

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

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

**INTRODUCTION**

**1. Contents of the report**

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

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Republic of Paraguay 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\\_par.pdf](http://www.oas.org/juridico/english/mec_rep_par.pdf) and [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_pry.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_pry.pdf)

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

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

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

**I. SUMMARY OF THE INFORMATION RECEIVED**

**1. Response of the Republic of Paraguay**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Paraguay and in particular from the Council for Promotion of the National Probity System (CISNI in Spanish), 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 Paraguay sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_pry_sp.htm)

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<sup>1</sup> 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.

[6] For its review, the Committee took into account the information provided by the Republic of Paraguay up to April 2, 2009, and that furnished and requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

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

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

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

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

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

[8] The Republic of Paraguay 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] – Article 8 of Law 125/91<sup>4</sup> provides that the calculation of net income shall be determined by deducting from the taxed gross income such expenditures as may be necessary to obtain said income and maintain the production source, provided, when the expenditure does not constitute taxed revenue for the beneficiary, that said expenditures represent actual outlay, are properly documented, and are at market prices. This provision further establishes that the items listed in its paragraphs a) to o), inclusive, may also be deducted.

[10] Article 9 of Law 2421/04, which amends Law 125/91<sup>5</sup>, contains a restrictive list of items that may not be deducted for net income calculation purposes.

[11] Article 3 of resolution 1346/05<sup>6</sup> of the Tax Authority [*Subsecretaría de Estado de Tributación*]<sup>7</sup> provides that for the purposes of Article 8 (ñ) of Law 125/91 (updated text),<sup>8</sup> total deduction of

<sup>2</sup> These documents were received electronically on April 2, 2009, and are available at:

[http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_pry_sp.htm)

<sup>3</sup> 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.

<sup>4</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley125.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley125.pdf)

<sup>5</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley2421.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley2421.pdf)

<sup>6</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_res1346.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_res1346.pdf)

<sup>7</sup> This decree governs the imposition of income tax on commercial, industrial, or service activities, as provided in Book I, Title I, Chapter I of Law 125/91, as amended by Article 3 of Law 2421/2004 (Administrative Reorganization and Fiscal Adjustment Law), the implementing regulations for which were adopted by Decree 6359 of September 13, 2005.

<sup>8</sup> Article 8 (Net Income) of Law 125/91, provides in this respect, “(...) *Also deductible are: (...) ñ Professional fees and other remunerations received for individual services not liable to the instant tax, subject to the limits and conditions set down in the regulations, in accordance with the activity concerned.*” Article 43 of the Appendix to Decree 6359/2005

expenditures for services of an individual nature is limited to 2.5% of the taxed net income for the year under assessment, while paragraphs b) and c) of this provision, respectively, provide that the activities of customhouse brokers and auctioneers, as well as the activities of commission agents, brokerage, and intermediation in general, shall be considered services of an individual nature and, therefore, deductible.

[12] – As for tax control, verification, audits, and investigation, Article 189 of Law 125/91 provides that the Tax Administration shall have the broadest possible powers of administration and control.

[13] In that regard, Article 27 of Law 3421/04 invests the Tax Authority, which reports to the Ministry of Finance, with the power of oversight and control of compliance by all taxpayers, without exception, with all the tax obligations set forth in Law 125/91, subject to the limits contained in Article 189 (5) thereof.<sup>9</sup> In summary administrative proceedings opened to investigate tax violations the Taxation Department may be empowered, by means of a reasoned decision in that regard, to investigate third-party non-taxpayers.

[14] As regards the way in which taxpayer oversight is to be carried out, Article 31 of Law 2421/04 provides that it should be as follows: a) Comprehensive inspection, by means of random selection of taxpayers in the same category based on objective criteria adopted by the Administration, which shall be carried out as public acts with full disclosure; and, b) specific inspections ordered by the Tax Authority of taxpayers or persons responsible suspected of committing irregularities detected by internal audits, crosschecking, or other information review systems or mechanisms used by the Administration, based on objective facts. If irregularities are confirmed in the course of these inspections, the administration may order a comprehensive audit of those taxpayers or persons responsible.

[15] – With respect to tax offenses, Article 170 of Law 125/91 recognizes delinquency, contravention, non-payment, and fraud as tax violations. Thus, Article 172 contains the definition of fraud, while Articles 173 and 174, respectively, describe the circumstances in which it is presumed that the attempt has been made to defraud the Treasury and in which fraud is presumed to have been committed. Under Article 175, these types of conduct are punishable with a fine of between one and three times the amount of tax so defrauded or so attempted to be defrauded, and the severity of the penalty shall be determined in a reasoned decision taking into account the circumstances described in sections 1 to 9 of this article.

[16] – Decree 4025 of November 8, 2004, authorizes the Ministry of Finance to organize the operating structure of the Tax Authority [*Subsecretaría de Estado de Tributación*], and Ministry of Finance resolution 60 of February 22, 2006, creates the Management Control and Tax Investigation Offices as well as the Department of Planning.

[17] – The Criminal Code, Article 261 of which recognizes the offense of tax evasion and provides for a prison sentence or a fine with respect to anyone who: submits to collection offices or other

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provides, “*Professional fees and other remunerations received for individual services liable to Individual Services Income Tax shall be deductible without limit. In all other cases, professional fees shall be deductible up to a limit of 2.5% of the taxed net income for the fiscal year under assessment.*”

<sup>9</sup> Article 189 (5) of Law 125/91 empowers the Tax Administration to request information from third parties in connection with any acts to which they might have contributed or of which they should have been aware in the pursuit of their activities, and to produce any tax-related documents pertaining to such situations. However, disclosures may not be demanded from anyone with a legally recognized prerogative to invoke professional confidentiality, including in the banking sector; ministers of worship, in respect of matters pertaining to the exercise of their ministry; and anyone for whom a disclosure would constitute a violation of the confidentiality of written correspondence or of communications in general.

administrative entities, false or incomplete information on relevant facts for the determination of tax; fails to fulfill their obligation to supply collection entities with information about such facts; or fails in their duty to use tax stamps and, by so doing, evades tax or obtains favorable tax treatment for themselves or for another. This article also punishes attempted tax evasion.

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

[18] 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 that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[19] Notwithstanding, the Committee considers it appropriate to make a number of observations about certain provisions that the country under review could consider supplementing and adapting.

[20] – First, the Committee sees that Article 3 of resolution 1346/05, which governs the imposition of income tax on commercial, industrial, or service activities, as provided in Law 125/91, indicates that, for the purposes of Article 8 (ñ) of this Law,<sup>10</sup> the activities of customhouse brokers and auctioneers, as well as the activities of commission agents, brokerage, and intermediation in general, shall be considered services of an individual nature and, therefore, deductible.

[21] In this regard, the Committee finds that although these activities do have regulations, they could potentially give rise to mediation of expenditures made in contravention of the anticorruption laws under the guise of the activities described in the preceding paragraph. Accordingly, the Committee believes that it would be useful for the Republic of Paraguay to consider taking the measures that it deems appropriate to strengthen the monitoring and control of the activities of customhouse brokers, auctioneers, and commission agents, as well as brokerage and intermediation activities in general, in order to ensure that they cannot be employed as means to disguise payments for corruption. The Committee will formulate a recommendation in this regard (see recommendation 1.4(a) in Chapter II of this report).

[22] – Second, as regards detecting procurement of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee acknowledges the efforts of the country under review to curb tax evasion and tax fraud, offer legal security to taxpayers in complying with their formal obligations to the State, and ensure greater precision in control, detection, and punishment of tax evasion. The Committee also deems it advisable for the country under review to consider adopting measures to make it easier for authorities that process applications for favorable tax treatment to detect sums paid for corruption cited as grounds for obtaining such treatment. The Committee will formulate a recommendation in this regard (see recommendation 1.4(b) in Chapter II of this report).

