

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
Eleventh Meeting of the Committee of Experts
June 25-30, 2007
Washington, DC

OEA/Ser.L
SG/MESICIC/doc.191/07 rev. 4
28 June 2007
Original: Spanish

REPUBLIC OF PERU

FINAL REPORT

(Adopted at the June 28, 2007 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE REPUBLIC OF PERU OF THE
CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE SECOND ROUND, AND
ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT COUNTRY
IN THE FIRST ROUND¹**

INTRODUCTION

1. Contents of the Report

This Report presents, first, a review of the implementation in the Republic of Peru of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the second round: Article III, paragraphs 5 and 8, and Article VI.

Second, the Report will examine follow-up to the recommendations that were formulated to the Republic of Peru by the MESICIC Committee of Experts in the first round, which are contained in the Report on that country adopted by the Committee at its Sixth meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_tto.pdf

2. Ratification of the Convention and adherence to the Mechanism

According to the official register of the OAS General Secretariat, the Republic of Peru ratified the Inter-American Convention against Corruption on April 4, 1997 and deposited the respective instrument of ratification on June 4, 1997.

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Peru

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Peru, and in particular from the Ministry of Justice, which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the Republic of Peru sent the provisions and documents it considered pertinent. That response, and those provisions and documents may be consulted on the following Internet web page: http://www.oas.org/juridico/spanish/mesicic2_resp_sp.htm

For its review, the Committee took into account the information provided by the Republic of Peru up to November 10, 2006, together with the information requested by the Secretariat and the members of

¹ This report was adopted by the Committee in accordance with the provisions of Article 3(g) and 26 of its Rules of Procedure and Other Provisions, at the plenary session held on June 28, 2007, at its Eleventh meeting, held at OAS Headquarters in Washington D.C., United States, June 25-29, 2007.

the review subgroup to carry out their functions in keeping with the Rules of Procedure and Other Provisions.

2. Documents submitted by civil society

The Committee also received, within the deadline established in the Calendar for the Second Round adopted at its Ninth meeting,² a document sent by “PROÉTICA” (National Council for Public Ethics), which was submitted by email by Transparency International.³

II. REVIEW OF IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND

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

1.1. SYSTEMS OF GOVERNMENT HIRING

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

The Republic of Peru has a set of provisions related to the above systems, among which the following provisions related to the principal systems should be noted

- Statutory and other legal provisions applicable to all of public servants, among which the following should be noted:

- Law 26771 of 1997, Article 1 of which prohibits senior officials and/or trusted employees with authority to appoint and contract personnel in public entities and agencies that make up the national public sector,¹ including state-owned companies, from exercising that power in the case of relatives; and charges the internal control organs of each institution with overseeing compliance (Article 2). The Law also provides that any actions in contravention of the aforesaid provision are void *ipso facto* and establishes penalties for persons in charge of appointments who violate it (Article 4).

- Supreme Decree 021-2000-PCM (Regulations on Law 26771), Article 2 of which provides that nepotism may be committed directly (when the act is committed by someone within their own administrative agency or unit) or indirectly (through influence exerted by a senior official and/or trusted employee on those who make hiring or appointment decisions in an administrative agency or unit other than their own). Article 3 states that the prohibitions against appointing, hiring, interfering in recruitment processes, appointing persons to positions of trust or *ad honorem* posts, or appointing members of collegiate bodies, or direct or indirect interference to those ends, are applicable in respect of relatives within the fourth degree of consanguinity or the second degree of affinity.

- Statutory provisions applicable to most public servants,^{ii,iii} among which the following should be noted:

² This meeting was held from March 27 to 31, 2006, at OAS headquarters in Washington DC, United States.

³ This document was received by email on November 10, 2006, and may be consulted on the Internet at: http://www.oas.org/juridico/spanish/mesicic2_per_inf_sc_sp.doc

- Law 24241 of 1985, Article 1 of which provides that public administration posts and positions, as well as promotions to categories and duties therein, shall be filled through competitions based on merit, the conditions for which shall be published and disclosed at government agencies two months in advance (Article 2). Furthermore, Article 3 creates the Higher Council for Competition Processes, which is the entity that decides at last instance any appeals, reviews, and complaints that arise.

- Law 28175 of 2004 (Public Employment Framework Law), Article 4 of which provides that the guiding principles of employment in the public sector are legality, modernity, impartiality, transparency and accountability, efficiency, probity and public ethics, merit and competence; Labor Law; and preservation of continuity in government policy and budgetary provision. It also stipulates, at Article 5, that access to employment in the public sector shall be by open public competition, by occupation, merit- and competence-based, and in an equal-opportunity framework. Articles 6 and 9, respectively, set out the requirements to be met by vacancy notices and applicants for employment in the public sector, and declare that vacancy notices shall be made public and that any administrative act that contravenes the provisions on access to public employment is void *ipso facto*. Articles 23 to 27 govern the existence of the civil service policy-making body, the Higher Council on Public Employment (*Higher Council on Public Employment* – COSEP), and set out its functions.^{iv} Finally, Article 28 creates the Public Employment Tribunal as the COSEP organ that decides at last instance administrative appeals against acts concerning entry, removal, and salaries in public sector employment.

- Other legal provisions that, in the absence of a specific law, permit appeals in recruitment processes, such as Law 27444 of 2001 (Law on General Administrative Procedure), Articles 206 to 217 of which permit interested parties to challenge administrative acts that violate, disregard, or injure a legitimate right or interest, as well as establishing time limits and conditions for invoking such remedies. Furthermore, Article 218 identifies the acts that exhaust administrative proceedings and may be challenged in the judiciary in contentious administrative proceedings, as provided in Article 148 of the Constitution and governed by Law 27584 of 2001.

1.1.2. Adequacy of the legal framework and/or other measures

With respect to the legal provisions that refer to the principal systems of government hiring that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

Notwithstanding, the Committee considers it appropriate to make a number of observations on the advisability of complementing and developing certain legal provisions that refer to those systems.

In first place, Law 28175 does not develop the structure of the civil service career system but merely defines the functions of the civil service policy-making body (the Higher Council on Public Employment) and of the Public Employment Tribunal. The Committee will make a recommendation in that regard (see Recommendation 1.1.1. (a) in Chapter III of this Report).

In second place, Laws 24241 and 28175 broadly provide that access to public employment shall be by merit-based competition. However, those laws are not sufficiently developed insofar as they do not provide details on important aspects of recruitment procedures, such as the different stages, timeframes, competent organs, disclosure, and the possibility to challenge competition conditions. In

that connection, for instance, while Article 6 of Law 28175 provides that as a minimum requirement, vacancy notices must set scoring criteria and a minimum pass mark, it does not provide the obligation for the authority to state a reasoned basis for decisions adopted in the recruitment process. The Committee will make a recommendation in that regard (see Recommendation 1.1.1. (a) in Chapter III of this Report).

In connection with the foregoing, it should be mentioned that, pursuant to operative paragraph 1 of the judgment adopted by the Constitutional Court in case 008-2005-PI/TC, published on September 17, 2005, the Court confirmed that Law 28175 is in force and, at the same time, acknowledged that some of its specific provisions required additional laws for their full enforcement and implementation.^v

1.1.3. Results of the legal framework and/or other measures

In its Response, the Republic of Peru notes in this respect that,⁴ *“Owing to the fact that law 28175 is in process of implementation we do not have sufficient information at present.”*

However, the Committee also takes note of the information presented by the country under review in section II of its Response, which mentions that the Higher Council on Public Employment has not been installed.^{vi} The Committee will make a recommendation in that regard (see Recommendation 1.1.1. (b) in Chapter III of this Report).

Finally, considering that the Committee does not have any other information or any data on the executive, legislative, or judicial branches or on the Office of the Attorney General, that would allow a comprehensive evaluation of the results in this topic, it will formulate a recommendation in that regard to the different branches of government and the Attorney General (see General Recommendation 4.2. in Chapter III of this Report).

1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES

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

The Republic of Peru has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions applicable to all State entities, such as those found in Article 76 of the Constitution, which provides that works and the procurement of supplies paid for with public funds or resources shall be carried out by contract and through public competitive bidding, as shall the procurement or disposal of assets, and that contracting of services and projects whose size and amount are specified in the Budgetary Law is done by public calls for bids. This Article adds that the law outlines procedures, exceptions, and responsibilities.

- Statutory and other legal provisions applicable to all State entities,^{vii} such as those contained in Supreme Decree 083-2004-PCM (Consolidated Amended Text of the Government Procurement Law),⁵ (hereafter in this section, “the Law”) and Supreme Decree 084-2004-PCM (Regulations on the

⁴ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 4.

⁵ http://www.consucode.gob.pe/descarga/Ley_y_Nuevo_Reglamento.pdf

Government Procurement Law),⁶ (hereafter in this section, “the Regulations”), which set out basic rules containing the guidelines to be observed by public entities, in keeping with the principles of fairness and transparency, in procurement and contracting of goods, services, all works, and the rights and obligations arising therefrom, as well as the exceptions to the Law (Article 2(3))^{viii} and exemptions from tender procedures (Article 19).^{ix} The following provisions in the two laws are of particular significance:

- Article 14 of the Law (Article 77 of the Regulations), which provides that public contracts shall be tendered through the processes of: a) Public competitive bidding (Article 15 of the Law and 77, paragraph 1, of the Regulations); b) Public call for bids (Article 16 of the Law and 77, paragraph 2, of the Regulations); and, c) Direct contract (public or selective) and small contracts procedures (Article 17 of the Law and 77, paragraphs 3 and 4, of the Regulations).
- Article 57 of the Regulations, which provides for the special tendering procedures of reverse auction (Articles 175 to 186 of the Regulations) and master pricing agreement (Articles 187 to 195 of the Regulations).
- Article 10 of the Law (Article 294(8) of the Regulations), which prohibits bidders in a tender process from entering into agreements with each other or with third parties for the purpose of engaging in practices that restrict free competition, on pain of disqualification from contracting with the State, without prejudice to other appropriate penalties.
- Article 14 of the Law (Article 36 of the Regulations), which prohibits splitting of tenders for procurement or contracting of goods, services, or works in order to change the appropriate type of tender process, except under special circumstances as provided in Article 36 of the Regulations. Article 14 also provides that the head or chief administrative officer, as appropriate, of the entity shall be liable in the event of any breach of this prohibition.
- Article 12 of the Law stipulates that prior to commencing a procurement or contracting process, the office responsible for the agency’s procurement and contracting shall conduct studies or random investigations of the possibilities offered by the market, thus securing information for the description and specifications of the goods, services, or works projects and for defining reference values for the purchase or contract. It also stipulates that reference values may not exceed market values, except when the agency issues a technical report under its own responsibility.
- Article 9 of the Law, which provides which persons are ineligible bidders and contractors, such as, any person with ties to the contracting entity or who is directly involved in the determination of needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments; as well as their respective spouses, partners, or relatives within the fourth degree of consanguinity and the second degree of affinity.^x
- Articles 58 to 65 of the Law, which create the Superior Government Procurement Council (CONSUCODE) as the policy-making body for procurement of goods and services, the functions of which are set out at Article 59. CONSUCODE is a decentralized public agency attached to the Office of the President of the Council of Ministers. Furthermore, it has legal personality under public law, enjoys technical, operational, administrative, economic and

⁶ *Ibid.*

financial autonomy, represents itself in the courts (Article 58 of the Law), and has its own jurisdictional body: the Government Procurement Tribunal (Article 61 of the Law).

