

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

FINAL REPORT

(Adopted at the March 25, 2010 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 BOLIVARIAN REPUBLIC OF VENEZUELA  
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 Bolivarian Republic of Venezuela 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 Bolivarian Republic of Venezuela by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: [www.oas.org/juridico/english/mec\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mec_rep_blv.pdf) and [www.oas.org/juridico/english/mesicic\\_II\\_rep\\_blv.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_blv.pdf)

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

[3] According to the official records of the OAS General Secretariat, the Bolivarian Republic of Venezuela deposited the instrument of ratification of the Inter-American Convention against Corruption on June 2, 1997.

[4] In addition, the Bolivarian Republic of Venezuela 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**

**Response of the Bolivarian Republic of Venezuela**

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Bolivarian Republic of Venezuela and in particular from the Office of the Comptroller General of the Republic, 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 Bolivarian Republic of Venezuela sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at the following web page: [www.oas.org/juridico/spanish/mesicic3\\_ven\\_sp.htm](http://www.oas.org/juridico/spanish/mesicic3_ven_sp.htm)

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1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 25, 2010, at its Sixteenth meeting, held at OAS Headquarters, March 22-25, 2010.

[6] For its review, the Committee took into account the information provided by the Bolivarian Republic of Venezuela up to August 14, 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.

[7] The Committee also received documents from a civil society organization. However they failed to meet the requisites set forth in Article 34 of the Committee's Rules of Procedure and other Provisions. Hence the requirements established in Article 36 regarding verbal presentation of the documents that could have been submitted in accordance with said Article 34 in the framework of the Committee's meetings, were not met and neither were the requirements for their publication on MESICIC's website complied with, in accordance with the provisions of Section X of the Methodology for review in the second round. (See appendix to this report).

## **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<sup>2</sup> FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)**

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

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

[9] – The Constitution of the Bolivarian Republic of Venezuela,<sup>3</sup> Articles 316 and 317 of which respectively provide that the tax system shall be applied efficiently and that no tax, assessment or contribution of any kind shall be collected unless it is established by law, and no exemptions, abatements or other types of tax incentives shall be granted except as provided for by law. The Constitution also states that tax evasion may be punished as a criminal offense, without prejudice to other statutory penalties.

[10] – The Organic Tax Code,<sup>4</sup> Article 3 of which provides that only laws shall govern, in accordance with the general provisions contained in this Code, the creation, amendment, or abolition of taxes, the definition of the tax base, the fixing of the tax rate, the base for its calculation, and identification of taxable persons liable thereto; the granting of tax exemptions and abatements; authorization of the executive branch to grant exemptions and other favorable tax treatment or incentives; and other matters referred to them by this Code.

[11] Article 39 provides that: "*Tax obligations are extinguished through the following common mechanisms: 1. Payment. 2. Compensation. 3. Agreement. 4. Remission. 5. Declaration of uncollectable status.*"

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<sup>2</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>3</sup> Official Gazette No. 36.860 of December 30, 1999.

<sup>4</sup> Official Gazette of the Bolivarian Republic of Venezuela, No. 37.305 of October 17, 2001.

[12] Article 80 defines as a tax offense any act or omission that violates the tax rules and classifies them as formal offenses; offenses in connection with tax stamps and official paper; material offenses; and offenses punished by imprisonment.

[13] Article 84 provides that save for the exceptions recognized in the Organic Tax Code, liability for tax offenses falls on the individual. For its part, Article 90 states that legal persons are held to account for tax offenses and that for offenses punishable with a prison sentence any directors, managers, administrators, representatives or statutory auditors who have personally participated in the commission of the wrongdoing shall be liable.

[14] Article 93 provides that, with the exception of prison sentences, all penalties shall be imposed by the Tax Administration without prejudice to appeals that taxpayers or liable persons might invoke against them. Penalties that entail prison sentences and disqualification from the practice of a trade or profession may only be imposed by the appropriate judicial organs in accordance with the procedures prescribed in the Organic Code of Criminal Procedure.

[15] Article 94 provides that the applicable penalties are imprisonment, a fine; seizure and destruction of the proceeds of the wrongdoing or the objects used to commit it; temporary closure of premises; disqualification from the practice of a trade or profession; and suspension or revocation of the registration and license to engage in industrial activities and sale of tax stamps and official paper.

[16] Article 111 states that whomsoever, by act or omission, and without prejudice to the penalty prescribed in Article 116, causes an unlawful reduction in tax revenues, including through improper enjoyment of exemptions, exonerations or other favorable tax treatment, shall be punished with a fine of between twenty-five percent (25%) and two hundred percent (200%) of the omitted tax.

[17] Article 115 provides that the following offenses are punishable by imprisonment: tax fraud; failure to make an advance tax payment by a withholding agent; and the dissemination or personal/inappropriate use of confidential information provided by independent third parties that affects or might affect their competitive position (public employees or officials, taxpayers and their representatives, judicial authorities, and any other person with access to that information).

[18] Article 116 defines tax fraud and provides that it is committed by whomsoever through fraud, concealment, manipulation or any other form of deception induces the Tax Administration to error and obtains for themselves or a third party an illicit enrichment in excess of two thousand tax units,<sup>5</sup> (2,000 UT)<sup>6</sup> at the expense of the person to whom it is payable<sup>7</sup> upon collection of the tax. The same Article states that this offense is punishable by imprisonment. The indicia of fraud are set down in Article 117.

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<sup>5</sup> The Bolivarian Republic of Venezuela mentions that the Tax Unit (UT by the acronym in Spanish) is the basic unit used to calculate assessments, penalties and fines by the National Integrated Tax Administration Service (SENIAT) and other municipal tax authorities. The UT is also used to calculate exemptions and exonerations of value-added tax (IVA in Spanish) and income tax (ISLR in Spanish), and it is increased annually in line with the inflation indices. The UT is also used in labor matters and contractual obligations, as well as to determine the cost of tax stamps used in processing legal documents, such as passports. At present its value is 55 bolívars. The official dollar-bolivar exchange rate is 2.15 bolívars per US\$ dollar. Accordingly, one UT is worth US\$25.58.

<sup>6</sup> According to information provided by the Bolivarian Republic of Venezuela, the value of 2,000 tax units is US\$ 51,162.79 (September 2009).

<sup>7</sup> Article 18 of the Organic Tax Code defines the person to whom the tax obligation is payable as the government agency to whom the tax is owed.

[19] Articles 121 to 133 grant the Tax Administration powers of verification, audit and determination of tax based on actual or presumed facts.

[20] Article 181 provides that in conducting an audit the authorized officials, in order to secure the accounting records, correspondence or property not registered in the accounts, may, as appropriate, seal, close off or place marks on said documents, properties, files, or the offices where they are located, as well as leaving them as deposits, following the preparation of an inventory to that effect.

[21] Article 183 provides that upon completion of the audit an indemnity claim certificate shall be drawn up, which shall state, inter alia, the place and date of issue; the identity of the taxpayer or person responsible; an indication of the tax, the relevant tax periods, and, as appropriate, the elements of the tax base audited; any acts or omissions detected; the audit methods used, and a breakdown of the tax amounts solely for the purposes of compliance with Article 185 of the Code;<sup>8</sup> the evidence that presupposes the existence of wrongdoings punishable by imprisonment, should they exist; and the written signature, electronic signature or other means of authentication of the authorized official.

[22] – The Income Tax Law (LISR),<sup>9</sup> Article 14 of which identifies those who are exempt from tax.

[23] Article 15 provides that in determining exempt income, the rules contained in the law for calculating revenue, expenditure and deductions for taxable income shall be applied.

[24] Article 23, which concerns gross income and costs, the first paragraph of which provides that the cost of goods shall be that which appears on the invoices directly issued by the vendor, provided that the prices are not higher than the normal market value and that the invoices are acceptable as proof of expenditure. They must show the vendor's Tax Information Registry number (RIF in Spanish), except where the taxpayer made the purchases abroad, in which case the relevant invoice must be provided. This Article also states that debit notes of subsidiary companies shall not constitute proof of expenditure except where supported by original documents from the vendor.

[25] Article 27 provides which deductions (benefits) are admissible for determining the overall net income. The same article also says that, unless otherwise provided, these deductions shall correspond to normal and necessary, non cost-imputable expenditures made in the country for the purpose of generating income.

[26] Article 91 says that issuers of receipts for the sale of goods or services rendered in the country shall comply with the billing rules set forth by the Tax Administration, and shall include on them the Tax Information Registry number. For all of the purposes contained in this law, these vouchers shall only be accepted as proof of disbursement when they contain the issuer's Tax Information Registry number and are issued in accordance with the billing rules established by the Tax Administration.

[27] – The Regulations of the Income Tax Law (RLISR),<sup>10</sup> Article 52 of which provides, inter alia, that the deductions authorized in Article 27 of the Income Tax Law shall be made in order to determine net income, which, barring any legal provisions to the contrary, must correspond to outlays incurred or paid, as appropriate, and to normal and necessary, non cost-imputable expense made in

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<sup>8</sup> Article 185 of the Organic Tax Code states that “*The indemnity claim certificate shall order the taxpayer or person responsible to submit the omitted declaration, or rectify the one submitted, and to pay the resulting tax within fifteen (15) business days after notification (...)*”

<sup>9</sup> Official Gazette N° 38.628 of February 16, 2007.

<sup>10</sup> Decree 2.507 of July 11, 2003.

the country in order to generate the income. This provision also states that in order to determine the amount of net income generated from foreign sources, expenses incurred abroad shall only be admissible to the extent that they are normal and necessary to generate the taxpayer's foreign earnings on which they pay tax as international income, for which purpose the standards contained in the above-cited Income Tax Law and its regulations for determining income from domestic sources shall apply.

[28] Article 53 provides that deductible entertainment expenses shall be those incurred in the fiscal period in which they were made and shall only be recognized for directors, administrators, managers and other company executives who, by reason of their category or functions represent it before third parties, and provided that such outgoings meet the requirements of normalcy and necessity as set forth in the Income Tax Law<sup>11</sup>.

[29] – Decree 310 of the Office of the President of the Republic, of August 10, 1994, which creates the National Integrated Tax Administration Service (SENIAT), Article 5 of which provides that any reference in the legal provisions in force to the Income Bureau, the Independent Venezuelan Customs Service (AVSA), the Sectoral Customs Department, and, in general, to the Tax Administration, shall be understood as referring to the SENIAT.

[30] – Administrative Order 0257,<sup>12</sup> of August 19, 2008, of the National Integrated Tax Administration Service (SENIAT), which sets out the general rules on the issuance of invoices and other documents.

[31] – The Organic Law of the Office of the Comptroller General and the National Tax Control System (LOCGR in Spanish),<sup>13</sup> Article 43 of which recognizes external tax control authority to the Office of the Comptroller General, Offices of the State Comptrollers, Offices of Municipal Comptrollers, and Offices of District and Metropolitan District Comptrollers.

[32] Article 46 provides that the Office of the Comptroller General of the Republic, and the other external oversight agencies, within the scope of their competence, may carry out audits, inspections, controls, examinations, studies, analyses, and investigations of all kinds on the agencies or bodies subject to their oversight, to verify the legality, accuracy, sincerity, and correct details of their operations, and to check compliance with and the results of administrative policies and actions, and to assess the effectiveness, efficiency, economy, quality, and impact of their dealings.

