



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

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REPUBLIC OF PERU

FINAL REPORT

(Adopted at the March 11, 2016 plenary session)

## SUMMARY

This report contains a comprehensive review of the implementation of the recommendations formulated to Peru in the Second Round Report with respect to paragraphs 5 and 8 of Article III of the Inter-American Convention against Corruption. These provisions refer, respectively, to systems for hiring public servants and procuring government goods and services and protecting public servants and private citizens who report, in good faith, acts of corruption, as well as to the definition of offenses involving acts of corruption set forth in Article VI of the Convention. Where appropriate, reference is made to new developments in implementing these provisions.

Furthermore, the report includes a comprehensive review of Peru's implementation of paragraphs 3 and 12 of Article III of the Convention, selected by the MESICIC Committee of Experts for the Fifth Round. These provisions address, respectively, measures aimed at creating, maintaining, and strengthening instruction to personnel at public entities to ensure proper understanding of their responsibilities and the ethical standards governing their activities, as well as the study of other preventive measures that take into account the relationship between equitable compensation and probity in public service. Reference has also been made to best practices reported by the State with respect to implementation of the provisions selected for the Second and Fifth Rounds.

The review was conducted in the framework of the Convention, the Report of Buenos Aires, the Committee's Rules of Procedure, and the methodologies adopted by the Committee for conducting on-site visits and for the Fifth Round; this includes the criteria established therein to guide the review with respect to equal treatment for all States parties, functional equivalency, and the aim both of the Convention as well as MESICIC to promote, facilitate, and strengthen cooperation between the States to prevent, detect, punish, and eradicate corruption.

To conduct the review, Peru's response to the questionnaire, as well as the information gathered during the on-site visit to the country from September 8-10, 2015 were used. Representatives of Mexico and Nicaragua took part in the visit, during which, thanks to the support of the MESICIC Technical Secretariat, there was the opportunity to specify, clarify, and supplement the information furnished by Peru, and to hear the opinions of civil society and private sector organizations, professional associations, and academics on the issues under review.

Recommendations were formulated to Peru in the Second Round Report, which the Committee deemed required additional attention in the Third Round Report. With respect to implementation of said recommendations, based on the Fifth Round methodology and given the information furnished in the response to the questionnaire and during the on-site visit, the Committee outlined which of these recommendations had been implemented satisfactorily, which required additional attention, which were to be reformulated, and which were no longer valid.

Several positive steps have been highlighted with respect to the systems for hiring public servants, particularly the creation of the National Civil Service Authority (SERVIR) in 2008, and the approval of the new Civil Service Law (Law 30057 of July 4, 2013) and its General Regulations. The foregoing establish a single, exclusive system for individuals who work at public entities in Peru, and provide that entry into public service is done through a merit-based, competitive, and transparent selection process that ensures equal access to the civil service.

As for the system for government procurement of goods and services, the enactment of the New Government Procurement Law (Law 30225 of 2014) and Law 30356 of 2015 are noteworthy; enactment of these Laws strengthens the transparency and oversight of resource management agreements with international organizations. Also noteworthy is the enhancement of the Electronic Government Procurement System (SEACE) platform and the National Provider Registry (RNP).

Also worth noting is the establishment in 2013 of the INFOBRAS System of the Office of the Comptroller General of the Republic (CGR), the purpose of which is to bolster oversight and transparency in public works through the registration, coordination, and dissemination of information by public entities, and to include citizens as allies in carrying out government oversight over public works.

On the matter of protecting whistleblowers who report acts of corruption, the report alludes to the implementation of Law 29542 of 2010 (Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters) and its Regulations. It likewise touches upon the establishment of the Comprehensive Protection Program for Witnesses, Expert Witnesses, Victims, or Collaborators who Participate in Criminal Proceedings. The report further highlights the service “*Aló Contraloría Empresarial*,” launched in April 2015, which the CGR provides to businesses and business trade associations that wish to confidentially submit information on allegedly unlawful or arbitrary acts in the public sector.

With respect to defining offenses involving the acts of corruption provided for in Article VI of the Convention, approval of Law 30124 of 2013 is highlighted. Said Law modifies Article 425 of the Criminal Code to include “(...) *those designated, selected, or appointed by the appropriate authority to perform activities or functions on behalf of or in the service of the State or its entities* (...)” as public servants subject to criminal jurisdiction.

Some of the recommendations formulated in the Second Round that are still current point to propositions like bringing criminal legislation into line and/or supplementing this legislation, as the case may be, such that it includes the elements of acts of corruption set forth under Article VI(1) of the Convention.

Furthermore, based on the review of new developments in Peru in connection with implementing the Convention provisions selected for the Second Round, the Committee has also formulated recommendations regarding matters such as: Developing and/or implementing laws and other instruments that ensure the dissemination, equity, and efficiency of the systems for hiring public servants and for government procurement of goods and services, pursuant to the principles and rights provided for in the Constitution and the Convention; concluding the transition to the new civil service system at the entities that are farther along in the process and launching competitive selection processes to fill vacancies under Law 30057; considering approval of the Prosecution Service Career Law that regulates in detail the entry of prosecutors based on merit; adopting relevant measures to implement a more advanced information search platform in the SEACE; providing appropriate training to the parties involved in contracting processes and the establishment of an organizational culture based on public ethics, as well as bolstering the system of control and oversight agencies; strengthening the OSCE oversight area by providing it with the necessary human, financial, and technological resources to supervise the proper enforcement of the contracting scenarios exempted from the application of Law 30225 and penalize those responsible in cases of unjustified splitting of the procurement of works, goods, and/or services; defining clearly and limiting the exception

contained in Law 29542 regarding complaints “brought that undermine professional secrecy” to prevent public servants in particular from being unable to report alleged acts of corruption due to their duty of confidentiality; establishing administrative appeals so that whistleblowers reporting acts of corruption may have CGR decisions on whether or not to grant protection measures reversed or amended; regulating, as a protection measure, whistleblowers’ right to be transferred from their habitual work position and even be seconded or assigned to a different entity in order to protect them from colleagues and/or superiors’ acts of harassment; and adopting the relevant measures to coordinate the existing whistleblower protection measures and programs in administrative and criminal jurisdictions.

The first provision selected for the Fifth Round refers to instruction to personnel of public entities to ensure proper understanding of their responsibilities and the ethical standards governing their activities, provided for in Article III(3) of the Convention. For review of the aforementioned provision, in keeping with the methodology for this Round, the country under review selected the Ministry of Justice and Human Rights (MINJUS) and the National Superintendency of Customs and Tax Administration (SUNAT) as it believed that these entities stand out for having implemented programs related to this issue.

This review is focused on determining whether provisions and/or measures have been adopted that ensure these groups of employees’ proper understanding of their responsibilities and the ethical standards governing their activities, how and when instruction is imparted, the programs provided for this purpose, the offices that have responsibilities in this respect, as well as the objective results obtained in applying such provisions and/or measures that govern the activities of personnel at the institutions mentioned above, taking note of the difficulties and/or weaknesses in achieving the aim of this provision of the Convention.

Some recommendations formulated to Peru for its consideration in connection with the foregoing point to goals such as those highlighted below:

- To include, as part of the content of the SERVIR directive on the minimum information that must be part of the orientation process, the provisions or other measures deemed appropriate to make everyone who enters the Peruvian civil service aware of the risks of corruption inherent to the performance of their duties, as well as the consequences and penalties for being involved in acts of corruption.

- Establish simplified, streamlined procedures so that any civil servant may go to the Secretariat for Public Management of the Office of the President of the Council of Ministers (SGP/PCM) to obtain information or resolve doubts about the scope or manner of interpreting ethical standards that govern their activities.

- Define the offices or entities that, respectively, are responsible for taking and answering queries about the respective ethical standards of MINJUS and SUNAT, and establish simplified, streamlined procedures so that any public servant may pose questions and receive answers to such questions.

- Adopt the relevant measures to ensure the necessary resources to expand and/or to continue with training activities in ethics and awareness of the inherent risks of corruption in the performance of duties of personnel who work at both MINJUS and SUNAT.

In keeping with the aforementioned methodology, the review of the second provision selected for the Fifth Round, set forth in Article III(12) of the Convention, is focused on determining whether

the State has studied preventive measures that take into account the relationship between equitable compensation and probity in public service and whether it has established objective and transparent criteria for determining compensation for public servants. It is recommended that Peru consider, *inter alia*, promoting, through the appropriate authorities, the inclusion of objective criteria to determine the remuneration of public servants in the departments and entities not covered by Law No. 30057 and its Compensation Regulations.

Finally, the best practices about which Peru provided information refer, in synthesis, to the “Activities of the Central Unit for Victim and Witness Protection and Assistance (UCAVIT) of the Public Prosecution Ministry: Events for external dissemination, video broadcasts of oral trial hearings, and assistance networks,” and the “Implementation of Basic, Intermediate, and Advanced Training Modules for Auditors” by the Office of the Comptroller General of the Republic (CGR) and its National Oversight Academy (ENC), which consists of designing and executing comprehensive training modules that respond to the training needs of CGR professionals.

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

**REPORT ON IMPLEMENTATION IN THE REPUBLIC OF PERU OF THE CONVENTION  
PROVISIONS SELECTED FOR REVIEW IN THE FIFTH ROUND, AND ON FOLLOW-UP  
TO THE RECOMMENDATIONS FORMULATED AND PROVISIONS REVIEWED  
DURING THE SECOND ROUND<sup>1</sup>**

**INTRODUCTION**

**1. Contents of the Report**

[1] As agreed by the Committee of Experts (hereinafter, “the Committee”) of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (hereinafter, “MESICIC”) at its Twenty-Fourth Meeting,<sup>2</sup> this report will first review the implementation of the recommendations formulated to the Republic of Peru in the Second Round<sup>3</sup> that the Committee deemed would require additional attention in the Third Round Report.<sup>4</sup>

[2] Second, where appropriate, this report will refer to new developments in the Republic of Peru in relation to the provisions of the Inter-American Convention against Corruption (hereinafter, “the Convention”) selected for the Second Round in such areas as legislative frameworks, technological developments, and results, and will proceed to make observations and any recommendations that may be required.

[3] Third, the report will discuss implementation of the Convention provisions selected by the Committee for the Fifth Round. These provisions are contained in paragraphs 3 and 12 of Article III, and have to do, respectively, with measures for creating, maintaining, and strengthening “*Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities,*” as well as “[t]he study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.”

[4] Fourth, the report will make reference, where appropriate, to the best practices that the country under review voluntarily wished to share with respect to implementation of the Convention provisions selected for the Second and Fifth Rounds.

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

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

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1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 11, 2016, at its Twenty-sixth Meeting, held at OAS Headquarters, March 7-11, 2016.
  2. See the Minutes of the Twenty-Fourth Meeting of the Committee, available in Spanish at: [http://www.oas.org/juridico/docs/XXIV\\_acta.doc](http://www.oas.org/juridico/docs/XXIV_acta.doc)
  3. Available in Spanish at: [www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf)
  4. Available in Spanish at: [www.oas.org/juridico/spanish/mesicic\\_III\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_III_inf_per.pdf)

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

## I. SUMMARY OF THE INFORMATION RECEIVED

### 1. Response of the Republic of Peru

[7] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Republic of Peru, and in particular from the Directorate of the High-Level Anti-Corruption Commission [*Coordinación General de la Comisión de Alto Nivel Anticorrupción*] (CAN), which was evidenced, *inter alia*, in the response to the questionnaire and in the consistent willingness to clarify or complete its contents, as well as in the support for the on-site visit to which the next paragraph of this report refers. Together with its response, the Republic of Peru sent the provisions and documents it considered pertinent.<sup>5</sup>

[8] The Committee also notes that the country under review gave its consent for the on-site visit, in accordance with provision 5 of the *Methodology for Conducting On-Site Visits*.<sup>6</sup> As members of the preliminary review subgroup, the representatives of Mexico and Nicaragua conducted the on-site visit from September 8–10, 2015, with the support of the MESICIC Technical Secretariat. The information obtained on that visit is included in the appropriate sections of this report and its agenda of meetings is annexed hereto, in keeping with provision 34 of the *Methodology for Conducting On-Site Visits*.

[9] For its review, the Committee took into account the information provided by Peru up to September 10, 2015, as well as that furnished and requested by the Secretariat and by the members of the review subgroup to carry out their functions, in keeping with the *Rules of Procedure and Other Provisions*; the *Methodology for Review of the Implementation of the Recommendations Formulated and the Provisions Examined in the Second Round*, as well as for review of the *Inter-American Convention against Corruption provisions selected for the Fifth Round*; and the *Methodology for Conducting On-Site Visits*.<sup>7</sup>

### 2. Documents and information received from civil society organizations and/or, *inter alia*, private sector organizations, professional associations, academics, and researchers

[10] The Committee did not receive any documents or information from civil society organizations within the time period established in the schedule for the Fifth Round, in accordance with Article 34(b) of the Committee's Rules of Procedure.

[11] Nonetheless, during the on-site visit to the country under review, information was gathered from civil society and private sector organizations, professional associations, academics, and researchers who were invited to participate in the meetings held for that purpose, pursuant to provision 27 of the *Methodology for Conducting On-Site Visits*. A list of invitees is included in the

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5. This response and those provisions and documents are available in Spanish at:

[www.oas.org/juridico/spanish/mesicic5\\_per.htm](http://www.oas.org/juridico/spanish/mesicic5_per.htm)

6. Document SG/MESICIC/doc.276/11 rev. 2, available in Spanish at: [www.oas.org/juridico/spanish/met\\_insitu.pdf](http://www.oas.org/juridico/spanish/met_insitu.pdf)

7. This information is available in Spanish at: [www.oas.org/juridico/spanish/mesicic5\\_per.htm](http://www.oas.org/juridico/spanish/mesicic5_per.htm)

agenda of the on-site visit, which has been annexed to this report. This information is reflected in the appropriate sections of this report.

## **II. FOLLOW-UP ON THE IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED IN THE SECOND ROUND AND NEW DEVELOPMENTS WITH REGARD TO THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THAT ROUND**

[12] First, the Committee will discuss progress, information, and new developments in the Republic of Peru in relation to the implementation of the recommendations formulated to them and the measures suggested to them by the Committee for implementation in the report from the Second Round,<sup>8</sup> [and] regarding which the Committee deemed additional attention would be required in the Third Round Report;<sup>9</sup> the Committee will also take note of those that have been satisfactorily considered and those that may require additional attention. In addition, where appropriate, it will address the continued validity of those recommendations and, as applicable, restate or reformulate them, pursuant to the provisions of Section V of the *Methodology* adopted by the Committee for the Fifth Round.

[13] In this section, the Committee will also take note, where appropriate, of any difficulties in implementing the above recommendations and measures to which the State in question may have drawn attention, as well as of its technical cooperation needs to that end.

[14] Second, it will refer to new developments in Peru in relation to the Convention provisions selected for the Second Round in such areas as legislative frameworks, technological developments, and results, and proceed to make any observations and recommendations that may be required.

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

#### **1.1. GOVERNMENT HIRING SYSTEMS**

##### **1.1.1 Follow-up on implementation of the recommendation formulated in the Second Round**

###### Recommendation:

*Strengthen government hiring systems.*

Measure (a) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

- *Enhance Law 28175 (Public Employment Framework Law), bearing in mind the legislative initiatives in place, in order to develop sufficiently the structure of the civil service career system and the provisions on public service recruitment procedures based on the principles of merit and equality, with respect to stages, timeframes, competent organs, disclosure, and the possibility to challenge bidding conditions.*

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8. Available in Spanish at: [www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf)

9. Available in Spanish at: [www.oas.org/juridico/spanish/mesicic\\_III\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_III_inf_per.pdf)



[15] In its response,<sup>10</sup> the country under review provides the following information with respect to the measure above:

[16] *“Law 28175 (Public Employment Framework Law), published on February 19, 2004, included, as two of its objectives: To create the conditions necessary to make public entities efficient, effective, participatory, transparent, honest, and competitive organizations when discharging their government responsibilities and in the services they provide to society, and to regulate labor relations in the civil service as well as performance management in order to offer quality services to users based on results-based management policies.*

[17] *This law stipulated as Second Transitional, Supplementary, and Final Provision that, within one hundred and twenty (120) days of its publication, the executive branch must send to the Congress of the Republic legislative bills on the following:*

[18] *1. Civil Service Career Law*

[19] *2. Law on Public Officials and Trust Employees*

[20] *3. Law on the Civil Servant Compensation System*

[21] *4. Civil Service Management Law*

[22] *5. Conflicts of Interest and Responsibilities Law*

[23] *Nevertheless, although such bills were submitted to the Congress of the Republic—with the exception of the bill on compensation—none were passed. Thus, while it did remain in effect, the Public Employment Framework Law was never enhanced and lost force when implemented.*

[24] *(...)*

[25] *On July 4, 2013, thanks to joint efforts between SERVIR, the Office of the President of the Council of Ministers, the Ministry of Labor, and the Ministry of Economy and Finance, Law 30057 (Civil Service Law) was published for purposes of establishing a single and exclusive system for individuals who work in government entities, as well as those responsible for managing them. This law is one of the most ambitious reforms in the past 20 years in Peru inasmuch as it is comprehensive because it regulates all three levels of government and more than half a million public servants. This reform is based primarily on two pillars: Meritocracy and a citizen-service approach.*

[26] *Specifically, Law 30057 provides that once the new civil service system is implemented, Law 28175 (Public Employment Framework Law) is to be repealed. In that regard, Law 30057 (Civil Service Law) will regulate everything in connection with human resources management in the Peruvian government that was previously covered under the Public Employment Framework Law, but that, subsists in some manner until full implementation of the new system.”*

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10 See the Republic of Peru’s response to the questionnaire with respect to follow-up on implementation of the recommendations formulated and the provisions reviewed in the Second Round, as well as with respect to the Convention provisions selected for the Fifth Round, p. 3, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

[27] *Bearing* in mind that Law 28175 (Public Employment Framework Law)—regarding which the recommendation contained in the previous measure was formulated—will be repealed by Law 30057 of July 2013 (Civil Service Law) once the new civil service system is implemented, the Committee believes that such recommendation no longer applies inasmuch as it is geared toward the enhancement of a law whose repeal has already been provided for by law.

[28] Given that Law 30057 contains a single and exclusive system for individuals who work in government entities, the Committee believes it is more useful to focus its analysis on this law, which constitutes a new development with respect to the legislative framework in this area, and, pursuant to the provisions of the methodology adopted for the Fifth Round, it will proceed to make any observations and recommendations that may be required with respect thereto in the appropriate section of this report.

### **1.1.2 New developments with respect to the implementation of the Convention provision on government hiring systems**

[29] The Committee was provided information about the following new developments in this area and will formulate the appropriate observations and recommendations:

#### **1.1.2.1 New developments with respect to the legislative framework**

##### **a. Scope of the new legislative developments**

- **Legislation and provisions of a diverse legal nature applicable to the majority of public servants, among which the following are noteworthy:**

[30] Law 30057 of July 2013 (Civil Service Law) and its General Regulations (adopted by means of Supreme Decree 040-2014-PCM of June 13, 2014), which establish a single and exclusive system for individuals who work in government entities.<sup>11</sup>

[31] The principles of Law 30057—established in Article III of the Preliminary Title thereof—include merit, transparency, accountability, integrity, and public ethics.

[32] Article 4 of Law 30057 establishes an administrative system for human resources management, which is comprised of: (a) The National Civil Service Authority (SERVIR); (b) government entities' human resources offices or their equivalent; and (c) the Civil Service Tribunal.

[33] Article 8 of Law 30057 (in line with Article 164 of its General Regulations) provides that the selection process is the mechanism for becoming a senior manager,<sup>12</sup> career civil servant,<sup>13</sup> and

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11. Law 30057 applies to: (a) the Executive Branch, including ministries and government bodies; (b) the Legislative Branch; (c) the Judiciary; (d) regional governments; (e) local governments; (f) bodies granted autonomy by Peru's Constitution and legislation; and (g) all other government entities and bodies, projects and programs whose activities are conducted by virtue of administrative powers and are therefore considered to be subject to the common provisions of public law. Exceptions to the enforcement of Law 30057 are stipulated in its First Final Supplementary Provision.

12. According to Article 3(a) of Law 30057, a senior manager is a civil servant who performs functions having to do with the organization, management, or decision-making of a body, organizational unit, program, or special project.

administrative support staff.<sup>14</sup> It aims to select the best people for positions based on merit, competition, and transparency, thereby ensuring equal access to public employment. And though they do not need to take part in a merit-based public competition, trust employees<sup>15</sup> must meet the profile requirements established for a position in order to be selected.

[34] The requirements for joining the civil service are detailed in Article 9 of Law 30057 (in line with Article 162 of its General Regulations) and call for [individuals to], *inter alia*: (a) Be in full exercise of their civil rights; (b) meet the minimum requirements for the position; (c) not have been convicted of committing an intentional crime; and (d) not have been administratively or legally disqualified from the profession, from contracting with the State, or from being a public servant.

[35] Article 163 of the General Regulations of Law 30057 dictates that all new public positions must first have their position profile approved in the Position Profile Manual [*Manual de Perfiles de Puesto*] (MPP) and be budgeted for accordingly in the Agency Table of Positions [*Cuadro de Puestos de la Entidad*] (CPE).

[36] The hiring of career civil servants is regulated under Article 67 of Law 30057 (in line with Articles 165 to 191 of its General Regulations) and is done via an open, merit-based, or crosscutting public competition.

[37] Article 160 of the General Regulations of Law 30057 expressly prohibits nepotism through direct or indirect influence in the process of recruiting or hiring individuals. Such prohibition includes relatives of the civil servant to the fourth degree of consanguinity or second degree of affinity, and as a result of marriage, cohabitation, or common-law relationship. It also provides that contracts or appointments made in violation of the provisions of this Article are void.

[38] – Legislative Decree 1023 of June 20, 2008, which creates the National Civil Service Authority (SERVIR), as the body responsible for drafting the national civil service policy, supervising the system, and settling disputes, ensuring its autonomy, professionalism, and impartiality from the time of its designation as technical body.

[39] – Legislative Decree 1024 of June 20, 2008 and its Regulations (Supreme Decree 030-2009-PCM), which create and regulate the corps of public managers [and] their employment system, and establish the requirement of holding a national competition to select appropriate candidates for management and supervisory functions. Such processes are to be conducted with independence, transparency, and impartiality (Article 4 of Legislative Decree 1024).

[40] – Office of the Executive President of SERVIR Resolution 160-2013-SERVIR-PE, which approves the guidelines for public entities' transition to the civil service system.

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13. According to Article 3(c) of Law 30057, a career civil servant is a civil servant who performs functions related directly to the implementation of substantive and internal administrative functions within an entity.

14. According to Article 3(d) of Law 30057, an administrative support staff member is a civil servant who performs functions indirectly related to the implementation of substantive and internal management functions within an entity.

15. According to Article 3(e) of Law 30057, a trust servant is a civil servant who is part of the immediate management circle of public officials and whose tenure in the civil service is determined by and at the pleasure of the individual who appointed him or her.

[41] – Office of the Executive President of SERVIR Resolution 233-2014-SERVIR-PE, which formalizes approval of Directive 001-2014-SERVIR/GDSRH "Directive approving the Guidelines for the Management, Operation, Registration Procedure, and Consultation of the National Registry of Sanctions involving Dismissal and Removal."

[42] Article 5(7) of that Directive establishes the obligation to consult the National Registry of Sanctions involving Dismissal and Removal prior to bringing a new person into the public administration, regardless of the hiring system or modality. Candidates who are ineligible at the time must be disqualified from the hiring process and may not be appointed, designated, or contracted under any hiring system or modality. It further sets forth the obligation on all government entities to conduct monthly verifications of all those who have been disqualified.

[43] Should it be confirmed that an individual working at a government entity is ineligible or has become ineligible, the entity must automatically dismiss him or her, notwithstanding any determination of administrative, civil, and criminal liability on the part of the individual in question and of the director or equivalent of human resources.

[44] – Office of the Executive President of SERVIR Resolution 100-2015-SERVIR-PE, which formalizes approval of Directive 001-2015-SERVIR/GPGSC "Families of positions and roles and Manual of Position Types [*Manual de Puestos Tipo*] (MPT) applicable to the civil service system;" as well as the "Catalogue of Position Types," which is an integral part of the Manual of Position Types (MPT).

[45] – Office of the Executive President of SERVIR Resolution 137-2015-SERVIR-PE, amended by Presidential Resolution No. 381-2015-SERVIR-PE, which formalizes approval of Directive 003-2015-SERVIR/GPGSC "Launching implementation of the new civil service system."

[46] – Ministerial Resolution 200-2010-PCM, amended by Ministerial Resolution 252-2013-PCM, which sets forth the guidelines for implementation of the Standard Transparency Portal [*Portal de Transparencia Estándar*] (PTE) in public administration entities, and which determines, *inter alia*, publication of the Position Classification Manual [*Manual de Clasificación de Cargos*]; of the Personnel Assignment Table [*Cuadro de Asignación de Personal*] (CAP); or, once implemented, of the Agency Table of Positions [*Cuadro de Posiciones de la Entidad*] (CPE), as well as of the provision approving the CAP.

