

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

OEA/Ser.L  
SG/MESICIC/doc.193/07 rev. 4  
29 June 2007  
Original: Spanish

BOLIVARIAN REPUBLIC OF VENEZUELA

FINAL REPORT

(Adopted at the June 29, 2007 plenary session)

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

**FINAL REPORT ON IMPLEMENTATION IN THE BOLIVARIAN REPUBLIC OF  
VENEZUELA OF THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE  
SECOND ROUND, AND ON FOLLOW-UP TO THE RECOMMENDATIONS  
FORMULATED TO THAT COUNTRY IN THE FIRST ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

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

Second, the Report will examine follow-up to the implementation of the recommendations that were formulated to the Bolivarian Republic of Venezuela by the MESICIC Committee of Experts in the first round and included in the Report on that country adopted by the Committee at its Sixth meeting. The report can be seen at the following website: [www.oas.org/juridico/spanish/mec\\_inf\\_ven.pdf](http://www.oas.org/juridico/spanish/mec_inf_ven.pdf)

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

According to the official register of the OAS General Secretariat, the Bolivarian Republic of Venezuela ratified the Inter-American Convention against Corruption on May 22, 1997 and deposited the instrument of ratification on June 2, 1997.

The Bolivarian Republic of Venezuela signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2001.

**I. SUMMARY OF INFORMATION RECEIVED**

**Response of the Bolivarian Republic of Venezuela**

The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Bolivarian Republic of Venezuela, and in particular from the Office of the Comptroller General of the Republic, which was evidenced, *inter alia*, in the Response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its Response, the Bolivarian Republic of Venezuela sent the provisions and documents it considered pertinent.

For its review, the Committee took into account the information provided by the Bolivarian Republic of Venezuela up to November 10, 2006 and the information requested by the Secretariat and the members of the review subgroup, to carry out its functions in accordance with the Rules of Procedure and Other Provisions.

---

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

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

## **II. REVIEW 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 Bolivarian Republic of Venezuela has a set of provisions related to the systems of government hiring, among which the following provisions related to the principal systems should be noted:

- Constitutional provisions applicable to all public servants, among which the following should be noted:
  - Article 144 of the Venezuelan Constitution provides that the law will establish the Civil Service Statute with norms on the entry, promotion, transfer, suspension and removal of public servants, as well as provision for their inclusion in the social security system. It further states that the law will determine the functions and requisites that public servants must fulfill in order to hold office.
  - Article 145 of the Constitution provides, *inter alia*, that public officials are at the service of the state and not of any particular faction, and that their appointment or removal shall not be decided on the basis of their political affiliation or inclination.
  - Article 146 of the Constitution states that public administration positions are career positions, with the exception of positions to which officials are popularly elected, freely appointed or removed, staff under contract, laborers in the service of public administration and any others determined by the law. This article also states that entry into career positions for public servants are conducted through a public competitive examination in order to determine their honesty, suitability and efficiency. It further provides that promotion shall be merit-based and determined according to scientific methods, and that transfer, suspension or removal from office shall be based on performance.
  - Article 148 of the Constitution states that no-one may hold more than one remunerated public post simultaneously, with the exception of such academic, interim, welfare or teaching positions as may be determined by the law, and that if a public servant accepts a second appointment that is not excepted in that article, this will entail resignation from the first one. However, this rule does apply to alternates, as long as they do not replace the principal incumbent on a permanent basis.

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

- Article 1 of the Civil Service Statute Law (LEFP) states that “*This law shall govern the public employment relationship between public officials and national public administrations,*” and provides its exclusions<sup>2</sup>.

Article 7 of the LEFP states that the entity responsible for planning the development of public functions in national public administration entities will be the Ministry of Planning and Development, whose attributions are defined in Article 8.

Article 8 of the LEFP provides that the Ministry of Planning and Development must assist the President of the Republic in carrying out the functions assigned under this Law, and must evaluate, approve and monitor the application of government policies through the approval of the staff plans implemented by government agencies and entities of the National Public Administration. In particular, this Ministry shall have the following functions:

- Organize the public function system and overseeing its enforcement and development. To this end it shall issue guidelines and procedures for recruitment, selection, entry, classification, assessment, payment of positions, performance evaluations, development, training, promotions, reassignments, transfers, leaves of absences, days in lieu, traveling expenses, personnel records, disciplinary regime, expenditures, and any other guidelines and procedures required by the system.
- Oversee compliance with the guidelines and procedures referred to in the previous paragraph.
- Approve the personnel plans of the organs and agencies of the National Public Administration subject to this law, and the amendments thereto, after checking with the Ministry of Finance regarding the availability of the budget necessary for its implementation.
- Perform audits, studies, analyses, and investigations to evaluate the execution of the relevant plans.
- Request the organs and agencies of the National Public Administration to furnish the information needed for the full discharge of its functions.
- Provide the organs and agencies with technical advice when they so request.
- Evaluate inquiries made by the organs and agencies of the National Public Administration regarding personnel administration.
- Assess the cost of draft and final collective labor contracts within the National Public Administration.

---

<sup>2</sup> Pursuant to Article 1 of the LEFP, the following public officials are excluded from application of this Law: civil servants who are: employed by the National Legislative Branch; covered by the Organic Law on the Foreign Service; employed by the Judiciary; employed by the Citizens’ branch of power; employed by the Electoral branch of power; laborers in the Public Administration; employed by the Office of the Attorney General; employed by the National Integrated Service of Customs and Tax Administration (SENIAT); and management, academic, teaching, administrative and research staff employed by State universities.

- Approve technical reports on the post classification and ranking systems proposed by the organs and agencies of the National Public Administration.
- Submit, for the consideration and approval of the President of the Republic, after checking with the Ministry of Finance regarding the availability of the necessary budget, technical reports on the wage scale to be applied within the organs and agencies of the National Public Administration.
- Approve the rules and scales of competitions for the entry and promotion of public employees, to include the descriptions and requirements applicable to each post.
- Approve technical reports on personnel reductions put forward by the organs and agencies of the National Public Administration in accordance with this law.
- Ask the National Executive, in conjunction with the Ministry of Finance, for budgetary corrections and adjustments in those organs and agencies of the National Public Administration that fail to meet the budgetary provisions of personnel plans.
- All other established by this law and its regulations.

Article 16 of the LEFP provides that anyone is entitled to apply for a position in the Public Administration, subject only to the limitations stipulated under the country's Constitution and legislation.

Article 17 of the LEFP defines the requirements that must be complied with for candidates who apply for posts regulated by this<sup>3</sup>, while Article 19 states that civil servants employed in Public Administration positions will be career officials or officials who can be freely appointed to and removed from office. It further states that anyone who has passed the public competitive examination, completed the probation period, been appointed to office and is in remunerated employment on a permanent basis, shall be defined as a career official

Article 20 of the LEFP states that public officials who can be freely appointed to or removed from office may hold high-level positions or positions of trust<sup>4</sup>, while Article 21 of the LEFP defines what is meant by positions of trust<sup>5</sup>.

---

<sup>3</sup> Candidates must be Venezuelan; over eighteen years of age; hold a high-school certificate; not be banned or disqualified from occupying a public post; not be receiving a pension from a State entity, except in the case of high-ranking posts, in which case the pension must be suspended (exceptions to this rule are pensions received for the performance of compatible functions); fill the requirements for the post; comply with the entry procedures established in this Law and its Regulations, if applicable; and submit a sworn statement of assets.

<sup>4</sup> Article 20 of the LEFP states that the following are considered high level positions: Executive Vice President; ministers; heads of national offices or their equivalent; presidential commissioners; Deputy Ministers; directors general, directors and other officials with similar ranks in the autonomous institutes; registrars and public notaries; the Secretary General of Government of the states; the sectoral directors general of the state governments, the directors of the municipal governments and other positions of equal rank; and the highest-ranking authorities of the state and municipal autonomous institutions, as well as their directors and officials of similar rank.

<sup>5</sup> Public officials whose functions require a high degree of confidentiality in the offices of the highest-ranking authorities of the Public Administration, of the deputy ministers, directors general and directors or their equivalent, as well as positions whose functions consist mainly of activities related to national security,

With respect to incompatibilities, according to Articles 35 and 36, Chapter V, of the LEFP, public officials may not hold more than one remunerated position, with the exception of such academic, interim, welfare or teaching positions as determined by the law. The academic, interim, welfare and teaching positions which the law defines as compatible with the exercise of a remunerated public office may be held provided they do not affect the official's ability to comply with the duties inherent to that office.

Articles 37, 38 and 39, Chapter IV of the LEFP, regarding staff under contract, provide that they may only be employed under a contract in cases where highly-qualified staff is needed for a particular task and for a specific period of time. They may not be contracted to carry out functions corresponding to the positions found in that law. In regards to the system applicable to staff under contract, the LEFP establishes that it is found in the respective contract and labor law, and in no case may such a contract be used as a means of entry into the Public Administration.

Article 40 of the LEFP provides that the staff selection process is designed to guarantee the entry of applicants to career positions in the Public Administration, based on their skills, abilities and competencies, and they must sit public competitive examinations to enable people who meet the requisites for holding positions to participate on an equal footing without any kind of discrimination; and further, if public officials are appointed to the career service without having taken the respective competitive entrance examinations required under this Law, their appointments shall be declared null and void if they were made without such competitive examination being held in accordance with this Law.

Articles 41 and 42 of the LEFP indicate, respectively, that the human resources offices of the agencies and entities of the Public Administration must hold public competitive examinations for career public officials, and that the human resources offices of the Public Administration agencies and bodies shall keep registers of eligible candidates and give them ample publicity in accordance with the regulations to that Law.

Article 45 of the LEFP states that vacancies for career positions must be filled from a list of eligible candidates for promotion in the respective entity; from the list of candidates eligible for promotion in the Public Administration; and from those in the registry of candidates eligible for entering public service.

Article 92 of the LEFP states that individual administrative actions filed by public officials under the terms of this Law shall exhaust administrative procedures. Therefore, the only recourse possible is the civil service administrative judicial review recourse which must be filed within the timeframe stipulated in Article 94 of this Law<sup>6</sup> following publication and notification thereof to the interested party, in accordance with the provisions of the Organic Law on Administrative Procedures.

Article 93 of the LEFP states that the appropriate civil service administrative judicial review tribunals must hear and rule on disputes that arise as a result of enforcement of this law, in particular in relation to complaints by public servants or candidates to the public service who feel that their rights

---

inspection and supervision, revenue, customs, border and alien control, without prejudice to the provisions of the law.

<sup>6</sup> Article 94 of the LEFP states that appeals brought under that Law shall only be admitted within three months from the date of the event that gave rise to them, or from the date at which the interested party was informed of the proceeding.

have been harmed by acts or deeds committed by the agencies or entities of the Public Administration and requests for nullity of clauses in collective bargaining agreements.

- Article 21 of the Decree on the organization and operation of Central Public Administration (DOFAPC) of February 23, 2006, defines the competences of the Ministry of Planning and Development, the governing authority and entity responsible for planning and developing of the public service.

- Article 1 of the Organic Law on Administrative Procedures (LOPA), which states that the National Public Administration and the Decentralized Public Administration, in keeping with the organic law creating them, shall align their activities to comply with the provisions of the LOPA. State and Municipal administrations, the Office of the Comptroller General and the Office of the Public Prosecutor shall also conduct their activities in accordance with this law insofar as this is applicable.

Article 85 of the LOPA provides that interested parties may file an “Administrative Appeal” of the type referred to in Chapter II, against any administrative proceeding that puts an end to a proceeding, prevents it from continuing, prevents a proper defense or makes a final prejudgment, if such an act harms the subjective rights or legitimate, personal and direct interests of those parties.

- Statutory and other legal provisions applicable to public servants in the National Legislative branch, among which the following should be noted:

- Article 94 of the Rules of Procedure and Debates of the National Assembly (RIDAN) classifies National Assembly employees as: a) legislative career civil servants; b) public officials who can be freely appointed to or removed from office; c) employees under contract; and d) laborers.

- Article 95 states that the President of the Assembly shall appoint legislative career staff to the respective post from a list of candidates put forward by the human resources department. The article also provides that all positions in the National Assembly shall be legislative career positions, with the exception of civil service positions subject to free appointment and removal, staff under contract, laborers and any other employees determined by the law; that legislative career officials and employees in the National Assembly shall be subject to a Personnel Statute approved by the plenary Assembly which shall regulate all matters related to entry, promotion, transfer, suspension and removal from office; and that national legislation on the public service shall be applied to any matters not foreseen by the Statute.

- Article 1 of the Civil Service Statute of the National Assembly (EFAN) provides that it will establish the rights and obligations derived from the civil service relationship between the National Assembly and the officials in its service, shall regulate matters concerning entry, transfer, suspension, removal, reclassification, training, preparation, system of stability and system of remunerations, as well as all matters regarding the administration of public service in the National Parliament; and that any matters not foreseen in the Statute shall regulated by the provisions of the Civil Service Statute Law and its regulations. Article 1 also states that the internal regulations, instructions and other regulatory instruments passed by the appropriate bodies of the National Assembly shall also be complementary, provided that they do not contradict the terms of the Statute.

Article 2 of the EFAN establishes that the officials of the National Assembly may be career civil servants or public officials who can be freely appointed or removed from office; and specifies that they must be legislative career officials who have passed public competitive examination, completed

a probationary period and, having been appointed by the appropriate authority, became permanent salaried employees of the National Assembly. It also defines as public officials who are freely appointed or removed as those who have been appointed by the appropriate authority to a high-level post or a position of trust and can be freely removed from office under the terms of the Statute.

Article 4 of the EFAN exempts from application of the Statute, laborers who are employed by the National Assembly. Those laborers shall be governed by their own collective bargaining agreement and the Organic Labor Law and its Regulations, and staff under contract shall be governed by the terms of their respective contract, supplemented by the terms of the Organic Labor Law and its Regulations.

Article 6 of the EFAN states that staff under contract shall only be used if skilled staff are required to undertake specific tasks for a specific period of time, and that in no case shall a staff contract be considered a means of access to a civil service position in the National Parliament. It adds that any contract to hire staff that infringes the terms of the Statute shall be declared without effect.

Article 11 of the EFAN states that the President of the National Assembly shall approve the standards governing public competitive examinations proposed by the Human Resources Directorate, and that when an examination is scheduled, it must be advertised in order to give all potential candidates a free and equal opportunity to apply.

Article 14 of the EFAN provides that officials can only be employed in a legislative career position in the National Assembly if a new position is created or a vacancy occurs, and their respective emoluments are foreseen in the corresponding budget.

Article 15 of the EFAN stipulates the requisites for holding the positions regulated by this Statute<sup>7</sup>.

Article 18 of the EFAN provides that each candidate's file with his/her background, the result of the tests, interviews, pre-employment examinations, opinions of the Heads of Unit and recommendation of the Human Resources Directorate, shall be submitted by the Directorate to the President of the National Assembly, while Article 20 states that it is the President of the National Assembly that appoints staff entry into the legislative career service.

Article 96 of the EFAN states that individual administrative procedures filed by public officials in the legislative career service, under the terms of this Statute, are the last recourse to administrative action. Therefore, the only recourse possible is the civil service administrative review recourse contained in Title VIII of the Civil Service Statute Law.

Article 97 of the EFAN that the appropriate civil service administrative judicial review tribunals must hear and rule on all disputes that arise as a result of enforcement of this Statute, including complaints filed by civil servants of the legislative career service or candidates for entry into the National Assembly who feel that their rights have been harmed by acts or deeds committed by Departments, Directorates or Dependencies of the National Assembly.

---

<sup>7</sup> Candidates must be Venezuelan; of legal age; comply with the requisites for holding the position; not be banned or disqualified from occupying a public post, not be receiving a pension from a State entity, except in the case of high-ranking posts, in which case the pension must be suspended for as long as the position is held; and any other requisites established in the laws, regulations and internal instructions of the National Assembly

Transitory Provision II of the EFAN states that people who joined the civil service on or after January 2, 2000 and up to ninety days after this Statute came into effect, must take a public competitive examination according to the terms stipulated in Title II, Chapter II of the Statute, except for the probationary period. Those incumbents will be given priority to apply for the position they presently hold and their time in the position and the service record will be taken into account.

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

- Article 255 of the Constitution states that access to the career service in the judiciary and promotion of judges shall be subject to a public competitive examination in order to ensure the suitability and excellence of participants and they will be selected by a panel of judges of the judicial circuits, in the form and the conditions established by the Law, which will guarantee citizen participation in the procedure to select and appoint judges.

- Article 6, paragraphs 6, 7 and 14 of the Organic Law of the Supreme Court of Justice (LOTSJ), states that the duties of the Supreme Court of Justice include appointing and swearing in the judges of the Republic; appointing and swearing in officials and employees of the Judicial branch, in accordance with the law and; appointing and removing secretaries, officers of the court and other officials and court employees or delegating to its president the power to appoint and remove them.

Article 13 of the LOTSJ states that the Judicial Nominations Committee is an advisory body of the Judicial branch on the selection of candidates as Supreme Court justices, and establishes guidelines on the manner the process should take place. Also, it states that the Committee shall advise the Electoral Judicial Colleges in the election of judges with disciplinary jurisdiction.

Article 14 of the LOTSJ states that the process for pre-selecting candidates shall be public and that once candidates have been nominated, the Judicial Nominations Committee must publish the names of the candidates in a major national newspaper the following working day, specifically indicating that those interested may, upon presentation of reliable proof, file an objection within fifteen (15) days to the appointment of one or more of the candidates, as of the date of publication of the list.

- Article 85 of the Organic Law of the Judiciary (LOPJ) states that the forensic physicians and other employees may be freely appointed and removed by the National Executive. The former shall be sworn in before a superior court or a criminal court of first instance appointed by it, and the second before the respective forensic surgeon.

- Article 1 of the Judicial Career Law (LCJ) states that its purpose is to guarantee the suitability, stability and independence of judges and regulate the conditions for their entry, permanency and termination; as well as determine disciplinary responsibility of judges when exercising their functions.

Article 4 of the LCJ provides that the judges of ordinary jurisdiction and special jurisdiction will enjoy the benefits of the Judicial Career Service; and that the Counselors of the Judiciary Council and the Magistrates of the Administrative Judicial Review Courts shall only enjoy the social security benefits of the Judicial Career Service. The same rule exempts the Magistrates of the Supreme Court of Justice and Military Judges from its application.

Article 10 provides that any candidate wishing to enter the Judicial Career Service must obtain an excellent score in the competitive examination and be declared capable in a neuropsychiatric

evaluation. In order to take the examination, a candidate must be Venezuelan, an attorney, of unquestionable conduct, over twenty-five years of age; free to exercise their civil and political rights; present proof of having practiced law for at least three years, or have a postgraduate diploma or degree in law.

Article 20 states that in order to fill existing vacancies and any that may be created pursuant to the law, the following order of priority will prevail: Judges of Judicial Districts that are different from but in the same category as the one to be filled and who apply for a transfer to the district and fill the requisites established in this Law for transfers; in the absence of the foregoing, Judges of the same district or region who have served in the category immediately below the position that is to be filled, and who meet the conditions established in this Law for promotions; the alternates of the incumbent who is to be replaced, appointed pursuant to the provisions of Article 22. When more than one of the Judges has priority as per this Article, the Judiciary Council will initiate a competitive process so that the interested judges can compete for the post.

Article 21 of the LCJ provides that the Judiciary Council shall organize and manage, in accordance with the regulations issued to that effect, the competitive examinations referred to in the Law; while Article 22 defines the composition of the panel of judges of the competitive examinations for the different categories.

Article 23 of the LCJ states that competitions will be public and must be announced in a major regional newspaper at least ten days before the date they are to be held, indicating the day, time and place they will take place. They will consist of three tests: one of credentials and merits; a written practical test and a theoretical oral examination. Article 24 also provides that if a competition is declared void, the Judiciary Council will convene a second competitive examination and if this too is declared void, the Council may proceed to fill the position with an interim Judge who meets the conditions stipulated in Article 10 until such time as the appointment can be filled through a competitive examination, which will be convened within a period of no more than six months, notwithstanding the provisions of Article 20 insofar as it is applicable.

Transitory Article 52 provides that Rapporteurs, Officials and Clerks of the court and other employees of the ordinary and special courts, with the exception of the military, shall be governed by the Judicial Personnel Statute issued by the Judiciary Council.

Transitory Article 53 states that until such time as the Law regulating the institution of public defense is passed, the public defenders shall enjoy the same benefits and guarantees agreed upon in this Law for Judges; insofar as they are not incompatible with their functions<sup>8</sup>.

- Article 4 of the Rules on Evaluation and Competitive Examinations for Entry to the Judicial Career Service (NECOICJ) states that entry is only possible through a public competitive examination, based on principles of honesty, suitability and efficiency. The competitive examination includes passing the tests of the Initial Training Programs, a medical and psychological evaluation and a knowledge examination.

Article 5 of the NECOICJ states that the Supreme Court of Justice, through the National Magistrate's School, shall announce public competitions in two major national newspapers, one regional

---

<sup>8</sup> The Committee notes that the Bolivarian Republic of Venezuela presented the new Public Defense Organic Law published in Official Gazette N° 38,595, after the deadline for submitting the response to the questionnaire, due to the fact that it came into effect on January 2, 2007. This is why this rule was not reviewed.

newspaper, when applicable, and on the website of the Supreme Court of Justice, in order to ensure that they are well advertised. This announcement will indicate the requirements and deadlines for registration, the category or categories and districts, the number of positions that can be applied for, the programs and any other information deemed relevant.