[33] Article 66 provides that the external tax control bodies may, in line with their powers of oversight, conduct such audits as they deem necessary of the places, premises, vehicles, books and

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<sup>11</sup> The Internal Tax Glossary ([http://www.seniat.gob.ve/portal/page/portal/MANEJADOR\\_CONTENIDO\\_SENIAT/03TRIBUTOS/3.8GLOSARIO/3.8GLOSARIO\\_TRIBUTOS\\_INTERNOS.pdf](http://www.seniat.gob.ve/portal/page/portal/MANEJADOR_CONTENIDO_SENIAT/03TRIBUTOS/3.8GLOSARIO/3.8GLOSARIO_TRIBUTOS_INTERNOS.pdf)), published by the National Integrated Tax Administration Service contains the following definitions: "*Necessary expense: An essential expense in the productive process of the enterprise in order to accomplish the commercial objectives thereof.*

*Normal expense: An expense ordinarily made in each of the production stages of an enterprise."*

"Furthermore, DECLARATION OF ACCOUNTING PRINCIPLES No. 2 DPC – 2 ACCOUNTING OF COSTS AND EXPENSES OF ENTERPRISES OR ACTIVITIES IN THE DEVELOPMENT STAGE ([http://www.fccpv.org/cont3/data/files/DPC\\_2.pdf](http://www.fccpv.org/cont3/data/files/DPC_2.pdf)), contains the following definitions: d) *Normal costs and expenses. "Those planned costs and expenses applied in each of the stages of an enterprise or activity during the development stage."* e) *Necessary costs and expenses. "Those costs and expenses that, while not included in the initial plan of the company or activity, are essential for attaining the commercial or normal industrial stage.*

<sup>12</sup> Official Gazette of the Bolivarian Republic of Venezuela, No. 38.997 of August 19, 2008.

<sup>13</sup> Official Gazette No. 37.347.

documents of any individuals and corporations who are taxpayers or liable persons, as defined in accordance with the Organic Tax Code, or who in any way contract, negotiate or engage in operations subject to their control, or who otherwise administer, manage or have custody of the property or funds of those entities.

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

[34] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[35] In this regard, in its response to the questionnaire, the Bolivarian Republic of Venezuela says, *“In Venezuela, there is no law that expressly denies or prevents individuals or corporations from receiving favorable tax treatment for expenditures made in violation of the anticorruption laws. However, the Constitution of the Bolivarian Republic of Venezuela provides that the tax system shall be applied efficiently and that no tax, assessment or contribution of any kind shall be collected unless it is established by law, and no exemptions, abatements or other types of tax incentives shall be granted except as provided for by law. The Constitution also states that, tax evasion may be punished as a criminal offense, without prejudice to other statutory penalties.”*

[36] The Committee, nevertheless, considers it appropriate to make some observations about certain provisions in this regard that the country under review could consider supplementing and adapting.

[37] The Committee believes that it would be beneficial for the country under review to consider adopting the measures that it deems suitable to make it easier for the appropriate authorities to detect sums paid for corruption when such sums are used to obtain favorable tax treatment (see Recommendation 1.4 (a) in Chapter II of this report).

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

[38] The section on results in the response of the Bolivarian Republic of Venezuela to the questionnaire includes a synoptic table on investigations and audits carried out by the National Integrated Customs and Tax Administration Service (SENIAT) in connection with tax evasion and loss of favorable tax treatment, which is reproduced below:

**TABLE 1**

Amount collected through fines, indemnity claims, and debt payment schedules from January 1, 2007 to December 31, 2008\*

ITEM	2007		2008	
	NUMBER OF FORMS	AMOUNT COLLECTED (Bs.)	NUMBER OF FORMS	AMOUNT COLLECTED (Bs.F)
Fines	93,448	101,738,317,882.47	114,055	109,733,822.43
Indemnity claims on income tax	5,455	87,872,631,615.82	4,912	1,425,916,676.70

**TABLE 1**

Amount collected through fines, indemnity claims, and debt payment schedules from January 1, 2007 to December 31, 2008\*

ITEM	2007		2008	
	NUMBER OF FORMS	AMOUNT COLLECTED (Bs.)	NUMBER OF FORMS	AMOUNT COLLECTED (Bs.F)
Indemnity claims on inheritance tax	764	2,188,564,004.38	866	3,982,394.26
Indemnity claims on corporate assets tax	165	122,559,957.52	224	697,703.89
Indemnity claims on value-added tax	2,830	114,533,996,015.52	5,454	31,748,390.60
Indemnity claims on bank withdrawal tax	1	39,445,171.00	38	1,496,856.26
Payment schedules, fines	3,230	2,302,654,681.35	128,620	2,726,807.72
<b>GRAND TOTAL</b>	<b>105,893</b>	<b>308,798,169,328.06</b>	<b>254,169</b>	<b>1,576,302,651.86</b>
<b>Equivalent in US\$</b>		<b>143,627,055.50</b>		<b>733,164,024.12</b>

\*Source: SENIAT

[39] The Committee finds that the information contained in the above-transcribed synoptic table serves to establish that in the country under review, administrative decisions have been adopted with respect to the collection of revenues through fines, indemnity claims, and debt payment schedules for the period between March 2007 and December 2008. However, that information is not itemized in such a way as to show which of these decisions concern favorable tax treatment improperly obtained based on acts of corruption; nor is any additional information supplied such as to enable it to make a comprehensive evaluation of the results in this topic. Therefore, the Committee will make a recommendation to the country under review that it consider the selection and development, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 1.4 (b) in Chapter II of this report).

#### **1.4. Conclusions and recommendations**

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

**[41] The Bolivarian Republic of Venezuela has considered and adopted measures 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 of Chapter II of this report.**

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

[43] Strengthen 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 Bolivarian Republic of Venezuela could take the following measures into account:

- a) Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment, such as the following (see section 1.2 of Chapter II of this report):
  - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based;
  - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions,
  - iii. Computer programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions;
  - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, and such aspects as certifying the authenticity of the documents submitted with the applications;
  - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications;
  - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.
- b) Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto (see 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 and provisions of a legal framework and/or other measures**

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

[45] – The Commercial Code,<sup>14</sup> Article 1 of which provides that [the Code] governs the obligations of businesspersons in their mercantile operations as well as all acts of commerce, including those carried out by non businesspersons.

[46] Article 10 provides that businesspersons are: i) all those who have the capacity to enter into contracts and make trade their habitual profession; and, ii) trading companies.

[47] Article 32 provides that all businesspersons are required to keep their accounts in Spanish, and that those books shall include the general journal, ledger, and general account book. They may also keep such auxiliary books as they deem appropriate to ensure the greatest possible orderliness and clarity in their operations.

[48] Article 33 provides that the general journal and the general account book may not be put into use before being submitted to the Mercantile Tribunal or Registrar, where such exist, or to the highest-ranked judge of ordinary law where the former officials do not exist, in order to have put on the first page of each book a note of the number of pages that it contains, dated and signed by the judge and his clerk or by the mercantile registrar, along with the seal of office stamped on all of the other pages.

[49] Article 34 provides that the general journal shall contain the entries, on a daily basis, of all the operations that businesspersons carry out, with each entry clearly stating the identity of the creditor and the debtor in each transaction, or a summary, at least monthly, of the totals of those operations, provided that in the latter case all of the documents by which to support such operations are kept daily.

[50] Under Article 36, businesspersons are prohibited to alter in the books the order and date of entries for the above-described operations; leave blank spaces between or after entries; make marginal or between-line entries, erasures or amendments; delete any part of entries; or remove pages, tamper with the binding or paging, or otherwise mutilate the books.

[51] Article 37 states that all errors and omissions committed upon making entries shall be corrected in a separate entry on the date when the fault was noted.

[52] Article 44 provides that all books of account and their supporting documents shall be kept for 10 years counted from the last entry in each book.

[53] Article 200 defines trading companies or partnerships as those whose purpose is to engage in one or more acts of commerce. This provision also mentions that the State, through the appropriate administrative agencies, shall ensure compliance with the legal requirements set for the incorporation and workings of corporations and limited liability partnerships.

[54] Article 284 says that all shareholders are entitled within 15 days before the shareholders' meeting to examine at the corporate premises the general accounts and list of shareholders, as well as obtain a copy of the balance sheet and the statutory auditor's report, which the management shall print for that purpose.

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<sup>14</sup> Special Official Gazette No. 475, of December 21, 1955.

[55] Article 287 provides that the regular shareholders meeting shall appoint one or more statutory auditors, who may be partners or not, in order to present a report to the shareholders' meeting of the following year on the corporation's position, the balance sheet, and the accounts to be submitted by the management.

[56] Article 311 provides that the statutory auditors shall review the balance sheets and issue their report; attend shareholder's meetings; perform such other functions as the law and bylaws prescribe for them, and, in general, ensure compliance on the part of the management with the obligations imposed by the law and the company charter and bylaws.

[57] – The Regulations of the Value-Added Tax Law,<sup>15</sup> Article 70 of which provides that payers of this tax, in addition to the books required by the Commercial Code, shall also keep a purchases book and a sales book; and that in these books they shall register in chronological order and without arrears information on their operations in the domestic market, imports, and exports, supported by invoices issued and received, or equivalent documents for the sale of goods and services. Articles 75 and 76 detail the particulars to be included in the aforesaid records of purchases and sales.

[58] – Article 102 of the Organic Tax Code identifies the following as violations of the obligation to keep accounting and special books and records: failure to keep the accounting and special books and records required by the appropriate laws; failure to keep accounting and special books and records in accordance with the formalities and conditions as set forth in the appropriate standards, or having them more than one month in arrears; failure to keep books of account and other accounting records in Spanish or in national currency, except in the case of taxpayers authorized by the Tax Administration to keep accounts in foreign currency; and failure to keep for the statutory period books, records, copies of payment vouchers or other supporting documents, as well as computerized bookkeeping systems or programs, magnetic storage media, or microfiche archives.

[59] – Resolution No. 254-2008 of the National Securities Commission,<sup>16</sup> which provides that corporations that make a public stock offering under the terms of the Capital Markets Law shall be required to prepare and present their financial statements in accordance with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS), as from the financial periods beginning on or after January 1, 2011, as the only accepted form of presenting accounts.

[60] – Enforcement Bulletin VEN-NIF No.0 of the Federation of Colleges of Public Accountants of Venezuela, Rule 13 of which establishes that the Generally Accepted Accounting Principles in Venezuela (VEN-NIF) are to replace, as of 2008, the Declarations of Accounting Principles (DPC) and Technical Publications (PT) for Large Entities, and also orders the adoption, inter alia, of International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS).<sup>17</sup>

[61] - The Public Accountancy Law (LECP in Spanish),<sup>18</sup> Article 1 of which provides that the practice of the profession of public accountancy shall be governed by the provisions contained in this Law and its Regulations.

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<sup>15</sup> Special Official Gazette No. 38.632 of February 26, 2007.

<sup>16</sup> Official Gazette No. 39.107 of January 27, 2009.

<sup>17</sup> This information can be accessed at: [http://www.fccpv.org/cont3/data/files/BA\\_VEN\\_NIF\\_0\\_V2\\_nov\\_2008.pdf](http://www.fccpv.org/cont3/data/files/BA_VEN_NIF_0_V2_nov_2008.pdf)

<sup>18</sup> Official Gazette No. 30.273 of December 5, 1973.

[62] Article 3 provides that for the purposes of this law, a public accountant is defined as anyone who has obtained or accredited in Venezuela a university degree in Public Accountancy and meets the requirement set forth in Article 18 of this law,<sup>19</sup> as well as the persons covered by Article 29,<sup>20</sup> provided that they meet the requirements set forth in said Law.

[63] Article 4 states that the title of ‘public accountant’ is reserved for the professionals to which the LECP refers.