- **Legislation and provisions of a diverse legal nature applicable to judges and prosecutors, among which the following are noteworthy:**

[47] – Law 29277 of 2008 (Judicial Service Career Law), Article III of which provides that entry, tenure, and promotion in the judicial service, as well as any benefits granted to judges, are governed by a merit-based system that recognizes and promotes those who demonstrate capacity and suitability.

[48] Article 5 of Law 29277 provides that entry into the judiciary is based on a selection and training process that culminates with [the individual's] appointment to the position and swearing in before the National Council of the Judiciary [*Consejo Nacional de la Magistratura*] (CNM).<sup>16</sup>

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16 According to Article 155 of the Constitution, the CNM is comprised of seven members, each of whom serves a five-year term. The Constitution specifies that these seven members are elected by secret vote by the following:

Article 5 likewise provides that entry into the judicial service must be handled via a competitive selection process overseen by the CNM.

[49] Articles 11 to 33 of the aforementioned Law regulate the process of selecting and appointing members of the judicial service.<sup>17</sup>

[50] Pursuant to Article 4 of the Judicial Service Career Law, the general requirements for entering and remaining in the judicial service include the following: (1) Not having been convicted or subject to a suspended sentence after having been found guilty of committing an intentional crime. Rehabilitation, after having served a sentence, does not make one eligible for the judicial service; (2) not having declared bankruptcy due to negligence or fraud, or being behind in child support payments; (3) not having been dismissed for disciplinary reasons from the judiciary or from the Public Prosecution Ministry or fired from any other government agency, state-owned enterprise, or private business due to gross misconduct; and (4) not having other conflicts of interest stipulated by law.

[51] Articles 41 and 42 of the Judicial Service Career Law establish, respectively, the impediments to applying for a judgeship at any level as well as conflicts of interest in the judicial service.

[52] – National Council of the Judiciary Resolution 049-2014-CNM, which adopts the Regulations for Competitive Selection and Appointment Processes for Judges and Prosecutors, which themselves fully regulate the process for selecting and appointing judges and prosecutors. This Resolution fully regulates the competition criteria, merits, and scoring to be evaluated when decisions are being made during each stage of the judge and prosecutor selection and appointment process; it also includes provisions aimed at ensuring the transparency of the process. The Resolution further offers citizens the opportunity to participate; namely, any individual may file a challenge, questioning the failure to meet established requirements or the conduct or suitability of a candidate (Articles 15 to 23).

- **Legislation and provisions of a diverse legal nature applicable to employees of the legislative branch, among which the following are noteworthy:**

[53] – The Organization and Functions Regulations [*Reglamento de Organización y Funciones*] (ROF) establish an organizational structure for the Parliamentary Service Career and include the functions of the organizational units designed up to the third level of organization.

[54] – The Parliamentary Service Career Organization and Functions Manual contains the general functions and attributes of the organizational units that comprise it.

## **b. Observations about new legislative developments**

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The Supreme Court (one member); the Board of Supreme Court Public Prosecutors (one member); members of the country's Bar Associations (one member); members of Peru's other professional associations (two members); the chancellors of Peruvian state universities (one member); and the chancellors of private universities (one member). The Constitution further provides that the number of members of the CNM may be increased to nine, with two additional members elected by secret vote of the Council itself from two lists of candidates: One put forward by institutions representing labor and the other proposed by representatives of the business sector.

17. According to Article 154(1) of the Constitution, appointments of judges and prosecutors by the CNM require a favorable vote by two-thirds of the legally established number of its members.

- **Regarding new legislative developments applicable to most public servants:**

[55] The Committee acknowledges that the new legislative developments in this area constitute positive steps taken in terms of establishing a single and exclusive system for individuals who work in Peru's government entities and of improving the merit-based system for entering the civil service. Nevertheless, the Committee believes it appropriate to make a number of observations in relation thereto:

[56] Regarding Law 30057 and its General Regulations, the Committee first observes that Chapter I of Title III of the Civil Service Law, which has to do with Entry into the Civil Service (Articles 8 and 9), is not yet in force and, consequently, Title III of Book II of its General Regulations (Articles 161 to 191) is likewise not in force.

[57] In this regard, during the on-site visit, representatives of SERVIR provided important clarifications about the process of transitioning to the new civil service.<sup>18</sup> According to these representatives, pursuant to the First Transitional Supplementary Provision of Law 30057, the Law will be gradually implemented and progressively introduced into government entities within a maximum of six years, as established therein.

[58] They further clarified that, pursuant to the Third Transitional Supplementary Provision of Law 30057 and to Presidential Resolution 160-2013-SERVIR/PE, which adopted the guidelines for public entities' transition to the civil service system, the path to the new system consists of four stages (Preparation of the Entity, Situational Analysis of the Entity, Internal Enhancements, and Implementation).<sup>19</sup> Once the last stage concludes and the entity's Table of Positions has been approved, the institutions will be in a position to hold their first public competition and implement the new system and enhanced processes. SERVIR provides support to government entities in the form of assistance and advisory services during the entire transition process.

[59] Based on information requested from SERVIR during the on-site visit, by October 2015,<sup>20</sup> the 18 entities that had advanced the farthest in the process of transitioning to the new civil service system include, *inter alia*, Peru's Ministry of Justice, Ministry of Economy and Finance, Ministry of Energy and Mines, Ministry of Defense, and the National Civil Service Authority (SERVIR) itself.<sup>21</sup>

[60] While acknowledging the important legislative and institutional progress (such as the creation of SERVIR) made in a relatively short period of time, the Committee also believes it fundamental to prevent the situation discussed above with respect to Law 28175 (Public Employment Framework Law). Even though it represented significant progress at the time, the Public Employment Framework Law was never effectively enforced because Peru's Congress never passed the necessary supplementary laws.

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18. See additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)

19. For further details on each of these stages, see additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)

20. See additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)

21. A complete list of the entities currently transitioning to the system provided for under the new Civil Service Law (as of October 1, 2015) is available in Spanish at: [http://storage.servir.gob.pe/servicio-civil/Lista\\_entidades\\_en\\_transito\\_01oct2015.pdf](http://storage.servir.gob.pe/servicio-civil/Lista_entidades_en_transito_01oct2015.pdf)

[61] Although it is clear that steps have been taken to prevent such situation from being repeated (SERVIR, rather than the legislative branch, is responsible for developing the enabling regulations for Law 30057), the Committee believes it is important for entities that are further along in the process of transitioning to the new civil service system to complete the process and begin holding public competitions to fill vacant positions under the new legislation in order to consolidate the new system. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.1 in section 1.1.3. of Chapter II of this report).

[62] In this case, the Committee takes note of the concern expressed by a number of representatives of civil society, the private sector, professional associations, and academia who weighed in during the on-site visit with regard to the impact that future changes in government administrations might have on implementation of the new legislation.

[63] Second, the Committee has discovered issues with respect to Law 30057's coverage. One of these issues has to do with the First Final Supplementary Provision of the Law, which lists the special service careers and entities that are exempt from application of Law 30057 (though the provisions of that Law would apply if gaps in the legislation that governs them were to arise).

[64] Pursuant to the above provision, Law 30057 does not cover state-enterprise workers, regional and local government workers, or employees of the following bodies and entities: The Central Reserve Bank of Peru, the Congress of the Republic, the National Superintendency for Customs and Tax Administration, the Superintendency of Banks, Insurance, and Pension Fund Administrators (AFP), and the Office of the Comptroller General of the Republic. Law 30057 also does not cover public servants who are subject to the following special laws: (a) Law 28091 (Law on the Diplomatic Service of the Republic); (b) Law 23733 (University Law); (c) Law 23536 (Law establishing the General Rules that Regulate the Work and Service Career of Health Professionals); (d) Law 29944, (Law on Education Reform); (e) Law 28359 (Law on the Military Status of Officers in the Armed Forces); (f) Legislative Decree 1149 (Law on the Service Career and Status of the Employees of the Peruvian National Police); (g) Law 29709 (Law on the Special Prison System Service Career); (h) Legislative Decree 052 (Public Prosecution Ministry Organic Law); and (i) Law 29277 (Judicial Service Career Law).

[65] In this regard, according to the information provided by SERVIR,<sup>22</sup> of a total of 1,400,000 public servants nationwide, the special service careers that are exempt from Law 30057 equal 50%.

[66] While the Committee understands that the creation of specific service careers may be motivated by the uniqueness and special nature of the functions certain entities perform, it also believes it would be useful for the country under review to consider adopting the appropriate measures to ensure that the different systems for entering the entities and special services exempted from Law 30057 are also based on the principles of openness, equity, and efficiency provided for in the Convention. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.2 in section 1.1.3 of Chapter II of this report).

[67] The Committee also notes that several contract types coexist for public servants in Peru:<sup>23</sup> The civil service (Legislative Decree 276 of 1984); the private sector employment system

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22 See additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)

(Legislative Decree 728 of 1991, ordered by Supreme Decree No. 003-97-TR); administrative service contracts (Legislative Decree 1057 of 2008, amended by Law 29849 of 2011); public management (Legislative Decree 1024 of 2008); highly-qualified officials (Law 29806 and Supreme Decree 016-2012-ef); the Management Support Fund (Decree Law 25650 of 1992); and the rendering of services.

[68] In this regard, during the on-site visit, representatives of SERVIR informed the Committee that, pursuant to Article 7 of Presidential Resolution 137-2015-SERVIR-PE, once Law 30057 has been fully implemented in an entity, new civil servants may only enter under the system contained therein. Civil servants may not enter any group under any other contracting system, including Legislative Decrees 276, 728, 1057, 1024, Laws 29806 and 28175, and Decree Law 25650. In addition, all public managers must enter via public competition, with the exception of those in trust positions.

[69] In view of the foregoing, the Committee not only reiterates the recommendation formulated previously, calling for efforts to be redoubled so that entities that are farther along in their transition to the new civil service system can complete the process, it also believes that all other entities need to move forward in the process of transitioning to the new system in order to harmonize contracting systems as quickly as possible, helping to better apply the principles of openness, equity, and efficiency provided for in the Convention. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.3 in section 1.1.3 of Chapter II of this report).

[70] Third, the Committee observes that the evaluation stage of selection processes (Article 172 of the General Regulations of Law 30057) is meant to be executed bearing in mind the requirements included in the position's profile. The Committee further notes that the provision cited indicates that the evaluation includes, at a minimum, an assessment of the candidate's curriculum vitae, an assessment of knowledge or abilities, and the final interview. The types of evaluation are regulated by a SERVIR directive, with other types able to be used with SERVIR's authorization, provided they ensure transparency and objectivity in the selection.

[71] In this regard, the representatives of SERVIR reported during the on-site visit that SERVIR had published or pre-published several directives in connection with the implementation of Law 30057.<sup>24</sup> However, SERVIR was still in the process of validating the directive that will thoroughly and uniformly regulate selection processes in Peru, regardless of the employment system to which the public servants belong. Bearing in mind the importance of that directive for ensuring the transparency and objectivity of the evaluation process, the Committee will formulate a recommendation in this regard (see recommendation 1.1.3.4 in section 1.1.3. of Chapter II of this report).

[72] Lastly, the Committee takes note of the information on SERVIR's budget over the past five years.<sup>25</sup> The Committee views positively the fact that the budget has been increased each year and doubled between 2013 and 2015.

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23 To learn more, see additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)

24. A complete list of the directives having to do with the system contained in the New Civil Service Law that were published and pre-published by SERVIR is available in Spanish at: <http://www.servir.gob.pe/leyserviciocivil/>

25. See additional information from SERVIR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_inf\\_com\\_servir.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_inf_com_servir.pdf)



[73] In such regard, in order to move forward in the process of transitioning to the new civil service system and of effectively implementing it, the Committee believes it is essential to ensure not only SERVIR's [budget] resources, but also the human, financial, and technological resources necessary for implementation of Law 30057, especially in the human resources units of the different entities that have begun, or are set to begin, the transition process. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.5 in section 1.1.3 of Chapter II of this report).

- **Regarding new legislative developments applicable to judges and prosecutors:**

[74] The Committee acknowledges that the new legislative developments in this area constitute positive steps in terms of improving the merit-based system for entering the judicial career service and ensuring transparency and equity in the selection of judges and prosecutors in Peru. Nevertheless, the Committee believes it appropriate to make a number of observations in relation thereto:

[75] Regarding the selection of prosecutors, the Committee first notes that unlike the judiciary, there is no Public Prosecution Ministry Service Career Law and that the Public Prosecution Ministry Organic Law does not regulate the service, but rather essentially performs an oversight function with respect to its different levels and specialties, limiting itself to establishing only requirements and conflicts of interest in connection with being a prosecutor.

[76] In this respect, and without discounting the existence of the Regulations for Competitive Selection and Appointment Processes for Judges and Prosecutors issued by the CNM, the Committee believes the Republic of Peru needs to have a law in place regarding the position of prosecutor that fully regulates the hiring of prosecutors based on merit, in accordance with the competencies established for each level of that career, as well as the different stages of the competitions, how they are assessed, selected, and appointed, as well as openness and transparency in all of the stages. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.6. in section 1.1.3. of Chapter II of this report).

[77] The Committee observes that the Judicial Service Career Law does not establish minimum and reasonable deadlines for publication of notice of a competition. The Committee notes that Article 13 of the Judicial Service Career Law limits itself to indicating that notice of a competition is made via publication [of an announcement] three consecutive times in both the Official Gazette and in a newspaper that enjoys wider circulation in the judicial district in which the competition is being held. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.7. in section 1.1.3. of Chapter II of this report).

[78] With respect to the Regulations for Competitive Selection and Appointment Processes for Judges and Prosecutors issued by the CNM, the Committee makes the following three observations:

[79] The first has to do with Article 21 of those Regulations, which limits appeals for reconsideration of rulings that find in favor of challenges filed against candidates; that is to say, the right to challenge such decisions is restricted exclusively to the candidates. In this regard, and for purposes of broadening citizen participation in the process, the Committee believes it is important that the right to file an appeal for reconsideration with the CNM also be available to whoever has filed a challenge that is ruled to be unfounded. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.8 in section 1.1.3 of Chapter II of this report).

[80] The second observation has to do with improving the transparency of the process and disclosure of the proceedings. In this respect, the Committee notes that Articles 35 and 39 regulate, respectively, disclosure of the results of written exams and curricula vitae on the CNM's website after they have been approved by the full Council. The same is not true, however, in the case of the final results of personal interviews. Article 54 stipulates that scores obtained in the interviews are to be published only once the competition has concluded. Bearing in mind that because it has a higher degree of discretion, this stage of the process requires timely disclosure in order to make it legitimate, the Committee believes it is necessary to publish the merits chart that results from the three stages of the process once the interview stage has concluded, specifying the final average and corresponding extra points pursuant to Articles 56 and 57. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.9 in section 1.1.3 of Chapter II of this report).

[81] The third observation refers to the mechanisms for impeaching selection processes. In order to ensure greater legitimacy in the selection of judges and prosecutors based on merit, the Committee recommends that candidates be given the power to appeal the results of the written exam in the case of a multiple choice test, as well as scores obtained in the personal interviews. The illegality of filing such appeals in these cases is established expressly in Articles 34 and 54, respectively, of the Regulations. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.10 in section 1.1.3 of Chapter II of this report).

[82] Lastly, the Committee takes note of the situation identified in the explanatory statement of Resolution 049-2014-CNM, which provides that the Regulations for Competitions: *"(...) seek to eliminate the high number of temporary appointments that continue to exist in the justice system—an estimated 36.32% in the Judiciary and 33.89% in the Public Prosecution Ministry, meaning that an approximate total of 34.80% of judges have not been appointed. This situation must be corrected, especially in terms of the appointment of tenured judges in areas difficult to cover, such as those positions in the most remote places in our country, which is something that has also been captured in these regulations."*

[83] The Committee further takes note of the information having to do with the fact that in June 2015, the Chief Justice of the Judiciary asked the CNM, via official communication, to appoint 431 tenured judges nationally: 102 justices of the peace, 262 special judges, 66 high court judges, and one Supreme Court justice.<sup>26</sup>

[84] In view of the foregoing, the Committee thinks it is important for the country under review to take measures aimed at reducing the high number of temporary positions in the judiciary and in Peru's Public Prosecution Ministry and hold public competitions that make it possible to appoint judges and prosecutors to the aforementioned positions. The Committee will formulate a recommendation in this regard (see recommendation 1.1.3.11 in section 1.1.3 of Chapter II of this report).

- **Regarding new legislative developments applicable to employees of the legislative branch:**

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26. See:

[https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s\\_cortes\\_suprema\\_home/as\\_inicio/as\\_enlaces\\_destacados/as\\_imagen\\_prensa/as\\_notas\\_noticias/2015/cs\\_n\\_ticonaytalav\\_03062015](https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s_cortes_suprema_home/as_inicio/as_enlaces_destacados/as_imagen_prensa/as_notas_noticias/2015/cs_n_ticonaytalav_03062015)

[85] With respect to the legislative branch, the Committee observes that Article 41 of the Congress of the Republic's Regulations provides that "(...) *The Parliamentary Service Career Statute aims to enable entry for the best candidates, ensure their permanence and steady progression in the service, facilitate their development, and promote their self-realization as they discharge their responsibilities in the parliamentary service. The Statute details the special aspects of the employment system and specific mission of specialized bodies, and calls for consideration of the creation of a registry that would provide a detailed list of all Congressional personnel, regardless of the employment system they fall under and how they were hired, as well as the pension system and other individual information about the employee. This registry will serve as a reference so that any worker, in accordance with his or her area of specialty, may join, where necessary and depending on the availability of positions, the parliamentary service.*"

[86] This Parliamentary Service Career Statute has not, however, been passed and the Committee thus sees no provision in place that establishes that legislative service staff must be selected based on merit, or that contains detailed rules with respect to the selection of legislative service staff and offers a mechanism for announcing vacancies and a procedure for challenging the decisions reached in competitions.

[87] Additionally, although the Organization and Functions Regulations (ROF) establish the Human Resources Department of the Administrative Office [*Oficialía Mayor*] of the Congress of the Republic as the office in charge of recruiting and selecting parliamentary service staff (Article 55), it would seem that no provisions exist that fully regulate how this Office should operate as far as selection of staff is concerned.

[88] Taking these considerations into account, the Committee will formulate the appropriate recommendations (see recommendations 1.1.3.12 to 1.1.3.16 in section 1.1.3 of Chapter II of this report).

#### **1.1.2.2 New developments with respect to technology**

[89] Although the Republic of Peru did not refer to technological progress<sup>27</sup> in its response to the questionnaire, the Committee believes it is important to highlight the creation of the Citizen Consultation Module<sup>28</sup> of the "National Registry of Sanctions Involving Dismissal and Removal" (RNSDD),<sup>29</sup> via which anyone may find out quickly and easily whether an individual is prohibited from working for the State.

#### **1.1.2.3 Results**

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27. See Peru's response to the Fifth Round questionnaire, p. 56. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

28. <http://www.sanciones.gob.pe:8081/transparencia/>

29. The objective of this Registry, mentioned in the reports of the First, Second, and Third Rounds, is to have public entities ensure that sanctions are enforced and not allow those persons currently disqualified from doing work for the government. Sanctions involving dismissal and removal are registered in the RNSDD, as are infringements of the Code of Ethics and Disqualifications mandated by the judiciary and the sanctions imposed by the Office of the Comptroller General of the Republic, among others contained in the legislation. For further information about the RNSDD, see: <http://inst.servir.gob.pe/index.php/es/component/content/article/44-informacion-de-servir/1200-preguntas-frecuentes-sobre-rnsdd.html>

[90] In its response to the questionnaire,<sup>30</sup> the country under review reports that *“The reform of the civil service [is] one of the most ambitious and anticipated reforms of the past 20 years inasmuch as it will apply to half a million public servants in more than 2,000 government entities and at three government levels (local, regional, and national). In this light, the challenge is tremendous from the standpoint of operational and fiscal feasibility. In terms of operational viability, SERVIR has been training managers of public entities’ human resources offices and conducting workshops to inform public servants themselves about the scope of the Civil Service Law. Part of this training entails preparing entities for implementation of the new system, part of which is called “transitioning” to the new civil service system.*

[91] *Nevertheless, there are still matters to be addressed and determined and implementation remains underway; no entity, to date, has held competitions under the new system or has an established service career structure.*” (The emphasis is ours).

[92] In this regard, the Committee reiterates the recommendations formulated previously, namely, that entities that are farther along in their transition to the new civil service system should conclude the process and that the human, financial, and technological resources necessary for implementation of Law 30057 be ensured so that merit-based competitions to fill vacancies under the new civil service system can begin (see recommendations 1.1.3.1 and 1.1.3.5 in section 1.1.3 of Chapter II of this report).

[93] On this matter, the Committee takes note that various representatives of civil society and private sector organizations, professional associations, and academics who took part in the on-site visit underscored their concern about the fact that public competitions under the new civil service legislation had yet to take place.

[94] The Committee likewise believes it is important that the necessary measures be taken to keep detailed statistical data, broken down by year, on the outcomes of selection processes for public servants in the different government branches and public entities in order to ascertain: The number of merit-based competitions held; the number and percentage of civil servants who entered the service via merit-based competitions; how many came in with no competition; how many permanent positions; how many temporary positions; how many candidates were eliminated because they were registered in the “National Registry of Sanctions involving Dismissal and Removal;” how many competitions were challenged; how many were audited; and what the results were of those challenges and audits, all in order to identify challenges and recommend corrective measures, as appropriate (see recommendation 1.1.3.17 in section 1.1.3 of Chapter II of this report).

### 1.1.3 Recommendations

[95] In view of the observations formulated in sections 1.1.1 and 1.1.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 1.1.3.1 Conclude the transition to the new civil service system in those entities that are farthest along in that process and begin public competitions to fill their vacancies under Law 30057 (see paragraphs 61 and 92 in section 1.1.2.1 in Chapter II of this report).

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30. See Peru’s response to the Fifth Round questionnaire, pp. 11-12. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

- 1.1.3.2 Ensure the application of the principles of openness, equity, and efficiency provided for in the Convention in the different systems for entering the public service, as well as the special service careers and other entities that are exempted from the application of Law 30057 (see paragraph 66 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.3 Move forward with the transition to the new system in the different entities in order to harmonize hiring systems as soon as possible, helping to improve application of the principles of openness, equity, and efficiency provided for in the Convention (see paragraph 69 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.4 Issue the SERVIR directive that will fully and uniformly regulate selection processes in Peru, regardless of the employment system the public servants fall under, thereby ensuring transparency and objectivity in the selection as well as the principles of openness, equity, and efficiency provided for in the Convention (see paragraph 71 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.5 Ensure the necessary human, financial, and technological resources for implementation of Law 30057, especially in the human resources units of the different entities that have begun or are poised to begin the process of transitioning to the new civil service system, within available resources (see paragraphs 61 and 92 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.6 Consider passing a Prosecution Service Career Law that fully regulates the entry of prosecutors based on merit in accordance with the competencies established for each level of the career track, as well as the different stages of the competitions, the assessment, selection, and appointment of candidates, and openness and transparency in all the stages (see paragraph 76 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.7 Provide for minimum and reasonable deadlines for publication of announcements of public competitions for entry into the Judicial Service (see paragraph 77 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.8 Establish the right to file appeals for reconsideration with the National Council of the Judiciary when challenges against candidates are ruled to be unfounded (see paragraph 79 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.9 Publish the merits chart that results from the three stages in selection and appointment processes for judges and prosecutors once the interview stage has concluded, specifying the candidates' final average and corresponding extra points, pursuant to Articles 56 and 57 of the Regulations for the Selection and Appointment of Judges and Prosecutors (see paragraph 80 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.10 Broaden the power for candidates to appeal the results in the selection and appointment processes for judges and prosecutors (see paragraph 81 in section 1.1.2.1 in Chapter II of this report).
- 1.1.3.11 Adopt appropriate measures for reducing the high number of temporary positions in the judiciary and in Peru's Public Prosecution Ministry by holding public competitions that

make it possible to appoint judges and prosecutors to the positions (see paragraph 84 in section 1.1.2.1 in Chapter II of this report).

1.1.3.12 Consider passing the Parliamentary Service Statute (see paragraph 88 in section 1.1.2.1 in Chapter II of this report).

1.1.3.13 Set forth provisions that require selection of legislative staff to be based on the principles of merit, openness, equity, and efficiency (see paragraph 88 in section 1.1.2.1 in Chapter II of this report).

1.1.3.14 Establish provisions that detail the operations of the Department of Human Resources of the Administrative Office [*Oficialía Mayor*] of the Congress of the Republic (see paragraph 88 in section 1.1.2.1 in Chapter II of this report).

1.1.3.15 Institute mechanisms and provisions that regulate and define, in detail, how selection for entry by technical-administrative and professional-administrative personnel into the Parliamentary Service should be conducted via a merit-based system, and that require, *inter alia*:

- i. Publication of announcements of vacancies in the Parliamentary Service in the mass media, including the Internet;
- ii. The establishment of minimum and reasonable deadlines for disseminating announcements of entry exams and minimum deadlines for receipt of candidates' registrations; and
- iii. Inclusion in the content of the announcements of scheduled timelines and locations where registrations will be taken and where further details about competitions may be obtained (see paragraph 88 in section 1.1.2.1 in Chapter II of this report).