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<sup>10</sup> Article 8(ñ) (Net Income) provides:

*The net income shall be determined by deducting from the taxed gross income such expenditures as may be necessary to obtain said income and maintain the production source, provided, when the expenditure does not constitute taxed revenue for the beneficiary, that said expenditures represent actual outlay, are properly documented, and are at market prices.*

*Also deductible are:*

*(...)*

*ñ) Professional fees and other remunerations received for individual services not liable to the instant tax, subject to the limits and conditions set down in the regulations, in accordance with the activity concerned.*

*(...)*

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

[23] In the “Results” section of its response to the questionnaire the Republic of Paraguay broadly states that the Tax Investigation and Fraud Detection Department (ITDF) has conducted several audits, *inter alia*, of cases involving tax evasion, undervaluation, sale of invoices, unauthentic documents, and granting of tax credit in respect of recovered surplus tax credit on value added tax. It also includes a synoptic table on tax evasion investigations for the years 2005, 2006 and 2007.<sup>11</sup>

[24] The Committee notes that the information supplied by the Republic of Paraguay does not include specific results on favorable tax treatment resulting from violation of anticorruption laws, nor sheds any light on which of the cases investigated might be connected with the issue.

[25] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 1.4 (e) in Chapter II of this report).

### 1.4. Conclusions and recommendations

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

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

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

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

- a) Strengthen, through such measures it deems appropriate, the monitoring and control of the activities of customhouse brokers, auctioneers, and commission agents, as well as brokerage and intermediation activities in general in order to ensure that they cannot be employed as a means to disguise payments for corruption (see Chapter II, Section 1.2. of this report).
- b) Adopt the measures considered necessary to facilitate the detection, by the officials responsible for processing applications for favorable tax treatment, of sums paid for

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<sup>11</sup> See pp. 15 and 16 of the response of the Republic of Paraguay to the questionnaire.

corruption that are disguised as expenditures in order to obtain such treatment, such as the following:

- i. Handbooks, manuals or guidelines on how to review applications, so that they can ensure that they meet the established requirements, verify the accuracy of the information provided therein, as well as an appropriate use of the information systems implemented by the tax authority for that purpose, and to confirm the origin of the expenditures on which they are based.
  - ii. The possibility of accessing the sources of information necessary in order to carry out the verification and confirmation referred to above, including the ability to request information from financial institutions.
  - iii. Computer programs that facilitate data consultation and crosschecking of information whenever necessary for the purpose of fulfilling 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, induction and continuing education programs specifically designed to alert them to the modalities used to disguise expenses for corruption and to instruct them on how to detect such expenditures in applications (see Chapter II, Section 1.2. of this report).
- c) Select and develop, through the tax authorities responsible for processing applications for favorable tax treatment, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto (see Section 1.3 of Chapter II of this report)

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

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

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

[31] - Law No. 1034/1983, the “Commercial Code,”<sup>12</sup> which applies to all individual business people and trading companies and which, in Article 74, requires all businesses with a capital in excess of one thousand times the minimum daily wage<sup>13</sup> established for sundry unspecified activities in the capital, to keep, in books, ordered and regular accounts that indicate their net worth

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<sup>12</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley1034.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley1034.pdf)

<sup>13</sup> According to the World Bank Report on the Observance of Standards and Codes for Accounting and Auditing, as of June 2006 that amount was equal to some US\$7,000. See p. 5, footnote No. 12, of that World Bank Report. The document is available at [http://www.worldbank.org/ifa/rosc\\_aa\\_pgy\\_esp.pdf](http://www.worldbank.org/ifa/rosc_aa_pgy_esp.pdf) (Spanish), and [http://www.worldbank.org/ifa/rosc\\_aa\\_pgy\\_eng.pdf](http://www.worldbank.org/ifa/rosc_aa_pgy_eng.pdf) (English).

and business results and, in addition, to preserve their business correspondence and accounting documents required by the nature of their commercial activities.

[32] Article 75 provides that choice of the accounting system is at the businesses' discretion, with the exception of the daybook and inventory, which are mandatory.

[33] Article 77 states that those who engage in commercial activities of the importance indicated in Article 74 must keep their accounts through a registered accountant, whereas Article 78 stipulates that prior to being used, the accounting books must be presented to the Public Commerce Register, with all their pages numbered, to be signed or sealed and to indicate, in a dated note on the first page, the number of sheets contained. Articles 79 to 85 establish rules by which those accounting records are to be kept, along with the duration for which they must be preserved, together with the supporting documents.

[34] In accordance with this section, accounting books must be kept in the official language, with the operations recorded in chronological order, without interlining, calls to the margin, or spaces left blank. No amendments, strikethroughs, or any other alterations may be made and, should a correction be necessary, it must be done by means of the corresponding additional entry; also prohibited is mutilating a part of any book, both obligatory and auxiliary, tearing out or skipping sheets, and altering the binding or numbering (Article 79).

[35] In addition, the daybook is to be used to record, in detail, the business daily operations, in the order in which they take place, so that each entry indicates the creditor and the debtor in the transaction carried out (Article 80).

[36] The inventory book is used to record the net worth at the start of operations, indicating and quantifying assets and liabilities, the position of the net worth, and the results at the end of each period of business, with a table indicating profit and loss. This book is also to record the detail of the inventory when it is not included in other records; complementary accounting statements may also be included (Article 82).

[37] For companies Article 86 requires them to keep the books, records, and documents described in Articles 74 and 75, in addition to those required by their nature; and Article 88 provides that copies of the balance sheet with the profit and loss statement must be deposited at the corporate headquarters and made available to the shareholders, at least fifteen days prior to their study at the shareholders' meeting.

[38] Chapter III of the Law regulates the showing of accounting books, records, and receipts, which, except in cases of public law, may be ordered only at the request of a party, in trials involving wills, common ownership of property, partnerships, third-party administration or management of businesses, and liquidations.<sup>14</sup>

[39] – The Civil Code,<sup>15</sup> Article 1117, establishes the mechanism of the statutory auditor to oversee the management of limited companies.

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<sup>14</sup> Article 95 of the Law states that in cases in which creditors are convened or bankruptcy is decreed, the terms of the corresponding law shall be observed.

<sup>15</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley1183.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley1183.pdf)

[40] Article 1199 provides that companies incorporated abroad that are domiciled in the Republic of Paraguay, or which conduct their main business therein, shall be considered domestic corporations for the purposes of complying with incorporation formalities, amendments, and oversight.

[41] - Law 125/91, “Establishing the New Tax Regime,”<sup>16</sup> and its amendments in Law 2421/04,<sup>17</sup> “On Administrative Reorganization and Fiscal Adaptation,” establish the obligation of keeping accounting records and supporting documentation. Article 189 of Law 125/91 equips the Tax Administration with the broadest powers of administration and oversight, while Article 192 states that books and special records must be kept in an ordered fashion until the fiscal obligations prescribe, together with documents of operations and situations that constitute taxable actions, indicating the expenses and outlays and correctly identifying the recipients.

[42] Additionally, Article 27 of Law 2421/04 authorizes the Undersecretariat of State for Taxation (SET), an agency of the Ministry of the Treasury, to oversee and ensure compliance by taxpayers with all the fiscal obligations set out in Law 125/91, which includes those governing accounting records.

[43] – Resolution 412/2004 by the Treasury Ministry’s Undersecretariat of State for Taxation (SET), “Adapting to Current Law the Regulatory Provisions of Accounting Records and Their Use by Computational Means,”<sup>18</sup> Article 1, states that taxpayers must keep their accounts in accordance with the applicable legal and regulatory provisions and with generally accepted accounting principles; while Articles 8 to 11 regulate the use of computers for the accounting records to be kept by taxpayers.

[44] – Technical Resolution No 7 of the Professional Council of the College of Accountants of Paraguay, whereby the College adopts the International Accounting Standards (IAS).<sup>19</sup>

[45] –Resolution SB. SG. No 313/01 of the Superintendent of Banks which approves the Manual of Rules and Regulations for External Audits for Financial Institutions, of November 2001, Section 3.3 of which recognizes the Ethics Code of the International Federation of Accountants (IFAC), adopted by the Professional Council of the College of Accountants of Paraguay, as applicable for these professionals.

[46] – The Criminal Code, Law 1160/97,<sup>20</sup> Article 182, punishes failures to keep accounts books, including the failure to keep them or preparing or altering them in such a way that hinders a true understanding of the net worth. It also punishes the removal, concealment, destruction, or damaging of books or other business papers that the law requires to be kept or stored; the illegal preparation of statements that hinder a true understanding of net worth; and the illegal failure to prepare the statement of net worth or the inventory within the legally stipulated time frame.

