

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

FINAL REPORT

(Adopted at the December 15, 2006 plenary session)

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

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

INTRODUCTION

1. Contents of the report

This report presents, first, a review of implementation in the Republic of Paraguay of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the 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 Paraguay 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 fourth meeting, and published at the following web page: http://www.oas.org/juridico/english/mec_rep_par.pdf

2. Ratification of the Convention and adherence to the Mechanism

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

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

I. SUMMARY OF INFORMATION RECEIVED

1. Response of the Republic of Paraguay

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Paraguay and in particular from the Inter-Institutional Technical Committee in Support of the Implementation of the Convention (CITAIC),² which was evidenced, *inter alia*, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Republic of Paraguay sent the provisions and documents it considered pertinent.

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 December 15, 2006, at its tenth meeting, held at OAS Headquarters in Washington D.C., United States, December 11-16, 2006.

² Created by Executive Order 16.735 of March 2005. It is composed of the Council for Promotion of the National Probity System (CISNI in Spanish), the Ministry of Finance through its Department of Government Contracting, the Ministry of Justice and Labor, the Office of the Attorney General, and the Civil Service Secretariat.

For its review, the Committee took into account the information provided by the Republic of Paraguay up to July 17, 2006, and that requested by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and Other Provisions.

2. Documents received from civil society organizations

The Committee also received, within the deadline established in the schedule for the second round adopted at its ninth meeting,³ documents from “*Transparencia Paraguay*”, the national chapter of Transparency International, submitted by that organization.⁴

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

- Article 101 of the Constitution,⁵ which applies to all public servants and entitle all Paraguayans to hold office and employment in the public service of their country, and provides further that the applicable law will regulate the various areas in which these officials and employees can provide their services.

-Article 102 of the Constitution, which provides that public servants and employees are entitled to the labor rights enshrined in the Constitution, under a standardized system for the various careers, within the limits established by law, and safeguarding rights guaranteed thereunder.

- Article 15 of the Civil Service Law (Law 1626/2000)⁶ which applies to a majority of public servants, and makes provisions for the public competitive examination¹ as the selection system for entry and advancement in the civil service, with the exception of the high-ranking positions and special cases mentioned in Article 2 of the Law.ⁱⁱ And Article 93 of the Civil Service Law that creates the Civil Service Secretariat, which reports to the Office of the President of the Republic and, *inter alia*, monitors compliance with this Law and formulates policy on human resources in the public sector based on need to ensure improvement of the service, and efficient and transparent management. It also prepares general rules on selection, admission, grading, evaluation and promotion of public servants based on public competitive examinations.

³ This meeting was held from March 27 to 31, 2006, at OAS headquarters in Washington, D.C.

⁴ These documents were received electronically on July 17, 2006, and are available at:

www.oas.org/juridico/spanish/mesicic2_pry_inf_sc_sp.pdf and
www.oas.org/juridico/spanish/mesicic2_pry_inf_sc_anexo_sp.pdf

⁵ See www.oas.org/juridico/spanish/mesicic2_pry_anexo3.pdf

⁶ See www.oas.org/juridico/spanish/mesicic2_pry_anexo9.pdf

- Article 1 of the Law against Nepotism in the Civil Service (Law 2777/2005),⁷ which is applicable to high-level public office, and which states that the President and Vice President of the Republic, the Speakers of the Senate and House of Deputies, Members of the Supreme Court of Justice, Members of the Superior Tribunal of Electoral Justice and of the Council of the Judiciary, the Prosecutor General, the Inspector General, the Ombudsman, Presidents of autarchic and decentralized entities, and Governors and Superintendents, shall not directly appoint to public, non-elected positions any relatives within the fourth degree of consanguinity and the second degree of affinity, unless such appointments are made in the framework of a public competitive examination.

- Article 3(n) of the Law that Organizes the Supreme Court of Justice (Law 609/1995),⁸ which applies to public servants in the Judicial Branch, and which provides that one of the powers of the Court is to appoint the officials and employees of the Judicial Branch. In addition, the Supreme Court of Justice has institutionally implemented a hiring system based on public competitive examinations or comparison of *curricula vitae*.

- Article 35 of the Organic and Operational Law of the Office of the Inspector General of the Republic (Law 276/1994),⁹ which applies to public servants in the oversight bodies, and which vests in the Inspector General the authority to appoint the staff of the institution by the procedure to be determined in the Internal Staff Rules. In that connection, the Office of the Inspector General issued resolution C.G.R. No. 1579/2004 approving the Staff Selection Regulations, which include the Staff Selection Procedure Manual of the Office of the Inspector General, which, *inter alia*, provides for public competitive examinations to be held for entry to this body.

- Article 90 of the Organic Law of the Office of the Attorney General (Law 1562/2000),¹⁰ which is applicable to public servants in the oversight bodies, and states that the assignment of positions in the Office of the Attorney General shall be subject to public competition open to all candidates.

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

With respect to the constitutional and 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.

Nevertheless, the Committee considers it appropriate to make a number of observations regarding the advisability that the country under review consider complementing, developing, and adapting certain provisions that refer to the aforesaid systems, bearing in mind, *inter alia*, that in its Response the State recognizes “*the absence of a civil service career*”¹¹ and suggests creation of “*the civil service career, giving precedence to suitability as the core factor in selection and promotion...*”¹²

⁷ See www.oas.org/juridico/spanish/mesicic2_pry_anexo14.pdf

⁸ See www.diputados.gov.py:1006/busquedaleyeyes/1995/py609_23071995.pdf

⁹ See www.diputados.gov.py:1006/busquedaleyeyes/1994/py276_08071994.pdf

¹⁰ See www.oas.org/juridico/spanish/mesicic2_pry_anexo8.pdf

¹¹ Response of Paraguay to the Questionnaire, p. 25. This document is available at:

www.oas.org/juridico/spanish/mesicic2_pry_resp.doc

¹² *Ibid*, p. 26.

The Civil Service Law (Law 1626/2000) is the most widely applicable legal norm as regards systems of government hiring, due to the generality of its scope and its direct treatment of the issue.¹³ However, the following aspects should be taken into account:

- As mentioned in the Report of the Republic of Paraguay in the Framework of the First Round of Review,¹⁴ the country under review reiterated to the Committee in its response to the questionnaire¹⁵ that several of the provisions of Law 1626/2000 were attacked as unconstitutional before the Supreme Court of Justice by representatives of government organs, agencies, bodies and entities, as well as by trade union representatives and public servants of those government offices. This situation led the Supreme Court, through its Constitutional Chamber, to grant provisional measures suspending the effects of the attacked provisions in favor of only those who opposed the aforesaid provisions.

- Among the contested provisions is that contained in Article 145, which abolishes the Public Servant Law (Law 200/1970), which was brought back into effect, giving rise to the existence of two laws governing the civil service. According to the final report of the consultant on preparation of the Plan of Action for Implementation of the Recommendations on Compliance with the Inter-American Convention against Corruption, this situation “*has led to chaotic situations where public servants are governed by one law or the other, depending on whether or not they brought an unconstitutionality action against the Law...*”¹⁶

- By the same token, as mentioned in section 1.1.1 above, Article 93 of Law 1626/2000 created the Civil Service Secretariat, which reports to the Office of the President of the Republic and monitors compliance with this Law and formulates policy on human resources in the public sector. However, inasmuch as these suspensions ordered by the Supreme Court affect this agency's structure, operations, and powers, they also affect the chief governing authority of government hiring systems in Paraguay.

- Finally, in its response, the Republic of Paraguay recognizes that, “*The Civil Service Secretariat has yet to adopt regulations on the selection system provided in this article of the law [Article 15 of Law 1626/2000], for which reason a decree has not yet been passed that establishes rules on announcement of public competitions for selection or of results of such competitions, or on administrative processes to challenge selection systems.*”¹⁷

In light of the foregoing, the Committee draws the attention of the Republic of Paraguay to the importance of considering the possibility of establishing, maintaining, and strengthening, through the appropriate legal and administrative procedures, government hiring systems so as to ensure the openness, equity, and efficiency of such systems. In this connection, the Committee suggests, taking

¹³ The Committee draws attention to the fact that Paraguay put forward as one of the appendices to its response, a draft “Law on the Civil Service Career and Government Employees,” updated on March 16, 2006, which is considered a step forward in implementation of the Convention:

www.oas.org/juridico/spanish/mesicic2_pry_anexo2.pdf

¹⁴ Report on implementation in Paraguay of the Convention provisions selected for review in the framework of the first round (SG/MESICIC/doc.45/03), p. 5. www.oas.org/juridico/english/mec_rep_par.pdf

¹⁵ Response of Paraguay to the Questionnaire, p. 4.

¹⁶ This report was prepared in the framework of the technical cooperation project to support implementation in the Republic of Paraguay of the recommendations formulated by the Committee of Experts of MESICIC on the provisions selected for review in the framework of the first round with the technical support of the OAS General Secretariat and the sponsorship of the Canadian International Development Agency (CIDA).

¹⁷ Response of Paraguay to the Questionnaire, p. 4.

into account the existing legal initiative, the adoption of a new legal instrument, applicable to all public servants, that governs the hiring system into the civil service based on principles such as merit and equality. The foregoing is without prejudice to the possibility, in keeping with the rule of separation of powers in force in the country under review and the existence of autonomous entities and bodies, of creating specific systems for certain public servants whose nature and responsibilities might require provisions that are more specific than those found in a generally applicable system. (See Recommendation 1.1(a) in Chapter III of this report).

The legal instrument being suggested could also include provisions on the creation of oversight mechanisms and governing or administrative authorities for the systems, which would monitor compliance with staff selection standards, while ensuring they have the necessary human and financial resources and functional independence to objectively perform their duties. (See Recommendation 1.1(b) in Chapter III of this report).