1.1.3.16 Create mechanisms, consistent with national law, for challenges aimed at clarifying, changing, or annulling the core proceedings that comprise merit-based selection processes for the Parliamentary Service, at both the administrative and judicial level (see paragraph 88 in section 1.1.2.1 in Chapter II of this report).

1.1.3.17 Develop detailed statistical data, broken down by year, on the outcomes of selection processes for public officials in the different government branches and public entities in order to ascertain: The number of merit-based competitions held; the number and percentage of civil servants who entered the service via merit-based competitions; how many came in with no competition; how many permanent positions; how many temporary positions; how many candidates were eliminated because they were registered in the "National Registry of Sanctions Involving Dismissal and Removal;" how many competitions were challenged; how many were audited; and what the results of those challenges and audits were, all in order to identify challenges and recommend corrective measures, where necessary (see paragraph 94 in section 1.1.2.3 in Chapter II of this report).

## **1.2. GOVERNMENT SYSTEMS FOR THE PROCUREMENT OF GOODS AND SERVICES**

### 1.2.1. Follow-up on implementation of the recommendations formulated in the Second Round

#### Recommendation 1.2.1:

*Strengthen government procurement through public competitive bidding and calls for bids.*

Measure (c) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Consider measures to reduce the variations that occur at present between amounts programmed in annual procurement and contracting plans and amounts actually executed by different entities.*

[96] In its response to the questionnaire,<sup>31</sup> the country under review presented information and new developments in connection with the above measure, from which, the Committee highlights the following as steps that help to advance its implementation:

[97] – The Regulations for the Government Procurement Law,<sup>32</sup> approved pursuant to Supreme Decree 184-2008-EF, which entered into force on February 1, 2009, establish, under Article 9 thereof, the specific scenarios that justify the amendment of Annual Procurement Plans (when contracting processes must be included or excluded or reference values differ by more than twenty-five percent (25%) from the estimated value, which, in turn, alters the type of contracting process).

[98] – Directive 005-2009-OSCE/CD "Annual Procurement Plan,"<sup>33</sup> approved by the Government Procurement Oversight Body [*Organismo Supervisor de las Contrataciones del Estado*] (OSCE), which contains supplementary provisions in connection with standardizing criteria for the drafting and publication of government entities' Annual Procurement Plans (PAC), including specific regulations about their content, approval, amendment, publication, registration, dissemination, implementation, oversight, and evaluation, as well as any attendant responsibilities.

[99] – The development of version 2.0 of the Electronic Government Procurement System (SEACE), which allows any individual to monitor the implementation of government entities' Annual [Procurement] Plans.

[100] In this regard, during the on-site visit, OSCE representatives reported that while Annual Procurement Plans may be amended, the degree to which such plans have been executed is not the most appropriate way to evaluate them inasmuch as an entity could, at the end of the year, remove from its

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31. See Peru's response to the Fifth Round questionnaire, p. 13. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

32. By means of Legislative Decree 1017, the Government Procurement Law, which has been in force since February 1, 2009, was approved, while Law 26850 (the former Government Procurement Law) was repealed, as were, consequently, Supreme Decrees 083-2004-PCM and 084-2004-PCM, the provisions of which were examined by the Committee during the Second Round and upon which most of the recommendations and measures having to do with government procurement systems in the Republic of Peru were made during that same Round. Moreover, Law 30225—the New Government Procurement Law—was enacted in July 2014; this Law will enter into force 30 calendar days after publication of its Regulations, which are currently being drafted.

33. During the meeting of the review subgroup, the State under review reported that Directive No. 003-2016-OSCE/CD, Annual Contracting Plan, was currently in force.

PAC any processes that were never tendered.<sup>34</sup> They further clarified that the OSCE does not authorize changes to PACs as that is a decision that falls to the entities themselves. They likewise stated that the New Government Procurement Law (Law 30225), which was approved in July 2014 but is not yet in force,<sup>35</sup> should improve procurement scheduling in government entities and enhance PACs. Article 15(1) of Law 30225 establishes specific deadlines for scheduling procurement, as well as for developing technical specifications and terms of reference such that these are planned well enough in advance in the first six months of the year prior to the year in which the tender process is to be held, thereby creating an incentive for the timely execution of procurement. The OSCE representatives also reported that the draft Regulations for the new Law provide that PACs may only be amended once a month.

[101] Regarding this matter, during the on-site visit, a number of representatives of private sector organizations reported that implementation of Annual Procurement Plans is minimal, with some entities amending them more than 300 times a year. This information was confirmed by the OSCE in the supplementary information requested during the on-site visit, which also includes the following:<sup>36</sup>

[102] *“In addition, according to SEACE management, the PAC module allows government entities to make these changes to their Annual Procurement Plans based on each entity’s management context—for example, where there is a lack of planning as to how to execute procurement, or depending on how late budget resources become available. If there is a desire to monitor the number of times a PAC is registered, perhaps it would be best to report such changes to oversight bodies.”*

[103] Based on the foregoing, the Committee—notwithstanding having taken note of the steps taken by the country under review to move forward in its implementation of *measure (c)* of recommendation 1.2.1. of Chapter II of this report, as reflected in the laws currently in place that regulate amendments to Annual Procurement Plans—believes the measure should be reformulated in the sense that the country under review conduct a study into the frequent modifications of the Annual Procurement Plans in order to, on the basis thereof, improve the scheduling and predictability of public procurement in the Republic of Peru, and implement a notification system in the SEACE that reports these changes to oversight agencies like the CGR and the OSCE in a timely manner (see recommendations 1.2.3.1. and 1.2.3.2. in section 1.2.3. of Chapter II of this report).

Measure (d) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Evaluate and adjust the government procurement system in order to make competitive bidding the general rule for contract tendering procedures in the State system for procurement of goods and services, taking into account the diversity of needs and budgetary scope of State entities and agencies.*

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34. See additional information from the OSCE requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_of\\_752\\_2015\\_pre\\_inf\\_osce.PDF](http://www.oas.org/juridico/PDFs/mesicic5_per_of_752_2015_pre_inf_osce.PDF)

35. During the meeting of the review subgroup, the State under review indicated that Law No. 30225 (the Government Procurement Law) had been in force since January 9, 2016, with the adoption of its Regulations by means of Supreme Decree No. 350-2015-EF. Since both provisions came into effect following the submission date of the response to the questionnaire and were not sent to the review subgroup prior to the deadline set in the Methodology for the MESICIC Fifth Round, the Committee will not conduct an exhaustive analysis of them and will merely use footnotes to report on the most important changes and updates.

36. See additional information from the OSCE requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_of\\_752\\_2015\\_pre\\_inf\\_osce.PDF](http://www.oas.org/juridico/PDFs/mesicic5_per_of_752_2015_pre_inf_osce.PDF)



[104] In its response to the questionnaire,<sup>37</sup> the country under review presented information and new developments in connection with the above measure, from which the Committee highlights the following as steps that lead it to conclude that the measure has been considered satisfactorily:

[105] – Legislative Decree 1017 (Government Procurement Law) and its Regulations, which entered into force on February 1, 2009, establishes in its Article 19 a ban on splitting the procurement of goods and services and the execution of works as a way to by-pass the type of contracting process that would be in order based on annual needs, or to evade application of the Government Procurement Law by having purchase amounts of less than three (3) Tax Units [*Unidades Impositivas Tributarias*] (UIT),<sup>38</sup> as well as liability for failing to comply with this provision.

[106] Possible exemptions from contracting processes are set forth in Article 20 of Legislative Decree 1017. At the same time, Article 56 thereof provides that contracts entered into may be voided when the conditions and/or requirements established in the law to qualify for exemption have not been met.

[107] In its response to the questionnaire, the country under review also provided information on results in this area. Based on this information the Committee notes that public tenders (including competitive bidding processes)<sup>39</sup> accounted for 53.7% of the total amount awarded in 2010; 61.4% in 2011; 60.7% in 2012; 60.7% in 2013; and 55.3% in 2014.<sup>40</sup>

[108] In this respect, the Committee wishes to recall that the measure included in this recommendation came about as a result of an examination of this topic in the framework of the Second Round based on the information furnished by the country under review.<sup>41</sup> From that information, the Committee was able to observe that in 2006, public tenders accounted for just 37.06%<sup>42</sup> of the amounts awarded during that period and that 36.83% of that total amount was awarded via small purchase procurement processes that did not include the same openness assurances as other processes.

[109] In view of the foregoing, the Committee takes note of the satisfactory consideration given by the country under review of *measure (d)* of recommendation 1.2.1. in Chapter II of this report, namely, that it took the measures necessary to ensure a significant increase in the percentage use of public tender and competitive bidding processes with respect to the total amount awarded in each of the past five years. This helps to effectively make competitive bidding the general rule for contract tendering procedures in the State system for procurement of goods and services.

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37. See Peru's response to the Fifth Round questionnaire, pp. 13, 58, and 59. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

38. As of November 10, 2015, one UIT is equivalent to 3,850 Peruvian Nuevos Soles (approximately US\$1,160). Source: <http://www.sunat.gob.pe/indicestasas/uit.html>

39. According to Peru's response to the Fifth Round questionnaire, p. 15: "(...) *it is important to point out that public tenders are used for the procurement of goods and the execution of works, while competitive bidding processes are used for the procurement of services; both types of processes adhere to the same timeframes and procedures stipulated in the law and should therefore be considered jointly in the analysis made in the Report referred to in the paragraph above.*"

40. See Peru's response to the Fifth Round questionnaire, pp. 58 and 59. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

41. See the "Republic of Peru, Final Report" from the Second Round, p. 11. Available in Spanish at: [http://www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf)

42. The figures include participation percentages from the public tender and competitive bidding processes. See previous footnote.

[110] Nevertheless, during the on-site visit, representatives of civil society and the private sector indicated that the law did not apply to either social programs or public-private partnerships (PPPs).

[111] In this respect, during the on-site visit, representatives of the Office of the Comptroller General of the Republic (CGR) reported, with respect to social programs, that their Research Department has published reports for 2012 and 2013, the objective of which is to report on the results of CGR oversight efforts in terms of social programs at the national level, including both oversight actions and monitoring and visits.

[112] The CGR representatives also reported that, in the case of 2013, the following had been identified: Shortcomings and risks tied to administrative matters; issues with preparatory documents and contracting processes; defects in contract implementation or in the implementation of infrastructure works; and deficiencies in the oversight of these programs.<sup>43</sup>

[113] The Committee takes note of the information furnished by the Office of the Comptroller regarding oversight of social programs and believes it is important to keep records of the results of actions taken to eliminate the risks involved in public procurement contracting identified by the CGR in its past and future reports.

[114] As to public-private partnerships (PPPs), the Committee takes note of the fact that the Office of the Comptroller General may issue an opinion prior to the signing of this type of contract; nevertheless, it may not do so when concession holders propose addenda or amendments to such contracts.<sup>44</sup> In this respect, information was received regarding the existence of a “Draft Law to Enhance the Ex Ante Control of the Office of the Comptroller General of the Republic in Processes to Promote Private Investment” [*Proyecto de Ley de Fortalecimiento del Control Previo de la Contraloría General de la República en los Procesos de Promoción de la Inversión Privada*]. This bill, submitted by the Office of the Comptroller in August 2015, would require it to issue a report prior to the introduction of addenda or amendments to PPP contracts in order to enable the timely detection and correction of potential issues.

Recommendation 1.2.3:

*Widen the use of electronic media and information systems for government procurement.*

Measure (a) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Establish the obligation requiring the public disclosure, whether electronically or through other communication media, of decisions authorizing adjustments of contracts.*

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43. See additional information from the CGR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_con\\_722\\_cg\\_sge.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_con_722_cg_sge.pdf)

44. During the meeting of the review subgroup, the State under review noted that the prior opinion could only refer to those aspects that compromised the State’s credit of financial capacity and that the prior report was not binding, irrespective of subsequent oversight.

[115] In its response to the questionnaire,<sup>45</sup> the country under review presented information and new developments in connection with the above measure, from which the Committee highlights the following as steps that lead it to conclude that the measure has been considered satisfactorily:

[116] – Legislative Decree 1017 (Government Procurement Law) and its Regulations<sup>46</sup> establish in Articles 45 and 287, respectively, the obligation to publish in the SEACE, under penalty of law, all signed contracts and the implementation thereof, as well as all proceedings that are required to be disclosed, pursuant to the provisions of the Government Procurement Law, its Regulations, and the Directive issued by the OSCE. Article 138 of the Regulations likewise indicates that contracts, and, as the case may be, purchase or service orders, as well as information in connection with the implementation thereof, must be registered in the SEACE in a period not to exceed ten (10) business days following their signing, conclusion, or approval, accordingly.

[117] – Directive 007-2012-OSCE/CD "Provisions applicable to the registration of information in the Electronic Government Procurement System (SEACE)",<sup>47</sup> which establishes in its Provision 8(6)(8), details on the information that must be registered with respect to contracts and their implementation, including additional services, reductions, readjustments, extensions, etc. Furthermore, this provision of the Directive establishes different levels of accountability in terms of compliance therewith:

[118] The body in charge of procurement for an entity is responsible for verifying that the aforementioned information is registered in a timely manner; in cases of noncompliance the penalties and sanctions provided for under Article 46 of the Law may apply.<sup>48</sup>

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45. See Peru's response to the Fifth Round questionnaire, p. 17. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

46. During the meeting of the review subgroup, the State under review indicated that Law No. 30225 (the Government Procurement Law) had been in force since January 9, 2016, with the adoption of its Regulations by means of Supreme Decree No. 350-2015-EF. Since both provisions came into effect following the submission date of the response to the questionnaire and were not sent to the review subgroup prior to the deadline set in the Methodology for the MESICIC Fifth Round, the Committee will not conduct an exhaustive analysis of them and will merely use footnotes to report on the most important changes and updates. Thus, in connection with this point the State under review reported that Articles 48 and 249, respectively, of those instruments establish the obligation of publishing on the SEACE information about PACs, preparatory proceedings, selection procedures, contracts (including purchasing or service orders) and their implementation, together with all undertakings that require publication, as established in the Government Procurement Law, its Regulations, and the Directive issued by the OSCE, regardless of whether they are subject to the scope of application of this law, their amounts, or their source of financing.

47. During the meeting of the review subgroup, the State under review reported that the tenth provision of Directive No. 006-2016-OSCE/CD – "Provisions applicable to the registration of information in the Electronic Government Procurement System (SEACE)" – establishes the details of the information to be recorded in connection with contracts and their implementation, including additions, reductions, adjustments, extensions of deadlines, deferrals, etc. The same provision of the Directive also establishes various responsibilities, such as: The authority of the entity in question shall be responsible for verifying that the deeds it issues or signs following the signing of the contract and that entail a modification of the amount or terms of the contract are in compliance with the rules for State procurement; The Body Responsible for Procurement (OEC) shall be responsible for ensuring that the contracts are recorded in the SEACE, together with, if applicable, the purchasing or service orders and information on implementation, within no more than ten (10) working days following their conclusion, occurrence, or adoption, as applicable, with the responsibilities set out in Article 9 of the Law to apply in the event of noncompliance.

48. *Idem*.

[119] The authority of the entity in question is responsible for verifying that any instrument it issues, or that it signs after a contract is entered into and that changes the amount or the terms of the contract, is consistent with government procurement legislation.<sup>49</sup>

[120] Users – public servants who register information in the SEACE having to do with contracts and, as the case may be, purchase or service contracts that are not the approved and signed documents, will be subject to the relevant administrative and/or criminal liability, in accordance with applicable legislation.<sup>50</sup>

[121] – Office of the Comptroller Resolution 134-2015-CG, which adopts an updated version of the “Regulation on Infractions and Penalties,” establishes in its Article 45 as a serious infraction,<sup>51</sup> failure to submit to the CGR or to register in the electronic systems, the documentation or information required of them by the law, pursuant to the conditions and deadlines stipulated therein, as well as failure to meet the Office of the Comptroller’s requirements to make corrections to the documentation or information submitted or registered. Furthermore, should the failure to comply affect the normal functioning of the entity or oversight services, the infraction will be considered very serious.<sup>52</sup>

[122] In view of the foregoing, the Committee takes note of the consideration given by the country under review to *measure (a)* of recommendation 1.2.3. of Chapter II of this report, namely, that it took the measures necessary to establish the obligation to publicly disclose the decisions that authorize adjustments to contracts via electronic means such as the SEACE.

[123] The Committee does, however, take note of some aspects brought to the attention of the preliminary review subgroup during the on-site visit that could enhance the usefulness of the system itself:

[124] The first issue was pointed out by representatives of civil society and the private sector and has to do with the need to improve the functionalities of the SEACE so it can better serve the general public and oversight organizations in their efforts to exercise oversight over government procurement contracting.

[125] In such regard, the Committee takes note of the fact that this need to improve the System was identified in the “2012-2016 National Anti-Corruption Plan” [*Plan Nacional de Lucha Contra la Corrupción 2012-2016*] (Supreme Decree 119-2012-PCM),<sup>53</sup> which states that “*The SEACE is an important tool for transparency in government procurement. Nevertheless, such instrument must be enhanced so it can provide itemized reports, business analysis, indicator generation, and alerts that lead to an effective focusing of oversight.*” The Plan also includes as Strategy 2.5: “*Implement a*

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49. *Idem.*

50. *Idem.*

51. Pursuant to Article 60(b) of the aforementioned Regulations, this serious infraction will be punished with a fine of one and a half to five Tax Units [*Unidades Impositivas Tributarias*] (UIT).

52. Pursuant Article 60(c) of the aforementioned Regulations, this serious infraction will be punished with a fine of five and a half to ten Tax Units [*Unidades Impositivas Tributarias*] (UIT).

53. Available in Spanish at: <http://can.pcm.gob.pe/wp-content/uploads/2013/02/Plan-Nacional-Anticorrupcion-2012-2016-DS-119-2012-PCM.pdf>

*government procurement data search platform that is accessible and user-friendly for public employees and citizens alike.*<sup>54</sup>

[126] The Committee agrees with the foregoing and believes it is important that the appropriate steps be taken to implement a more advanced search platform in the SEACE so that citizens and oversight bodies may better monitor public procurement processes. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.3 in section 1.2.3 of Chapter II of this report).<sup>55</sup>

[127] The second issue is the apparent failure to update and/or input information into the SEACE. According to civil society and private sector representatives, not all information is published in the System and, in some cases, even when it has been, the information is incomplete.<sup>56</sup>

[128] In this regard, the Committee takes note of the situation identified in Report 07 – 2015 – CG/EST, “Procurement by means of International Organization Contracting Processes – 2011–2014 Period” [*Contrataciones bajo la modalidad de selección por encargo a Organismos Internacionales - Periodo 2011 – 2014*], which corroborates what was stated above. This Report, although restricted to an examination of procurement done through agreements with international organizations, recognizes as a limiting factor to the CGR’s oversight efforts the fact that “*even though the requesting entities [themselves]—and/or through the International Organization—are required to register all contracts concluded under this mechanism, as well as all documents related thereto, in the Electronic Government Procurement System (SEACE), many of the agreements and contracts signed have not been published, or if they have been, only the first page is shown.*”<sup>57</sup>

[129] It is because of this that the Committee believes it is important that the appropriate measures be taken to provide guidance to those in charge of publishing the information required in the SEACE with respect to their legal duties, and to enable the bodies responsible for procurement in an entity to effectively verify that [the information] has been registered in the System in a timely manner; and, where there is failure to comply, ensure that the appropriate penalties are imposed. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.4 in section 1.2.3 of Chapter II of this report).<sup>58</sup>

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54. During the meeting of the review subgroup, the State under review reported that in October 2014, the OSCE made available to the general public the “Public Selection Process Search Engine,” which enables information on selection processes convened under SEACE v 2.0 and SEACE v 3.0 to be found from the SEACE web page, thereby offering a single search tool. It should be noted that this search engine allows searches to be made by selection processes, by Court case file, and by selected suppliers, which offer different search criteria for optimized results.

55. *Idem.*

56. During the meeting of the review subgroup, the State under review reported that the entity is responsible for reviewing all the selection processes published on the SEACE and for checking that there are no records or files that are not strictly related to procurement processes being carried out, and for checking and/or verifying that the registration information has not been omitted.

57. See Report 07 – 2015 – CG/EST, “Procurement by means of International Organization Contracting Processes – 2011–2014 Period” [*Contrataciones bajo la modalidad de selección por encargo a Organismos Internacionales - Periodo 2011 – 2014*], p. 6. Available in Spanish at: [http://doc.contraloria.gob.pe/estudios-especiales/reportes/2015/Reporte\\_N07-2015-CG\\_EST.pdf](http://doc.contraloria.gob.pe/estudios-especiales/reportes/2015/Reporte_N07-2015-CG_EST.pdf)

58. During the meeting of the review subgroup, the State under review reported that the OSCE periodically reminds entity users by means of notices published on the SEACE web page and e-mails sent to entity users about the requirement of registering information in the SEACE, about the publication of manuals, tutorial videos, and instruction sheets, in which the functioning of the SEACE is reported, so that they are instructed regarding how to

[130] The Committee likewise believes it is important that Institutional Oversight Bodies (OCI) include in their annual oversight plans, a review of the information of the respective entity that is contained in the SEACE in order to verify whether the law is being followed as well as whether detailed statistical data is being kept about penalties imposed against those who fail to comply with the duty to publish the documentation or information required of them by law in the SEACE, under the conditions and by the deadlines stipulated therein, in order to identify challenges and recommend corrective measures, where appropriate. The Committee will formulate recommendations in this regard (see recommendations 1.2.3.5 and 1.2.3.6 in section 1.2.3 of Chapter II of this report).<sup>59</sup>

[131] Lastly, the Committee notes that the New Government Procurement Law (Law 30225), which will enter into force shortly, as it is currently in the process of being regulated,<sup>60 61</sup> does not contain the obligation—which is contained in Articles 45 and 46 of the current Government Procurement Law (Legislative Decree 1017)—to publish in the SEACE, under penalty of law, all signed contracts and the implementation thereof, as well as all other proceedings that are required to be disclosed. The Committee therefore cautions that not having such an obligation or the respective penalties established by law could undermine the strengthening and reliability of the SEACE. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.7 in section 1.2.3 of Chapter II of this report).

Recommendation 1.2.4:

*Strengthen the system for public works contracting contained in Supreme Decree 83-2004-PCM and its Regulations.*

Measure (a) suggested by the Committee, which requires additional attention in the terms stipulated by the Third Round Report:

*Consider implementation of individual systems of control for each public works contract, in particular in any which, by reason of the size of the project, would allow civic oversight or citizen control or demand regular reporting on contract progress, notwithstanding any internal and external institutional oversight systems.*

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interact with the SEACE in order to meet the requirements of the public procurement regulations as regards recording information on their procurement activities in that system.

59. On this point, at the meeting of the review subgroup, the State under review indicated that for this purpose, the enforcement of the principles of functional autonomy, materiality, and selectivity must be borne in mind. Selectivity is to be understood as the selective nature of the National Control System's oversight of the entities and their agencies and critical activities that pose the greatest risk of incurring in actions contrary to administrative probity.

60. According to its Eighth Final Supplementary Provision, Law 30225 will enter into force 30 calendar days after publication of its Regulations, which are currently being drafted.

61. During the meeting of the review subgroup, the State under review indicated that Law No. 30225 (the Government Procurement Law) had been in force since January 9, 2016, with the adoption of its Regulations by means of Supreme Decree No. 350-2015-EF. Since both provisions came into effect following the submission date of the response to the questionnaire and were not sent to the review subgroup prior to the deadline set in the Methodology for the MESICIC Fifth Round, the Committee will not conduct an exhaustive analysis of them and will merely use footnotes to report on the most important changes and updates. Thus, on this point the State under review reported that the Regulations to Law No. 30225 and Directive No. 006-2016-OSCE/CD address the aforesaid obligations of publishing information in the SEACE, in Articles 249-250 and 7.1, respectively.



[132] In both its response to the questionnaire,<sup>62</sup> and during the on-site visit, the country under review provided information with respect to the above measure, from which the Committee highlights the following as steps that help to advance implementation thereof:

[133] – Directive 007-2013-CG/OEA "Information Registration and Citizen Participation in the Oversight of Public Works – INFOBRAS,"<sup>63</sup> of the Office of the Comptroller General of the Republic (CGR), the objective of which is to enhance oversight and transparency in public works via the registration, coordination, and disclosure of information by government agencies, and to bring in the general public as an ally in government efforts to monitor public works.

[134] The Directive's objectives also include regulating and providing access to the registry of information on public works in the INFOBRAS system, which includes data on the public work in question, how advanced it is physically and financially-speaking, variations in the cost and implementation period, settlement, operation, and maintenance, etc., in order to facilitate oversight and monitoring of the process for both the competent internal and external control bodies and for citizens in general.

[135] Additionally, Provision 5(6) of the Directive sets forth the duty public entities have to intervene both directly and indirectly in the execution of public works and to register the required information in the INFOBRAS system.

[136] – "Citizen Monitoring and Oversight of Public Works" workshops organized by the Office of the Comptroller General of the Republic (CGR), the main objective of which is to foster citizen participation in oversight as a way of preventing corruption so as to optimize citizens' understanding of the State and use of the tools (like INFOBRAS) the Office of the Comptroller has made available to the public for monitoring the management of government resources. The workshop consists of two modules and on-line courses and has been given since 2014 in each of the cities that houses a regional bureau of Office of the Comptroller; more than 1,000 individuals have been trained.