[64] Article 7 provides, “*The professional services of public accountants shall be necessary wherever they are required by law, in particular the following:*

- a) To audit or examine the books or records of account, related documents, and financial statements of companies legally incorporated in the country and to issue an opinion thereon when said documents are used for judicial or administrative purposes. The services of a public accountant shall also be necessary whenever such documents are requested from said companies by financial, banking, or credit institutions, in fulfillment of their corporate purpose.*
- b) To express an opinion on the balance sheets of banks, insurance companies, and bonded warehouses, as well as those of any publicly traded companies. These shall be published*
- c) To audit or examine the financial statements that banks, insurance companies, and other credit institutions are required by law to publish or present. And also to express an opinion on said financial statements;*
- d) To act as accounting experts in proceedings on disclosure of books, accountability proceedings, or assessment of intangible assets;*
- e) To certify statements of account or balance sheets presented by liquidators of commercial or civil companies whose capital is equal to or greater than Bs. 500,000.00;*
- f) To certify statements of account and balance sheets produced by receivers in bankruptcy and meetings of creditors, and to review and approve balance sheets to be used in the transformation or merger of corporations whose capital is equal to or greater than Bs. 500,000.00;*
- g) To certify the report of the internal auditor of stock corporations as required by Article 311 of the Commercial Code, whenever that is requested by a number of shareholders that represents at least one fifth of the capital stock. When the nature of the company is one recognized in Articles 56, 62 and 70 of the Capital Market Law certification of the internal auditor’s report by a public accountant shall be mandatory;*
- h) To express an opinion on the financial statements that are required to be published as appendices to prospectuses for public offerings of securities issued in accordance with the Capital Market Law;*
- i) To express opinions on balance sheets and statements of profit and loss of decentralized state-owned companies and facilities, as well as foundations and other public-utility institutions.”*

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<sup>19</sup> Article 18 of the Public Accountancy Law provides, “*In order to practice the profession governed by the instant law, the professionals to which it refers shall register their qualifications with the respective College. The College shall assign this registration a number, which shall appear on all the public acts performed by the professional.*”

<sup>20</sup> Article 29 of the Public Accountancy Law provides, “*The Colleges are authorized to register any individuals who, in spite of not having obtained a university degree in public accountancy in Venezuela or accredited their degree in the country, request such registration within 12 months after the promulgation of this law, in the following cases:*

*1) If the person has at least seven years of professional practice as a public accountant in the country and can reliably demonstrate that fact with evidence that attests that during that practice they have repeatedly performed at least one of the functions mentioned in Article 7 herein;*

*2) If the person has between four and seven years of professional practice and, in addition to meeting the requirements set forth in the preceding paragraph, successfully sits the examination mentioned in Article 31 herein.”*

[65] Article 8 provides that a public accountant's opinion, certification, and signature on a company's financial statements presupposes, in the absence of evidence to the contrary, that the act in question has been carried out in accordance with the laws in force and in keeping with the bylaws in the case of legal persons; that the necessary information on which to base their opinion has been obtained; that the balance sheet reflects the actual situation of the company upon the date of its preparation; that amounts have been accurately taken from the books and that the latter are in compliance with law; and that the statement of profit and loss reflects the results of the operations carried out in the period under examination.

[66] Article 9 states, "*Performance of the following activities does not constitute professional practice of public accountancy: keeping of books and records of account; preparation of trial balance sheets or financial statements; acting as an internal auditor; preparation of reports for internal purposes; preparation and installation of bookkeeping systems; review of accounts and accounting methods in order to assess their effectiveness.*"

[67] Article 11 stipulates that public accountants shall observe professional confidentiality in the practice of their professional activities and, therefore, are prohibited to disclose any information or submit any evidence obtained in the course of these activities except to a competent authority and only in the circumstances provided in other laws.

[68] Article 22 states that it corresponds to the Federation of Colleges of Public Accountants of Venezuela to set standards on professional ethics and disciplinary measures by which to ensure the reputable practice of public accountancy; as well as to introduce and implement legal and regulatory reforms and issue internal regulations designed, *inter alia*, to help develop and protect the public accountancy profession.

[69] – The Code of Professional Ethics of Venezuelan Public Accountants, adopted by the Federation of Colleges of Public Accountants of Venezuela, Article 1 of which provides, *inter alia*, that this Code shall govern the conduct of all public accountants in their relations with the general public, their clients, their colleagues, and their representative body, and that it shall be applicable to them regardless of the form that their activity or specialty takes, and whether they practice independently or as an official or employee of public- or private-sector institutions.

[70] Article 6 mentions that the public accountant is required to observe professional confidentiality and not disclose for any reason any facts, information, or circumstances to which they are privy in the practice of their profession, in accordance with the provisions contained in the LECP.

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

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

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

[73] – To begin with, the Committee notes that although Article 3 of the Commercial Code specifies that all businesspersons are required to keep their accounts in Spanish, and that they must also keep a general journal, ledger, and general account book, it offers no further details about what systems should be used to keep these accounts. The Committee believes that the country under review could consider amending its Commercial Code to provide for the use of generally accepted accounting principles and the existing proposals in the tax legislation. The Committee will make a recommendation (see Recommendation 2.4 (a) in Chapter II of this report).

[74] – Second, the Committee’s attention is drawn to Article 9 of the Public Accountancy Law (LECP), states that “*Performance of the following activities does not constitute professional practice of public accountancy: keeping of books and records of account; preparation of trial balance sheets or financial statements; acting as an internal auditor; preparation of reports for internal purposes; preparation and installation of bookkeeping systems; review of accounts and accounting methods in order to assess their effectiveness,*” which could be interpreted as contradicting Article 7 of the same Law.<sup>21</sup> The Committee will make a recommendation (see Recommendation 2.4 (b) in Chapter II of this report).

[75] - Third, the Committee also notes that there is no obligation for publicly held companies and other associations to have legally qualified accountants in charge of their internal accounting controls. The Committee will make a recommendation (see Recommendation 2.4 (c) in Chapter II of this report).

[76] - Fourth, the Committee also believes that it would be useful to consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts and to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies to bring them to the attention of the legal representative and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense, as well as assuring that professional confidentiality not be an obstacle to that end. The Committee will offer recommendations in this regard (see Recommendation 2.4 (d) and (e) in Chapter II of this report).

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

[78] – Sixth, the Committee believes that it would be useful for the country under review to consider holding awareness and honesty promotion campaigns targeting the private sector, and also consider measures such as preparation of handbooks and guidelines for companies on good practices that should be implemented to prevent corruption (see Recommendation 2.4 (g) in Chapter II of this report).

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<sup>21</sup> The Bolivarian Republic of Venezuela, in the document containing its observations on the draft preliminary report, reported that it has a network of Colleges of Technical Accountants, which are gathered together under the umbrella of the Association of Accountants of Venezuela and/or National College of Accounting Technicians, (CNTC: <http://www.fenacotecv.org.ve/colegios.html>), which has a set of National Instructions for technical accountants and internal auditors, as well as its own Code of Ethics. However, since this information was submitted after the established deadline, its analysis was not possible. See Venezuela’s comments on the draft preliminary report, pp. 13-14.

[79] - Seventh, the Committee believes that it would be beneficial for the country under review to consider adopting such measures as it deems appropriate to make it easier for the organs or agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records in order to detect sums paid for corruption concealed through said records (see Recommendation 2.4 (h) in Chapter II of this report).

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

[80] In its response to the questionnaire the Bolivarian Republic of Venezuela made no reference to results obtained from the application of the above provisions.

[81] In this regard, the Committee draws attention to the importance that countries under review respond to the questionnaire in full, including the section on results, so as to enable it to make a comprehensive assessment both of any progress that might have been made and of those areas that require strengthening in order to implement the Convention. The Committee will make a recommendation in this regard (see Recommendation 2.4 (i) in Chapter II of this report).

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

[82] Based on the review conducted in foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[83] **The Bolivarian Republic of Venezuela has considered and adopted measures intended to create, maintain and strengthen standards on prevention of bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.**

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

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

- a) Adapt the Commercial Code to provide for the use of generally accepted accounting principles and the existing proposals in the tax legislation (see Chapter II, Section 2.2 of this report).
- b) Adopt appropriate measures to recognize as part of the professional practices of public accountants the activities of keeping books and records of account; preparation of trial balance sheets or financial statements; acting as an internal auditor; preparation of reports for internal purposes; preparation and installation of bookkeeping systems; and review of accounts and accounting methods in order to assess their effectiveness (see Chapter II, Section 2.2 of this report).
- c) Introduce the obligation for publicly held companies and associations of whatever type which, in the pursuit of their corporate purpose, conclude agreements with the State, with other states, or with domestic or foreign entities with state-owned capital, to have legally qualified accountants in charge of their internal accounting controls (see Chapter II, Section 2.2 of this report).

- d) Consider the use of guidelines or manuals on the conduct of internal audits designed to detect anomalies or corrupt acts (see Chapter II, Section 2.2 of this report).
- e) Adopt the necessary measures to make it a duty for individuals and accountants responsible for the entry of accounting records and for internal auditors when they detect anomalies to bring them to the attention of the legal representative and the partners (in the case of companies) or members (in the case of associations), and to report them to the appropriate authorities in the event that they could constitute an offense, ensuring that professional or commercial confidentiality is not an obstacle for that purpose (see Chapter II, Section 2.2 of this report).
- f) Promote training for individuals responsible for the entry of accounting records and for accounting for their accuracy, including raising awareness of the importance of abiding by the standards in force for ensuring the veracity of said records and the consequences of their violation (see Chapter II, Section 2.2 of this report).
- g) Consider holding awareness and honesty promotion campaigns targeting the private sector, and also consider measures such as preparation of handbooks and guidelines for companies on good practices that should be implemented to prevent corruption (see Chapter II, Section 2.2 of this report).
- h) Consider adopting such measures as it deems appropriate to make it easier for the organs or agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records in order to detect sums paid for corruption concealed through said records (see Chapter II, Section 2.2 of this report):
  - i. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred.
  - ii. Handbooks, manuals, or guidelines for control organs or agencies that do not yet have them on how to review accounting records in order to detect sums paid for corruption.
  - iii. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based.
  - iv. Institutional coordination mechanisms that enable said organs or agencies easily to obtain timely collaboration needed from other institutions or authorities to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
  - v. Training programs for officials of organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records, specifically designed to alert them to the methods used to disguise payments for corruption through said records and to instruct them on how to detect them.

- i) Through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and for ensuring ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the proper manner, select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report (see Chapter II, Section 2.3 of this report).

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

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

[86] The Bolivarian Republic of Venezuela has no provisions that criminalize transnational bribery as provided in Article VIII of the Convention.

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

[87] Based on the observations contained in the preceding section, the Committee will formulate 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 transnational bribery as an offense as provided in Article VIII of the Convention.<sup>22</sup> (See Recommendation 3.4.1, 3.4.2 and 3.4.3 in Chapter II of this report).

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

[88] The absence of standards in this area precludes an evaluation of results in this regard. In its response the country under review says, "*Venezuela has no record in the past five years of any request for legal assistance from another state party in connection with transnational bribery.*"<sup>23</sup> Bearing in mind both of these circumstances the Committee will make a recommendation in that regard. (See Recommendation 3.4.4 in Chapter II of this report).

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

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

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

[91] In light of the comments formulated in that section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendations:

- 3.4.1 Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the

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<sup>22</sup> On page 12 of its response to the questionnaire the Bolivarian Republic of Venezuela mentions, "At present the National Assembly is debating a reform of the Venezuelan Criminal Code and an anticorruption bill. The legislative authorities are dealing with this situation."

<sup>23</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 13.

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).