The Committee also considers it advisable for the suggested legal text to contain provisions on publication of employment opportunities in the civil service or vacancies or positions to be filled therein, as well as their content and form; and on the amount of advance notice for their publication, for which purpose consideration could be given to the use of mass media, such as, *inter alia*, country wide distributed newspapers and/or the Internet. (See Recommendation 1.1(c) in Chapter III of this report).

Bearing in mind the principle of due process, the Committee also suggests that this legal instrument could contain provisions for challenge mechanisms with respect to the clarification, amendment, or revocation of substantive acts in the employee-selection processes, such as the terms and conditions of competitions, rejection of candidates, nomination of winners, composition of shortlists, trusted appointments, etc. (See Recommendation 1.1(d) in Chapter III of this report).

Paraguay could also consider the implementation of prior training programs or courses to help those who have entered the civil service to acquaint themselves with their duties, the standards of integrity required therefore as well as the inherent functions of their position. (See Recommendation 1.1(e) in Chapter III of this report).

Furthermore, notwithstanding the absence of regulations on Article 15 of the Civil Service Law (Law 1626/2000) and the unconstitutionality actions brought against it, the Committee recognizes that several entities in the public sector, such as the Supreme Court of Justice, the Office of the Prosecutor General, the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Education and Culture, the Ministry of Public Health and Welfare, the Civil Service Secretariat, and the Office of the Inspector General have each adopted institutional hiring systems based on public competitive examinations or comparison of curricula vitae. (See Recommendation 1.1(f) in Chapter III of this report).

In that connection, the Committee notes that the last paragraph of Article 88 of Law 1562/2000 (Organic Law of the Office of the Attorney General) provides that the rules governing the prosecutorial and administrative career shall be issued by the Prosecutor General, for which reason it is suggested that this institution adopt said rules on the aforementioned career in the Attorney General's Office, in accordance with the basic principles and standards that govern the civil service and which the Civil Service Secretariat shall establish for that purpose (See Recommendation 1.1(g) in Chapter III of this report).

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

In its response, the Republic of Paraguay states, “regarding the objective results obtained, including any available statistical data, we should mention that the Civil Service Secretariat is still consolidating that statistical data. Therefore, the country will only be able to provide the Committee of Experts of MESICIC with the relevant data in its next follow-up report.”¹⁸

Considering that the Committee does not have additional information other than that referred above to enable it to make a comprehensive evaluation of the results of this topic, it will make a recommendation in this regard. (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 Paraguay has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Statutory provisions applicable to all government entities, among which the following should be noted:

- The Law on Government Contracting (Law 2051/2003)¹⁹ and its Regulations²⁰ (Regulatory Decree 21909/2003),²¹ which are applicable to procurement procedures carried out by government entities, agencies and municipalities, with the exception of those mentioned in Article 2 of the Law.ⁱⁱⁱ Among the provisions contained in these legal texts are the following:

- Article 16 of the Law,^{iv} which provides that government procurement shall be carried out via the procedures of: a) national and international public tender (Articles 18 to 31 of the Law and 32 to 66 of its Regulations); b) competitive bidding (Articles 32 of the Law and 67 of the Regulations); c) direct contracting (Articles 34 of the Law and 74 of the Regulations); and d) imprest fund (Articles 35 of the Law and 75 of the Regulations). Article 33^v of the Law establishes the exceptions to the requirement to conduct procurement by public tender or competitive bidding (Articles 68 to 73 of the Regulations);
- Articles 5, 6, and 27 of the Law, which create, respectively, the Central Regulatory and Technical Unit (UCNT in Spanish)²² as the regulatory authority for the Government Procurement System that reports to the Under Secretariat for Financial Administration of the Ministry of Finance (Articles 4 to 8 of the Regulations); the Procurement Operations Units (UOC in Spanish)²³ (Articles 9 and 10 of the Regulations); and the Evaluation Committees

¹⁸ Response of Paraguay to the Questionnaire, p. 6.

¹⁹ www.contratacionesparaguay.gov.py/app/reglas/ley_2051.pdf

²⁰ www.contratacionesparaguay.gov.py/app/reglas/decreto_21909.pdf

²¹ Regulatory Decree 21909/2003 was amended at Articles 18, 19, 24, 25, 26, 35, 44, 45, 47, 48, 49, 51, 53, 56, 62, 75, 78, 81, 83, 84, 92, 112, 118, and 125 by Regulatory Decree 5174/2005.

²² Law 2051/2003, Article 3 (x), defines the UCNT as “the administrative unit empowered to issue provisions to ensure proper compliance with this law and its Regulations.”

²³ Law 2051/2003, Article 3(y), defines UOCs as “the administrative unit in each government agency, entity and municipality that carries out the planning, programming, budget, and procurement procedures in the areas governed by this law.”

which grade bids submitted in public tender procedures (Article 11 of the Regulations). Also, Articles 72 to 78 of the Law establish administrative sanctions for suppliers and contractors who commit any of the infractions mentioned in Article 72, without prejudice to the appropriate sanctions arising from civil or criminal liability (Articles 108 to 112 of the Regulations);

- Article 20 (antepenultimate paragraph) of the Law provides that in no circumstances shall registration be a condition for suppliers and contractors to participate in government procurement procedures. However, Article 106 of the Regulations empowers all government entities, agencies and municipalities to keep a record of suppliers and contractors for the sole purpose of having a database of them. Furthermore, Article 75 of the Law requires the UCNT to keep a current record of all natural and legal persons prevented from participation in government procurement operations under Articles 40^{vi} of the Law and 117 of the Regulations;
 - Articles 64 to 68 of the Law, which govern the Government Procurement Information System (SICP in Spanish)^{vii} created by the UCNT in accordance with Article 5(c) of the Law and Articles 99 to 102 of the Regulations. At present, the main tool of the SICP is the Government Contracting Portal (www.contratacionesparaguay.gov.py/en/index.html) where, *inter alia*, the following are published: legal framework of the procurement system; Annual Procurement Plan for all state entities; budget allocated to each entity; calls for bids under each method of procurement; tender awards; register of ineligible persons; Annual Training Plan; the UOCs that have been set up; links to entities connected with the UCNT. The portal can also be used to report irregularities in government procurement procedures.
 - Article 42 of the Law, which establishes the public works procurement system^{viii} and provides that the responsibilities, measurement and payment, execution, delivery and oversight of public works are governed by the provisions in force (Articles 41 to 46) in the Law creating the Public Works System (Law 1533/2000)²⁴, abrogated by Article 93(a) of Law 2051/2003;
 - Article 4 of the Law, which provides that government procurement procedures shall be governed by the principles of economy and efficiency; equality and open competition; transparency and openness; administrative modernization and simplification, and separation of functions; and
 - Article 79 of the Law, which recognizes the “protest” to the UCNT as an appeal procedure against any acts that contravene the provisions of the Law at any time in procurement procedures, decisions which may be appealed in contentious administrative proceedings before the Accounts Tribunal (Articles 118 to 122 of the Regulations).
- The Law on Financial Administration of the State (Law 1535/1999),²⁵ Article 2 of which establishes the Integrated Financial Administration System (SIAF in Spanish)^{ix} and names as internal (Article 60) and external (Article 63) governing bodies, the Office of the Inspector General, Office of the Auditor General of the Executive Branch (Article 62), and the Offices of Institutional Internal Auditors (Article 61) and Independent External Auditors (Article 64). This law is supplemented by Articles 5(e), 70, 71, 79, and 82 of Law 2051/2003, which, *inter alia*, empower the Offices of the Auditors General of the Executive, Legislative, and Judicial Branches and the internal auditors of

²⁴ See www.diputados.gov.py:1006/busquedaleyevs/2000/py1533_04012000.pdf

²⁵ See www.diputados.gov.py:1006/busquedaleyevs/2000/py1535_03012000.pdf

state entities and municipalities, as appropriate, to intervene, either *motu proprio* or at the request of one of the parties, in any public procurement procedure, without prejudice to the jurisdiction of the Office of the Inspector General in accordance with its organic law and functions (Law 276/1994).

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

With respect to the legal and regulatory provisions that refer to the principal government systems for procurement of goods and services 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.

The Committee nevertheless deems it appropriate to express some comments about the advisability that the Republic of Paraguay considers complementing, developing and adapting the legal framework and the government procurement measures for goods and services now in force, taking into account the following:

- Article 1 of Law 2051/2003 provides that the purpose of the law is to govern, among other activities, all procurement of goods and services by government entities, agencies, and municipalities except as provided by Article 2 of the Law. In that connection, Article 16 sets out the different types of government procurement procedures and the amounts to which they apply. With respect to tenders, Article 16 states that procurement operations by public tender shall be for amounts in excess of 10,000 (ten thousand) times the daily minimum wage;²⁶ while for competitive bidding procedures the amount shall be between 2,000 (two thousand) and 10,000 (ten thousand) times the daily minimum wage, otherwise the direct contract or imprest fund methods shall apply.

- In the rules on exceptions to the tender procedure contained in Article 33 of Law 2051/2003, the Committee notes that only the grounds mentioned in subsections: (a) on procurement of works of art, ownership of patents, author's copyright, or other exclusive rights; (c) on procurement for reasons of national security; and, (g) on procurement or lease of goods for technical reasons or due to an emergency; are given further details about in Articles 69 to 74 of the Regulations (Regulatory Decree 21909/2003). However, the special circumstances contained in subsections (b), (d), (e), (f), and (h), arising, *inter alia*, from natural disasters, acts of God or *force majeure*, or tenders declared abandoned, are not developed. This incomplete regulation of all the hypothetical circumstances described in Article 33 could allow the possibility of tender procedures being dispensed with through inappropriate use of those ambiguous exceptions that, for want of clarity, could easily lead to the exercise of discretion, which could potentially result in special contracting procedures becoming the norm in the government procurement system. Accordingly, and in order to make the aforementioned system of exceptions more transparent, the Committee urges the country under review to consider the adoption of regulations that also cover the hypothetical circumstances provided in subsections (b), (d), (e), (f), and (h) of Article 33 of Law 2051/2003. (See Recommendation 1.2.1 in Chapter III of this report).