Article 7 of the NECOICJ establishes the necessary requisites for entry in to the judicial career service<sup>9</sup>, while Article 8 refers to incompatibilities for performing the functions of a judge, which include, in particular, being in active military service, a minister of any cult or religion, leader of a political party, having a criminal record or having been condemned by courts or professional disciplinary bodies that compromise his/her behavior. Neither can they be judges in the same judicial district with other judges who are related through direct sanguinity, spouses, or related collaterally within the third degree by consanguinity (related by blood) and within the second degree by affinity (related by marriage), both inclusive. These same circumstances apply to people who are related through adoption.

Article 29 of the NECOICJ establishes the composition of the Panel of Judges, and states that the panel for each competition shall be made up of three (3) principal members and three (3) alternates, selected at random and the examination to ascertain their knowledge shall be announced at least ten (10) days in advance. The members of the panel may not be spouses nor may they be related within the fourth degree by consanguinity or within the second degree by affinity, nor can they be in any way related to the participants.

Article 35 provides that the score given by the panel cannot be changed by any authority, unless it is determined, pursuant to an official letter or request of one of the parties, that a procedural defect affected the validity of the scoring, or that due to proven material errors and subject to authorization by a full bench of the Supreme Court of Justice. In such cases, any candidate who does not agree with the score has five (5) days from receipt of the result to request that it be reviewed. The panel must show the candidate the evaluation of the examination and explain the criteria used to grade it in order to guarantee the educational purpose of the activity and the impartiality of the evaluation. The provisions of this article shall also apply to the evaluation of credentials. This Article adds that the panel's decision is the last administrative recourse and it can only be challenged by filing an application for annulment of an administrative decision with the Political-Administrative Court of the Supreme Court of Justice within the term provided for in the Organic Law with regard to its functions.

---

<sup>9</sup> Venezuelan nationality; law degree from a Venezuelan university, or from a foreign university and revalidated so that the candidate can practice law in Venezuela; registered both in the respective bar association and in the attorney's social welfare institute, and presentation of the respective solvency; having graduated at least three years before and with working experience in the profession; ability to exercise his/her civil and political rights; unquestionable behavior and recognized morals; commitment to abstain from involvement in political, party-political or union activism in public service; authorize a periodical investigation of his/her assets; submit a tax return for the previous fiscal year; submit the last sworn statement of assets, in the event of having previously held a public office; be skilled in the way the media function; have been declared capable in the medical and psychological assessment; and pass the public competitive examination.

- Statutory and other legal provisions applicable to public servants in oversight bodies, among which the following should be noted:

- Article 13 of the Organic Law of the Office of the Public Prosecutor (LOMP) states that the Attorney General of the Republic shall determine in the Personnel Statute of the Office of the Public Prosecutor, the positions to be filled by officials who can be freely appointed or removed from office, by reason of the level or nature of their functions.

Article 21 of the LOMP provides that the Attorney General of the Republic must appoint prosecutors of the Office of the Public Prosecutor as well as its other employees, in accordance with the procedure established in this Law and by internal regulations; and will also issue the internal regulations of the Office of the Public Prosecutor.

Article 22 of the la LOMP states that in order to carry out better the functions of the Office of the Public Prosecutor the Attorney General of the Republic may employ professionals, technical staff or experts in specific areas, under the terms and conditions set forth in the corresponding contract, in which case the provisions of this Law shall not apply to those people.

Article 79 of the LOMP creates the Career in the Public Prosecutions Service which shall be governed by the provisions of the Personnel Statute issued by the Attorney General of the Republic. This article also states that candidates who wish to enter the public prosecutions service must pass the competitive examination with an excellent score, of which a minimum of seventy-five percent (75%) must be obtained.

- Article 1 of the Personnel Statute of the Office of the Public Prosecutor (EPMP), states that the Statute will govern all aspects related to regulations governing labor issues insofar as they apply to prosecutors, attorneys for minors, officials and employees of the Office of the Public Prosecutor, with the exception of laborers in the service of the Office of the Public Prosecutor, who are governed by the provisions stipulated in the corresponding collective bargaining agreement.

Article 2 of the EPMP states that officials and employees of the Office of the Public Prosecutor may be career officials or officials who can be freely appointed and removed from office by the Attorney General.

Article 3 provides that anyone who enters the service of the Office of the Public Prosecutor, through an appointment, satisfactorily completes the probationary period established in Article 8 and is employed on a permanent basis, shall be considered a career official or employee. This article also states that a position shall be considered as subject to free appointment or removal when determined as such in the appointment of an official or employee or if so determined by a resolution issued by the Attorney General. The following are some of the positions subject to free appointment or removal and are exempted from the application of the career service system: the Directors of Office of the Attorney General, Deputy-Directors, Coordinators, Division Heads, Departmental Heads, Unit Heads, Auditors, Registrars of Goods and Materials, Warehouse Managers, General Service Supervisors, Internal Services Managers, Buildings Supervisors, Telecommunications Technicians, Copy Supervisors, Copy Machine Operators, Media Professionals, officials and employees who work in the Coordination Area and Secretariat of the Office of the Attorney General, Assistants and Deputy Directors of the Office, as well as officials and employees who provide security services to the Attorney General and the dependencies of the Office of the Public Prosecutor.

Article 7 of the EPMP provides that in order to work for the Office of the Public Prosecutor, it is required, where applicable, to have passed the evaluations that ascertain the skill, aptitude and knowledge required for the post. This Article also indicates that if the Attorney General deems this to be pertinent, professional positions may be filled subject to an evaluation of credentials or competitive examination for which rules will be drawn up. Appointments to the position of Senior Prosecutor and Prosecutor of the Office of the Public Prosecutor and Attorneys for Minors must first pass a competitive examination in keeping with regulations contained in the Organic Law of the Office of the Public Prosecutor and this Statute.

- Article 23, which refers to the evaluation panel of the competitive examinations, states that the panel's decisions shall be made by majority vote and, in the case of tests to determine the candidates knowledge of the law, the final grade will be calculated by averaging the scores assigned by each panel for each test. These decisions may not be appealed and the panel's deliberations will take place in private and be recorded in a report.

- Article 10 of the Organic Law of the Office of the Comptroller General of the Republic and the National System for Fiscal Control (LOCGRSNCF) states that the Office of the Comptroller General shall act under the guidance and responsibility of the Comptroller General.

Article 19 of the LOCGRSNCF states that the administration of the staff employed in the Office of the Comptroller General shall be governed by this Law, by the Personnel Statute and by the other rules issued by the Comptroller General on the matter.

- Article 1 of the Personnel Statute of the Office of the Comptroller General of the Republic (EPCGR) states that the Comptroller General shall have competency over the public service and the management and development of Human Resources of the Office of the Comptroller General of the Republic who, through special internal regulations, will complement and develop the provisions of this Statute and approve the necessary manuals and rules of procedure.

Article 2 of the EPCGR provides that officials in the service of the Office of the Comptroller General may be career officials and freely appointed and removed officials, while Article 3 states that anyone who enters the service of that office by appointment, satisfactorily completes the probationary period established in Article 12 of this Statute and is employed on a permanent basis, shall be a career official.

Article 4 of the EPCGR indicates that the positions in the Office of the Comptroller General are career positions, except for those subject to free appointment and removal; and that high level positions and positions of trust are considered positions subject to free appointment and removal, of which the following are listed:

- High-level posts: Director General; Sectoral Director; Supervisory Analyst; Consultant Analyst; Assistant Consultant Analyst; Associate Consultant Analyst; General Consultant Analyst; Supervisory Attorney; Consultant Attorney; Assistant Consultant Attorney; Associate Consultant Attorney; General Consultant Attorney; Auditor General; Consultant Auditor; Assistant Consultant Auditor, Associate Consultant Auditor; General Consultant Auditor; Supervisory Administrator; Consultant Administrator; Assistant Consultant Administrator; Associate Consultant Administrator; and General Consultant Administrator.

- Positions of trust: Coordinating Analyst; Senior Analyst; Junior Analyst; Assistant; Coordinating Attorney; Senior Attorney; Junior Attorney; Coordinating Auditor; Senior Auditor; Junior Auditor; Audit Assistant; Coordinating Researcher; Senior Researcher; Research Assistant; Coordinating Administrator; Senior Administrator; Junior Administrator; Documentalist Coordinator; Pre-school Director; Teaching Coordinator; Educational Psychologist; Supervisory Communicator; Coordinating Communicator; Laboratory Technician; Dentist; Nutritionist; Coordinator; Security I; Security II; Security III; and Security Supervisor; and positions whose incumbents come under the Office of the Comptroller and the Office of the Deputy Comptroller.

Article 5 of the EPCGR provides that the Human Resources Directorate will be responsible for the management and development of staff employed in the Office of the Comptroller General; that the Human Resources Director must have technical training in personnel management and development and may not be related to the Comptroller General within the fourth degree of consanguinity and second of affinity.

Article 6 of the EPCGR states that the Human Resources Directorate shall fulfill the functions assigned to him in the Internal Regulations of the Office of the Comptroller General and the corresponding Organizational Resolution.

Article 7 of the EPCGR defines the following necessary requirements in order to be employed by the Office of the Comptroller General: be Venezuelan; have good behavior; fill the requirements for the position; not be banned from exercising his/her civil rights; and any others provided for in the Constitution, laws and regulations, as well as the rules and procedures issued by the Comptroller General.

Article 8 of the EPCGR states that entry into the Office of the Comptroller General is carried out through a competitive examination. Successful candidates are chosen based on merit and are evaluated equally in a manner that ensures objectivity. For selection purposes, the Human Resources Directorate must keep a Register of Eligible Candidates in accordance with the rules applicable to such processes.

Article 10 provides that the Comptroller will appoint officials to career positions or those that are subject to free appointment and removal.

- Article 1 of the Internal Regulation of the Office of the Comptroller General of the Republic (RICGR) state that both it and the Organizational Resolutions that complement it, establish standards related to the structure, organization and operation of the bodies of the Office of the Comptroller General, the distribution of functions and the assignment of competencies.

### **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 in the Bolivarian Republic of Venezuela that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention

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

- With respect to the system for hiring public servants under the central system, the Committee considers the following:

First, the Committee notes that although Article 19 of the Civil Service Statute Law (LEFP) defines as a career civil servant as someone who has won the public competitive examination, completed the probationary period, been appointed to office and holds a remunerated permanent position, the regulations applicable to the subsystem on the recruitment of civil servants to the Civil Service that define the parameters and guidelines to carry out these competitive examinations come from the General Regulations of the repealed Administrative Careers Law, which has been being used on a temporary basis. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.1 (a) of this Report).

Secondly, the Committee notes that pursuant Article 8 of the LEFP, the Ministry of Planning and Development is responsible for evaluating, approving and controlling the application of civil service policies through the approval of the staff plans implemented by the agencies and entities of the National Public Administration. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.1 (b) of this Report).

Thirdly, the Committee notes that Article 16 of the LEFP provides that anyone can apply for a position in the Public Administration, subject only to the restrictions stipulated in the Constitution of the Bolivarian Republic of Venezuela and its laws. However, the Committee notes that neither the Constitution nor the LEFP make any provision regarding restrictions or incompatibilities to prevent people related by consanguinity or affinity from holding a public office. The Committee will formulate a recommendation in this regard. (Recommendation 1.1.6 (a) in Section 1.1 of Chapter III of this Report.)

- With respect to the system of government hiring of public servants in the National Legislative branch, the Committee takes note of the following:

First, the Committee notes that the Civil Service Statute of the National Assembly (EFAN) provides that a competitive examination is one of the conditions for entry into the legislative career service and that persons employed under contract are excepted from the application of the Statute and their employment shall be governed by the terms of their contract. The EFAN also states that contracted staff may only be employed if people with special qualifications are required to undertake specific tasks for a specific period of time, and that in no case shall staff contracts be used as a method of access to a civil service position in the National Parliament. It further stipulates that if a staff contract infringes the terms of the Statute, it shall be declared void.

The Committee notes that the only criterion for defining contracted staff is that they must be “qualified to carry out specific tasks,” but no mention is made of what this qualification consists of, or the nature of the tasks. In addition, although it is provided that the contract must be for specific period of time, and a limit of one financial year is set for budgetary reasons, no limitations or conditions are set on the awarding of successive contracts.

Likewise, despite the fact that according to the EFAN, in no case shall staff contracts be used as a means of access to a civil service position in the National Parliament, the absence of any regulation or definition on the matter could mean that staff with similar functions to those of career staff could be contracted. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.6 (d) of this Report).

Secondly, the Committee observes that, as provided in the EFAN, the President of the National Assembly approves the standards on public competitive examinations proposed by the Human Resources Directorate. Competitive examinations must be advertised to give all potential candidates an equal opportunity to apply. However, there is no indication in the Response to the Questionnaire that these rules have been published, or that a regulated recruitment subsystem, based on the provisions of the EFAN, exists. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.2 of this Report).

Lastly, the Committee is concerned that although the requirements for holding the offices regulated in the EFAN have been established, there appears to be no provision regarding restrictions or incompatibilities to prevent people related by consanguinity or affinity from holding a public office. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.6 (a) of this Report).

- With respect to the system of government hiring of public servants in the Judicial branch, the Committee takes note of the following:

Firstly the Committee notes that, despite the existence of the Judicial Careers Law (LCJ), the only officials who have access to a career in the judiciary and whose employment is governed by that Law are judges<sup>10</sup>. Counselors of the Judiciary Council and the Magistrates of the Administrative Judicial Review Courts only enjoy the social security benefits of the Judicial Career, while Magistrates of the Supreme Court magistrates and Military Judges are exempt from compliance with the provisions of this Law<sup>11</sup>.

The Committee also notes that Transitory Article 52 of the LCJ stipulates that Rapporteurs, Officials, Clerks of Court and others employed by Ordinary and Special Courts of Justice, with the exception of the Military ones, are governed by the Judicial Personnel Statute issued by the Judiciary Council. However, this Statute has not yet been published. Therefore, not only do these officials lack access to a career in the judiciary, but neither is there any legislation to regulate their functions and the system through which they are hired.

In the case of forensic surgeons and other employees of this dependency, the Committee finds that, according to the Organic Law of the Judiciary (LOPJ) they are freely appointed and removed from the National Executive, and although Transitory Article 53 states that Ombudsmen shall enjoy the same benefits and guarantees as those granted to judges under the LCJ, until such time as the Law regulating the Ombudsman institution is passed, at the date the Response to the Questionnaire was remitted, this Law has not been published<sup>12</sup>. The Committee will formulate recommendations in this regard. (Chapter III, Section 1.1., Recommendation 1.1.3. (a), (b) and (c) of this Report).

The Committee notes that although Article 23 of the LCJ states that competitions are to be public and notice of them is to be given in a prominent regional newspaper, they are not published nationally. This means that the competition will not be publicized across the nation and there will be a lower number of suitable candidates. In connection with this, the Committee notes that such announcements could be placed in a broader range of media, such as radio, television, and internet. The Committee

---

<sup>10</sup> See Article 1 of the Judicial Careers Law (LCJ).

<sup>11</sup> See Article 4 of the LCJ.

<sup>12</sup> The Committee notes that the Bolivarian Republic of Venezuela presented the new Public Defense Organic Law published in Official Gazette N° 38,595, after the deadline for submitting the response to the questionnaire, due to the fact that it came into effect on January 2, 2007. This is why this rule was not reviewed.

will formulate a recommendation on this point. (Recommendation 1.1.3 (d) in Section 1.1 of Chapter III of this Report.)

- With respect to the system of government hiring of public servants in the Office of the Public Prosecutor, the Committee takes note of the following:

First, the Committee notes that the Organic Law of the Office of the Public Prosecutor (LOMP) provides that the Attorney General, in order to enable the Public Prosecutor's Office to carry out its functions satisfactorily, may hire professionals, technicians or experts in different areas, under the terms and conditions established in the corresponding contract, without them being subject to the provisions of this Law<sup>13</sup>. However, there appears to be no provision that regulates the conditions and guidelines under which such staff are hired or the type of functions they must perform. This situation could lead to the hiring of staff whose functions might be similar to those of career staff and, since there are no restrictions on rehiring, they could be extended indefinitely. Thus, although such officials are not classified as civil servants, in practice that is what they are, without having passed a public competitive examination or being subject to the same regulations as career civil servants. The Committee will formulate a recommendation in this regard<sup>14</sup>. (Chapter III, Section 1.1., Recommendation 1.1.6. (d) of this Report).

Secondly the Committee notes that the Personnel Statute of the Office of the Public Prosecutor (EPMP), defines as a career official or employee those who enter the service of the Office of the Public Prosecutor by way of appointment, completed the probationary period and is in permanent employment<sup>15</sup>. It further states that employment in the Office of the Public Prosecutor is subject to an evaluation to determine whether candidates have the skills, knowledge and ability required for the functions they must perform. This Article also states that if the Attorney General deems this pertinent, professional posts can be filled based on the evaluation of credentials or a competitive examination, for which corresponding rules will be issued<sup>16</sup>.

The Committee is concerned that with the exception of the appointment of the Senior Prosecutor and the Prosecutors of the Office of the Public Prosecutor and the Attorneys for Minors, merit-based competitive examinations do not appear to be one of the conditions for entry into the career service. Moreover, although competitive examinations are mentioned as optional requirements for holding professional positions, there are no regulations or guidelines on how such examinations should be held, nor is there any definition of the term professional positions or how these are distinguished from other career positions. Therefore the Committee will formulate recommendations in this regard<sup>17</sup>. (Chapter III, Section 1.1., Recommendation 1.1.4 (a) and (b) of this Report).

---

<sup>13</sup> See Article 22 of the Organic Law of the Public Prosecutor's Office (LOMP).

<sup>14</sup> The Committee notes that on page 26 of the Response of the Bolivarian Republic of Venezuela to the Questionnaire, reference is made to a Recruitment Manual (*Manual de Normas y Procedimientos para la Contratación de Persona Natural*), in which the staff contracts handled by the Public Prosecutor's Office are defined: Contracts for a Specific Period of Time; Contract for Consulting Services; Contract for Specific Works; Work Scholarship and Contract for Professional Fees. Subsequently, in an email sent on January 24, 2007, the Technical Secretariat received an explanation from the Bolivarian Republic of Venezuela indicating that this Manual is still at the preliminary draft stage, which why it was not reviewed.

<sup>15</sup> See Article 3 of the EPMP.

<sup>16</sup> See Article 7 of the EPMP.

<sup>17</sup> The Committee notes that on page 26 of the Response of Venezuela to the Questionnaire, reference is made to a Recruitment Manual (*Manual de Normas y Procedimientos para la Contratación de Persona Natural*), in which the staff contracts handled by the Public Prosecutor's Office are defined: Contracts for a Specific Period

Third, we note that the regulations assign the Attorney General of the Republic responsibility for deciding whether the assignment of professional positions is to take place by means of an assessment of credentials or through competitive examinations. This measure appears not to guarantee the equity, equality, and efficiency of a career service since those positions that require a competition and those for which competitions are not needed are not previously defined. A recommendation in this respect will therefore be given<sup>18</sup>. (Chapter III, Section 1.1., Recommendation 1.1.4 (c) of this Report.)

Finally, the Committee notes that soon of the positions listed in Article 3 of the EPMP as positions subject to free appointment and removal could, by their nature, be included among the positions open to the career service. The Committee believes that the country under review could consider revising this list and implementing a recruitment system in order to fill this type of vacancy through a merit-based competitive examination for access to the career civil service. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.4 (d) of this Report).

- With respect to the system of government hiring of public servants in the Office of the Comptroller of the Republic, the Committee takes note of the following:

First the Committee notes that Article 1 of the Personnel Statute of the Office of the Comptroller General of the Republic (EPCGR) states that through special internal regulations the Comptroller General will complement and develop the provisions of this Statute and approve any manuals and rules of procedures that may be necessary. However, no such manuals or rules of procedure seem to have been published.

The Committee notes that Article 8 of the EPCGR states that entry to employment in the Office of the Comptroller General shall be subject to a merit-based competitive examination, open to candidates under equal conditions, in order to guarantee objectivity. It further stipulates that the Human Resources Directorate will keep a Register of Eligible Candidates for recruitment purposes, in accordance with the rules on this matter. However, the Committee finds that the rules that govern the recruitment subsystem have not yet been established and will formulate a recommendation in this regard. (Chapter III, Section 1.1, Recommendation 1.1.5 (a) of this Report).

Second, the Committee is concerned that some of the positions listed in Article 4 of the EPCGR as subject to free appointments and removals, or as trust positions, could, by their nature, be included among the positions eligible for the career service. Thus, the Committee believes the State undergoing review would benefit from reviewing that list and from implementing a selection system to fill such vacancies through competitive merit-based competitions with access to the career service. The Committee will issue a recommendation in this regard. (Recommendation 1.1.5 (b) in Section 1.1, Chapter III, of this Report.)

Finally, the Committee points out that although Article 5 of the EPCGR states that the Director of Human Resources cannot be related to the Comptroller General within the fourth degree of consanguinity and second of affinity, Article 7 of the same Statute which defines the requirements for access to employment in the Office of the Comptroller General contains no provision regarding restrictions or incompatibilities to prevent people related by consanguinity or affinity from entering

---

of Time; Contract for Consulting Services; Contract for Specific Works; Work Scholarship and Contract for Professional Fees. Subsequently, in an email sent on January 24, 2007, the Technical Secretariat received an explanation from the Bolivarian Republic of Venezuela indicating that this Manual is still at the preliminary draft stage, which why it was not reviewed.