- 3.4.2 Adopt, subject to its Constitution and the fundamental principles of its legal system, appropriate measures that 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 3.2 of this report).
- 3.4.3 Adopt the necessary measures to ensure, with respect to the provision that criminalizes the conduct described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term "government official of another state." (See Chapter II, Section 3.2 of this report).
- 3.4.4 Select and develop, through the organs or 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**

[92] The Bolivarian Republic of Venezuela has a set of provisions related to illicit enrichment, among which the following should be noted:

[93] – The Constitution, Article 116 of which provides that: "*Confiscations of property shall not be ordered or carried out, except in the cases permitted by this Constitution. As an exceptional measure, the property of Venezuelan or foreign individuals or corporations who are responsible for crimes committed against state assets may be subject to confiscation, as may be the property of those who have illicitly enriched themselves under the cover of Public Power, and property deriving from commercial, financial, or any other activities connected with unlawful trafficking in psychotropic and narcotic substances.*"

[94] The Anticorruption Law (*Ley Contra la Corrupción - LCC*),<sup>24</sup> Article 46 of which provides that "*A public official commits illicit enrichment when in the performance of their functions they obtain an increase in wealth that is disproportionate to their income, which they are not able to explain upon being requested to do so, and it does not constitute another offense.*"

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<sup>24</sup> Special Official Gazette No. 5.637 of April 7, 2003.

[95] Article 48 provides that the proceeds of illicit enrichment shall, when the sentence becomes final, become the property of the injured entity should they have suffered financial harm. In all other instances they shall pass to the Treasury.

[96] Article 73 provides that any public servant who in the performance of his duties obtains an increase in his net worth that is disproportionate in comparison to his income and that he cannot justify, upon being requested so to do and provided that it does not constitute another crime, shall be punished by a prison term of between three (3) and ten (10) years. The same penalty shall apply to third parties who intervene to cover up such unjustified increases in net worth.

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

[97] With respect to the provisions related to the criminalization of illicit enrichment as provided for by Article IX of the Convention, the Committee notes that based on the information available to it, they may be said to constitute a coherent set of measures that are pertinent for promoting the purposes of the Convention.

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

[98] The section on results in the response of the Bolivarian Republic of Venezuela to the questionnaire includes a number of synoptic tables on the following:<sup>25</sup> Net worth audits and penalties imposed by the Office of the Comptroller General under the Anticorruption Law from 2004 to 2009; penalties imposed by the Office of the Comptroller General in 2008; a list of appellate and lower courts with cases concerning crimes against public property and administration of justice as of May 2008; a summary, by judicial instance of ongoing and suspended cases concerning crimes against public property and administration of justice as of May 2008; and a summary of proceedings instituted by the Office of the Attorney General in connection with acts of corruption, from 2004 to 2008.

**TABLE 2**  
Net worth audits and penalties imposed  
by the Office of the Comptroller General under the Anticorruption Law, 2004-2009

Tax returns reviewed	Net worth audits carried out	Cases referred to the Office of the Attorney General	Number of officials punished	Unjustified increase in wealth (Bs. F)	Penalties imposed F).
71.659	78	63	110	42,730,853.57	534,865.75
				Amount in US\$	
				<b>19,874,815.61</b>	<b>248,774.77</b>

*\*Source: Activity Report of the Office of the Comptroller General*

[99] Based on the information submitted by Venezuela in the results section, the Committee notes that the Office of the Comptroller General has conducted net worth audits, identified cases of unjustified increases in wealth, and imposed penalties. The Committee also notes that the information

<sup>25</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 16-18.

supplied does not include any information about results in connection with assistance and cooperation with respect to this offense, as provided in the Convention.

[100] Considering that the Committee does not have additional information that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will make a recommendation that, through the organs or agencies responsible for requesting and/or providing the aforesaid assistance and cooperation, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard (see Recommendation 4.4 in Chapter II of this report).

#### **4.4. Conclusions and recommendation**

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

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

[103] In light of the comments formulated in that section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendation:

- Select and develop, through the organs or agencies charged with requesting and/or providing assistance and cooperation with respect to the offense of illicit enrichment, as provided in the Convention, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard. (See Chapter II, Section 4.3 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**

[104] The Bolivarian Republic of Venezuela has not criminalized 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.

[105] The Bolivarian Republic of Venezuela criminalized illicit enrichment,<sup>26</sup> as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention. In April, 2003 it enacted the Law against Corruption,<sup>27</sup> which repealed the previous legislation, but maintained and expanded the provisions on illicit enrichment.

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

[106] Bearing in mind that the Bolivarian Republic of Venezuela has not criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption, should it do so, the Committee will recommend that it notify the OAS Secretary General of that fact, in

<sup>26</sup> Organic Law of Protection of Public Assets, published in Official Gazette No. 3.077, December 23, 1982.

<sup>27</sup> Extraordinary Official Gazette N° 5.637, April 7, 2003

accordance with Article X of the Convention. (See the recommendation in Chapter II, Section 5.3 of this report).

[107] On the other hand, the Bolivarian Republic of Venezuela criminalized illicit enrichment, as provided in Article IX of the Inter-American Convention against Corruption, prior to the date on which it ratified the Convention; consequently, the notification provided in Article X thereof is not necessary.

### **5.3. Conclusions and recommendation.**

[108] The Bolivarian Republic of Venezuela has not criminalized transnational bribery as provided in Article VIII of the Inter-American Convention against Corruption. Accordingly, should it do so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.

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

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

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

[110] – The Constitution of the Bolivarian Republic of Venezuela, Article 69 of which prohibits extradition of Venezuelans.

[111] Article 271 provides that in no case shall the extradition be refused of foreigners responsible for the offenses of money laundering, drug trafficking, international organized crime, acts against the public resources of other states, and human rights violations.

[112] – Article 6 of the Criminal Code provides that the extradition of a Venezuelan shall not be granted on any grounds, but that, at the request of the aggrieved party or of the Office of the Attorney General, they shall be tried in Venezuela if the offense with which they are charged is punishable under Venezuelan law. This article also provides that the extradition of a foreigner shall not be granted for political crimes or for infringements related to such crimes; or for any act not criminalized by Venezuelan law; or if the crime of which they are accused carries the death penalty or life imprisonment under the laws of the requesting country.

[113] – The Code of Criminal Procedure, Articles 395 to 399 of which, describe how an extradition request is to be processed.

[114] – Extradition treaties signed by the Bolivarian Republic of Venezuela with Colombia, Brazil, United States, Chile, and Uruguay, among others.<sup>28</sup>

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

[115] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

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<sup>28</sup>. The texts of the bilateral extradition treaties signed by Venezuela are available for consultation at: <http://www.oas.org/juridico/mla/sp/per/index.html>

[116] However, the Committee believes it necessary, based on the provisions contained in Article XIII (6) of the Convention, for the country under review to consider adopting pertinent measures to send a report in due course to the requesting state to which it refuses an extradition request for an offense that it has criminalized in accordance with the Convention on the basis of the nationality of the person sought, or because it deems that it has jurisdiction, on the final outcome of the case, which, as a consequence of that refusal, it has submitted to its competent authorities for prosecution (see Recommendation 6.4 (a) in Chapter II of this report).

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

[117] With respect to results in this area, the response of the Bolivarian Republic of Venezuela to the questionnaire includes the below-transcribed synoptic table on extradition cases processed from 2000 to 2009:

**TABLE 7**  
Extradition Cases Processed, 2000-2009\*

<b>Year</b>	<b>Extradition Decisions</b>
<b>2009</b>	5
<b>2008</b>	30
<b>2007</b>	31
<b>2006</b>	48
<b>2005</b>	26
<b>2004</b>	9
<b>2003</b>	7
<b>2002</b>	9
<b>2001</b>	18
<b>2000</b>	9

*\*Source: Supreme Court of Justice*

[118] From the information submitted by Venezuela in the results section, the Committee notes that the Supreme Court of Justice has processed extradition cases and issued decisions in that regard. However, the Committee notes that the information supplied does not indicate what those decisions entailed nor includes results related to assistance and cooperation with respect to this offense, as provided in the Convention, for the last five years.

[119] In the absence of any additional information with which to make a comprehensive evaluation of results of this topic, the Committee will make a recommendation that, through the organs or agencies responsible for requesting and/or providing the aforesaid assistance and cooperation, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard (see Recommendation 6.4 (b) in Chapter II of this report).

[120] Finally, In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes and corruption cases. This could consist, among other measures, in 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 Recommendation 6.4 (c) in Chapter II of this report).

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

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

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

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

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

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

#### **FIRST ROUND<sup>29</sup>**

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

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<sup>29</sup> The references to sections that appear in italics in the recommendations and measures transcribed herein, refer to the report from the First Round of Review.

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

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

#### Recommendation 1.1.1:

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>30</sup>

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

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<sup>30</sup> Report on Implementation in Uruguay of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 23 – 24, [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

[125] With respect to measures a), b) and f) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>31</sup> In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measures, the following:

[126] *“The Venezuelan State, through the Office of the Comptroller General, created in 2008 a Technical Support Subcommittee for the preparation of a proposed Law on Conflict of Interests (...).*

[127] *“The bill contains definitions for a number of concepts, including conflict of interests, nepotism, public ethics, administrative morals, and political proselytism. It also describes conflict-of-interest situations that give rise to liability to administrative prosecution for public servants, which may give rise to penalties that range from a fine to annulment of the appointments made in violation of said instrument.”*<sup>32</sup>

[128] Venezuela also says that *“(…), the Code of Ethics for Venezuelan Judges was issued<sup>33</sup> the purpose of which is to set out to be ethical principles that guide the conduct of the judges of the Republic, as well as their disciplinary system, in order to ensure their independence and suitability, thereby preserving the trust of the people in the integrity of the judiciary and judicial system.”*

[129] The Committee takes note of the steps taken by the country under review to advance in its implementation of measures a), b), and f) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, for which purpose it hopes that the country can overcome the implementation difficulties that it has mentioned in its Response,<sup>34</sup> in the sense that a date has not yet been set on the agenda of the National Assembly for the debate on the proposed Law on Conflict of Interests, but that it is under review by the Committee for Domestic Policy in the Legislature. Furthermore, the Committee has noted the information provided on the domestic agencies that have participated in its implementation.<sup>35</sup>

[130] With respect to measure c) of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to its implementation.

[131] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure d) of the foregoing recommendation.<sup>36</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[132] With respect to measure e) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from

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<sup>31</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 28-29.

<sup>32</sup> The State under review mentions that for more-detailed information the official web page of the Ministry of Communication and Information may be consulted at:

[http://www.minci.gob.ve/noticias/1/182059/consulte\\_el\\_contenido.html](http://www.minci.gob.ve/noticias/1/182059/consulte_el_contenido.html).

<sup>33</sup> Published in Official Gazette 39.236 of August 6, 2009.

<sup>34</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 27-28.

<sup>35</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 27-28.

<sup>36</sup> *Ibid*, p.28.

the Second Round.<sup>37</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measure, the following:

[133] *“A government officials register was incorporated in the online submission system for sworn statements of assets and will be under the supervision of the Office of the Comptroller General. This system came into force on July 1, 2009. In an initial phase, a registration system for public-sector organs and entities was set up and launched on March 23, 2009, in order to ensure control and follow-up on the obligation to submit asset disclosures and establish the necessary organization. Both of these systems will be integrated with the government official registration system, which will facilitate their use in the prevention and punishment of conflict-of-interests violations.”*

[134] The Committee takes note of the step taken by the country under review to advance in the implementation of measures e) of the foregoing recommendation, as well as the need for it to continue to give attention thereto, given that the recommendation refers to the use of a system which was implemented very recently.

