

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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METHODOLOGY
FOR THE REVIEW OF THE IMPLEMENTATION OF THE PROVISIONS OF THE
INTER-AMERICAN CONVENTION AGAINST CORRUPTION SELECTED IN THE
THIRD ROUND AND FOR FOLLOW-UP ON THE RECOMMENDATIONS
FORMULATED IN THE PREVIOUS ROUNDS

INTRODUCTION

The Report of Buenos Aires and the Rules of Procedure and Other Provisions of the Committee of Experts on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption (hereinafter, as applicable, *Report of Buenos Aires, Rules, Committee, Mechanism, and Convention*) provide that the Committee shall “devise a methodology for the review of the implementation of the provisions of the Convention selected to be reviewed in each round, designed to ensure that sufficient reliable information is obtained.”

At its thirteenth meeting, held from June 23 to 27, 2008, the Committee decided that during the third round it would review implementation by States Parties of the following provisions of the Convention: Article III, paragraphs 7 and 10; and Articles VIII, IX, X, and XIII.

Furthermore, Article 29 of the *Rules* refers to “follow-up within the framework of future rounds” and, in its third paragraph, provides that “During the second and subsequent rounds, the country report of each State Party shall address the steps taken to implement the recommendations adopted by the Committee in previous country reports. The country report shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.”

In light of the above, this document contains the methodology for the review of the implementation of the provisions of the Convention selected in the framework of the third round and for follow-up on the recommendations formulated by the Committee in the country reports adopted in the previous rounds. To this end, the document refers to the objective of the review in the third round, to its framework, and the general and specific criteria used to guide the review of the provisions selected in the third round; considerations with respect to the scope of this review and follow-up on the recommendations formulated in the country reports in the previous rounds; sources of information, the review process; responses to the questionnaire; country reports; and participation of civil society organizations.

I. OBJECTIVE OF THE REVIEW IN THE THIRD ROUND

Within the framework of the purposes of the Convention and the Mechanism, the objective of the review in the third round will be to conduct the follow-up of the implementation in each State Party of the Convention provisions selected in the third round, by the review of the existence of a legal

framework and of other measures for the implementation of each one of the provisions and, assuming they exist, of their adequacy for the purposes of the Convention, and by an initial review of the State Party's results and progress. Its objective is also to follow up on progress in implementation of the recommendations formulated in the country reports in the previous rounds, pursuant to Article 29 of the *Rules*.

II. FRAMEWORK FOR REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN THE THIRD ROUND

The review of the implementation of the provisions selected in the third round shall be conducted within the framework of the provisions of the Convention as well as of the Report of Buenos Aires and the Rules of the Committee.

III. CRITERIA USED TO GUIDE THE REVIEW OF IMPLEMENTATION OF THE CONVENTION PROVISIONS SELECTED IN THE THIRD ROUND

In addition to the principles outlined in the Report of Buenos Aires and the Rules of the Committee, information concerning the implementation of the provisions of the Convention selected in the third round shall be reviewed based mainly on the general and specific criteria described below.

A) GENERAL CRITERIA

The following three criteria shall guide the general and comprehensive review of the implementation of the provisions of the Convention selected in the third round:

1. Equal treatment

In accordance with this criterion, and as concerns the review of information on the implementation of the selected provisions of the Convention, all States Parties shall enjoy equal and consistent treatment. With a view to ensuring compliance with this criterion, in particular, the following precautionary measures shall be adopted in addition to the principles outlined in the Report of Buenos Aires and the Rules:

- a) All States Parties shall be reviewed within the framework of the round and in accordance with the same criteria and procedures;
- b) The questionnaire shall be the same for all States Parties; and,
- c) All country reports shall have the same structure.

2. Functional equivalency

The Committee shall review the measures taken by the State Party to implement specific provisions of the Convention to determine whether those measures seek to achieve the obligations and purposes of the Convention.

In this regard, the Committee shall review the information within the specific legal context and system of each State Party and the issue of whether the measures are uniform among the various States shall not be examined, but the Committee shall weigh the equivalency of the measures in achieving the expressed purposes.

3. Strengthening of cooperation

In accordance with this criterion, the Committee shall review the information received always taking into account that the purpose of both the Convention and Follow-up Mechanism is to promote, facilitate and strengthen cooperation among States Parties in the prevention, detection, punishment and eradication of corruption.

B) SPECIFIC CRITERIA

The implementation by a State Party of each of the selected provisions shall be reviewed based upon the following specific criteria:

1. Existence of a legal framework and/or of other measures

The Committee shall determine, based on this criterion, whether a State Party possesses a legal framework and other measures for the implementation of the respective provision of the Convention.

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

If a State Party possesses a legal framework and other measures for the implementation of the respective provision of the Convention, the Committee shall review whether they are appropriate to promote the purposes of the Convention: to prevent, detect, punish and eradicate corruption.