- Article 8 of the Law, which creates the National Registry of Providers (RNP) (Articles 5 to 17 of the Regulations). Furthermore, Article 6 of the Regulations provides that the RNP is composed of five chapters: Goods Suppliers (Articles 7(9) to 7(11) of the Regulations);⁷ Service Providers (Articles 7(9) to 7(11) of the Regulations);⁸ Works Consultants (Articles 7(12) to 7(19) of the Regulations);⁹ Works Constructors (Articles 7(20) to 7(26) of the Regulations);¹⁰ and Persons Ineligible for Government Contracts (Articles 7(27) to 7(30) of the Regulations).¹¹ Articles 5 and 6 of the Regulations provide that CONSUCODE is the entity that develops, manages and operates the RNP, while Article 15 provides the obligation for CONSUCODE to keep its web page current with information on registered providers, as well as on legal and natural persons for whom penalties are in effect.
- Article 66 of the Law, which creates the Electronic Government Procurement System (SEACE), in order to permit information exchange and disclosure about government procurement, and to permit transactions to be carried out electronically. Use of the SEACE is mandatory (Article 67 of the Law) and it is managed by CONSUCODE (Article 68 of the Law). Finally, Articles 308 and 309 of the Regulations provide, respectively, that both the tender notice and the conditions shall be published in the SEACE and made freely available to all over the Internet without charge.
- Article 175 of the Regulations, which institutes the electronic or virtual reverse auction as a special tendering mechanism that is subject to the rules contained in CONSUCODE Resolution No. 590-2006.
- Articles 239 to 271 of the Regulations, which establish special rules for public works contracts, such as: Additional requirements for signing the agreement (Article 239 of the Regulations);^{xii} when the works execution period is held to have begun (Article 240 of the Regulations); and a mandatory requirement to designate a professional with the appropriate expertise in the type of work contracted as the person responsible for it and as the contractors' representative, though without authority to agree on amendments to the contract (Article 242 of the Regulations).

⁷ <http://www.consucode.gob.pe/htmls/registronc/rnp.htm>: The Chapter on Goods Suppliers, for which sufficient information has been accredited as to the nature and purpose of their activities to make them eligible to bid in goods procurement or supply procedures.

⁸ *Ibid.* The Chapter on Service Providers, for which sufficient information has been accredited as to the nature and purpose of their activities to make them eligible to bid in contracting procedures for general services and for works consultant services.

⁹ *Ibid.* The Chapter on Works Consultants, for which sufficient information has been accredited as to the nature and purpose of their activities for them to be assigned specialties, which renders them eligible to bid in tenders for works consultation contracts.

¹⁰ *Ibid.* The Chapter on Works Constructors, for which sufficient information has been accredited as to the nature and purpose of their activities for them to be assigned maximum contracting capacity, which renders them eligible to bid in tendering procedures for public works contracts.

¹¹ *Ibid.* The Chapter on Persons Ineligible for Government Contracts, which contains information on natural and legal persons on whom administrative sanctions by the Government Procurement Tribunal, hereinafter the Tribunal, leaving them temporarily or permanently disqualified from taking part in tendering procedures and government contracts.

- Article 3 of the Law which provides that the guiding principles of contracting and procurement are morality;^{xii} free competition;^{xiii} impartiality;^{xiv} efficiency;^{xv} transparency;^{xvi} economy;^{xvii} technological modernity;^{xviii} and just and equal treatment.^{xix}
- Articles 64 to 68 of the Regulations, which govern the determination of the evaluation factors to be taken into account and provide that the bidding conditions shall specify the factors, scores -and their allocation guidelines- that will be considered in determining the best bid. Those factors must be in keeping with the principles of reasonableness, fairness, and proportionality (Article 64 of the Regulations). These specific guidelines to each type of contract (goods procurement, general services, consultant services, and works) are governed by Articles 65, 66, 67, 68, respectively, of the Regulations.
- Article 27 of the Law (Article 109 to 112 of the Regulations), which permits bidders to submit queries about the bidding conditions within the minimum period set for that purpose (Articles 110 to 112 of the Regulations). This Article also provides that answers to said queries shall be reasoned and substantiated, disclosed through the SEACE (Article 109 of the Regulations), and considered an integral part of the bidding conditions in the procedure.
- Article 28 of the Law (Article 113 to 116 of the Regulations), permits bidders to formulate reasoned objections in writing to bidding conditions should they fail to meet the minimum requirements set forth in Article 25 of the Law^{xx} or in any other provision on government procurement or other standards connected with the tender procedure. The Special Committee shall provide a reasoned and substantiated answer to any objections made, in a list of answers that shall include the identity of each objecting party and its answer to each objection admitted. In that connection, Article 116 of the Regulations provides the possibility for objections to be referred to CONSUCODE should the Special Committee not accept them. The time limits for lodging objections are set down in Articles 114 to 116 of the Regulations.
- Articles 53 to 57 of the Law (Articles 149 to 174 of the Regulations), which provide two challenge procedures (appeal and review), their respective time limits, requirements, and the bodies competent to hear them.^{xxi} Article 55 of the Law (Article 149 of the Regulations) provides, furthermore, that said challenge procedures have the power to suspend the tender procedure at the stage it happens to be at and of rendering any ensuing acts null and void

1.2.2. Adequacy of the legal framework and/or other measures

With respect to the constitutional and legal provisions governing public procurement systems, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are relevant for promoting the purposes of the Convention.

The Committee nevertheless deems it appropriate to express some comments for the country under review to consider in supplementing, developing or adapting the legal framework and the government procurement measures now in force, in light of the following:

- The Committee notes that Article 202 of the Regulations recognizes as grounds for annulment of the contract the violation of the presumption of veracity, as well as the reasons provided in Article 9 of the Law with respect to ineligible bidders and contractors.^{xxii} However, public entities are not empowered to terminate the contract unilaterally or to

reserve the right to withhold the award in cases where,¹² for example, collusion between bidders or overvaluation of the contract is discovered; nor is provision made for the procedural consequences arising from such conduct, such as reinitiation of the tender procedure in accordance with the general rules or to select and contract with the provider that received the second-best appraisal in the procedure in question, to the extent that said provider complies with the contract execution requirements set out in the bidding conditions. The Committee will make a recommendation in that regard. (See Recommendation 1.2.1 (a) in Chapter III, Section 1.2 of this Report).

- As regards oversight mechanisms, the Committee finds that the administrative penalties contained in Article 294 of the Regulations would appear too low. Using the same example as in the preceding paragraph, the penalty provided under Article 10 of the Law for companies that engage in practices that restrict free competition is temporary disqualification from contracting with the State for a minimum period of three months and a maximum of one year. In this regard, the Committee believes that it would be advisable for the Republic of Peru to consider reviewing those sanctions and establish an appropriate temporary disqualification period for providers, participants, bidders, or contractors that incur the penalties set forth in Article 294 of the Regulations, as well as to review the sanctions attached to the violations set forth therein, as the seriousness of these violations relative to one another is unclear. The Committee will make a recommendation in that regard. (See Recommendation 1.2.2 in Chapter III, Section 1.2 of this Report).^{xxiii}
- With respect to contracting not conducted via public competitive bidding, the Committee notes that Article 148 of the Regulations makes it a requirement in exempt procurement and contracting procedures, that public entities invite a sole provider whose bid conforms to the characteristics and requirements set down in the bidding conditions. The Committee considers that even though the requirement that the bidding conditions be met is provided for, the power to invite only one provider could grant public entities a great deal of discretionary authority, and it believes that it would be advisable to require them to invite two or more providers that satisfy the bidding conditions, for which purpose they could use the registry of contractors. Exceptions to the foregoing would be contracts for strictly personal services or when there is only one provider in the national market, in the case of goods or services for which there is no available substitute. The Committee will make a recommendation in that regard. (See Recommendation 1.2.1 (b) in Chapter III, Section 1.2 of this Report).
- With respect to government procurement information systems, the Committee notes that Article 42 of the Law grants public entities authority to adjust the value of the contract by up to 15% provided that that is essential to accomplish the purpose of the contract. However, the Law does not require public disclosure of decisions authorizing such adjustments. The same applies in cases of increases in excess of 15%, although in the latter cases entities would have less discretionary power since prior approval is needed of the chief of the budget unit or head of the entity and of the Office of the Comptroller General. The Committee believes that to publish such information electronically or through other communication media would introduce a greater measure of transparency in the contract adjustment system and it will make a recommendation in that regard. (See Recommendation 1.2.3 (a) in Chapter III, Section 1.2 of this Report).

¹² Procedure in which the companies are notified of the winning bid selected under the bid appraisal criteria.

- Finally, the Committee commends the Republic of Peru on its efforts to establish a modern system for public works contracting, as reflected in both Supreme Decree 083-2004-PCM and its Regulations. However, it would be useful for the country under review to consider expanding that system by adopting the following measure:

- Implement oversight systems for each individual public works contract, in particular in any which, by reason of the size of the project, would allow civic oversight or citizen control or demand regular reporting on contract progress, notwithstanding any internal and external institutional oversight systems. (See Recommendation 1.2.4(a). in Chapter III, Section 1.2 of this Report).
- Study the possibility of granting the general population the ability now enjoyed by bidders to present inquiries and comments on tender rules in accordance with the terms of Articles 27 and 28 of the Law, as well as, when appropriate, publishing pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon. (See Recommendations 1.2.4 (b) and (c) in Chapter III, Section 1.2, of this Report.)

1.2.3. Results of the legal framework and/or other measures

With respect to results in this area, the Republic of Peru provides the following information in its Response on programmed government procurement for fiscal year 2006 and notices for tender procedures issued:¹³

“For fiscal year 2006 the overall budget allocated to government procurement (programmed) came to S/. 27,614,545,563, which figure includes the implementation of 130,287 tender procedures.”

“The number of notices for tender procedures issued as of October 25 was 138,136, with an aggregate value of value of S/. 13,551,574,543.”

Furthermore, Annexes 1 and 2 of the Response of the Republic of Peru to the Questionnaire in the Second Round contain more detail about the values and numbers of procedures programmed for procurement and contracting, *inter alia*, of goods, services, consultant services, and works. Also, Annexes 3 and 4 provide information on the values and numbers of procedures actually convened as of October 2006. The table below summarizes the information contained in Annexes 1, 2, 3, and 4.

| | Goods | Works | Consultant services | Services | General services |
|---|-------------------------------|------------------------------|----------------------------|----------------------------|------------------------------|
| Total amount programmed (in Nuevos Soles)/ total number of procedures programmed | S./17,413,017,160 / 56,407 | S./5,272,157,968 / 11,316 | S./428,346,992 / 8,585 | S./290,553,484 / 4,822 | S./3,634,328,534 / 44,354 |
| Total amount executed (in Nuevos Soles) / total number of procedures convened¹⁴ | S./8,338,919,171 / 57,532 | S./2,215,741,891 / 4,470 | S./166,638,637 / 5,886 | S./665,310,105 / 38,644 | S./1,753,429,140 / 27,139 |

¹³ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 15.

¹⁴ Current as of October 2006.

Based on the foregoing, the Committee finds that as of October 2006, with the exception of services contracts, 50% of the amounts programmed for fiscal year 2006 for procurement and contracting of goods, works, consultant services, and general services have not been executed. The Committee also notes that amount executed in services contracts was more than twice the amount programmed for the period. The Committee observes that variations of this kind, while permitted under Article 27 of the Regulations on the Government Procurement Law, could undermine the reliability of annual government procurement plans, which, quite apart from being an important administrative instrument, should serve as a dependable and effective tool for citizen oversight of use of public funds. The Committee will make a recommendation in that regard. (See Recommendation 1.2.1 (c) in Chapter III, Section 1.2 of this Report).