[137] – Office of the Comptroller General of the Republic (CGR) guidelines for verifying the information registered in the INFOBRAS system by Institutional Oversight Bodies (OCI). The OCIs' 2015 Annual Oversight Plans included verification of registries in INFOBRAS. In such regard, these guidelines show OCI chiefs how to verify the information registered in INFOBRAS on all public works underway during the annual evaluation period, pursuant to the stipulations of Directive 007-2013-CG/OEA.

[138] On this matter, during the on-site visit, representatives of the Office of the Comptroller General of the Republic (CGR) reported that a major challenge to consolidating INFOBRAS is how to ensure that information is entered into the system. They reported on efforts they have taken in this regard, which include dissemination programs and the preparation of different manuals on how to use the system.<sup>64</sup>

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62. See Peru's response to the Fifth Round questionnaire, p. 13. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

63. INFOBRAS (<https://apps.contraloria.gob.pe/ciudadano/>) is a web-based system developed by the CGR with the support of the German Agency for International Cooperation (GIZ) that seeks to make the execution of public works nationwide more transparent by providing access to information on monthly progress and by coordinating the public works-related data contained in the SEACE, the National Public Investment System (SNIP), and the Government Financial Administration Integrated System (SIAF).

64. Among them, the Manual on how to register information in the INFOBRAS system; manuals on how to record achievement of INFOBRAS goals in: (1) Municipalities in major type "A" and "B" cities; (2) municipalities in

They also shared the following information on the steady increase in the amount of information contained in INFOBRAS: The system has been growing each year and has a total of 42,539 registries (through September 2015).<sup>65</sup>

[139] The CGR representatives further reported that the 2013 and 2015 budget laws strengthened the compulsory nature of INFOBRAS. They underscored the Management Improvement and Municipal Modernization Incentives Plan [*Plan de Incentivos a la Mejora de la Gestión y Modernización Municipal*] (PI), created by Law 29332 and its amending directives. This Plan serves as a results-based budget tool and entails a transfer of resources to municipalities when they have met goals in a certain period of time. Such goals are devised by different central government entities and aim to promote certain results, the achievement of which requires coordinated work with the municipalities. The Office of the Comptroller reported that it has been working since 2013 on different goals through INFOBRAS, such as the extent of updating and the registration of works that are underway in the system.<sup>66</sup>

[140] In order to verify that the goals have been met, the Administrative Office for Research and Public Management of the Office of the Comptroller reviews the information entered into INFOBRAS and tells the Public Budget Directorate General [*Dirección General de Presupuesto Público*] (DGPP) of the Ministry of Economy and Finance (MEF) which municipalities have met the goal, providing details on the degree of completion and on the entities that received higher scores.

[141] The CGR also provided statistical data on the fulfillment of INFOBRAS-related goals.<sup>67</sup> From this information, the Committee observes that 42 of the 250 (17%) municipalities in major cities have not met the goal, meaning that they have not registered or updated information about public works in INFOBRAS. In the case of municipalities in non-major cities with 500 or more urban dwellings, 159 out of 558 (28%) failed to meet the INFOBRAS-related goals.<sup>68</sup>

[142] Lastly, the CGR also furnished information in connection with verification by Institutional Oversight Bodies (OCI), the purpose of which is to ensure quality in the registering of information in the INFOBRAS system.<sup>69</sup> Of the 786 entities verified, 450 (57%) are at 100% compliance, while 293 entities (37%) are at 0% compliance.

[143] In this regard, the Committee acknowledges the progress made in strengthening INFOBRAS in a short period of time, but observes that not all entities are registering and updating information in the system as the law requires. Consolidation of the system will require the participation of all those entities that are not yet using it, as well as a commitment to keep the system continually updated. For that, it is noted that the 82nd final complementary provision of the Public Sector Budget Law for the 2015 fiscal year (Law No. 30281) establishes a mechanism to ensure the updating of the record in INFOBRAS. For its better enforcement, consideration should be given to enacting the complementary provisions described in that same legal provision.

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non-major cities with 500 or more urban dwellings; and (3) municipalities in non-major cities with fewer than 500 urban dwellings. These manuals are available at: [https://apps.contraloria.gob.pe/ciudadano/wfm\\_info\\_ayuda.aspx](https://apps.contraloria.gob.pe/ciudadano/wfm_info_ayuda.aspx)

65. See additional information from the CGR requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_con\\_722\\_cg\\_sge.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_con_722_cg_sge.pdf)

66. For further details, see Supreme Decree 033-2015-EF, which sets forth the procedures for meeting goals and for the allocation of resources from the 2015 Management Improvement and Municipal Modernization Incentives Plan, in which all municipalities nationwide take part.

67. Available in Spanish at: [http://www.oas.org/juridico/docs/mesicic5\\_per\\_est\\_mod\\_eva\\_meta\\_03\\_07\\_cgr\\_pi.xlsx](http://www.oas.org/juridico/docs/mesicic5_per_est_mod_eva_meta_03_07_cgr_pi.xlsx) and [http://www.oas.org/juridico/docs/mesicic5\\_per\\_est\\_mod\\_eva\\_meta\\_09\\_cgr.xlsx](http://www.oas.org/juridico/docs/mesicic5_per_est_mod_eva_meta_09_cgr.xlsx)

68. Available in Spanish at: [http://www.oas.org/juridico/docs/mesicic5\\_per\\_est\\_mod\\_eva\\_meta\\_03\\_07\\_cgr\\_pi.xlsx](http://www.oas.org/juridico/docs/mesicic5_per_est_mod_eva_meta_03_07_cgr_pi.xlsx)

69. Available in Spanish at: [http://www.oas.org/juridico/docs/mesicic5\\_per\\_est\\_mod\\_eva\\_meta\\_09\\_cgr.xlsx](http://www.oas.org/juridico/docs/mesicic5_per_est_mod_eva_meta_09_cgr.xlsx)



[144] Based on the foregoing, the Committee, notwithstanding having taken note of the steps taken by the country under review to implement the suggested *measure (a)*, believes the recommendation must be reformulated in the sense that the country under review should be encouraged to consider taking the appropriate measures to ensure [government entities'] compliance with the duty to periodically report on the status of public works contracts via INFOBRAS, in order to consolidate this system as a useful tool for citizen oversight activities. The Committee further believes it necessary to develop detailed statistical data on penalties imposed against those who fail in their duty to publish documentation or information in INFOBRAS, pursuant to the conditions and deadlines provided for in the current law, in order to identify challenges and recommend corrective measures, where appropriate. The Committee will formulate recommendations in this regard (see recommendations 1.2.3.8 and 1.2.3.9 in section 1.2.3 of Chapter II of this report).

Measure (b) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Study the possibility of granting the general population the power now enjoyed by bidders to present inquiries and comments on tender rules in accordance with the terms of Articles 27 and 28 of the Law.*

[145] In its response to the questionnaire,<sup>70</sup> the country under review furnished the following information with respect to the above measure:

[146] *“The procurement law does not grant the general population the ability to present inquiries and comments on tender rules as such ability is limited solely to the bidders who are registered as participants in the contracting process (...).”*

[147] In light of the foregoing, the Committee notes the satisfactory consideration by the State under review of measure (b) suggested in recommendation 1.2.4, given that the process for the adoption of the new regulations governing public procurement favored other mechanisms for public participation, such as oversight boards and a system for receiving complaints, as was described by the State under review.

Measure (c) suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon.*

[148] In its response to the questionnaire,<sup>71</sup> the country under review presented information and new developments with respect to the above measure, from which the Committee highlights the following as steps that help to advance its implementation:

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70. See Peru's response to the Fifth Round questionnaire, p. 21. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

71. See Peru's response to the Fifth Round questionnaire, p. 23. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

[149] – The Regulations for the Government Procurement Law, approved pursuant to Supreme Decree 184-2008-EF, which entered into force on February 1, 2009, establish in their Article 37 that “*The tender rules approved for contracting processes may be pre-published in the SEACE and on the institutional website of the organizing entity. The foregoing does not represent an additional stage to those set forth for all contracting processes and thus any inquiry or comment having to do with tender rules may only be made during the appropriate stage in the process.*”<sup>72</sup>

[150] The Law stipulates that all inquiries or comments in connection with the content of the tender rules must only be made during the corresponding stage of the process. The Committee believes that this precludes pre-publication from being of greater use to the organizing entity inasmuch as entities could immediately correct any potential issues identified by either bidders or the public, for example if the tender rules were drafted without taking into account some relevant special law.

[151] In this connection, the Committee takes note of the steps taken by the country under review to move forward in its implementation of *measure (c)* of recommendation 1.2.4. of Chapter II of this report and the need for it to continue to give consideration thereto (see recommendation 1.2.3.10 in section 1.2.3 of Chapter II of this report).

[152] On this matter, during the on-site visit, representatives of civil society and the private sector reported that pre-publication of tender rules was not contemplated in the draft Regulations for the New Government Procurement Law (Law 30225), approved in July 2014. The representatives of the OSCE specified that entities have the authority to pre-publish the tender rules for a contracting process they will be holding since the procurement law does not limit such power.<sup>73</sup>

## **1.2.2. New developments with respect to implementation of the Convention provision on government procurement of goods and services**

[153] The Committee had access to information about the following new developments in this area and will formulate the relevant comments and recommendations on them:

### **1.2.2.1. New developments in connection with the legislative framework**

#### **a. Scope of the new legislative developments**

- **Legislation and provisions of a diverse legal nature, among which the following are noteworthy:**

[154] – Law 30225 of July 8, 2014 (New Government Procurement Law), cited in section 1.2.1. above, aims to establish rules geared toward maximizing the value of the government resources invested and promoting a results-based management approach to the procurement of goods, services, and public works such that this is done in a timely manner and under the best possible price and quality conditions, thereby enabling government goals to be met and the living standards of the general public to be improved.

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72. During the meeting of the review subgroup, the State under review reported that Law No. 30225 (in force since January 9, 2016) does not provide for the prepublication of tender rules in the SEACE.

73. See additional information from the OSCE requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_of\\_752\\_2015\\_pre\\_inf\\_osce.PDF](http://www.oas.org/juridico/PDFs/mesicic5_per_of_752_2015_pre_inf_osce.PDF)

[155] According to Article 2 of Law 30225, the principles that govern procurement include freedom to participate, equal treatment, transparency, openness, competition, effectiveness, and efficiency.

[156] The scope of the New Government Procurement Law and the contracting scenarios excluded therefrom may be found in Articles 3 and 4, respectively. Article 5 determines which of the contracting scenarios excluded from its scope are subject to the oversight of the Government Procurement Oversight Body (OSCE), among them, procurement contracts whose amounts are equal to or less than (8) Tax Units (UIT),<sup>74</sup> whatever their value is at the time of the transaction (Article 5(a)).

[157] Articles 6 to 10 cover the authority in charge of procurement processes. Article 9 establishes criteria for determining responsibilities for anyone involved in procurement processes for or on behalf of the entity, regardless of the legal regime that links them to it. Should liability need to be determined in cases of procurement contracting, it will be done so in accordance with the legal regime that links the individual[s] in question to the entity, notwithstanding any civil and criminal liability that might exist.

[158] Articles 11 to 14 discuss preconditions for providers. Article 11 determines who is precluded from being a participant, bidder and/or contractor, including for the procurement contracting referred to in Article 5(a) (procurement contracting for amounts equal to or less than eight UIT).

[159] Article 13 addresses consortium participation, while Article 14 sets forth the following measures for protecting and promoting competition: When the entity, the OSCE, or the Government Procurement Tribunal verifies the existence of indications of anticompetitive behavior in a procurement contracting process, it should, pursuant to applicable law, forward all relevant information to the National Institute for the Defense of Competition and the Protection of Intellectual Property [*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*] (INDECOPI) so that this organization can, as the case may be, initiate the appropriate administrative proceeding for punishing the alleged perpetrators (Article 14(1)). In addition, when the OSCE notices that a requirement established in the documents for the contracting process could have an affect on competition, it may compel the entity to substantiate and/or eliminate such requirement, accordingly. If, in addition, the OSCE finds indications of collusion—as established in Article 384 of the Criminal Code—it must forward all relevant information to the Public Prosecution Ministry (Article 14(2)).

[160] Articles 15 to 45 regulate procurement contracting processes. Article 15 contains the guidelines for the formulation, content, and disclosure of Annual Procurement Plans (PAC). Article 16 establishes the duty of the area in question to draw up the technical specifications, terms of reference, or technical dossier, respectively, as well as to justify the ultimate public aim of the contract. Article 16 further determines that these preparatory documents “*must be objective and specific, providing equal access to the procurement contracting process, and should not create obstacles that jeopardize competition in the process.*”

[161] Article 17 addresses the standardization of requirements, and through it executive branch agencies “*that develop domestic and/or sector government policies are empowered to make the requirements for the goods and services they must procure uniform [...] in their area of jurisdiction via a standardization process.*”

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74. As of November 10, 2015, one UIT is equivalent to 3,850 Peruvian Nuevos Soles (approximately US\$1,160). Source: <http://www.sunat.gob.pe/indicestajas/uit.html>

[162] Article 18 provides that entities must estimate a value for the goods and services to be procured and a reference value in the case of consulting services and the execution of works. Article 20 prohibits splitting contracting for goods, services, and works in order to, among other things, circumvent the applicable contracting process and/or application of the law and its regulations by creating procurement contracts equal to or less than eight (8) UIT.

[163] Procurement contracting methods are established in Articles 21 to 26, and consist of the following: (a) Public tender and competitive bidding (Article 22); (b) Simplified procedure for awarding contracts (Article 23); (c) Individual consultant selection (Article 24); (d) Price comparison (Article 25); (e) Reverse electronic auctions (Article 26); and (f) Direct contracting (Article 27).<sup>75</sup> The government budget law will establish the parameters for use of the different procurement methods, bearing in mind the estimated or reference value, accordingly. As to the price comparison method, the estimated value of those procurement contracts must be less than one-tenth of the minimum established by the government budget law for public tenders and competitive bidding. See the table below for the 2015 parameters:

[164]

Procurement Method	Amount <sup>76</sup>
Public tender and competitive bidding	s/. 1,800,001 and up (works) s/. 400,001 and up (goods and services)
Simplified procedure for awarding contracts	From s/. 30,800 to s/. 1,800,000 (works) From s/. 30,800 to s/. 400,000 (goods and services) From s/. 250,001 to s/. 400,000 (services and consultants – individuals)
Individual consultant selection	From s/. 30,800 to s/. 250,000 (services and consultants – individuals)
Price comparison	From s/. 30,800 to s/. 40,000 (goods and services)
Reverse electronic auctions	s/. 30,800 and up (goods and services)
Direct contracting	s/. 30,800 and up (works, goods and services)

*Source: Article 13 of the Government Budget Law for Fiscal Year 2015*

[165] Articles 28, 29, and 30 regulate, respectively, cases in which offers are rejected, as well as the abandonment and cancellation of contracting processes.

[166] Article 34 regulates contract amendment scenarios that may be compelled by the entity or requested by the contract holder; in the latter case, all changes must be approved by the entity. Amendments must not alter the economic/financial balance of the contract (Article 34(1)).

[167] Article 34(2) provides that “*in exceptional cases and when the area involved in the procurement has provided supporting evidence, an entity may order and directly pay for add-ons in the amount of up to twenty-five percent (25%) of the original contract amount in the case of goods, services, and*

75. Article 31 of this Law also provides for special procurement methods for goods and services through the Framework Agreement E-catalogues. The Law's Regulations will establish the procedures for implementing or maintaining these e-catalogues and may establish other special procurement methods.

76. Exchange rate: s/. 1.00 = US\$0.30 (on November 20, 2015).

*consulting services, provided they are essential for meeting the aims of the contract. Entities may also reduce goods, services, or works by up to the same percentage.”*

[168] In the case of oversight of public works, Article 34(3) provides that “*add-ons may be up to fifteen percent (15%) of the total amount of the original contract, minus the corresponding budget deductions. To that end, the corresponding payments are approved by the director of the entity. Should additions to a public work become essential due to defects in the technical dossier or unforeseeable situations that may arise after the contract is signed and these are greater than those established in the preceding paragraph, and up to a maximum of fifty percent (50%) of the amount originally contracted—notwithstanding any liability that may correspond to the project designer—the head of the entity may choose to authorize them. To this end, entity’s director must give authorization, and, for execution and payment, prior authorization must also be forthcoming from the Office of the Comptroller General of the Republic and confirmation must be made that the necessary resources are available. In the case of emergency add-ons, such authorization is given prior to payment. The Office of the Comptroller General of the Republic has a maximum of fifteen (15) business days, under penalty of law, to issue its decision. Such situation must be reported by the director of the entity to the Budget and General Account Committee of the Congress of the Republic and of the Ministry of Economy and Finance. Alternately, the State may cancel the contract via written communication with the contract holder.*”

[169] Articles 41 to 45, for their part, address the dispute settlement system. Regarding appeals, Article 41 stipulates that in the case of contracting processes whose estimated or reference value exceeds 65 UIT, the Government Procurement Tribunal has the jurisdiction to hear and rule on them. In all other cases, appeals will be decided directly by the director of the entity.

[170] When [an appeal] is filed the contracting process is put on hold until a ruling is made, with any actions taken from the time of filing until the respective decision is issued being rendered null and void (Article 42).

[171] Articles 46, 47, 48, and 49 contain the general aspects of the National Provider Registry [*Registro Nacional de Proveedores*] (RNP) and of the Electronic Government Procurement System (SEACE).

[172] Article 50 establishes infractions as well as the administrative penalties that the Government Procurement Tribunal imposes on providers, participants, bidders and/or contractors, and in the cases referred to in Article 5(a) of the Law. Penalties include fines<sup>77</sup> (Article 50(2)(a)), temporary disqualification (Article 50(2)(b)), and permanent disqualification (Article 50(2)(c)). Penalties are published in the National Provider Registry (RNP) and include information on partners or directors, and on the members of the management bodies (Article 50(6)).

[173] Articles 51 to 58 regulate the Government Procurement Oversight Body (OSCE): Its functions (Article 52); organization and resources (Article 53); Governing Board and Executive Chair (Article 54), and the requirements for and impediments to becoming a member (Article 55); and reasons leading to openings on the Board (Article 56). Article 58 creates the Multi-sector Council for Monitoring Public Procurement Contracting—attached to the OSCE—the mission of which is to

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77 . Not less than 5% or greater than 15% of the financial proposal or of the contract. In addition, failure to pay fines is grounds for suspending the right to participate in any contracting process and to contract with the State for a period of up to 18 months. Fines are also applicable to public entities that act as providers (Article 50(2)(a) of Law 30225).

examine and report to the competent authorities cases of alleged fraud, collusion, and corruption in State procurement contracting by government officials, public servants, and/or private individuals. Its make-up and functions are established in the Regulations.

[174] Lastly, Articles 59 to 62 establish and regulate the Government Procurement Tribunal: Its functions (Article 59); the requirements for and impediments to becoming a member of the Tribunal (Article 60); reasons leading to openings on the Tribunal (Article 61); and notification and disclosure of rulings (Article 62).

[175] – Law 30356 published November 5, 2015, which enhances the transparency and oversight of resource management agreements with international organizations.

[176] Article 4 establishes the general requirements that entities must meet in order to enter into these types of agreements, to wit: Authorization expressly established in a legal provision and favorable reports from the budget, management, and legal affairs areas of the government entities themselves, as well as a favorable and binding report from the Ministry of Economy and Finance.

[177] In addition, Article 6(2) grants the OSCE and the CGR the right to scrutinize all documents having to do with the signing and implementation of these types of agreements.

#### **b. Observations on new legislative developments**

[178] The Committee acknowledges that the new legislative developments in this area constitute positive steps in terms of optimizing government procurement contracting processes by ensuring a results-based management approach, and enhancing oversight and increasing transparency in resource management agreements with international organizations. Nevertheless, the Committee believes it appropriate to make a number of observations with respect to the New Government Procurement Law:

[179] First, the Committee notes that, in terms of its Eighth Final Supplementary Provision, the New Government Procurement Law is not yet in force because its Regulations have not yet been adopted. According to the Second Final Supplementary Provision, these Regulations were to have been adopted within 180 calendar days after the Law's approval, namely, in January 2015.<sup>78</sup>

[180] In this regard, during the on-site visit, representatives of the OSCE reported that the draft Regulations for the New Government Procurement Law were opened up to comments at the beginning of the year. They noted that while the draft regulations were being drawn up, they organized a number of workshops that were attended by representatives of different sectors (government entities, trade unions, providers, civil society) and that publication of the draft Regulations had allowed for active participation by the general public—between 900 and 1,000 comments were received and are being evaluated. They likewise noted that the executive branch, rather than the OSCE, as it is a technical body, determines when the Regulations will be approved.<sup>79</sup>

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78. During the meeting of the review subgroup, the State under review indicated that Law No. 30225 (the Government Procurement Law) had been in force since January 9, 2016, with the adoption of its Regulations by means of Supreme Decree No. 350-2015-EF. Since both provisions came into effect following the submission date of the response to the questionnaire and were not sent to the review subgroup prior to the deadline set in the Methodology for the MESICIC Fifth Round, the Committee will not conduct an exhaustive analysis of them and will merely use footnotes to report on the most important changes and updates.

79. *Idem*.

[181] Bearing in mind the above and the fact that approval of the Regulations is key for both ensuring the entry into force of Law 30225 itself and for developing its content, the Committee believes it is important that the necessary measures be taken to establish and disclose the estimated date for their approval and for due consideration to be given to the observations and comments received. This would support and facilitate efforts to implement the New Government Procurement Law. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.11 in section 1.2.3 of Chapter II of this report).<sup>80</sup>

[182] In this connection, during the on-site visit, representatives of the private sector expressed disappointment with respect to how the draft Regulations for Law 30225 were prepared, alleging that they themselves had not been properly heard and that they would like to see a chart of comments received by the OSCE that indicates which observations were and were not included.

[183] Second, the Committee notes that the New Government Procurement Law, based on the new Public Administration model (results-based management), increases the leeway for discretion for those involved in procurement processes for or on behalf of government entities. This greater freedom should not mean that discretionary acts are not subject to oversight, but the change in model does create challenges for oversight bodies.

[184] In this respect, the Committee takes note of the concerns raised by the representatives of the Office of the Comptroller General of the Republic and civil society and private sector representatives in connection with the challenges the National Oversight System will be faced with because of the increased discretion given by the new Law to all individuals who are involved in procurement processes for or on behalf of government entities.

[185] In this regard, according to the Fourth Final Supplementary Provision of Law 29622, “*when existing legislation expressly authorizes a certain degree of discretion to public officials for making certain decisions, the bodies of the National Oversight System may not question exercise of this discretion merely because they hold a different opinion. Opinions may be expressed about such decisions only if the decisions were made without due and timely consideration of the facts or risks, or based on the results achieved vis-à-vis the original objectives and goals, or when, in cases in which the law lends itself to multiple interpretations, the decision strays from the interpretation adopted by the competent oversight body.*”

[186] The Committee believes it is important that the appropriate measures be taken to ensure that the increase in discretion is not accompanied by an increase in corruption (or in citizens’ perception thereof), to wit: Providing appropriate training for those who take part in procurement processes and the establishment of an organizational culture based on public ethics, as well as the strengthening of the system of control and of oversight agencies. Furthermore, once the New Government Procurement Law enters into force, the Committee would be interested in having a study that identifies the impact of the new law on the efforts of the National Oversight System and, where appropriate, the resulting “corruption risks,” in order to pinpoint challenges and recommend corrective measures, accordingly. The Committee will formulate recommendations in this regard (see recommendations 1.2.3.12 and 1.2.3.13 in section 1.2.3 of Chapter II of this report).

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80. *Idem.*

[187] Third, the Committee observes that the new Law increases the threshold amount for procurement processes to which Law 30225 would not apply. The amount climbs from three—the current number—to eight Tax Units (UIT), that is from s/. 11,550 to s/. 30,800.<sup>81</sup>

[188] The Committee further observes that Article 5 of Law 30225 stipulates that the above scenario, which is exempt from application thereof, is subject to OSCE oversight as well as to the impediments of Article 11 as far as participants, candidates, and/or contractors are concerned.

[189] In this regard, bearing in mind that the above change might increase the risk of corruption due procurement contracting splitting, the Committee believes it is important that the OSCE's oversight function be equipped with the human, financial, and technological resources it needs to supervise the proper use of this procurement scenario and to make reports to the competent bodies for the punishment of those responsible for cases in which the procurement of works, goods, and/or services is split without justification. The Committee also believes it is important that the necessary measures be taken to collect detailed statistical data on the OSCE's oversight efforts with respect to the procurement scenarios that are exempt from the Law, as well as on the assessing of the appropriate penalties by the competent bodies, in order to identify challenges and recommend corrective measures, where appropriate. The Committee will formulate recommendations in this regard (see recommendations 1.2.3.14 and 1.2.3.15 in section 1.2.3 of Chapter II of this report).

[190] On this matter, it is worth noting that during the on-site visit, representatives of civil society and private sector organizations reported that, in their opinion, procurement contracting will be increasingly split once the new Law enters into force, and they emphasized the need for effective oversight by the OSCE in the case of this and other procurement contracting scenarios exempted from application of the Law.