- As to the governing bodies for the Government Procurement System described in section 1.2.1 above, the Committee notes that, overall, the provisions that the country under review has in place in this regard, such as those contained in the laws on the organization and functions of the Office of the Inspector General (Law 276/1994); on Financial Administration of the State (Law 1535/1999); and on Government Contracting (Law 2051/2003), constitute an adequate regime for administration and

²⁶ *Supra nota* 25.

control of the system. Nevertheless, the Committee deems it advisable for the country under review to continue to strengthen those bodies so that they have the necessary support and resources, in the event that they are insufficient, to carry out their functions properly, and to develop or strengthen mechanisms, as the case may be, which permit effective institutional coordination of their activities, bearing in mind such measures as the Inter-Institutional Cooperation Agreement signed on September 20, 2005, by the Office of the Inspector General and the Office of the Attorney General;²⁷ as well ongoing evaluation and follow-up of said activities. The Committee also believes it appropriate for that strengthening to center in particular on the Central Regulatory and Technical Unit (UCNT) and the Procurement Operations Units (UOC), taking into account that the Republic of Paraguay said in its response that “[I]n the area of government contracting... [t]he main challenge is to strengthen the purchasing operations units [sic] in order to improve procurement planning and compliance with the requirements provided in the new law in force, as well as to follow up on obligations contained in awarded contracts.”²⁸ (See Recommendation 1.2.2 in Chapter III of this report).

- The Committee also acknowledges the existence of the Government Procurement National Training Plan, in which the UCNT offers training courses, workshops and seminars to public servants, government employees, suppliers and contractors throughout the country. In that regard, the Republic of Paraguay is urged to move forward with the National Training Plan in order to extend it to all public servants in UOC's, so as to ensure the correct application of Law 2051/2003, as well as the procedures developed for its implementation, and to continue to implement measures of this type, which are aimed to enhance the professionalism of staff in governing bodies and others involved in government procurement procedures, and to seek to ensure that staff are suitably acquainted with those procedures and with their use and application. (See General Recommendation 4.1 in Chapter III of this report).

The foregoing considerations are supported by the Country Procurement Assessment Review (CPAR) in the Republic of Paraguay,²⁹ prepared by the World Bank in cooperation with the Inter-American Development Bank (IDB) and the Government of Paraguay, and also by the initial document of Project 14357 in Support of Implementation of the Program for Development of a Government Procurement System, signed by the IDB and the Ministry of Finance, with assistance and cooperation provided by the United Nations Development Programme (UNDP).³⁰

- As regards control mechanisms, the Committee notes an absence of provisions establishing sanctions for government servants and employees who fail to fulfill or infringe the provisions that govern the Government Procurement System. The foregoing is without prejudice to the Article 76 of Law 2051/2003, which provides that government servants and employees who infringe the aforesaid provisions shall be punished in accordance with the Civil Service Law (Law 1626/2000), many of the provisions of which, as mentioned in section 1.1.1, have been suspended because they have been challenged as unconstitutional. Therefore, the Committee urges the country under review to consider

²⁷ www.oas.org/juridico/spanish/mesicic2_pry_anexo4.pdf

²⁸ Response of Paraguay to the Questionnaire, p. 25.

²⁹ Country Procurement Assessment Review, Paraguay, World Bank public document (Report 25908), January 31, 2003. Available in English only at:

www-ds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/06/30/000094946_03061804052686/Rendered/PDF/multi0page.pdf

³⁰ Support for Implementation of the Program for Development of a Government Procurement System, Agreement BID ATN/MT-7244-PR, May 2003, available at: http://www.undp.org/py/pnud2/doc-proyecto/ver_doc.asp?docum=D000091.pdf

development and implementation of a system of sanctions for government servants and employees who violate their duties and principles in the area of government procurement. Such sanctions could be included in the legal instrument suggested in section 1.1 above or in the laws specifically concerned with such matters. (See Recommendation 1.2.3(a) in Chapter III of this report).

- By the same token, and in order to have more control mechanisms in place, the Committee suggests that the country under review consider the advisability of developing and implementing standards with a view to the selection of a body to move forward with the tasks of audit, control, and monitoring of contracts over a certain amount or of a particular level of complexity. The State might also examine the possibility of creating qualified citizen “watchdogs” to monitor pre-contractual procedures and on the execution of government contracts where the nature, importance or magnitude so warrants, taking into account the signed agreements entered into by the UCNT with several organizations, including the Paraguay Chapter of Transparency International, the Paraguayan Construction Chamber, the Paraguayan Industrial Union, the Paraguayan Dairy Board, the Paraguayan Organization for Inter-Municipal Cooperation, and the United States Agency for International Development (USAID), as well as with other regional citizen watchdog organizations. (See Recommendations 1.2.3 (b) and (c) in Chapter III of this report).

- Also, the Committee was unable to identify any systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts. Therefore, it is suggested that the Republic of Paraguay consider steps to develop, implement and publicize such mechanisms, which would be regarded as a major stride for the purposes of Article III, paragraph 5 of the Convention. (See Recommendation 1.2.3(d) in Chapter III of this report).

- On the matter of information systems for government procurement, the Committee extends its recognition to the State in light of the strides made with the SICP, in particular its government contracting portal (www.contratacionesparaguay.gov.py). Notwithstanding the progress made in this area, such as the Supplementary Technical Cooperation Agreement on Automation of Government Procurement signed by the Ministry of Finance of Paraguay and the Civil Service Secretariat of Mexico,³¹ it would be advisable that the country under review consider including the use of a modern and efficient, Internet-based system of government works contracting, goods procurement, service provision and consultancy services that offers greater swiftness and transparency in procurement processes in Paraguay. (See Recommendation 1.2.4 in Chapter III of this report).

- Finally, the Committee recognizes the efforts of the Republic of Paraguay to have a modern public works procurement system, which is reflected both in Law 2051/2003 and in its Regulations. However, it would be useful if the country under review were to consider complementing this system through inclusion of the following measures:

- Adopt the necessary provisions with respect to supervening circumstances that would justify amendments to a public works contract, including cases in which the State or the contractor might be entitled to compensation, without prejudice to Article 62 of Law 2051/2003. (See Recommendation 1.2.5(a) in Chapter III of this report); and

³¹ See www.contratacionesparaguay.gov.py/img/pdf/acuerdocoopmexico.pdf

- Implement comprehensive citizen oversight mechanisms that cover all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls. (See recommendation 1.2.5(b) in Chapter III of this report).

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

With respect to results in this area, in its response,³² the Republic of Paraguay provided information on the number of procedures and amounts awarded and executed under each method of procurement in 2005, as well as the number of contractors disqualified by the Central Regulatory and Technical Unit between May 2004 and June 2006. However, the Committee deems it appropriate to make the following comments:

- Firstly, on the issue of the number of procurements in 2005, the country under review mentions that 17,486 procurement procedures were carried out, of which only 20.11% (3,516) were by public tender (national and international) and competitive bidding; 67.63% (11,825) were by direct contract procedures; and the remaining 12.27% (2,145) were by special direct contract.

Based on this information, the Committee notes that direct and special contracts constituted the norm in terms of procurement methods in 2005 and it is significant that the number of special direct contracting operations (2,145) alone exceeded the total number of national and international public tender procedures (1885) held over the same period.

- Secondly, as regards the amounts awarded in 2005, the Committee notes that 81.02% was awarded through tender procedures, which, according to the Republic of Paraguay, generated a 25% saving for the State. However, the remaining 18.97% was awarded through direct contracts, 13.84% of which was through special direct contracts.

Based on this information, the Committee concludes that most of the amounts awarded by the State were in fact through tender procedures. However, the Committee is concerned by the fact that the amounts awarded via direct contracts were justified in most cases on special grounds. Therefore, the Committee reiterates its comments on section 1.2.2 above regarding the advisability that the country under review considers the adoption of regulations that cover all the hypothetical circumstances provided in Article 33 of Law 2051/2003. (See recommendation 1.2.1 in Chapter III of this report).

- As regards the objective results obtained in connection with the application of sanctions on contractors, in its response the Republic of Paraguay refers to the section on ineligible persons at the government contracting portal,³³ which shows that between May 2004 and July 2006, 33 contractors were disqualified for committing the infractions provided in Article 40 of Law 2051/2003. Despite the foregoing, the Committee has no further information with which to make a comprehensive interpretation of those figures, except to recognize that the UCNT has applied sanctions to state contractors and providers in the framework of procurement activities carried out

- Finally, and bearing in mind that the legal framework in force in this area is relatively recent, the Committee deems it advisable for the Republic of Paraguay to consider periodic comprehensive evaluations to appraise the use and effectiveness of the Government Procurement System and, based on their findings, determine and consider the adoption of specific measures with which to ensure its

³² Response of Paraguay to the Questionnaire, p. 9.