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<sup>16</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley125.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley125.pdf)

<sup>17</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley2421.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley2421.pdf)

<sup>18</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_res412.doc](http://www.oas.org/juridico/spanish/mesicic3_pry_res412.doc)

<sup>19</sup> Paraguay’s National Securities Commission, by means of Resolution No. 5, adopted the IAS as they were adopted by the College of Accountants of Paraguay, as the accounting model to be used by companies issuing securities. To date, that is the only institution to have adopted the IAS as its accounting model

<sup>20</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_penal.pdf)

[47] – Decree 6359, “which governs income tax on commercial, industrial, or service activities, as provided in Book I, Chapter I of Law 125/91, adjusting it to the amendments introduced by Law 2421 of July 5, 2004,”

[48] – In its response, the country under review also provides information indicating the existence of applicable provisions, measures, and mechanisms, with different contents and scopes, regarding the oversight of other financial agencies and entities, such as those set forth in Law 861/96 “Of Banks, Financial Companies, and other Credit Agencies”<sup>21</sup>; Law 489/95, “Organic Law of the Central Bank of Paraguay”<sup>22</sup>; Law 827/96, “Of Insurance”<sup>23</sup>; Law 438/94, “Of Cooperatives”<sup>24</sup>; Law 2157/03, “Regulating the Operations of the National Cooperatives Institute and Establishing its Organic Charter”<sup>25</sup>; Resolution No. 1662/06 of the Board of Directors of the National Cooperatives Institute, “Regulating the Registration of Corporate and Accounting Books at Cooperative Agencies and Expanding the Scope of Art. 48 of Decree No. 14052/96”<sup>26</sup>; and Law No. 94/91 “Of the Paraguayan Securities Market”, which created the National Securities Commission (CNV).

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

[49] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures that are relevant for promoting the purposes of the Convention.

[50] Notwithstanding, the Committee considers it appropriate to make a number of observations about certain provisions in this regard that the country under review could consider supplementing, developing or adapting:

[51] – First of all, the Committee notes that although commercial corporations have provisions governing the way in which they are to keep accounting records and internal controls, there are no similar provisions for other kinds of associations that, in pursuit of their corporate purpose, enter into contracts with the State, with other states, or with domestic or foreign entities that have state participation in their equity. In that regard, although Law 125/91, which establishes the new tax regime and its amendments in Law 2421/04 set a series of parameters for regulating the accounting records and controls of all taxpayers, their purpose is strictly tax-related. The Committee therefore deems it necessary for the country under review to consider adopting the relevant measures so that corporations and associations of any kind that, in pursuit of their corporate purpose, enter into contracts with the State, with other states, or with domestic or foreign entities that have state participation in their equity, are subject to regulations governing the way in which they are to keep their accounting records, so that they accurately and in reasonable detail reflect their operations, and the way in which they are to establish adequate internal accounting controls to enable their employees to detect acts of corruption. The Committee will formulate a recommendation in this regard (see recommendation 2.4 (a) in Chapter II of this report).

[52] – In second place, the Committee notes that although Law 1034/1983, the “Commercial Code,” requires businesses to keep ordered and regular accounts, Article 75 of the Commercial Code

<sup>21</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley861.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley861.pdf)

<sup>22</sup> Available at [http://www.bcp.gov.py/index.php?option=com\\_content&task=view&id=43&Itemid=1](http://www.bcp.gov.py/index.php?option=com_content&task=view&id=43&Itemid=1)

<sup>23</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley827.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley827.pdf)

<sup>24</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley438.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley438.pdf)

<sup>25</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley2157.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_ley2157.pdf)

<sup>26</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_res1662.doc](http://www.oas.org/juridico/spanish/mesicic3_pry_res1662.doc)

leaves the choice of the accounting system to the business' discretion. In addition, although the Committee notes that in July 2002 the Professional Council of College of Accountants of Paraguay adopted the International Accounting Standards (IAS),<sup>27</sup> in Paraguay membership is voluntary and the College has no legal authority over companies.<sup>28</sup> Similarly, although the National Securities Commission (CNV) of Paraguay adopted the IAS as the accounting model for companies issuing securities by means of resolution No. 5, that does not apply to companies that do not issue securities or to other kinds of associations.

[53] In consideration whereof, the Committee believes that the country under review should consider adopting the necessary measures to implement an accounting system to apply to all commercial companies, including those that do not issue securities and those associations of any kind that, in pursuit of their corporate purpose, enter into contracts with the State, with other states, or with domestic or foreign entities that have state participation in their equity. The Committee will formulate a recommendation in this regard (see recommendation 2.4 (b) in Chapter II of this report).

[54] – Third, the Committee notes that the country under review does not have a law for the practice of the profession making professional association and the codes of conduct governing ethical behavior mandatory to guarantee the integrity and objectivity of all accountants and internal auditors in the pursuit of their duties; or standards or guidelines for conducting internal audits intended to detect anomalies or acts of corruption. Neither does it require persons and accountants responsible for keeping accounting records and internal auditors to report any anomalies they detect to the legal representative and shareholders (in corporations) or to the members (in associations) or to report them to the competent authorities in the event that they could constitute crimes.

[55] In that regard, the Committee believes that to comply with the purpose of Article III(10) of the Convention, the country under review should consider adopting regulations for the practice of the profession that would make professional association and the codes of conduct governing ethical behavior mandatory, to guarantee the integrity and objectivity of accountants and internal auditors in the pursuit of their duties, and standards or guidelines for conducting internal audits intended to detect anomalies or acts of corruption; and that it should require persons and accountants responsible for keeping accounting records and internal auditors to report any anomalies they detect to the management of companies, their legal representative and shareholders (in corporations) or to the members (in associations) and to report them to the competent authorities in the event that they could constitute crimes, further ensuring that professional secrecy provisions in no way hinder such reporting. The Committee will formulate recommendations in this regard (see recommendations 2.4 (c) and (d) in Chapter II of this report).

[56] Similarly, the Committee invites the country under review to consider holding ongoing awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the

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<sup>27</sup> The International Accounting Standards (IAS) are a set of precepts developed by the International Accounting Standards Board (IASB), an independent privately-funded agency based in the city of London. The IASB's mission is to develop, in the public interest, a single set of high quality, understandable international financial reporting standards (IFRSs) that can be followed and that require transparent and comparable information for general purpose financial statements. In addition, the IASB works with national agencies responsible for issuing accounting standards to harmonize accounting rules across the world. (More information at [www.iasb.org](http://www.iasb.org))

<sup>28</sup> See p. 14 of the World Bank Report on the Observance of Standards and Codes for Accounting and Auditing. The document is available at [http://www.worldbank.org/ifa/rosc\\_aa\\_pgy\\_esp.pdf](http://www.worldbank.org/ifa/rosc_aa_pgy_esp.pdf) (Spanish), [http://www.worldbank.org/ifa/rosc\\_aa\\_pgy\\_eng.pdf](http://www.worldbank.org/ifa/rosc_aa_pgy_eng.pdf) (English)

veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work, prior elaboration of the corresponding manuals. The Committee will formulate a recommendation in this regard (see recommendation 2.4 (e) in Chapter II of this report).

[57] – In addition to acknowledging the efforts made by the country under review to improve the way in which the accounting records and internal controls of various agencies are kept, such as the banking system, insurance companies, and cooperatives, the Committee believes the country under review should consider adopting additional measures to facilitate the prevention and detection of bribery of domestic and foreign officials. The Committee will formulate a recommendation in this regard (see recommendation 2.4 (f) in Chapter II of this report).

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

[58] In the results section of the Republic of Paraguay's response to the questionnaire, the country undergoing review reports that: "*the Jeroviaha Unit, attached to the General Directorates of Tax Oversight and of Major Taxpayers of the Treasury Ministry's Undersecretariat of State for Taxation, was created by Decree 8094/2006 as amended by Decree 8594/2006. Its purpose is to ensure transparency in economic acts that have a fiscal impact, through their documentation, registration, and declaration, and to improve taxpayers' compliance with the obligations of registration, declaration, and payment,*"<sup>29</sup> and it also includes a summary of the unit's activities over the period 2005-2008.