Based on the consultations section of the SEACE web page,¹⁵ the Committee takes note of the following information:

Execution of programmed tenders, by procedure type
Period: 2006

| Procedure | Number of procedures implemented | % | Amount (in S/. millions) | % |
|-------------------------------|----------------------------------|-------|--------------------------|-------|
| a. Public Competitive Bidding | 1,459 | 0.83 | 4,764.8 | 25.93 |
| b. Public Calls for Bids | 1,117 | 0.64 | 2,044.1 | 11.13 |
| c. Public Direct Contract | 3,044 | 1.73 | 1,025.5 | 5.58 |
| d. Selective Direct Contract | 17,230 | 9.82 | 1,973.2 | 10.74 |
| e. Small Contracts | 143,339 | 81.70 | 6,767.8 | 36.83 |
| f. International Contracts | 7,047 | 4.02 | 780.4 | 4.25 |
| g. Other procedures | 706 | 0.40 | 451.7 | 2.46 |
| h. Exemptions | 1,503 | 0.86 | 565.8 | 3.08 |
| TOTAL | 175,445 | 100 | 18,373.3 | 100 |

Source: SEACE web site

Based on this information, the Committee notes that in 2006, the Country under review held a total of 175,445 governments contracting and procurement procedures, of which 1,459 (0.83%) corresponded to public competitive bidding; 1,117 (0.64%) to public calls for bids; 3,044 (1.73%) to public direct contracts; 17,230 (9.82%) to selective direct contracts; 143,339 (81.70%) to small contracts; 7,047 (4.02%) to international contracts; and 706 (0.40%) to other procedures. With regard to this information, the Committee finds that the small contracts mechanism was the general rule for contracting procedures during said period, and notes that only 0.86% of the total number of contracts entered into by the State were via exempt procedures.

With respect to the contract amounts awarded during that period, the Committee observes that 25.93% corresponded to public competitive bidding; 11.13% to public calls for bids; 5.58% to public direct contracts; 4.25% to international contracts; 2.46% to other procedures; and 3.08% to exempt procedures. Based on this information, the Committee finds it striking that 36.83% of the total amount awarded in 2006 was done through small contracts, which do not offer the same guarantees of openness as the other procedures. Accordingly it would be relevant to encourage the Country under review to consider evaluating and adjusting the government procurement system in order to

¹⁵ http://www.seace.gob.pe/?_pageid_=21&_contentid_=81 (Statistics on Published Tender Notices).

make competitive bidding the general rule for contract tendering procedures in the government procurement system (See Recommendation 1.2.1 (d) in Chapter III, Section 1.2 of this Report).

Furthermore, the Committee finds that Article 67 of the Government Procurement Law provides that all entities that fall within its scope are required to use the SEACE. However, based on the information submitted by the Republic of Peru in its Response,¹⁶ the System, “*at present covers 82.28% (2,242) of the total number of entities (2,725) that comprise the national public sector.*” Accordingly, bearing in mind the importance of continuing the gradual expansion of coverage to encompass all entities, the Committee will formulate a recommendation. (See Recommendation 1.2.3 (b) in Chapter III, Section 1.2 of this Report).

In addition, the Committee takes note of information on the CONSUCODE web site in connection with the dissemination and training programs on government procurement regulations for public officials and private companies.¹⁷ In that sense, the Committee recognizes the efforts made and urges the Republic of Peru to continue to design and implement measures of this type aimed at providing training for both private companies and public servants involved in government procurement procedures, for the purpose of ensuring that said procedures are adequately known, managed and implemented. (See General Recommendation 4.1 in Chapter III of this Report).

Finally, bearing in mind that on its web page CONSUCODE has published the 2005 Annual Report on Government Procurement and the first quarterly report for 2006,¹⁸ the Committee considers it appropriate for the Republic of Peru continue to conduct said periodic comprehensive evaluations for the purpose of evaluating the use and effectiveness of its goods and services procurement system and, based on the findings, identify and consider the adoption of specific measures through which to ensure the transparency, openness, equity, and efficiency of the system. (See Recommendation 1.2.5 in Chapter III, Section 1.2 of this Report).

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

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

The Republic of Peru has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Law 27378 and its Regulations (Supreme Decree 020-2001-JUS), which provides benefits for effective collaboration in connection with organized crime, when such offences have been perpetrated by a group of persons or by criminal organizations and provided that their commission has involved the use of public funds or the participation of government officials, public servants, or any person, with their consent or acquiescence (Article 1 (1) of the Law), or when the crime against the public administration is committed by public officials (Article 1 (2) of the Law).¹⁹ Protection measures are afforded to anyone involved as a collaborator, witness, expert or victim in criminal proceedings instituted under this Law (Article 21 of the Law).

¹⁶ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 6.

¹⁷ http://www.consucode.gob.pe/htmls/capacitacion/index_capacita.asp?informacion=presentacion.htm

¹⁸ http://www.consucode.gob.pe/boletinesestadisticos/boletines_estadisticos.htm

¹⁹ Provided in Title XVIII, Chapter II of the Peruvian Criminal Code.

Article 22 of the aforesaid Law (Article 6 of the Regulations) also provides for special protection measures, which, *inter alia*, may consist of: a) police protection; b) withholding of identity and other particulars; c) provision of new identity documents and, as appropriate, economic means to move residence or place of work, in exceptional and especially serious circumstances; and, d) protection of labor rights in accordance with the laws in force. Furthermore, Article 11 of the Regulations creates the Special Investigation and Protection Unit (UECIP) of the National Police as an entity attached to the Office of the Prosecutor General which, under the direction of the appropriate prosecutor, carries out the necessary investigations and inquiries and provides protection for collaborators, victims, witnesses, and experts who, as appropriate, submit information, depositions, or complaints under Law 27378.

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

With respect to the legal provisions for protecting public servants and private citizens who in good faith report acts of corruption, the Committee notes that, on the basis of the information available to it, they may be said to constitute a set of measures that are pertinent for promoting the purposes of the Convention.

Notwithstanding the foregoing, the Committee notes that while there are provisions that provide protection measures that could be applied to whistleblowers, such as those contained in Article 22 of Law 27378 and Article 6 of its Regulations, those provisions are basically intended for persons involved in criminal proceedings in connection with the offences mentioned in the previous section when committed by a group of persons. Accordingly, the Committee finds that the scope of the protection measures provided in the framework of said law does not encompass public servants or private citizens who report acts of corruption that might not be recognized as crimes but could be the subject of an administrative investigation; or cases in which the offence is committed by a person acting alone.

Moreover, the Committee also notes that the protection measures provided in Article 11 of Law 27378 and Article 6 of Its Regulations are essentially designed to protect the physical integrity of its beneficiaries. The only provision that provides whistleblower protection for public servants in the workplace is not sufficiently detailed (Article 22, last paragraph, of Law 27378 and Article 9 (*h*) of the Regulations), which could deter public servants from carrying out their duty to report acts of corruption due to fears of a possible deterioration in their working conditions.

Based on the foregoing, the Committee will make a recommendation to the country under review (see the recommendation in Chapter III, Section 2 of this Report), to the effect that it consider the adoption, through the appropriate authority, of a comprehensive regulation on the protection of public servants and private citizens who in good faith report acts of corruption, including protecting their identities, in keeping with its Constitution and the fundamental principles of its domestic legal system, which could include, among others, the following aspects:

- Coverage for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation.
- Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment,

particularly for public officials and when the acts of corruption could involve their superiors or coworkers.

- Provisions to punish noncompliance with protection rules and/or obligations.
- A simplified whistleblower protection application process.
- Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption.
- Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection.
- Mechanisms to facilitate international cooperation in the above areas, when appropriate, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance.
- The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.

The Committee wishes to expressly recognize the efforts made by Peru to have a comprehensive regulation on protection of persons who report acts of corruption, as evidenced by the existence of a “Whistleblower Protection Bill” (Legislative Bill 83/2006-CR) presented by the Office of the Comptroller General.^{xxiv}

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

The absence of objective results precludes an evaluation in this area. Accordingly, the Committee will make appropriate recommendations. (See General Recommendation 4.2 in Chapter III of this Report).

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

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

The Republic of Peru has a set of provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention, among which the following should be noted:

- With regard to paragraph (a) of Article VI(1):
 - Articles 393, 394, 395 and 396 of the Criminal Code of Peru, as amended by Law 28355 of 2004, which provide:

“Article 393.- Acceptance or solicitation of bribes for violation of official duty. Any government official or public servant^{xxv} who accepts or receives a gift, promise, or any other advantage or benefit in order to perform or omit an act in violation of their duties, or who accepts such as a consequence of having breached said duties, shall be punished by not less than five nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Any official or public servant who directly or indirectly solicits a gift, promise, or any other advantage or benefit in order to omit an act in violation of their duties or as a consequence of having breached said duties, shall be punished by not less than six nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Any official or public servant who conditions their performance of the duties arising from their office or position to the presentation or promise of a gift or advantage shall be punished by not less than eight nor more than ten years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Article 394.- Acceptance or solicitation of bribes for performance of official duty. Any official or public servant who accepts or receives a gift, promise, or any other advantage or undue benefit, in order to perform an act within the purview of their office or position, without breaching their duty, or as a consequence of an act already performed, shall be punished by not less than four nor more than six years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code”.

“Any official or public servant who directly or indirectly solicits a gift, promise, or any other undue advantage in order to perform an act within the purview of their office or position, without breaching their duty, or as a consequence of an act already performed, shall be punished by not less than five nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Article 395.- Acceptance or solicitation of bribes to influence discretion. Any judge, arbitrator, government attorney, expert, member of an administrative tribunal or other similar official who in any way accepts or receives any form of gift, promise, or any other advantage or benefit, in the knowledge that its intention is to influence or decide a matter submitted to their attention or jurisdiction, shall be punished by not less than six nor more than fifteen years of imprisonment, disqualification under Article 36 (1) and (2) of the Criminal Code, and a fine of 180 to 365 days’ pay.”

“Any judge, arbitrator, government attorney, expert, member of an administrative tribunal or any other similar official who in any way, directly or indirectly solicits a gift, promise, or any other advantage or benefit in order to influence the decision on a matter submitted to their attention, shall be punished by not less than eight nor more than fifteen years of imprisonment, disqualification under Article 36 (1) and (2) of the Criminal Code, and a fine of 365 to 700 days’ pay.”

“Article 396.- Acceptance or solicitation of bribes by assistants of justice. If, in the case of Article 395, the perpetrator is a court clerk, reporter, specialist, assistant of justice, or any other person similar to the foregoing, they shall be punished by for not less than five nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

▪ With regard to paragraph (b) of Article VI(1):

- Articles 397 and 398 of the Criminal Code of Peru, as amended by Law 28355 of 2004, which provide:

“Article 397.- General offering of bribes. Any person who, in any way, offers, gives, or promises an official or public servant a gift, promise, advantage or benefit, in order to perform or omit acts in violation of their duties shall be punished by not less than four nor more than six years of imprisonment.”

“Any person who, in any way, offers, gives, or promises a gift, advantage or benefit, so that an official or public servant might perform or omit acts within the purview of their office or position, without breaching their duty, shall be punished by not less than three nor more than five years of imprisonment.”