[191] Fourth, the Committee notes that Article 27 of Law 30225 includes direct contracting scenarios that are additional to those contained in current legislation. The Committee is particularly concerned about the inclusion of scenarios like the ones indicated in Article 27(g), which authorizes direct contracting *“for advertising services that television, radio, print, or any other type of media provide to the government.”*

[192] Bearing in mind the existence of Law 28874, which regulates government advertising, the Committee believes that official government advertising services should be procured through competitive processes based on the principles of openness, equity, and efficiency provided for in the Convention, in order to prevent preference from being given to media that have a favorable editorial line toward the government. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.16 in section 1.2.3 of Chapter II of this report).<sup>82</sup>

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81. As of November 10, 2015, one UIT is equivalent to 3,850 Peruvian Nuevos Soles (approximately US\$1,160). Source: <http://www.sunat.gob.pe/indicestajas/uit.html>

82. During the meeting of the review subgroup, the State under review indicated that the use of direct contracting obligatorily required the inclusion of the corresponding technical and legal grounds in the prior report or reports that contain the justification of the need and admissibility of direct contracting. Those reports must be published in the SEACE, so that any citizen can learn about the direct contracts that the entity in question decides to enter into, as well as for the corresponding oversight by the OSCE, which substantially reduces the risk of bias referred to in this paragraph.



[193] Fifth, the Committee notes that Article 17 authorizes executive agencies that develop national and/or sector government policies “*to make the requirements for the goods and services they must procure uniform [...] in their areas of jurisdiction via a standardization process.*”

[194] In this respect and taking into account suggestions made by private sector representatives during the on-site visit, the Committee believes it is important to consider making, as part of the above-mentioned standardization process, compliance with Peru’s Technical Standards [*Normas Técnicas Peruanas*] (or similar standards in the case of imports), where they exist, an objective evaluation criterion for the procurement of goods and/or services. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.17 in section 1.2.3 of Chapter II of this report).<sup>83</sup>

[195] Sixth, the Committee notes that pursuant to Article 41 of the New Government Procurement Law, appeals are to be decided directly by the director of the entity in question in the case of contracting processes whose estimated or reference value is less than 65 UIT.<sup>84</sup>

[196] The Committee believes that in order to limit conflicts of interest in these cases (entities as both judge and party), consideration could be given to making the Government Procurement Tribunal’s case law binding.

[197] Lastly, regarding the violations set forth in Article 50 of the New Government Procurement Law, the Committee believes it is important that the Law’s Regulations clearly stipulate the difference between submitting inaccurate and false information to the Government Procurement Tribunal and to the National Provider Registry [*Registro Nacional de Proveedores*] (RNP), established, respectively, in Article 50(h) and (i), inasmuch as these entail penalties of different levels of severity. The Committee further believes it is important to consider broadening Article 50 to also punish those who submit inaccurate, false, or forged information in the context of an arbitration proceeding. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.18 in section 1.2.3 of Chapter II of this report).

#### **1.2.2.2. New developments with respect to technology**

[198] In its response to the questionnaire,<sup>85</sup> the country under review presented information about new developments with respect to technology, among which the Committee considers the following to be noteworthy:

[199] – Improvements to the Electronic Government Procurement System (SEACE), including the development and implementation of version 2.0 of the SEACE as of February 2009, and of version 3.0 as of 2013.

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83. During the meeting of the review subgroup, the State under review indicated that Article 8 of the Regulations to Law No. 30225 provides that the request must include the requirements set out in the laws, technical regulations, metrology and/or sanitary regulations, and other rules that obligatorily regulate the purpose of the contract. Requirements contained in voluntary technical standards can also be included, provided that: (i) they serve to ensure compliance with the functional or technical requirements, (ii) there exists in the market an agency that can certify compliance with technical standard, and (iii) they do not contravene the aforesaid obligatory provisions.

84. As of November 10, 2015, one UIT is equivalent to 3,850 Peruvian Nuevos Soles (approximately US\$1,160). Source: <http://www.sunat.gob.pe/indicestajas/uit.html>

85. See Peru’s response to the Fifth Round questionnaire, p. 56. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

[200] Furthermore, a “contracts module” was developed in the 2.0 version of the SEACE that enables authorities, public officials, and institutional oversight bodies to monitor adjustments made to contracts.

[201] The OSCE has developed the “Dispute and Contracts Module Manual – 2015” [*Manual del Módulo de Contratos y Controversias 2015*],<sup>86</sup> as well as a list of responses to “Frequently Asked Questions about the Contracts Module”<sup>87</sup> that guide the efforts of officials responsible for registering information having to do with contract adjustments, etc.

[202] On this matter, during the on-site visit, OSCE representatives also reported that version 3.0 had been written in Java and includes the following modules: Administration, Preparatory Documents, Contracting Procedures, Procedure Configurator and Interfaces. All entities have been conducting their contracting processes in SEACE 3.0 since January 2015.<sup>88</sup>

[203] – Improvements to the National Provider Registry (RNP).<sup>89</sup> Version 5.0 of the RNP is currently under development and will, among other improvements, allow any individual (whether or not he or she is a provider) to find out about business opportunities with the government and have access to public information about a provider’s background and experience.

[204] According to information provided subsequent to the on-site visit,<sup>90</sup> “by means of Public Competition 004-2013-OSCE, a procurement contracting process was held in order to contract a provider that could furnish analysis, design, construction, testing, and implementation services for the new National Provider Registry System, which is currently being built. The new RNP System is being implemented presently and to that end, the National Provider Registry’s processes have been redesigned and new processes have been put in place in order to glean more information from the Registry. It is important to note that the new RNP System will be implemented in Java, will use the Oracle 11g database, will be implemented in a three-layered architecture, and will have a document manager to store the system’s files.”

### 1.2.2.3. Results

[205] In its response to the questionnaire,<sup>91</sup> in addition to the information already referred to in section 1.2.1 above, the country under review provided the following information about the outcomes obtained in connection with a number of aspects of systems of government procurement of goods and services referred to in Article III(5) of the Convention, to wit:

- **Regarding penalties imposed on contractors and entities:**

[206] A list of providers, participants, bidders, and/or contractors who have been temporarily or permanently disqualified from contracting with the State is published monthly by the OSCE on its

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86. Available in Spanish at: <http://www2.seace.gob.pe/Documentos/189912301641342radC6168.pdf>

87. Available in Spanish at: <http://www2.seace.gob.pe/Documentos/189912302041204rad11BCF.pdf>

88. See additional information from the OSCE requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_of\\_752\\_2015\\_pre\\_inf\\_osce.PDF](http://www.oas.org/juridico/PDFs/mesicic5_per_of_752_2015_pre_inf_osce.PDF)

89. <http://portal.osce.gob.pe/rnp/>

90. Available in Spanish at:

[http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_osce\\_anexo11\\_inf\\_sob\\_imp\\_ver\\_2.0\\_3.0\\_seace.PDF](http://www.oas.org/juridico/PDFs/mesicic5_per_osce_anexo11_inf_sob_imp_ver_2.0_3.0_seace.PDF)

91. See Peru’s response to the Fifth Round questionnaire, pp. 43, 44, and 59. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

institutional website within fifteen (15) business days after the end of each month, pursuant to the provisions of Article 9 of Legislative Decree 1017 and Article 281 of its Regulations. The link is as follows: <http://portal.osce.gob.pe/osce/content/observatorio>.

[207] Based on the information available to it, the Committee believes that penalties are being imposed on providers, participants, bidders, and/or contractors. The Committee also notes, however, that as of October 12, 2015, 101 of the businesses assessed penalties by the Government Procurement Tribunal were still contracting with the State pursuant to precautionary measures granted by the judiciary.<sup>92</sup> Without questioning the judiciary's full autonomy to grant these precautionary measures, the Committee believes an analysis should be done of what might have prompted the judiciary to grant precautionary measures to the businesses penalized and, where appropriate, of the potential impact of such decisions on the fight against corruption in Peru, in order to identify challenges and recommend corrective measures. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.19. in section 1.2.3. of Chapter II of this report).

[208] The Committee further notes that the OSCE has the power to receive complaints about government entity violations of the Government Procurement Law, and that Directive 012-2007/CONSUCODE/PRE regulates the procedure for processing such complaints. Unfortunately, the Committee was not privy to statistical data about these complaints and how they were settled. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.20. in section 1.2.3. of Chapter II of this report).

- **Training**

[209] In its response to the questionnaire,<sup>93</sup> the country under review stated that *"The Assistant Office for Capacity Building of the OSCE's Technical Standards Office is responsible for developing and executing activities related to dissemination, training, and capacity-building as far as government procurement management and written information thereon are concerned.*

[210] *In order to perform this function, the Assistant Office develops, proposes, and implements a Capacity-Building Plan that includes all training available from strategic partners as well as supplementary and free training offered by the OSCE. Presently, the OSCE has 38 inter-agency cooperation agreements in place to broaden the supply of training opportunities in different cities nationwide. It is important to note that in 2014, the OSCE trained 3,175 public officials while its strategic partners trained another 5,569.*

[211] *Furthermore, it should be noted that one thing the Assistant Office for Capacity Building takes into account when determining how to intervene is which departments have been identified by the High Level Anti-Corruption Commission as having elevated rates of corruption. As a result, 1,501 of those who received training in 2014 hailed from those departments.*

[212] *The Assistant Office for Capacity Building also manages the process for certifying professionals and specialists who work in Bodies Responsible for Procurement [Órganos Encargados de las*

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92. <http://portal.osce.gob.pe/osce/content/108-empresas-siguen-contratando-con-el-estado-trav%C3%A9s-de-medidas-cautelares>

93. See Peru's response to the Fifth Round questionnaire, pp. 43 and 44. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

*Contrataciones] (OEC); this process contains requirements for training in government procurement. Since 2011, more than 11,000 professionals and specialists from OECs have been certified.”*

[213] The Committee takes note of the training activities conducted and of the extensive supply of capacity-building opportunities contained on the OSCE’s website,<sup>94</sup> as well as on [www.meespecializo.pe](http://www.meespecializo.pe) – an OSCE site created for public servants who wish to improve their procurement contracting skills. The Committee believes it is key that the OSCE’s training and dissemination activities continue and that efforts be made to publicize the mechanism for reporting any violation of government procurement legislation (Directive 012-2007/CONSUCODE/PRE) committed by public entities. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.21 in section 1.2.3 of Chapter II of this report).

[214] The Committee also takes specific note of the procedure for certifying professionals and specialists who work in OECs<sup>95</sup> and believes it is important for the appropriate measures to be taken to increase the number of public servants in the OECs who have been duly accredited. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.22 in section 1.2.3 of Chapter II of this report).

- **Degree of competition**

[215] During the on-site visit, representatives of the private sector informed the preliminary review subgroup<sup>96</sup> about the ever greater decline in the average number of proposals put forth and proposals admitted in procurement processes for works, goods, and services in Peru, which have fallen to an approximate level of 1.5 average bidders and proposals admitted per competitive process.

[216] In response to this information, the representatives of the OSCE clarified that they have conducted studies on the matter.<sup>97</sup> They drew the following conclusions from their latest study:

[217] *“Based on the analysis, we concluded that competition levels were similar in 2012 and 2013. Starting in 2014, there was a slight increase that can be explained by the extremely large amounts at stake, that is to say, specific procurement contracting processes that saw a significant number of bidders.*

[218] *Approximately three-quarters of the total number of contracts were awarded in processes that included a single proposal. This means that, generally speaking, the average number of proposals admitted was 1.5.*

[219] *Within these competition-level parameters, the lowest averages can be found in processes for the execution of works organized by local governments, primarily in Ucayali, Ancash, Tumbes, and Pasco (...)*”

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94. <http://portal.osce.gob.pe/osce/content/desarrollo-de-capacidades>

95. <http://certificacion.osce.gob.pe/default.asp>

96 See presentation by the National Industry Association [*Sociedad Nacional de Industrias*] (SNI). Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_soc\\_civ\\_sni\\_com\\_est\\_set\\_2015.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_soc_civ_sni_com_est_set_2015.pdf)

97 See “*Cálculo del Nivel de Competencia en el Procedimiento Clásico*” [Calculation of Competition Levels in Classic Procedures], 2013 and 2014. Available in Spanish at: [http://portal.osce.gob.pe/osce/sites/default/files/Documentos/Publicacion/Estudios/2013/C%C3%A1lculo%20del%20Nivel%20de%20Competencia%202013\\_v4.pdf](http://portal.osce.gob.pe/osce/sites/default/files/Documentos/Publicacion/Estudios/2013/C%C3%A1lculo%20del%20Nivel%20de%20Competencia%202013_v4.pdf) and [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_osce\\_anexo5\\_calc\\_niv\\_com\\_2014.PDF..](http://www.oas.org/juridico/PDFs/mesicic5_per_osce_anexo5_calc_niv_com_2014.PDF..)

[220] In view of the foregoing, the Committee believes it is important to identify the reasons behind the low average number of public works procurement processes in local governments, mainly in the provinces highlighted, and that the necessary measures be taken to boost the level of competition for public procurement contracts. The Committee will formulate a recommendation in this regard (see recommendation 1.2.3.23 in section 1.2.3 of Chapter II of this report).

### **1.2.3. Recommendations**

[221] In view of the observations formulated in sections 1.2.1 and 1.2.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendations:

- 1.2.3.1 Conduct a study into the reasons for the frequent modifications of the Annual Procurement Plans in order to, on the basis thereof, improve the scheduling and predictability of government procurement in the Republic of Peru (see paragraph 103 in section 1.2.1 in Chapter II of this report).
- 1.2.3.2 Implement a notification system in the Electronic Government Procurement System (SEACE) that reports amendments to Annual Procurement Plans to oversight bodies like the Office of the Comptroller General of the Republic (CGR) and the Government Procurement Oversight Body (OSCE) in a timely manner (see paragraph 103 in section 1.2.1 in Chapter II of this report).
- 1.2.3.3 Adopt the measures necessary to implement a more advanced search platform for the SEACE so that citizens and oversight bodies may better monitor public procurement processes (see paragraph 126 in section 1.2.1 in Chapter II of this report).
- 1.2.3.4 Adopt the appropriate measures to provide guidance to those in charge of publishing the information required in the SEACE with respect to their legal duties, and to enable the bodies responsible for procurement in an entity to effectively verify that [the information] has been registered in the System in a timely manner; and, where there is failure to comply, ensure that the appropriate penalties are assessed (see paragraph 129 in section 1.2.1 in Chapter II of this report).
- 1.2.3.5 Have Institutional Oversight Bodies (OCI) include in their annual oversight plans, a review of the information of the respective entity that is contained in the SEACE in order to verify whether the law is being followed (see paragraph 130 in section 1.2.1 in Chapter II of this report).
- 1.2.3.6 Keep detailed statistical data about the assessment of penalties against those who fail to comply with the duty to publish the documentation or information required of them by law in the SEACE, pursuant to the conditions and deadlines stipulated therein, in order to identify challenges and recommend corrective measures, where appropriate (see paragraph 130 in section 1.2.1 in Chapter II of this report).
- 1.2.3.7 Consider reinstituting by law the entities' obligation to publish in the SEACE, under penalty thereof, all signed contracts provided by law to be made public and periodic reports on the implementation of such contracts, as well as all proceedings that are

required to be disclosed, as appropriate (see paragraph 131 in section 1.2.1 in Chapter II of this report).

- 1.2.3.8 Adopt the measures necessary to ensure compliance with the duty to periodically report on the execution of public works contracts through INFOBRAS, in order to consolidate this system as a useful tool for citizen oversight activities. In that context, consider enacting the complementary provisions described in the 82nd final complementary provision of the Public Sector Budget Law for the 2015 fiscal year (Law No. 30281) (see paragraph 144 in section 1.2.1 in Chapter II of this report).
- 1.2.3.9 Develop detailed statistical information on penalties assessed against those who fail to fulfill their duty to publish documentation or information in INFOBRAS pursuant to the conditions and deadlines provided for in the current law in order to identify challenges and recommend corrective measures, where appropriate (see paragraph 144 in section 1.2.1 in Chapter II of this report).
- 1.2.3.10 Study the possibility of publishing, when appropriate, pre-bidding terms and conditions so that interested parties can find out about them and submit comments thereon (see paragraph 151 in section 1.2.1 in Chapter II of this report).
- 1.2.3.11 Take the appropriate measures to establish and publicize the estimated date for adoption of the Regulations for Law 30225 and give due consideration to the observations and comments received about the draft text of the Regulations (see paragraph 181 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.12 Provide appropriate training for those who take part in procurement processes as well as the establishment of an organizational culture based on public ethics and the strengthening of the system of control and of oversight agencies (see paragraph 186 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.13 Conduct a study to determine the impact of the new Law on the efforts of the National Oversight System, and, where applicable, the resulting “corruption risks,” in order to pinpoint challenges and recommend corrective measures, as the case may be (see paragraph 186 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.14 Strengthen the OSCE’s oversight function by equipping it with the human, financial, and technological resources it needs to supervise the proper application of the procurement scenarios that are exempt from the application of Law 30225, within available resources, and to make reports to the competent bodies for punishing those responsible for cases in which the procurement of works, goods, and/or services is split without justification (see paragraph 189 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.15 Implement the measures necessary to develop detailed statistical data on the OSCE’s oversight efforts with respect to the procurement scenarios that are exempt from Law 30225, as well as on the assessment of the appropriate penalties by the competent bodies, in order to identify challenges and recommend corrective

measures, where appropriate (see paragraph 189 in section 1.2.2.1 in Chapter II of this report).

- 1.2.3.16 Consider eliminating paragraph (g) from Article 27 of Law 30225, in order to ensure that—bearing in mind Law 28874—competitive bidding becomes the general rule for the procurement of government advertising services via competitive processes that are based on the principles of openness, equity, and efficiency provided for in the Convention (see paragraph 192 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.17 Consider making compliance with Peru’s Technical Standards (or similar standards in the case of imports), where they exist, an objective evaluation criterion for the procurement of goods and/or services (see paragraph 194 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.18 Clearly stipulate the difference between submitting inaccurate and false information to the Government Procurement Tribunal and to the National Provider Registry, established, respectively in Article 50(h) and (i) of Law 30225 and broaden Article 50 to also punish those who submit inaccurate, false, or forged information in the context of an arbitration proceeding (see paragraph 195 in section 1.2.2.1 in Chapter II of this report).
- 1.2.3.19 Conduct an analysis of what might have prompted the judiciary to grant precautionary measures to the businesses penalized by the Government Procurement Tribunal and, where appropriate, of the potential impact of such decisions on the fight against corruption in Peru in order to identify challenges and recommend corrective measures (see paragraph 207 in section 1.2.2.3 in Chapter II of this report).
- 1.2.3.20 Develop comprehensive statistical data on the outcomes of OSCE investigations that make it possible to ascertain: The total number of complaints received; cases investigated that are awaiting a decision by the OSCE; the number of decisions issued regarding the complaints; the number of these decisions that resulted in charges of liability or in punishment; the number of these decisions that did not lead to charges of liability or resulted in an acquittal; and the number of these decisions for which penalties were time-barred or criminal liability was extinguished because they were not issued by the established deadlines, all in order to identify challenges and recommend corrective measures (see paragraph 208 in section 1.2.2.3 in Chapter II of this report).
- 1.2.3.21 Make efforts to publicize the mechanism for reporting public entity violations of government procurement legislation (Directive 012-2007/CONSUCODE/PRE) (see paragraph 213 in section 1.2.2.3 in Chapter II of this report).
- 1.2.3.22 Implement the measures necessary to increase the number of public servants in the Bodies Responsible for Procurement (OEC) who have been duly accredited (see paragraph 214 in section 1.2.2.3 in Chapter II of this report).
- 1.2.3.23 Identify the reasons behind the low average number of public works procurement processes in local governments, mainly in the provinces of Ucayali, Ancash, Tumbes,

and Pasco, and adopt the measures necessary to increase the level of competition for public procurement contracts (see paragraph 220 in section 1.2.2.3 in Chapter II of this report).

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

### **2.1. Follow-up on implementation of the recommendation formulated in the Second Round**

#### Recommendation:

*Implementing systems to protect public servants and private citizens who, in good faith, report acts of corruption.*

#### Measure suggested:

*Adopt, through the respective authority, a comprehensive regulation on protection of public servants and private citizens who, in good faith, report acts of corruption, including protecting their identity, in accordance with the Constitution and the fundamental principles of its domestic legal order, which could include, among others, the following aspects:*

- a) Coverage for those who report acts of corruption that may or may not be defined as criminal offenses, but which could be subject to judicial or administrative investigation;*
- b) Protection measures, targeting not just the protection of the physical integrity of whistleblowers and their families, but also the protection of their positions of employment, particularly for public officials and when the acts of corruption could involve their superiors or coworkers;*
- c) Provisions to punish noncompliance with protection rules and/or obligations;*
- d) A simplified whistleblower protection application process;*
- e) Reporting mechanisms, such as anonymous complaints and identity-protected complaints, to guarantee the personal security and identity confidentiality of public officials and private citizens who, in good faith, report acts of corruption;*
- f) Mechanisms for reporting the threats or reprisals that informants may face, indicating the authorities responsible for processing protection requests and the agencies responsible for providing such protection;*
- g) Mechanisms for the protection of witnesses, providing them with the same guarantees as public officials and private citizens;*



- h) *Mechanisms to facilitate international cooperation in the above areas, when appropriate, including the technical assistance and reciprocal cooperation described in the Convention, along with exchanges of experiences, training, and mutual assistance.*
- i) *The competence of the judicial and administrative authorities in this area, clearly distinguishing one from the other.*

[222] Both in its response to the questionnaire,<sup>98</sup> and during the on-site visit, the country under review presented information and new developments with respect to the recommendation above, from which the Committee highlights the following as steps that help to advance its implementation:

- **Protection of whistleblowers who report acts of government corruption:**

[223] – Law 29542 of June 3, 2010 (Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters) and its Regulations (Supreme Decree 038-2011-PCM), which aim to protect and offer benefits to public officials and servants or any citizen who furnishes a substantiated complaint regarding the commission of arbitrary or unlawful acts at any public entity and may be administratively investigated or penalized.

[224] According to Article 4 of Law 29542 and of its Regulations, the Office of the Comptroller General of the Republic (CGR) is the competent authority for receiving and evaluating all complaints, as well as for processing those that fall within its jurisdiction. In addition, the CGR must forward all complaints required to be processed by other administrative agencies and will inform the whistleblower of such action.

[225] The requirements for complaints are set forth in Article 7 of Law 29542 (Article 6 of its Regulations) and are the following: “(a) [Complaints] must refer to actions or omissions that reveal arbitrary or illegal acts; (b) they must be made in writing and be duly substantiated; (c) they must identify and single out who the perpetrators are and, as the case may be, who was involved in the acts being reported; (d) the particulars being reported may not be part of any legal or administrative proceeding that is currently underway, or have been a part of a favorable or final judgment; (e) they must contain a signed commitment by the whistleblower to provide information when so requested by the competent authority. If a whistleblower refuses, is unwilling to do so, or withdraws, investigations will be pursued by the competent authority.”

[226] Law 29542 also regulates, in its Article 8 (Article 10 of its Regulations), protection measures and benefits that may be granted to whistleblowers irrespective of the employment system they fall under so that they are not subject to reprisals. One measure that has been adopted is identity confidentiality—for which ID codes are assigned to them—and whistleblowers may not be dismissed, fired, or removed because of the complaints they file.

[227] It is especially important to note that Article 8(c) of Law 29542 [Article 10(e) of its Regulations] stipulates that “when reprisals against whistleblowers, regardless of the employment system they fall under, materialize in the form of harassment (...), confirmed by the Ministry of Labor and Job Promotion, the conduct of the public official who perpetrated [the harassment] is considered to be a serious offense, which is cause for justified dismissal, pursuant to applicable law.” Article 9 of

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98. See Peru’s response to the Fifth Round questionnaire, pp. 24 to 29. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

Law 29542 stipulates that *“the information furnished by the whistleblower and the appropriate agency’s evaluation thereof during the entire process are confidential, under penalty of law, except in cases of malicious complaints.”*

[228] Lastly, in an attempt to simplify whistleblower protection applications, the annex of Law 29542’s Regulations contains the form that is to be filled out to file a complaint. This is available in electronic format at the following website: <https://appscgr.contraloria.gob.pe/sinad>

[229] – Directive 011-2015-CG/GSND – “Complaint Management Service,” adopted pursuant to Office of the Comptroller Resolution 268-2015-CG, of September 4, 2015, replaces the previous Directive 006-2011-CG/GSND and establishes standardized stages, criteria, procedures, and roles for handling complaints filed with the National Oversight System (SNC) through the Office of the Comptroller and Institutional Oversight Bodies (OCI), protecting both the identity of whistleblowers and the content of the complaints.

[230] This Directive establishes the National Complaint Management System [*Sistema Nacional de Atención a Denuncias*] (SINAD), which is set up as a deconcentrated system nationally and is comprised of: The National Complaint Management System Department of the CGR;<sup>99</sup> the (3) Regional Coordination Offices and the (20) Regional Oversight Offices of the CGR; the (749) Institutional Oversight Bodies (OCI); and other CGR organizational units, which, because of their area of specialization, function, or at the behest of CGR Senior Management, must handle a complaint.