<sup>18</sup> *Ibid.*

the service. The Committee, will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.6 (a) of this Report).

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

In the results section of the Response of the Bolivarian Republic of Venezuela to the Questionnaire<sup>19</sup> a table with the heading, “Access by officials to employment in the Public Administration” and the following statement is found:

*“During 2004, 2005 and up to September 30, 2006 a total of 11,581 people entered the civil service. A number of these officials entered into career positions without going through the public competitive examination process in accordance with the Constitution and legislation. However, a process was undertaken to evaluate the credentials for entering the Public Administration and its entities are now allowing all officials who entered the Public Administration without going through the competitive examination process and wish to become career officials, to sit on a competitive examination. This would not however affect their entitlement to the economic benefits of their present position.”*

Table N° 1								
Access by officials to employment in Public Administration *								
Entry/Year	2004	%	2005	%	2006 to 30/09/06	%	Total staff at 30/09/06	
Public competitive examination	508	11%	118	3%	0	0%	626	
Freely appointed and removed from office	High level	81	2%	69	2%	31	1%	181
	Officials of Trust	880	19%	582	15%	335	11%	1.797
Contract	1,081	23%	1,415	36%	1,486	51%	3,982	
Laborers	1,404	30%	1,149	29%	424	14%	2,977	
Access to career public office without an examination	740	16%	625	16%	653	22%	2,018	
<b>TOTAL</b>	<b>4,694</b>	<b>100%</b>	<b>3,958</b>	<b>100%</b>	<b>2,929</b>	<b>100%</b>	<b>11,581</b>	

*\*Source: National Assembly, Ministry of Foreign Affairs, Ministry of the Interior and Justice, Office of the Attorney General of the Republic, Office of the Public Prosecutor, Ombudsman’s Office and Office of the Comptroller General of the Republic.*

First, it should be noted that Article 146 of the Constitution states, *inter alia*, that positions in the entities of the Public Administration are career positions and access to them is subject to a public competitive examination, based on principles of honesty, suitability and efficiency. There is further legislation on the matter, e.g. Article 40 of the Civil Service Statute Law which provides that “. . .appointments of career civil servants shall be null and void if they were not made on the basis of the competitive entry processes provided for in this law.”

<sup>19</sup> See pages 39 and 40 of the Response of Venezuela to the Questionnaire.

From the information provided by the Bolivarian Republic of Venezuela regarding the National Assembly, Ministry of Foreign Affairs, Ministry of the Interior and Justice, Office of the Prosecutor General of the Republic, Office of the Attorney General, Ombudsman's Office, and Office of the Comptroller General of the Republic, the Committee observes that over the last three years the proportion of officials who entered the career through a public competitive examination has fallen, to the extent that during 2006, as of September, no competitive examination had been held in those bodies, whereas there is a 22% increase in the number who entered career positions without taking the respective competitive examination. It should also be noted that even though, according to the explanation contained in the Response to the Questionnaire, the qualifications of these officials were evaluated, this does not mean that they took the public competitive examination based on principles of honesty, suitability and efficiency referred to in Article 146 of the Constitution.

The Committee is also concerned that the percentage of civil servants who entered the public administration during the same period of 2006 under a contract reached 51%. Considering the foregoing, the Committee will formulate a recommendation in this regard. (Chapter III, Section 1.1., Recommendation 1.1.6 (b) and (c) of this Report).

The Committee considers that the information submitted by the State undergoing review does not allow it to make a comprehensive evaluation of the results of these bodies in this area, and, consequently, it will formulate a recommendation in this regard (see Chapter III, General Recommendation 4.2 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 Bolivarian Republic of Venezuela has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Constitutional provisions applicable to all state entities, among which the following should be noted:

Article 299 provides that the socioeconomic regime of the Bolivarian Republic of Venezuela is based on the principles of social justice, democratization, efficiency, free competition, protection of the environment, productivity and solidarity, with a view to ensuring overall human development and a dignified and useful existence for the community. The State, jointly with private initiative, shall promote the harmonious development of the national economy, to the end of generating sources of employment, a high rate of domestic added value, raising the standard of living of the population and strengthen the economical sovereignty of the country, guaranteeing the reliability of the law; the solid, dynamic, sustainable, continuing and equitable growth of the economy to ensure a just distribution of wealth through participatory democratic strategic planning with open consultation.

Pursuant to Article 308, the State shall protect and promote small and medium-sized manufacturers, cooperatives, savings funds, family-owned businesses, microenterprises, and any other form of community association for purposes of work, savings and consumption, under an arrangement of collective ownership, to strength the country's economic development, based on the initiative of the people. Training, technical assistance and appropriate financing shall be guaranteed.

- Statutory and other legal provisions applicable to all State entities, among which the following should be noted:

- Article 38 of the Organic Law of the Office of the Comptroller General of the Republic and the National System for Fiscal Control provides that the internal control system implemented in the entities and agencies referred to in Article 9, sub-paragraphs 1 to 11, of this Law, must ensure that, before purchasing goods or services or preparing contracts that create financial commitments, the parties accountable must guarantee that the following requisites are complied with:

- Expenditure must be allocated to the appropriate budget item or to additional credits if applicable.
- There must be a budget available for the expense.
- The guarantees required must be sufficient to meet the obligations assumed by the contractor.
- Prices must be fair and reasonable, the only exceptions being those stated in other Laws.
- The provisions of the Public Tenders Law have been complied with, when appropriate, and in other applicable Laws.

The State must also ensure that before making any payments, the parties responsible must ensure that:

- Any applicable legal and regulatory provisions have been complied with.
- Budgetary credits or additional legally agreed credits have been properly allocated.
- Expenses have been budgeted for.
- Disbursements cover genuine and proven commitments, unless they are for advance payments to contractors or authorized advances to officials pursuant to the legislation in force.
- Payments are effectively credited to the party indicated.

Article 91, paragraph 1 states that, notwithstanding any civil, criminal or other statutory liability, administrative liability arises for acts, deeds or omissions with respect to the procurement of goods, services and works, if the appropriate procedures applicable in each case to the hiring of contractors are totally or partially not observed in accordance with the provisions of the Public Tenders Law or the applicable legislation thereto.

- Article 59 of the Organic Law on Administrative Procedures states that at any stage in the procedure the interested parties and their representatives are entitled to examine, read or copy any documents in the file, and obtain certified copies of them. Exceptions to this rule are documents classified as confidential by a hierarchical superior. Such documents shall be kept in a separate section of the file. Classification of a document as confidential must be based on a reasoned decision.

- Article 1 of the Decree-Law on the Partial Reform of the Public Tenders Law (DFLRPLL), states that the purpose of the Decree-Law is to regulate the procedure followed by the persons referred to in Article 2 of the Decree-Law to hire contractors to execute works, acquire movable property or provide services other than professional or labor services.

Article 2 provides that the entities listed below must comply with the provisions of the Decree-Law:

- National government agencies
- Autonomous institutes.
- The entities making up the District Capital
- State universities.
- Non-profit associations and companies in which the Republic and legal persons to which the previous paragraphs refer may own an equity stake of at least fifty per cent (50%).
- Non-profit associations and companies in which the non-profit associations and companies referred to in the previous paragraph own an equity stake of at least fifty per cent (50%).
- Foundations set up by any of the parties referred to in the previous paragraphs or in which they have the power to make management decisions.
- The States, Municipalities, autonomous state or municipal institutes, non-profit associations and companies in which they have a direct or indirect stake of at least (50%), as well as foundations set up by any of the entities mentioned in this paragraph, or those in whose management they have decision-making power, when the prices of the contracts to which this Decree-Law refers must be paid fully or partially paid out of their own funds, including the *situación constitucional* (the proportion of the national budget allocated to local state governments).
- Entities that receive subsidies or donations from the State or other public or private enterprises.

Pursuant to Article 3, the Decree-Law does not apply to lease agreements on real property, including financing, and the purchase of real property, insurance contracts and financial services provided by entities that are subject to the provisions of the General Law on Banks and Other Financial Institutions.

Article 4 also excludes processes for selecting contractors to supply goods or services or execute works from application of the Decree-Law if the total or partial value thereof was paid out of funds from international cooperation agreements between the Bolivarian Republic of Venezuela and other States; and it further states that the contracting entity must take steps to ensure that all the mechanisms and resources available in the respective bidding conditions are used in such procedures so as to guarantee ample participation in national tenders for goods and services.

Article 5 defines the meaning of the terms Contractor, Participant, Professional Services, Contract, Qualification, Classification, Bidder, General Bid, Selective Bid, Direct Award, Proven Emergency, Production Process, Base Budget and Electronic Media, as follows:

- Contractor. Any individual or body corporate that execute works, supplies goods or provides non-professional, non-labor services for any of the entities governed by this Decree-Law, by virtue of a contract, without a relationship of dependency.
- Participant. Any individual or body corporate who obtained bidding conditions to participate in a General Bidding Process or an International Invitation Call for Bids, or anyone who is invited to bid in a Selective Bidding or Direct Award Process.
- Professional Services. Services provided by individuals or bodies corporate by virtue of scientific, professional, technical, artistic, intellectual, creative or teaching activities undertaken by them on their own behalf, or by staff under them.
- Contract. Legal instrument that regulates goods, services and works procurement, including purchase orders and service orders.
- Qualification. Outcome of examining a participant's legal, technical and financial capacity of a participant to comply with obligations assumed under contract.
- Classification. Location of the interested party in specialist categories of the National Register of Contractors, defined by the National Contracting Service, based on its overall general technical capacity.
- Bidder. Individual or body corporate that has expressed an interest to participate in or offer any of the procedures foreseen in this Decree-Law.
- General Bid. Competitive procedure for selecting a contractor in which several foreign or national individuals or companies can participate, subject to compliance with the requisites set forth in this Decree-Law, its Regulations and the special conditions inherent to each process.
- Selective Bid. Exceptional competitive selection procedure used by a contractor in which the interested parties are invited by the contracting entity to bid on the basis of their technical, financial and legal capacity.
- Direct Award. Exceptional procedure for selecting a contractor in which the contractor is selected by the contracting entity pursuant to the provisions of this Law and its Regulations.
- Proven emergency. Unexpected events or circumstances that totally or partially paralyze the entity's activities, or threaten to do so.
- Production process. Process through which different variables intended to achieve a finished product or a particular service converge.
- Base budget. Cost estimate based on technical specifications for the procurement of goods, services or works.

- Electronic media. Instruments, devices, elements or tangible or intangible components that obtain, create, store, manage, code, handle, move, control, transmit and receive, data or data messages either automatically or manually and whose meaning seems clear to human beings or the equipment designed to interpret such media.

Article 6 provides that the President of the Republic at a Ministerial Council may, in keeping with the plans for economic development, issue temporary measures so that the contracting of the entities referred to in Article 2 of the Decree-Law, compensate adverse or unfavorable conditions that affect small and medium industries and cooperatives. These measures include, *inter alia*, setting margins of preference, categories or amounts of reserved contracts, use of contracting schemes that involve the incorporation of goods with national value added content, transfer of technology, incorporation of human resources, programming of deliveries, which serve as a means of promotion and development for small and medium industries companies that produce goods or provide services and are located in certain parts the country.

Article 7 provides that in the evaluation of criteria, the contracting entity must take the necessary steps to incorporate as much national content as possible in bids for goods and related services produced by small and medium sized industries. It must also establish conditions conducive to national development by incorporating licenses for the use of technology. These conditions, which must be clearly defined, must be objective and non-discriminatory and will be identified in the call for bids and detailed in the bidding conditions.

Article 11 provides that a permanent bid commission must be created in the entities that are subject to compliance with the provisions of this Decree-Law. Depending on the complexity of the works to be carried out, the bid commissions may be set up to procure goods and services. These commissions shall have an uneven number of members who must be professionally qualified, competent and known for their honesty. They will be appointed by the highest authority of the procuring entity, preferably from its officials, and the legal, technical, economic and financial areas must be represented in the commissions.

Article 12 stipulates that the Comptroller General of the Republic and the contracting entity's internal oversight body must appoint representatives to act as observers. These representatives shall not have the right to vote in the bidding processes.

Article 18 creates the National Procurement Service, which has, budgetary, financial and operational autonomy in all the areas under its responsibility. It is an organ of the Ministry of Production and Commerce<sup>20</sup>. Its attributions are defined in Article 19 and are the following:

- Submit to the National Executive the draft regulations necessary for the enforcement of the Decree-Law.
- Issue its internal regulations for its operation.
- Issue decisions on matters within its competence, as required by the judicial or administrative authorities.

---

<sup>20</sup> The website of the National Contracting Service (*Servicio Nacional de Contrataciones*) is: <http://www.snc.gob.ve>

- Keep the National Register of Contractors up to date using available technology.
- Establish the organizational and operational standards of the National Register of Contractors as well as the criteria according to which the classification of the specialty and the legal and financial qualification of the interested parties will be determined, so they can be included in the National Register of Contractors.
- Suspend anyone who infringes the provisions of the Decree-Law of the National Register of Contractors, in accordance with the foreseen procedures.
- Design and coordinate the information systems and the procedures for enforcing this Decree-Law.
- Design and coordinate the implementation of procurement training programs in conjunction with the Superintendence for the Promotion and Protection of Free Competition.
- Obtain, compile, systematize, disseminate and provide information on the annual and quarterly programming of procurement processes to anyone who requests it.
- Approve the amounts to be charged for their services, publications or the provision of available information.
- Promote and strengthen the creation and enhancement of technical standards on works, goods and services, in coordination with the competent agencies and institutions.
- Promote and strengthen the creation and enhancement of oversight systems for works, goods and service procurement by the entities referred in Article 2 of this Decree-Law.
- Follow up the information received from the entities that must comply with the provisions of this Decree-Law.
- Prepare files containing irregularities so they can be submitted to the Office of the Comptroller General of the Republic and so that the sanctions provided for in this Decree-Law are applied.
- Any other attributions stipulated in this Decree-Law and its Regulations.

Pursuant to Article 23, each October prior to the end of each fiscal year, the entities that must comply with the provisions of the Decree-Law shall remit the program of works, services and goods procured for the following fiscal year to the National Procurement Service. Procurement classified as confidential for security reasons is exempt from this requirement.

Article 24 provides within fifteen (15) consecutive days after the end of each quarter, entities that are subject to compliance with the provisions of the Decree-Law, must remit to the National Procurement Service a summary of procurement undertaken during that quarter, for each procedure envisaged in this Decree-Law. The summary must contain the identification of each procedure, its type, object, name of the participating companies, the successful bidder and the amount of the contract.

In accordance with Article 28, the National Register of Contractors must operate from the headquarters of the National Procurement Service in accordance with the provisions of the Decree-Law; and the Minister of Production and Commerce may create or eliminate Auxiliary Registries.

Article 29 states that the purpose of the National Register of Contractors is to centralize, organize and supply basic information, in a manner that is efficient, reliable and timely, so that it can be qualified on the basis of its legal and financial content and classified by specialty, under the terms stipulated in the Decree-Law and its Regulations. It must therefore:

- Undertake the ongoing systematization, organization and consolidation of the data provided by the persons who are registered and the entities governed by this Decree-Law.
- Provide to the public and private entities with information on the persons registered.
- Prepare and publish a directory containing the qualification and classification of contractors by specialty.
- Request from the contractors the documentation required under this Decree-Law and its Regulations, so that it can be identified, qualified in accordance with its legal and financial content, and classified by specialty.
- Agree or deny registration pursuant to the terms of this Decree-Law.
- Decide on the legal and financial qualification and classification by specialty, in keeping with the standards and procedures laid down by the National Procurement Service.
- Agree or deny the issuance of the certificate of registration, having ascertained compliance with the requirements under the Law and its regulations.
- Take any other action indicated in the Law and its Regulations.

Article 30 states that anyone shall be entitled to consult the information contained in the National Register of Contractors.

Article 31 states that the National Register of Contractors may require that registered persons submit all the documentation stipulated in the provisions of the Decree-Law and its Regulations, and they are under obligation to provide it when requested. They may also examine any books or documents and carry out any audits or evaluations considered necessary, on any persons who applied for registration and who registered or entered into contracts with any of the entities governed by the Decree-Law within the previous three (3) years.

Article 34 provides a resource to ensure the continuous improvement of these processes by allowing the procurement entities to assess the contractor's performance in the different categories of contracts established in the Regulations to the Decree-Law. The results of the assessment must be reported to the contractor by management or the unit responsible for the technical aspects of the contract, no later than twenty (20) working days after conclusion of each contract, and must indicate the circumstances that occurred during execution thereof. The contractor may file an administrative recourse as provided for under the Organic Law on Administrative Procedures.

Article 36 stipulates that contractors must be registered in the National Register of Contractors in order to tender offers for any General or Selective bidding processes or Direct Award process governed by this Decree-Law for an amount in excess of five hundred tax units (approximately US\$7,665.00) in the case of procurement of goods or services, or one thousand five hundred tax units (approximately US\$22,995.00) in the case of construction of works. Inclusion in the National Register of Contractors shall not be required for International Invitation Call for Bids, scientific or artistic works and highly specialized services used only sporadically.

Article 42 provides that the procedures for recruiting contractors under the provisions of the Decree-Law will be carried out based on the principles of economy, transparency, honesty, efficiency, equality, competence and publicity.

Article 47 states that bidding conditions must, at least, contain a clear and concise definition of:

- The goods, services or works to be procured with lists of quantities and related services and drawings, if applicable.
- Detailed technical specifications of the goods to be purchased or included in the works, if applicable. COVENIN standards and any other compulsory technical standards must be included in the technical specifications.
- Language of the statements of intent and bids, deadline and place for submitting them, and minimum period of validity.
- Currency of the bids and conversion rates to a common currency.
- Deadline and place where participants may ask the contracting entity to clarify the bidding conditions.
- Authority authorized to clarify queries, amend bidding conditions and notify decisions regarding the procedure.
- The requirement that the offer stipulate the address where notifications must be made and the person responsible for receiving them.
- The manner in which any arithmetical errors or disparities in the amounts included in the offers would be corrected.
- Qualification criteria, their weight and how such criteria will be quantified.
- Evaluation criteria, their weight and how price and other factors defined as criteria will be qualified, taking into account the aspects contained in Chapter I, Title II of this Decree-Law.
- Deadlines for awarding the contract.
- Draft contract to be entered into with the beneficiary of the contract award.
- Standards, methods and tests to be applied to determine whether the goods or works delivered meet the specifications.

- Method, deadline and conditions for delivering the goods or services or executing works procured under the bid, and any related services that the contractor must provide under the terms thereof.
- Conditions and requisites of the guarantees required under the contract.
- Sample statement of intent, bid and bonds or guarantees.

Article 58 states that receipt and opening of envelopes containing statements of intent and bids shall be public. All other procedures shall be decided by the interested parties in accordance with the terms and conditions established in this Decree-Law.

Article 60 stipulates that invitations to tender must be announced on the two (2) days of the week established in the regulations on the matter. These announcements must be published in a major national newspaper and must be grouped consecutively on one or several pages, until such time as an official circular is published for that purpose.

Article 61 states that a General Bidding Process or an International Invitation Call for Bids shall be used:

- For the procurement of goods and services if the estimated amount of the contract to be granted is for an amount in excess of eleven thousand tax units (approximately US\$154,000); and
- In the case of the construction of works, if the estimated amount is for an amount in excess of twenty-five thousand tax units (approximately US\$349,000)

Article 67 provides that invitations to tender in General Bidding Processes or International Invitation Call for Bids shall be published in a major newspaper.

Article 72 states that a Selective Bidding Process shall be used:

- If the estimated amount of a contract for the procurement of goods or services is more than one hundred thousand tax units (approximately US\$15,349) and no more than eleven thousand tax units (approximately US\$154,000);
- If the estimated amount of a works contract is more than eleven thousand five-hundred tax units (approximately US\$161,000) and no more than twenty-five thousand tax units (approximately US\$349,000)

Article 73 adds that a Selective Bidding Process is in order in the following cases, provided that the highest authority of the contracting agency or entity provides a reasoned decision to justify using this method:

- Procurement of highly specialized equipment for experimental, research and educational purposes.
- For reasons of State security, as stipulated in the Regulations to the Organic Law of the Office of the Comptroller General of the Republic.

- If, according to the information provided by the National Register of Contractors, the goods required are produced or sold by no more than five (5) manufacturers or suppliers, or if no more than five (5) companies are able to execute the works or provide the services in question.

Article 79 indicates that when qualifying, examining, evaluating and deciding on a contract, the contracting entity must abide by the bidding conditions, in terms of the definition, weighting and procedure established therein.

Article 85 states that the Commission's report must recommend that a contract be awarded on the basis of the criteria and mechanisms contained in the bidding conditions. In no case may the Commission apply criteria or mechanisms that are not contained in those conditions, or change or fail to apply the conditions contained therein. The report must indicate whether there are other offers that satisfy the bidding conditions and could be the second or third choice.

Article 87 provides that Direct Awards shall be used:

- For the procurement of goods and services when the estimated amount of the contract does not exceed one hundred thousand tax units (approximately US\$15,349)
- For the construction of works, when the estimated amount of the contract does not exceed eleven thousand five hundred tax units (approximately US\$161,000)
- For goods, services or works to be procured from a public sector entity.