[59] In this regard, the Committee notes that the information furnished by the Republic of Paraguay deals with topics of a strictly fiscal nature and does not include specific results on preventing or detecting the bribery of domestic and foreign government officials.

[60] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country 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 ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see recommendation 2.4 (i) in Chapter II of this report).

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

[61] 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(10) of the Convention:

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<sup>29</sup> See pp. 29 to 32 of the response of the Republic of Paraguay to the questionnaire.

**[62] The Republic of Paraguay has considered and adopted measures intended to create, maintain, and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in Chapter II, Section 2.1, of this report.**

[63] In light of the comments formulated in the above-noted sections, the Committee suggests that the Republic of Paraguay consider the following recommendation:

[64] – Strengthen the provisions on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Republic of Paraguay could take the following measures into account:

- a) Adopt the relevant measures so that associations of any kind that, in pursuit of their corporate purpose, enter into contracts with the State, with other states, or with domestic or foreign entities that have state participation in their equity, are subject to regulations governing:
  - i) the maintenance and protection of accounting records they accurately and in reasonable detail reflect the operations carried out; and,
  - ii) the establishment of adequate internal accounting controls to enable their employees to detect acts of corruption, bribery in particular (see section 2.2 in Chapter II of this report).
- b) Adopt the measures necessary to implement an accounting system for all commercial companies that do not issue securities and for associations of all kinds that, in pursuit of their corporate purpose, enter into contracts with the State, with other states, or with domestic or foreign entities that have state participation in their equity (see section 2.2 in Chapter II of this report).
- c) Develop the measures that it deems appropriate for the practice of the profession that would make professional association and codes of conduct governing ethical behavior mandatory to guarantee the integrity and objectivity of accountants and internal auditors in the pursuit of their duties, as well as standards or guidelines for conducting internal audits intended to detect anomalies or acts of corruption (see section 2.2 in Chapter II of this report).
- d) Adopt the measures necessary to require persons and accountants responsible for keeping accounting records and internal auditors to report any anomalies they detect to the management of companies, their legal representative and shareholders of corporations or to the members of associations, and to report them to the competent authorities in the event that they could constitute crimes, further ensuring that professional secrecy provisions in no way hinder such reporting (see section 2.2 in Chapter II of this report).
- e) Regularly conduct awareness campaigns that target individuals responsible for the entry of accounting records and for accounting for their accuracy, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs, prior elaboration of the corresponding manuals, specifically designed to instruct those who work in the area of

internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work (see section 2.2 in Chapter II of this report).

- f) Adopt additional measures to facilitate the prevention and detection of bribery of domestic and foreign officials applicable to all corporations and associations that do not already have such measures in place. These measures could include review methods for detecting anomalies in accounting records that could indicate the payment of sums for corruption concealed in those records, such as:
  - i) Continue the implementation of 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) Design handbooks, manuals, or guidelines on how to review accounting records in order to detect sums paid for corruption for those control organs or entities that as yet do not have them;
  - iii) Strengthen and implement the existing 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) Implement and broaden institutional coordination mechanisms that enable those organs or entities to obtain easily and in a timely manner the necessary collaboration 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 the officials of the organs and entities responsible for preventing and/or investigating violations of measures intended to guarantee the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them (see section 2.2 of Chapter II of this report).
- 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, and consider 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 section 2.3 of Chapter II of this report).

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

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

[65] The Republic of Paraguay has not yet adopted a set of provisions on transnational bribery as provided in Article VIII of the Convention.

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

[66] Based on the observations contained in the preceding section, the Committee will make the relevant recommendations to the country under review in order that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct of transnational bribery as described in Article VIII of the Convention<sup>30</sup> (see recommendation 3.4 (a) in Chapter II of this report).

[67] Furthermore, the Committee urges the country under review to consider adopting, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons linked thereto who are found to have been involved in the commission of acts that constitute said conduct (see recommendation 3.4 (b) in Chapter II of this report).

[68] By the same token, the Committee believes it advisable for the country under review to consider adopting the necessary measures to ensure, with respect the provisions that would, in due course, prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state” and that for that purpose it guide itself by the definition of government official contained in Article I of the Convention (see recommendation 3.4 (c) in Chapter II of this report).

[69] In addition, the Committee takes note that the Republic of Paraguay states that although it does have several assistance and cooperation agreements, it does not have an international cooperation law that establishes the requirements of legal cooperation requests by a foreign legal authorities, in order to comply with the third paragraph of Article VIII of the Convention. In that regard, the Committee urges the country under review to adopt the provisions and measures it deems appropriate to comply with Article VIII of the Convention, including the possibility of adopting an international cooperation law (see recommendation 3.4 (d) in Chapter II of this report.)

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

[70] The lack of standards in this area precludes an appraisal of results in this respect. In addition, in its response, the country under review noted, “*No complaints of this kind [transnational bribery] have been filed in Paraguay. Neither have any requests for mutual assistance formulated by other states party for the investigation or prosecution of acts of transnational bribery been received.*”<sup>31</sup> This is also corroborated in the document prepared by the civil society organization *Transparencia Paraguay*.<sup>32</sup> Bearing both of these circumstances in mind, the Committee will formulate a recommendation in this regard (see recommendation 3.4 (d) in Chapter II of this report).

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<sup>30</sup> The Committee notes the existence of a draft bill to criminalize transnational bribery in Paraguay, referred to in both the State's response and the document submitted by the civil society organization *Transparencia Paraguay*, indicating that it was placed before the Senate in March 2009.

<sup>31</sup> Response of the Republic of Paraguay to the questionnaire, p. 36.

<sup>32</sup> Document from *Transparencia Paraguay*, p. 33.

### 3.4 Conclusions and recommendations

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

**[72] The Republic of Paraguay has not adopted measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.**

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

- a) Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another state, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. (See Chapter II, Section 3.2 of this report).
- b) Adopt, subject to its Constitution and the fundamental principles of its legal system, pertinent measures to prohibit and punish any businesses domiciled in its territory that engage in the conduct described in Article VIII of the Convention, irrespective of the penalties applicable to persons linked thereto who are found to have been involved in the commission of acts that constitute said conduct. (See Chapter II, Section 4.2 of this report).
- c) Adopt the necessary measures to ensure, with respect the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term "government official of another state. (See Chapter II, Section 3.2 of this report).
- d) Adopt the provisions and measures it deems appropriate, including the possibility of adopting an international cooperation law, to comply with Article VIII, paragraph 3, of the Convention, which requires that any state party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide the assistance and cooperation with respect to it provided for in the Convention. (See Section 3.2 of Chapter II of this Report.)
- e) Select and develop, through the organs and agencies that would, in due course, be responsible for the investigation and/or prosecution of the offense of transnational bribery, and with requesting and/or providing assistance and cooperation with respect thereto, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. (See Chapter II, Section 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

[74] The Republic of Paraguay criminalized the offense of illicit enrichment by means of Law No. 2523/04, “On Preventing, Defining, and Punishing Illicit Enrichment in Public Service and Influence Peddling.”<sup>33</sup> The provisions of this law include the following:

[75] Article 3 provides that the offense of illicit enrichment is committed by any public servant covered by any of the situations described in Article 2<sup>34</sup> who, following commencement of his or her functions, incurs any of the following situations: (a) has obtained the ownership, possession, or use and enjoyment of goods, rights, or services that represent a price for purchase, possession, or use and enjoyment that is in excess of his or her legitimate economic possibilities and those of his or her spouse or companion; (b) following his or her admission to public service, has paid off debts or canceled obligations that affected his or her net worth, or those of his/her spouse or companion or relatives up to the second degree by blood and or marriage, in conditions in excess of his/her legitimate economic possibilities.

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

[76] With respect to the provisions that refer to illicit enrichment provided in Article IX of the Convention that the Committee has examined, based on the information available to it, they constitute a set of measures that are relevant for promoting the purposes of the Convention.