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

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>38</sup>

- Recommendation 1.2.1

*Continue to bring the Criminal Code in line with the provisions of Article 271 of the Constitution, which stipulates the non-applicability of statutory limitations on crimes against public property.*

[135] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>39</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the recommendation, the following:

[136] *“At present the National Assembly is debating a reform of the Venezuelan Criminal Code and the Venezuelan government is giving attention to the Committee’s recommendations.”*

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

- Recommendation 1.2.2

*Consider the possibility of extending the five-year disqualification period for public service, established in Article 96 of the Anticorruption Act (LCC), to any official or public employee punished for any crime stipulated in this Act, to 15 years, pursuant to Article 105 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System (LOCGRSNC).*

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<sup>37</sup> *Ibid.*

<sup>38</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>39</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 29.

[138] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>40</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the recommendation, the following:

[139] *“At present the Public Accounts Committee of the National Assembly is analyzing a reform of the Anti-Corruption Law and the Venezuelan government is giving attention to the Committee’s recommendations.”*

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

- Recommendation 1.2.3

*Strengthen the power of the Judiciary so that it retains the power to determine the liability of public servants for crimes of corruption, notwithstanding laws that allow other bodies to take administrative or other action.*

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

[141] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>41</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the recommendation, the following:

[142] *“At present the Public Accounts Committee of the National Assembly is analyzing a reform of the Anti-Corruption Law and the Venezuelan government is giving attention to the Committee’s recommendations.”*

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

- Recommendation 1.2.4

*Take relevant measures to ensure that the discretion allowed in several provisions related to government procurement, as well as in Article 59 of the Anti-Corruption Act (LCC), does not constitute an element that affects or could prompt a public servant to engage in illicit conduct or to make arbitrary decisions, in relation to the preservation and proper use of public resources, as mentioned in Section 1.2.3.*

[144] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second

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<sup>40</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 29.

<sup>41</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 29.

Round.<sup>42</sup> In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the recommendation, the following:

[145] *“At present the Public Accounts Committee of the National Assembly is analyzing a reform of the Anti-Corruption Law and the Venezuelan government is giving attention to the Committee’s recommendations.”*

[146] *“(…) the reform of the Government Contracting Law was recently approved,<sup>43</sup> as were its Implementing Regulations,<sup>44</sup> consolidating the standards on procurement of goods and services and introducing rules on decision making by government officials in this regard, thus eliminating the degrees of discretionality that existed in the abolished standards.”<sup>45</sup>*

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

- Recommendation 1.2.5

*Design and implement mechanisms to inform and train all public servants with respect to the standards of conduct mentioned in this section, and to handle enquiries about the standards, as well as provide periodic training and updating with regard to said standards*

[148] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>46</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the recommendation, the following:

[149] *“In order to ensure proper conservation and use of resources entrusted to government officials in the performance of their functions, the Bolivarian Republic of Venezuela has substantially increased for 2009 the budget appropriation for courses, workshops, and other events for providing training to government officials in the various organizations that comprise the different branches of government at the national, state, and municipal level.*

[150] *“Thus, for example, in the judicial branch, through the National Judiciary School, a variety of training programs have been implemented to disseminate and provide training to judicial officials on standards of conduct and proper use of assigned resources; since 2007, a total of 4,558 officials have received training under these programs.”*

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

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<sup>42</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 29.

<sup>43</sup> Official Gazette 39.165 of April 24, 2009.

<sup>44</sup> Official Gazette 39.181 of May 19, 2009.

<sup>45</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 29.

<sup>46</sup> *Ibid.*, p. 29-33.

### **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**

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>47</sup>

- Recommendation 1.3.1

*Develop regulations and mechanisms in order to facilitate and promote the reporting of acts of corruption. This should be complemented by measures that protect public servants who report these acts, in particular when these acts involve managers or superiors.*

*Ensure that the regulations and provisions in force, for instance Article 2 of the Presidential Order through establishing the Code of Conduct of Public Servants, specifically allows people to report unlawful acts to the oversight bodies, eliminating the requirement to inform only the management of the institution where the public servant reported works.*

[152] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>48</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 1.3.2

*Consider the possibility, in the case of employees who fail to comply with the obligation to report, of imposing punishment of a criminal or administrative nature that is more severe than the current system of fines, including loss of employment, among other penalties, depending on the seriousness of the offence.*

[153] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>49</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 1.3.3

*Update the financial penalties set forth in the criminal code, taking into account the seriousness of corruption offenses in the public service.*

[154] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>50</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the recommendation, the following:

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<sup>47</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>48</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.33.

<sup>49</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.33.

<sup>50</sup> *Ibid.*

[155] “At present the National Assembly is debating a reform of the Venezuelan Criminal Code and the Venezuelan government is giving attention to the Committee’s recommendations.”

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

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

• Recommendation

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

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

- a) *Promulgate legal provisions and other pertinent measures in order to establish clearly those parties from whom the Comptroller General of the Republic may request the periodic presentation of a sworn statement of net worth, to ensure that these provisions include senior officials within the public administration and those who, given the importance and nature of their posts, could facilitate or generate illicit enrichment or other unlawful acts against public property, and to determine the deadlines for presenting said statements, their contents and formal requirements.*
- b) *Consider the appropriateness of requiring sworn statements at times other than those already provided for, establishing reasonable timelines for updating them or circumstances under which it would be advisable to require their presentation.*
- c) *Strengthen the role afforded to officials in charge of human resources units under Article 26 of the Anticorruption Act. This could be achieved by stipulating the obligation of these units to immediately notify the Office of the Comptroller General whenever an individual obliged to do so fails to present proof of presentation of the statement of income, assets and liabilities, and by specifying/detailing the corresponding actions to be taken by the Office of the Comptroller General in such situations.*
- d) *Regulate the conditions, procedures and other appropriate aspects related to the publicizing of sworn statements of income, assets and liabilities, as applicable.*
- e) *Use sworn statements of income, assets and liabilities to detect and prevent conflicts of interest.*
- f) *Implement a register of those obliged to present sworn statements of income, assets and liabilities and mechanisms for the periodic updating of said register.*
- g) *Implement the necessary procedures for achieving effective control over compliance in presenting these statements, in accordance with the recommendation made in point f) above.*
- h) *Consider the possibility of adjusting prevailing legislation to make use of modern information and communications technologies to administer and manage these statements.*

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<sup>51</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

[157] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>52</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measure, the following:

[158] The promulgation of Resolution No. 01-00-57 of the Office of the Comptroller General,<sup>53</sup> which requires the annual presentation of a sworn statement of net worth by government officials or employees who “*hold any of the following posts: President and Vice President of the Republic, Principal Deputies of the National Assembly, Members of the Supreme Court of Justice and of the First and Second Contentious Administrative Tribunals, Members of the Board of the CNE, Attorney-General and Assistant Attorney-General of the Republic, Comptroller General of the Armed Forces; Ministers and Vice Ministers, Ambassadors, Consuls, Registrars and Notaries, Judges, Members of the Board of the Central Bank of Venezuela, Members of the Board of Directors of Corporations, State-Owned Companies, Self-Governing Institutes, Civil Associations and Foundations; Superintendents, Intendents, and Directors General of Public Sector Organs and Agencies; Rectors, Vice-Rectors and Secretaries of Public Universities, Governors and Government Clerks, Members of State Legislative Councils, State Attorneys, Assistant Attorneys and Directors General, State Comptrollers, District and Municipal Mayors and Directors General, Members and Directors General of District and Municipal Councils, District and Municipal Auditors.*”

[159] The Committee takes note of the step taken by the country under review to advance in its implementation of measure a) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[160] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure b) of the foregoing recommendation.<sup>54</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[161] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure c) of the foregoing recommendation.<sup>55</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[162] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure d) of the foregoing recommendation.<sup>56</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[163] With respect to measure e) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>57</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measure, the following:

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<sup>52</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 34-35.

<sup>53</sup> Published in Official Gazette 39.148 of March 27, 2009.

<sup>54</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.35.

<sup>55</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.35.

<sup>56</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.p. 35-36.

<sup>57</sup> *Ibid*, p. 36.

[164] *“Included in the proposed law on conflict of interests.”*

[165] The Committee takes note of the step taken by the country under review to advance in its implementation of measure e) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[166] With respect to measure f) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step that leads it to conclude that measure f) of the recommendation has been satisfactorily considered, the implementation of the Registration System for Public Sector Organs and Entities,<sup>58</sup> by Resolution No. 01-00-000049,<sup>59</sup> of March 9, 2009.

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

[168] With respect to measure g) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>60</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measure, the following:

[169] *“With the implementation of the Electronic Submission System for Sworn Statements of Net Worth, compliance by government officials with the obligation to submit sworn statements of net worth will be more closely monitored.”*

[170] The Committee takes note of the step taken by the country under review to advance in its implementation of measure g) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[171] With respect to measure h) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step that leads it to conclude that measure h) of the recommendation has been satisfactorily considered, the creation of the Electronic Submission System for Sworn Statements of Net Worth,<sup>61</sup> by resolution No. 01-00-000122 of June 19, 2009.<sup>62</sup>

[172] The Committee takes note of the satisfactory consideration by the country under review of measure h) of the foregoing recommendation.

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<sup>58</sup> Available at the Internet portal of the Office of the Comptroller General: <http://www.cgr.gob.ve/>

<sup>59</sup> Published in Official Gazette 39.139 of March 13, 2009.

<sup>60</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.36.

<sup>61</sup> Available at the Internet portal of the Office of the Comptroller General: <http://www.cgr.gob.ve/>

<sup>62</sup> Published in Official Gazette 39.205 of June 22, 2009.

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

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

- Recommendation 3.1

*Strengthen the supervisory work carried out by the Office of the Comptroller General, as the lead body for oversight and monitoring of state comptroller's offices, considering the possibility of conducting a larger number of evaluations or diagnoses on their activities, or using the mechanisms or instruments deemed appropriate to verify their proper operation.*

[173] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>64</sup> In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measure, the following:

[174] *“... as governing organ of the National Fiscal Control System, the Office of the Comptroller General performs assessments and reviews, as well as engaging in joint activities with the other bodies that comprise the System, in order to ensure that it functions properly, harmonize criteria, and make efficient use of the resources allocated to the fiscal control organs.*

[175] *“As a result of those assessments, in 2008, the intervention was ordered under Article 34 of the LOGRSNCF (Organic Law of the Office of the Comptroller General) of four state and 16 municipal comptroller's offices.”*

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

- Recommendation 3.2

*Strengthen the work of the Office of the Comptroller General by putting into practice policies and concrete actions to check follow-up and implementation by entities under its supervision of corrective actions suggested during audits, diagnoses or evaluation.*

[177] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>65</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

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<sup>63</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>64</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 36.

<sup>65</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 37.

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

##### 4.2 Mechanisms for access to information

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

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

[178] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>67</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

##### 4.2 Mechanisms for access to information

- Recommendation

*Institute legal standards and measures to support access to public information.*

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>68</sup>

- Strengthen the guarantees provided on the exercise of the right to public information, including the possibility of accessing a type of information other than that already provided for; and consider the implementation of provisions that ensure that access to such information can only be denied for reasons explicitly regulated and determined by law.*
- Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.*
- Establish a specific procedure to protect the right of citizens to access public information, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) an entity or offices charged with this function and an oversight agency that should monitor the implementation of these regulations; iii) requirements on admissibility and consequences when such requirements are not met; iv) reasons why a request may be denied; v) method for communicating with the official who submitted the request; vi) prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to the information being sought; and vii) an increase in the number of sanctions so as to cover*

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<sup>66</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>67</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.p. 37-38.