Pursuant to Article 88, a Direct Award Process is in order in the following cases, provided that the highest authority of the contracting agency or entity provides a reasoned decision to justify this method:

- For supplies required to continue the production process, if a delay in opening a bidding procedure is likely to seriously affect the continuity of the production process;
- For the purchase of artistic or scientific works.
- If, according to the information provided by the National Register of Contractors, the goods and services to be procured are produced, sold or provided by a sole manufacturer or supplier or if the technical conditions of the goods, services or works in question exclude the possibility of any competition whatsoever.
- For contracts for manufacturing equipment, purchasing goods or contracting services where it is not possible to apply bidding procedures, given the modalities under which the manufacturers and suppliers agree to produce or supply the goods, equipment or services in question.
- If a state of emergency or civil unrest is declared at home or abroad.
- In the event of a proven emergency within the respective agency or entity.
- In the case of services that are essential to keep the institution operating.

- In the case of works or goods regulated by contracts that have been annulled or rescinded and a delay in opening a new bidding procedure might be detrimental to the contracting entity.
- In the case of the procurement of works, services or goods procured which, for reasons of general interest, must be undertaken within a maximum period of one hundred and eighty (180) working days, in keeping with an exceptional economic and social development plan already approved at a Ministerial Council. The works, services and goods to be contracted through a direct award process will be defined in detail at a Ministerial Council, as will the agencies or entities responsible for their execution.

Article 95 states that all bidders must be informed of the award decision, which concludes the bidding procedure. Bidders who are disqualified from the process must also be informed of the reasons for taking the decision.

Article 96 provides that the notifications referred to in this Decree-Law must fill the requisites established in the Organic Law on Administrative Procedures and must be delivered to the address given on the register of recipients of bidding conditions, unless otherwise indicated on the offer.

Article 97 states that in the case of the notification of the decisions issued by the National Register of Contractors, this must be delivered to the address indicated on the interested party's request for registration.

Article 101 stipulates that the filing of an appeal shall not suspend the contested decision to award the contract.

Article 102 provides that decisions issued by the highest authority of the contracting entity or the highest authority of the National Procurement Service are the last recourse to administrative action and these decisions can only be appealed through an administrative recourse pursuant to the Organic Law on Administrative Procedures.

Article 107 stipulates that all statements of intent, bids and any other documents received or taken into account in the bidding or direct award procedures, as well as reports, opinions and any other acts or actions arising therefrom, must be included in the file. This file shall be kept in the archives of the administrative unit of the contracting entity for at least three (3) years after the procedure is concluded.

Article 108 points out that all the bidders in a procedure governed by this Law shall be entitled to examine, read or copy any documents in the file, examine the file, and obtain certified copies of them after the procedure is concluded, regardless of the result. Exceptions to the provisions of this article are documents classified as confidential according to the Organic Law on Administrative Procedures. The file may be examined, read or copied during the contracting entity's working hours, subject to a written request at least two (2) working days in advance.

Article 112 provides that if the “*buena pro*”<sup>21</sup> is awarded, or any other decision reached under this Decree-Law and its Regulations, on the basis of false information or the infringement of legal provisions, the contracting entity may declare the award null and void.

Article 113 states that the contracting entity may declare contracts void in the following cases:

- If the “*buena pro*” through which the contract was awarded is annulled.
- If according to the Law the contracts should have been subject to General or Selective bidding procedures and the contract was awarded without those procedures being followed.
- If the contracts awarded do not comply with the conditions set forth in the respective bidding conditions and the offers submitted.

Article 117 provides that the procedures for selecting contractors contained in the Decree-Law may be undertaken using information technology and communication methods that guarantee the principles of transparency, honesty, efficiency, equality, competence, publicity, authenticity, rule of law and confidentiality. In order to guarantee these principles, the contracting entity must use security systems that allow participants free access to the documents registered or stored in electronic format or similar methods that must be stipulated in the bidding conditions.

Article 118 states that when the procedures for selecting contractors envisaged in the Decree-Law call for compliance with certain formalities and conditions, these may be carried out using electronic methods.

Article 119 stipulates that, subject to approval by the Bid Commission, the contracting entity, depending on its availability and technological preparation, must include in the bidding conditions the possibility of participation through electronic bidding methods, in which case the technological aspects, programs and other requirements necessary in order to participate in the respective selection procedure must be specified. Only secure and commonly used elements and programs may be used and impartiality guaranteed, regardless of the technology used. In the case of programs that allow documents, communications and bids to be read, displayed and understood electronically, at least three (3) programs whose quality is widely acknowledged shall be made available. Contractors may choose to use whichever program they prefer. In all cases, compliance with the principles foreseen in this law and the applicable rules contained in legislation on data messages and electronic signatures shall be guaranteed.

Article 121 provides that in the procedures that employ electronic media to select contractors, contractors may participate using the electronic methods and/or the other methods foreseen in this Decree-Law. Therefore the existence of mechanisms that allow persons who do not have access to those methods to exercise their rights and comply with their obligations using traditional methods shall be guaranteed in order to ensure respect for the principle of non-exclusion.

- Article 1 of the Partial Regulations of the Decree on the Partial Reform of the Public Tenders Law (RPDRPLL) states that its purpose is to develop the rules of the Decree-Law on the Partial Reform of the Public Tenders Law which regulates the National Register of Contractors and registration, the

---

<sup>21</sup> In Venezuela, the term “*buena pro*” is used to convey the acceptance or approval of the proposal or bid by the organs of the Public Administration.

Auxiliary Registries of Contractors, the Bid Commissions, direct awards and the suspension and reintroduction of bidding procedures.

Pursuant to Article 13, Auxiliary Registries have the following attributions:

- Request that contractors furnish all the documentation required according to the rules of the National Procurement Service procedures in order to ascertain the identification, legal and financial qualification and classification by specialty.
- Send to the National Register of Contractors the information required for registration, in keeping with the rules established by the National Procurement Service.
- Carry out audits, under the coordination of the National Register of Contractors, on companies that are registered or have applied to register, in keeping with the rules established by the National Procurement Service.
- Inform the National Procurement Service of any cases where fraudulent practices or corruption on the part of a registered company or a company that applied to register or update or renew its new registration, are detected.
- Any others that are delegated by the National Procurement Service to the Auxiliary Registries.

Article 14 states that in order to register on the National Register of Contractors, the interested parties must log on to the online National Register of Contractors (RNC) system through its webpage and provide general, legal and financial data and information on the specialty following the instructions contained in the User's Manual for Contractors prepared by the National Procurement Service. After entering the data required by the system, applicants present the documents required by the National Procurement Service and the forms produced online by the RNC system at an Auxiliary Register. For applicants who are unable to register on line, the National Register of Contractors will create alternative mechanisms to enable them to register.

Article 28 provides that in the case of a Direct Award, in keeping with the provisions of Articles 87 and 88 of the Decree on the Partial Reform of the Public Tenders Law, the contracting entities may choose to use private bidding and price consultation mechanisms.

Article 29 indicates that whenever possible when contracts are award directly the contracting entity must comply with the terms contained in Article 28, in the order in which they are listed and justify its selection of the bidder and the reasons for not using the other mechanisms available, if applicable.

Article 30 states that in the case of a private bid, the contracting entity shall request offers from at least three (3) companies, in sealed envelopes and the selection shall be made taking into account compliance with the criteria contained in the requirements.

Article 31 provides that in the case of a price consultation, the contracting entity must obtain quotes from at least three (3) companies before deciding which one to award the contract to.

Article 34 provides that the Ministers and senior authorities of the entities referred to in Article 2 of the Decree-Law on the Partial Reform of the Public Tenders Law must adopt the necessary measures so that contracts that are to be financed through international cooperation agreements between the

Bolivarian Republic of Venezuela and other states contain the highest possible proportion of domestic inputs.

- Article 1 of the Partial Regulations on the Decree on the Partial Reform of the Public Tenders Law for Direct Awards, states that its purpose is to establish the procedure to be followed for direct awards by the persons referred to in Article 2 of the Decree on the Partial Reform of the Public Tenders Law. The hiring of contractors for goods, services or works must be executed within a maximum period of one hundred and eight (180) working days in accordance with the Exceptional Economic and Social Development Plan drawn up to promote small and medium industry and alternative enterprises such as collective enterprises, cooperatives and self-managed microenterprises.

Article 3 states that the contracting entities and agencies must incorporate in the evaluation criteria the highest possible proportion of domestic inputs of goods and related services produced by small and medium industries or alternative enterprises such as: collective enterprises, cooperatives and self-managed microenterprises, complying with the temporary measures in force and any others pertinent measures issued by the National Executive.

Article 4 provides that offers submitted by the enterprises mentioned in the previous article shall be evaluated and considered if their headquarters or place of manufacture is physically located in the area where the contracting entity or agency that needs the goods, services or works is located, in accordance with these Regulations.

Pursuant to Article 5, bids shall be selected through a competitive price evaluation of the submitted offers, considering the National Value Added (NVA), contracts reserved for the State and the additional preference laid down in Article 4.

Article 6 states that the contracting entities and agencies that conduct procedures in accordance with these Regulations must:

- Select the small and medium enterprises, cooperatives and other collective associations that are on the National Register of Contractors.
- Issue and approve the conditions of the Participation and Technical Specifications of the public contracts included as programs or projects in the Exceptional Economic and Social Development Plan prior to compliance with the technical standards and regulations in force, and deliver them with the invitation to participate in the direct tender process foreseen in these Regulations.
- Establish the public competitive examination mechanism for the receipt and opening of offers at which the companies selected and interested in participating will be present, respecting the principles set forth in Article 42 of the Decree on the Partial Reform of the Public Tenders Law.
- Remit to the National Procurement Service within ten (10) working days following the signature of each of the contracts executed in accordance with these regulations, a list of the following details: number, date, purpose and amount of the contract, and name of the federal entity in which it will be executed. The incorporated name of the successful bidder must also be given, its Fiscal Information Registration (RIF) number, and the incorporated names of the participating companies and their respective RIF numbers.

- Presidential Decree No. 1,427 on general procurement conditions for the publication of works governs contracts entered into by the Republic through Ministries or other Central Administration agencies. This Decree bans contractors from partially or totally assigning or transferring a contract without authorization from the contracting entity and further states that the contractor must post a performance bond issued by a bank, financial institution or insurance company, to the satisfaction of the contracting entity, for the amount indicated in the main document, to guarantee compliance with all the obligations assumed under the contract.

This same Decree states that the contracting entity must monitor and inspect the work undertaken by the contractor and the contract must indicate the period that must elapse before it is certain that the works and related installations, equipment and services are free of defect and operate properly.

Article 9 of the Decree states that any queries, controversies and complaints that may arise as a result of the contract and are not solved by the parties by mutual agreement or in the manner foreseen in the Decree, shall be settled by the competent courts of the Bolivarian Republic of Venezuela in conformity with its laws, and no complaints from other countries shall be admitted for any reason whatsoever.

- Presidential Decree No 3,798 on the temporary measures for establishing the amounts and categories reserved for alternative companies that manufacture goods, provide service and execute works. Alternative companies mean: bodies corporate of a social and participatory nature, whose main domicile can only be in Venezuela, which have been incorporated under the legislation applicable to them, such as cooperatives, family firms, microenterprises and any other form of community association for the purpose of work.

Article 4 indicates that in the case of procedures for selecting contractors envisaged in the Decree-Law of the Partial Reform of the Public Tenders, cost-based competitive contracts and the following categories are reserved for alternative enterprises:

- Amounts: For the procurement of goods and services, if the estimated amount of the contract does not exceed ten thousand five hundred tax units (approximately US\$160,965.00); for the procurement of works, if the estimated amount of the contract does not exceed twenty-four thousand tax units (approximately US\$367,920.00).
- Categories:
  - *Goods*: LINENS: sheets, towels, blankets table cloths, table napkins and similar items; CLOTHING: men's shirts, jackets, pants, women's blouses, T-shirts, caps, uniforms for cleaner and laboratory technicians, overalls, nurses uniforms, vacation camp and sports uniforms; etc.
  - *Services*: maintenance, repairs and cleaning of homes, buildings and other premises and oil installations; this includes cleaning of windows, blinds and ceilings, etc.; electricity, which includes for example: installation, cabling, electrical and light sockets and switches; cleaning and unplugging of drains, gutters and general plumbing; maintenance and repair of black, gray and white water plant and equipment at oil fields and industrial facilities; sump cleaning, collective and individual personnel transportation; transportation and collection of oil waste; cleaning of automotive vehicles, trains, and boats and shipping vessels; mechanical

and electrical maintenance, upholstery, vehicle bodyshop and paintshop, upholstery, and mechanical and electrical maintenance; and minor mechanical work; general hotel and hotel services maintenance; carpet fitting; installation of doors, bolts, locks and cylinders; general and laundry services; road marking, signing, cleaning and pothole patching; manufacture, maintenance and repair of office and school furniture and equipment; food and refreshment supplies; vacation plans, organization of events an protocol, beach and club cleaning; unarmed security; non-toxic waste collection and disposal; vegetation control: cutting, trimming, sewing and maintenance of ornamental plants, irrigation, maintenance of squares, parks and gardens; water plant and watering systems; railway cleaning; dual-mode vehicle repair; urban, internal, intraurban and interurban messaging; minor repairs and maintenance of office, medical, refrigeration, telecommunications, and computer equipment and accessories not covered by the original equipment manufacturer (OEM); ironwork and carpentry, including repair, manufacture and maintenance of furniture, buildings and premises; minor repairs and maintenance of industrial assets (drills, flow stations, electrical plant, oil wells, machinery, etc.)

- *Works*: Minor completion and installation: paintwork, partitioning, floors, ceilings, plastering, windows, blinds, doors and stairs; refurbishing, expansion, maintenance and enhancement of civil works anywhere in any geographical region.

- Presidential Decree No 4,000 on temporary measures for the promotion and development of small and medium industries, cooperatives or any form of collective enterprise, goods manufacturers, service providers and works enterprises in the country.

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

With respect to the constitutional and legal provisions that refer to the principal systems of the procurement of goods and services in the Bolivarian Republic of Venezuela that the Committee has examined, based on the information available to it, they constitute a set of measures relevant to promoting the purposes of the Convention.

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

- First, with reference to Article 3 of the Decree-Law on the Partial Reform of the Public Tenders Law (DFLRPLL), the Committee suggests reviewing the grounds for which the Decree does not apply to insurance contracts or contracts for financial services, since there is no reason to justify their exclusion. The Committee will issue a recommendation on this point. (Recommendation 1.2.1 (a) in Section 1.2, Chapter III, of this Report.)

- Second, as regards access to information on procurement processes, the Committee is concerned that Article 108 of the DFLRPLL establishes that all bidders who participate in a procedure governed by that Law shall be entitled to examine the file and read or copy any documents contained therein, once the procedure has concluded, regardless of the result. Progress has been made in that regard. However, the same article exempts documents declared as confidential in accordance with the law governing administrative procedures.

The Committee notes with regard to the previous paragraph that Article 59 of the Organic Law on Administrative Procedures states that at any stage in the procedure the interested parties and their representatives are entitled to examine, read or copy any documents in the file, and obtain certified copies of them. Exceptions to this rule are documents classified as confidential by a hierarchical superior. Such documents shall be kept in a separate section of the file. The decision to classify a document as confidential must be based on a reasoned decision.

The Committee is concerned that Article 59 of the Law on Administrative Procedures affords superiors a broad margin of discretion in ruling a document confidential and hence to kept separate from the file and away from public access. The Committee will issue a recommendation on this point. (Recommendation 1.2.1 (b) in Section 1.2, Chapter III, of this Report.)

- Thirdly, with reference to the authorities that oversee or manage the control mechanisms and systems, the Committee notes that in its response the State under review says that the governing authorities of the procurement system are the President of the Republic, the highest officials of the National Public Powers responsible for spending, the bidding committees, the National Procurement Service, and the National Register of Contractors. The Committee thus notes that there is not a central body that manages the control systems and mechanisms. The Committee therefore believes that the State under review would benefit from strengthening the National Procurement Service as the independent, central authority responsible for public procurement, and it will issue a recommendation on that point. (Recommendation 1.2.2 (a) in Section 1.2, Chapter III, of this Report.)

Since the existence of social control mechanisms for contracting – such as qualified citizen oversight bodies – would help promote an integral system of effective and efficient control, the Committee will formulate a recommendation in that regard to the State undergoing review. (Recommendation 1.2.2 (b) in Section 1.2, Chapter III of this Report.)

The Committee notes that Article 36 of the DFLRPLL states that inclusion in the National Register of Contractors is not necessary for bidding processes that are announced internationally, scientific and artistic projects, and highly specialized services used only sporadically. The Committee believes the State could consider creating a register for bidding processes that are announced internationally. the Committee will formulate a recommendation on this point. (Recommendation 1.2.2 (c) in Section 1.2, Chapter III of this Report.)

- Fourthly, with regard to electronic and information systems for government procurement, the Committee has noted that Article 60 of the DFLRPLL provides that processes related to staff recruitment must be announced twice a week on the dates stipulated by the regulations governing the matter. They must also be advertised in a major national newspaper until an official publication is created for that purpose. However, the Committee is not aware that up to now the DFLRPLL has published any regulations governing the subject of publications, or that an official publication has been created for that purpose. Likewise, the country under review would benefit from the use of modern computer-based methods such as the Internet to publish this information. The Committee will formulate recommendations in this regard. (Chapter III, Section 1.2. Recommendation 1.2.3 (a) and (b) of this Report).

The Committee also notes that Article 67 of the DFLRPLL states that new general bidding processes, including international invitations to tender, must be published in a major national newspaper. The Committee considers that the State under review could consider using modern means of

communication such as the Internet for these purposes. The Committee will formulate a recommendation in this regard. (Chapter III, Section 1.2., Recommendation 1.2.3 (c) of this Report).

The Committee also notes that the Bolivarian Republic of Venezuela does not have an electronic procurement system, and it believes the Country under review would do well to consider the creation of such a system, to be available to all agencies of the Public Administration, and it will formulate a recommendation in that regard. (Recommendation 1.2.3 (d).)

- Fifthly, the Committee notes that the legislation governing public procurement is spread around several decrees, partial amendments, and other instruments. The Committee thus believes that the State under review would benefit from consolidating its law into a single, concise, defined document, which would make its enforcement much more accessible and understandable – both for the public employees responsible for its implementation and for the members of the public who are to use it. This would create a more efficient and economic dynamic in line with the principles of disclosure, equity, and efficiency as set out in the Convention. The Committee will therefore formulate a recommendation on this point. (Recommendation 1.2.4 (a) in Section 1.2, Chapter III of this Report.)

It should be noted that the selection principles or criteria that determine awards in selection processes are set out only in the rules or conditions of each bidding process and are not defined in law. In order to invest these processes with more objective and transparent selection criteria, a recommendation will be formulated on this point. (Recommendation 1.2.4 (b) in Section 1.2, Chapter III of this Report.)

With the purpose of making the procurement process more transparent, it is suggested that preliminary bids are published so interested parties may be able to access them and make comments. A recommendation will be made in that regard. (Recommendation 1.2.4 (c) in Section 1.2, Chapter III of this Report.)

Lastly, the Committee considers necessary that the Bolivarian Republic of Venezuela gets a system of information that publish the bidding processes and that all interested citizens be able to consult it. For this reason a recommendation will be made. (Recommendation 1.2.4 (d) in Section 1.2., Chapter III of this Report.)

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

The Bolivarian Republic of Venezuela, in the results section of its Response to the Questionnaire, makes the following comment:

*“Table N° 2 shows the number of public procurement processes for goods, services and works in 2004 and 2005, the amount of money invested per type of process and the share of each type as a percentage of the total amount invested in those processes (equivalent to approximately US\$165,142,652.33 and US\$2,089,309,261.20 in 2004 and 2005 respectively).”*

<b>Table N° 2. Procurement of goods, services and works expressed in billions of bolivars *</b>						
<b>PROCESS/YEAR</b>	<b>2004</b>			<b>2005</b>		
	<b>Number</b>	<b>Amount</b>	<b>%</b>	<b>Number</b>	<b>Amount</b>	<b>%</b>
General Bidding (Art. 61 LL)	53	124,345.92	35%	53	4,078,047.69	91%
Selective Bidding (Art. 72 and 73 LL)	37	64,578.57	18%	46	88,830.91	2%
Public procurements contracts for goods or services through Direct Award selection process (Art. 87 LL), for contracts not exceeding 1,100 tax units.	3,291	10,196.92	3%	3,387	18,373.55	0%
Works procurement contracts through Direct Award selection process (Art. 87 LL), for contracts not exceeding 11,500 tax units.	79	10,418.14	3%	266	51,565.47	1%
Procurement contracts for goods or services through Direct Award selection process (Art. 88 LL), regardless of the amount of the contract.	86	19,251.26	5%	146	57,375.65	1%
Works procurement contracts through Direct Award selection process (Art. 88 LL), regardless of the amount of the contract.	6	1,535.18	0%	88	137,616.41	3%
Temporary Measures contracts (Decree 1892 dated July 30, 2002; Decree 2876 dated April 6, 2004) and (Decree 3798 dated August 1, 2005; Decree 4000 dated October 17, 2005)	61	124,730.72	35%	68	60,205.22	1%
<b>Totals</b>	<b>3,613</b>	<b>355,056.70</b>	<b>100%</b>	<b>4,054</b>	<b>4,492,014.91</b>	<b>100%</b>

\*N.B.: Does not include information on states and municipalities

*\*Source: National Assembly, Ministry of Foreign Affairs, Ministry of the Interior and Justice, Office of the Attorney General of the Republic, Office of the Public Prosecutor, Ombudsman's Office, Supreme Court of Justice and Office of the Comptroller General of the Republic*

The Inspection Section (*Gestión Fiscalizadora*) of the 2005 Management Report (*Informe de Gestión*) of the Office of the Comptroller General of the Republic, contained the following on the general situation of the agencies and entities evaluated:

*“Based on the results of the inspections carried out we must reiterate what has been expressed in previous years regarding the continued existence of a series of failures, shortcomings, deeds, acts and omissions that adversely affect public management, and in particular the increase in the number of cases which occur due to the conduct of officials whose values are not in keeping with public*

*ethical values and who are in charge of managing public resources. The following is what we consider to be some of the most relevant aspects, to facilitate a better understanding of the situation:*

*“The Central government’s assets are considerably eroded by the loss in revenue from unpaid, uncharged or uncollected taxes, duties and contributions, undelivered receipts, missing assets, remaining portions of funds pending reimbursement, duties pending collection, duties pending with a credit balance, deficit in fiscal credit balances, missing stamp duty, purchases made without following the procedures laid down in the Public Tenders Law and misappropriation of public funds, as a result of which objections on 20% of the accounts examined were filed. Other issues included delays in the execution of public works. One example is the construction of two subsystems for wastewater collection as part of the Lake Valencia Clean-Up Project scheduled for completion within a two-year period which began on September 26, 1990, and at the time of the inspection (2005) was still unfinished. Another example is the Program to Modernize the National Hydrometeorological Measurement and Forecasting System, completion of which as of April 30, 2005 was already delayed by 16 months. In 80% of cases, contracts are not ready on time and cost up to 195% more than estimated<sup>22</sup>.”*

(...)

