receive.*

*Consequently, the difficulties encountered by the GPGRH in implementing the aforementioned measure have to do with the fact that the National Civil Service Authority (SERVIR) recently initiated its functions (December 2008); the plethora of disparate rules relating to the civil service, and the need to follow all the procedures for introducing a bill in Congress.”*

<sup>x</sup> Response of the Republic of Peru to the Questionnaire in the Third Round, p. 25. “*It is only a few weeks since SERVIR began its operations and the functions of the Authority’s various line units are still in the process of implementation.*

*Furthermore, as regards human resources, the State lacks systematized information from which to formulate personnel and human capital development policies, determine the basic competencies and needs for each position in the public administration, or even identify what benefits or incomes public servants receive.*

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*Consequently, the difficulties encountered by the GPGRH in implementing the aforementioned measure have to do with the fact that the National Civil Service Authority (SERVIR) recently initiated its functions (November 2008); the plethora of disparate rules relating to the civil service, and the existence of different government hiring systems, among others.”*