³³ See www.contratacionesparaguay.gov.py/html/habilitacion/inhabilitacion.html

transparency, openness, equity, and efficiency. (See Recommendation 1.2.6 in Chapter III 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 Paraguay has a set of provisions and measures related to the above-mentioned systems, among which the following should be noted:

- The Organic Law of the Office of the Attorney General (Law 1562/2000), Article 10 of which provides that, *“the Office of the Attorney General shall protect anyone who is place in danger of injury as a result of collaborating with the administration of justice, in particular in the case of punishable acts linked to organized crime, abuse of office, violation of human rights. To that end, the Office of the Attorney General shall have in place a permanent protection program for witnesses, victims, and its officials.”*

- The Inter-institutional Agreement for Implementation of the Reporting System for Acts of Public Corruption,³⁴ signed on August 25, 2004 by the Office of the Inspector General and the Office of the Ombudsman, of which clause 1(2) requires the Office of the Ombudsman to keep secret and protect the identity of public servants who lodge complaints.

- The “Corruption Whistleblower Protection Project,”³⁵ which receives funding provided by the United States Agency for International Development (USAID) and is implemented by the Institute for Comparative Studies in Criminal and Social Sciences of Paraguay (INECIP-Py in Spanish),³⁶ a non-profit nongovernmental organization. This Project aims to set up anti-corruption offices in public institutions to receive, investigate and follow up on reports of acts of corruption; protect the identities of persons who report such acts; and create a system to follow-up and monitor the reports of acts of corruption filed at the anti-corruption offices that are set up.

The country under review also informs that early this year, with a view to implementing an exchange of experiences program in this area with countries such as Chile, Colombia and Spain in the framework of the EUROsociAL-Justicia Program³⁷, the Office of the Attorney General created a Witness Protection Department within the structure of the Victim and Witness Assistance Center.

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

With respect to the 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 relevant for promoting the purposes of the Convention.

³⁴ See www.contraloria.gov.py/download/conv_defensoria.pdf

³⁵ See www.inecip.org.py/proteccion

³⁶ See www.inecip.org.py/proteccion/download/convenio_sfp.pdf

³⁷ See www.programaueurosoci.al.eu

The Committee, nevertheless, considers that it would be pertinent for the Republic of Paraguay to consider adopting, through the appropriate authority, comprehensive regulations on protection of public servants and private citizens who in good faith report acts of corruption, in accordance with the fundamental principles of its domestic system of laws, bearing in mind that in its response the State states, “*Paraguay does not have one specific law establishing a system for protecting public servants and private citizens who, in good faith, report acts of corruption.*”³⁸ (See Recommendation in Section 2 of Chapter III of this report).

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

In its response, Paraguay reports that, “*regarding the objective results obtained in relation to systems for protecting persons who report acts of corruption, it should be mentioned that none of the government institutions that make up CITAIC –except for the Office of the Ombudsman, which has provided information on three cases of reports it has received and processed in conjunction with the Office of the Inspector General, as mentioned in the following paragraph– have reported results or statistics in this connection.*”³⁹

Considering that the Committee does not have additional information that might enable it to make a comprehensive evaluation of the results of this topic, other than that offered above, it will make a recommendation in this regard. (See General Recommendation 4.2 in Chapter III of this report).

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

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

The Republic of Paraguay has a set of provisions related to 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 Article VI(1)(a) of the Convention:

- Article 300 (Solicitation or acceptance of bribes) of the Criminal Code of the Republic (Law 1160/1997), which provides: “*1) Any public servant^x who solicits or accepts a benefit or the promise thereof in exchange for a consideration arising from an act that they have performed or will perform in the course of their official duties, shall be sentenced to up to three years of imprisonment or receive a fine. 2) Any judge or mediator who solicits or accepts a benefit, or the promise thereof, in exchange for a decision or some other judicial act that they have performed or will perform, shall be sentenced to up to five years of imprisonment or receive a fine. 3) The attempted commission of such offences shall also be punished.*”

- Article 301 (Aggravated solicitation or acceptance of bribes) of the Criminal Code, which provides: “*1) Any public servant who solicits or accepts a benefit or the promise thereof in exchange for an act that they have performed or will perform in the course of their official duties and in so doing commits malfeasance, shall be sentenced to up to five years of imprisonment. 2) Any judge or mediator who solicits or accepts a benefit, or the promise thereof, in exchange for a decision or some other judicial act that they have performed or will perform and that constitutes judicial malfeasance, shall be*

³⁸ Response of Paraguay to the Questionnaire, p. 9. The Committee notes that the country under review has a Bill on Protection of Persons Who Report Acts of Corruption, which was presented to the Senate in August 2004, and which it considers as progress in implementing the Convention

³⁹ *Ibid*, p. 11.

sentenced to up to 10 years of imprisonment. 3) The attempted commission of such offences shall also be punished. 4) The provisions contained in Article 57 shall also apply to the offences referred to in the foregoing sections.”^{xi}

- Article 304 (Additional provisions) of the Criminal Code, which provides: *“Additional provisions: 1) Any omission shall be treated the same as an offence committed in the performance of functions in the meaning of the Articles contained in this chapter. 2) Any reward, or the promise thereof, solicited or accepted by a judge from one party without the knowledge of the other party shall be deemed a benefit, in the meaning of the Articles contained in this chapter, as shall any reward offered, promised, or guaranteed by one party offers without the knowledge of the other.”*

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

- Article 302 (Offering a bribe) of the Criminal Code, which provides: *“1) Any person who offers, promises, or guarantees a benefit to a public servant in exchange for an act that they have performed or will perform in the course of their official duties and that is subject to their discretionary powers, shall be sentenced to up to two years of imprisonment or receive a fine. 2) Any person who offers, promises or guarantees a benefit to a judge or mediator in exchange for a decision or any other judicial act that they have performed or will perform, shall be sentenced to up to three years of imprisonment or receive a fine.”*

- Article 303 (Aggravated offer of a bribe) of the Criminal Code, which provides: *“1) Any person who offers, promises, or guarantees a benefit to a public servant in exchange for an act that they have performed or will perform in the course of their official duties and in so doing commits malfeasance, shall be sentenced to up to three years of imprisonment. 2) Any person who offers, promises or guarantees a benefit to a judge or mediator in exchange for a decision or any other judicial act that they have performed or will perform, and that constitutes judicial malfeasance, shall be sentenced to up to five years of imprisonment. 3) The attempted commission of such offences shall also be punished.”*

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

- Articles 300 and 301 of the Criminal Code, recorded above.

- Article 312 (Illegal exaction) of the Criminal Code, which provides: *“1) Any public servant in charge of collection of taxes, fees, and other contributions who knowingly: 1. collects sums not due; 2. fails to deliver in full all sums collected to the national treasury; or, 3. makes improper deductions, shall be sentenced to up to 10 years of imprisonment or receive a fine. 2°) The attempted commission of such offences shall also be punished.”*

- Article 313 (Improper receipt) of the Criminal Code, which provides: *“1) Any public servant, lawyer, or other justice sector employee who knowingly receives for their benefit undue fees or other remunerations shall be sentenced to up to two years of imprisonment or receive a fine. 2°) The attempted commission of such offences shall also be punished.”*

- Article 4 (Embezzlement by appropriation) of the Law against Crimes against Government Property (Law 2880/2006)⁴⁰, which provides: *“Any appointed, contracted or elected public servant or employee of any category or rank, who appropriates State property that has been given into their*

⁴⁰ See www.oas.org/juridico/spanish/mesicic2_pry_anexo15.pdf

administration, possession or custody by reason of their functions or office, shall be sentenced to five to twelve years of imprisonment. The same sanction shall be imposed on any official who permits, or gives their consent for another person to engage in, the aforementioned conduct in full knowledge of their intentions. If at the time of consummation the value of the appropriated property does not exceed 100 times the legal minimum wage for assorted non-specific activities in the Republic, the official shall be sentenced to up to five years of imprisonment. The attempted commission of such offences shall also be punished.”

- Article 6 (Embezzlement through misuse) of Law 2880/2006, which provides: “*Any public servant who misuses, or permits the misuse by another, of State property for their own benefit or that of a third party shall be given a fine. The same sanction shall be imposed on any public servant who makes unlawful use of works or services paid for by the State for their own benefit or that of a third party.”*

▪ With regard to Article VI(1)(d) of the Convention:

- Article 194 (Obstruction in return of property) of the Criminal Code, which provides: “*1) Anyone who helps a person who has committed an unlawful act in order to ensure their enjoyment of the benefits of said act shall be sentenced to up to five years of imprisonment or receive a fine. 2) In such cases, the sanction shall not exceed for what is provided for in the act from which the benefits arise. 3) The person liable to punishment for participation in the prior act shall not be punished for obstruction. 4) Anyone who induces a person not involved in the prior act to commit obstruction shall be punished for instigation. 5) Criminal prosecution of the act shall depend on the initiative of the victim or on the appropriate administrative authorization, as the case may be, provided that the principal has participated in the prior act.”*

- Article 195 (Conversion of property) of the Criminal Code, which provides: “*1) Anyone who, with the intention of obtaining undue monetary gain, receives an object obtained through a crime against alien property, supplies it to a third party, or procures or helps to procure its transfer from one person to another, shall be sentenced to up to five years of imprisonment or receive a fine. 2) Where appropriate, the provisions of Articles 171 and 172 shall be applied. 3) The attempted commission of such offences shall also be punished. 4) When the principal acts: 1. commercially; 2. as a member of a gang formed for the continuous commission of larceny, robbery, or conversion of stolen property, the term of imprisonment may be increased to up to 10 years. Furthermore, the provisions contained in Articles 57 and 94 shall apply.”*