*“It is important to point out the fact that the National Executive has been giving the fight against corruption the importance it deserves, incorporating it in its strategic guidelines, which coincide with the Office of the Comptroller General’s vision of corruption. We call this type of corruption social terrorism, since mismanaged funds and resources that are diverted from the purpose for which they were envisaged, are detrimental to the citizens in general and the poorest and most vulnerable sectors in particular. This is why coordinated action must be undertaken among all the public branches of government, and citizens (who have a fundamental role to play in this struggle, because of their ability to exercise oversight on behalf of society and take part in public affairs), in order to keep on strengthening the educational and preventive work that enables all of us to be truly responsible for seeing that public funds are used correctly for the benefit of the country<sup>23</sup>.”*

Taking in account the information provided by the Bolivarian Republic of Venezuela in its Response to the Questionnaire, as well as the information contained in the report of the Office of the Comptroller General of the Republic quoted above, the Committee considers that the country under review could benefit from undertaking concerted action with the branches of government and citizens in order to strengthen the educational and preventive work needed in order to enforce the corresponding legislation, thereby ensuring that public tenders will become the norm and not the exception in government procurement. The Committee will formulate a recommendation in this regard. Chapter III, Section 1.2., (Recommendation 1.2.1 (c) of this report).

Lastly, the Committee notes that the information included in Venezuela’s response to the questionnaire regarding statistics on procedures for selecting contractors, does not include any data for 2006, and it is limited to only 8 public agencies, which does not make it possible to undertake a comprehensive evaluation of the results for that period. (See General Recommendation 4.2.).

---

<sup>22</sup> See page 1 of the Report of the Office of the Comptroller General of the Republic.

<sup>23</sup> See page 9 of the Report of the Office of the Comptroller General of the Republic.

## **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 Bolivarian Republic of Venezuela has a set of provisions related to the above-mentioned systems, among which the following should be noted:

- Article 55 of the Constitution provides that everyone is entitled to receive protection by the State through its citizen safety agencies regulated by law, from situations that affect or constitute a threat, vulnerability or risk to the physical integrity of individuals, their properties, the enjoyment of their rights or the fulfillment of duties. It further states that the participation by citizens for purposes of prevention, citizen safety and emergency management shall be regulated by a special law.

- Statutory and other legal provisions, among which the following should be noted:

- The Anti-Corruption Law (LCC) whose purpose in accordance with Article 1 is to set the standards that will govern the conduct of the persons subject to its provisions, guarantee the proper and transparent management of public resources based on the principles of honesty, transparency, participation, efficiency, efficacy, legality, accountability and responsibility laid down in the Constitution of the Bolivarian Republic of Venezuela, and the criminalization of acts committed against the common good and the sanctions applicable to anyone who infringes those provisions and whose acts, deeds or omissions cause harm to public property; and Chapters I to IV of Title IV list the crimes against public property and the administration of justice that can be reported by public servants and private individuals.

- Article 81 of the Organic Law of the Office of the Public Prosecutor (LOMP) states that victims of a criminal action shall receive protection as soon as they are identified as such by the appropriate entity. The protection may be extended after the trial ends for as long as this is considered prudent.

Articles 82 to 85 state that the Senior Prosecutor, through the Victim Protection Office or at the request of the interested party, may ask the competent judge to take whatever steps are necessary to protect the victim and his freedom or material assets. Depending on the degree of risk or danger, the judge shall take the measures necessary to preserve the identity of the victim and the victim's home, profession and place of work, without affecting the suspect's right to a defense. Protection may be extended to include the victim's spouse or the people who live with the victim and the victim's ascendants, descendants, brothers, sisters and relatives within the second degree. The Victim Protection Office shall provide the following services: protection, advice, support, information and education on their rights, to facilitate his appropriate and timely participation in the criminal process. The Attorney General will issue the regulations that shall govern this matter.

Article 86 provides that protection for witnesses and experts may be arranged in the cases envisaged in the previous articles with respect to victim protection.

- Book 2 of the Organic Code of Criminal Procedure (COPP) regulates the general aspects of complaints, among which the following articles should be noted:

Article 285 states that anyone who is aware that a punishable offence has been committed may report it to a prosecutor in the Office of the Public Prosecutor or a criminal investigations police entity.

Article 286 provides that complaints may be filed verbally or in writing and must state the name and address of the person filing the report, a description of the circumstances of the offence, an indication of the person who committed the offence, the people who witnessed or learned of it, if known by the reporting person. In the case of a verbal complaint, a report will be drawn up in the presence of the complainant who will sign it together with the official who records it. The written complaint will be signed by the complainant or an authorized proxy. If the complainant cannot sign it, he shall affix his fingerprint thereto.

Article 287 provides that it is compulsory for the following persons to file a complaint: private individuals who in the course of their employment discover that a punishable offence has been committed if failure to do so is punishable under the Criminal Code or any applicable special law thereto; public officials who in the course of their employment realize that a punishable offense has been committed; physicians or health professionals who are called upon by virtue of their professional knowledge to assist in cases involving poisoning, wounds or other types of lesion, abortions, or presumed pregnancies, in which case they must inform the authorities.

- Article 25 of the Scientific, Penal and Criminal Investigations Law (LOICPC), empowers the Scientific, Penal and Criminal Police Force to request that the corresponding judge, acting upon its own initiative or at the request of the interested party, grant protect measures to witnesses and experts by preserving their identity, profession or trade, workplace and home, without infringing the principles of criminal procedure and subject to a prior authorization by the Office of the Public Prosecutor, when it is perceived that a person or his property is in serious danger.

- The Instructions on Complaints (IMD) issued by the Office of the Comptroller General of the Republic states that any citizen who is aware that a public official or private individual is involved in an abnormal deed connected with the handling of public funds or property belonging to entities under the control of the Office of the Comptroller General of the Republic, may file complaints deemed pertinent, provided that there are grounds therefor. They can be reported verbally or in writing.

- Article 1 of the Victim and Witness Protection Law (LPVTDSP), whose purpose is to protect the rights and interests of victims, witnesses and other parties to a legal action, and regulate protection measures inasmuch as their scope of application, modalities and procedures are concerned.

Article 4 of the Law defines as recipients of the protection provided therein as anyone who is in danger of being a direct or indirect victim, a witness, expert, official of the Office of the Public Prosecutor or the police forces, and other main or secondary actors involved in a proceeding. It adds that these protection measures may be extended to include relatives within the fourth degree of consanguinity or second of affinity, and anyone else who requires such protection by reason of their immediate relationship, as indicated in the previous paragraph.

Article 5 provides that the following shall be considered direct victims under this Law: anyone who individually or collectively has suffered any kind of physical or psychological harm, financial loss or whose fundamental rights have been fundamentally compromised as a result of actions or omissions that infringe the criminal legislation in force. Likewise, families within the fourth degree of consanguinity or second of affinity shall be considered indirect victims, or persons under their responsibility, who have an immediate relationship with the direct victim, and persons who were harmed by going to the aid of a victim in danger or trying to prevent the victimization.

Article 7 states that the protection and assistance referred to in this law must be provided by the appropriate jurisdictional bodies, the criminal investigations police force, the bodies with special responsibility for criminal investigations and the criminal investigation support agencies, in their respective spheres of competence, at the request of the Office of the Public Prosecutor; and that all public and private entities, agencies and dependencies, if applicable, are obliged to cooperate with the Office of the Public Prosecutor as requested by it or the competent jurisdictional body to apply the protection measures foreseen in that Law.

Article 8 states that notwithstanding any other necessary measures undertaken with other appropriate authorities to protect victims, witnesses and other parties in the proceeding, and to safeguard their health, security and wellbeing, including their psychological state and social adaptation while the danger persists, the Office of the Public Prosecutor shall request to the National Executive, through the appropriate ministries, for assistance in order to effectively guarantee the following measures:

- Provide the necessary protection for the physical integrity of the person at risk and the family that lives with him.
- Provide the documentation he needs to establish a new identity.
- Help him get a job.
- Provide other services necessary to assist him and if applicable the family that lives with him.
- Provide the protected person, and if necessary the family that lives with him, with a dwelling or room.
- Provide transportation of the furniture and personal property of the protected person and, if applicable, for the family that lives with him, if they must move to a new home.
- Provide medical and psychological care for the protected person and, if necessary, to the family that lives with him.
- Provide him, and if necessary the family that lives with him, support so that they can fit into the education system, consistent with some of the measures under this Law, when a move to a new home is necessary.
- Provide support in relation to training, education and dissemination of everything connected with the protection of victims, witnesses and other parties in the proceeding.

The same article adds that the National Executive shall adopt whatever mechanisms are necessary so that the appropriate ministries can provide the cooperation envisaged in this Article; and will ensure that the necessary financial resources are assigned in the budget of the appropriate ministries, subject to compliance with the legal provisions in force.

Article 15 provides that the executive, through the Police Coordination Office of the ministry responsible for internal and judicial matters, shall set up an emergency hotline for the victims, witnesses and other parties in the proceeding, which will operate twenty four hours a day and be manned by specially trained staff. In the cases envisaged under this Law, all victims, witnesses and other people involved in the proceeding must be made aware, from the start of the criminal process undertaken by the people in the administration of justice, on the existence and usefulness of this

emergency hotline. The Office of the Public Prosecutor shall be informed monthly, through the Directorate of Senior Prosecutors, of any calls received on this line.

Article 16 states that any support, service or protection given to victims of crime, witnesses and other parties involved in the procedure shall be provided free of charge and the institutions that must provide such assistance may not ask for any remuneration for their services.

Article 20 provides that the protection measures referred to in this Law are out-of-court and in-court measures.

Article 21 defines the special out-of-court protection measures that shall be applied when the circumstances make this possible and advisable, among which the following are noted:

- Personal or residential custody, through direct surveillance or other security measures, to include the residence of the victim of the crime or protected person, whichever is applicable.
- Temporary accommodation in safe houses or centers.
- Financial aid for accommodation, transportation, food, communication, healthcare, moving, job reinsertion, security systems, home refurbishing and other essential expenses, within and outside the country, as long as the beneficiary is unable to finance himself.
- The change of identity shall consist of documentation accrediting a new identity under an assumed name to keep the whereabouts of the protected person and his immediate family confidential.
- Order the perpetrator, suspect or victim not to go near the place where the victim, witnesses or other parties involved in the case are found.

Pursuant to Article 23, the general and necessary protection measures that the Office of the Public Prosecutor will request, once the provisions of Article 16 of this Law have been complied with, are as follows:

- During the criminal proceeding, preserve the identity of the victim or individuals involved in the case, as well as their profession and their workplace, whether or not the counsel for the defense of the suspect or the accused agrees with this measure.
- The proceedings must not state the first or last names, address, place of work or profession, or any other information that could be used to identify them. Instead a nomenclature, code or automated mechanism could be used.
- When they must be present at a proceeding, steps must be taken to prevent them from being recognized.
- The address for serving citations and summons shall be the headquarters of the judiciary in question which will forward them confidentially to the addressee.
- Any other measure deemed fit in order to protect victims, witnesses and other parties in a proceeding, in accordance with Venezuelan legislation.

Article 26 provides, among other things, that victims, witnesses and other parties involved in a proceeding, may ask the prosecutor from the Office of Public Prosecutor or the Senior Prosecutor of the respective judicial district, to be taken under custody to the place where the investigations or trial are to take place and to their home, in official vehicles if they have reason to suspect that their lives or safety are in danger.

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

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

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

- First, the Committee notes that Article 81 of the Organic Law of the Office of the Public Prosecutor states that victims involved in a criminal proceeding shall be protected as soon as they are identified as such by the corresponding body and that Articles 82 to 85 of that Law establish the protection measures for these victims, as well as mechanisms for protecting their identity. The Committee also observes that Article 86 extends the possibility of this protection to include witnesses and expert witnesses in accordance with the contingencies established for the protection of victims, which is why the Law on the Protection of Victims, Witnesses and Other People involved in Proceedings (LPVTDSP) was passed.

The Committee points out that even though the Law on the Protection of Victims, Witnesses and Other People involved in Proceedings (LPVTDSP) was passed, it refers exclusively to criminal complaints and does not mention threats or any other kind of retaliation, including employment-related ones, that may not be defined as crimes and may be subject to an administrative investigation.

The Committee considers that the Bolivarian Republic of Venezuela could consider introducing amendments to protect people who report acts of corruption from threats or retaliation beyond the aspects related exclusively to the criminal procedures, since not all acts of corruption are necessarily defined as crimes. The Committee will formulate a recommendation in this regard. (Chapter III, Section 2, Recommendation 2.1 (a), (b), and (d) of this report).

- Secondly, the Committee points out that the Law on Scientific, Penal and Criminal Investigations (LOICPC) authorizes the Scientific, Penal and Criminal Police Force to ask a judge to take whatever measures are deemed necessary to protect the identity of the profession, trade, workplace or home of witnesses and expert witnesses when it is perceived that the person or his property may be in serious danger.

However, the Committee notes that these protection measures refer to protection of the identity of witnesses and expert witnesses in cases of scientific, penal and criminal investigations, but no mention is made of protecting the identity of persons who in good faith report acts of corruption, particularly given the fact that all not all such acts are defined as crimes and that these cases are often subject to administrative rather than scientific, penal or criminal investigations. Neither has the Committee been able to find in the Organic Code of Criminal Procedure (COOP), or in the

Instructions on How to File a Complaint (IMD), issued by the Office of the Comptroller General of the Republic, any provision regarding protection of the identity of persons who in good faith report acts of corruption. The Committee will formulate a recommendation in this regard. (Chapter III, Section 2, Recommendation 2.1 (c) and (d) of this report).

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

The Bolivarian Republic of Venezuela, in the results section of its Response to the Questionnaire, makes the following comment:

*“Table N° 3 contains figures on complaints received, processed and in process in 2004 and 2005, as well as requests for protection of witnesses, private individual and public servants undertaken during that period. Currently 469 protection measures requested in 2004 are still in process. In other words, the Office of the Public Prosecutor has still not asked that the measure be lifted. The same applies to 411 protection measures requested in 2005.”*

<b>Table N° 3. Systems for protecting public servants and private citizens who in good faith report acts of corruption</b>						
<b>TYPE/YEAR</b>	<b>2004</b>			<b>2005</b>		
	<b>Received</b>	<b>In Process</b>	<b>Processed</b>	<b>Received</b>	<b>In Process</b>	<b>Processed</b>
Complaints*	1,353	106	1,236	1,434	121	1,313
Requests for the protection of witnesses, private individuals and public servants. **	2,053	469	1,584	2,649	411	2,238
<b>Totals</b>	<b>3,406</b>	<b>575</b>	<b>2,820</b>	<b>4,083</b>	<b>532</b>	<b>3,551</b>

*\*Source: Ethics Council (Republican Moral Council), Ministry of the Interior and Justice, States, Municipalities and Office of the Comptroller General of the Republic.*

*\*\*Source: Directorate of Protection (“Dirección de Salvaguarda”) of the Office of the Public Prosecutor.*

Based on the response to the questionnaire and the comparative table, the Committee points out that it cannot ascertain which of these complaints refers to the protection of witnesses, private individuals and public officials in different kinds of criminal cases and which refer specifically to reports of acts of corruption made in good faith. The Committee also notes that there is no information on 2006. For those reasons this Committee considers that the information presented by the Bolivarian Republic of Venezuela in its response makes it impossible to make a proper appraisal of the results, and it will therefore formulate recommendations in this regard. (See General Recommendation 4.2.)

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

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

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

- Article 3 of the Anti-Corruption Law states that: *“Without prejudice to the provisions of the Law establishing the Civil Service Statute, for the purposes of this Law the following shall be considered public officials or employees:*

*“1. Those invested with public functions, be they permanent or temporary, remunerated or free, arising from election, appointment, or contract extended by the competent authority, at the service of the Republic, its states, federal territories and dependencies, districts, metropolitan districts, or municipalities; autonomous national, state, district, and municipal bodies; public universities; the Central Bank of Venezuela; or any other of the organs and entities that exercise public power.*

*“2. The directors and administrators of civil and commercial companies, foundations, civil associations, and other institutions established with public resources or headed by any of the persons indicated in Article 4 of this Law, or when the total contributions in a single fiscal year from one or several of those persons account for fifty percent (50%) or more of their budget or net worth; and the directors appointed to represent those organs and entities, even when the participation is less than fifty percent (50%) of the budget or net worth.*

*“3. Any other person in the situations described in this Law.” ( . . . )*

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

- Article 60 of the Anti-Corruption Law (LCC) which states that: *“Public officials who force or induce someone to give or promise them or a third party a sum of money or some other benefit or gift not legally due to them, shall be sentenced to two (2) to six (6) years in prison and fined up to fifty percent (50%) of the value of whatever was given or promised.”*

Article 61 of the LCC states that: *“Public officials who in the course of their work corruptly accept compensation or another benefit for themselves or a third party as a reward for doing something in their official capacity, shall be sentenced to one (1) to four (4) years in prison and fined up to fifty percent (50%) of the money received or promised. Those who provided or promised the money, compensation or benefit shall receive the same punishment as indicated in this Article.”*

Article 62 of the LCC states that: *“Public officials who for their own account or that of another, delay doing or fail to do something that they must do in their official capacity in the course of their work, in exchange accepting money or another benefit, shall be sentenced to three (3) to seven (7) years imprisonment and fined up to fifty percent (50%) of the benefit received or promised.*

*“The prison term shall be four (4) to eight (8) years and the fine for up to sixty percent (60%), if the action taken was to:*

*“1. Confer a civil service position, subsidy, pension or honors, or for the agreement to enter into contracts related to the administration to which the official belongs.*

*“2. Showing favor or disfavor to one of the parties in an administrative, criminal, civil or any other kind of proceeding.*

*“If the person responsible for the conduct is a judge and this results in a prison sentence for more than six (6) months, the prison sentence shall be from five (5) to ten (10) years.*

*“Any third party who was used by a public official to receive or accept the offer of money or another benefit on his behalf, and anyone who gave or promised to give the money or benefit indicated in this Article, shall be sanctioned with the same penalty in each case.”*

Article 96 of the LCC states that: *“Public officials or employees who have been convicted for any of the crimes provided for in this Law shall be banned from holding a public function and therefore may not hold publicly elected position or any other public office, starting from the time of sentence and up to five (5) years, with the exception of the provisions stated in Article 83<sup>24</sup> of this Law, in which case the period established by that rule will be applied.*

*“The period of disqualification referred to in this article shall be decided by the judge in the final ruling, depending on the severity of the offence.”*

- Article 105 of the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Control System (LOCGRSNCF) states that: *“The declaration of administrative responsibility in accordance with the provisions of Articles 91 and 92 of this Law is punishable with the fine found in Article 94, depending on the severity of the offence and the amount of damage caused. The Comptroller General of the Republic must decide himself, without any other procedure being necessary, depending on the importance of the offence, whether to suspend the official from office without pay for up to twenty-four (24) months or to dismiss the responsible person. The decision will be executed by the highest authority. Depending on the severity of the offence committed, the official may be disqualified from exercising public functions for a maximum of fifteen (15) years, in which case information must be remitted to the respective human resources department of the entity or agency where the deed occurred so that the pertinent steps can be taken.” ( . . . )*

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

- Article 61 of the Anti-Corruption Law (LCC) states that: *“Public officials who in their official capacity receive or accept an offer, for themselves or for another, compensation or other benefit not due to them, shall be sentenced to one (1) to four (4) years in prison and fined up to fifty percent (50%) of the amount received or promised. Anyone who gives or promises the gifts of money or other benefits indicated in this Article shall also receive the same punishment.”*

---

<sup>24</sup> Pursuant to Article 83 of the LCC, *“A judge who fails to or refuses to rule, alleging that this matter is unclear, insufficient, contradictory or non-existent in this Law, , shall be sentenced to one (1) to two (2) years in prison. If the judge acted in his own interest, the sentence shall be doubled. Any judge who infringes this law or abuses his power to benefit or harm a person who has been indicted, shall be sentenced to three (3) to six (6) years in prison.*

*“The Executive Directorate of the Magistracy of the Supreme Tribunal of Justice shall take whatever steps are necessary to dismiss the judge, who may only return to the judicial career twenty (20) years after serving the sentence, provided his behavior was impeccable during that time.”*