<sup>68</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

*a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.*

- d) *Implement, if this has not yet been done, the provision of Article 9 of the Anticorruption Act relating to the creation of public or citizen service offices, ensuring that they have sufficient resources to carry out their work.*

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

[179] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure a) of the foregoing recommendation.<sup>69</sup> In addition, in the Progress Report submitted by on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC, the country under review mentions that *“no progress is reported in the implementation of this measure.”*<sup>70</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[180] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure b) of the foregoing recommendation.<sup>71</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[181] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure c) of the foregoing recommendation.<sup>72</sup> In addition, in the Progress Report submitted by on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC, the country under review mentions that *“no progress is reported in the implementation of this measure.”*<sup>73</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[182] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>74</sup> In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measure, the following:

[183] *“The Office of the Comptroller General has been very persistent in promoting the creation of Citizen Assistance Offices at all public administration entities, which have responded satisfactorily. The entry into force of the new Rules for Promotion of Citizen Participation has encouraged their creation, which the Office of the Comptroller General has followed very closely.*

[184] *In that connection, the Office of the Comptroller General issued instructions for all organs that comprise the National Fiscal Control System, upon carrying out their oversight activities, to verify the creation of Citizen Assistance Offices in accordance with the aforementioned legal instrument at all public-sector organs and agencies at the national, state, and municipal level.”*

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<sup>69</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 38-39.

<sup>70</sup> Progress Report of the Bolivarian Republic of Venezuela, p.5.

<sup>71</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 39.

<sup>72</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 38-39.

<sup>73</sup> Progress Report of the Bolivarian Republic of Venezuela, p.5.

<sup>74</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 39-40.

[185] The Committee takes note of the steps taken by the country under review to advance in the implementation of measure d) of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

[186] With respect to measure e) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>75</sup> In this regard, the Committee notes, as steps which contribute to the progress in the implementation of the measure, the following:

[187] *“(...) in 2007, 2008 and so far in 2009, the organs that make up the National Fiscal Control System have provided training to more than 98,000 officials and citizens in 3,451 training activities on aspects connected with public administration oversight, citizen participation, and the right to information (...)*

[188] *“For its part, the Office of the Comptroller General, through the Higher Institute for Fiscal Control and State Auditors (COFAE in Spanish), included in its program the courses “Creation and Operations of Citizen Assistance Offices,” “Citizen Participation As a Public Administration Oversight Mechanism,” and “Excellence in Citizen Assistance and Service.” The courses are intended for government officials or professionals involved in activities associated with citizen participation, in particular those who carry out citizen-assistance duties, and directors, managers, supervisors, officials, and other professionals involved in citizen services who are interested in raising service standards.”*

[189] The Committee takes note of the steps taken by the country under review to advance in the implementation of measure e) of the foregoing recommendation. However, the Committee observes that the information supplied by the country under review does not indicate which of the 3,451 training activities were specifically related to mechanisms for access to public information in the possession of the state and optimization of the use of technology to facilitate understanding in this area by officials and citizens; nor which of the 98,000 individuals who received training were public officials and which were private citizens. The Committee reiterates the need for country under review to continue to give attention thereto.

#### **4.3. Mechanisms for consultation**

- Recommendation

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>76</sup>

- a) Carry out processes to allow consultation with interested sectors with respect to the design of public policies and the preparation of draft laws, decrees or resolutions in the sphere of the Executive Branch.*

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<sup>75</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.40.

<sup>76</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

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

[190] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure a) of the foregoing recommendation.<sup>77</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation

[191] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure b) of the foregoing recommendation.<sup>78</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[192] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure c) of the foregoing recommendation.<sup>79</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[193] With respect to measure d) of the foregoing recommendation, in its Response, the country under review provided no information. The Committee reiterates the need for the country under review to give additional attention to its implementation.

[194] With respect to measure e) of the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>80</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the measure, the following, which the country under review had already mentioned in connection with measure e) of recommendation 4.2:

[195] *“(…) in 2007, 2008 and so far in 2009, the organs that make up the National Fiscal Control System have provided training to more than 98,000 officials and citizens in 3,451 training activities on aspects connected with public administration oversight, citizen participation, and the right to information (…)*

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<sup>77</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.p. 40-42.

<sup>78</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.p. 42-43.

<sup>79</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 43.

<sup>80</sup> *Ibid*, p.40 and p.43.

[196] The Committee takes note of the steps taken by the country under review to advance in the implementation of measure e) of the foregoing recommendation. However, the Committee observes that the information supplied by the State under review does not indicate which of the 3,451 training activities were directly related to the use of consultation mechanisms by civil society and nongovernmental organizations, as well as public officials and employees; which of the 98,000 individuals who received training were public officials and which were private citizens; and whether or not there was participation by civil society and nongovernmental organizations and, assuming there was, specifically which organizations did so. The Committee reiterates the need for country under review to continue to give attention thereto.

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

- Recommendation

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>81</sup>

- a) Strengthen and continue to implement rules and mechanisms that encourage the participation of civil society and non-governmental organizations in public administration efforts to prevent corruption. Also, consider establishing a legal structure that systematically increases, promotes and includes such aspects methods of participation other than those already anticipated, as well as different mechanisms to promote, facilitate, consolidate and assure this participation.*
- b) Adopt the legal provisions and measures considered appropriate to ensure that the registry of organized communities and non-governmental organizations is not used as a restrictive tool to discourage the participation of civil society and non-governmental organizations in efforts designed to prevent corruption.*
- c) Regulate Article 76 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System which grants civil society and non-governmental organizations the right to suggest candidates to lead fiscal control units in the institutions subject to this law.*
- d) Take steps towards the repeal of the “contempt laws” (See Section 4.4.2. of this report).*
- e) Design and implement programs and disseminate information so as to encourage participation in public administration and, when appropriate provide civil society, non-governmental organizations, public officials and employees with the necessary training and tools to use such mechanisms.*

[197] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure a) of the foregoing recommendation<sup>82</sup>. The Committee reiterates the need for the country under review to give additional attention to its implementation.

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<sup>81</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>82</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 44.

[198] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure b) of the foregoing recommendation.<sup>83</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[199] In its Response, the country under review provided no information with respect to measures c) and d) of the foregoing recommendation. The Committee reiterates the need for the country under review to give additional attention to its implementation.

[200] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure e) of the foregoing recommendation.<sup>84</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

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

- Recommendation

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

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>85</sup>

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

[201] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure a) of the foregoing recommendation.<sup>86</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “no progress is reported in the implementation of this measure.”<sup>87</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

[202] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the measure b) of the foregoing recommendation.<sup>88</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

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<sup>83</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 44.

<sup>84</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 44.

<sup>85</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>86</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 45.

<sup>87</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 7.

<sup>88</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 45.

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

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>89</sup>

- Recommendation 5.1

*Analyze the possibility of including the acts of corruption referred to in the Inter-American Convention against Corruption in bilateral legal cooperation treaties subscribed in the future, especially those involving other States Parties to the Inter-American Convention against Corruption.*

[203] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>90</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 5.2

*Promote the harmonization of domestic legislation with the provisions of the Inter-American Convention against Corruption pertaining to extradition, and compile in a single text the provisions and standards relating to international treaties on mutual legal assistance in criminal matters.*

[204] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>91</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 5.3

*Consider deepening internal coordination among the various bodies responsible for Mutual Legal Assistance*

[205] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>92</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 5.4

*Determine and prioritize specific areas in which the Bolivarian Republic of Venezuela considers that technical cooperation from other States Parties is necessary to strengthen its capacity to prevent, detect, investigate and punish acts of corruption.*

[206] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second

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<sup>89</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>90</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 45.

<sup>91</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 45.

<sup>92</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 45.

Round.<sup>93</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the foregoing recommendation, the identification of specific areas of cooperation by the country under review and other states parties at the Third Summit of the Presidents of the Judicial Branches of the member states of UNASUR in October 2008, in the Declaration of Nueva Esparta.<sup>94</sup>

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

- Recommendation 5.5

*Design and implement a comprehensive information and training program for applicable authorities and officials, with the objective of ensuring that they are aware of the mutual legal assistance provisions and can provide assistance needed for investigation and/or prosecution of acts of corruption provided for in the Convention and in other treaties subscribed by the Bolivarian Republic of Venezuela .*

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

[208] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>95</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 5.6

*Design and implement an information system that enables authorities of the Bolivarian Republic of Venezuela to ensure ongoing follow-up of requests for legal assistance in reference to acts of corruption and, in particular, to those covered in the Inter-American Convention against Corruption.*

[209] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>96</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

- Recommendation 5.7

*Continue ongoing technical cooperation exchanges with other States Parties and consider holding discussions with other States on the most effective ways and means to prevent, detect, investigate and punish acts of corruption.*

[210] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing

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<sup>93</sup> *Ibid*, p.46.

<sup>94</sup> This document is available for consultation on line at <http://www.tsj.gov.ve/unasur/unasur.shtml>

<sup>95</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 46.

<sup>96</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 46.

recommendation.<sup>97</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

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

[211] The Committee did not formulate any recommendations to the Bolivarian Republic of Venezuela on this matter.

## 7. GENERAL RECOMMENDATIONS

Recommendations suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:<sup>98</sup>

### ▪ Recommendation 7.1

*Design and implement, when appropriate, training programs for public servants in charge of applying the systems, standards, measures and mechanisms considered in this report, with the objective of guaranteeing adequate knowledge, handling and implementation of the above.*

[212] With respect to the foregoing recommendation, in its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round.<sup>99</sup> In this regard, the Committee notes, as a step which contributes to the progress in the implementation of the foregoing recommendation, the design of a distance-training program on the Inter-American Convention against Corruption and its most important aspects. The Committee takes note of the steps taken by the country under review to advance in the implementation of the foregoing recommendation, as well as the need for it to continue to give attention thereto.

### • Recommendation 7.2

*Select and develop procedures and indicators, as appropriate, which enable verification of the follow-up to the recommendations contained in this report, and communicate the results of this follow-up to the Committee through the Technical Secretariat. With this in mind, consider taking into account the list of more general indicators applicable within the Inter-American system that were available for the selection indicated by the State under review and posted on the OAS website by the Technical Secretariat of the Committee; as well, consider information derived from the review of the mechanisms developed in accordance with recommendation 7.3 below.*

[213] In its Response, the country under review provided no information with respect to the above recommendation. The Committee reiterates the need for the country under review to give additional attention to its implementation.

### • Recommendation 7.3

*Develop, as appropriate and where they do not yet exist, procedures designed to determine the effectiveness of the systems and mechanisms mentioned in this report.*

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<sup>97</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 46.

<sup>98</sup> Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for Review in the Second Round, pp. 58-63. Available at [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

<sup>99</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 47.

[214] In its Response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round, which it considers related to the foregoing recommendation.<sup>100</sup> The Committee reiterates the need for the country under review to give additional attention to its implementation.

## SECOND ROUND

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

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

#### 1.1. Systems of Government Hiring

- Recommendation 1.1.1.

*Strengthen the systems of government hiring systems within public administration system.*

Measures suggested by the Committee:

- a) Regulate the Civil Service Statute Law (LEFP) so as to adapt the norms, guidelines and processes of the government hiring subsystem based on merit, thereby assuring compliance with the principles of openness, equity and efficiency as set forth in the Convention.*
- b) Define the guidelines and parameters according to which staffing plans will be developed by the National Public Administration, as provided for in Article 8 of the Civil Service Statute Law (LEFP).*

[216] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>101</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[217] With respect to measure b) of the foregoing recommendation, in its Response, the country review presents information.<sup>102</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[218] *“In a bid to define the guidelines and parameters by which to personnel plans should be designed, the Bolivarian Republic of Venezuela adopted Decree 6054, which introduced a Post Classification System that applies to the Civil Service Career (...)”*<sup>103</sup>

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

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<sup>100</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.p. 47-48.

<sup>101</sup> *Ibid.* at pgs. 39 – 40.