[231] According to Article 7(1) of the above Directive, complaints may be filed anonymously or not, by anyone, in person or by mail, or on the CGR’s website.<sup>100</sup> Both options require the use of the “Complaint Filing Form,” contained in Annex 02 of the Directive.<sup>101</sup>

[232] Together with their complaints, pursuant to Article 7(3) of the Directive, whistleblowers may request the protection measures provided for in Law 29542 and its Regulations, indicated above, provided they meet the requirements and sign the whistleblower commitment form to provide information when so requested, which is contained in Annex 03 of the Directive.

[233] The complaint management process has two stages: Receipt (verification of compliance with the requirements) and evaluation (in-house analysis/field visit).

[234] Requirements for complaints are set forth in Article 7(2) of the Directive, which stipulates that the agencies of the SINAD must handle all complaints related to: *“(a) Allegedly illegal or arbitrary [acts] that have occurred in an entity subject to the SNC’s oversight; (b) [acts] that are not part of legal, arbitration, or administrative proceedings currently underway, disciplinary proceedings, injunctions or challenges against providers or bidders, or that have to do with any*

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99. During the meeting of the review subgroup, the State under review reported that as established in the Organization and Functions Regulations (ROF), adopted by means of Comptrollership Resolution No. 027-2016-CG of February 8, 2016, the “National Complaint Management System Department” was renamed the “Department of Complaints.”

100. <https://appscgr.contraloria.gob.pe/sinad>.

101. During the meeting of the review subgroup, the State under review reported that the use of this “Form” was optional, and so it was feasible for members of the public to file complaints using other formats, and that what was important was compliance with the requirements set out in No. 7.2 of Directive No. 011-2015-CG/GPROD, “Complaint Attention Service.”

*particulars that were subject to favorable or final legal judgments or included in actions pending before the Constitutional Court or investigations being conducted by other competent government institutions; and (c) [acts] that are not subject to an oversight or related service currently underway or concluded.”*

[235] Pursuant to Article 7(4)(1) of the Directive, following adjustments to the CGR’s jurisdiction as far as legal requirements and cases are concerned, the following was determined: (a) If the act being reported falls under the jurisdiction of the CGR and meets the requirements, the evaluation stage moves forward and the whistleblower is informed; (b) if the act being reported falls under the jurisdiction of the CGR but does not meet the requirements, the complaint is finalized and the whistleblower is informed; and (c) if the act being reported does not fall under the jurisdiction of the CGR, the complaint is referred to the entity that does have jurisdiction, as expressly prescribed by law; the entity in question then finalizes the complaint and the whistleblower is informed.

[236] Furthermore, the Article cited above provides that “(...) *if the whistleblower meets the requirements set forth in Law 29542 and its Regulations, the complaint will be admitted and the whistleblower informed that he or she may benefit from the protection measures and benefits said Law establishes; otherwise, the respective corrections [to the complaint] will be requested, for which ten (10) business days will be granted as from receipt thereof. If the requirements are not met, the complaint will not be admitted for purposes of Law 29542. The foregoing does not preclude review and evaluation of the facts reported if they meet the requirements provided for in subparagraph 7.2.*”

[237] As for the confidential nature of the complaint’s content and the whistleblower’s identity, Article 6(4) of the Directive stipulates that both are protected by the principle of confidentiality from the time of receipt until the processing of the complaint or the oversight stemming therefrom is completed, as the case may be.

[238] The whistleblower’s identity and personal information may not be revealed even when the processing of the complaint or the oversight stemming therefrom have concluded, except where: “(a) *It has been confirmed that a false report was filed, notwithstanding the legal actions that may be taken; (b) Their disclosure is provided for in the regulations regarding personal data protection or a legally binding rule that expressly provides therefor; (c) The whistleblower gives his or her free, prior, express, informed, and unequivocal consent.*”

[239] – The official launch of “SINAD BUSINESS” [SINAD EMPRESARIAL]—currently “Aló Contraloría Empresarial,”<sup>102</sup> in April 2015, which is a personalized and confidential customer service the CGR provides to businesses and business trade associations that would like to submit information on allegedly unlawful or arbitrary acts in the public sector.

[240] During the on-site visit,<sup>103</sup> CGR representatives reported that the above-mentioned service has enabled economic actors interested in upholding fair trade practices to channel their complaints regarding irregularities they witness or learn about. The service currently has 15 trade associations participating, which represent approximately 1,500 companies, and it is in the process of expanding. To this end it is necessary to publicize and make different business trade associations aware of this service.

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<sup>102</sup> [http://doc.contraloria.gob.pe/sinad\\_empresarial/index.html](http://doc.contraloria.gob.pe/sinad_empresarial/index.html)

<sup>103</sup> See additional information from the Office of the Comptroller General requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_con\\_722\\_cg\\_sge.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_con_722_cg_sge.pdf)

- **Protection for Whistleblowers Reporting Acts of Corruption Under the (Criminal) Justice System:**

[241] – The New Code of Criminal Procedure (Legislative Decree 957 of July 22, 2004) sets forth in its Second Book, Second Section of Title V (Articles 247 to 252)<sup>104</sup> protection measures applicable to witnesses, expert witnesses, victims, or collaborators who participate in criminal proceedings.

[242] The protection measures that may be adopted, which are set forth in Article 248(2), are the following: *“(a) Police protection; (b) change of residence; (c) concealment of whereabouts; (d) non-disclosure of their identity and other personal data in the proceedings conducted, as well as any other data that could be used for to identify them. A number or another code may be used for this purpose; (e) use of any procedure that hinders their normal visual identification in the proceedings conducted; (f) establishing as a domicile, for purposes of service of process, the headquarters of the competent office of the prosecutor, where addressees will be confidentially furnished notifications and summons; (g) use of technological procedures, such as videoconferences and others that are appropriate, provided that the necessary resources are available for their implementation. This measure will be adopted to avoid endangering the security of the protected party once his or her identity is revealed where required to ensure the parties’ right to defend themselves; (h) where there is a grave and imminent risk to the life, limb, or liberty of the protected party or his family members and these legal rights cannot be guaranteed otherwise, their departure from the country may be facilitated with a migratory status that allows them to reside temporarily or work abroad.”*

[243] Furthermore, in exceptional cases and at the request of the prosecutor, Article 249(3) authorizes the judge to order that documents be provided for a new identity, as well as the economic means to change residence or workplace.

[244] In accordance with Article 247(2) of the New Code of Criminal Procedure, in order for protection measures to be applied, during the preliminary investigation the prosecutor or the judge must rationally detect grave danger for the personal safety, liberty, or assets of the party who seeks to avail themselves of such protection, or for their spouse or domestic partner, their parents, offspring, or siblings.

[245] Pursuant to Article 24(1) of the New Code, if the circumstances provided for in the aforesaid Article are detected, the judge or prosecutor shall adopt, of their own motion or at the behest of the parties, depending on the degree of risk or danger, the necessary measures to safeguard the protected party’s identity, his or her domicile, profession, and workplace, notwithstanding the defendant’s right to cross-examination.

[246] Finally, Article 249(2) stipulates that the prosecutor may decide after proceedings have concluded whether the protection measures should continue, provided that he or she deems that the grave danger persists. Nevertheless, according to Article 250(1), it is the responsibility of the court that is competent to hear the trial to issue a well-founded opinion on the suitability of maintaining, changing, or eliminating all or some of the protection measures adopted by the prosecutor or judge

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104. Pursuant to the Third Transitional Supplementary Provision of Law 30077, published on August 20, 2013, Title V of the New Code of Criminal Procedure entered into force nationwide. The entirety of the New Code entered into force on July 1, 2014.

during the preliminary or intermediate stages of the investigation, as well as whether other new measures should be adopted.

[247] – The “Regulations for the Victim and Witness Assistance Program” (approved by Office of the Attorney General Resolution 1558-2008-MP-FN), which were developed and implemented by the Office of the Attorney General as a program whose essential purpose is to support the prosecutor’s job, adopting measures for legal, psychological, and social assistance for victims and witnesses who participate in criminal proceedings or investigations, ensuring that their testimony or contributions are not subject to interference or vanish due to risk factors out of their control; in addition, the program aims to oversee the implementation of any protection measures victims and witnesses may be provided (Article 6).

[248] In keeping with Article 10 to 19, the Program consists of the following units: (1) Central Unit (in the city of Lima), made up of a Senior Coordinating Prosecutor, a Provincial Criminal Prosecutor, and a Provincial Family Prosecutor; (2) 33 District Units for Victim and Witness Assistance (in each judicial district), made up of professionals with the following specialization: psychology, law, and social assistance, and; (3) 111 Immediate Assistance Units (places other than the seat of each judicial district), made up of professionals with expertise in psychology.

[249] Article 28 of the aforementioned Regulations sets forth the crimes subject to assistance procedures, including crimes against the public administration: Extortion, collusion, and corruption of government officials.

[250] – The “Regulations of the Comprehensive Protection Program for Witnesses, Expert Witnesses, Victims, or Collaborators who Participate in Criminal Proceedings” (approved pursuant to Supreme Decree 003-2010-JUS), which supplement the Regulations for the Victim and Witness Assistance Program mentioned previously and set forth standards, procedures, guidelines, and requirements related to protection measures granted to witnesses, expert witnesses, victims, or collaborators who are at risk due to their involvement in criminal proceedings, issued in keeping with the provisions of the New Code of Criminal Procedure. Protection likewise covers spouses, domestic partners, parents, offspring, and siblings.

[251] Article 4 of the Regulations Comprehensive Program establishes definitions for different terms and it is worthwhile to highlight the definition of “collaborator who participates in the proceedings”: “(...) *anyone who collaborates with the administration of justice, as an informant, who is a person who does not have evidence, but makes useful contributions to the criminal proceedings. Collaborators shall be admitted to the Program only in exceptional cases at the behest of the prosecutor in charge of the case and subject to evaluation by the Coordinating Office of Security and Protection. This also applies to effective collaborators who have been involved in a criminal act and then accuse or charge their co-perpetrators in exchange for a reduced sentence. The provisions of Article 475(4) of the [New] Code of [Criminal Procedure] are to be taken into account for their inclusion in the Protection program.*”

[252] In accordance with the Regulations of the Comprehensive Program it is the responsibility of the Office of the Attorney General to implement said Program (Article 2), which relies on the Central Protection Unit and District Units in each judicial district (Article 5) for its proper functioning.

[253] In keeping with Article 14, the decision to include someone in the Comprehensive Program is set forth in a document that is to be signed by the protected party, members of his or her immediate family who are included, the prosecutor, and the Chief of the Central Unit or the District Coordinator, accordingly. Said Article also lists the corresponding obligations for each of the parties.

[254] Article 18 expands on and details the protection measures established in Article 248(2) of the New Code of Criminal Procedure in the following terms: *“(a) Police protection, which may include the designation of permanent police personnel in their domicile or during their daily comings and goings, change of residence to an unknown place, to special housing or premises, and in general, the concealment of their whereabouts for all purposes; (b) non-disclosure of the protected party’s identity in the proceedings in which they are involved, preventing their name, last name, domicile, workplace, profession, or any other information that could be used to identify them from appearing in the respective records. To this end, a secret code shall be assigned which shall be known only by the prosecutor or the judge who imposes the measures, as well as by the other individuals who are directly involved in the protection measures; (c) the protected person’s participation in the proceedings using methods that make visual identification impossible; (d) use of mechanical or technological procedures, such as videoconferences or other appropriate means, provided the judicial body has the necessary resources to employ them. These measures will be adopted to prevent the protected person’s safety from being endangered when, in order to uphold the parties’ right to defend themselves in the investigation or criminal proceedings, it is necessary to reveal his or her identity; (e) use of the headquarters of the competent prosecutor’s office as the protected person’s domicile for purposes of service of process. Furthermore, if the collaborator is in prison, he or she will be placed in an environment that ensures their security and physical safety during incarceration; this is to be coordinated with the National Prisons Institute.”*

[255] In light of the foregoing, the Committee takes note of the steps taken by the country under review to make headway in implementing the above recommendation and the measure suggested, with which the Committee deems that the Republic of Peru has given satisfactory consideration to subparagraphs (a) to (g), and (i) of the above-mentioned measure. To this end, the Committee believes that the recommendation and measure suggested should be reformulated to urge the country under review to continue making progress in upholding and strengthening systems for protecting those who, in good faith, report acts of corruption, giving additional attention to implementation of the aspects identified in subparagraph (h) of the measure suggested. For these purposes, the Committee believes it is advisable that the country under review consider the criteria set forth in the “Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses” available at the Anti-corruption Portal of the Americas.<sup>105</sup>

## **2.2. New developments with respect to the Convention provision on systems for protecting public servants and private citizens who, in good faith, report acts of corruption.**

### **2.2.1. New developments regarding the legislative framework**

#### **a. Scope of the new legislative developments**

[256] – Law 29542 of June 3, 2010 (Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters) and its Regulations (Supreme Decree 038-

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<sup>105</sup> Available in Spanish at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf)

2011-PCM), mentioned in the prior section, the purpose of which is to protect and provide benefits to public servants and officials or any citizen who furnishes a substantiated complaint regarding the commission of arbitrary or unlawful acts that occur at any public entity and may be administratively investigated or penalized.

[257] – The “Regulations of the Victim and Witness Assistance Program” (approved pursuant to Office of the Attorney General’s Resolution 1558-2008-MP-FN), mentioned in the previous section, which were developed and implemented by the Office of the Attorney General as a program whose essential aim is to support prosecutorial work, adopting legal, psychological, and social assistance measures for victims and witnesses who participate in the investigation or criminal proceedings, ensuring that their testimonies or contributions are not subject to interference or vanish due to risk factors out of their control; additionally, it aims to supervise the implementation of any protection measures provided to victims and witnesses.

[258] – The “Regulations of the Comprehensive Protection Program for Witnesses, Expert Witnesses, Victims, or Collaborators who Participate in Criminal Proceedings” (approved pursuant to Supreme Decree 003-2010-JUS), mentioned in the previous section, which supplements the Regulations of the Victim and Witness Assistance Program and stipulates the standards, procedures, guidelines, and requirements of the protection measures provided to witnesses, expert witnesses, victims, or collaborators who are at risk due to their participation in criminal proceedings, issued pursuant to the provisions of the New Code of Criminal Procedure. The protection also covers spouses, domestic partners, parents, offspring, or siblings.

[259] – Directive 011-2015-CG/GSND – “Complaint Management Service,” approved pursuant to Office of the Comptroller Resolution 268-2015-CG, of September 4, 2015, mentioned in the previous section, which replaces the prior directive 006-2011-CG/GSND and sets forth uniform criteria, procedures, roles, and stages to handle complaints submitted to the National Oversight System (SNC), through the Office of the Comptroller and the Institutional Oversight Bodies (OCI), protecting the whistleblower’s identity and the content of the complaint.

#### **b. Observations on new legislative developments**

[260] The Committee recognizes that the new legislative developments on this matter are positive steps forward that have been taken to continue making progress in creating, maintaining and strengthening systems for protecting public servants and private citizens who, in good faith, report acts of corruption referred to in Article III(8) of the Convention.

[261] Nevertheless, based on the information gathered principally during the on-site visit, the Committee believes it is appropriate to put forth some considerations on the advisability of supplementing these new developments, notwithstanding the observations formulated by the Committee in section 2.1 above in relation to follow-up on implementation of the recommendation formulated to the country under review in the Second Round Report.

[262] First, the Committee notes that Article 6 provides for exceptions to the application of Law 29542 (Law on the Protection of Whistleblowers in the Administrative Sphere and Effective Collaboration in Criminal Matters), and that among these exceptions is the prohibition that *“[complaints] be brought if they undermine professional secrecy.”*



[263] In this respect, the Committee believes that it is necessary to clearly define and limit this exception, specifically to prevent situations in which public servants cannot report alleged acts of corruption because of their duty to maintain confidentiality. The Committee will formulate a recommendation in this regard (see recommendation 2.3.2 in section 2.3 of Chapter II of this report).

[264] Second, the Committee notes that neither Law 29542 nor its Regulations provide for administrative appeals to be filed so that whistleblowers may have the CGR's decisions on whether to grant them protection measures reversed or amended. To this end, the Committee deems it is necessary that such appeals be established and believes that it would be advisable for the country under review to consider the criteria established in the "Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistleblowers and Witnesses" available on the Anti-corruption Portal of the Americas<sup>106</sup> (see recommendation 2.3.3 in section 2.3 of Chapter II of this report).

[265] Third, the country under review mentioned in its response to the questionnaire<sup>107</sup> the following difficulties noted in evaluating requests for protection measures and benefits under Law 29542 and its Regulations:

[266] *"1. The Law should state verbatim that the mere submission of the communication to the Office of the Comptroller provides, without having to take further steps, protection of the identity of citizens, public servants or officials, inasmuch as a simple reading of the law and its regulations in accordance with the principle of legality could be interpreted to mean that given there is a period of time between the submission of the communication and its approval, any person could obtain said information during that time.*

[267] *2. Given that the first line of protection is non-disclosure of whistleblowers' identity, a determination must be made as to how this will be linked to the other protection measures; namely, how said measure will be reconciled with the prohibition on dismissals or reprisals set forth in the following paragraphs.*

[268] *3. Just as the law prohibits whistleblowers from being transferred from their habitual position as the result of a qualified, admissible complaint, as a protection measure, the right of whistleblowers to be transferred from their habitual job position and even be seconded or assigned to another agency to protect them from acts of harassment from their superiors should be regulated.*

[269] (...)."

[270] In this regard, the Committee takes note of the difficulties mentioned by the country under review and will formulate the respective recommendations (see recommendations 2.3.4, 2.3.5, and 2.3.6 in section 2.3 of Chapter II of this report).

[271] Third [*sic*], with respect to the need for coordinating protection programs and measures for whistleblowers in the administrative and criminal jurisdictions, representatives of the Public Prosecution Ministry reported during the on-site visit that they were in the process of preparing an inter-sectoral guide with the National Complaint Management System [*Sistema Nacional de Atención a Denuncias*]

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<sup>106</sup> Available in Spanish at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf)

<sup>107</sup> See Peru's response to the Fifth Round questionnaire, p. 28. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)



(SINAD) of the Office of the Comptroller General of the Republic (CGR). The purpose of the guide is to achieve in concrete cases a coordinated work dynamic and expeditious, timely communication channels to adequately protect whistleblowers who report alleged acts of corruption subject to administrative and criminal jurisdictions, as well as enable effective follow-up of complaints in both jurisdictions, supplementing and integrating [them], as appropriate. The Committee will formulate a recommendation in this regard (see recommendation 2.3.7 in section 2.3 of Chapter II of this report).

[272] Finally, the Committee takes note of the difficulty mentioned in the country under review's reply to the questionnaire<sup>108</sup> about the insufficient budget allocation earmarked for the Comprehensive Victim and Witness Protection and Assistance Program. In keeping with what was requested during the on-site visit, representatives of the Public Prosecution Ministry provided information regarding the budget allocated to the Program for 2012-2015. The Committee notes that the budget provided during this period has been practically the same (approximately s./ 2,750,000), which represented an average of 11% of the budget required by the Public Prosecution Ministry for the Program's proper functioning.

[273] In this regard, the Committee will formulate a recommendation to equip the Comprehensive Victim and Witness Protection and Assistance Program with the financial, human, and technical resources necessary to provide the protection measures stipulated in the legislation on public servants and private citizens who, in good faith, report acts of corruption, in keeping with available resources (see recommendation 2.3.8 in section 2.3 of Chapter II of this report).

### **2.2.2. New technological developments**

[274] The country under review presented information both in its reply to the questionnaire,<sup>109</sup> as well as during the on-site visit,<sup>110</sup> about new technological developments, among which the Committee highlights the following:

[275] – Implementation of the WILLAY software application by the Office of the Comptroller General of the Republic (CGR) in September 2013. This application supports and facilitates the management of complaints submitted to the SINAD. It also allows users to submit complaints virtually using a web-based form<sup>111</sup> with identity protection. Given their nature, whistleblowers' personal data are encrypted by the application immediately after being input into the system in order to comply with the legal requirements regarding protection of whistleblowers' identities.

[276] Furthermore, during the on-site visit, CGR representatives explained that the WILLAY System was designed to have an integrated application that can streamline SINAD's job by registering the information regarding the complaint evaluation process (Receipt, Admission, and Organization).

[277] CGR representatives also reported that enhancements have been made to the System since its implementation, which include electronic notification to citizens, ensuring in this way a personalized notification in less time and at reduced cost.

### **2.2.3. Results**

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108 See Peru's response to the Fifth Round questionnaire, p. 28. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

109 See Peru's response to the Fifth Round questionnaire, p. 60. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

110 See additional information from the Office of the Comptroller General of the Republic requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_con\\_722\\_cg\\_sge.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_con_722_cg_sge.pdf)

111 <https://apps.cgr.contraloria.gob.pe/sinad>.

[278] Both in its response to the questionnaire,<sup>112</sup> as well as during the on-site visit, the country under review submitted the following information on results obtained with regard to systems of government procurement of goods and services [*sic*] referred to in Article III(8) of the Convention, namely:

[279] As regards training, detailed information was presented both in the response to the questionnaire, as well as during the on-site visit, about different in-person and distance learning and training activities conducted by the CGR, as well as by its National Oversight Academy [*Escuela Nacional de Control*] (ENC).<sup>113</sup>

[280] With respect to the specific training on whistleblower protection, the following was reported:

[281] “(...) Since Law 29542, its Regulations, and Directive 006-2011-CG/GSND [replaced by Directive 11-2015-CG/GSND] went into force, the National Complaint Management System Department has periodically been training citizens, public servants, and officials from different entities on the implementation of the Whistleblower Protection Law, and the measures and benefits this Law offers.

[282] For 2015, the National Complaint Management System Department – SINAD, has initiated an annual series of training lectures for public servants and officials. This series began with the National Immigration Superintendency, the Office of the Inspector General of the Ministry of the Interior, employees of the Northern Regional Coordinating Office of the Office of the Comptroller General, and several heads of the Institutional Oversight Bodies of the Department of Lambayeque have been trained in the implementation of Law 29542. The purpose thereof is to assist in government oversight, creating values in our citizens, contributing to the fight against corruption in the framework of policies and strategies aimed at promoting ethics and values.

[283] It is important to highlight that so far in 2015, approximately 160 public servants and officials from the entities mentioned in the previous paragraph have been trained—i.e., in training sessions that are a continuation of those that have been provided in the past, as well as the initiation of trainings that will be given in what remains of 2015, in compliance with the Operational Plan of the National Complaint Management System Department, as well as training lectures that public agencies request.”

[284] The Committee takes note of the wide array of training activities conducted by the Office of the Comptroller General of the Republic and its National Oversight Academy and, particularly, the activities related to disseminating and applying Law 29542. Bearing in mind the recent approval of Directive 011-2015-CG/GSND, which amended the internal processing of complaints at SINAD, the Committee believes it is vital that dissemination and training activities continue on this issue. It is likewise vital that citizens also be included so they understand the requirements to file a complaint and the protection measures the law offers public servants and private citizens who, in good faith, report acts of corruption. The Committee will formulate a recommendation in this regard (see recommendation 2.3.9 in section 2.3 of Chapter II of this report).

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112. See Peru's response to the Fifth Round questionnaire, pp. 44-62. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

113. See the presentation made by the National Oversight Academy during the on-site visit, which will also be referred to in this report's chapter on “best practices.” Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_pan\\_7\\_cgr\\_bue\\_pra\\_ins\\_pers.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_pan_7_cgr_bue_pra_ins_pers.pdf)

[285] In the response to the questionnaire a table was also presented where you can see that the number of complaints has increased annually from 2008 until 2014.<sup>114</sup> Additionally, it was reported that:

[286] *“Furthermore, based on consultations with personnel charged with evaluating the complaints at the offices of the CGR (SINAD) nationwide, in 2013, nine (09) requests for protection measures were filed, of which eight (08) received the protection measures contained in Article 8(b) and (c) of Law 29542.”*

[287] *“In this same regard, in 2014 six (06) requests for protection measures were made to the CGR (main office) all of which were granted; in 2015, four (04) requests for protection measures have been received, of which three (03) have been granted.”*

[288] Considering that the identity protection measure is granted immediately, and is therefore not included in the information stated in previous paragraphs, the Committee believes that a large number of protection measures requested have been granted; nevertheless, the Committee lacks detailed information on this matter.

[289] As for the statistical data on complaints received, CGR representatives stated during the on-site visit<sup>115</sup> that from January 2013 to December 2014 they received a total of 6,518 complaints, 38% of which were related to procurement of goods and services and execution of works, followed by human resource management with 15.7%.

[290] The manner in which the complaints were filed was the following: 3,191 individuals went directly and in person to file a complaint, which represented 48.95%; 2,651 filed the complaint using a paper form, which represented 40%; and, 676 used the Web or e-mail, which came to 10.37%.

[291] Of these complaints, 3,661 were regarding local governments (56.16 %); 1,758 were regarding the national government (26.97%); 712 were regarding regional governments (10.93%); 375 complaints concerned autonomous agencies (5.75%); and 12 complaints concerned other agencies (0.18%).

[292] Other relevant data: Of the universe of individuals filing complaints, only 412 were public officials (6.32%). 14% of the cases reported were for amounts over one million *soles* and 24.49% were for amounts between 0 and 50,000 *soles*.<sup>116</sup> In 30% of the cases, the SINAD did not have jurisdiction to handle the complaint.