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

As concerns this criterion, the preliminary review shall attempt to examine to what extent objective results have been generated by the application of the legal framework and of other measures existing in the State Party related to the implementation of a respective provision of the Convention.*

The review of information on results shall seek to focus on the current situation of the country reviewed, avoiding inclusion of information referring to the period prior to the date of ratification of the Convention by the State Party.

When in its response to the questionnaire, a state provides statistical data, it shall seek to ensure, if such data relates to implementation of the provisions established in Article III, paragraphs 7 and 10 of the Convention, that such information refers to the two years prior to the date of its response and, in the case of Articles VII, IX, and XIII, to the five years prior to that date.

4. Level of progress in the implementation of the Convention

Based on this criterion, the Committee shall review the progress made and shall identify the areas, if any, that require progress in the implementation of the Convention.

In addition to the foregoing, in its review the Committee may, where appropriate, take into consideration any elements contained in the provisions of the United Nations Convention against Corruption that refer to the subject matter of the provisions of the Inter-American Convention against Corruption, whose implementation is under review.

* With respect to the provision contained in Article X of the Convention, it is not appropriate to review results as it only refers to notification.

IV. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE REVIEW OF THE PROVISIONS SELECTED IN THE THIRD ROUND

For the review of the selected provisions of the Convention to be considered in the third round, the following thematic areas will be kept in mind, as well as the considerations that are formulated in connection with some of the selected provisions.

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

The first provision selected by the Committee for review of implementation by States Parties provides the following:

“Article III.- Preventive Measures.- For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

[...]

“7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.”

As regards the foregoing provision, the review shall consider the laws, rules and/or measures that deny or prevent favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the country concerned, as well as the means or mechanisms to apply them, and the objective results of their application.

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

The second provision selected by the Committee for review of implementation by States Parties provides the following:

“Article III.- Preventive Measures.- For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

[...]

“10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.”

With respect to the foregoing provision, the review shall consider if the measures adopted by the States Parties in this respect are designed “to create, maintain and strengthen” rules or other measures to deter or impede bribery of domestic and foreign government officials, such as the mechanisms alluded to in said provision. To that end, the review will address aspects such as the range of publicly held companies and other types of associations that are required to maintain accounting records on

their operations; the rules regarding how those records are be kept; the mechanisms to enforce them, such as the prohibition of certain acts that undermine the accuracy, veracity, authenticity and safekeeping of said records; the criminal, financial, and any other sanctions in place for those who infringe them; and the organs and agencies responsible for prevention and/or investigation of their violation and for imposing the appropriate punishment.

The review shall also address objective results obtained, such as measures adopted to prevent or investigate breaches of the aforementioned standards and other measures and sanctions imposed in that regard, including available statistical data.

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

The third provision selected by the Committee for review of implementation by States Parties provides the following:

“Article VIII.- Transnational bribery

“Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.

Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established transnational bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.”

The review of implementation of Article VIII of the Convention will examine, first, if the conduct described in that article is criminalized under domestic law, subject to its Constitution and the fundamental principles of its legal system; second, assuming the conduct is criminalized, if it is considered an act of corruption for the purposes of the Convention; and, third, should it not be criminalized, if the State, insofar as its laws permit, provides assistance and cooperation with respect to this offense as provided in the Convention.

Furthermore, in the event that the aforesaid conduct is criminalized, the review will address objective results obtained, such as judicial proceedings in progress and their results. If the country under review does not criminalize the aforesaid conduct, insofar as its laws permit it to provide assistance and cooperation as provided in the Convention, the review will address objective results in that regard.

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

The fourth provision selected by the Committee for review of implementation by States Parties provides the following:

“Article IX.- Illicit enrichment

“Subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.

Among those States Parties that have established illicit enrichment as an offense, such offense shall be considered an act of corruption for the purposes of this Convention.

Any State Party that has not established illicit enrichment as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.”

The review of implementation of Article IX of the Convention will examine, first, if the conduct described in that article is criminalized under domestic law, subject to its Constitution and the fundamental principles of its legal system; second, assuming the conduct is criminalized, if it is considered an act of corruption for the purposes of the Convention; and, third, should it not be criminalized, if the State, insofar as its laws permit, provides assistance and cooperation with respect to this offense as provided in the Convention.

Furthermore, in the event that the aforesaid conduct is criminalized, the review will address objective results obtained, such as judicial proceedings in progress and their results. If the country under review does not criminalize the aforesaid conduct, insofar as its laws permit it to provide assistance and cooperation as provided in the Convention, the review will address objective results in that regard.

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

The fifth provision selected by the Committee for review of implementation by States Parties provides the following:

“Article X.- Notification

“When a State Party adopts the legislation referred to in paragraph 1 of articles VIII and IX, it shall notify the Secretary General of the Organization of American States, who shall in turn notify the other States Parties. For the purposes of this Convention, the crimes of transnational bribery and illicit enrichment shall be considered acts of corruption for that State Party thirty days following the date of such notification.”