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

[77] The Republic of Paraguay states, in its response to the questionnaire:<sup>35</sup> “*Over the past five years the Financial Crimes and Anticorruption Unit of the Public Prosecution Service has admitted a total of 137 cases. Of these, approximately 82.5% are being investigated; 6.6% have been dismissed; charges have been filed in 5.1%; convictions have been handed down in 2.2%; 2.2% were thrown out; and 1.4% have been appealed against.*” The response also contains three charts with a summary of the cases, broken down by prosecutors, for the period 2004 to 2009. The country under review reports that these statistics pertain exclusively to cases of illicit enrichment.

[78] In addition, the country undergoing review also reports in its response to the questionnaire:<sup>36</sup>

[79] “*Some of the problems encountered by the prosecutors assigned to the Financial Crimes Units of the Public Prosecution Service, such as: the absence of technical staff specializing in this area to take charge of field work; neither do the prosecutors have direct access to the databases of various public institutions (e.g., the Treasury, National Police, automobile registry, public records offices), which would help them obtain information for determining the existence or otherwise of punishable offenses; nor do they have access to the database of the private company INFORCOMF (Informaciones Confidenciales), which could be of use in obtaining information; another problem is*

<sup>33</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_ley2523.doc](http://www.oas.org/juridico/spanish/mesicic3_pry_ley2523.doc)

<sup>34</sup> Article 2 provides that Law No. 2523/04 shall apply to all individuals who perform public functions or who have the power to use, keep, manage, or exploit public funds, services, or goods, irrespective of the title of the position or the method of election, appointments, or hiring, who commit the offenses described in that law.

<sup>35</sup> Response of the Republic of Paraguay to the questionnaire, pp. 37-38

<sup>36</sup> *Ibid*, pp. 38-39

*the relatively high level of informal activity in our economy, which enables certain public officials to attempt to justify inconsistent increases in their net worth through, for example, alleged loans for amounts in the millions that they supposedly receive from private individuals, who often have significant assets, which makes it extremely difficult to determine whether the operation is faked or not; delays in judicial proceedings; shortcomings in the audit reports of oversight agencies; the absence of regulations of Art. 104 [of the Constitution]<sup>37</sup> and/or institutional regulations that establish administrative sanctions for the failure to provide sworn declarations.” This information is echoed by civil society, in the document from *Transparencia Paraguay*.<sup>38</sup>*

[80] In consideration whereof, the Committee believes that it would be beneficial for the country under review to consider the appropriate steps for it to promote inter-institutional coordination to facilitate the detection, investigation, and prosecution of acts of corruption, particularly those involving illicit enrichment, including those that could be concealed or disguised behind falsified operations such as alleged loans for amounts in the millions extended to public officials by private citizens. To that end, it would be of great use for the country under review to strengthen the Financial Crimes Units of the Public Prosecution Service, by providing them with technical staff specialized in anticorruption matters and financial resources training, updating and instructing their staff, and facilitating direct access to the information necessary to determine the existence or otherwise of punishable acts, so they can discharge their duties in full (see recommendation 4.4(a) in Chapter II of this report.)

[81] Finally, the Committee notes that the country under review has provided no information on results from the assistance and cooperation provided for in the Convention in connection with this offense. In addition, the document prepared by the civil society organization *Transparencia Paraguay* includes information on cases that are pending resolution.<sup>39</sup> In the absence of additional information presented in a manner that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will make a recommendation so that through the organs and agencies responsible requesting and/or providing that assistance and cooperation, the country under review can select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard (see recommendation 4.4(b) in Chapter II of this report).

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

[82] On the basis of 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:

**[83] The Republic of Paraguay has adopted certain measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4.1, of this report.**

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<sup>37</sup> Article 104 of the Constitution states: “*MANDATORY DECLARATION OF ASSETS AND INCOME: Public officials and employees, including those holding elective office, those working for state-owned, binational, self-supported, or decentralized companies, and, in general, those who are regularly receiving remuneration from the State, must sign a sworn statement declaring their assets and income by no later than 15 days after their installation and within 15 days after stepping down.*”

<sup>38</sup> Document from *Transparencia Paraguay*, p. 39

<sup>39</sup> Document from the civil society organization *Transparencia Paraguay*, pp. 39-44

[84] In light of the comments formulated in that section, the Committee suggests that the Republic of Paraguay consider the following recommendations:

- a. Promote inter-institutional coordination to facilitate the detection, investigation, and prosecution of acts of corruption, particularly those involving illicit enrichment, including those that could be concealed or shielded behind falsified operations that appear to be legitimate. To achieve that, the country under review could take the following measures into consideration:
  - i. Provide the Financial Crimes Units of the Public Prosecution Service with the human and financial resources and training needed to discharge their duties in full.
  - ii. Remove the obstacles in order to facilitate direct access, by investigative agents to, the information they need in order to determine the existence or otherwise of punishable acts. (See Section 4.2 of Chapter II of this Report.)
- b. Select and develop, through the organs and agencies responsible for requesting and/or providing the assistance and cooperation provided for in the Convention, in connection with the offense of illicit enrichment, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard. (See Section 4.2 of Chapter II of this Report.)

## **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**

[85] The Republic of Paraguay has not criminalized the offense of transnational bribery, as provided in Article VIII of the Inter-American Convention against Corruption, as was noted in Chapter II, Section 3, of this report.

[86] The Republic of Paraguay criminalized the offense of illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention. In 2004 it enacted Law 2523/04 "On Preventing, Defining, and Punishing the Offense of Illicit Enrichment," whereby the previous legislation, Decree Law No 448/40, was repealed.

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

[87] Bearing in mind that the Republic of Paraguay has not criminalized the offense of transnational bribery as provided in Articles VIII of the Inter-American Convention against Corruption, and when it does, the Committee will recommend that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention (see recommendation 5.3 in Chapter II, of this report).

[88] On the other hand, the Republic of Paraguay criminalized the offense of illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on

which it ratified the Convention; consequently, the notification provided in Article X thereof is not necessary.

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

[89] The Republic of Paraguay has not criminalized the offense of transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption. The Committee therefore recommends that when it does so, it notify the Secretary General of the OAS of the fact, in accordance with the terms of Article X of the Convention.

[90] In regards to illicit enrichment, in March 2009, the country under review informed the General Secretariat of the enactment of Law 2523/04, “On Preventing, Defining, and Punishing the Offense of Illicit Enrichment,” whereby the previous legislation was repealed and the definition of the offense was amended. The Committee acknowledges the efforts of the Republic of Paraguay in keeping the General Secretariat apprised of the amendments made to its definition of the offense described in Article IX of the Convention.

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

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

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

[92] – The National Constitution of the Republic of Paraguay<sup>40</sup>, Article 41 of which provides that all Paraguayans are entitled to residence in their country; that the entry of foreigners without permanent residence in the country shall be regulated by law, in consideration of the applicable international conventions; and that foreigners with permanent resident status shall not be forced to leave it except pursuant to a judicial decision.

[93] Article 137 provides that the Constitution, approved and ratified international treaties, conventions, and agreements, laws enacted by Congress, and other legal instruments of a lower hierarchy adopted as a result thereof constitute the nation’s positive law, in that order of precedence.

[94] Article 141 states that international treaties that have been validly signed, approved by an act of Congress, and the instruments of ratification of which have been exchanged or deposited are a part of domestic law with the order of precedence indicated in Article 137.

[95] – The Criminal Code<sup>41</sup>, Article 9 of which deals with acts committed abroad and states that Paraguayan criminal law shall apply to other actions committed abroad only when the act is criminally punishable at the location at which it is committed, and when the perpetrator, at the time of the crime, is a Paraguayan national or acquired that nationality subsequent to the commission; or, if not a national, he is within the nation’s territory and his extradition has been rejected even though, on account of the nature of the facts, it would have been legally admissible. This provision also applies when no power to sanction exists at the site of the crime.