Article 63 of the LCC provides that: *“Anyone who, without achieving their purpose, attempts to persuade or induce a public official to commit one of the crimes foreseen in Articles 61 and 62 of this Law shall be sentenced to six (6) months to two (2) years in prison if the purpose of the inducement was to make the official commit the crime envisaged in Article 61; and if the purpose was to make him commit the crime indicated in Article 62, the penalties are half the amount.”*

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

- Article 62 of the Anti-Corruption Law which states that: *“Public officials who for their own account or that of another, delay doing or fail to do something that they must do in their official capacity in the course of their work, in exchange accepting money or another benefit, shall be sentenced to three (3) to seven (7) years imprisonment and fined up to fifty percent (50%) of the benefit received or promised.*

*“The prison term shall be four (4) to eight (8) years and the fine for up to sixty percent (60%), if the action taken was to:*

*“1. Confer a civil service position, subsidy, pension or honors, or for the agreement to enter into contracts related to the administration to which the official belongs.*

*“2. Showing favor or disfavor to one of the parties in an administrative, criminal, civil or any other kind of proceeding.*

*“If the person responsible for the conduct is a judge and this results in a prison sentence for more than six (6) months, the prison sentence shall be from five (5) to ten (10) years.*

*“Any third party who was used by a public official to receive or accept the offer of money or another benefit on his behalf, and anyone who gave or promised to give the money or benefit indicated in this Article, shall be sanctioned with the same penalty in each case.”*

Article 68 of the LCC states that: *“Public officials who take advantage of their functions by using their position to favor or harm the electoral chances of a candidate, group, party or political movement, shall be sentenced from (1) to three (3) years in prison.”*

Article 71 of the LCC provides that: *“Public officials who unlawfully, directly or through a third party, take advantage of the functions they exercise or use the influence derived therefrom to obtain an economic advantage or benefit for themselves or a third party shall be sentenced to two (2) to four (4) years imprisonment. The same penalty shall apply to anyone who, for their own or another’s benefit, makes unlawful use of the influence or power over a public official so that the public official uses his official capacity to omit, delay or hasten something that is contrary to his duties. Public officials who act in such a way shall be subject to the same penalty increasing between one third (1/3) and one half (1/2) thereof, except in the case of the circumstances foreseen in the second part of Article 60 of this Law, in which case the sanction envisaged in the Article will be applied.”*

Article 83 of the LCC provides that: *“A Judge who fails to or refuses to rule, alleging that this matter is unclear, insufficient, contradictory or non-existent in this Law, shall be sentenced to one (1) to two (2) years in prison. If the Judge acted in his own interest, the sentence shall be doubled. Any Judge who infringes this law or abuses his power to benefit or harm a person who has been indicted, shall be sentenced to three (3) to six (6) years in prison. The Executive Directorate of the Magistracy of the Supreme Court of Justice shall take whatever steps are necessary to dismiss the Judge, who may*

*only return to the judicial career twenty (20) years after serving the sentence, provided his behavior was impeccable during that time.”*

- Article 13, paragraph 3 of the Organic Law against Organized Crime (LOCDO), provides that: *“Anyone who obstructs the administration of justice or a criminal investigation for the benefit of an organized criminal group or a member thereof shall be sanctioned as follows: (. . .)*

*“3. The penalty for promising or giving money or some other benefit to achieve their purpose, shall be six to eight years in prison, and any public official or subordinate in the field of the administration of justice who accepts or receives money or a benefit shall be liable to the same penalty.”*

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

- Article 470 of the Criminal Code (CP) states that: *“Anyone who with the exception of the cases envisaged in Articles 254, 255, 256 and 257 of this Code purchases, receives, hides the proceeds of a crime in the form of foreign or domestic currency, public traded securities or movable property or is involved in the acquisition, receipt or concealment of the money, documents or things, that constitute proof of the crime, without having taken part in the crime itself, shall be sanctioned with three to five years in prison. If the money, items or publicly traded securities constitute the proceeds of a crime that is punishable with imprisonment for more than five years, the guilty party will be sentenced to five to eight year’s imprisonment.*

*“When the proceeds of a crime are enjoyed by public officials whose duty it is to apprehend a criminal or undertake a criminal investigation and who acted on their own or with another for the purpose of committing a crime, they will be sanctioned with the penalties foreseen in the last paragraph of this Article and will immediately be dismissed. In the cases provided for in the earlier provisions of this article, the prison term shall not exceed two thirds of the penalty established for committing the crime from which the things or legally owned securities come. (. . .)”*

- Article 52 of the Anti-Corruption Law (LCC) states that: *“Any of the people indicated in Article 3 of this Law who for their own benefit or that of a third party, use or divert assets for whose collection, administration or custody they were responsible for, shall be sentenced to three (3) to ten (10) years in prison and fined between twenty (20%) and sixty percent (60%) of the value of the those assets. The same penalty shall apply if the agent, whether or not he actually holds the assets, uses, diverts or contributes to their use or diversion, for his own benefit or that of a third party, while taking advantage of his public office to do so.”*

- With respect to money laundering, Article 4 of the Organic Law against Organized Crime (LOCDO) states: *“Anyone who himself or through a third party owns or possesses capital, assets or benefits derived directly or indirectly from unlawful activities or serious crime, shall be sentenced to eight to twelve years in prison and fined a sum equivalent to the unlawfully obtained increase in the value of his capital.*

*“The same penalty shall apply to officials who undertake the following activities for their own account or that of another if they:*

*“1. Converted or transferred, by any means whatsoever, assets, capital, equity or surpluses with the intention of concealing the unlawful origin thereof or helped someone who involved in the commission of such crimes to evade the legal consequences of their actions.*

2. *Concealed or covered up the nature, origin, location, destination, movement, ownership or other right over the asset. (. . . )*”

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

- Article 80 of the Criminal Code (CP), Title IV, “Attempt and Frustrated Crime” states: *“In addition to crimes committed and failure to commit a crime being punishable offences, attempts to commit a crime and frustrated crimes are also punishable. An attempt to commit a crime occurs when a person takes the appropriate measures to commit a crime but, for circumstances beyond his control, has not done everything that was required to complete it. A frustrated crime occurs when a person has done everything necessary to commit a crime but did not manage to do so due to circumstances beyond his control.”*

Article 83 of the CP, regarding the simultaneous involvement of several people in the same punishable offence provides that: *“When several people concur in order to commit a punishable offence, each of the perpetrators and immediate cooperators is subject to the penalty laid down for that offence. A person who leads another to commit the offence shall be equally liable.”*

On the issue of covering up an act of corruption, in conformity with Article 254 of the CP: *“Anyone who did not previously agree to participate in a crime that is punishable with imprisonment or detention, and did not contribute towards its commission, and nevertheless helps to ensure the advantage derived from the crime; prevents the authorities from investigating it or assist the perpetrators from persecution or being sentenced, or in any way destroys or alters the clues or signs of a crime that is subject to the above-mentioned sanctions, shall be sentenced to between one and five years in prison.”*

Article 283 of the CP on the aiding and abetting of a crime, states that: *“Anyone who publicly or through any method instigates another or others to carry out acts that are contrary to the law, shall be punished for merely instigating them:*

*1. If the instigation was intended to encourage someone to commit a crime that is punishable by a set prison term, imprisonment for one third the term of imprisonment for the crime instigated.*

*2. In all other cases, with fines of fifty tax units (150 U.T.), depending on the significance of the crime instigated.*

- Article 18 of the Law against Organized Crime (LOCDO) states the following with respect to the participation of public officials: *“If a public official is in any way involved in the commission of a crime defined in this Law, in addition to the penalty applicable for his criminal liability, he will also be dismissed from office and banned from exercising public functions or entering into contracts with the State for a period of one to fifteen years after serving the sentence. If the crime committed harmed another national, state, or municipal entity, the maximum penalty shall be applied.”*

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

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

First of all, the Committee notes that in the situation addressed by Article 61 of the LCC, not all the elements of the offense of passive bribery set out in Article VI.1 (a) of the Convention are contained in the corresponding precept. The Committee will therefore formulate a recommendation. (Chapter III, Section 3, Recommendation 3.1 of this Report.)

The Committee further notes that not all the elements of the offense of active bribery set out in Article VI.1 (b) of the Convention are contained in the corresponding precept. The Committee will therefore formulate a recommendation. (Chapter III, Section 3, Recommendation 3.2 of this Report.)

Secondly, the Committee notes that most the articles cited in the above chapter were covered by the Criminal Code, in some cases with sanctions different to those imposed by the Anti-Corruption Law, and that the Organic Law on the Protection of Public Property repealed those articles of the Criminal Code, which were then covered by the LCC.

Nevertheless, the Committee sees that those articles still appear in the Criminal Code, without any indication that they have been repealed and that reference should be made to the LCC for them. The Committee will formulate a recommendation on this point. (Recommendation 4.3 in Section 4, Chapter III of this Report).

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

The Bolivarian Republic of Venezuela, in its Response to the Questionnaire, did not refer to the results obtained from the application of the above provisions.

The Committee points out the importance that the country under review complete the Questionnaire, including the Results section, in order to be able to make a comprehensive assessment of any progress made and the areas that need to be strengthened for the implementation the Convention.

This Committee considers that, given the lack of information from the Bolivarian Republic of Venezuela, it cannot assess the matter and will therefore formulate recommendations in this regard. (General Recommendations 4.2 and 4.3 in Section 3, Chapter III, of this Report.)

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

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

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

### **1.1 Systems of Government Hiring**

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

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

- 1.1.1 Strengthen the systems of government hiring systems within public administration system. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:
  - a. Regulate the Civil Service Statute Law (LEFP) so as to adapt the norms, guidelines and processes of the government hiring subsystem based on merit, thereby assuring compliance with the principles of openness, equity and efficiency as set forth in the Convention. (See Chapter II, Section 1.1.2. of this Report).
  - b. Define the guidelines and parameters according to which staffing plans will be developed by the National Public Administration, as provided for in Article 8 of the Civil Service Statute Law (LEFP). (See Chapter II, Section 1.1.2. of this Report).
- 1.1.2 Strengthen the system of government hiring of public officials in the Legislative branch. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measure:
  - Make the necessary changes to establish guidelines on the implementation of a staff recruitment subsystem with parameters on the manner to hold competitive examinations, including the methods for announcing vacancies and publishing selection requirements, in order to ensure that merit-based competitive examinations comply with principles of legality, equity, neutrality, equality and transparency. (See Chapter II, Section 1.1.2. of this Report).
- 1.2.3 Strengthen the system of government hiring of public officials in the Judicial branch. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:
  - a. Carry out the relevant amendments to ensure that the career service in the judiciary is not solely limited to judges, but are also to other public officials in the Judiciary. (See Chapter II, Section 1.1.2. of this Report).
  - b. Take the necessary steps to enact the Judicial Personnel Statute pursuant to the provisions of Transitory Article 52 of the Judicial Careers Law (LCJ), which takes into account a merit-based recruitment subsystem and include parameters on the manner to hold competitive examinations, measures on the announcement of vacancies, publication of selection requirements and the mechanism for challenging a decision, including access to a second level of appeal, all of which must comply with the principles of openness, equity and efficiency contained in the Convention. (See Chapter II, Section 1.1.2. of this Report).

- c. Take steps towards passing the Law regulating the Office of the Ombudsman, in keeping with the provisions of Transitory Article 53 of the Judicial Careers Law (LCJ),<sup>25</sup> and ensuring that said Law includes a merit-based selection process, a mechanism for challenging decisions and access to a second level of appeal, and also that it complies with the principles of openness, equity and efficiency provided for in the Convention. (See Chapter II, Section 1.1.2. of this Report).
- d. Make the necessary amendments to Article 23 of the LCJ so that competitions are advertised at the national level and not just regionally, for this purpose making use of modern forms of communication such as the internet, radio, and television. (See Section 1.1.2 in Chapter II of this Report.)

1.1.4 Strengthen the system of government hiring of public officials in the Office of the Public Prosecutor. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Make the necessary changes so that merit-based competitive examinations are compulsory for candidates for career positions, and not just limited to the positions of Senior Prosecutor and Prosecutor of the Office of Public Prosecutor and Attorneys for Minors. (See Chapter II, Section 1.1.2. of this Report).
- b. Make the necessary changes to establish guidelines on the implementation of a staff selection subsystem that consist of parameters on the manner to hold competitive examinations, including methods for announcing vacancies and publishing selection requirements, so as to guarantee that merit-based competitive examinations are held according to the principles of legality, equity, neutrality, equality and transparency. (See Chapter II, Section 1.1.2. of this Report).
- c. Regulate the offices which require candidates thereto to sit competitive examinations to enter the Public Prosecutions Service as civil servants. (See Chapter II, Section 1.1.2 of this Report.)<sup>26</sup>
- d. Consider reviewing the positions subject to free appointment and removal listed in Article 3 of the Personnel Statute of the Office of the Public Prosecutor (EPMP), in order to ascertain how many of them could, by their nature and type of functions, be incorporated into a merit-based selection system with the possibility of access to a career position. (See Chapter II, Section 1.1.2 of this Report).

1.1.5 Strengthen the system of government hiring of public officials in the Office of the Comptroller General. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Approve the Manual of Rules of Procedure of the Statute of the Office of the Comptroller General of the Republic (EPCGR) referred to in Articles 1 and 8 of the EPCGR, and ensure

---

<sup>25</sup> The Committee notes that the Bolivarian Republic of Venezuela presented the new Organic Law of the Ombudsman published in Official Gazette N° 38,595, after the deadline for submitting the response to the questionnaire, due to the fact that it came into effect on January 2, 2007. This is why this legislation was not reviewed.

<sup>26</sup> See footnote No. 17.

that they include parameters on how to carry out competitive examinations, methods for keeping a register of eligible candidates, as well as the manner to announce vacancies and publish selection requirements, so as to guarantee that these competitions comply with the principles of openness, equity and efficiency. (See Chapter II, Section 1.1.2. of this Report).

- b. Consider reviewing the positions subject to free appointment and removal and trust positions listed in Article 4 of the EPGR, in order to ascertain which of them could, by their nature and type of functions, be incorporated into a merit-based selection system with the possibility of access to a career position. (See Chapter II, Section 1.1.2 of this Report.)

1.1.6 Strengthen the system of government hiring of public officials in general. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Take the necessary steps so that the corresponding rules cover the incompatibility between relationships by blood or by marriage and holding a public position. (See Section 1.1.2 in Chapter II of this Report.)
- b. Ensure that entry into the public administration is subject to a public competitive examination, pursuant to the terms of Article 146 of the Constitution and the pertinent legislation. (See Chapter II, Section 1.1.2. of this Report).
- c. Monitor the staff selection processes by way of the contracting method, in order to verify that this system is not used as a means of evading the merit-based competitive examination system. (See Chapter II, Section 1.1.2. of this Report).
- d. Regulate staff contracts to determine exactly what type of work justifies such contracts, how it differs from work undertaken by career staff, as well as any relevant rehiring restrictions, in order to prevent this method from being used to hire permanent staff who are not governed by the same legislation as career staff, and thereby guarantee compliance with the principles of openness, equity, and efficiency contained in the Convention. (See Chapter II, Section 1.1.2. of this Report).

## **1.2 Government Systems for the Procurement of Goods and Services**

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

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

1.2.1 Strengthen the procedures for public tender with competitive bidding and procurement in general. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Review the grounds for which this Decree does not apply to insurance contracts or contracts for financial services. (See Section 1.2.2 in Chapter II of this Report.)

- b. Revise Article 59 of the Administrative Procedures Law to establish the grounds for identifying a document as confidential, and thus to be filed separately and not be subject to public access, and ensuring that the decision is not left to the sole discretion of the hierarchical superior. (See Section 1.2.2 in Chapter II of this Report.)
- c. Undertake coordinated action between the branches of government and citizens in order to strengthen educational and preventive work so as to enforce the corresponding legislation, thereby ensuring that public tenders will become the norm and not the exception in government procurement. (See Chapter II, Section 1.2.3. of this report).

1.2.2 Strengthen government procurement oversight mechanisms. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Strengthen the governing bodies of the Public Sector procurement system, especially the National Procurement Service, as far as the functions developed in relation to administration and control of the system are concerned, providing it with the funds necessary to fulfill its functions, and establishing mechanisms to enable institutional coordination and constant evaluation and follow-up, in order to ensure that the system functions as a central autonomous authority for managing public procurement systems and oversight mechanisms. (See Chapter II, Section 1.2.2. of this report).
- b. Complement, through the appropriate authority, the DFLRPLL by establishing social oversight mechanisms for procurement activities, such as qualified citizen watchdog groups, in order to reinforce control of those activities. (See Chapter II, Section 1.2.2. of this report).
- c. Consider the creation of a contracting register as described in Article 36 of DFLRPLL, particularly for bidding processes that are announced internationally. (See Chapter II, Section 1.2.2. of this Report.)

1.2.3 Continue strengthening electronic methods and information systems for government procurement. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:

- a. Enact regulations on publications related to the processes for selecting contractors referred to in Article 60 del DFLRPLL. (See Chapter II, Section 1.2.2. of this report).
- b. Establish the official publishing body referred to in Article 60 of the DFLRPLL, thereby ensuring the inclusion of modern computer-based methods such as the Internet to ensure the widespread dissemination of this information. (See Chapter II, Section 1.2.2. of this report).
- c. Amend Article 67 of the DFLRPLL, which states that invitations to tender in general bidding processes, including international invitations to tender, shall be published in a major national newspaper, so as to include the use of modern means of communication such as the Internet, to ensure that this information is widely disseminated. (See Chapter II, Section 1.2.2. of this report).
- d. Consider the possibility of creating a procurement system based on electronic media, available to be used by all agencies of the Public Administration. (See Chapter II, Section 1.2.2 of this report.)

- 1.2.4. Continue to foster the principles of openness, equity and efficiency foreseen in the Convention. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:
  - a. Consider consolidating the legislation on public procurement in a single concise and well-defined volume, to facilitate access and application by public servants and facilitate access to it by the public. (See Chapter II, Section 1.2.2 of this Report).
  - b. Amend the public contracting law to take into account general selection criteria or principles and thereby avoid them only being stated in the bidding terms and conditions of each tender. (See Chapter II, Section 1.2.2 of this Report).
  - c. Make provisions to publish the pre-bidding terms and conditions for the tenders in order that the interested parties can be informed of them and make their comments. (See Chapter II, Section 1.2.2 of this Report).
  - d. Implement an information system to publish bidding processes and enable all those citizens interested to consult them. (See Chapter II, Section 1.2.2 of this Report).

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

**The Bolivarian Republic of Venezuela 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 2 of Chapter II of this Report.**

In view of the comments made in that section, the Committee recommends that the Bolivarian Republic of Venezuela strengthen the system for protecting public servants and private citizens who in good faith report acts of corruption. In light of the comments made in the above-noted section, the Committee suggests that the Bolivarian Republic of Venezuela consider the following recommendation:

- 2.1 Strengthen systems for protecting public servants and private citizens who in good faith report acts of corruption. In meeting this recommendation, the Bolivarian Republic of Venezuela could take into account the following measures:
  - a. Introduce the necessary reforms in the legislation in force in order to ensure protection of the person who in good faith report acts of corruption, and also their families, as effectively as possible and pursuant to the legislation governing the civil service. This should not be limited to criminal proceedings but also administrative ones. (See Chapter II, Section 2.2 of this Report).
  - b. Additionally take steps to protect the labor situation of whistleblowers, especially when they are public servants and when the acts of corruption could involve their superiors or colleagues from the office, including provisions to prevent retaliations for the lodging of reports. (See Chapter II, Section 2.2 of this Report).

- c. Make the necessary amendments to the criminal legislation and to the legislation on the civil service to safeguard the identity, as effectively as possible, of persons who in good faith report acts of corruption. (See Chapter II, Section 2.2 of this Report).
- d. Mechanisms that facilitate international cooperation in addressing this topic, when appropriate. (See Chapter II, Section 2.2 of this Report).

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

**The Bolivarian Republic of Venezuela has adopted measures aimed at criminalizing the acts of corruption indicated in Article VI(1) of the Convention, as discussed in Section 3 of Chapter II of this Report.**

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

- 3.1. Assess the relevant legislative amendments so that all elements of passive bribery are included in the situation described in Article 61 of the LCC. (See Chapter II, Section 3.2 of this Report).
- 3.2. Assess the relevant legislative amendments so that all the elements of the offense of active bribery set out in Article VI.1 (b) of the Convention are included. (See Chapter II, Section 3.2 of this Report).
- 3.3. Update and reorder the Criminal Code in regards to those articles that were repealed, and that are now covered under the new Anti-Corruption Law. (See Chapter II, Section 3.2 of this Report).

### **4. GENERAL RECOMMENDATIONS**

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

- 4.1. Design and implement, when appropriate, training programs for public servants responsible for 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 yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein (See Chapter II, Sections 1.1.3.; 1.2.3.; and 3.3. of this Report).
- 4.3. Establish mechanisms for providing timely responses to the Questionnaire regarding the provisions of the Inter-American Convention against Corruption within the set deadlines, including the section on results. (See Chapter II, Section 3.3 of this Report).