“Article 398.- Offering of bribes to influence discretion. Any person who, in any way, offers, gives, or promises a gift, advantage or benefit to a judge, government attorney, expert, arbitrator, member of an administrative tribunal or a similar official, in order to influence the decision on a matter submitted to their attention or jurisdiction, shall be punished by not less than five nor more than eight years of imprisonment and disqualification from public office under sections 2, 3 and 4 of Article 36 of the Criminal Code.”

“When the gift, promise, advantage, or benefit is offered or presented to a court clerk, reporter, specialist, assistant of justice, witness, translator or interpreter, or a similar person, the penalty shall be shall be not less than four nor more than eight years of imprisonment and disqualification from public office under sections 2, 3 and 4 of Article 36 of the Criminal Code.”

“If the person who offers, gives, or corrupts is an attorney at law or a member of a law firm, the penalty shall be shall be not less than five nor more than eight years of imprisonment, disbarment under sections 1, 2, 3 and 8 of the Criminal Code, any a fine of 180 to 365 days’ pay.”

▪ With regard to paragraph (c) of Article VI(1):

- Articles 393 and 394 the Criminal Code of Peru, as amended by Law 28355 of 2004, which provide:

“Article 393.- Acceptance or solicitation of bribes for violation of official duty. Any government official or public servant^{xxvi} who accepts or receives a gift, promise, or any other advantage or benefit in order to perform or omit an act in violation of their duties, or who accepts such as a consequence of having breached said duties, shall be punished by not less than five nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Any official or public servant who directly or indirectly solicits a gift, promise, or any other advantage or benefit in order to omit an act in violation of their duties or as a consequence of having breached said duties, shall be punished by not less than six nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Any official or public servant who conditions their performance of the duties arising from their office or position to the presentation or promise of a gift or advantage shall be punished by not less than eight nor more than ten years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

“Article 394.- Acceptance or solicitation of bribes for performance of official duty. Any official or public servant who accepts or receives a gift, promise, or any other advantage or undue benefit, in order to perform an act within the purview of their office or position, without breaching their duty, or as a consequence of an act already performed, shall be punished by not less than four nor more than six years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code”.

“Any official or public servant who directly or indirectly solicits a gift, promise, or any other undue advantage in order to perform an act within the purview of their office or position, without breaching

their duty, or as a consequence of an act already performed, shall be punished by not less than five nor more than eight years of imprisonment and disqualification under Article 36 (1) and (2) of the Criminal Code.”

- Article 384 of the Criminal Code of Peru, as amended by Law 26713 of 1993, which states: “*Article 384.- Collusion. Any official or public servant who, in contracts for provision of goods and services, competitive bidding, calls for bids, auctions, or any other similar operation in which they are involved by virtue of their office or a special commission, defrauds the State or an legally recognized entity or agency thereof by entering into pacts with interested parties in the agreements, adjustments, liquidations, or provisions shall be punished by not less than three nor more than fifteen years of imprisonment.*”

- Article 399 of the Criminal Code of Peru, as amended by Law 28355 of 2004, which states: “*Any official or public servant who, seeking to benefit themselves or a third party, has a direct, indirect or disguised interest in any contract or operation in which they are involved by virtue of their office, shall be punished by not less than four nor more than six years of imprisonment and disqualification from public office under Article 36 (1) and (2) of the Criminal Code.*”

▪ With respect to paragraph (d) of Article VI(1):

- Article 405 of the Criminal Code of Peru, which states: “*Article 405.- Actual concealment. Any person who obstructs justice by seeking to bring about the disappearance of the traces or evidence of a crime or concealing the effects thereof, shall be punished by imprisonment for not less than two nor more than four years.*”

- Articles 1, 2, 3, and 4 of Law 27765 (Anti-Money Laundering Law) of June 26, 2002, transcribed as follows:

“*Article 1.- Acts of conversion and transfer. Any person who converts or transfers money, assets, effects, or profits, the illicit origin of which they are aware or can presume, in order to prevent identification of their origin, their seizure, or their confiscation, shall be punished by not less than eight nor more than fifteen years of imprisonment and a fine of 120 to 350 days’ pay.*”

“*Article 2.- Acts of concealment and possession. Any person who acquires, uses, keeps, has custody of, receives, conceals, or possesses money, assets, effects, or profits, the illicit origin of which they are aware or can presume, in order to prevent identification of their origin, their seizure, or their confiscation, shall be punished by not less than eight nor more than fifteen years of imprisonment and a fine of 120 to 350 days’ pay.*”

“*Article 3.- Aggravating circumstances. The penalty shall be shall be not less than ten nor more than twenty years of imprisonment and a fine of 365 to 730 days’ pay, when:*”

“*a) The perpetrator uses or takes advantage of his position as a public official or an intermediary in the real estate, financial, banking, or stock brokerage sectors.*”

“*b) The perpetrator commits the offense as a member of a criminal organization.*”

“*The penalty shall be shall be not less than twenty-five years of imprisonment when the acts of conversion or transfer concern money, assets, effects, or profits originating from illicit drug trafficking or terrorism.*”

“Article 4.- Omission to report suspicious transactions or operations. Anyone who, in breach of the duties inherent to their position or profession, omits to report to the appropriate authority any suspicious transactions or operations that they might have detected, as required by the laws and regulatory standards, shall be punished by not less than three nor more than six years of imprisonment, a fine of 120 to 250 days’ pay, and suspension of not more than six years, pursuant to sections 1, 2, and 4 of Article 36 of the Criminal Code”.

▪ With respect to paragraph (e) of Article VI(1):

- Article 16 of the Criminal Code of Peru, which states: *“Article 16.- Attempted commission. Attempted commission occurs when a person begins to carry out a crime that they decided to commit but does not consummate it.*

The judge shall punish attempted commission with a prudently reduced sentence.”

- Article 23 of the Criminal Code of Peru, which states: *“Article 23.- Participation as principal, abettor, and co-principal. Anyone who commits the punishable act themselves or through a third, or who commits it in conjunction with another shall be punished with the penalty provided for this violation.”*

- Article 24 of the Criminal Code of Peru, which states: *“Article 24.- Instigation. Anyone who fraudulently causes another person to commit the punishable act shall be punished with the penalty applicable to the principal.”*

- Article 25 of the Criminal Code of Peru, which states: *“Article 25.- Primary and secondary complicity. Anyone who fraudulently provides assistance in the commission of the crime, without which it could not have been committed, shall be punished with the penalty provided for the principal. Those who otherwise fraudulently provide assistance shall be punished with a prudently reduced sentence.”*

- Article 317 of the Criminal Code of Peru, as amended by Law 28355 of 2004, which states: *“Article 317.- Conspiracy. Anyone who is part of a criminal organization of two or more individuals assembled in order to commit crimes shall, for the mere fact of being a member of that organization , be punished with not less than three nor more than six years of imprisonment. When the purpose of the organization is to commit crimes of genocide, crimes against public safety and the peace, crimes against the State and national defense, or crimes against government and the constitutional rule of law, the penalty shall be not less than eight nor more than thirty-five years of imprisonment, a fine of 180 to 365 days’ pay, and disqualification under Article 36, sections 1, 2, and 4”.*

- Article 404 of the Criminal Code of Peru, as amended by Decree-Law 25429 of 1992, which states: *“Article 404.- Personal concealment. Anyone who conceals a person from criminal prosecution or from the execution of a sentence or other measures ordered by the courts shall be punished by not less than three nor more than six years of imprisonment. If the perpetrator conceals the author of crimes against the peace, against the State and national defense, or crimes against government and the constitutional rule of law, or of illicit drug trafficking, the penalty shall be not less than ten nor more than fifteen years of imprisonment.”*

- Article 405 of the Criminal Code of Peru, which states: *“Article 405.- Actual concealment. Any person who obstructs justice by seeking to bring about the disappearance of the traces or evidence of*

a crime or concealing the effects thereof, shall be punished by not less than two nor more than four years of imprisonment.”

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

With respect to provisions related to the criminalization of the acts of corruption provided for in Article VI(1) of the Convention that have been examined by the Committee, based on the information made available to it, they constitute, as a whole, a set of provisions relevant for promoting the purposes of the Convention.

Nonetheless, the Committee considers that the country under review, in order to improve said provisions in its legal framework, could supplement them, taking into account the observation concerning the consistency of such provisions with Article VI(1) of the Convention which was put forward in a review carried out in the framework of a technical cooperation project for the ratification and implementation of the Convention carried out by the OAS with financial collaboration from the IDB and the participation of the Institute of International Studies of the Pontifical Catholic University of Peru, and published in the book, *“Adaptando la Legislación Penal de Perú a la Convención Interamericana contra la Corrupción”* [Adapting Peru’s Criminal Laws to the Inter-American Convention against Corruption].

Based on the foregoing, the Committee considers that:

- Articles 393, 394, 395, and 396 of the Criminal Code do not allow for the possibility of gifts, promises, or other advantages or benefits being requested or accepted on behalf of a person or entity other than a public official or civil servant. (See Recommendation 3 (a) in Chapter III, Section 3, of this Report).
- Articles 397 and 398 of the Criminal Code do not allow for the possibility of gifts, promises, or other advantages or benefits being offered or given to another person or entity in exchange for the performance or omission of an act by a public official or civil servant in discharging his/her public duties. (See Recommendation 3 (a) in Chapter III, Section 3, of this Report).
- Article 425 of the Criminal Code, which concerns the definition of government officials and public servants, could be expanded in such a way as to include those who have been selected, appointed, or elected to perform activities or functions in the name or service of the State, even if they have not taken up the position or office. (See Recommendation 3 (b) in Chapter III, section 3 of this Report).

In that connection, the document sent by *“Transparency International”* mentions the following:²⁰ *“Although the legal framework provided by Peru’s criminal laws is more specific than that contained in the Inter-American Convention against Corruption as regards criminalization of corruption-related offenses, there still remains the task of amending the current concept of government official under domestic law and including the definition offered by the Convention.”*

²⁰ Document of Proética, Peruvian Chapter of Transparency International. p. XIII.

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

Annex 7 of the Response of Peru to the Questionnaire contains information prepared by the Office of the Ad Hoc Prosecutor for the Fujimori-Montesinos Cases,²¹ which lists the number of cases and offences corresponding to a variety of corruption-related crimes.

With respect to the aforementioned information, while it does not represent every case being processed in the country, according to the Republic of Peru,²² the Committee considers that it serves to demonstrate that in the Republic of Peru criminal investigations have been carried out of the corruption offences recognized in Article VI (1) that are criminalized in the country under review, which warrants recognition.

In this regard, in its Response,²³ Peru further notes, *“It remains difficult to obtain reliable information on judicial proceedings instituted at the domestic level against acts of corruption provided in Article VI (1) of the Convention, which, as described in the preceding paragraphs, are criminalized under Peruvian law”*.

“In Peru, following the discovery of the acts of corruption committed by high-ranking government officials during the last decade, and given the imminence of their prosecution in the courts, the Transitional Governing Council of the Judiciary then in place created a specialized sub-office within the judicature to prosecute those cases.”

“(…) We also believe that one way to measure the effectiveness of the criminal classifications under the domestic law of the acts of corruption provided in Article VI (1) of the Convention is by examining the contents of the final judgments that have been issued in these cases. A review of those judgments would provide us with objective results as to whether or not the court of last instance accepted the arguments of the Office of the Prosecutor [Fiscalía] (as the body with the obligation to prosecute crimes) and the Office of the Attorney General [Procuraduría] (as protector of the rights of the State, which is the aggrieved) to support the indictment and prosecution of public officials for those acts of corruption.”