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<sup>40</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_constitucion.doc](http://www.oas.org/juridico/spanish/mesicic3_pry_constitucion.doc)

<sup>41</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_pry\\_penal.pdf](http://www.oas.org/juridico/spanish/mesicic3_pry_penal.pdf)

[96] – The Code of Criminal Procedure, Article 147 of which states that the extradition of persons charged or convicted of offenses shall be subject to current international law, the country’s laws, international custom, or by rules of reciprocity when no applicable provisions exist. In addition, Article 148 establishes the procedural rules for active extradition;<sup>i</sup> Article 149 establishes the procedural rules for passive extradition;<sup>ii</sup> and Article 150 establishes the procedural rules for precautionary measures in extradition proceedings.<sup>iii</sup>

[97] – The extradition treaties between the Republic of Paraguay and Brazil, Chile, the United States, Uruguay, and other countries<sup>42</sup>.

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

[98] With respect to the provisions related to extradition, that the Committee has examined, based on the information made available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

[99] The Committee nevertheless deems it appropriate to express some comments about certain provisions in this regard that the country under review could consider supplementing, developing, or adapting:

[100] First of all, the Committee notes that in its response, the country under review reports that “*Paraguayan law allows the Convention to be used as the legal basis for an extradition procedure when no bilateral extradition treaty exists with the requesting country,*” and gives, as the grounds for this, Articles 137 and 141 of the Constitution and Article 147 of the Code of Criminal Procedure.<sup>43</sup>

[101] In second place, the Committee notes that in its response, the country under review reports that in accordance with the international treaties it has signed and its national law, the Republic of Paraguay can reject extradition requests on the grounds of citizenship or because it believes it has jurisdiction. The country under review further says that:

[102] “*In such cases, although national law is silent on the point, under the international instruments it has ratified, our country, after denying the extradition of a person for the reasons cited, is obliged to prosecute the case domestically, to ensure that the offense does not go unpunished, and must also inform the requesting state of the result of that process.*”

[103] “*If an extradition is denied on the grounds of the citizenship of the person sought, under the principle of international doctrine that establishes that if a country disallows the handing over of a person sought in extradition for the reasons given, it is obliged to prosecute him domestically in order to ensure that the offense does not go unpunished (aut dedere aut judicare).*”<sup>44</sup>

[104] In this regard, the Committee notes that although Articles 6 to 9 of the Paraguayan Procedural Code describes the procedure as regards the question of jurisdiction, it can find no legal provision governing the way the requesting state is to be notified as indicated-in Article XIII of the Convention. In addition, although the country under review says that pursuant to that principle of international doctrine there is an obligation to prosecute a person whose extradition has been denied

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<sup>42</sup> Available at [www.mre.gov.py](http://www.mre.gov.py)

<sup>43</sup> Response of the Republic of Paraguay to the questionnaire, p. 40.

<sup>44</sup> *Ibid*, pp. 43-44.

on citizenship grounds it makes no reference to any provision establishing that obligation in its domestic law. In its response to the questionnaire the country under review also notes that: “*regarding the extradition process to be used, it must be noted that our country does not have a special law that regulates the procedure to be used in extradition proceedings (...)*.”<sup>45</sup>

[105] Finally, the Committee believes it is necessary that pursuant to Article III, paragraph 6, of the Convention, the country under review should consider adopting the relevant measures to inform a requesting state that its extradition for offenses covered in the Convention has been denied on account of the citizenship of the person sought or because it believes itself to have jurisdiction, and to report on the final result of the case that, as a result of that denial, it brings before its competent authorities for prosecution; and it should expressly establish, in the instrument it deems appropriate, the obligation of prosecuting a person whose extradition is denied on citizenship grounds or because the State believes it has jurisdiction (see recommendations 6.4(a) and (b), in Chapter II of this report).

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

[106] The section of the Republic of Paraguay’s response to the questionnaire dealing with its results in this area includes a list of all the individuals extradited between 2005 and 2008, broken down by country and by offense. In connection with this, the country under review notes the following:

[107] “*We provide statistical data for the past four years covering extradition requests filed by foreign authorities in which the Paraguayan courts have granted extradition. Although the offenses for which the persons extradited were being prosecuted were not acts of corruption, the data shown will serve to indicate that our country’s extradition process is functioning.*”<sup>46</sup>

[108] The Committee notes that as explained by the country under review and corroborated by civil society in the observations submitted by *Transparencia Paraguay*, while this information does indicate the number of persons extradited between 2005 and 2008, those extraditions were not in connection with acts of corruption. The country under review has indicated that it has not received any requests for extradition for acts of corruption, and that it has not made any requests of extradition for acts of corruption to other States Party to the Convention.

[109] Based on the foregoing, the Committee will formulate a recommendation for the country undergoing review so that, through the agencies or bodies responsible for processing active and passive extradition requests, it can develop procedures and indicators, when appropriate and when they do not yet exist, to enable it to submit information on its use of the Inter-American Convention against Corruption as the legal basis of extradition requests sent to other states parties as well as information on the steps taken to deal with similar requests made by other states parties to the Convention (see recommendation 6.4(c) in Chapter II of this report).

[110] Finally, the Committee believes it would be useful for the country under review to consider adopting such measures as it deems appropriate to ensure a greater use of the Inter-American Convention against Corruption in extradition cases, such as implementing training programs on the possibilities for enforcement it offers, designed specifically for the judicial and administrative authorities with responsibilities in this area (see recommendation 6.4(d) in Chapter II of this report).

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<sup>45</sup> *Ibid.*, p. 45.

<sup>46</sup> *Ibid.*, pp. 48-50.

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

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

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

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

- a) Consider the convenience to adopt a regulation for the extradition process which among other aspects expressly establishes the obligation of prosecuting a person whose extradition has been denied on the grounds of citizenship or because the State believes it has jurisdiction, as well as the relevant measures to inform, on a timely basis, a requesting state that its extradition for offenses covered by the Convention has been denied because the State believes itself to have jurisdiction, and to report on the final result of the case that, as a result of that denial, it brings before its competent authorities for prosecution. (See section 6.2 of Chapter II of this report).
- b) Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to requests for extradition formulated to other States Parties to the Convention, for the investigation or prosecution of the crimes that have been criminalized pursuant thereto and the steps that have been taken to respond to similar requests from other States Parties. (See section 6.3 of chapter II of this report)
- c) Consider adopting the appropriate measures in order to benefit from a greater use of the Inter-American Convention against Corruption in extradition cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See section 6.3 of chapter II of this report)

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

#### **FIRST ROUND**

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

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

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

- Recommendation 1.1.1.

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

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:<sup>47</sup>

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

*- Develop and implement codes of ethical conduct for all public officials and employees.*

[115] The Committee notes that the first measure above was deemed to have been satisfactorily considered within the framework of the Second Round. Nonetheless, because this measure is continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the country progress reports provided for by article 32 of the Rules of Procedure.

[116] The second measure was satisfactorily considered within the Framework of the Second Round.

Measures suggested by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round:<sup>48</sup>

*- Coverage for all government officials and employees, in all levels, branches, and organs of the State.*

*- Coverage of all instances in which conflicts of interest could be seen or could arise: prior to assuming public functions; during the performance of public office; and after leaving public office, establishing adequate restrictions for those who leave public office (see section 1.1.2 of Chapter II of this report).*

*- Establish mechanisms to ensure effective compliance with the regulations to prevent conflicts of interest, determining the responsible agencies or authorities for monitoring compliance, and setting forth the application of measures or sanctions in the case non-compliance.*

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<sup>47</sup> Report on Implementation in the Republic of Paraguay of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_pry.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_pry.pdf)

<sup>48</sup> *Ibid.*

[117] The Committee notes that the country under review did not refer to the measures listed above, in its response to the questionnaire. Accordingly, the Committee takes note of the need for the country 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 control systems within the public administration.*

Measures suggested by the Committee that were satisfactorily considered within the Framework of the Second Round:<sup>49</sup>

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

[118] The first measure was satisfactorily considered within the Framework of the Second Round.

[119] The Committee notes that the second measure above was deemed to have been satisfactorily considered within the framework of the Second Round. Nonetheless, because this measure is continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the country progress reports provided for by article 32 of the Rules of Procedure.

**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 1.3.1.

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

Measures suggested by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round:<sup>50</sup>

- *Ensure that the laws requiring public officials and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware are*

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<sup>49</sup> *Ibid.*, pg. 25.

<sup>50</sup> *Ibid.*, p. 26.