[293] Furthermore, in keeping with what was requested during the on-site visit,<sup>117</sup> CGR representatives presented additional information on results, which appears below:

[294]

**Table – Statistics regarding complaints received nationwide**  
Source: National Complaint [Management] System Department

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114. See Peru's response to the Fifth Round questionnaire, p. 51. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

115. See the presentation made by the CGR during the on-site visit, slide 10. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_pan\\_1\\_cgr\\_pro\\_den.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_pan_1_cgr_pro_den.pdf)

116. Exchange rate: S./ 1.00 = US\$0.30 (as of December 16, 2015).

117 See additional information from the Public Prosecution Ministry requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_sinad\\_inf\\_mesicic.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_sinad_inf_mesicic.pdf)

Status	2010	2011	2012	2013	2014	2015 (as of 09/15/15)	Total
Finalized	1851	1774	2612	2291	1833	460	10821
Under review	9	18	88	162	1082	1242	2601
Being monitored	17	30	270	322	799	265	1703
<b>Overall total</b>	<b>1877</b>	<b>1822</b>	<b>2970</b>	<b>2775</b>	<b>3714</b>	<b>1967</b>	<b>15125</b>

[295] The Committee notes that the number of proceedings finalized has decreased proportionally each year since 2013, and consequently, the number of complaints under review has increased proportionally. In this regard, CGR representatives identified during the on-site visit the need to expedite the process of handling complaints.<sup>118</sup> The Committee will formulate a recommendation in this respect (see recommendation 2.3.10 in section 2.3 of Chapter II of this report).

[296] With respect to the results of the Victim and Witness Protection and Assistance Program that were requested during the on-site visit, the country under review provided the following information:

[297] During the period spanning 2010 to August 2015, 5,850 users have been assisted from a total of 3,056 cases that were referred by prosecutors' offices to the Victim and Witness Protection and Assistance Program.

[298] The table below, which shows the cases related to acts of corruption referred to the Program, is based on the information presented:

TYPE OF PROCEEDINGS			CASES		USERS	
			With Protection Measures	Without Protection Measures	With Protection Measures	Without Protection Measures
CRIMES AGAINST THE PUBLIC ADMINISTRATION	CRIMES COMMITTED BY PUBLIC SERVANTS	Extortion	59	100	97	197
		Bribery	53	54	106	108
		Influence peddling	2	4	4	8
		Embezzlement	338	615	459	1227
		Obstruction of Justice	0	18	0	33
		Improper payment	0	2	0	3
		Inappropriate business dealings involving conflicts of interest	0	2	0	3
		Corruption of officials	138	309	292	674
		Illicit enrichment	0	4	0	8
		Corruption of officials – Acts	0	2	0	4

118 See the presentation made by the CGR during the on-site visit, slide 14. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_pan\\_1\\_cgr\\_pro\\_den.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_pan_1_cgr_pro_den.pdf)

		of Corruption involving prosecutors				
		Corruption of officials – Solicitation of bribery	74	319	122	644
		Corruption of officials – Solicitation of bribery involving officers of the court	0	5	0	10
		Collusion	35	73	70	146
		Inappropriate business dealings	12	20	24	40
		Conspiracy	0	4	0	8
		Corruption of officials – Solicitation of bribery for performance of official duty and abuse of authority	0	0	0	0

[299] The Committee observes that it is in the bribery cases where, proportionally, more protection measures have been provided (50%), followed by inappropriate business dealings (38%), extortion (37%), embezzlement (35%), influence peddling (33%), collusion (32%), corruption of public officials (31%), and corruption of officials – solicitation of bribery (19%).

[300] It was also reported that between 2006 and July 2015, a total of 1,285 protection measures were granted, a large number of which consisted of police protection (1,060 cases); identity protection (142 cases); concealment of whereabouts (39 cases); change of residency (25 cases); other procedures (19 cases). During this period there were no cases in which a change of identity or departure from the country was granted as a protection measure.

[301] The Committee takes note that protection measures have been granted in cases involving acts of corruption in the judicial branch. However, no information was presented regarding requests that were denied and the reasons for their denial, and the information is not sufficiently disaggregated to allow for a comprehensive analysis of the results. In this regard, the Committee will formulate a recommendation for institutions responsible for the “Comprehensive Protection Program for Witnesses, Experts, Victims, or Collaborators who Participate in Criminal Proceedings” to keep statistical data that refer to aspects such as the number of cases in which whistleblowers and witnesses have requested and obtained protection measures in cases of acts of corruption, the kinds of measure granted, as well as the number of requests denied and the reason for the denial, in order to identify challenges and adopt, where appropriate, corrective measures (see recommendation 2.3.11 in section 2.3 of Chapter II of this report).

### 2.3. Recommendations

[302] In light of observations formulated in sections 2.1. and 2.2. of Chapter II of this report, the Committee suggests that the State under review consider the following recommendations:

- 2.3.1. Establish mechanisms that facilitate, where appropriate, international cooperation regarding protection for whistleblowers and witnesses who report acts of corruption, including technical assistance and reciprocal cooperation that is provided for under the Convention, as well as exchange of experiences, training, and mutual assistance, bearing in mind the criteria provided for in the “Model Law to Facilitate and Encourage Reporting of Acts of Corruption and Protection of Whistleblowers and Witnesses” (see paragraph 255 in section 2.1 in Chapter II of this report).
- 2.3.2. Clearly define and limit the exception contained in Law 29542 for complaints “brought that undermine professional secrecy,” in order to specifically prevent situations in which public officials may be impeded from reporting alleged acts of corruption because of their duty to maintain confidentiality (see paragraph 263 in section 2.2 in Chapter II of this report).
- 2.3.3. Establish administrative appeals to be filed so whistleblowers who report acts of corruption may have the decisions of the Office of the Comptroller General of the Republic (CGR) whether or not to grant them protection measures reversed or amended, bearing in mind the criteria provided for in the “Model Law to Facilitate and Encourage Reporting of Acts of Corruption and Protection of Whistleblowers and Witnesses”<sup>119</sup> (see paragraph 264 in section 2.2 in Chapter II of this report).
- 2.3.4. Consider expressly stipulating in Law 29542 that the mere submission of the communication to the CGR, without any further action being required, grants whistleblowers identity protection (see paragraph 270 in section 2.2 in Chapter II of this report).
- 2.3.5. Develop a way in which the protection of whistleblowers’ identity will be tied to the remaining protection measures provided for, stipulating how that measure will fit in with the prohibition on dismissal or reprisals that is set forth in the following subparagraphs of Article 8 of Law 29542 (see paragraph 270 in section 2.2 in Chapter II of this report).
- 2.3.6. Regulate, as a protection measure, whistleblowers’ right to be transferred from their usual post and even to be seconded or assigned to a different entity in order to protect them from acts of harassment from their colleagues and/or superiors (see paragraph 270 in section 2.2 in Chapter II of this report).
- 2.3.7. Adopt the appropriate measures needed to coordinate existing whistleblower protection programs and measures in the administrative and criminal jurisdictions (see paragraph 271 in section 2.2 in Chapter II of this report).
- 2.3.8. Equip the *Comprehensive Victim and Witness Protection and Assistance Program* with the financial, human, and technical resources necessary to furnish the protection

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119. Available in Spanish at: [http://www.oas.org/juridico/PDFs/ley\\_modelo\\_proteccion.pdf](http://www.oas.org/juridico/PDFs/ley_modelo_proteccion.pdf)

measures stipulated in the provisions regarding public servants and private citizens who, in good faith, report acts of corruption, in keeping with available resources (see paragraph 273 in section 2.2 in Chapter II of this report).

- 2.3.9. Continue training activities and dissemination of Law 29542, and expand what is offered to include [private] citizens so they may learn about the requirements for submitting complaints and protection measures that the law offers to public servants and private citizens who, in good faith, report acts of corruption (see paragraph 284 in section 2.3 in Chapter II of this report).
- 2.3.10. Adopt the measures necessary to expedite the processing of complaints received in the administrative jurisdiction through the National Complaint Management System (SINAD) (see paragraph 295 in section 2.3 in Chapter II of this report).
- 2.3.11. Prepare statistical data on behalf of the institutions responsible for the “*Comprehensive Protection Program for Witnesses, Experts, Victims, or Collaborators that Participate in Criminal Proceedings*” which refer to aspects such as the number of cases in which whistleblowers and witnesses have requested and obtained protection measures in cases of acts of corruption, the kind of measures granted, as well as the number of requests denied and the reason for their denial, in order to identify challenges and adopt, where appropriate, corrective measures (see paragraph 301 in section 2.3 in Chapter II of this report).

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

#### **3.1. Follow-up on implementation of recommendations formulated in the Second Round**

##### Recommendation (a):

*Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI(1) of the Convention.*

[303] The country under review presented information regarding the above recommendation both in its response to the questionnaire,<sup>120</sup> as well as during the on-site visit, of which the Committee highlights the following:

[304] “*Difficulties have been detected in implementing all of the elements set out in Article VI(1) of the Convention, basically due to two issues: (a) It is considered that some issues have already been resolved pursuant to national case law, which makes legislative reform unnecessary, as is the case of the elements “directly or indirectly,” as well as benefits for an “entity;” (b) furthermore, in many cases there is no consensus in Congress to pass these kinds of legislative changes, even less so when the legislative agenda is often devoted to situation- and/or media-driven issues.*”

[305] During the on-site visit, representatives of the Supreme Court of Justice and the Public Prosecution Ministry explained that the plenary accords of the Court are binding in keeping with

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120 See Peru’s response to the Fifth Round questionnaire, pp. 30-37. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)



Articles 22 and 80(4) of the Basic Law of the Judicial Branch, as well as Article 301-A of the Code of Criminal Procedure.<sup>121</sup>

[306] In this respect, they explained that in Plenary Accord 01-2005/ESV-22 of November 26, 2005, it was unanimously ruled that the fourth legal conclusion of the Supreme Court's final judgment stemming from the Appeal for Nullity 1091-2004-Lima<sup>122</sup> is a binding precedent. Said final judgment sets out the scope of the elements of the objective classification of the offense (generic acceptance [of bribes]) defined in Article 393 of the Criminal Code (Solicitation of bribery for violation of official duties). The final judgment, which convicted a public official for the crime of bribery for violation of official duties<sup>123</sup> to the detriment of the State, also expanded the scope of the ruling to include two primary accomplices (individuals who, at the behest of the public official, had directly and indirectly provided him a bribe in exchange for a passport application form, the sale of which was restricted at that time due to its scarcity).

[307] In this respect, the Committee would recall that this recommendation stems from the analysis conducted on this issue during the Second Round,<sup>124</sup> based on the information that the country under review itself provided, namely:

[308] “- Articles 393, 394, 395, and 396 of the Criminal Code do not include the possibility of the donation, promise, or any other advantage or benefit being solicited or accepted by another person or entity other than the public servant or official (...).

[309] – Articles 397 and 398 of the Criminal Code do not include the possibility of the donation, promise, or any other advantage or benefit being offered or granted to another person or entity in exchange for public servants or officials performing or failing to perform acts in the exercise of their public duties (...).”

[310] The Committee does not consider that the recommendation has been met pursuant to the above-mentioned case law, inasmuch as it is not related to the fact that the public official accepts or receives a bribe “indirectly” or through another person. In this regard, the Committee notes that several other articles of the Peruvian Criminal Code include in their definition of offenses the act of soliciting or accepting and offering or granting “directly or indirectly,” such as the articles regarding the crimes of extortion (Article 382), simple and aggravated collusion (Article 384), willful and premeditated embezzlement (Article 387), misappropriation (Article 388), solicitation of bribery in violation of official duties (Article 393(2)), international solicitation of bribery (Article 393-A), solicitation of bribery in the performance of official duties (Article 394(2)), transnational bribery (397-A), inappropriate business dealings (Article 399), and influence peddling (Article 400).

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121 Constitutional Court in the Judgment of Case 0019-2009 of March 21, 2011, legal argument 16: “*The Court takes note of the fact that in terms of Article 22 and 80(4) of the Consolidated Text of the Basic Law of the Judicial Branch, the Supreme Court, in the exercise of its judicial authority, is competent to set precedent. However, the Court notes that although such precedent is mandatory for all judicial bodies, exceptionally, judges and justices may deviate from said criterion, in which case they are obligated to ‘adequately substantiate their decision by citing the mandatory precedent that they dismiss and the arguments that they invoke.’*”

122 Available in Spanish at: <http://www.minjus.gob.pe/wp-content/uploads/2014/09/DGDOJ-Compendio-Jurisprudencia-de-la-CS-Penal-Tomo-I.pdf>

123 Article 393 was amended and broadened subsequent to the facts by Law 28355, published on October 6, 2004 and by Law 30111, published on November 26, 2013. The crime defined by this Article then came to be called “solicitation of bribery for violation of official duties.”

124 See “The Republic of Peru, Final Report” from the Second Round, p. 19. Available in Spanish at: [www.oas.org/juridico/spanish/mesicic\\_II\\_inf\\_per.pdf](http://www.oas.org/juridico/spanish/mesicic_II_inf_per.pdf)



[311] The Committee therefore takes note of the need for the country under review to pay additional attention to implementing the aforementioned recommendation (see recommendation in section 3.3 of Chapter II of this report).<sup>125</sup>

Recommendation (b):

*Amend and/or expand Article 425 of the Criminal Code, which concerns the definition of government officials and public servants, in such a way as to include those who have been selected, appointed, or elected to perform activities or functions in the name of the State or in the service of the State, even if they have not taken up the position or office.*

[312] In its response to the questionnaire<sup>126</sup> the country under review presented information and new developments with regard to the above recommendation, from which the Committee highlights the following as steps that lead it to conclude that the measure has been considered satisfactorily.

[313] – Law 30124 of December 13, 2013, which amends Article 425 of the Criminal Code to include as public servants and government officials subject to criminal jurisdiction “(...) *Individuals designated, elected, or appointed by a competent authority, to perform activities or duties on behalf of or in the service of the State and its entities (...).*”

[314] In view of the foregoing, the Committee takes note of the satisfactory consideration the country under review has given to recommendation (b) of Chapter II of this report for having taken the relevant measures to supplement Article 425 of the Criminal Code, in keeping with such recommendation.

Recommendation (c):

*Consider publication, on the web site of the Supreme Court of Justice, of the contents of the judgments it issues as the court of last resort for criminal matters.*

[315] In its response to the questionnaire<sup>127</sup> the country under review presented information and new developments regarding the above recommendation, from which the Committee highlights the following as steps that lead it to conclude that the measure has been considered satisfactorily.

[316] – Administrative Resolution 280-2010-CE-PJ of August 5, 2010, pursuant to which the judiciary ordered publication on its website of all judgments and rulings that put an end to proceedings or alter legal status, with the exception of those that are confidential by legal mandate, in order to optimize access to information about judicial decisions.

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125 Although the Peruvian government believes that the problem of the express definition of cases dealing with illegal advantages or benefits requested or accepted by third parties has been resolved through jurisprudence, the upcoming parliamentary discussions on the amendment of the Criminal Code, to be held in the second half of March 2016, will again examine that issue. It should also be noted that punishment of the crimes of embezzlement and collusion has been bolstered by the denial of suspended sentences for those found guilty of committing and/or abetting them by means of Law No. 30304, “Law Prohibiting Suspended Sentences for Offenses Committed by Civil Servants and Public Employees.”

126 See Peru’s response to the Fifth Round questionnaire, pp. 37 and 38. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

127 See Peru’s response to the Fifth Round questionnaire, pp. 37 and 38. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

[317] – Implementation of the “Case Records Query” [Consulta de Expedientes Judiciales] (CEJ) module, with which the parties to proceedings can consult the information uploaded by judicial bodies through the Comprehensive Judicial System [Sistema Integrado Judicial] (SIJ) – Records. To this end, there are two systems in operation to search for case files and judicial decisions:

[318] Supreme Court Case Records Query:<sup>128</sup> Provides access to decisions issued by the different criminal [*sic*] chambers of the Supreme Court of Justice of the Republic (Permanent and Ad-hoc Criminal Chamber; Permanent and Ad hoc Civil Chamber; Supreme Permanent Constitutional and Social Chamber, 1<sup>st</sup> and 2<sup>nd</sup> Ad-hoc Constitutional and Social Chambers)

[319] Superior and Trial Court Case Records Query:<sup>129</sup> Provides access to resolutions issued by Superior and Trial Courts that hear civil, commercial, administrative, family, and labor matters.

[320] – Implementation of the “Systematized National Case Law Service” in 2013 on the website of Peru’s judiciary,<sup>130</sup> in order to disseminate to all stakeholders case law handed down by the Supreme Court of Justice and Superior Courts of Justice.

[321] This service has a hardware and software platform that can address users’ queries and store all decisions in a last-generation electronic document manager.

[322] Queries can be conducted through general and specific searches, or by category. Among these categories there is a specific search engine regarding corruption of public officials,<sup>131</sup> where searches are done according to the different kinds of corruption offenses that the national judiciary has determined.

[323] In light of the foregoing, the Committee takes note of the country under review’s satisfactory consideration of recommendation (b) of Chapter II of this report for having taken the pertinent measures to publish on the website of the Supreme Court of Justice the contents of the judgments it issues as the court of last resort for criminal matters.

### **3.2. New developments with respect to the Convention provision on acts of corruption**

#### **3.2.1. New developments with respect to the legislative framework**

##### **a. Scope of the new legislative developments**

- **Legislation and provisions of a diverse legal nature, among which the following are noteworthy:**

[324] – Law 30111 of November 25, 2013, which includes a sentence with fines for all corruption offenses defined in the Criminal Code.

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<sup>128</sup> <http://apps.pj.gob.pe/cejSupremo/>

<sup>129</sup> <http://cej.pj.gob.pe/cej/forms/busquedaform.html>

<sup>130</sup> <http://jurisprudencia.pj.gob.pe/>

<sup>131</sup> <http://jurisprudencia.pj.gob.pe/jurisprudenciaweb/faces/page/resolucion-busqueda-delito.xhtml>

[325] – Law 30124 of December 13, 2013, mentioned previously in section 3.1, amending Article 425 of the Criminal Code to include as public servants or government officials subject to criminal jurisdiction: (1) Those who have employment relationships with State-owned enterprises or public-private companies that are part of the State’s entrepreneurial activity; and (2) those designated, selected, or appointed to perform duties on behalf of or in the service of the State.

[326] – Law 30304 of February 26, 2014, which amends Article 57 of the Criminal Code by prohibiting suspended sentences for perpetrators of corruption offenses defined under Article 384 (extortion) and 387 (embezzlement).

#### **b. Observation on new legislative developments**

[327] The Committee recognizes that the new legislative developments in this matter are positive steps taken to improve the definition of offenses involving acts of corruption and the effectiveness thereof. The Committee has no observations to make in his regard.

#### **3.2.2. New technological developments**

[328] The country under review has not referred to new technological developments other than those mentioned previously in section 3.2.1.

#### **3.2.3. Results**

[329] In response to a request made during the on-site visit, the country under review provided the table below, which contains results obtained with respect to acts of corruption referred to in Article VI of the Convention, to wit:<sup>132</sup>

#### **[330] NATIONWIDE DATA<sup>133</sup>**

YEAR	NUMBER OF CASES OF CRIMES AGAINST THE PUBLIC ADMINISTRATION	PRELIMINARY INVESTIGATION	TRIAL PHASE	FINAL CONVICTIONS		CRIMINAL PROCEEDINGS CONCLUDED DUE TO TIME-BARRING, DISMISSAL, DEATH, OR OTHER MANNER OF CONCLUDING PROCEEDINGS	UNRESOLVED CASES PENDING
				SINGLE- / MULTIPLE- JUDGE COURT SPECIAL SUPREME CRIMINAL CHAMBER	COURT OF PRELIMINARY INVESTIGATION (REDUCED SENTENCES- AGREEMENTS WITH OFFICE OF THE PROSECUTOR)		
2011 <sup>134</sup>	1,861	111	9	0	0	764	422
2012 <sup>135</sup>	1,553	162	54	20	58	616	616
2013 <sup>136</sup>	8,718	568	68	371	212	2,321	4,456
2014 <sup>137</sup>	11,338	940	131	248	838	3,307	5,006
<b>Total</b>	<b>23,470</b>	<b>1,781</b>	<b>262</b>	<b>639</b>	<b>1,108</b>	<b>7,008</b>	<b>10,500</b>

[331] With regard to the foregoing information, the Committee observes that:

132 See additional information from the Public Prosecution Ministry requested during the on-site visit, available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_min\\_pub\\_inf\\_adi\\_estadistica.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_min_pub_inf_adi_estadistica.pdf)

133 Source: Annual Reports/File from the Unit for Management and Processes Indicators – SGF.

134 The range is from January 15 to December 13, 2011 and data from Lima’s Annual Report were considered. There were no final convictions recorded according to the report from that year.

135 The range is from January 1 to December 14, 2012 and data from Lima’s Annual Report were considered. There were no final convictions recorded according to the report from that year.

136 The range is from January 1 to December 31, 2013 and data from the National Annual Report were considered.

137 The range is from January 1 to December 31, 2014 and data from the National Annual Report were considered.

[332] First, there has been a considerable increase in the number of cases of crimes against the public administration since 2013; however, during this period this increase has not gone hand in hand, proportionally speaking, with an uptick in the number of cases under preliminary investigation or in the trial phase. In other words, the number of cases that are shelved continues to be high, just as indicated in the MESICIC Fourth Round Report.<sup>138</sup>

[333] In this regard, the Committee will not formulate a new recommendation; rather, it reiterates recommendations 2.4.6, 2.4.7, 2.4.8, 3.4.8, and 3.4.9 contained in the Fourth Round Report.<sup>139</sup>

[334] Second, the Committee continues to be struck in particular by the large number of criminal proceedings concluded due to time-barring, dismissal, death, or other manner of conclusion of proceedings, as well as unresolved pending cases. These account for, respectively, almost 30% and 45% of the total cases received from the Public Prosecution Ministry during that period (2011-2014).

[335] The Committee had the opportunity, just as it did during the on-site visit during the Fourth Round, to hear from representatives of the Public Prosecution Ministry, the judiciary, and civil society, who again emphasized the need to lengthen the statute of limitations for crimes of corruption inasmuch as the complexity of some of these crimes is a challenge for both the Public Prosecution Ministry and the judiciary.

[336] In this regard, it was reported that the draft amendment of Article 41 of the Constitution is still under consideration by the Peruvian National Congress. This draft amendment, mentioned in the Fourth Round Report,<sup>140</sup> includes corruption offenses on the list of crimes whose statute of limitations would double.

[337] Current constitutional provisions, Article 80 of Criminal Code, as well as case law on the matter,<sup>141</sup> restrict doubling the statute of limitations in cases of crimes committed by public servants that involve assets of the State or of State-supported agencies, or committed by members of criminal organizations. The Committee will not formulate a new recommendation in this regard; rather, it reiterates recommendation 3.4.3 from the Fourth Round Report that the country under review give due consideration to lengthening the statute of limitations for corruption offenses to prevent perpetrators from going unpunished.<sup>142</sup>

### **3.3. Recommendation**

[338] In view of the observations formulated in sections 3.1. and 3.2 of Chapter II of this report, the Committee suggests that the country under review consider the following recommendation:

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138 See Peru's Fourth Round Report, pp. 24-26 and 34-35. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_sp.pdf)

139 *Ibid*, pp. 27 and 37. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_sp.pdf)

140 *Ibid*, p. 33. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_sp.pdf)

141 See Plenary Accords 01-2010 and 02-2011. Available in Spanish at: [http://www.minjus.gob.pe/wp-content/uploads/2014/09/DGDOJ-Compendio\\_Jurisprudencia-de-la-CS-Penal-Tomo-I.pdf](http://www.minjus.gob.pe/wp-content/uploads/2014/09/DGDOJ-Compendio_Jurisprudencia-de-la-CS-Penal-Tomo-I.pdf)

142 See Peru's Fourth Round Report, p. 37. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_sp.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_sp.pdf)

- Adapt and/or expand, as appropriate, its criminal legislation, in order to include the elements of those acts of corruption set out in Article VI(1) of the Convention (see paragraph 311 in section 3.1. in Chapter II of this report).

#### **4. GENERAL RECOMMENDATIONS**

Recommendation 4.1 suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

*Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, provisions, measures, and mechanisms considered in this report, for the purpose of ensuring that said systems, provisions, measures and mechanisms are adequately known, managed, and implemented.*

[339] Taking into account that sections 1, 2, and 3 of Chapter II of this report provide an updated and detailed review of the follow-up on the recommendations formulated to the Republic of Peru in the Second Round, as well as the systems, standards, measures, and mechanisms to which the suggested recommendation refers, the Committee would defer to what is stated in those sections. Therefore, the Committee deems that this recommendation is redundant.

Recommendation 4.2 suggested by the Committee, which requires additional attention in the terms stipulated in the Third Round Report:

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

[340] Taking into account that sections 1, 2, and 3 of Chapter II of this report provide an updated and detailed review of the follow-up on the recommendations formulated to the Republic of Peru in the Second Round, as well as the systems, standards, measures, and mechanisms to which the suggested recommendation refers, the Committee would defer to what is stated in those sections. Therefore, the Committee deems that this recommendation is redundant.