“However, in our country, the Supreme Court of Justice does not publish the contents of judgments (known in Peru as final judgments [sentencias ejecutorias]) that it issues as the court of last resort for criminal matters. The Ministry of Justice recently urged the president of the judicial branch to carry out this task via the judiciary web page. Since October of this year the Supreme Court has published the results of votes on a daily basis, but not the contents of judgments.”

by the same token, the document submitted by Transparency International mentions the following:²⁴ *“With respect to progress made by the Peruvian State in implementing the Inter-American Convention against Corruption, based on judicial proceedings, an obstacle in this regard is the difficulty of obtaining reliable official information reflecting such progress. Thus, one of the chief problems has to do with the fact that the Supreme Court of Justice does not regularly publish the contents of its judgments. In other words, there is no up-to-date case law to follow up on judicial decisions. This problem is compounded by the lack of awareness of the right to seek public*

²¹ Response of the Republic of Peru to the Questionnaire in the Second Round, Annex 7.

²² Response of the Republic of Peru to the Questionnaire in the Second Round, p. 21.

²³ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 20-21.

²⁴ Document of Proética, Peruvian Chapter of Transparency International. p. XIII.

information recognized in Law 27927 (amended by Law 27806) and the failure of the majority of government institutions to comply in a timely or formal manner with requests for information.”

Based on the foregoing, the Committee will make a recommendation that the Supreme Court of Justice consider publishing on its web site the contents of the judgments it issues as the court of last resort for criminal matters (See Recommendation 3 (c) in Chapter III, section 3 of this Report).

Finally, Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of the criminal investigations referred to, it will formulate a recommendation to the judiciary in this regard (See general recommendation 4.2 in Chapter III of this Report.)

III. CONCLUSIONS AND RECOMMENDATIONS IN RELATION TO THE IMPLEMENTATION OF THE PROVISIONS SELECTED IN THE FRAMEWORK OF THE SECOND ROUND

Based on the review conducted in Chapter II of this Report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Peru of the provisions contained in Article III(5) (systems of government hiring and for the procurement of goods and services); Article III(8) (systems for protecting public servants and private citizens who, in good faith, report acts of corruption); and Article VI (acts of corruption) of the Convention, which were selected for review within the framework of the second round.

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

1.1. Systems of Government Hiring

The Republic of Peru has considered and adopted measures intended to establish, maintain and strengthen the systems of government hiring, as discussed in Section 1.1 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Peru consider the following recommendation:

- 1.1.1 Strengthen government hiring systems. In meeting this recommendation, the Republic of Peru could take into account the following measures:
 - a. Enhance Law 28175 (Public Employment Framework Law), bearing in mind the legislative initiatives in place, in order to develop sufficiently the structure of the civil service career system and the provisions on public servant recruitment procedures based on the principles of merit and equality, with respect to stages, timeframes, competent organs, disclosure, and the possibility to challenge bidding conditions. (See section 1.1.2. in Chapter II of this Report).
 - b. Establish the Higher Council on Public Employment, the civil service policy-making body. (See section 1.1.3. in Chapter II of this Report).

1.2. Systems for government procurement of goods and services

The Republic of Peru has considered and adopted measures intended to establish, maintain and strengthen the systems for government procurement of goods and services, as discussed in Section 1.2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Peru consider the following recommendations:

- 1.2.1 Strengthen government procurement through public competitive bidding and calls for bids. In meeting this recommendation, the Republic of Peru could take into account the following measures:
 - a. Recognize to entities authority to terminate contracts unilaterally or to reserve the right to withhold their award, as appropriate, when they discover irregularities in procedures, such as overvaluation of the contract or collusion between participating companies. In such cases, the power of entities to reinstate the tender procedure for procurement of goods or services in accordance with the general rules should also be recognized or the selection and contracting with the provider that received the second-best appraisal in the procedure in question, to the extent that said provider complies with the requirements for contract execution set out in the bidding conditions. (See section 1.2.2. in Chapter II of this Report).
 - b. Amend Article 148 of the Regulations on the Government Procurement Law (Supreme Decree 084-2004-PCM) in order to make it mandatory in exempt procurement and contracting procedures to invite two or more registered providers that meet the requirements contained in the bidding conditions, except in the case of contracts for strictly personal services or when there is only one provider in the national market, in the case of goods or services for which there is no available substitute (See section 1.2.2. in Chapter II of this Report).
 - c. Consider measures to reduce the variations that occur at present between amounts programmed in annual procurement and contracting plans and amounts actually executed by different entities (See section 1.2.3 in Chapter II of this Report).
 - d. Evaluate and adjust the government procurement system in order to make competitive bidding the general rule for contract tendering procedures in the State system for procurement of goods and services, taking into account the diversity of needs and budgetary scope of State entities and agencies (See section 1.2.3 in Chapter II of this Report).
- 1.2.2 Strengthen oversight mechanisms in the government procurement system. To carry out this recommendation, Peru could take the following measures into account:
 - Review the sanctions provided in Article 294 of the Regulations on the Government Procurement Law (Supreme Decree 084-2004-PCM), in order to establish an appropriately long disqualification period for providers, participants, bidders, or contractors that incur the penalties set forth therein, as well as to review the other sanctions established in Article 294,

in order that they be commensurate with the seriousness of the violation. (See section 1.2.2. in Chapter II of this Report).²⁵

1.2.3 Widen the use of electronic media and information systems for government procurement. To carry out this recommendation, Peru could take the following measures into account:

- a. Establish the obligation requiring the public disclosure, whether electronically or through other communication media, of decisions authorizing adjustments of contracts. (See section 1.2.2. in Chapter II of this Report).
- b. Follow up on the expansion of the SEACE aimed at bringing all entities within the scope of the Government Procurement Law. (See section 1.2.3. in Chapter II of this Report).

1.2.4 Strengthen the system for public works contracting contained in Supreme Decree 083-2004-PCM and its Regulations. To carry out this recommendation, Peru could take the following measure into account:

- a. Consider implementation of individual systems of control for each public works contract, in particular in any which, by reason of the size of the project, would allow civic oversight or citizen control or demand regular reporting on contract progress, notwithstanding any internal and external institutional oversight systems. (See section 1.2.2. in Chapter II of this Report).
- b. Study the possibility of granting the general population the power now enjoyed by bidders to present inquiries and comments on tender rules in accordance with the terms of Articles 27 and 28 of the Law. (See section 1.2.2. in Chapter II of this Report).
- c. Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereof. (See section 1.2.2, chapter II of this report).

1.2.5 Continue to conduct periodic comprehensive evaluations in order to evaluate the use and effectiveness of the government procurement system and, based on the findings, identify and consider the adoption of specific measures through which to ensure the transparency, openness, equity, and efficiency of the system. (See section 1.2.3 in Chapter II of this Report).

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

The Republic of Peru has considered and adopted certain measures aimed at creating, maintaining, and strengthening systems to protect public servants and private citizens who in good faith report acts of corruption, as discussed in Section 2 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Peru consider implementing systems to protect public servants and private citizens who in good

²⁵ See Endnote XXIV.

faith report acts of corruption. In meeting this recommendation, the Republic of Peru could take into account the following measures:

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

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

The Republic of Peru has adopted measures aimed at criminalizing the acts of corruption provided for by Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.

In light of the comments made in the above-noted section, the Committee suggests that the Republic of Peru consider the following recommendations:

- a. Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI.1 of the Convention. (See section 3.2., chapter II of this report).

- b. Amend and/or expand Article 425 of the Criminal Code, which concerns the definition of government officials and public servants, in such a way as to include those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, even if they have not taken up the position or office. (See section 3.2 in Chapter II of this Report).
- c. Consider publication, on the web site of the Supreme Court of Justice, of the contents of the judgments it issues as the court of last resort for criminal matters.

4. GENERAL RECOMMENDATIONS

Based on the review and contributions made throughout this Report, the Committee suggests that the Republic of Peru consider the following recommendations:

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that the said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, provisions, measures, and mechanisms considered in this report, and to follow-up on the recommendations made herein (see Chapter II, Sections 1.1.3.; 2.3.; and 3.3 of this Report).

5. FOLLOW-UP

The Committee will consider the periodic update Reports submitted by the Republic of Peru concerning progress in implementing previous recommendations, within the framework of the plenary meetings of the Committee and in accordance with the provisions of Article 31 of the Rules of Procedure and Other Provisions.

Similarly, the Committee will review the progress in implementing the recommendations made in this Report, in accordance with the provisions of Article 29 of the Rules of Procedure.

IV. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN THE FIRST ROUND

The Committee observes, in relation with the implementation of the recommendations formulated for the Republic of Peru in the Report in the First Round of review, based on the information at its disposal, the following:

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

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

▪ Recommendation 1.1.1:

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

▪ Measures suggested by the Committee:

- a) *Analyze possible situations of conflict of interest that could arise from the constitutional authorization (Articles 92 and 126 of the Constitution) that permits a member of Congress to be appointed as a Minister of State and empowers such Member to take part in congressional voting; it would be advisable for such Member to abstain on matters directly connected with their executive function.*
- b) *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing conflicts of interest, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (see Section 1.1 .2 of Chapter II of this report).*
- c) *Evaluate the possibility of amending the First Additional and Final Provision of Law 27815 (Code of Ethics in Public Administration Act) to eliminate its supplemental character in the case of lower ranking provisions.*
- d) *Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on preventing conflicts of interest (see Section 1.1.2 in Chapter II of this report).*
- e) *Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public functions are discharged by honest individuals, making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.*
- f) *Establish prior consultation of the National Registry of Dismissals on Disciplinary Grounds as a procedure to be followed in determining eligibility for employment (Article 7(b) of Law 28175 of 2004).*
- g) *Clearly define, for each position, the technical and professional requisites to be met by those appointed to positions of confidence (Law 28175, Article 4 (2)).*
- h) *Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct applicable to conflicts of interest, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*
- i) *Evaluate the levels of use and effectiveness of the standards of conduct for preventing conflicts of interest and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring their effectiveness toward that end.*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The adoption of Supreme Decree 033-2005-PCM, Regulations on the Civil Service Code of Ethics,²⁶ which defines “conflict of interests” and sets out the penalties and administrative disciplinary procedure for this and other ethical violations.
- The adoption of Ministerial Resolution 135-2004-PCM, amended by Ministerial Resolution 099-2005-PCM, approving the Operational Guidelines for the National Registry of Sanctions involving Dismissal and Removal.²⁷
- The preparation, by the Civil Service Secretariat, of a draft law creating an electronic system for online consultation of the National Registry of Sanctions Involving Dismissal and Removal, for mandatory use by government entities in the employee recruitment and service contracting procedures.²⁸

The Committee takes note that the country under review has considered measure b) of the recommendation, regarding the adoption of the Regulations on the Civil Service Code of Ethics, without venturing an in-depth analysis of the contents of those Regulations.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of measure e) of the recommendation, regarding approval of the Operational Guidelines for the National Registry of Sanctions involving Dismissal and Removal; however, the Committee does not venture an in-depth analysis of their contents. In this regard, the Committee also notes the preparation of the draft law creating the electronic system for online consultation of said Registry and its mandatory use, aimed at ensuring that civil service positions are occupied by honest individuals.