<sup>102</sup> *Ibid.*

<sup>103</sup> Published in Official Gazette 38.921 of April 30, 2008.

- Recommendation 1.1.2.

*Strengthen the system of government hiring of public officials in the Legislative branch.*

Measure suggested by the Committee:

*Make the necessary changes to establish guidelines on the implementation of a staff recruitment subsystem with parameters on the manner to hold competitive examinations, including the methods for announcing vacancies and publishing selection requirements, in order to ensure that merit-based competitive examinations comply with principles of legality, equity, neutrality, equality and transparency.*

[220] With respect to the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>104</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “no progress is reported in the implementation of this measure.”<sup>105</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.3.

*Strengthen the system of government hiring of public officials in the Judicial branch*

Measures suggested by the Committee:

- a) Carry out the relevant amendments to ensure that the career service in the judiciary is not solely limited to judges, but are also to other public officials in the Judiciary.*
- b) Take the necessary steps to enact the Judicial Personnel Statute pursuant to the provisions of Transitory Article 52 of the Judicial Careers Law (LCJ), which takes into account a merit-based recruitment subsystem and include parameters on the manner to hold competitive examinations, measures on the announcement of vacancies, publication of selection requirements and the mechanism for challenging a decision, including access to a second level of appeal, all of which must comply with the principles of openness, equity and efficiency contained in the Convention.*
- c) Take steps towards passing the Law regulating the Office of the Ombudsman, in keeping with the provisions of Transitory Article 53 of the Judicial Careers Law (LCJ), and ensuring that said Law includes a merit-based selection process, a mechanism for challenging decisions and access to a second level of appeal, and also that it complies with the principles of openness, equity and efficiency provided for in the Convention.*
- d) Make the necessary amendments to Article 23 of the LCJ so that competitions are advertised at the national level and not just regionally, for this purpose making use of modern forms of communication such as the internet, radio, and television.*

[221] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>106</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

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<sup>104</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 49.

<sup>105</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 9.

<sup>106</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 49.

[222] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>107</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[223] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information.<sup>108</sup> In this regard, the Committee notes the following as a step that leads it to conclude that said measure has been satisfactorily considered:

[224] *“In this connection, the National Assembly passed the Organic Law of the Ombudsman’s Office,<sup>109</sup> the purpose of which is to set out the rules governing the nature, organization, functional and administrative independence, discipline and suitability for service in Ombudsman’s Office, in order to ensure the effectiveness of the service and guarantee the career benefits of the Ombudsman and the other officials recognized by this Law and its statutes.”*

[225] The Committee takes note of the satisfactory consideration by the country under review of measure c) of the foregoing recommendation, without entering into an analysis of the substance of the above-cited Organic Law of the Ombudsman’s Office.

[226] In its Response, the country under review provided no information with respect to measure d) of the above recommendation. On the other hand, the Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that *“no progress is reported in the implementation of this measure.”*<sup>110</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.4.

*Strengthen the system of government hiring of public officials in the Office of the Public Prosecutor.*

Measures suggested by the Committee:

- a) Make the necessary changes so that merit-based competitive examinations are compulsory for candidates for career positions, and not just limited to the positions of Senior Prosecutor and Prosecutor of the Office of Public Prosecutor and Attorneys for Minors.*
- b) Make the necessary changes to establish guidelines on the implementation of a staff selection subsystem that consist of parameters on the manner to hold competitive examinations, including methods for announcing vacancies and publishing selection requirements, so as to guarantee that merit-based competitive examinations are held according to the principles of legality, equity, neutrality, equality and transparency*
- c) Regulate the offices which require candidates thereto to sit competitive examinations to enter the Public Prosecutions Service as civil servants.*
- d) Consider reviewing the positions subject to free appointment and removal listed in Article 3 of the Personnel Statute of the Office of the Public Prosecutor (EPMP), in*

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<sup>107</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 49.

<sup>108</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 51-52.

<sup>109</sup> Published in Official Gazette 39.021 of September 22, 2008.

<sup>110</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 9.

*order to ascertain how many of them could, by their nature and type of functions, be incorporated into a merit-based selection system with the possibility of access to a career position.*

[227] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>111</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “*no progress is reported in the implementation of this measure.*”<sup>112</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[228] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>113</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “*no progress is reported in the implementation of this measure.*”<sup>114</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[229] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>115</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[230] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>116</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “*no progress is reported in the implementation of this measure.*”<sup>117</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.5.

*Strengthen the system of government hiring of public officials in the Office of the Comptroller General.*

Measures suggested by the Committee:

- Approve the Manual of Rules of Procedure of the Statute of the Office of the Comptroller General of the Republic (EPCGR) referred to in Articles 1 and 8 of the EPCGR, and ensure that they include parameters on how to carry out competitive examinations, methods for keeping a register of eligible candidates, as well as the manner to announce vacancies and publish selection requirements, so as to guarantee that these competitions comply with the principles of openness, equity and efficiency.*

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<sup>111</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 52.

<sup>112</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 10.

<sup>113</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 52.

<sup>114</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 10.

<sup>115</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 53.

<sup>116</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 53.

<sup>117</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 10.

- b) *Consider reviewing the positions subject to free appointment and removal and trust positions listed in Article 4 of the EPGR, in order to ascertain which of them could, by their nature and type of functions, be incorporated into a merit-based selection system with the possibility of access to a career position.*

[231] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>118</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “no progress is reported in the implementation of this measure.”<sup>119</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[232] With respect to measure b.) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>120</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.1.6.

*Strengthen the system of government hiring of public officials in general.*

Measures suggested by the Committee:

- Take the necessary steps so that the corresponding rules cover the incompatibility between relationships by blood or by marriage and holding a public position.*
- Ensure that entry into the public administration is subject to a public competitive examination, pursuant to the terms of Article 146 of the Constitution and the pertinent legislation.*
- Monitor the staff selection processes by way of the contracting method, in order to verify that this system is not used as a means of evading the merit-based competitive examination system.*
- Regulate staff contracts to determine exactly what type of work justifies such contracts, how it differs from work undertaken by career staff, as well as any relevant rehiring restrictions, in order to prevent this method from being used to hire permanent staff who are not governed by the same legislation as career staff, and thereby guarantee compliance with the principles of openness, equity, and efficiency contained in the Convention.*

[233] With respect to measure a) of the foregoing recommendation, in its Response, the country review presents information.<sup>121</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[234] “(...) the Attorney General, in an internal circular, has issued precise instructions to the Department of Human Resources to restrict the entry or re-entry of any family relatives by consanguinity or affinity within the same judicial district, in order to ensure impartiality, objectiveness, and transparency”

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<sup>118</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 53.

<sup>119</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 10.

<sup>120</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 53.

<sup>121</sup> *Ibid*, p.54.

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

[236] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>122</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[237] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>123</sup> The Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC mentions that “*no progress is reported in the implementation of this measure.*”<sup>124</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[238] In its Response, the country under review provided no information with respect to measure d) of the above recommendation. On the other hand, the Progress Report submitted by the country under review on the occasion of the Fifteenth Meeting of the Committee of Experts of MESICIC presents information, which it regards as related to the implementation of said measure.<sup>125</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

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

- Recommendation 1.2.1.

*Strengthen the procedures for public tender with competitive bidding and procurement in general.*

Measures suggested by the Committee:

- a) Review the grounds for which this Decree does not apply to insurance contracts or contracts for financial services.*
- b) Revise Article 59 of the Administrative Procedures Law to establish the grounds for identifying a document as confidential, and thus to be filed separately and not be subject to public access, and ensuring that the decision is not left to the sole discretion of the hierarchical superior.*
- c) Undertake coordinated action between the branches of government and citizens in order to strengthen educational and preventive work so as to enforce the corresponding legislation, thereby ensuring that public tenders will become the norm and not the exception in government procurement.*

[239] With respect to measure a) of the foregoing recommendation, in its Response, the country review presents information. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

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<sup>122</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 54.

<sup>123</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 54.

<sup>124</sup> Progress Report of the Bolivarian Republic of Venezuela, p. 10.

<sup>125</sup> Progress Report of the Bolivarian Republic of Venezuela, p.p. 10-11.

[240] *“The Bolivarian Republic of Venezuela promulgated Decree 5.929 with the Rank, Effect, and Force of the Government Contracting Law, issued by the national executive branch in the framework of the 2008 Empowering Law (Ley Habilitante). Subsequently, on March 24, 2009, the National Assembly promulgated the Law Partially Reforming Decree 5.929 with the Rank, Effect, and Force of the Government Contracting Law, which replaces the entire legal regime contained in the 2001 Public Tenders Law. The reform, published in Special Official Gazette 5556 of the same date, also replaces all other legal provisions with the rank of law and below that clash with the aforesaid Decree with the Rank, Effect, and Force of Law (...)*

[241] *“(...) Article 5 of the Government Contracting Law does not exclude insurance contracts from the contractor selection methods, as Article 3 of the abolished Decree with Force of Law Partially Reforming the Public Tenders Law did.(...)”*

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

[243] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>126</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[244] With respect to measure c) of the foregoing recommendation, in its Response, the country review presents information. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[245] *“(...) Furthermore, training courses on government contracting have been included in all the curricular programs at civil service colleges, and the National Government Contracting Service (<http://www.snc.gob.ve/>) (...) has itself created a series of training courses and workshops, among which the following should be noted: Training Course on Government Contracting at State Organs and Agencies; Training Workshop of the National State Procurement Register for Government Bodies and State Agencies; Training Workshop on the Contracts Summary Module; Training Workshop on the Electronic Procurement System; Training Workshop on Government Contracting for Cooperatives and the Government Contracting Training Workshop for Community Councils, which are available for consultation by all civil servants and interested parties. ([http://www.snc.gob.ve/paginas/cont\\_prog.html](http://www.snc.gob.ve/paginas/cont_prog.html))”*

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

- Recommendation 1.2.2.

*Strengthen government procurement oversight mechanisms.*

Measures suggested by the Committee:

- a) Strengthen the governing bodies of the Public Sector procurement system, especially the National Procurement Service, as far as the functions developed in relation to administration*

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<sup>126</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 56-57.

*and control of the system are concerned, providing it with the funds necessary to fulfill its functions, and establishing mechanisms to enable institutional coordination and constant evaluation and follow-up, in order to ensure that the system functions as a central autonomous authority for managing public procurement systems and oversight mechanisms.*

- b) Complement, through the appropriate authority, the DFLRPLL by establishing social oversight mechanisms for procurement activities, such as qualified citizen watchdog groups, in order to reinforce control of those activities.*
- c) Consider the creation of a contracting register as described in Article 36 of DFLRPLL, particularly for bidding processes that are announced internationally.*

[247] With respect to measure a) of the foregoing recommendation, in its Response, the country review presents information. In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[248] *“The National Government Contracting Service is and acts as the independent central authority and administrator of all government contracting systems and control mechanisms. This activity has been bolstered by the new Government Contracting Law, Articles 31, 95, and 129 of which set out the obligation for the contracting body or agency to prepare a report assessing the contractor’s performance, or Compliance Report, which entails supervising the manner in which they performed the service, so as to ensure that the public interest is served as best as possible, in order subsequently to submit it to the National Contracting Service for it to update its records and impose the appropriate penalties, in the event of nonperformance by the contractor, by means of the procedures contained in the Law.”*

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

[250] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>127</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[251] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>128</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.2.3.

*Continue strengthening electronic methods and information systems for government procurement.*

Measures suggested by the Committee:

- a) Enact regulations on publications related to the processes for selecting contractors referred to in Article 60 del DFLRPLL.*

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<sup>127</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 57-58.

<sup>128</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p. 58.