The review of implementation of Article X of the Convention will examine if the country under review has issued the notification, in the event the legislation referred to in Articles VIII(1) and IX(1) was adopted subsequent to ratification of said Convention. The nature of this provision renders a review of results moot.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

The sixth provision selected by the Committee for review of implementation by States Parties provides the following:

“Article XIII.- Extradition

“1. This article shall apply to the offenses established by the States Parties in accordance with this Convention.

2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty existing between or among the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.

6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offense, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State, and shall report the final outcome to the Requesting State in due course.

7. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings.”

The review of implementation of Article XIII of the Convention will examine, first, bearing in mind the provisions contained in Article XIII (1, 2, 3, and 4), if, under the legal framework of the country under review, this Convention may be considered the legal basis for extradition in connection with the offenses it has criminalized in accordance with said Convention. Second, the review will analyze if, in the event that the State Party may refuse extradition for those offenses on the basis of the nationality of the person sought, or because it deems that it has jurisdiction over the offense, it submits the case to the competent authorities for the purpose of prosecution and reports the final outcome to the requesting state in due course. Third, the review will examine if, subject to the provisions of its domestic law and its extradition treaties, the country under review, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, takes into custody the person whose extradition is sought and who is present in its territory, or takes other appropriate measures to ensure their presence at extradition proceedings.

Furthermore, the review will address objective results obtained from the application of the existing rules and/or other measures on extradition for the aforementioned offenses in the country under review, such as extradition requests made to other States Parties for the purpose of investigating or

prosecuting those offenses and procedures initiated by the country under review to attend to requests received by it from other States Parties with the same purpose, as well as the results thereof.

V. CONSIDERATIONS WITH RESPECT TO THE SCOPE OF THE FOLLOW-UP ON THE RECOMMENDATIONS FORMULATED IN THE COUNTRY REPORT IN THE PREVIOUS ROUNDS

1. First Round

Pursuant to Article 29 of the Rules, the country report of each State Party shall address the steps taken to implement the recommendations made in the first round to the respective State on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those that it supplied information but which the Committee considered in Section IV of the corresponding country report for that round that they needed further attention. The country report shall also note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.

2. Second Round

Pursuant to Article 29 of the Rules, the country report of each State Party shall address the steps taken to implement the recommendations adopted by the Committee in the respective report for the second round and shall note those recommendations that have been satisfactorily considered and those that need additional attention by the country under review.

VI. SOURCES OF INFORMATION

The review shall be carried out based on the answers to the questionnaire by the respective State Party, documents presented by civil society organizations in accordance with the Rules of the Committee, and any other pertinent information that the Secretariat and members of the Committee may obtain.

Members of the review subgroup may contact each other and the experts of the country under review through teleconferences, video conferences or any other manner deemed appropriate during the period provided for the review subgroup to consider the preliminary draft report prepared by the Secretariat.

Should a State adopt a law subsequent to the deadline for submitting its response to the questionnaire, it may send said law to the Secretariat up to one month before the meeting of the review subgroup, so that the Secretariat may relay it to the members of said review subgroup.

VII. REVIEW PROCESS

The review shall follow the process outlined in the Rules of the Committee, in keeping with the Report of Buenos Aires.

VIII. RESPONSES TO THE QUESTIONNAIRE

The states shall respond to the questionnaire in accordance with the provisions of Article 21 of the Rules and within the deadlines set by the Committee in the timetable adopted for the Third Round.

The responses to the questionnaire by States Parties shall be translated into the working languages of the Committee.

For the purposes of the provisions of Article 26 of the Rules, it is recommended that the responses of the States Parties to the questionnaire not exceed 35 pages. Each State Party may append additional documents it considers to be necessary, which it shall submit for the attention of the members of the Committee in the original language. To that end, the State Party may also attach translations of those appendices in the other working languages of the Committee.

Once it has received the responses to the questionnaire from the States Parties, the Technical Secretariat shall publish them on the Internet web page of the Mechanism.

IX. COUNTRY REPORT

The draft reports shall be translated into the working languages of the Committee. Pursuant to Article 26 of the Rules, it is recommended that they not exceed 35 pages.

In accordance with Article 25(g) of the Rules, once the report is approved by the Committee, the Technical Secretariat shall publish it on the Internet web page of the Mechanism.

X. PARTICIPATION OF CIVIL SOCIETY ORGANIZATIONS

In accordance with Article 34(b) of the Rules, civil society organizations may present, through the Technical Secretariat, documents with specific and direct information related to the questions that are referred to in the questionnaire with respect to the implementation by a State Party of the provisions selected for review in the third round. They may also present documents with information related to implementation of the recommendations formulated by the Committee to the State Party in previous rounds.

In keeping with the second paragraph of Article 36 of the Rules, the Committee will invite civil society organizations to give verbal presentations, in informal meetings, of the documents they presented in accordance with the provisions in the preceding paragraph and in Article 34(b) of the Rules.

Documents submitted by civil society organizations in accordance with this section shall be published on the Internet web page of the Mechanism.

For the purposes of this section, civil society organizations shall submit documents, together with their corresponding electronic copies, within the same time limit established for the respective States Parties to present their responses to the questionnaire.