Without venturing an in-depth analysis of the contents of the aforementioned legal texts, the Committee, finally, notes the need for the Republic of Peru to give additional attention to the implementation of the other elements in measure e),^{xxvii} as well as to the remaining measures in the foregoing recommendation.

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

▪ Recommendation 1.2.1:

²⁶ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 22.

²⁷ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 23-24.

²⁸ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 23-24.

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

▪ Measures suggested by the Committee:

- a) *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the protection of public resources, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (see section 1.2.2 in Chapter II of this report).*
- b) *Strengthen the National Commission for Fighting Corruption and Promoting Ethics and Transparency in the Public Administration, providing it with greater autonomy and more legal instruments and resources for discharging its functions, including those with an impact on preventing conflicts of interest (see Section 1.1.2 in Chapter II of this report).*
- c) *Implement the National Registry of Sanctions involving Dismissal and Removal described in Law 27444 of 2001, to make it a useful tool for pursuing its aims, including ensuring that public functions are discharged by honest individuals, making use in this of new technologies that will enable it to be kept up to date and facilitate its timely consultation by users.*
- d) *Design and implement mechanisms to publicize and train all public employees regarding the standards of conduct for ensuring the conservation and appropriate use of public resources, to resolve their questions thereon, and to provide regular training and updates regarding those standards.*
- e) *Evaluate the levels of use and effectiveness of the standards of conduct for ensuring the conservation and appropriate use of public resources and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating, or ensuring their effectiveness toward that end.*
- f) *Optimize the use of existing technology for the purposes of designing a computerized public system for State procurement, contracting and resources.*
- g) *Include, at the time that the terms and conditions for public bidding competitions and procurements are prepared, standards that enable potential bidders and different civil society stakeholders to formulate observations on draft terms and conditions, making it possible to include opinions in the final terms and conditions, the foregoing process must meet the requirements of full publicity and dissemination.*
- h) *Without forgetting the media habitually used, such as the Official Gazette, El Peruano and daily newspapers with the largest circulation at the national or local level, the Republic of Peru should, with respect to publicity for announcements of terms and conditions for public bidding competitions and procurements, examine the possibility of using a larger number of dissemination channels, such as the Internet, associations, schools, chambers of commerce or other entities that act as a hub for purveyors or professionals connected with the object of the competition or procurement in question.*

- i) *Include on the web pages of all public entities information on their budget, finances, expenditures and human resource management, in accordance with Emergency Decree 035-2001 (see Section II, 4.2.1., penultimate paragraph, of this Report).*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The adoption of Supreme Decree 033-2005-PCM, Regulations on the Civil Service Code of Ethics, which governs Titles II and IV of the Code of Ethics, concerning penalties for ethical violations and administrative disciplinary procedure.²⁹
- The publication of Ministerial Resolution 135-2004-PCM, amended by Ministerial Resolution 099-2005-PCM, approving the Operational Guidelines for the National Registry of Sanctions involving Dismissal and Removal.³⁰
- The issuance of Directive 001-2005-CG/OCI-GSNC, “*Exercise of Preemptive Oversight by Institutional Control Organs*”, approved by Comptroller’s Decision 528-2005-CG, in order to strengthen preemptive oversight in the National Oversight System.³¹
- The issuance of Directive 04-2006-CG/SGE-PC, “*Pre-emptive instructions for the conservation, inspection, and surveillance of public assets and resources during electoral processes*,” approved by Comptroller’s Decision, in order to ensure the conservation and appropriate use of public resources.³²
- The adoption of Law 28716 “*Public Entity Internal Control Law*”, which led to the enactment of new Internal Control Standards approved by Comptroller's Decision 320-2006-CG.³³
- The adoption of Supreme Decree No. 083-2004-PCM, “*Consolidated Amended Text of the Government Procurement Law*” and of Supreme Decree No. 084-2004-PCM, “*Regulations on the Government Procurement Law*.”

The Committee takes note that the country under review has considered measure a) of the recommendation, regarding the adoption of the Regulations on the Civil Service Code of Ethics, without venturing an in-depth analysis of the contents of those Regulations.

With respect to the aforesaid observations in follow-up to Recommendation 1.1.1, the Committee takes note of the steps taken by the country under review to proceed with the implementation of measure c) of the recommendation, regarding approval of the Operational Guidelines for the National Registry of Sanctions involving Dismissal and Removal; however, the Committee does not venture an in-depth analysis of their contents. In this regard, the Committee also notes the preparation of the draft law creating the electronic system for online consultation of said Registry and its mandatory use, aimed at ensuring that civil service positions are occupied by honest individuals.

²⁹ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 25.

³⁰ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 23-24.

³¹ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 26.

³² Response of the Republic of Peru to the Questionnaire in the Second Round, p. 26.

³³ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 26.

The Committee also notes the steps taken by the Republic of Peru in implementing measures (f), (g), and (h) of the recommendation, regarding the creation and regulation of the RNSDD and the SEACE, both of which were set up by the Government Procurement Law and its Regulations; it also notes the obligatory requirement of publishing both the invitations and the rules for selection procedures in the SEACE (which will be freely available to everyone over the internet) and the allowing of bidders to submit grounded, written inquiries and comments on the rules of bidding processes and public auctions.

Without venturing an in-depth analysis of the contents of the aforementioned legal texts, and in view of the fact that the Response of Peru to the Questionnaire does not refer to the other elements of this recommendation, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation. The Committee also takes note of the difficulties mentioned by the country under review in implementing this recommendation^{xxviii} and of the information provided on the internal agencies that have participated in the process of implementing said recommendation.³⁴

1.3. Standards of conduct and mechanisms relating to measures and systems to require public officials to report to competent authorities regarding acts of corruption in public office of which they are aware.

▪ Recommendation 1.3:

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

▪ Measures suggested by the Committee:

- a) *Issue regulations for the Civil Service Code of Ethics, regulating the punishments applicable for contravening its provisions, including those governing the obligation of reporting breaches thereof, and specifying the way in which its provisions are to apply in conjunction with other relevant rules, ensuring that the scope of its application is not curtailed (see section 1.3.2 of Chapter II of this Report).*
- b) *Facilitate compliance with the obligation to report acts of corruption, through the channels deemed appropriate, regulating their use.*
- c) *Adopt and implement measures to protect whistleblowers, so that they enjoy guarantees in the face of threats or any other act of pressure or coercion to which they may be subjected as a result of compliance with this obligation.*
- d) *Include in the protection measures contained in Law 27378 of December 2000, Supreme Decree 020-2001-JUS of July 2001, and Supreme Decree 031-2001-JUS of October 2001 persons who in good faith report crimes and have not participated in the commission of crimes.*

³⁴ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 25-26. They are the Civil Service Secretariat, the Office of the President of the Council of Ministers, the Office of the Comptroller General and its National Audit School [*Escuela Nacional de Control*].

- e) *Provide training to public officials on their responsibility to report to appropriate authorities any acts of corruption that come to their attention.*
- f) *Evaluate the levels of use and effectiveness of the measures and systems for requiring public employees to report acts of corruption, and of the mechanisms for ensuring compliance with them that exist in Peru, as instruments for preventing corruption and, as a result of that evaluation, give due consideration to adopting measures for promoting, facilitating, consolidating or ensuring their effectiveness toward that end.*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The adoption of Supreme Decree 033-2005-PCM, Regulations on the Civil Service Code of Ethics.³⁵

The Committee takes note of the steps taken by the country under review to proceed with the implementation of measure a) of the recommendation, regarding the adoption of the Regulations on the Civil Service Code of Ethics. However, said Regulations do not provide specific punitive measures for those who fail to carry out their duty to report acts of corruption.

Based on the foregoing and in view of the fact that the Response of Peru to the Questionnaire does not refer to the other elements of this recommendation, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

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

▪ Recommendation 2.1:

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

▪ Measures suggested by the Committee:

- a) *Expand the provisions governing the content of sworn statements of income, property, and revenues by state officials and civil servants, so that they also explicitly oblige said employees to provide information on their “liabilities,” and develop this concept by indicating the elements it comprises and the information that is to be supplied in connection with it (see Section 2.2 in Chapter II of this report).*
- b) *Include in the standards on sworn financial statements the obligation to provide information on the assets belonging to the official’s dependents; to his or her spouse; and to the conjugal partnership constituted with his or her spouse or domestic partner, stating the provenance of said assets.*

³⁵ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 27.

- c) *Include a section in the sworn statement for the declaration of any positions or appointments the official may have held (in public or private activity) prior to assuming the position in connection with which the sworn financial statement is being submitted; and use this declaration for the purposes of detecting possible conflicts of interest.*
- d) *Include, on the list of those required to submit declarations, all public officials authorized to issue licenses, as well as those who sit on panels or working groups that oversee competitive bidding processes.*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The preparation by the Office of the Comptroller General of Draft Law 00082/2006-CGR “*Draft Law Governing Sworn Statements of Income, Property, and Revenue of Government Officials and Public Servants*”.³⁶

The Committee takes note of the steps taken by the country under review to proceed with the implementation of measures a), b), and c) of the recommendation, regarding the preparation of the Draft Law Governing Sworn Statements of Income, Property, and Revenue of Government Officials and Public Servants. The purpose of that bill is to improve the financial disclosures system with a new filing form that it proposes, which would include, inter alia, information on the assets and revenue of the declarant and their spouse or partner, as well as the liabilities of the conjugal partnership. It also includes an obligation to provide information on all rights or holdings, as well as the employment or service provision relationship of the declarant with companies, corporations, partnerships or any other kind of private association.³⁷

Without venturing an in-depth analysis of the contents of the aforementioned legal text, bearing in mind that it could undergo changes during its approval process and because the Response of Peru to the Questionnaire does not refer to the final element of this recommendation, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

- Recommendation 2.2:

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

- Measures suggested by the Committee:

- a) *Establish systems for the effective verification of sworn financial statements, including a specific timetable and measures to overcome obstacles to access to required information, and*

³⁶ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 27-28.

³⁷ Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 27-28.

establishing measures to overcome obstacles for accessing any information sources that may be required.

- b) *Establish a register of officials required to submit sworn financial statements, and mechanisms for periodic updates of the register.*
- c) *Evaluate the possibility of implementing a computerized system to optimize capacity for the control of sworn financial statements, alerting appropriate authorities to substantial changes in the content of an official's sworn statements.*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The preparation by the Office of the Comptroller General of Draft Law 00082/2006-CGR “*Draft Law Governing Sworn Statements of Income, Property, and Revenue of Government Officials and Public Servants,*” which is designed to improve the verification system for sworn statements through the inclusion of “*express authority for regulated persons to lift client confidentiality with respect to banking, tax, and identity, as well as for telecommunications service operators to provide information of a personal nature supplied by regulated persons as subscribers and/or users in the framework of their contractual relationships.*”³⁸
- The development and initial implementation by the Office of the Comptroller General, of an Internet-based application called “*Prisma Web*”, for preparing and filing sworn statements.
- The signing of agreements by different institutions (Superintendency of Banking, Insurance, and Private Pension Fund Managers; the College of Notaries of Lima and the College of Notaries of Peru; the National Superintendency of Public Registries; and the Association of Banks of Peru) with the Office of the Comptroller General, in order to widen access to information sources to help ensure effective verification of sworn statements.
- The opening of an archive by the Office of the Comptroller General on the principal officials who have been appointed and terminated based on information published in the Official Gazette, “*El Peruano.*”
- The initial implementation of an electronic database containing information on filed sworn statements, as well as preliminary steps to develop a data mining system to take advantage of the information contained in that database.