- b) *Establish the official publishing body referred to in Article 60 of the DFLRPLL, thereby ensuring the inclusion of modern computer-based methods such as the Internet to ensure the widespread dissemination of this information.*
- c) *Amend Article 67 of the DFLRPLL, which states that invitations to tender in general bidding processes, including international invitations to tender, shall be published in a major national newspaper, so as to include the use of modern means of communication such as the Internet, to ensure that this information is widely disseminated.*
- d) *Consider the possibility of creating a procurement system based on electronic media, available to be used by all agencies of the Public Administration.*

[252] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>129</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[253] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>130</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[254] With respect to measure c) of the foregoing recommendation, in its Response, the country review presents information.<sup>131</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[255] “(...) Article 57 of the [new] Government Contracting Law provides for the publication of such calls on the web page of the contracting body or agency and also on the web page of the National Government Contracting Service (<http://www.snc.gob.ve/>). The purpose of the foregoing is to comply with the legal provisions that require the Public Administration to use new technologies in its relations with members of the public.” (...)

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

[257] With respect to measure d) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>132</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 1.2.4.

*Continue to foster the principles of openness, equity and efficiency foreseen in the Convention.*

Measures suggested by the Committee:

- a) *Consider consolidating the legislation on public procurement in a single concise and well-defined volume, to facilitate access and application by public servants and facilitate access to it by the public.*

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<sup>129</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 58.

<sup>130</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, pp. 58.

<sup>131</sup> *Ibid*, p.59.

<sup>132</sup> *Ibid*.

- b) *Amend the public contracting law to take into account general selection criteria or principles and thereby avoid them only being stated in the bidding terms and conditions of each tender.*
- c) *Make provisions to publish the pre-bidding terms and conditions for the tenders in order that the interested parties can be informed of them and make their comments.*
- d) *Implement an information system to publish bidding processes and enable all those citizens interested to consult them.*

[258] With respect to the foregoing recommendation, in its Response, the country review presents information.<sup>133</sup> In this regard, the Committee notes the following as a step that leads it to conclude that measure a) of the foregoing recommendation has been satisfactorily considered:

[259] *“As mentioned above, the rules and regulations on State contracting were consolidated in the new Government Contracting Law and its Regulations.”*

[260] The Committee takes note of the satisfactory consideration by the country under review of measure a) of the foregoing recommendation, without entering into an analysis of the substance of the above-cited Government Contracting Law and its Regulations.

[261] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>134</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[262] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>135</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[263] With respect to measure d) of the foregoing recommendation, in its Response, the country review presents information.<sup>136</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the measure, the following:

[264] *“(...) Article 57 of the [new] Government Contracting Law provides for the publication of such calls [for bids] on the web page of the contracting body or agency and also on the web page of the National Government Contracting Service (<http://www.snc.gob.ve/>). The purpose of the foregoing is to comply with the legal provisions that require the Public Administration to use new technologies in its relations with members of the public.” (...)*

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

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<sup>133</sup> Response of the Bolivarian Republic of Venezuela to the questionnaire, p.60

<sup>134</sup> *Ibid*, p. 61.

<sup>135</sup> *Ibid*, p. 61.

<sup>136</sup> *Ibid*, p.59.

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

- Recommendation 2.1.

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

### Measures suggested by the Committee:

- Introduce the necessary reforms in the legislation in force in order to ensure protection of the person who in good faith report acts of corruption, and also their families, as effectively as possible and pursuant to the legislation governing the civil service. This should not be limited to criminal proceedings but also administrative ones.*
- Additionally take steps to protect the labor situation of whistleblowers, especially when they are public servants and when the acts of corruption could involve their superiors or colleagues from the office, including provisions to prevent retaliations for the lodging of reports.*
- Make the necessary amendments to the criminal legislation and to the legislation on the civil service to safeguard the identity, as effectively as possible, of persons who in good faith report acts of corruption..*
- Mechanisms that facilitate international cooperation in addressing this topic, when appropriate.*

[266] With respect to measure a) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>137</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[267] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>138</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[268] With respect to measure c) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>139</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

[269] With respect to measure b) of the foregoing recommendation, in its Response, the country under review presents information that it considers related.<sup>140</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

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<sup>137</sup> *Ibid*, p. 61.

<sup>138</sup> *Ibid*, p. 61.

<sup>139</sup> *Ibid*, p. 61.

<sup>140</sup> *Ibid*, p. 61.

### 3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

- Recommendation 3.1.

*Assess the relevant legislative amendments so that all elements of passive bribery are included in the situation described in Article 61 of the LCC.*

[270] With respect to the foregoing recommendation, in its Response, the country review presents information.<sup>141</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the Anti-Corruption Law reform bill, which, according to the country under review, is being examined by the Public Accounts Committee of the National Assembly.

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

- Recommendation 3.2

*Assess the relevant legislative amendments so that all the elements of the offense of active bribery set out in Article VI.1 (b) of the Convention are included.*

[272] With respect to the foregoing recommendation, in its Response, the country review presents information.<sup>142</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the Anti-Corruption Law reform bill, which, according to the country under review, is being examined by the Public Accounts Committee of the National Assembly.

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

- Recommendation 3.3

*Update and reorder the Criminal Code as regards those articles that are no longer in force under the new Anti-Corruption Law.*

[274] With respect to the foregoing recommendation, in its Response, the country review presents information.<sup>143</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the Anti-Corruption Law reform bill, which, according to the country under review, is being examined by the Public Accounts Committee of the National Assembly.

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

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<sup>141</sup> *Ibid*, p.62.

<sup>142</sup> *Ibid*, p.62.

<sup>143</sup> *Ibid*, p.62.

#### 4. GENERAL RECOMMENDATIONS

- Recommendation 4.1.

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

[276] With respect to the foregoing recommendation, in its Response, the country review presents information.<sup>144</sup> In this regard, the Committee notes, as a step which contributes to progress in the implementation of the recommendation, the design of a distance-training program on the Inter-American Convention against Corruption and its most important aspects.

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

- Recommendation 4.2.

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

[278] With respect to the foregoing recommendation, in its Response, the country under review presents information that it considers related<sup>145</sup> The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 4.3.

*Establish mechanisms for providing timely responses to the Questionnaire regarding the provisions of the Inter-American Convention against Corruption within the set deadlines, including the section on results.*

[279] In its Response, the country under review provided no information with respect to the above recommendation. The Committee takes note of the need for the country under review to give additional attention to its implementation.

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<sup>144</sup> *Ibid*, p.62.

<sup>145</sup> *Ibid*, p. 62.

## ANNEX

### TO THE REPORT ON IMPLEMENTATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND, AND ON FOLLOW UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY IN THE FIRST AND SECOND ROUNDS

#### INTRODUCTION

[280] The purpose of this annex is to set forth the arguments supporting the inclusion of the paragraph transcribed below in Section I (“Summary of Information Received”) in the “Report on Implementation in the Bolivarian Republic of Venezuela of the Convention Provisions Selected for review in the Third Round, and on Follow-up to the Recommendations Formulated to that Country in the First and Second Rounds:”

*The Committee also received documents from a civil society organization. However they failed to meet the requisites set forth in Article 34 of the Committee’s Rules of Procedure and other Provisions. Hence the requirements established in Article 36 regarding verbal presentation of the documents that could have been submitted in accordance with said Article 34 in the framework of the Committee’s meetings, were not met and neither were the requirements for their publication on MESICIC’s website complied with, in accordance with the provisions of Section X of the Methodology for review in the second round. (See appendix to this report).*

[281] When considering the Draft Reports on the First and Second Rounds, regarding the Bolivarian Republic of Venezuela, the Committee indicated the conditions that must be fulfilled to consider contributions from civil society organizations pursuant to the Rules of Procedure and Other Provisions of the Committee (hereinafter “The Rules of Procedure”); it referred to the documents received on that occasion from civil society organizations in relation to the Bolivarian Republic of Venezuela; and it analyzed compliance with the conditions established in Article 33<sup>146</sup> of the Rules of Procedure, in the specific case of the documents that were received from civil society organizations during the First and Second Rounds on the Bolivarian Republic of Venezuela.

[282] On that occasion Annex II containing the considerations quoted in the above reference was incorporated in the Reports on the First and Second Rounds regarding the Bolivarian Republic of Venezuela and adopted by the Committee on July 30, 2004 and June 29, 2007, respectively. These reports, together with the aforesaid annexes, have been posted on MESICIC’s website.<sup>147</sup>

[283] On August 14, 2009, the MESICIC Committee of Experts, in the context of its Third Round of Review, again received documents from the civil society organization *Transparency Venezuela*, care of *Transparency International*. Bearing in mind the pronouncements of the Committee of Experts in the previous rounds, on August 31, 2009, the Technical Secretariat of the Committee sent

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<sup>146</sup> The numbering of the articles has increased by one number due to the inclusion of a new article in the Regulations and Rules of Procedure of the Committee. Thus Article 33 (b) above is now Article 34 (b), and Article 35 above is now Article 36.

<sup>147</sup> [http://www.oas.org/juridico/english/mec\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mec_rep_ven.pdf) and [http://www.oas.org/juridico/english/mesicic\\_II\\_rep\\_ven.pdf](http://www.oas.org/juridico/english/mesicic_II_rep_ven.pdf)

a note<sup>148</sup> to the Lead Expert of the Bolivarian Republic of Venezuela on the MESICIC Committee, in which it asked her to indicate if the position of the Venezuelan State with regard to the participation of the aforesaid organization in the review of the Bolivarian Republic of Venezuela in the MESICIC framework remained the same as that expressed in the communication of December 22, 2006, signed by the Comptroller General of the Republic, a copy of which was attached to said note. In reply, the Technical Secretariat of the Committee received two communications from the Lead Expert of Venezuela on the Committee of Experts, the first directly from her on September 2, 2009,<sup>149</sup> and the second through the Permanent Mission of Venezuela to the OAS on September 8, 2009,<sup>150</sup> in which the Bolivarian Republic of Venezuela ratified in all respects the position that it had expressed in the communication of December 22, 2006.<sup>151</sup>

[284] Bearing in mind the background in this matter, the information submitted by the Technical Secretariat on the communications in this regard, and the information supplied by the Bolivarian Republic of Venezuela to the effect that there had been no change in the circumstances according to which the civil society organization *Transparency Venezuela* did not satisfy the rule ‘*in accordance with the internal legislation*’ contained in Article 34 of the Rules of Procedure of the Committee, the MESICIC Committee of Experts agreed to suspend publication on the website of the document from the civil society organization *Transparency Venezuela*, sent by *Transparency International* on August 14, 2009, in connection with the review of the Bolivarian Republic of Venezuela in the framework of the Third Round.

[285] Having conducted a thorough examination, and bearing in mind the foregoing, the Committee concludes that the organization *Transparency Venezuela* does not fulfill all the conditions set forth in Article 34 of the Rules of Procedure governing the participation of civil society organizations in the MESICIC process, including the verbal presentation, publication, distribution, and consideration of the documents submitted.

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<sup>148</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_ven\\_notas\\_sec\\_tecnica.pdf](http://www.oas.org/juridico/spanish/mesicic3_ven_notas_sec_tecnica.pdf)

<sup>149</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_ven\\_notas\\_experta.pdf](http://www.oas.org/juridico/spanish/mesicic3_ven_notas_experta.pdf)

<sup>150</sup> Available at [http://www.oas.org/juridico/spanish/mesicic3\\_ven\\_notas\\_mision.pdf](http://www.oas.org/juridico/spanish/mesicic3_ven_notas_mision.pdf)

<sup>151</sup> Available at [http://www.oas.org/juridico/spanish/mesicic2\\_ven\\_opc\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic2_ven_opc_sp.pdf)