- Article 196 (Money laundering) of the Criminal Code, which provides: “*1) Anyone who: 1. conceals an object originating from: a) a crime; b) an offense committed by a member of a criminal organization provided in Article 239; c) an offense mentioned in Articles 37 to 45 of Law 1340/88; or 2. in respect of such an object, disguises its provenance, obstructs or jeopardizes knowledge of its provenance, location, discovery, confiscation, special confiscation, or sequestration, shall be sentenced to up to five years of imprisonment or receive a fine. 2) The same sanction shall apply to anyone who: 1. obtains an object mentioned in the foregoing clause, or provides it to a third party; or 2. keeps it or uses it for themselves or for another person having known its provenance when they obtained it. 3) The attempted commission of such offences shall also be punished. 4) When the principal acts: 1. commercially; 2. as a member of a band formed for the continuous commission of money laundering, the term of imprisonment may be increased to up to 10 years. Furthermore, the provisions contained in Articles 57 and 94 shall apply. 5) Anyone who, in the cases of sections 1 and 2, and through gross negligence overlooks the provenance of the object of an unlawful act mentioned*

in section 1(1), shall be sentenced to up to two years of imprisonment or receive a fine. 6) The act shall not be punishable under clause 2 when the object was first obtained by a third party acting in good faith. 7) The objects mentioned in clauses 1, 2, and 5 shall be assumed as originating from an offense committed outside the scope of this law when the act is criminally punishable in the place of its commission. 8) A person shall not be punished for money laundering when they: 1. Voluntarily provide or bring about the disclosure of information about the act to the competent authority, provided that said act has not been fully or partially discovered and that the principal was aware of that fact; and, 2. In the cases of sections 1 and 2, in the circumstances of the foregoing subsection, facilitate the confiscation of the objects connected with the offense. 9) When the principal, through voluntary disclosure of their knowledge, has contributed considerably to the clarification: 1. of the circumstances of the act that exceed their own contribution thereto; or, 2. of an act mentioned in section 1 unlawfully committed by another, the court may reduce the sanction in accordance with Article 67 or dispense therewith.”

▪ With regard to Article VI(1)(e) of the Convention:

- Article 29 (Commission as principal) of the Criminal Code, which provides: “1) Anyone who commits the act or uses another to do so shall be punished as the principal. 2) Any person who acts in concert with another, such that through their contribution they share with the other person control over commission of the act, shall also be punished as the principal.”

- Article 30 (Instigation) of the Criminal Code, which provides: “Anyone who induces another to commit an intentional unlawful act shall be punished as an instigator. The sanction shall be that provided for the principal.”

- Article 31 (Complicity) of the Criminal Code, which provides: “Anyone who helps another to commit an intentional unlawful act shall be punished as an accomplice. The sanction shall be that provided for the principal and reduced in accordance with Article 67.”

- The above-transcribed Articles 195(3), 196(3), 300(3), 301(3), 303(3), and 313(2) of the Criminal Code; and Article 4 of Law 2880/2006, which criminalize attempted commission.

- Article 239 (Criminal association) of the Criminal Code, which provides: “1) Anyone who: 1.- Creates an association that is hierarchically structured or organized in any way to commit punishable acts; 2.- is a member thereof or participates therein; 3.- provides it with financial or logistical support; 4.- provides services to it; or, 5.- promotes it; shall be sentenced to up to five years of imprisonment. 2) The attempted commission of such offences shall also be punished. 3) The court may dispense with the sanction when the charge against the participant is minor or his contribution was secondary. 4) The court may reduce the sanction in accordance with Article 67 or dispense therewith when the principal: 1. Seeks diligently and of his own free will to thwart the continued association or the commission of a planned punishable act; 2.- informs the competent authority of punishable acts or of plans to commit them in time to prevent their perpetration.”

- Article 292 (Obstruction of Criminal Justice) of the Criminal Code, which says: “1) Anyone who willfully or knowingly prevents another from being convicted of a crime or subjected to a measure for an unlawful act, shall be sentenced to up to three years of imprisonment or a fine. 2) The same penalty shall apply to anyone who willfully or knowingly prevents the complete or partial execution of a penalty or measure to which another has been sentenced. 3) The penalty shall not exceed that provided for the act committed by the other person. 4) The attempted commission of such offences

shall also be punished. 5) A person shall not be punished for obstruction when they commit an act in an attempt not to be sentenced to a punishment or subjected to a measure, or in order to prevent execution of the sentence. 6) A person shall be exempt from punishment when the act is committed on behalf of a relative.”

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

The Committee notes that, based on the information made available to it with respect to the provisions for criminalizing the acts of corruption cited in Article VI(1) of the Convention, such provisions may be said to constitute, as a whole, a set of measures that are relevant for promoting the purposes of the Convention.

- With regard to Articles VI(1)(a) and (b) of the Convention:

The Committee notes that the wording of the offences described in Articles 300 (Solicitation or acceptance of bribes), 301 (Aggravated solicitation or acceptance of bribes), 302 (Offering a bribe), and 303 (Aggravated offer of a bribe) is similar to that of the classifications contained in Article VI(1) (a) and (b) of the Convention.

- With regard to Article VI(1)(c) of the Convention:

The Committee notes that the wording of the offences described in Articles 300 (solicitation or acceptance of bribes), 301 (aggravated solicitation or acceptance of bribes), 304 (additional provisions), 312 (illegal exaction) and 313 (improper receipt) of the Criminal Code, as well as in Articles 4 (embezzlement by appropriation) and 6 (embezzlement through misuse) of Law 2880/2006, is similar to that of the classifications contained in Article VI(1)(c) of the Convention.

- With regard to Article VI(1)(d) of the Convention:

The Committee notes that the wording of the offences described in Articles 194 (Obstruction in return of property), 195 (Conversion of property) and 196 (Money laundering) of the Criminal Code is similar to that of Article VI(1)(d) of the Convention. It is worth adding that a review which was conducted in the framework of a technical cooperation project for ratification and implementation of the Convention carried out by the OAS with the financial collaboration of the IDB and the participation of the Office of the Prosecutor General, and published in a book titled “*Adaptando la Legislación Penal de Paraguay a la Convención Interamericana contra la Corrupción*” [Adapting the Criminal Laws of Paraguay to the Inter-American Convention against Corruption] found,^{xii} “[i]n conclusion, the proposed criminal classification contained in Article VI (1)(d) of the Convention is covered by the domestic laws (Criminal Code and Code of Criminal Procedure) without any material differences.”⁴¹

- With regard to Article VI(1)(e) of the Convention:

The Committee observes that the types of participation in the commission of a crime, namely, as principal, co-principal, instigator, accomplice and accessory after the fact, as well as attempted commission and association, mentioned in Article VI(1)(e) of the Convention, are provided for in

⁴¹ *Adaptando la Legislación Penal de Paraguay a la Convención Interamericana contra la Corrupción*, p. 46. Available in Spanish at: www.oas.org/juridico/spanish/agendas/estudio_final_paraguay.htm.

Articles 29, 30, 31, 195, 196, 292, 300, 301, 303, and 313 of the Criminal Code and in Article 4 of Law 2880/2006.

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

Considering that the Committee does not have additional information other than that referred to above which would enable it to make a comprehensive evaluation of the results of this section, it will make a recommendation in this regard. (See Recommendation in Chapter III, Section 3 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 in Chapter II of this report, the Committee offers the following conclusions and recommendations regarding implementation by the Republic of Paraguay of the provisions contained in Article III(5) (systems of government hiring and 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 in the context 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 Paraguay has considered and adopted certain measures intended to establish, maintain and strengthen, when applicable, systems of government hiring, as discussed in section 1.1 of Chapter II of this report.

In light of the comments made in that section, the Committee recommends that the Republic of Paraguay consider establishing, maintaining, and strengthening government hiring systems that assure the openness, equity, and efficiency of such systems. In meeting this recommendation, the Republic of Paraguay could take into account the following measures:

- (a) taking into account the existing legal initiative, adopt a legal instrument, applicable to all public servants, that governs civil service hiring systems based on principles such as merit and equality, that ensures the legitimacy and transparency of the public competitive examination, without prejudice to the possibility, in keeping with the rule of separation of powers and the existence of autonomous entities and bodies, of creating other systems for certain public servants whose nature and responsibilities require more specific provisions, such as the exception under Article 1 of the Law against Nepotism in the Civil Service (Law 2777/2005). (See Chapter II, Section 1.1.2. of this report).
- (b) Taking into account the existing legal initiative, implement provisions on the creation of oversight mechanisms and governing or administrative authorities to monitor compliance with staff selection standards, and ensure they have the necessary resources to function properly. (See Chapter II, Section 1.1.2. of this report).

- (c) Develop mechanisms for publication of employment opportunities in the civil service, giving consideration to the use of the mass media for that purpose. (See Chapter II, Section 1.1.2. of this report).
- (d) Taking into account the existing legal initiative and in observance of the principle of due process, implement administrative or judicial challenge mechanisms for the purpose of clarification, amendment, or revocation of substantive acts in the employee selection processes. (See Chapter II, Section 1.1.2. of this report).
- (e) Implement prior training programs or courses to help those who have entered the civil service to acquaint themselves with their duties, the required standards of integrity, their responsibilities and obligations, and the consequences of non-compliance. (See Chapter II, Section 1.1.2. of this report).
- (f) Consider the need, following the appropriate formalities, for the presentation for approval and enactment of Rules of Procedure for Article 15 de la Law No 1626/2000. (See Chapter II, Section 1.1.2 of this report).
- (g) Adopt, bearing in mind the powers of the Office of the Prosecutor General under Article 88 of Law 1562/2000 (Organic Law of the Office of the Attorney General) regulations governing the systems for procurement, promotion, and tenure of civil servants in that state organ, in accordance with the considerations to be suggested for that purpose by the Civil Service Secretariat and based on the principles of openness, merit, and equality. (See Chapter II, Section 1.1.2 of this report).