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

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

- Recommendation 3:

³⁸ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 29.

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

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The development and implementation by the Office of the Comptroller General of the Comprehensive Oversight Strategy, in order to detect, punish and eliminate corrupt practices, as well as the publication of the management document “Strategic Guidelines of the Office of the Comptroller General 2006 – 2010” which contains facts and figures on measures carried out.
- The adoption of the following directives by the Office of the Comptroller General: Directive 06-2006-CG/SE “*Transmission of Information on Compliance with Public Spending Austerity and Efficiency - Emergency Decrees 019, 020, and 021-2006 and Supplemental Standards*”, approved by Comptroller’s Resolution 292-2006-CG; and Directive 011-2004-CG/GDPC “*Rapid Action Procedures*,” approved by Comptroller’s Resolution 131-2004-CG.

Without venturing an in-depth analysis of the contents of the aforementioned Directives, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

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

▪ Recommendation 4.1:

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

▪ Recommendation 4.2:

Strengthen mechanisms for guaranteeing access to public information.

▪ Measures suggested by the Committee:

- a) *Adopt appropriate measures to ensure that those state agencies required to do so by the right-to-information rules incorporate into their Sole Texts of Administrative Procedures (TUPAs) the procedure for access to information (see Section 4.2.3 in Chapter II of this report).*

- b) *Adopt appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information publish on their Internet web sites the information required to appear thereon by the these norms (see Section 4.2.3 in Chapter II of this report).*
- c) *Implement training and dissemination programs dealing with the mechanisms for information access, in order to help public officials and citizens understand them and to optimize the use of available technology to that end.*
- d) *Conduct an evaluation to determine the factors that could be adversely affecting the enforcement of the norms governing the right to information and, as a result thereof, adopt measures to overcome those problems (see Section 4.2.3 in Chapter II of this report).*
- e) *Optimize the system for the organization of public archives to facilitate public access to the information.*
- f) *Strengthen existing protections for the right to public information, so that access to such information cannot be denied or limited on grounds, or according to criteria, other than those established in the law.*
- g) *Analyze the feasibility of reconciling paragraphs 1 and 2 of article 18 of Law 27927 of 2003, with respect to the possibility of destruction by the public administration of information in its possession, and to establish objective criteria for the concept of “public utility” mentioned in paragraph 2 of the above-cited article.*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The approval of Supreme Decree 032-2006-PCM, which creates the Citizen and Companies Services Portal the purpose of which is to provide a forum for all public entities to publish and disseminate their Single Texts of Administrative Procedures.³⁹

The Committee takes note of the steps taken by the country under review to proceed with the implementation of the measure in the recommendation concerning adoption of appropriate measures to ensure that those state agencies required to do so by the norms on right-to-information, include in their Single Texts of Administrative Procedures the procedure for accessing information, in keeping with Supreme Decree 032-2006-PCM adopted by the Office of the President of the Council of Ministers; however, the Committee does not offer an in-depth analysis of its contents.

Based on the foregoing and in view of the fact that in its Response to the Questionnaire Peru does not refer to the other elements of this recommendation, the Committee takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

- Recommendation 4.3

³⁹ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 31.

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

▪ Measures suggested by the Committee:

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

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.

▪ Recommendation 4.4:

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

▪ Measures suggested by the Committee:

- a) *Establish mechanisms, in addition to those that already exist, for strengthening civil society and NGO participation in efforts to prevent corruption and heighten public awareness about the problem, and to encourage awareness about the participation mechanisms that exist and how they can be used.*
- b) *Conduct an evaluation of the rules governing citizen's participation rights as set forth in the Law on the Right of Participation and Citizen Control, in order to detect the presence of any precepts that could be adversely influencing the effectiveness of those rights and to make the corresponding adjustments thereto (see Section 4.4.2 in Chapter II of this report).*
- c) *Make progress with repealing its desacato laws (see Section 4.4.2 in Chapter II of this report).*

In its Response, the Republic of Peru presents information with respect to the above recommendation. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendation, the measures taken with respect to:

- The issuance of Directive 02-2006-CG "Citizen Watchdog Procedure in Public Entities," approved by Comptroller's Resolution 155-2006-CG. Which "enables the organized participation of the citizenry in governmental oversight activities through citizen watchdog organizations, for the purposes of which the Office of the Comptroller General will participate by providing training and technical advisory services for members of the public who engage in

*citizen oversight, in order to ensure that their efforts contribute to the technical activities performed by the National Oversight System in the exercise of governmental control.*⁴⁰

Without venturing an in-depth analysis of the contents of Directive 02-2006-CG, the Committee takes note of the steps taken by the country under review to proceed with the implementation of measure a) of the recommendation and the need for it to give further attention to said recommendation.

Based on the foregoing and in view of the fact that the Response of Peru to the Questionnaire does not refer to the other elements of this recommendation, the takes note of the steps taken by the country under review to proceed with the implementation of the foregoing recommendation as well as the need for the Republic of Peru to continue giving attention to the implementation of this recommendation.

▪ Recommendation 4.5:

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

▪ Measures suggested by the Committee:

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

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.

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

▪ Recommendation 5.1:

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

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.

⁴⁰ Response of the Republic of Peru to the Questionnaire in the Second Round, p. 32.

▪ Recommendation 5.2:

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

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.

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

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

7. GENERAL RECOMMENDATIONS

▪ Recommendation 7.1:

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

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.

▪ Recommendation 7.2:

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

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.

- Recommendation 7.3:

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

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.

END NOTES

ⁱ Pursuant to Article 1 of the Regulations on Law 26771, “For the purposes of the Law and these Regulations the term “Entity” is understood to encompass all State organs and agencies, including the following:

a. Entities that represents the legislative, executive, and judicial branches, as well as their respective decentralized public agencies;

b. Office of the Attorney General, National Elections Panel, National Elections Procedures Office, National Registry of Identity and Civil Status, National Council of the Magistracy, Ombudsman, Office of the Comptroller General, Constitutional Court;

c. Public agencies created by law;

d. Regional and local government entities, their decentralized agencies, and enterprises;

e. Entities and enterprises within the scope of the National Financing Fund for State Enterprise Activities;

For the purposes of these regulations, all agencies, organs, or enterprises that are under the authority of, attached to, or have been created by any of the entities mentioned in the preceding clauses are part of the “Entity.”

The Law applies to the aforementioned entities regardless of their source of financing, including international cooperation sources and sources that must be reimbursed with funds from regular sources of financing.”

ⁱⁱ Pursuant to Article 3 of Law 28175 of 2004 (Public Employment Framework Law): “This law governs the personal, subordinate, and remunerated services provided by a public-sector employee to a public administration entity, regardless of the category of the former and the organizational nature and functions of that employment.

The following are public administration entities for the purposes of this Law:

1. The Legislative Branch, in accordance with the Constitution and the Rules of Procedure of the Congress.

2. The Executive Branch: ministries, decentralized public agencies, special projects, and, in general, any other entity belonging to this branch of government.

3. The Judicial Branch in accordance with the provisions contained in its organizational law.

4. Regional governments and their organs and entities.

5. Local governments and their organs and entities.

6. Autonomous constitutional agencies.

This law does not apply to members of the Armed Forces and National Police of Peru. Where appropriate, their civilian personnel shall be governed by this law, except as otherwise provided in their respective organizational laws.

Workers subject to special regulations are governed by this law and the particularities in the services they provide are governed by their specific laws.”

ⁱⁱⁱ Article 4 of Law No. 28175, utilizes the generic term “Public Employee,” classifying such employees as:

- Public officials, who perform preeminently political functions, are recognized by express provisions, represent the state or a sector of the population, design state policies, and/or head public agencies or entities.

They may be elected by popular universal vote or assigned to positions of original political trust, with regulations governing their appointment and removal, or freely appointable and removable.

- Employees in positions of trust, who hold positions of technical or political trust and are distinct from public officials.

- Public servants. These are subdivided into senior directors, executives, specialists, and support staff.

^{iv} Pursuant to Article 24 of Law 28175 of 2004, its functions are to: “a) monitor compliance with this law, the rules of application, regulations, guidelines, and procedures that it establishes.

b) Issue guidelines to regulate the civil service employee system, supervising their application, compliance, and development; determine offences, and impose the appropriate penalties.

c) Propose the necessary rules and regulations to improve the civil service employee system.

d) Supervise and provide guidance on compliance with the rules on civil service employee classification, the maximum limits established, as well as the standards and guidelines provided for management of public employment.

e) Penalize violations of public employment standards within its purview.

f) Answer queries on public employment put by government entities.

-
- g) *Keep the National Civil Service Employee Registry and its Seniority Listing*
 - h) *Issue the guiding principles for the civil service employee education and training system at the national, regional, and local level, and enact general rules for linkage between government entities and training services offered by private or public sector entities.*
 - i) *Propose rules on its organization and functions.*
 - j) *Centralize and analyze all public employment information.*
 - k) *Propose human resource management policy.*
 - l) *Any other functions indicated by the Law or the Regulations.”*

^v *The second final and supplemental transitional provision of Law 28175 of 2004 provides that, “within one hundred twenty (120) days counted from the publication of the present law, the executive branch shall transmit to the Congress of the Republic legislative bills for: 1. The Civil Service Career Law; 2. The Public Servant and Trusted Employee Law; 3. The Public Employment Remuneration Law; 4. The Public Employment Management Law; and, 5. The Conflict of Interests and Responsibilities Law.”*

^{vi} *Response of the Republic of Peru to the Questionnaire in the Second Round, p. 22: “Although the Higher Council on Public Employment has not been implemented, in accordance with the above-cited code, the Civil Service Secretariat of the Office of the President of the Council of Ministers has been answering queries put by various entities of the central government (in particular in the executive branch), regional and local governments, and other agencies, regarding the scope of the concept of ‘conflict of interests.’”*

^{vii} *Supreme Decree 083-2004-PCM (as amended by Law 28267). Article 2.1 “Within the scope of this law the generic term entity encompasses: a) the national government, its agencies and units, as well as its institutions and decentralized public agencies; b) regional governments, their agencies and units; c) local governments, their agencies and units; d) autonomous constitutional agencies; e) public universities; f) welfare societies and shareholders’ meetings; g) the Armed Forces and National Police of Peru; h) health, housing, welfare and other related funds of the Armed Forces and National Police of Peru; i) State-owned companies under public or private law, whether they be national-, regional-, or local-government property; semipublic companies in which management decisions are controlled by the State; j) projects, programs, decentralized organs, and other organic, functional, implementing and/or operating units of the branches of government and decentralized government agencies; k) all dependencies, such as decentralized government agencies, organic units, projects, programs, companies, funds belonging or attached to central, regional, or local government, as well as the agencies referred to in the Constitution and any others that are created and recognized by Peruvian law.”*