*fully in effect, implementing recommendations 7.1 and 7.2 when appropriate, and that they are applicable to all public officials and employees.*

*- Facilitate compliance with that requirement, such as permitting that the report be made by any means of communication that are considered pertinent, regulating their use, and eliminating formalities that may inhibit reporting, and develop the protection program established in Law 1562/2000 so that whistle-blowers are protected from threats or retaliation to which they may be subject because of their compliance with this requirement.*

*- Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

[120] The Committee notes that the country under review did not refer to the measures listed above, in its response to the questionnaire. Accordingly, the Committee takes note of the need for the country to give additional attention to its implementation.

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

- Recommendation 2.1.

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

Measures suggested by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round:<sup>51</sup>

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

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

*- Use the financial disclosure reports for detecting and punishing illicit acts.*

[121] The Committee notes that the country under review did not refer to the measures listed above, in its response to the questionnaire. Accordingly, the Committee takes note of the need for the Republic of Paraguay to give additional attention to its implementation.

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<sup>51</sup> *Ibid*, p. 26-27

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

- Recommendation 3.1.

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

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

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

[122] In its response, the country under review presents information that it considers related to the implementation of the measures listed above.<sup>53</sup> The Committee reiterates the need for the country under review to give additional attention to the implementation of the aforementioned measures of the foregoing recommendation.

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

#### **4.1. Mechanisms for access to information:**

- Recommendation 4.1.1.

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

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

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

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<sup>52</sup> *Ibid*, p.p. 27-28.

<sup>53</sup> Reply from the Republic of Paraguay to the questionnaire, p. 3-4.

<sup>54</sup> *Ibid*, p. 28-29.

[123] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>55</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

#### **4.2. Mechanisms for consultation**

Recommendations formulated by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round.<sup>56</sup>

- Recommendation 4.2.1.

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

[124] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>57</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

- Recommendation 4.2.2.

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

[125] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>58</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

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

Recommendations formulated by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round.<sup>59</sup>

- Recommendation 4.3.1.

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

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<sup>55</sup> *Ibid*, p. 30

<sup>56</sup> *Ibid*, p. 30.

<sup>57</sup> *Ibid*, p. 303

<sup>58</sup> *Ibid*, p. 30.

<sup>59</sup> *Ibid*, p. 29.

[126] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>60</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of recommendation 4.3.1, the following:<sup>61</sup>

[127] *“In November 2008, by means of Circular No. 08/2008, the “Mail Box for Complaints, Claims, and Suggestions” was distributed to all tax offices in Asunción and in the interior of the country; in addition, instructions were issued for its proper use and oversight (copy of instructions submitted as an attachment).”*

[128] The Committee takes note of the step taken by the country under review to advance with the implementation of recommendation 4.3.1, as well as of the need for it to continue to give attention thereto.

- Recommendation 4.3.2.

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

[129] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>62</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

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

Recommendations formulated by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round.<sup>63</sup>

- Recommendation 4.4.1.

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

[130] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>64</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

- Recommendation 4.4.2.

*Design and implement programs to publicize the mechanisms for encouraging participation in monitoring public administration and, when appropriate, to train and provide the necessary tools to civil*

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<sup>60</sup> *Ibid.*, p. 30.

<sup>61</sup> *Ibid.*, p. 30.

<sup>62</sup> *Ibid.*, p. 30

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

*society and non-governmental organizations, as well as to public officials and employees so that they can use such mechanisms.*

[131] In its response, the country under review presents information that it considers related to the implementation of all the recommendations in chapter 4.<sup>65</sup> The Committee reiterates the need for the country to give additional attention the implementation of the aforementioned recommendation.

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

Recommendations formulated by the Committee that require information on their implementation or which required further attention within the Framework of the Second Round.<sup>66</sup>

- Recommendation 5.1.

*Review comprehensively the specific areas in which the Republic of Paraguay might need or could usefully receive mutual technical cooperation to prevent, detect, investigate, and punish acts of corruption; and that based on this review, a comprehensive strategy be designed and implemented that would permit the Republic of Paraguay to approach other States Parties and non-parties to the Convention and institutions or financial agencies engaged in international cooperation to seek the technical cooperation it needs.*

[132] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

- Recommendation 5.2.

*Promote the efforts of technical cooperation exchange with other State Parties on the effective ways and methods to prevent, detect, investigate and sanction acts of corruption.”*

[133] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

- Recommendation 5.3.

*Design and implement an integral program for dissemination and training directed specifically to competent authorities (in particular to, judges, magistrates, state attorneys and other authorities with judicial investigative functions), in order to ensure that they are knowledgeable of the provisions on mutual legal assistance and other related treaties signed by Paraguay, and may apply them to concrete cases.*

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<sup>65</sup> *Ibid.*

<sup>66</sup> Report on Implementation in the Republic of Paraguay of the Convention Provisions Selected for Review in the Second Round, and on Follow-up to the Recommendations Formulated to that Country in the First Round. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_pry.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_pry.pdf)

[134] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

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

Recommendations formulated by the Committee that were satisfactorily considered within the Framework of the Second Round:<sup>67</sup>

- Recommendation 6.1.

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

[135] The Committee notes that the recommendation above was deemed to have been satisfactorily considered within the framework of the Second Round. Nonetheless, because this measure is continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the country progress reports provided for by article 32 of the Rules of Procedure.

## 7. GENERAL RECOMMENDATIONS

Recommendations formulated by the Committee that were satisfactorily considered within the Framework of the Second Round:<sup>68</sup>

- Recommendation 7.3.

*Develop procedures to ensure that the public officials and employees who are responsible for implementing the systems mentioned in this report receive the training they need to effectively carry out their duties.*

[136] The Committee notes that the recommendation above was deemed to have been satisfactorily considered within the framework of the Second Round. Nonetheless, because this measure is continuous in nature, the Committee looks forward to the country under review reporting on actions developed in this regard, in the country progress reports provided for by article 32 of the Rules of Procedure.

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

- Recommendation 7.1.

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

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<sup>67</sup> *Ibid.* pg. 31.

<sup>68</sup> *Ibid.* p. 32.

<sup>69</sup> *Ibid.* p. 31-32.

[137] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

- Recommendation 7.2.

*Encourage review and adaptation, as appropriate, of the current provisions regulating civil service, to prevent and punish improper conduct of public officials and employees, at all levels, as well as to establish their obligations in the performance of their duties.*

[138] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

- Recommendation 7.4.

*Select, develop, and report to the Technical Secretariat of the Committee, procedures and indicators, when appropriate, that make it possible to monitor the recommendations established in this report. For this purpose, the Technical Secretariat of the Committee will publish on the OAS website a list of more generalized indicators applicable within the inter-American system that may be available for the aforementioned selection by the country under review.*

[139] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee reiterates the need for the country to give additional attention to its implementation.

[140] On the other hand, civil society makes the following remark in the last section of its report:<sup>70</sup>

[141] *“The current national situation is that the authorities and/or agencies directly involved are not fully operational, to the extent that the CISNI, the central authority for implementing the Convention’s provisions, only obtained a few days ago the decree approving the National Integrity Plan (PNI) for the 2006– 2010 period; this situation indicates not just an institutional delay on the topic, but also a kind of lethargy among the officials and the outreach efforts they should make to involve others.*

[142] *“It would also be useful to demand official answers regarding the development of procedures, the implementation of the provisions, and the actual commitment toward corruption issues of all of us who make up the Republic.”*

## SECOND ROUND

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

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<sup>70</sup> Report of *Transparencia Paraguay*, p. 57.