## 5. FOLLOW-UP

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

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

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

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

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

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

▪ Recommendation:

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

▪ Measures suggested by the Committee:

- a) *Review and analyze the possibility of regulating the system of prevention of conflicts of interest, incompatibilities, restrictions, disqualifications and prohibitions relating to the senior posts of the state, taking into account the specificities and importance of these posts, as well as the mechanisms to enforce said regulations. Considering, among other aspects, the provision of incompatibility in the exercise of public functions with respect to other public or private activities in which there could exist any circumstance that would compromise impartiality; strengthening the sanctions system; and provision of a fully autonomous body to oversee full compliance with these regulations.*
- b) *Review and analyze broadening and strengthening the system of legal impediments, prohibitions, incompatibilities and disqualifications contained in the sectoral laws related to conflicts between private and public interests. In so doing, consider making provision for and broadening certain assumptions that could shape conflicts of interest and that, because of their importance, it would be appropriate to deal with in a more detailed and specific manner; determining the entities or officials in charge of ensuring compliance; and applying measures and penalties in case of non-compliance.*
- c) *Ensure the applicability and application of the sanctions envisaged for public servants who infringe the rules governing conflicts of interest, including among other provisions, the cases covered in Article 123 of the National Public Treasury Organic Act.*

- d) *Extend the statutory limitation period established in Article 88 of the Civil Service Statute, taking into account the importance of strengthening instruments that currently available to the administration, so that they do not constitute an obstacle to determining the individual disciplinary liability of public servants who commit offences, and the need for the above-mentioned period to be consistent with and fulfill the same purpose as other existing time limits, as noted in section 1.1.2 of this report.*
- e) *Ensure that the registry of civil servants in the employ of the national civil service, provided for in Article 9 of the Civil Service Statute, is used for the prevention and punishment of conflicts of interest.*
- f) *Review and analyze the possibility of incorporating a regulation that limits or prohibits the participation of former civil servants in the management of certain areas of activity and, in general, situations that could lead to individuals taking undue advantage of their status as former public servants.*

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

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

### ▪ Recommendation 1.2.1

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

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

### ▪ Recommendation 1.2.2

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

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

### ▪ Recommendation 1.2.3

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

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

In its Response, the Bolivarian Republic of Venezuela presents information with respect to the first paragraph of the above recommendation, and states in its Response to the Questionnaire that in May 2004, the Organic Law of the Supreme Court of Justice came into force, and whose Article 5 (1) and (2) grants the Full Bench of the Supreme Court of Justice the following attribution:

*“a) declare whether or not there is good reason to prosecute the President of the Republic. If there is good reason, continue to hear the case, subject to the approval of the National Assembly, until a final decision is reached; b) declare whether or not there is good cause to prosecute other senior state officials, such as the Executive Vice President, members of the National Assembly or the Supreme Court of Justice, Ministers, Attorney General, Prosecutor General, Comptroller General of the Republic, Ombudsman, Governors, Officials, Generals and Admirals of the National Armed Forces, in command functions, and Heads of Venezuelan Diplomatic Missions. If it is determined that there is good reason, send the court records to the Attorney General or the person replacing him if applicable; and if the crime is a common one, continue to hear the case until a final decision is reached.”*

The Response of the Bolivarian Republic of Venezuela to the Questionnaire did not refer to the other aspects of this recommendation. The Committee takes note of the need for the country under review to give additional attention to its implementation.

▪ Recommendation 1.2.4

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

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

▪ Recommendation 1.2.5

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

In its Response, the Bolivarian Republic of Venezuela 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:

- Design and application by the Ministry of Foreign Affairs in 2005 of a system to identify staff training needs as well as the result in the programming of courses given in 2006<sup>27</sup>.

- Signing of a Cooperation Agreement between the Ethics Council (*Consejo Moral Republicano del Estado Venezolano*) and the Ministry of Education and Sport, in February 2006, called “Civic Training and the Recovery of School, Family, Community and Civil Service Values” to foster civic and citizen training in the family, school and community environment, beginning in the schools, and encourage public officials and the users of public administration services to adhere to the principles and moral ethical values that support the public service.

- Workshops on Citizen Training and the Recovery of the Values of Civil Servants<sup>28</sup>, held in June and July 2006.

- Different training activities on matters related to citizen participation, training in values and social comptrollership, undertaken at the offices of the State and Municipal Comptrollers in 2004 and 2005.

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 Bolivarian Republic of Venezuela 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

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

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

In its Response, the Bolivarian Republic of Venezuela presents information with respect to the first paragraph of the above recommendation, and which the Committee considers that the recently approved Law on the Protection of Victims, Witnesses and Persons involved in Judicial Proceedings, published in the Official Gazette of October 4, 2006, which came into force on November 4, 2006, is a step towards its implementation.

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

---

<sup>27</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 84 and 85.

<sup>28</sup> *Ibid.*, pages 85-86.

▪ Recommendation 1.3.2

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

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

▪ Recommendation 1.3.3

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

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

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

▪ Recommendation

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

▪ Measures suggested by the Committee:

- a) *Promulgate legal provisions and other pertinent measures in order to establish clearly those parties from whom the Comptroller General of the Republic may request the periodic presentation of a sworn statement of net worth, to ensure that these provisions include senior officials within the public administration and those who, given the importance and nature of their posts, could facilitate or generate illicit enrichment or other unlawful acts against public property, and to determine the deadlines for presenting said statements, their contents and formal requirements.*
- b) *Consider the appropriateness of requiring sworn statements at times other than those already provided for, establishing reasonable timelines for updating them or circumstances under which it would be advisable to require their presentation.*
- c) *Strengthen the role afforded to officials in charge of human resources units under Article 26 of the Anticorruption Act. This could be achieved by stipulating the obligation of these units to immediately notify the Office of the Comptroller General whenever an individual obliged to do so fails to present proof of presentation of the statement of income, assets and liabilities, and by specifying/detailing the corresponding actions to be taken by the Office of the Comptroller General in such situations.*

- d) *Regulate the conditions, procedures and other appropriate aspects related to the publicizing of sworn statements of income, assets and liabilities, as applicable.*
- e) *Use sworn statements of income, assets and liabilities to detect and prevent conflicts of interest.*
- f) *Implement a register of those obliged to present sworn statements of income, assets and liabilities and mechanisms for the periodic updating of said register.*
- g) *Implement the necessary procedures for achieving effective control over compliance in presenting these statements, in accordance with the recommendation made in point f) above.*
- h) *Consider the possibility of adjusting prevailing legislation to make use of modern information and communications technologies to administer and manage these statements.*

In its Response, the Bolivarian Republic of Venezuela 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 by the Office of the Comptroller General of the Republic of several resolutions<sup>29</sup> to require the presentation of updated sworn statements of assets by public officials within the Ministries of Education, Culture and Sport; Higher Education; and Health and Social Development; members of the programs making up the National Armed Forces and the officials of the Legislative Branch mentioned in the respective resolutions<sup>30</sup>. (Measures “a” and “b.”)
- Promulgation of Resolution No. 01-00-001, published in the Official Gazette of the Bolivarian Republic of Venezuela No. 38,354, on October 1, 2006, through which the Office of the Comptroller General of the Republic requires that all those responsible for the human resources area of the entities or agencies under their control must report movements on staff who enter or leave its service in a Monthly Report called the “Relación Mensual.”<sup>31</sup> (Measure “c.”)
- A preliminary Anti-Corruption bill which is currently being reviewed the National Assembly and would provide for the partial publication of the Sworn Statement of Assets, to make this information public knowledge so that possible cases of unjustified enrichment by public officials while performing their duties can be reported<sup>32</sup>. (Measure “d.”)
- Studies being conducted by the Office of the Comptroller General of the Republic on the legal, technological and budgetary methods that would make it possible to detect, follow up and punish conflicts of interest using sworn statements of assets<sup>33</sup>. (Measure “e.”)

---

<sup>29</sup> The Committee notes that together with a memorandum sent to the Technical Secretariat dated December 22, 2007 the Bolivarian Republic of Venezuela remitted Resolution N° 01-00-000367 of December 4, 2006, published in Official Gazette N° 38,579 of December 7, 2006, whereby the Office of the Comptroller General of the Republic requires that between April 1 and the last day of April of each year, a Sworn Statement of Assets be submitted to the senior officials of the entities and agencies of the National Public Branch of Power.

<sup>30</sup> *Ibid.*, pages 88-91.

<sup>31</sup> *Ibid.*, pages 93-95.

<sup>32</sup> *Ibid.*, pages 91-92.

<sup>33</sup> *Ibid.*, pages 92-93.

- Studies being conducted by the Office of the Comptroller General of the Republic on the possibility of implementing a technological program through which public officials or employees would be able to submit their Sworn Statements of Assets electronically<sup>34</sup>. (Measure “h.”)

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 Bolivarian Republic of Venezuela to continue giving attention to the implementation of this recommendation.

The Response of the Bolivarian Republic of Venezuela to the Questionnaire did not refer to the other aspects of this recommendation. Because of this, the Committee notes the need for the Bolivarian Republic of Venezuela to pay further attention to its implementation.

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

#### ▪ Recommendation 3.1

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

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

#### ▪ Recommendation 3.2

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

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

### **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 General participation mechanisms**

#### ▪ Recommendation

*Analyze existing legal norms, for the purposes of identifying provisions that could be adversely affecting these rights, including those provisions related to the requirement concerning sources for funding civil society organizations and for the purposes of making changes that are deemed relevant to assuring that*

---

<sup>34</sup> *Ibid.*, pages 95-96.

*in the existing juridical structure, there are no provisions that put a limit on their participation in the prevention of corruption.*

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

#### **4.2 Mechanisms for access to information**

- Recommendation

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

- Measures suggested by the Committee:

- a) *Strengthen the guarantees provided on the exercise of the right to public information, including the possibility of accessing a type of information other than that already provided for; and consider the implementation of provisions that ensure that access to such information can only be denied for reasons explicitly regulated and determined by law.*
- b) *Consider the advisability of integrating and systematizing in a single regulatory text the provisions that guarantee access to public information.*
- c) *Establish a specific procedure to protect the right of citizens to access public information, establishing for this purpose, among other aspects, the following: i) procedures for accepting requests and responding to them on a timely basis; ii) an entity or offices charged with this function and an oversight agency that should monitor the implementation of these regulations; iii) requirements on admissibility and consequences when such requirements are not met; iv) reasons why a request may be denied; v) method for communicating with the official who submitted the request; vi) prompt and specialized administrative remedies allowing for appeal of a decision made by a public servant who improperly denies access to the information being sought; and vii) an increase in the number of sanctions so as to cover a broader spectrum of circumstances that could hamper, delay or prevent the exercise of this right and that involve the conduct of public servants.*
- d) *Implement, if this has not yet been done, the provision of Article 9 of the Anticorruption Act relating to the creation of public or citizen service offices, ensuring that they have sufficient resources to carry out their work.*
- e) *Implement training and dissemination programs on mechanisms for access to public information held by the State, in order to facilitate the understanding thereof by public officials and citizens and optimize the use of the technology available for this purpose.*

In its Response, the Bolivarian Republic of Venezuela 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 creation of more than 67 Citizen Service Offices created in different bodies of the public administration<sup>35</sup>, under the Office of the Comptroller General of the Republic. (Measure “d.”)
- The “Workshop on the Strengthening of Relations between the State and Society within the new constitutional framework” sponsored by the Ministry of Foreign Affairs in 2006, in which representatives of the political, social and economic sectors in the country participated, and at which officials from the ministry exchanged ideas on ways and means to strengthen the relationship between the state and society<sup>36</sup>. (Measure “e.”)
- The Ministry of Science and Technology’s program entitled “The Virtual Community in the National Technology Plan” and its International Information Bulletin; as well as the Chat Rooms on the [www.mct.gov.ve/publico/foro/pi\\_foro.php](http://www.mct.gov.ve/publico/foro/pi_foro.php) where current national topics such as draft laws and economic and petroleum issues, etc. are discussed<sup>37</sup>. (Measure “e.”)

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 Bolivarian Republic of Venezuela to continue giving attention to the implementation of this recommendation.

The Response of the Bolivarian Republic of Venezuela to the Questionnaire did not refer to the other aspects of this recommendation. Because of this, the Committee notes the need for the Bolivarian Republic of Venezuela to pay further attention to its implementation.

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

- Recommendation

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

- Measures suggested by the Committee:

- a) *Carry out processes to allow consultation with interested sectors with respect to the design of public policies and the preparation of draft laws, decrees or resolutions in the sphere of the Executive Branch.*
- b) *Develop suitable mechanisms for conducting public consultations on subjects relating to the performance of administrative functions of a type other than the regulatory activity of the Administration, based on what was stated in Section 4.3.2 of this report.*
- c) *Regulate the pertinent provisions to eliminate areas of discretion that appear to exist in some provisions now in force, as indicated in Section 4.3.2 of this report.*
- d) *Supplement regulations, when appropriate, on participation mechanisms provided in national legislation, so as to define aspects such as the value to be given to consultations and information and the results produced and the consequences for failure to comply with*

---

<sup>35</sup> *Ibid.*, pages 96-97.

<sup>36</sup> *Ibid.*, pages 97.

<sup>37</sup> *Ibid.*, pages 97-98.

*obligations relating to existing consultation mechanisms, such as penalties for infringing them.*

- e) *Design and implement programs to disseminate consultation mechanisms and, when appropriate, train and provide necessary tools for civil society and non-governmental organizations, as well as public officials and employees in the use of such mechanisms.*

In its Response, the Bolivarian Republic of Venezuela 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 use of tools that can be used for consultation, such as the links on the websites of the majority of the agencies and entities of the Venezuelan State, through which citizens find out the activities carried out by them and submit queries, complaints, suggestions and proposals through their websites<sup>38</sup>. (Measures “b” and “e”)

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 Bolivarian Republic of Venezuela to continue giving attention to the implementation of this recommendation.

The Bolivarian Republic of Venezuela’s Response to the questionnaire did not address the rest of the elements of this recommendation. In view of this, the Committee takes note of the need that the Bolivarian Republic of Venezuela provides further attention to its implementation.

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

- Recommendation

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

- Measures suggested by the Committee:

- a) *Strengthen and continue to implement rules and mechanisms that encourage the participation of civil society and non-governmental organizations in public administration efforts to prevent corruption. Also, consider establishing a legal structure that systematically increases, promotes and includes such aspects methods of participation other than those already anticipated, as well as different mechanisms to promote, facilitate, consolidate and assure this participation.*
- b) *Adopt the legal provisions and measures considered appropriate to ensure that the registry of organized communities and non-governmental organizations is not used as a restrictive tool to discourage the participation of civil society and non-governmental organizations in efforts designed to prevent corruption.*
- c) *Regulate Article 76 of the Organic Act of the Office of the Comptroller General and the National Fiscal Control System which grants civil society and non-governmental organizations the right to suggest candidates to lead fiscal control units in the institutions subject to this law.*

---

<sup>38</sup> *Ibid.*, pages 98-100.

- d) *Take steps towards the repeal of the “contempt laws” (See Section 4.4.2. of this report).*
- e) *Design and implement programs and disseminate information so as to encourage participation in public administration and, when appropriate provide civil society, non-governmental organizations, public officials and employees with the necessary training and tools to use such mechanisms.*

In its Response, the Bolivarian Republic of Venezuela presents information with respect to the above recommendation, and points out that *“the entry into force of the Community Councils Law is intended to create, develop and regulate the composition of the Community Councils which are mechanisms whose purpose is to facilitate the participation, coordination and integration of different community organizations, social groups and citizens so that the citizens can directly manage public policies and projects designed to satisfy the communities’ needs and aspirations.”*<sup>39</sup> (Measures “a” and “b”)

The Committee takes note of the steps taken by the reviewed State for the advancement in the implementation of the aforementioned recommendation and of the need that it continues to give attention to this matter.

The Bolivarian Republic of Venezuela’s Response to the Questionnaire did not address the rest of the elements of this recommendation. In view of this, the Committee takes note of the need that the Bolivarian Republic of Venezuela provides further attention to its implementation.

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

- Recommendation

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

- Measures suggested by the Committee

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

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

---

<sup>39</sup> *Ibid.*, pages 100-101.

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

### ▪ Recommendation 5.1

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

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

### ▪ Recommendation 5.2

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

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

### ▪ Recommendation 5.3

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

In its Response, the Bolivarian Republic of Venezuela 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 in relation to the signing of both inter-institutional agreements, between the Supreme Court of Justice with the Ministry of Science and Technology on the one hand, and the Settlement Board of Cavendes Banco de Inversión C.A. on the other, to enable the High Court to “*support and assist the Superintendency of Electronic Certification Services (SUSCERTE) to provide training and foster the use of electronic signatures in the judicial branch, and to organize programs on electronic signatures as a means of interacting with the Public Administration (. . .)*”.<sup>40</sup>

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 Bolivarian Republic of Venezuela to continue giving attention to the implementation of this recommendation.

### ▪ Recommendation 5.4

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

---

<sup>40</sup> *Ibid.*, pages 101-102.

In its Response, the Bolivarian Republic of Venezuela 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:

- Two programs supported by the Inter-American Development Bank (IADB) and the World Bank. The first is a program to modernize the court, particularly the Supreme Court of Justice, while the second seeks to support the reform of the criminal justice system by improving criminal investigation and prosecution processes in order to make this process more efficient and precise and in accordance with the state of law.<sup>41</sup>
- - The Venezuelan state's participation in various international events, seminars and workshops to exchange experiences on issues such as the fight against corruption, actions related to probity and public ethics and the exercise of social oversight and public management; and its participation in the monitoring, leadership and coordination of the execution of the IDB's long-term training program and the Latin American and Caribbean Organization of Latin American and Caribbean. Supreme Audit Institutions (OLACEFS), as the chair of the Organization's Regional Training Committee.<sup>42</sup>

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 Bolivarian Republic of Venezuela to continue giving attention to the implementation of this recommendation.

▪ Recommendation 5.5

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

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

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

▪ Recommendation 5.6

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

The response by the Bolivarian Republic of Venezuela to the Questionnaire did not address the other elements in this recommendation. Therefore the Committee points out that the Bolivarian Republic of Venezuela should pay further attention to its implementation.

---

<sup>41</sup> *Ibid.*, pages 102-103.

<sup>42</sup> *Ibid.*, pages 103-104.

- Recommendation 5.7

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

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

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

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

## **7. GENERAL RECOMMENDATIONS**

- Recommendation 7.1

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

In its Response, the Bolivarian Republic of Venezuela presents information with respect to the above recommendation, pointing out that “*The General Directorate of Consular Affairs of the Ministry of Foreign Affairs runs a program that provides daily information on the status of the requests received.*”<sup>43</sup>

Taking into account the foregoing, The Committee takes note of the need for the country under review to give additional attention to its implementation.

- Recommendation 7.2

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

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

---

<sup>43</sup> *Ibid.*, page 104.

- Recommendation 7.3

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

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

## ANNEX

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

#### **INTRODUCTION**

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

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

When considering the Draft Report on the First Round, regarding the Bolivarian Republic of Venezuela, the Committee indicated the conditions that must be fulfilled to consider contributions from civil society organizations pursuant to the Rules of Procedure and Other Provisions of the Committee (hereinafter “The Rules of Procedure”); it referred to the documents received on that occasion from civil society organizations in relation to the Bolivarian Republic of Venezuela; and it analyzed compliance with the conditions established in Article 33<sup>44</sup> of the Rules of Procedure, in the specific case of the documents that were received from civil society organizations during the First Round on the Bolivarian Republic of Venezuela.

On that occasion the Annex II containing the considerations quoted in the above reference was incorporated in the Report on the First Round regarding the Bolivarian Republic of Venezuela and adopted by the Committee on July 30, 2004, and was posted on MESICIC’s website<sup>45</sup>.

Taking into account the foregoing, insofar as there have been no changes to date, and to what the Committee referred to in Annex II of the Report on the First Round on the Bolivarian Republic of Venezuela, this appendix will transcribe exactly what the Committee reported on the matter quoted in the reference.

Therefore this document will refer to the conditions that must be satisfied in order for civil society organizations to participate in the second round; the documents received from civil society organizations and issues regarding their participation in this review process, within the framework of the second round, in relation to the Bolivarian Republic of Venezuela; and an analysis of compliance

---

<sup>44</sup> The numbering of the articles has increased by one number due to the inclusion of a new article in the Regulations and Rules of Procedure of the Committee. Thus Article 33 (b) above is now Article 34, (b), and Article 35 above is now Article 36.

<sup>45</sup> [http://www.oas.org/juridico/spanish/mec\\_inf\\_ven.pdf](http://www.oas.org/juridico/spanish/mec_inf_ven.pdf)

with the conditions envisaged for the participation of civil society organizations in the second round, in the specific case of the civil society organization from which documents related to the Bolivarian Republic of Venezuela were received.

## **I. CONDITIONS THAT MUST BE MET BY CIVIL SOCIETY ORGANIZATIONS IN ORDER FOR THEM TO PARTICIPATE IN THE SECOND ROUND**

The Rules of Procedure<sup>46</sup> govern the organization and activities of MESICIC's Committee of Experts. Article 34 in particular refers to the participation of civil society organizations, while Article 36 refers to the conditions that must be met in order for them to participate in Committee meetings.

Section X of the "Methodology for review of the implementation of the provisions of the Inter-American Convention against Corruption selected for review in the Second Round and for follow up of the recommendations formulated in the First Round"<sup>47</sup> (hereinafter "The Methodology"), refers to the participation of civil society organizations and the posting of documents received from them on MESICIC's website.

### **A. CONDITIONS THAT MUST BE MET BY CONTRIBUTIONS FROM CIVIL SOCIETY ORGANIZATIONS UNDER ARTICLE 34 OF THE RULES OF PROCEDURE AND OTHER PROVISIONS OF THE COMMITTEE**

The Committee already expressed its opinion in relation to the first heading during the First Round. The text in quotation marks is an exact transcription of what was concluded in the First Round:

"Article 33 of the Rules of Procedure and Other Provisions of the Committee governs the participation of civil society organizations in its activities. This article lists the requirements that must be met in full by such organizations to be eligible for consideration by the Committee of Experts.