^{viii} *Supreme Decree 083-2004-PCM (as amended by Law 28267). Article 2.3.- “This law does not apply to: a) The hiring of public sector workers, servants, or officials subject to private sector labor or administrative career regulations; b) hiring of external auditors in or for public sector entities, which are specifically subject to the standards governing the National Audit System. All other procurement and contracting conducted by the Office of the Comptroller General of the Republic are governed by the provisions contained in this Law and its Regulations; c) internal or external borrowing operations; d) banking and financial agreements entered into by entities; e) outsourcing contracts entered into with board or executive board chairman who perform duties on a full-time basis in government entities or state-owned companies; f) acts of disposal and of administration and management of government property; g) procurement and contracting operations whose separate amounts are less than or equal to one tax unit in force at the time of the operation; h) contracting of notaries public to carry out the functions provided in this Law and its Regulations; i) services provided by conciliators, arbitrators, conciliation centers, arbitration institutions, and any other persons related to conciliation and arbitration; j) Publication of official notices in the Official Gazette, El Peruano, expressly required by law or regulatory provisions; k) the concession of natural resources, public works, assets, and public services; l) the transfer to the private sector of state-owned shares and assets in the framework of the privatization process; m) budget execution mechanisms other than contracts provided for in the rules and regulations on such matters, except for the contracting and procurement of any goods and services that might be required to that purpose; n) international contracts, which are governed by the treaties to which Peru is a party or, in the absence of a treaty, by customary law and generally accepted practices of international commerce; and, o) contracting and procurement carried out by Peru is foreign service missions exclusively for their operation and activities.”*

^{ix} Supreme Decree 083-2004-PCM (as amended by Law 28267). Article 19.- Exemption from tendering procedures.- *“Procurement operations and contracts are exempt from tendering procedures when they are: a) Carried out among public sector entities in keeping with the principles of economy established by the Regulations; b) carried out to contract public services subject to a single rate; c) carried out in emergencies or situations in which the exhaustion of supply is imminent declared in accordance with this Law; d) of secret, military secret, or internal nature carried out by the Armed Forces, National police, and agencies of the national intelligence system that need to be kept in reserve in accordance to law, subject to a favorable opinion on the part of the office of the comptroller General. Goods, services, and works of a secret, military secret all internal nature shall be determined by executive decree with a vote in favor by the Council of ministers. In no circumstances shall this exemption applied to goods, services, at all works of an administrative or operational nature under the Regulations; e) when there is no substitute for the goods or services or there is only one provider; and, f) for strictly personal services, as recognized by the Regulations.”*

^x Article 9.- Ineligible bidders and/or contractors.- The following are ineligible bidders and/or contractors: a) The President and Vice Presidents of the Republic, representatives to the Congress of the Republic, government ministers and vice ministers, members of the Supreme Court of justice of the Republic, the heads and members of the collegiate body of autonomous constitutional agencies, for one year after leaving office; b) the heads or of institutions or of decentralized government agencies, regional presidents and vice presidents, regional government council members, mayors, councilors, other officials and public servants, directors and officers of state-owned companies; and, in general, natural persons with contractual ties to the entity who have a direct involvement in the determination of needs, specifications, bid appraisal, selection alternatives, and approval of purchases or payments; c) the spouse, partner, or relatives within the fourth degree of consanguinity and the second degree of affinity of the persons mentioned in the foregoing paragraphs; d) legal persons in which the natural persons mentioned in paragraphs a), b), and c) have a proprietary interest of more than 5% of the equity or corporate assets, within 24 months before the invitation to tender is issued; e) legal and natural persons whose agents or legal representatives are the spouse, partner, or a relative within the fourth degree of consanguinity and the second degree of affinity of the persons mentioned in paragraphs a) and b) hereinabove; f) natural or legal persons to have been temporarily or permanently disqualified by administrative penalties from exercising their rights to participate in tender procedures and contracts with entities, in accordance with the provisions contained in this Law and its Regulations; g) legal persons whose partners, shareholders, stakeholders or proprietors have been part of legal persons temporarily or permanently disqualified by administrative penalties from participating in government tender procedures and contracts, or that, having acted as natural persons, shall meet with the same types of penalty; in accordance with the principles set forth in the Law and the Regulations; and, h) any natural or legal person who has taken part as such in the preparation of prior technical studies or information that on which tender procedure is founded and support the object of the contract, except in the case of supervision contracts. In the cases mentioned in paragraphs b), c), and d) the impediment to be a bidder is restricted to the jurisdiction or sector to which the persons referred to in paragraphs a) and b) belong. In the case of autonomous constitutional agencies, the impediment is confined to the procurement operations or contracts undertaken by said entities.

^{xi} Beyond the requirements set forth in Article 200 of the Regulations, which apply to all contracts, Article 239 of the Regulations provides that, in order to sign the contract, the bidder shall: 1) Present a certificate of freedom to contract issued by the National Registry of Providers; 2) designate the resident engineer if one is not included in the technical bid; and, 3) provide a costed works schedule consistent with the set disbursement schedule and supported by the PERT-CPM works program in keeping with the contract term, which shall also be presented.

^{xii} Article 3(1) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that all acts connected with contracts and procurement must be guided by the principles of honesty, veracity, security, justice, and probity.

^{xiii} Article 3(2) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that procurement and contracting procedures shall include regulations or treatments that foster the broadest, most objective, and most impartial possible competition, plurality and participation of prospective bidders.

^{xiv} Article 3(3) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that decisions and resolutions adopted by officials and agencies responsible for the entities procurement and contracting

operations shall be adopted in strict accordance with the Law and Regulations; as well as in keeping with technical criteria that ensure impartiality in the treatment of bidders and contractors.

^{xv} Article 3(4) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that all procurement or contracting of goods, services, and works shall meet stipulated requirements in terms of quality, price, execution and delivery date, and shall be delivered in optimum conditions for end users.

^{xvi} Article 3(5) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that all procurement or contracting operations shall be carried out on the basis of reasoned objective criteria and classifications that shall be accessible to bidders. This article also provides that bidders shall have access during the tender process to all the procurement and contract documents. Unless otherwise stipulated in the Law and Regulations, the tender notice and announcement of the award and results shall be made public.

^{xvii} Article 3(6) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that in all procurement or contracting operations the principles of simplicity, austerity, consolidation, and economy shall apply in the use of resources, in the different stages of tender processes, and in the decisions and resolutions adopted in their connection, and unnecessary and costly formalities and requirements should be avoided in bidding conditions and agreements.

^{xviii} Article 3(7) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that all goods, services, and works shall fulfill conditions as to quality and technological modernity necessary to effectively meet the purposes for which they are required, at the time that they are procured or contracted and for a set and foreseeable time thereafter, as well as offering the possibility of adaptation, integration, and upgrading, as appropriate, with new developments in science and technology.

^{xix} Article 3(8) of Supreme Decree 083-2004-PCM (as amended by Law 28267) provides that all bidders in goods, services, all works contracts shall participate and have access to contract with entities in the same conditions as other bidders, and all privileges, advantages and prerogatives are prohibited except as otherwise provided by law.

^{xx} Under Article 25 of the Law, the minimum requirements for bidding conditions are as follows: a) Mechanisms to encourage the greatest possible participation of bidders subject to the object of the procedure and bearing in mind the need to obtain the most favorable technical and financial bid possible; b) details characteristics of the goods, services, all works to be procured or contracted; the site of delivery, preparation, all construction, as appropriate; c) performance bond, subject to the provisions of the Regulations; d) public notification mechanisms and periods that ensure a real possibility of participation for bidders; e) determination as to the system and/or mechanism to follow, which shall be one of those set forth in the Regulations; f) The tender procedure schedule; g) the bid appraisal and scoring method; h) the pro forma agreement, including the transaction conditions; i) Price adjustment formulae, as appropriate; j) standards to be applied in the event of financing granted by multilateral or government agencies; and, k) mechanisms to ensure bid confidentiality.

^{xxi} Under Article 54 of the Law, appeals shall be heard and resolved by the head of the entity that convened the process, following examination of a supporting technical and legal brief that in no case may be issued by the persons who comprise the special committee (the body that supervises the tender procedure). Furthermore, appeal decisions may, in turn, be appealed for review by the Government Procurement Tribunal: a) in cases of public competitive bidding and public calls for bids, whether or not an express decision as being issued; b) in cases of direct contracts and small contracts procedures, but only in the event of negative administrative silence. In any case, the entity is required, on its liability, to forward the respective procedural record.

^{xxii} With respect to ineligible bidders or contractors, see endnote xi *supra*.

^{xxiii} The Committee notes that the Republic of Peru presented both Law No. 28911 – which amended the Government Procurement Law, set new sanctions that the CONSUCODE may impose, and modified the challenge procedures – as well as Supreme Decree No. 028-2007-EF, after the deadline for submitting the response to the questionnaire; this was because they came into force on the day of their publication in the official journal *El Peruano*, December 3, 2006, and March 3, 2007, respectively. That is the reason why no in-depth review of the provisions contained therein was conducted.

^{xxiv} Response of the Republic of Peru to the Questionnaire in the Second Round, pp. 17-18: “*Legislative Bill 83/2006-CR provides the following protection measures for whistleblowers: i) withholding of their identity; ii) protection against termination, dismissal, or removal from office as a result of the reported acts, and against*

suspension or nonrenewal of services contracts as a result of the complaint; iii) protection against acts of intimidation in reprisal for the complaint lodged”.

“The bill also offers whistleblowers the following benefits: i) possibility of reduced administrative penalties in cases where the whistleblower was involved in the reported acts, subject to the degree of their involvement; ii) in cases where the reported acts constitute administrative violations punishable with a fine, the whistleblower may receive a percentage of what is actually collected as a reward.”

“It is proposed that the legislative bill apply to government employees, former officials, former public servants, persons who provide services at public entities under any of work contract system or modality, as well as any citizen who becomes aware of irregularities.”

“Furthermore the bill not only covers acts of corruption but also illegal acts subject to administrative penalties, which acts might also cause economic injury to the public entity and qualify as offences under in the Criminal Code. Accordingly, the extension of the protection measures available under Law 27378 is also provided for.”

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

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

^{xxvii} The Committee notes that the Republic of Peru presented Ministerial Resolution No. 017-2007-PCM – approving the Guidelines for the use, registration, and consultation of the Electronic System of the National Registry of Sanctions involving Dismissal and Removal (RNSDD) – after the deadline for submitting the response to the questionnaire, because it came into force on the date it was published in the official journal *El Peruano*, January 20, 2007. That is the reason why no in-depth review of these guidelines was conducted.

^{xxviii} Response of the Republic of Peru to the Questionnaire in the Second Round, p. 23. *“At present, public entities are required to notify the PCM of any sanctions involving dismissal and removal that they imposed, attaching a suitably completed form. After the form has been submitted and verified to ensure that it contains all the requisite information, the SGP proceeds to register the penalized person in the RNSDD. Accordingly, the information in the RNSDD and whether or not it is up to date depends in large measure on the timely reporting of the necessary data by each entity.”*

“There is no rule that requires public entities to consult the RNSDD before hiring (under contract or employment), election, assignment or appointment of a service provider or public employee, or that provides any penalty for authorities that hire someone who is ineligible despite that being recognized as an obligation that should be met.”

“Since it is not currently a prerequisite, in vacancy competitions, hiring, assignment, appointment, or selection procedures for public servants, officials, or service providers, for applicants not to be ineligible for public office and there is no penalty for those who hire, appoint, assign or select ineligible persons, consultation by entities is not mandatory but optional.”

“(…) Finally, disqualifications and or the suspension thereof arise not only from decisions of public entities, but also from court rulings, a circumstance not covered in the rules of procedure approved for the RNSDD, which has created problems in its administration.”

“As can be appreciated, at present there are visible shortcomings in the system of registration of sanctions involving dismissal or removal, as a result of which the mechanism is not very effective or useful. Furthermore,

sizeable amounts of financial and human resources are needed to manage the Registry and keep it properly updated. And there is no guarantee of a reduction in information reporting or consultation response times because of the way in which the procedure is designed.”