## **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.

*Establishing, maintaining, and strengthening government hiring systems that assure the openness, equity, and efficiency of such systems*

#### Measures suggested by the Committee

- (a) Taking into account the existing legal initiative, adopt a legal instrument, applicable to all public servants, that governs civil service hiring systems based on principles such as merit and equality, that ensures the legitimacy and transparency of the public competitive examination, without prejudice to the possibility, in keeping with the rule of separation of powers and the existence of autonomous entities and bodies, of creating other systems for certain public servants whose nature and responsibilities require more specific provisions, such as the exception under Article 1 of the Law against Nepotism in the Civil Service (Law 2777/2005).*
- (b) Taking into account the existing legal initiative, implement provisions on the creation of oversight mechanisms and governing or administrative authorities to monitor compliance with staff selection standards, and ensure they have the necessary resources to function properly.*
- (c) Develop mechanisms for publication of employment opportunities in the civil service, giving consideration to the use of the mass media for that purpose.*
- (d) Taking into account the existing legal initiative and in observance of the principle of due process, implement administrative or judicial challenge mechanisms for the purpose of clarification, amendment, or revocation of substantive acts in the employee selection processes.*
- (e) Implement prior training programs or courses to help those who have entered the civil service to acquaint themselves with their duties, the required standards of integrity, their responsibilities and obligations, and the consequences of non-compliance.*
- (f) Consider the need, following the appropriate formalities, for the presentation for approval and enactment of Rules of Procedure for Article 15 de la Law No 1626/2000.*
- (g) Adopt, bearing in mind the powers of the Office of the Prosecutor General under Article 88 of Law 1562/2000 (Organic Law of the Office of the Attorney General) regulations governing the systems for procurement, promotion, and tenure of civil servants in that state organ, in accordance with the considerations to be suggested for that purpose by the Civil Service Secretariat and based on the principles of openness, merit, and equality.*

[144] The Committee notes that the country under review did not refer to any of the measures listed above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

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

- Recommendation 1.2.1.

*That the appropriate authority adopt regulations on the hypothetical circumstances listed in subsections (b), (d), (e), f), and (h) of Article 33 of the Law on Government Contracting (Law 2051/200), bearing in mind the regulations on subsections a), c) and g) in Articles 69 to 74 of the Regulations on the Law on Government Contracting (Regulatory Decree 21909/2003).*

[145] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay attention to its implementation.

- Recommendation 1.2.2.

*Continue to strengthen the governing bodies of the Government Procurement System, in particular the Central Regulatory and Technical Unit (UCNT) and the Procurement Operations Units (UOC), with respect to the functions they carry out in connection with the administration and control of the system, providing them with the necessary resources to carry out their functions properly and creating mechanisms that permit effective institutional coordination of their activities as well ongoing evaluation and follow-up of said activities.*

[146] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

- Recommendation 1.2.3.

*Strengthen the control mechanisms of the Government Procurement System.*

### Measures suggested by the Committee

- (a) Develop and implement a system of sanctions for government servants and employees who violate or fail to fulfill the principles and provisions contained in the Law on Government Contracting (Law 2051/2003) and its Regulations (Regulatory Decree 21909/2003). This system could be included in the legal instrument suggested in section 1.1 above or in the laws governing such matters.*
- (b) Develop and implement provisions for the selection of a person or body to carry out the tasks of audit, control, and monitoring of contracts where the amount or particular level of complexity so warrant.).*
- (c) Create qualified citizen “watchdogs” to monitor the pre-contractual phase and the execution of government contracts where the nature, importance or magnitude so warrants.*

- (d) *Develop, implement and publicize mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts.*

[147] The Committee notes that the country under review did not refer to any of the measures listed above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

- Recommendation 1.2.4.

*Develop and implement electronic systems of contracting that allow for the procurement of goods and services through such means.*

[148] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

- Recommendation 1.2.5.

*Complement the public works procurement system contained in the Law on Government Contracting (Law 2051/2003).*

#### Measures suggested by the Committee

- (a) *Consider development and implementation of provisions on supervening circumstances which would justify amendments to a public works contract, including cases in which the State or the contractor might be entitled to compensation, without prejudice to Article 62 of the Law on Government Contracting (Law 2051/2003).*

- (b) *Consider development and implementation of comprehensive citizen oversight mechanisms that cover all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls.*

[149] The Committee notes that the country under review did not refer to any of the measures listed above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

- Recommendation 1.2.6.

*Conduct periodic comprehensive evaluations to appraise the use and effectiveness of the Government Procurement System and, based on their findings, determine and consider the adoption of specific measures with which to ensure its transparency, openness, equity, and efficiency.*

[150] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

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

- Recommendation

*Strengthen the systems for protecting public servants and private citizens who in good faith report acts of corruption.*

Measure suggested by the Committee

*- Adopt, through the appropriate authority, comprehensive regulations on protection of public servants and private citizens who in good faith report acts of corruption, including protection of their identity, in accordance with its Constitution and with the fundamental principles of its domestic system of laws, which could include, inter alia, the following aspects:*

- *Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;*
- *Measures to protect not only the physical integrity of whistleblowers and their families, but also to provide protection in the workplace, especially when the person is a public official and the acts of corruption involve his superior or co-workers;*
- *Mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who in good faith report acts of corruption;*
- *Mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;*
- *Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;*
- *Mechanisms to facilitate international cooperation on the foregoing matters, as appropriate.*

[151] The Committee notes that the country under review did not refer to the measure above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

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

- Recommendation

*Selection and development, by the Judicial Branch and the Office of the Attorney General, of procedures and indicators, when appropriate and where they do not yet exist, that analyze the results of the systems, provisions, measures and mechanisms considered in Section 3 of this Report.*

[152] In its response, the country under review presents information that it considers related to the recommendation above<sup>71</sup>. The Committee notes the need for the country under review to give additional attention to its implementation.

#### 4. GENERAL RECOMMENDATIONS

- Recommendation 4.1.

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

[153] In its response, the country under review presents information regarding to the implementation of the recommendation above. In this regard, the Committee notes, as a step which contributes to progress in its implementation, the following:

[154] *“On June 3 to 6, 2008, two workshops called “Mock Trial: Money Laundering” were held and were attended by 34 civil servants from different levels; on June 23 to 27, 2008, a workshop called “Money Laundering and the Funding of Terrorism,” attended by 12 civil servants, took place; and on September 3, 2008, the workshop “Asset Recovery Tools in Corruption Cases” was held, attended by 17 officials of different ranks in the Public Prosecution Service.”*

[155] The Committee takes note of the step taken by the country under review to progress with the implementation of the aforementioned recommendation, as well as the need for the Republic of Paraguay to continue to give further attention thereto.

- Recommendation 4.2.

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

[156] The Committee notes that the country under review did not refer to the recommendation above, in its response to the questionnaire. Accordingly, the Committee notes the need for the Republic of Paraguay to pay additional attention to its implementation.

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<sup>71</sup> Reply from the Republic of Paraguay to the questionnaire, p. 52-53.

**ENDNOTES**

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<sup>i</sup> Article 148 of the Code of Criminal Procedure, which deals with active extradition, states that a request for the extradition of a person facing charges shall be issued by the criminal judge, at the request of the Public Prosecution Service or of the complainant, as provided for in Article 147, and shall be processed through diplomatic channels. It also provides that extradition cannot be requested if a personal precautionary measure has not been ordered, pursuant to Book IV of the Code of Criminal Procedure, and that a request for the extradition of a convict shall be issued on an ex officio basis by the trial judge.

<sup>ii</sup> Article 149 of the Code of Criminal Procedure, which deals with passive extradition, states that when a foreign state requests the extradition of a person who has been charged or convicted, jurisdiction stands with the competent criminal judge of the capital of the Republic; that all resolutions denying extradition requests shall be sent to the Criminal Chamber of the Supreme Court of Justice, which is to rule on the case within 15 days of receiving the proceedings; if the person sought is in detention, his freedom will not be ordered until the Criminal Chamber of the Supreme Court of Justice issues its resolution; and that if the resolution is not given within the established deadline, the person shall be released immediately and no further warrant for his arrest may be issued.

<sup>iii</sup> Article 150 of the Code of Criminal Procedure, which deals with precautionary measures, states that the criminal judge on whom a request is served may order the temporary detention and preventive custody of the person sought through extradition, provided that a sentence or detention order exists, the nature of the punishable action is clearly stipulated, and the case allows for preventive custody pursuant to both the Code of Criminal Procedure and current international law; that in urgent cases temporary detention may be ordered even when not all the documents required for extradition to proceed have been submitted; that the duration of temporary detention may not exceed fifteen days, except when the treaties allow for a longer period; and that the request for temporary detention may be made through any certified channel and shall be communicated immediately to the Ministry of Foreign Affairs.