1.2. Government systems for the procurement of goods and services

The Republic of Paraguay 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 that section, the Committee suggests that the Republic of Paraguay consider the following recommendations:

- 1.2.1. That the appropriate authority adopt regulations on the hypothetical circumstances listed in subsections (b), (d), (e), f), and (h) of Article 33 of the Law on Government Contracting (Law 2051/200), bearing in mind the regulations on subsections a), c) and g) in Articles 69 to 74 of the Regulations on the Law on Government Contracting (Regulatory Decree 21909/2003). (See Chapter II, section 1.2.2 of this report).
- 1.2.2. Continue to strengthen the governing bodies of the Government Procurement System, in particular the Central Regulatory and Technical Unit (UCNT) and the Procurement Operations Units (UOC), with respect to the functions they carry out in connection with the administration and control of the system, providing them with the necessary resources to carry out their functions properly and creating mechanisms that permit effective institutional coordination of their activities as well ongoing evaluation and follow-up of said activities. (See Chapter II, section 1.2.2 of this report).

1.2.3. Strengthen the control mechanisms of the Government Procurement System. In meeting this recommendation, the Republic of Paraguay could take into account the following measures:

- (a) Develop and implement a system of sanctions for government servants and employees who violate or fail to fulfill the principles and provisions contained in the Law on Government Contracting (Law 2051/2003) and its Regulations (Regulatory Decree 21909/2003). This system could be included in the legal instrument suggested in section 1.1 above or in the laws governing such matters. (See Chapter II, section 1.2.2 of this report).
- (b) Develop and implement provisions for the selection of a person or body to carry out the tasks of audit, control, and monitoring of contracts where the amount or particular level of complexity so warrant. (See Chapter II, section 1.2.2 of this report).
- (c) Create qualified citizen “watchdogs” to monitor the pre-contractual phase and the execution of government contracts where the nature, importance or magnitude so warrants. (See Chapter II, section 1.2.2 of this report).
- (d) Develop, implement and publicize mechanisms or systems for the rendering of periodic accounts both by suppliers and contractors and by persons or entities directly responsible for supervision, control and oversight of contracts. (See Chapter II, section 1.2.2 of this report).

1.2.4. Develop and implement electronic systems of contracting that allow for the procurement of goods and services through such means. (See Chapter II, section 1.2.2 of this report).

1.2.5. Complement the public works procurement system contained in the Law on Government Contracting (Law 2051/2003). In meeting this recommendation, the Republic of Paraguay could take into account the following measures:

- (a) Consider development and implementation of provisions on supervening circumstances which would justify amendments to a public works contract, including cases in which the State or the contractor might be entitled to compensation, without prejudice to Article 62 of the Law on Government Contracting (Law 2051/2003). (See Chapter II, section 1.2.2 of this report).
- (b) Consider development and implementation of comprehensive citizen oversight mechanisms that cover all the different stages of public works procurement procedures, without prejudice to existing internal or external institutional controls. (See Chapter II, section 1.2.2 of this report).

1.2.6. Conduct periodic comprehensive evaluations to appraise the use and effectiveness of the Government Procurement System and, based on their findings, determine and consider the adoption of specific measures with which to ensure its transparency, openness, equity, and efficiency. (See Chapter III, section 1.2.3 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 Paraguay has considered and adopted certain measures intended to establish, maintain and strengthen systems for protecting public servants and private citizens who, in good faith, report acts of corruption, as discussed in Section 3 of Chapter II of this report.

In light of the comments made in that section, the Committee recommends that the Republic of Paraguay consider strengthening the systems for protecting public servants and private citizens who in good faith report acts of corruption. In meeting this recommendation, the Republic of Paraguay could take into account the following measures:

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

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

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

The Republic of Paraguay has adopted measures aimed at defining as criminal offenses the acts of corruption provided for by Article VI(1) of the Convention, as described in section 3.1 of Chapter II of this report.

In light of the comments contained in said section, the Committee suggests that the Republic of Paraguay consider the selection and development, by the Judicial Branch and the Office of the Attorney General, of procedures and indicators, when appropriate and where they do not yet exist, that analyze the results of the systems, provisions, measures and mechanisms considered in Section 3 of this Report. (See Chapter II, Section 3.2 of this report).

4. GENERAL RECOMMENDATIONS

Based on the revision and contributions made throughout this report, the Committee suggests that the Republic of Paraguay consider the following recommendations:

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for managing and implementing the systems, standards, measures and mechanisms considered in this report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.
- 4.2. Select and develop procedures and indicators, when appropriate and where they do not presently exist, to analyze the results of the systems, standards, measures and mechanisms considered in this report, and to follow-up on the recommendations made herein. (See Chapter II, Sections 1.1.3 and 1.2.3).

5. FOLLOW-UP

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

Similarly, the Committee will review the progress of the Republic of Paraguay in implementing the recommendations made in this Report, in accordance with Article 29 of the Rules of Procedure and Other Provisions.

IV. OBSERVATIONS IN RELATION TO THE PROGRESS IN THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE REPORT FROM THE FIRST ROUND

Based on the information made available to the Committee on the implementation of the recommendations formulated for the Republic of Paraguay in the Report in the First Round of Review, the Committee observes 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.

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

▪ Measures suggested by the Committee:

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

- *Coverage of all instances in which conflicts of interest could be seen or could arise: prior to assuming public functions; during the performance of public office; and after leaving public office, establishing adequate restrictions for those who leave public office (see section 1.1.2 of Chapter II of this report).*
- *Establish mechanisms to ensure effective compliance with the regulations to prevent conflicts of interest, determining the responsible agencies or authorities for monitoring compliance, and setting forth the application of measures or sanctions in the case non-compliance.*
- *Designing and implementing mechanisms to publicize and provide training on the standards of conduct, including those involving conflicts of interest, to all government officials and employees, and to provide further training or periodic updating regarding them.*
- *Develop and implement codes of ethical conduct for all public officials and employees.*

In its response,⁴² the Republic of Paraguay 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:

- Enactment of the Law against Nepotism in the Civil Service (Law 2777/2005);⁴³
- Preparation of the proposed Law on Ethics in the Civil Service⁴⁴ and the preliminary draft bill on the Civil Service Career and Government Employees;⁴⁵
- Various training activities on standards of conduct involving conflicts of interest implemented by the Council for Promotion of the National Probity System (CISNI) in conjunction with public institutions and civil society organizations;⁴⁶ and,
- Adoption of resolution CGR N° 640/2003 which creates the Code of Ethics for Employees of the Office of the Inspector General; resolution 322/2004, which approves the Code of Ethics of the Honorable House of Deputies of the Nation;⁴⁷ and resolution (CSJ) 390/2005 of the Supreme Court of Justice, which adopts the Judicial Code of Ethics of the Republic of Paraguay.⁴⁸

The Committee takes note that the country under review has satisfactorily considered the measure of the recommendation to provide training to government servants on standards of conduct involving conflicts of interest, which, by its very nature, requires continuous attention.

The Committee also takes note that the country under review has satisfactorily considered the measure of the recommendation to develop and implement codes of ethical conduct for public officials and employees insofar as the Office of the Inspector General, the Honorable House of Deputies, and the Judicial Branch are concerned. It should be noted, however, that the Committee has not conducted an in-depth analysis of the contents of said codes of ethics.

⁴² Response of Paraguay to the Questionnaire, pp. 18-19.

⁴³ *Supra* note 9.

⁴⁴ See www.oas.org/juridico/spanish/mesicic2_pry_anexo1.pdf

⁴⁵ See www.oas.org/juridico/spanish/mesicic2_pry_anexo2.pdf

⁴⁶ Response of Paraguay to the Questionnaire, pp. 23-25.

⁴⁷ See www.diputados.gov.py/archivos/codigo/resolucion322-codigoetica.pdf

⁴⁸ See www.idea.org.py/documentos/Acordada390.doc

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

“Strengthen control systems within the public administration.”

▪ Measures suggested by the Committee:

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

In its response,⁴⁹ the Republic of Paraguay 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:

- Promulgation of the Law against Illicit Enrichment of Public Servants and Influence Peddling (Law 2523/2004);⁵⁰ and the Law against Crimes against Government Property (Law 2880/2006);⁵¹ and
- Various training activities on standards of conduct to ensure the conservation and proper use of public resources carried out by the Council for Promotion of the National Probity System (CISNI) in conjunction with public institutions and civil society organizations;⁵²

The Committee takes note that the country under review has satisfactorily considered the measure of the recommendation to ensure that the laws on protection of public property are fully in effect, by the adoption of Laws 2523/2004 and 2880/2006. It should be noted, however, that the Committee has not conducted an in-depth analysis of the contents of said laws.

The Committee also takes note that the country under review has satisfactorily considered the measure of the recommendation to provide training to government servants on standards of conduct to ensure the conservation and proper use of public resources, which, by its very nature, requires continuous attention.

⁴⁹ Response of Paraguay to the Questionnaire, pp. 19-20.

⁵⁰ See www.oas.org/juridico/spanish/mesicic2_pry_anexo11.pdf

⁵¹ *Supra* note 51.

⁵² Response of Paraguay to the Questionnaire, pp. 23-25.

The Committee also takes note of the steps taken by the country under review to proceed with the implementation of the remaining elements of the foregoing recommendation, as well as the need for the Republic of Paraguay to continue giving attention to the implementation of this recommendation

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

▪ Recommendation 1.3.1.