"According to the above-mentioned article, the conditions that must be met by these civil society organizations may be summarized as follows:

- Compliance with the "Guidelines for the Participation of Civil Society Organizations in OAS Activities"(CP/RES. 759 (1217/99)) (hereinafter, the "Guidelines");
- Compliance with the condition "in accordance with the internal legislation of the respective State Party";
- Compliance with the condition governing the content of documents, requiring that they contain "specific and direct information related to the questions that are referred to in the questionnaire"; and
- Compliance with the Committee's established deadlines for the presentation of documents

"The following paragraphs offer an analysis of each one of these conditions."

---

<sup>46</sup> [http://www.oas.org/juridico/spanish/mesicic\\_reglamento.pdf](http://www.oas.org/juridico/spanish/mesicic_reglamento.pdf)

<sup>47</sup> Document classified as SG/MESICIC/doc.171/06

[http://www.oas.org/juridico/spanish/mesicic\\_method\\_IIround\\_sp.pdf](http://www.oas.org/juridico/spanish/mesicic_method_IIround_sp.pdf)

### **1.1 Conditions set in the Guidelines for the Participation of Civil Society Organizations in OAS Activities (CP/RES. 759 (1217/99))**

“The Plan of Action of the Second Summit of the Americas (1998), instructed the OAS to promote programs suitable for encouraging greater participation in public affairs by civil society. Under this mandate, several actions were taken toward devising guidelines to encourage civil society participation in OAS activities.

“One of the results of this process was the creation, under the aegis of the Organization’s Permanent Council, of a Committee that was entrusted with, *inter alia*, drafting a guidelines document; this proposal was later adopted by the OAS Permanent Council in resolution CP/RES.759 (1217/99), entitled Guidelines for the Participation of Civil Society Organizations in OAS Activities.’

“The adopted document sets out the forms of participation, principles, eligibility conditions, and procedures that must be observed by civil society organizations interested in participating in the activities carried out within the framework of the Organization.

“Thus, under the guidelines, civil society bodies are entitled to attend OAS activities, to make presentations, to provide information at the request of the organs, agencies, and entities of the OAS, and to provide specialized advisory services when so requested. They can also participate in operational activities relating to the design, functioning, and execution of cooperation programs, in accordance with the applicable current rules.

“In this regard, two forms of participation are defined, each with a different set of requirements and scope. The first of these two mechanisms applies to those organizations that have requested permission to participate in the day-to-day activities or business of the OAS. For this purpose, they must submit the relevant application in a communication to the OAS Secretary General. The Secretary General refers these applications to the Permanent Council’s Committee on Civil Society Participation in OAS Activities, which proceeds to analyze them, formulates the recommendations it deems pertinent, and sends its conclusions to the Permanent Council, which then adopts a final decision as it sees appropriate.

“As a part of this process, there is a set of conditions that these organizations must satisfy in order to be accepted; these include indicating its name or corporate identity and identifying the work areas that it agrees to support. Applications must also be accompanied by the following documents: articles of incorporation, statutes, most recent annual report, organizational mission statement, and financial statements from the year previous to the application, including funding sources (public and private).

“Organizations accepted by the Permanent Council by means of the above procedure are recorded in the register kept for this purpose by the General Secretariat. These organizations may appoint representatives to attend the public meetings of the Permanent Council and its subsidiary bodies. To this end, the OAS Secretariat is obliged to inform them of the calendar of public meetings and the order of business of the individual sessions.

“The second form of participation refers to requests lodged by those civil society organizations that are not recorded in the appropriate register and which refer to participation in one specific activity carried out by the OAS. In such cases, as under the previous mechanism, applications are addressed to the OAS Secretary General, who refers them to the competent Permanent Council Committee. However, unlike the first procedure, this Committee simply conducts a preliminary examination of

the application and conveys it to the group or committee responsible for organizing the activity. It is that group or committee, and not the Permanent Council as in the previous procedure, that is responsible for making the final decision regarding the civil society organization's participation in the activity in question.

“In spite of the overlaps between the requirements that civil society organizations must meet in order to participate under either of the two above mechanisms, those organizations that are recorded in the register have a series of responsibilities that do not apply to those that wish merely to attend one specific event. These obligations include: attending to queries presented by the organs, agencies, and entities of the OAS; disseminating, among their members, information on the Organization's activities; and submitting to the General Secretariat, before December 31 of each year, a report, including an executive summary, describing its participation in OAS activities over that year, indicating its financial situation and sources of funding, and listing the activities it plans to carry out over the following year. These reports are submitted to the General Secretariat, which forwards them to the Permanent Council committee responsible for such matters.

“Finally, it should be noted that being recorded in the register allows organizations to participate at specific activities, such as a conference or a meeting, by simply indicating the name of the person or persons who will be representing it on that occasion.”

**1.2 Condition established in Article 33 of the Rules of Procedure and Other Provisions of the Committee with respect to “accordance with the internal legislation of the respective State Party.”**

“Another of the requirements established by Article 33 of the Rules of Procedure and Other Provisions of the Committee which places restrictions on civil society organization participation in the analysis process carried out by the Committee of Experts, is that any such participation be carried out “in accordance with the internal legislation of the respective State Party.”

“It should be noted that the first draft version of the Committee's Rules of Procedure and Other Provisions, as discussed at the first regular meeting, contained no reference to this condition. It was, however, included following an express proposal made by the delegation of the Bolivarian Republic of Venezuela during the discussion and adoption of the Rules of Procedure. During the discussion of Article 33, that delegation explained that in accordance with their domestic laws, only those civil society organizations that received no funding from foreign sources could participate.”

“At that time the Committee considered the reasons given by the delegation of Venezuela and, in light thereof, resolved to incorporate into the approved text of the Rules of Procedure and Other Provisions a condition whereby civil society participation in the review process conducted by the Committee had to be “in accordance with the internal legislation of the respective State Party.”

“With reference to this matter, in its original Response to the questionnaire, the Bolivarian Republic of Venezuela stated: ‘Finally, for Venezuela, the participation of nongovernmental organizations in activities related to the control of public affairs in the country, and therefore their participation in the follow-up mechanism for implementation of the Inter-American Convention against Corruption, is limited to civil society organizations that are national in scope, with no external subsidy.’<sup>48</sup>

---

<sup>48</sup> Response of the Bolivarian Republic of Venezuela to the Questionnaire, pages 84 and 85, p. 24.

“In the update of its Response, submitted within the deadline set by the Committee (March 8, 2004), it repeated this position and included a paragraph similar in scope to the previous one, and stating as follows: ‘In the update of its Response, submitted within the deadline set by the Committee (March 8, 2004), it repeated this position and included a paragraph similar in scope to the previous one, and stating as follows: “Finally, in Venezuela the participation of nongovernmental organizations in activities related to the control of public administration in the country is recognized in the Constitution, laws, and jurisprudence for civil society organizations of national scope. This is based on the jurisprudence of the Supreme Court, which grants this type of authority exclusively to Venezuelans, and in accordance with the principles of the OAS Charter in the framework of respect for sovereignty and the juridical order of the states, nonintervention, and the juridical equality of states.”’<sup>49</sup>

“As stated in the previous paragraph, attached to the updated Response (Appendix No. 1 thereto) was a ruling from the Supreme Court of Justice, Venezuela’s highest court for constitutional matters, which stated the following in connection with the matter at issue: “The representatives of civil society are Venezuelan associations, groups, and institutions (without external subsidy) which as a result of their purposes, continued presence, number of members or supporters and continuous activities, have been working from different angles of that society to improve the quality of life of Venezuelan society, without ties to the government or political parties.”<sup>50</sup>

“Taking into consideration the background to the incorporation of the in accordance with the internal legislation of the respective State Party condition into the Committee’s current Rules of Procedure; the content of the ruling handed down by Venezuela’s highest court of constitutional interpretation; and the domestic law of that State, it is necessary to conclude that, in the specific case of Venezuela, to be able to participate in the MESICIC analysis process, a civil society organization may not be a recipient of foreign funding.”

### **1.3 Condition referring to the content of documents submitted by civil society organizations, requiring that they contain “specific and direct information related to the questions that are referred to in the questionnaire”**

“Article 33(b) of the Rules of Procedure and Other Provisions of the Committee requires that all documents presented by civil society organizations under the aegis of this mechanism, must contain specific and direct information related to the questions that are referred to in the questionnaire.”

“This is therefore another element that must be studied in order to determine the appropriateness of any possible contribution by civil society organizations in this process, with respect to the Bolivarian Republic of Venezuela.”

### **1.4 Compliance with the deadlines set by the Committee for the presentation of civil society contributions**

In compliance with Article 34 b) of the Rules of Procedure, during the Ninth Regular Meeting of the Committee, it was agreed that the deadline for the six States to be reviewed at the Committee’s Eleventh Regular Meeting would be November 10, 2006. The same deadline was agreed on for the presentation of documents by civil society organizations.

---

<sup>49</sup> Updated Response of the Bolivarian Republic of Venezuela to the Questionnaire, page 49.

<sup>50</sup> Ruling of the Constitutional Court of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, given on the thirtieth of June, 2000. File No. 00-1728.

**B. CONDITIONS THAT MUST BE MET FOR PARTICIPATION BY CIVIL SOCIETY ORGANIZATIONS IN COMMITTEE MEETINGS UNDER ARTICLE 36 OF THE RULES OF PROCEDURE**

Article 36 of the Rules of Procedure governs the participation of civil society organizations in Committee meetings:

*The Committee may invite or accept the request of the civil society organizations, within the framework of its meetings, to give a verbal presentation of the documents they presented in accordance with the provision in Article 34, c) of these Rules.*

*The Committee will invite the civil society organizations to give verbal presentations, in informal meetings, of the documents they presented in accordance with the provisions in Article 34 a) and b) of these Rules.*

Pursuant to said Article 36, the conditions that must be met by civil society are subject to the conditions stipulated in Article 34 (a), (b) and (c) of the Rules of Procedure which are summarized in Section I.A of this annex.

**C. CONDITIONS THAT MUST BE MET FOR THE PUBLICATION OF THE DOCUMENTS PRESENTED BY CIVIL SOCIETY ORGANIZATIONS THROUGH MESICIC'S WEBSITE, ACCORDING TO THE METHODOLOGY ADOPTED BY THE COMMITTEE FOR REVIEW WITHIN THE FRAMEWORK OF THE SECOND ROUND**

Section X of the Methodology establishes the conditions for the participation of civil society within the framework of the Second Round.

The first paragraph of the text of Section X of the Methodology is an exact copy of the provision contained in Article 34, b) of the Rules. In turn, the second paragraph is an exact transcription of Article 36 of the Rules which, as has been said, makes the participation of civil society organizations in Committee meetings conditional upon compliance with the requisites contained in Article 34, b) of the Rules.

The third paragraph of Section X of the Methodology establishes the conditions for posting documents presented by civil society organizations on MESICIC's website. It states that: "Documents presented by civil organizations in accordance with the provisions of this section shall be published on the Mechanism's website."

Consequently, publication on MESICIC's website of documents presented by civil society organizations is conditional upon compliance with the requisites established in Article 34, b) of the Rules.

**II. DOCUMENTS RECEIVED FROM CIVIL SOCIETY ORGANIZATIONS AND WITH RESPECT TO THEIR PARTICIPATION IN THE REVIEW PROCESS WITHIN THE FRAMEWORK OF THE SECOND ROUND IN CONNECTION WITH THE BOLIVARIAN REPUBLIC OF VENEZUELA**

On November 10, 2006 the Technical Secretariat received a communication from Transparency International, through which it presented the document entitled "Report by civil society: response to

the questionnaire of the Committee of Experts; Second Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption”, prepared by Transparency International.

According to the third paragraph of Section X of the “Methodology for review of the implementation of the provisions of the Inter-American Convention against Corruption selected for review in the Second Round and for follow-up of the recommendations formulated in the First Round,” on November 21, 2006 the Technical Secretariat posted the document referred to in the previous paragraph on MESICIC’s webpage.

On January 8, 2007, the Technical Secretariat received a communication dated December 22, 2006 signed by the Comptroller General of the Bolivarian Republic of Venezuela, Clodosbaldo Russián Uzcátegui, “in his capacity as President of the Ethics Council (*Consejo Moral Republicano del Estado Venezolano*), the body responsible, as the Central Authority according to Article XVIII of the Inter-American Convention against Corruption (CICC), for following up implementation of said Convention.” In that communication the Venezuelan State expressed its position on the scope of the provision contained in the Rules of Procedure of the Committee of Experts of MESICIC with regard to the participation of civil society organizations and, in particular, Transparency International, in the process for reviewing the specific case of the Bolivarian Republic of Venezuela. The Committee considered this subject and made a statement on the matter in Annex II of the Report on the Implementation in Venezuela of the provisions of the CICC selected for review in the First Round.

Taking the foregoing into account, the publication of the documents presented by Transparency International was suspended pending a statement from the Committee within the framework of the Eleventh Meeting on compliance with the requisites contained in Articles 34(b) and 36 of the Rules of Procedure, and in Section X of the Methodology, in the specific case of the contributions presented by the above-mentioned civil society organization, within the framework of the second round. The statement referred to has been made in this document.

### **III. ANALYSIS OF COMPLIANCE WITH THE CONDITIONS SET FOR THE PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS IN THE SECOND ROUND, IN THE SPECIFIC CASE OF CIVIL SOCIETY ORGANIZATIONS FROM WHICH DOCUMENTS WERE RECEIVED IN RELATION TO THE BOLIVARIAN REPUBLIC OF VENEZUELA**

With regard to the participation of the civil society organization Transparency International in the review process in relation to the Bolivarian Republic of Venezuela in the second round, this Chapter will examine whether the conditions that civil society organizations must fulfill in order to participate in the review process were fulfilled; as well as the conditions provided for in Article 36 of the Rules, in order to take part in Committee meetings; and the conditions established in Section X of the Methodology for Review in the Second Round, for the publication of the documents received from civil society organizations on MESICIC’s website.

**A. ANALYSIS OF COMPLIANCE WITH THE CONDITIONS SET IN ARTICLE 34 OF THE RULES OF PROCEDURES AND OTHER PROVISIONS, WITH SPECIFIC REFERENCE TO THE DOCUMENTS RECEIVED FROM CIVIL SOCIETY ORGANIZATIONS IN VENEZUELA**

In order to determine whether or not participation by the civil society organization Transparency International in the Committee's review process is permissible, the following paragraphs analyze, one by one, the conditions that, under Article 34 of the Committee's Rules of Procedure and Other Provisions, must be met by civil society organizations wishing to participate in this process: (i) compliance with the "Guidelines for Participation by Civil Society Organizations in OAS Activities"; (ii) compliance with the condition "in accordance with the internal legislation of the respective State Party"; (iii) compliance with the condition governing the content of documents, requiring that they contain "specific and direct information related to the questions that are referred to in the questionnaire"; and (iv) compliance with the Committee's established deadlines for the submission of documents.

**1. Analysis of compliance with the conditions set in the Guidelines for the Participation of Civil Society Organizations in OAS Activities (CP/RES. 759 (1271/99))**

As indicated in the "Guidelines for the Participation of Civil Society Organizations in OAS Activities" and section 1.1 of this appendix, there are two procedures whereby civil society participation in Organization activities can be allowed.

The first of these applies to organizations that have been duly registered, for which purpose they must follow the procedure and meet the conditions mentioned in section 1.1 of this appendix. As was noted at that point, if an organization that is already registered has submitted an application, has had it analyzed and approved by the Permanent Council committee responsible for handling such matters, and has had it adopted by the Permanent Council, it may attend a conference, meeting, or activity by simply notifying the names of the individuals who will be representing it at the event.

With respect to organizations that are not registered, the Guidelines also establish the procedure and conditions described in section 1.1 of this document, that they must meet in order to participate in specific OAS activities. According to this procedure, a request must be lodged with the OAS Secretary General, which then refers the application to the responsible Permanent Council committee. This committee conducts a preliminary examination of the request, formulates a recommendation, and forwards it to the working group responsible for organizing the meeting or conference, which then makes a final decision and accredits the participating organization, when appropriate.

According to the information available, Transparency International is a civil society organization registered in accordance with the "Guidelines for the Participation of Civil Society Organizations in OAS Activities" and therefore it fulfills the conditions foreseen in those guidelines.

However, it must be noted that even under such an assumption, the requirements set forth in paragraphs 2 to 4 below must also be met.

**2. Analysis of compliance with the conditions set in Article 34 of the Rules of Procedure with respect to “accordance with the internal legislation of the respective State Party”**

As indicated in the analysis in section 1.2, Venezuela’s highest constitutional court has ruled on the conditions to be met by civil society organizations in order to be considered as such, and one of those conditions was the absence of external funding.

With regard to the document presented by Transparency International, the 2005 Annual Report<sup>51</sup> published by that organization indicates some of its funding sources, including donations from Switzerland, Germany, Finland, the Netherlands, the United Kingdom and the United States.

In light of the above remarks, it can be seen that Transparency International is in noncompliance with the condition contained in Article 34 of the Committee’s Rules of Procedure and Other Provisions, with respect to “accordance with the internal legislation of the respective State Party.”

**3. Analysis of compliance with the condition of documents submitted by civil society organizations requiring that they contain specific and direct information**

With regard to the condition set forth in Article 34 of the Rules of Procedures requiring that the documents submitted contain specific and direct information, the following aspects could be considered.

In the documents received by the Technical Secretariat and described in Section 2 of this annex, it was noted that the contributed made by Transparency International and related to the questionnaire consists of three sections which are all pertinent and are related to the Inter-American Convention against Corruption, and that they refer to the questions included in the questionnaire.

Taking into consideration the above reasons, it could be concluded that the documents submitted by Transparency International meet the condition set forth in Article 34 of the Rules and Procedure regarding the need that they contain specific information and their direct relation to the questions posed in the questionnaire.

**4. Analysis of compliance with the deadline set by the Committee for civil society organizations to submit their contributions**

As indicated in Section 1.4 of this annex, November 10, 2006 was set by the Committee within the framework of its Ninth Regular Meeting, as the deadline for the State under review and civil society to submit documents.

On November 10, 2006 the Technical Secretariat received a communication from Transparency International through which it presented the document “Report by civil society; response to the questionnaire of the Committee of Experts; Second Round of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption” prepared by Transparencia Venezuela.

Given the above considerations, it can be concluded that these documents meet the condition on the deadline for civil society to submit its contributions.

---

<sup>51</sup> Annual Report of Transparency International-2005, page 38.

**5. Conclusion on compliance with the conditions set in Article 34 of the Rules of Procedure in the specific case of the civil society organization from which documents were received in connection with the Bolivarian Republic of Venezuela .**

In light of the above analysis, it can be concluded that the documents received on November 10, 2006 from Transparency International do not fulfill the conditions set forth in Article 34 of the Rules of Procedure and Other Regulations of the Committee governing the participation of civil society organizations in the review process.

**B. ANALYSIS OF COMPLIANCE WITH THE CONDITIONS SET FORTH IN ARTICLE 36 OF THE COMMITTEE'S RULES OF PROCEDURE ON PARTICIPATION IN THE MEETING OF THE COMMITTEE, IN THE SPECIFIC CASE OF THE CIVIL SOCIETY ORGANIZATION FROM WHICH DOCUMENTS WERE RECEIVED IN CONNECTION WITH THE BOLIVARIAN REPUBLIC OF VENEZUELA**

To determine the source of the participation of Transparency International through its national chapter Transparencia Venezuela, at the Committee meetings, the conditions set forth in Article 36 of the Rules of Procedure on compliance by civil society organizations regarding their participation in this process are set forth below.

It should be noted that Article 36 of the Rules of Procedure states that:

*“The Committee may invite or accept the requests of the civil society organizations, within the framework of their meetings, of its meetings, to give a verbal presentation of the documents they presented in accordance with the provision in Article 34, c), of these Rules.*

*“The Committee will invite the civil society organizations to give verbal presentations, in informal meetings, of the documents they presented in accordance with the provisions in Article 34 a) and b) of these Rules.”*

As can be seen, the participation by civil society organizations in the Committee's meetings is subject to compliance with Article 34 of the Rules of Procedure. Since the Committee has decided that in this case neither the requisites nor the conditions established in Article 36 were complied with, it would not be in order to make the presentations envisaged there.

**C. ANALYSIS OF COMPLIANCE WITH THE CONDITIONS SET IN THE METHODOLOGY FOR REVIEW IN THE SECOND ROUND ADOPTED BY THE COMMITTEE FOR PUBLICATION OF THE DOCUMENTS RECEIVED IN THE SPECIFIC CASE OF THE CIVIL SOCIETY ORGANIZATION FROM WHICH DOCUMENTS WERE RECEIVED IN CONNECTION WITH THE BOLIVARIAN REPUBLIC OF VENEZUELA**

As stated above, according to Section X of the Methodology, any documents presented by civil society organizations pursuant to the terms of that section will be posted on MESICIC's website.

Further, in order for these documents to be posted on the website, the civil society organizations must meet the requisites set forth in Article 34 of the Rules of Procedure which were analyzed above. In this case, it was stipulated that those conditions, in the case of Transparency International, regarding the review in connection with the Bolivarian Republic of Venezuela in the Second Round, are not met and thus, as stated in Section X of the Methodology, it would not be in order to post the documents on MESICIC's website.