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

▪ Measures suggested by the Committee:

- *Ensure that the laws requiring public officials and employees to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware are fully in effect, implementing recommendations 7.1 and 7.2 when appropriate, and that they are applicable to all public officials and employees.*
- *Facilitate compliance with that requirement, such as permitting that the report be made by any means of communication that are considered pertinent, regulating their use, and eliminating formalities that may inhibit reporting, and develop the protection program established in Law 1562/2000 so that whistle-blowers are protected from threats or retaliation to which they may be subject because of their compliance with this requirement.*
- *Training public officials concerning the existence and purpose of their responsibility to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware.*

In its response, the Republic of Paraguay presents information on the foregoing recommendation, as follows:

“On this point we refer to Section II of this report on REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED FOR THE SECOND ROUND, which responds to the questions on systems for protecting public servants and private citizens who, in good faith, report acts of corruption (Article III (8) of the Inter-American Convention against Corruption)”⁵³

The Committee takes note of the need for the country under review to give additional attention to the implementation of this recommendation.

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

▪ Recommendation 2.1.

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

⁵³ *Ibid.*, p. 21.

▪ Measures suggested by the Committee:

- *Implement the provisions of Articles 104 and 283, paragraph 6 of the National Constitution in regard to sworn declaration of assets and income; ensuring that there are regulations governing such aspects as their minimum contents; mechanisms, where necessary, for evaluating and verifying, as well as updating the data; the use and disclosure of those declarations and penalties for noncompliance.*
- *Establish systems to ensure compliance with the requirement by all public officials and employees, including high-level civil servants; determine the minimum content, expressly requiring data needed to comply with the purpose, including the detection and prevention of conflicts of interest; establish systems, where necessary, for evaluating and verifying, as well as updating the data contained in the declaration; and regulate the use of the contents of the declaration and its disclosure.*
- *Use the financial disclosure reports for detecting and punishing illicit acts.*

In its response,⁵⁴ the Republic of Paraguay 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:

- Resolution 1968/05, which creates the Internal Rules of Procedure of the Office of the Prosecutor General and provides that failure to present a sworn declaration of assets in the time and manner prescribed by the applicable standards is considered a very serious fault, the penalty for which is removal from office; and
- The use of sworn statements of net worth to detect and punish illicit acts.

The Committee takes note of the steps taken by the State under review to move forward in implementing the other elements of the measures mentioned in the foregoing recommendation and the need for it to continue paying attention thereto.

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

▪ Recommendation 3.1.

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

▪ Measures suggested by the Committee:

- *Strengthening oversight bodies through harmonization of their functions for control of effective compliance with the provisions in Article III, paragraphs 1, 2, 4, and 11 of the Convention, providing them with necessary legal instruments and resources for the complete development of its functions; making sure that they have greater political and social support.*

⁵⁴ *Ibid*, pp. 21 and 22.

- *Ensuring that the laws governing oversight bodies are fully in effect, implementing, where appropriate, recommendations 7.1 and 7.2 and that they are applicable to all public officials and employees.*

In its response,⁵⁵ the Republic of Paraguay 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:

- Law 2248/03 which resolves the conflict of jurisdiction that existed between the Inspector General of Public Spending and the Audit Court;
- The cooperation agreement of September 2005 between the Office of the Inspector General of Public Spending and the Office of the Attorney General, which develops internal mechanisms to improve the oversight activities of the Office of the Inspector General; and
- The institutional strengthening of the internal oversight bodies created by Law 1535/1999 (Law on Financial Administration).

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also takes note of the difficulties⁵⁶ mentioned by the country under review in implementing this recommendation, with respect to the legal void in terms of administration of justice on public accounts.

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

4.1. Mechanisms for access to information:

▪ Recommendation 4.1.1.

“Institute legal norms supporting public access to government information.”

▪ Measures suggested by the Committee:

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

In its response,⁵⁷ the Republic of Paraguay 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 alternative that the

⁵⁵ *Ibid.*, p. 22.

⁵⁶ *Ibid.*, p. 21.

⁵⁷ *Ibid.*, pp. 22 and 23.

authorities adopt the appropriate administrative resolutions to establish systems to ensure public access, as appropriate, to information of public interest.

The Committee takes note of the need for the country under review to give additional attention to its implementation. The Committee also notes the difficulties⁵⁸ mentioned by the country under review in implementing this recommendation, regarding the complete rejection by the Senate of the Bill on Access to Public Information approved by the House of Deputies in December 2005.

4.2. Mechanisms for consultation

- Recommendation 4.2.1.

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

- Recommendation 4.2.2.

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

In its response,⁵⁹ the Republic of Paraguay presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to the publication in 2004 of methodological guidelines for holding congressional public hearings and the creation of several public assistance offices.

The Committee takes note of the need for the country under review to give additional attention to the implementation of this recommendation.

4.3. Mechanisms to encourage participation in public administration

- Recommendation 4.3.1.

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

- Recommendation 4.3.2.

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

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, p. 23.

In its response,⁶⁰ the Republic of Paraguay presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to the creation of Citizen Participation and Transparency Units within public institutions.

The Committee takes note of the need for the country under review to give additional attention to the implementation of this recommendation.

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

▪ Recommendation 4.4.1.

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

▪ Recommendation 4.4.2.

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

In its response,⁶¹ the Republic of Paraguay presents information with respect to the above recommendations. In this regard, the Committee notes, as steps which contribute to progress in implementation of the recommendations, the measures taken with respect to the increase in the number of web sites of public institutions and the monitoring program implemented by the UNDP and the Ministry of Finance.

The Committee takes note of the need for the country under review to give additional attention to the implementation of this recommendation.

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

▪ Recommendation 5.1.

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

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

▪ Recommendation 5.2.

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

▪ Recommendation 5.3.

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

In its response,⁶² the Republic of Paraguay 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:

- Inclusion of the Office of the Attorney General in the secure electronic communication system of the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition;
- The signing by the General Secretariat of the OAS and the Council for Promotion of the National Probity System (CISNI) of the Memorandum of Understanding to carry out a technical cooperation project in the Republic of Paraguay to facilitate implementation of the recommendations made to it by the Committee of Experts of MESICIC on the Convention provisions selected for review in the first round, with funding provided by the Canadian International Development Agency (CIDA); and
- Development by the Council for Promotion of the National Probity System (CISNI) and the Training Center of the Office of the Attorney General of a basic document on international legal cooperation in the framework of the IACC, which is intended for judges and prosecutors and aims to provide tools and models for extradition and other proceedings.

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

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

▪ Recommendation 6.1.

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

In its response,⁶³ the Republic of Paraguay 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 by the Republic of Paraguay with respect

⁶² *Ibid*, pp. 22-23.

⁶³ *Ibid*, p. 23.

to the allocation of human and financial resources to the Directorate of International Affairs and Foreign Legal Assistance of the Attorney General's Office and the legal and budgetary status of the Council for Promotion of the National Probity System (CISNI) as the central consultative authority for the Convention.

The Committee takes note that the country under review has satisfactorily considered the foregoing recommendation, which, by its very nature, requires continuous attention.

7. GENERAL RECOMMENDATIONS

▪ Recommendation 7.1.

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

In its response, the Republic of Paraguay 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 by the Republic of Paraguay with respect to the promulgation of the Law against Nepotism in the Civil Service (Law 2777/2005); the Law against Illicit Enrichment of Public Servants and Influence Peddling (Law 2523/2004); and the Law against Crimes against Government Property (Law 2880/2006). It should be noted that the Committee has not conducted an in-depth analysis of the contents of said laws.

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 Paraguay to continue giving attention to the implementation of this recommendation.

▪ Recommendation 7.2.

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

In its response, the Republic of Paraguay 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 by the Republic of Paraguay with respect to the preparation of the proposed Law on Ethics in the Civil Service and the preliminary draft bill on the Civil Service Career and Government Employees.

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 Paraguay to continue giving attention to the implementation of this recommendation.

▪ Recommendation 7.3.

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

In its response, the Republic of Paraguay 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 by the Republic of Paraguay with respect to the various training activities carried out by the Council for Promotion of the National Probity System (CISNI) in conjunction with public institutions and civil society organizations.

The Committee notes that the country under review has satisfactorily considered the foregoing recommendation, which, by its very nature, requires continuous attention.

▪ Recommendation 7.4.

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

In its response the Republic of Paraguay makes no reference to the foregoing recommendation.⁶⁴ In light of this fact, the Committee takes note of the need for Paraguay to give additional attention to its implementation. To this end, Paraguay might consider opportunities for technical assistance.

⁶⁴ The Committee takes note of the communication by e-mail of November 23, 2006, from the Executive Secretariat of CITAIC to the Technical Secretariat of MESICIC, concerning progress in implementation of recommendation 7.4 in the Report on Paraguay in the First Review Round, with respect, *inter alia*, the entry into force, in July, 2004, of the Program for Monitoring fulfilment of the Inter-American Convention against Corruption, and for updating the National Integrity Plan, for the period 2006-2010.

END NOTES

ⁱ According to the second paragraph of Article 15 of Law 1626/2000, a public competitive examination is defined as a set of technical procedures based on a weighting system and evaluation of reports, certificates, background, training courses, and exams designed to measure the knowledge, experience and suitability of the candidate, expressed in quantifiable and comparable values, in accordance with the general regulations to be prepared by the Civil Service Secretariat and approved by Decree by the Executive branch.

ⁱⁱ Article 2 of Law 1626/2000 provides, "In spite of the fact that they hold public office, the following are expressly exempt from the provisions of the preceding Article: a) The President and Vice President of the Republic, senators and deputies, governors and members of departmental councils, mayors, members of municipal councils, and any other person appointed to office by popular election; b) ministers and vice ministers in the executive branch; c) diplomats and consuls in active service covered by the law on the diplomatic and consular career; d) military personnel in active service; e) police personnel in active service; f) faculty members at state universities, and teachers at primary and secondary schools, and technical training institutes; g) magistrates in the judicial branch; h) the Inspector General and their deputy, the Ombudsman, Deputy Ombudsman, and members of the Council of the Judiciary; i) the Prosecutor General and prosecutors

ⁱⁱⁱ Law 2051/2003, Article 2.- Excluded Procurement Operations. The following procurement operations are excluded from the scope of this law: a) Individual services governed by the Civil Service Law; b) Concessions for public works and services and the granting of permits, licenses, or authorizations for the use and exploitation of public property, which shall be governed by the appropriate laws; c) Any procurement in performance of international treaties to which the Republic of Paraguay is party and which are financed with funds provided by multilateral lending agencies of which Paraguay is a member. In such cases the agreements contained in the respective instruments shall be observed, without prejudice to the supplementary application of the provisions contained in this law whenever expressly stipulated or whenever a special system of rules is not expressly established; d) Any acts, agreements, and contracts subject to this law entered upon by or among agencies, entities, and municipalities. This exception shall not apply when the agency, entity, or municipality with the obligation to deliver or lease goods, provide services, or carry out works does so through a private third party; e) Any procurement that involves government lending operations; monetary, financial, and exchange regulation; and financial operations in general; and, f) Any procurement for conveyance of international or domestic mail.

^{iv} In Chapter 1 of Title 3 of Law 2051/2003, Article 16 provides that in government procurement operations the organizers shall use the procedures of: a) public tender, for procurement operations for amounts exceeding 10,000 (ten thousand) times the minimum daily wage; b) competitive bidding, for procurement operations for amounts between 2,000 (two thousand) and 10,000 (ten thousand) times the daily minimum wage; c) direct contract, for procurement operations for amounts of less than 2,000 (two thousand) times the daily minimum wage; and, d) imprest fund, for minor procurement operations whose amount and nature make it unnecessary to abide by the foregoing procedures, provided the amount of each operation does not exceed 20 (twenty) times the daily minimum wage. In the Republic of Paraguay the daily minimum wage is: a) Gs. 40,660.00 (approximately US\$7.40) for persons hired on a monthly basis (this amount is the result of dividing the minimum monthly salary of Gs. 1,219,795.00 by 30 days); and, b) Gs. 46,915.00 (approximately US\$8.64) for persons hired on a daily basis (this amount is the result of dividing the minimum monthly salary of Gs. 1,219,795.00 by 26 days). At present the exchange rate is approximately US\$1.00 = Gs. 5,430.00.

^v Law 2051/2003, Article 33.- Exceptions. Competition organizers may, under liability, hold procurement procedures without abiding by the provisions applicable to public tenders or competitive bidding in the following circumstances: a) the contract can only be entered upon with a particular person because it refers to works of art, ownership of patents, author's copyright, or other exclusive rights; b) natural disasters that endanger or disrupt the social order, economy, public services, health, security, or environment in any area or region of the country; c) processes carried out in the interests of national security; d) as a result of situations that constitute an act of God or *force majeure*, in which it is not possible to obtain goods or services, or carry out works through competitive bidding procedures in the time required to deal with the event in question; in such cases the amounts or items shall be limited to what is strictly necessary to address the situation; e) when the contract has been rescinded for causes attributable to the provider or contractor who was awarded the

tender. In such cases, the contracting party may award the part of the rescinded contract pending performance to the next lowest valid bid, provided that the difference in price with respect to be original winning bid does not exceed 10 percent; f) when holding two tenders that have been declared abandoned; g) when the procurement or outsourcing of goods is justified for urgent technical reasons or due to an emergency; or; h) following appraisal by competent bodies, the procurement of goods, execution of works, or provision of services is accepted in payment to the Paraguayan state, provided that the generally recognized principles set forth in Article 4 of this law are observed.

In such cases, the supreme authority of the agency, entity, or municipality, by resolution issued on the basis of a properly founded and reasoned opinion of the Procurement Unit (UOC in Spanish), shall confirm the special circumstances and determine the procedure that guarantees to the State the best possible conditions in any of the hypothetical situations mentioned in Article 16 (c) and (d).

Any negligence or lack of foresight on the part of the official in charge of the procurement operation that gives rise to such an exception shall be considered a serious fault and be punished in accordance with the rules in force. Suspected officials may not participate in any of the competitive procedures in which the suspicion might have arisen, until the appropriate organ issues a resolution absolving them of responsibility for the allegedly irregular act.

^{vi} Law 2051/2003, Article 40.- Prohibitions and restrictions on bidding and contracting.- None of the following may bid in any of the procurement procedures provided in this Law or contract with government agencies, entities and municipalities: a) government servants or employees involved in any stage of the procurement procedure who have personal, family or business ties to the provider or contractor, as well as any persons for whom such procedures might be of some benefit, their spouse or relatives within the fourth degree or consanguinity or affinity, or third parties with whom they have professional, working or business relations, or partners, shareholders, or companies of which the government servant or employee or the aforementioned persons are a part or have been a part in the past six months; b) anyone disqualified from doing so under the Service Law; c) bidders, suppliers or contractors who, through fault of their own, have had more than one contract administratively terminated within a period of two calendar years counted from the date notice was served of the first termination. That impediment shall stand for the purposes of the Procurement Operations Unit (UOC) for two calendar years counted from the date notice of termination of the second contract was served; d) any physical or legal person disqualified from doing so by resolution of the Central Regulatory and Technical Unit (UCNT), under the terms of Title Seven of this Law; e) any suppliers or contractors who, through fault of their own, are in default of delivery of goods, provision of services, or execution of works in respect of another contract or contracts entered on with the same contractor, provided the latter has been adversely affected; f) any physical or legal person involved in creditors', bankruptcy, or liquidation proceedings; g) participants who, in their own name or that of a third party, submit more than one bid for the same good or service in a procurement procedure and are linked to each other by a common partner or associate; h) physical or legal persons who seek to participate in a procurement procedure and, by virtue of another contract, are, or have earlier been, engaged, either directly or through companies that comprise the same business group, in analysis and quality control activities, preparation of specifications, budgets, or the preparation of any other document connected with the procedure in which they desire to participate; i) physical or legal persons who, in their own name or through companies that comprise the same business group, seek to be contracted in order to carry out inspections, offer opinions or expert opinions, and prepare appraisals to be used to resolve discrepancies arising from contracts to which said persons or companies are party; j) physical or legal persons who enter upon contracts concerning matters governed by this law without the authority to use intellectual property rights; k) any physical or legal persons in arrears as fiscal or social security debtors; and, l) any other physical or legal persons who for whatever reason are prohibited from doing so by a court order or the law.

^{vii} Law 2051/2003, Article 3(w), defines the SICP as “the electronic information system that permits automation of all the different stages of procurement processes, including announcement of the requirements in terms of goods, leases, services, or public works necessary to meet all contractual obligations in full, as well as preparation of statistical data; generation of information and its transmission through remote electronic media in widespread use through interconnected computers and data networks, through which government agencies,

entities, and municipalities make available to suppliers and contractors information, the document transmission service, and accounts rendered by government servants and employees to oversight agencies and civil society.”

^{viii} Law 2051/2003, Article 3(p), defines public works as “all works relating to the construction, reconstruction, demolition, repair, installation, extension, remodeling, adaptation, restoration, conservation, maintenance, modification, or renovation of buildings, structures, or facilities, as well as ground preparation and clearing, excavation, erection, building, installation of equipment or materials, decoration, and finishing of works; and all-in or turnkey projects, in which the contractor undertakes to carry out the entire project through to conclusion, including design of the work, construction, supply of materials and equipment, putting into operation, quality control, and even technology transfer.

^{ix} Law 1535/1999, Article 2.- Integrated Financial Administration System. Let the Integrated Financial Administration System (hereinafter SIAF) be created for the purposes provided in the preceding article. The SIAF shall be compulsory for all government agencies and entities and shall be governed by the principles of regulatory centralization and operational decentralization in the interests of implementing a dynamic financial administration and information system that integrates and harmonizes the different tasks connected with the administration of resources assigned to government entities and agencies to fulfill their institutional objectives, programs, goals, and functions, to which end the supervision, evaluation, and management control mechanisms necessary for the system to function properly are created.

The SIAF shall be composed of the following systems: budget; investment; treasury; public credit and debt; accounts; and control.

^x Criminal Code of the Republic, Article 14. Definitions. 1) For the purposes of this law the following definitions shall apply: (...) 14. Public servant: A person who performs a public function in accordance with Paraguayan law, whether as an official, an employee of, or a person contracted by the State;...

^{xi} Criminal Code of the Republic, Article 57. Financial sanction. 1) Together with a prison sentence of more than two years the judge may order, if expressly provided by law and in accordance with the provisions contained in Article 65, the payment of a sum of money up to a maximum amount set taking into account the wealth of the perpetrator. 2) The appraisal of wealth shall not take into account benefits subject to confiscation. As appropriate, the provisions of Article 92 shall be applied. 3) Where immediate payment is not possible, the provisions contained in Article 93 (2) shall be applied. 4) If a financial sanction is not paid it shall be substituted with a term of imprisonment of between three months and three years. The substitute prison term shall be determined in the sentence.

^{xii} The review was prepared by Dr. José Casañas Levi, in his capacity as National Consultant, and is published in the book, “*Adaptando la Legislación Penal de Paraguay a la Convención Interamericana contra la Corrupción*”, Office of the Secretary for Legal Affairs, Department of Legal Cooperation of the OAS, 2001 (JL969.5.C6 A3 2001 (Par) /// OEA/Ser.D/XIX.3 Add. 5). This publication contains the reports on the working seminar organized by the OAS, IDB and the Office of the Prosecutor General of the Republic of Paraguay, which was held in Asunción on October 19 and 20, 2000, in the framework of the “Project in Support of Ratification and Implementation of the IACC” (which came out of the cooperation agreement signed by the OAS and the IDB on March 26, 1999).