### **III. ANALYSIS, CONCLUSIONS, AND RECOMMENDATIONS REGARDING THE IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE FIFTH ROUND**

#### **1. INSTRUCTION TO GOVERNMENT PERSONNEL TO ENSURE PROPER UNDERSTANDING OF THEIR RESPONSIBILITIES AND THE ETHICAL RULES GOVERNING THEIR ACTIVITIES (ARTICLE III(3) OF THE CONVENTION)**

[341] In keeping with the *Methodology* agreed upon by the Committee to analyze the provision selected for the Fifth Round, set forth in Article III(3) of the Convention regarding measures aimed at creating, maintaining, and strengthening “*instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities*,” the country under review selected the Ministry of Justice and Human Rights (MINJUS) and the National

Superintendency of Customs and Tax Administration (SUNAT), as it considers that they stand out for having implemented programs related to this issue.

[342] A brief description of these two public agencies selected by the Republic of Peru, which are analyzed in this section, follows below:

[343] – The Ministry of Justice and Human Rights (MINJUS), in accordance with Law 29809—the Law on the Ministry of Justice and Human Rights’ Organization and Functions—is an agency of the executive branch, the legal personality of which is subject to public law. Furthermore, the Ministry has the following matters under its purview: (a) General human rights policy in the country; (b) legal defense of the State; (c) policies regarding access to justice; (d) prison policy; (e) regulation of notaries, registries, and supervision of foundations; (f) defense, consistency, and enhancement of the legal system; and (g) the State’s relations with religious denominations.

[344] – The National Superintendency of Customs and Tax Administration (SUNAT), in accordance with the law that created it—Law 24829, approved by Legislative Decree 501—and Law 29816 to Strengthen SUNAT, is a specialized technical agency under the Ministry of Economy and Finance, the legal personality of which is subject to public law. SUNAT has its own budgetary resources and enjoys functional, technical, economic, financial, budgetary, and administrative autonomy.

[345] SUNAT’s jurisdiction is nationwide and it is principally charged with designing and proposing tax policy measures and regulating tax provisions. Furthermore, it is responsible for managing, applying, overseeing, penalizing, and collecting domestic taxes for the central government, as well as other taxes the management of which has been assigned to it.

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

[346] The Republic of Peru has a set of provisions and/or measures aimed at providing instruction to personnel of public entities in order to ensure adequate understanding of their responsibilities and ethical standards governing their activities, among which the following stand out:

- Legislation, provisions of constitutional status and of a diverse legal nature, applicable to most personnel at public entities, among which the following are worthy of note:

[347] – Law 28175 of 2004 (Public Employment Framework Law),<sup>143</sup> which provides in Article 10 thereof that “*an individual who is hired is entitled to the necessary initial orientation, guidance on institutional policy and on his or her rights, obligations, and duties. This training is a basic requirement to begin working.*”

[348] – General Regulations (Supreme Decree 040-2014-PCM of June 13, 2014) of Law 30057 of July 2013 (Civil Service Law), which in Article 184 thereof defines the purpose of the orientation process and its scope in the following terms:

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143 As indicated in section 1.1 of the prior chapter of this report, in Peru employment in the public sector is regulated by Law 30057 (New Civil Service Law), which is in the process of being implemented, while its predecessor, Law 28175, the Public Employment Framework Law, subsists until the new civil service system is completely implemented.

[349] *“The purpose of the orientation is to provide civil servants information regarding the general operation of the State, its institutions and internal rules, and finally, their position. The entity, through the Office of Human Resources or its equivalent, is to organize orientation activities for new civil servants, irrespective of the group to which they belong or the contractual arrangement.*

[350] *This activity is to be completed during the entry phase. It is the responsibility of SERVIR to approve the directive regarding the minimum information that is to be included in the orientation.”*

[351] – Law 27815 (Law on the Civil Service Code of Ethics), which establishes ethical principles and duties for public employees, ethics violations and prohibitions, as well as penalties and disciplinary proceedings.

[352] According to Article 5(2) of the Law on the Civil Service Code of Ethics, if there is any doubt regarding a specific ethical question, the relevant entity is to consult with the Office of the President of the Council of Ministers.<sup>144</sup>

[353] Furthermore, according to Article 9(1) of the above-mentioned Law, it is the responsibility of the governing body of each public entity to execute in the institution under its purview measures to promote a culture of probity, transparency, justice, and public service pursuant to the Civil Service Code of Ethics.

[354] It is likewise the responsibility of the governing body, in keeping with Article 9(2), to establish mechanisms and incentives that enable public servants’ proper, transparent, and loyal conduct. In this regard, said body is charged with: (a) Disseminating the Civil Service Code of Ethics; (b) designing, establishing, applying, and disseminating incentives and rewards for public servants who comply with the principles, duties, and obligations of the Code and respect its prohibitions; (c) developing educational campaigns about the penalties for public servants who engage in practices that are contrary to the principles set forth in the Code.

[355] – Regulations of the Law on the Civil Service Code of Ethics (Supreme Decree 033-2005-PCM of April 18, 2005), which provide in Articles 22 and 23 thereof for the dissemination of the Code and the implementation of educational campaigns, namely:

[356] *“Article 22.- Dissemination of the Law and its Regulations*

[357] *The governing body tasked to comply with the obligations contained in Article 9 of the Law will be the General Secretariat of the agency or its equivalent, in keeping with the respective Regulations on Organization and Functions.*

[358] *The Secretary General or his equivalent will demonstrate to the head of the agency compliance with his duty to disseminate the Law and these Regulations. Failure to carry out the aforementioned dissemination is a punishable violation.*

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144 Pursuant to Article 36 of the Regulations regarding the Organization and Functions of the Office of the President of the Council of Ministers (Supreme Decree 063-2007-PCM), the Secretariat for Public Management is competent in matters of government functioning and organization, administrative simplification, ethics and transparency, in keeping with the standards of modernization, streamlining, and decentralization of the State, internal oversight, as well as the Civil Service Code of Ethics.

[359] *Article 23.- Educational campaigns regarding penalties*

[360] *The General Secretariat will conduct education campaigns about the penalties referred to in Article 9(2)(c) of the Law, in keeping with the budget resources available at each entity of the public administration and in the manner and form its operating capacity allows.*

[361] –Ministerial Resolution 050-2009-PCM approving the Directive “Guidelines for Promoting the Civil Service Code of Ethics,” amended by Ministerial Resolution 195-2012-PCM, “Recognition of Good Governance Practices in Executive Entities,” the objective of which is to disseminate and incentivize actions and processes implemented by the public administration aimed at achieving a comprehensive, transparent, and participatory management which is citizen centered.

[362] Article 5 of the aforementioned Directive provides for the creation of Working Groups to Foster Ethics, consisting of public servants from each one of the units that make up the entity. The Groups’ objective is to promote the Civil Service Code of Ethics within its respective offices.

[363] The promotional activities listed in Article 7 include organizing on a quarterly basis informative lectures and socialization of the importance of the Civil Service Code of Ethics and the penalties for failure to comply therewith.

▪ Legislation and provisions of a diverse legal nature, and other measures applicable to MINJUS personnel, among which the following are noteworthy:

[364] The country under review reported in its questionnaire<sup>145</sup> that the manner in which personnel are made aware of the responsibilities and duties of their posts is through monthly orientation sessions conducted by the Office of Human Resources, which are aimed at new Ministry employees. This is part of their adaptation and integration process at the Ministry and includes analysts who are specialists in the topics addressed. Furthermore, manuals and guides that enable proper performance of duties are handed out.<sup>146</sup>

[365] The country under review also points out in its response that the orientation sessions are held on a monthly basis, around the first and second week of each month. The new employees hired the month prior take part in these sessions.

[366] As for the use of modern communication technologies to make personnel aware of the responsibilities or duties of their post and to provide guidance on the appropriate performance thereof, the country under review reports that virtual tools have not been designed for this activity; however, communications and documents are sent through e-mail. Furthermore, there is an Intranet platform through which communiqués, important documents, legal provisions, and directives are sent.

[367] As for the existence of offices where personnel may go to obtain information or resolve doubts about the way to appropriately discharge the responsibilities and duties of their post, the country under

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<sup>145</sup> See Peru’s response to the Fifth Round questionnaire, pp. 68-82. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

<sup>146</sup> According to the country under review’s response to the questionnaire, at the orientation session each participant is provided a folder that contains: The Orientation Manual, the Ministry of Justice and Human Rights (MINJUS) Code of Ethical Conduct, an informative brochure on the MINJUS 2013 – 2017 Institutional Strategic Plan, the Civil Service Law – Law 30057, and the General and Compensation Regulations of said Law.



review reports that questions may be addressed to the Office of Human Resources or the General Office for Planning and Budget.

[368] Furthermore, the Office of Human Resources is reportedly in charge of defining, guiding, advising, and supporting the manner in which personnel are to be made aware of the responsibilities and duties of their post and of supervising that this is done effectively.

[369] The country under review points out in its response that the manner in which personnel are made aware of the ethical standards governing their activities is through monthly workshops called “Ethics and Integrity Thursdays” [“*Jueves de Ética e Integridad*”]. These workshops, which are for all employees of the Ministry of Justice and Human Rights, are part of the Institutional Integrity Model organized by the Office of Human Resources. Furthermore, manuals and guides are distributed to provide guidance to public servants on the scope and interpretation of the Code of Ethical Conduct and Institutional Integrity Model.

[370] The country under review also reports that during the orientation sessions conducted monthly all new employees are provided the MINJUS Code of Ethical Conduct, which was approved pursuant to Ministerial Resolution 151-2014-JUS, of May 24, 2014. Said Code includes, as Annex 01, a letter of understanding and acceptance to be signed by MINJUS staff. Employees thereby swear under oath that they fully understand the mission, values, and ethical principles that govern their employment, that compliance is mandatory, and by respecting this Code everyone contributes to creating a work environment that ensures the credibility of the Ministry and the service it provides.

[371] As for the use of modern communication technologies to make personnel aware of the ethical standards governing their activities and to provide guidance to them about their scope or interpretation, the country under review pointed out in its response that the “Ethics and Integrity Thursdays” workshops make use of an E-learning platform to disseminate the Code of Ethical Conduct and videos of the workshops: <http://capacitacion.minjus.gob.pe/aula/course/view.php?id=8>

[372] According to the MINJUS Code of Ethical Conduct, the Committee for Ethical Conduct is the mechanism for managing, implementing, and monitoring the institutional integrity system and the Code.

[373] This Committee is responsible for evaluating requests and exceptional situations that arise with respect to the application of the Code of Ethical Conduct and consist of: (a) The Secretary General, who will act as the President of the Committee; (b) the head of the General Office of Legal Counsel; (c) the head of the General Administration Office; (d) the head of the General Office for Planning and Budget; and (e) the head of the Office of Human Resources.

- Legislation and provisions of a diverse legal nature, and other measures applicable to SUNAT personnel, among which the following are noteworthy:

[374] The country under review reports in its response to the questionnaire<sup>147</sup> that the manner in which SUNAT personnel are made aware of the responsibilities and duties of their post is through an Employee Orientation Program, which takes place within 10 days of starting work. The Program’s goal is to provide the employee detailed information about the position and/or post, which includes dimensions about their duties, those of the organizational unit, its location within the organization, obligations,

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147 See Peru’s response to the Fifth Round questionnaire, pp. 68-82. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

responsibilities, objectives, and goals, as well as procedures and internal norms, which enable an enhanced and speedy adaptation to the work team.

[375] The Employee Orientation Program is conducted verbally and is the responsibility of the head of the organizational unit, who together with the participant signs the form called Record of Employee Orientation.

[376] During the on-site visit, SUNAT representatives reported on the Senior Management Orientation Program, which has three stages: A general orientation workshop; a specific orientation workshop; and a final report, prepared by the Training Division with results obtained in order to have feedback from the respective units. SUNAT representatives indicated that a Senior Management General Orientation Manual—which was undergoing validation during the on-site visit—has been prepared.

[377] Additionally, SUNAT representatives reported during the on-site visit that in Lima and Callao, the administration and implementation of the General Orientation Program is the responsibility of the Contract Management and Personnel Information Division. At the deconcentrated offices it is done with the support of the Administrative Support Offices. The Senior Leadership General Orientation Program is the responsibility of the Training and Development Division.

[378] As for the use of modern communication technologies to make personnel aware of the responsibilities and duties of their post and to provide them guidance about appropriate performance, the country under review indicates that there is an Intranet platform for sending personnel communiqués, important documents, legal provisions, and directives.

[379] With respect to the existence of offices where personnel can go to obtain information or resolve doubts about appropriately discharging the responsibilities and duties of their post, the country under review reports that the Employee Orientation Program is the responsibility of the head of the organizational unit, who may designate a professional or senior manager, subject to authorization from the National Office of Human Resources Management.

[380] The country under review points out in its response that the manner in which SUNAT makes its personnel aware of ethical standards governing their activities is through an organizational unit charged with providing the orientation program to personnel who begin working. As part of this program, the SUNAT Code of Ethics is furnished, among other documents. Once received, there is confirmation of receipt through a record that is to be kept in the personnel file of each employee.

[381] Furthermore, this Code, as well as the Civil Service Code of Ethics, is published as part of the human resources regulations on the SUNAT Intranet, which can be accessed by all employees.

[382] As for the use of modern communication technology to make personnel aware of the ethical standards governing their activities and to provide them guidance regarding their scope or interpretation, the country under review highlights in its response that ethical standards are disseminated on the institutional Intranet. Additionally, the virtual course, “Ethics Compliance Program” [*“Programa de Adherencia Ética”*] was designed and executed in 2014. This course consisted of a study of the: (a) Civil Service Code of Ethics; (b) Regulations of the Civil Service Code of Ethics; and (c) SUNAT Code of Ethics.

[383] It was also reported in the response to the questionnaire that said course was compulsory for all personnel (government officials, senior managers, and civil servants), and was organized for groups of 500 employees for one week at a time. During this time, they reviewed visual, audio, and written material, after which there was an evaluation. Finally, those who passed printed a form pursuant to which they committed and agreed to comply with these standards. They signed the form and forwarded it to the department of human resources to be included in their personnel files.

[384] As for offices where personnel may go to obtain information or resolve doubts about the scope or manner of interpreting ethics standards governing their activities, the country under review reported, both in its response as well as during the on-site visit, that the Office for Ethics Strengthening and the Fight against Corruption [*Oficina de Fortalecimiento Ético y Lucha contra la Corrupción*] (OFELCCOR) was created in 2013. This Office is charged with promoting and implementing measures that bolster the integrity and ethical conduct of the institution's personnel and detecting risks of corruption in order to propose improvement or oversight in institutional processes (Article 50 of the SUNAT Regulations on Organization and Functions).

[385] However, according to what was indicated in the response itself, there is no office in the entity assigned the functional role or defined as being the one that has the duty of providing employees with assistance to resolve doubts or to interpret standards. OFFELCOR's role is to disseminate ethical standards.

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

[386] The Committee reviewed legislation, and provisions of the constitution and of a diverse legal nature, that have to do with measures aimed at giving instruction to personnel from the two public agencies selected by the country under review and ensuring adequate understanding of their responsibilities and the ethical standards governing their activities. Such provisions are clearly relevant for purposes of the Convention.

[387] Nevertheless, the Committee believes it is appropriate to make some observations with regard to these provisions:

- With respect to the provisions and measures applicable to most personnel of public entities, the Committee considers that:

[388] First, the Committee notes that pursuant to Article 184 of the General Regulations of Law 30057 of July 2013 (Civil Service Law), it is the responsibility of SERVIR to approve the directive on the minimum information that is to be included in the [employee] orientation.

[389] During the on-site visit, SERVIR representatives stated that this directive is still being validated.

[390] The Committee believes it is positive that efforts are underway to establish a minimum content for the orientation programs. The Committee recommends that this minimum information in the orientation program include provisions and other measures that are deemed appropriate for making all individuals who enter public service aware of the risks of corruption inherent in the performance of their duties, as well as the consequences and penalties for becoming involved in corruption. The Committee will formulate a recommendation in this regard (see recommendation 1.4.1 in Chapter III of this report.)

[391] Moreover, bearing in mind that not all government entities fall under the scope of Law 30057, and consequently, of SERVIR—as mentioned previously in section 1.1.2.1 in Chapter II of this report—the Committee believes it is important that entities that are exempt also use minimum criteria in their respective orientation programs. The Committee will formulate a recommendation in this regard (see recommendation 1.4.2 in Chapter III of this report).

[392] Second, the Committee notes that Article 5(2) of the Law on the Civil Service Code of Ethics provides that if there is a doubt regarding a specific matter of an ethical nature, queries should be addressed to the Office of the President of the Council of Ministers; however, there does not seem to be a process or information about how to make this kind of query, which in theory would fall to the Secretariat of Public Management of said Office.<sup>148</sup> Thus, the Committee believes it is important to establish simplified, streamlined procedures so that any official may go to obtain information or resolve doubts about the scope or manner of interpreting the ethical standards governing their activities. The Committee will formulate a recommendation in this regard (see recommendation 1.4.3 in Chapter II of this report).

- With respect to the provisions and measures applicable to MINJUS personnel, the Committee considers that:

[393] First, the Committee notes that, in keeping with the MINJUS Code of Ethical Conduct, the Committee for Ethical Conduct is responsible for evaluating requests and exceptional situations that arise regarding the enforcement of the aforementioned Code. However, the country under review identified in its response the MINJUS Office of Human Resources as the office where personnel can go to obtain information or resolve doubts about the scope or manner of interpreting the ethics standards that govern their activities.

[394] In that regard, just as in the case of the Civil Service Code of Ethics mentioned above, the Committee considers that it is important to clearly define the office or entity responsible for taking and answering queries about the MINJUS Code of Ethical Conduct. It likewise considers that it is important to establish simplified, streamlined procedures so any government official may pose questions and receive answers to such questions. The Committee will formulate a recommendation in this regard (see recommendation 1.4.4 in Chapter III of this report).

[395] Second, the Committee considers it appropriate that tools be developed to verify that MINJUS personnel have adequately understood the ethical standards governing their activities. To this end, the Committee suggests that efforts be made to use modern communication technologies (see recommendation 1.4.5. in Chapter III of this report).

- With respect to the provisions and measures applicable to SUNAT personnel, the Committee considers that:

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148 According to Article 36 of the Regulations on Organization and Functions of the Office of the President of the Council of Ministers (Supreme Decree 063-2007-PCM), the Secretariat for Public Management is competent in terms of the functioning and organization of the State, administrative simplification, ethics, and transparency, in keeping with the standards of modernization, streamlining, decentralization of the State, internal oversight, as well as the Civil Service Code of Ethics.

[396] First, the Committee notes that the country under review mentions in its response to the questionnaire<sup>149</sup> that *“there is no office in the entity assigned the functional role or defined as being the one that has the duty of providing employees with assistance to resolve doubts or to interpret standards, which could mean that several organizational units may do so informally or in the end no one may do it.”*

[397] *There is a standard that interprets that the Office for Ethics Strengthening and the Fight against Corruption has the responsibility for dissemination, only at that level.”*

[398] In this respect, the Committee believes it is important for appropriate measures to be taken to determine the office at SUNAT that has responsibility for taking and answering queries about the Code of Ethics, and that simplified, streamlined procedures be established so that any government official may pose questions and receive answers to such questions. The Committee will formulate a recommendation in this regard (see recommendation 1.4.6 in Chapter III of this report).

[399] Second, as indicated previously, the country under review reports in its response to the questionnaire that the “Ethics Compliance Program” is a virtual course that took place in 2014, in which SUNAT officials participated, approved, and signed the respective commitment instrument.

[400] However, the response to the questionnaire also indicated that *“new personnel who began after the schedule was approved were not included in this training. For this reason, implementation of the program should be evaluated for this group that did not take or sign off on the Ethic Compliance Program.”*<sup>150</sup>

[401] In this respect, the Committee considers that it is appropriate that tools like the “Ethics Compliance Program” continue to be used in order to verify that SUNAT personnel have an adequate understanding of the ethical standards governing their activities, especially by using modern communication technology. The Committee will formulate a recommendation in this regard (see recommendation 1.4.7 in Chapter III of this report).

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

[402] The country under review, both in its response to the questionnaire, as well as during the on-site visit, presented the following results that were achieved with respect to implementation of provisions and/or measures for providing instruction to personnel of the selected public entities, to ensure they have an appropriate understanding of their responsibilities and the ethical standards that govern their activities, namely:

[403] – The response to the questionnaire reported<sup>151</sup> that between June 2013 and June 2015 a total of 15 orientation sessions took place for new MINJUS employees. During this period a total of 371

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149 See Peru’s response to the Fifth Round questionnaire, p. 73. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

150. See Peru’s response to the Fifth Round questionnaire, p. 82. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

151. See Peru’s response to the Fifth Round questionnaire, pp. 74-75. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

employees from Lima and Callao were trained (161 in 2013; 129 in 2014; and 81 in 2015). Additionally, it was noted that the program is not offered in the provinces due to budget restrictions.<sup>152</sup>

[404] As to results regarding instructions to ensure adequate understanding of ethical standards governing MINJUS activities, it was indicated that on May 24, 2014—one month after its approval—the MINJUS Code of Ethical Conduct was presented and distributed to all Ministry personnel.

[405] Furthermore, training workshops called “Ethics and Integrity Thursdays” were implemented as part of the Institutional Integrity Model, with the aim of contributing to participants’ proper performance and the development of a culture of trust and integrity. The workshops, which are 4 hours long, were designed with technical support from USAID and have been offered to employees from Lima and Callao since June 2014.

[406] In 2014, 24 (weekly) workshops were conducted and 791 workers and 48 directors from Lima and Callao were trained. In 2015 (as of September), 6 (monthly) workshops were conducted and 139 employees were trained.

[407] During the on-site visit, MINJUS representatives reported that the budget executed to hold the workshops was a total of S./ 108,467.98 in 2014 and S./ 37,212.65<sup>153</sup> in 2015 (as of September).

[408] The response to the questionnaire<sup>154</sup> further indicates that “(...) *the high turnover rate among employees obliges us to continue holding these workshops monthly in order to promote and make all employees aware of the commitment to the Ministry of Justice and Human Rights’ Code of Ethical Conduct. New employees who enter the Ministry are thus invited to participate in these workshops and to sign the Letter of Understanding and Acceptance by which they commit to accepting and complying with the MINJUS Code of Ethical Conduct.*”

[409] – In relation to SUNAT and its personnel the response to the questionnaire<sup>155</sup> points out that: “(...) *as part of the annual training schedule for our personnel, in-person ethics workshops have taken place since 2009. It is estimated that the employees who attend represent approximately 10% of each fiscal year’s work force.*”

[410] *Training in this subject is one of the mandatory indicators provided for in the agency’s annual institutional operational plan. By way of example, it is reported that in 2015 the goal for participation was for at least 1,000 employees to attend in-person sessions on the codes of ethics. This responsibility fell to the Office for Ethics Strengthening and the Fight against Corruption.*

[411] *Additionally, in 2014 a virtual training course on said standards was offered to all employees (approximately 12,100). This responsibility fell to three organizational units: (1) The Tax Administration Institute (IAT); (2) National Office of Human Resources Management; and (3) Office for Ethics Strengthening and the Fight against Corruption.*

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152. See Peru’s response to the Fifth Round questionnaire, p. 82. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

153 Exchange rate: S./ 1.00 = USD \$0.30 (as of December 16, 2015).

154 See Peru’s response to the Fifth Round questionnaire, p. 79. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

155 See Peru’s response to the Fifth Round questionnaire, pp. 71-72. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

[412] (...) In 2014 the virtual course, “Ethics Compliance Program” was designed and executed. This course consisted of the study of the: (a) Civil Service Code of Ethics; (b) Regulations of the Civil Service Code of Ethics; and (c) SUNAT Code of Ethics.

[413] The above course was compulsory for all personnel (government officials, senior management, and civil servants) and was given to groups of 500 employees for one week at a time. During this time, they reviewed visual, audio, and written material, after which there was an evaluation. Finally, those who passed printed a form pursuant to which they committed and agreed to comply with these standards. They signed the form and forwarded it to the department of human resources to be included in their personnel files.

[414] It is worth noting that, as this course was virtual, it cost little and included all of the workforce, thereby meeting the main goal of disseminating and teaching the content of the ethics standards that govern our conduct as public servants.”

[415] During the on-site visit, SUNAT representatives indicated that the aforementioned “Ethics Compliance Program” lasted four months (June-September 2014) and the final results were that a total of 11,539 employees passed (95.27%), 13 failed (0.11%), and 560 did not participate in the Program (4.62%). Based on the information requested by the review subgroup, which was provided subsequent to the on-site visit, it was confirmed that 57 of the 560 who had not participated in the Program later received training; 93 no longer worked at the agency; and 410 have yet to be trained in issues related to ethics in the civil service.

[416] In this regard, the country under review points out in its response to the questionnaire<sup>156</sup> that “Difficulties that arose had to do with not being able to include a small group of personnel for different reasons, such as employees who were on leave or vacation, among others. Although personnel who were unable to participate in the initial schedule proposed were rescheduled twice, it was not enough to cover that group of participants.”

[417] Another issue noted was that new employees who began after the schedule was approved were not included in this training. For this reason, the implementation of the Ethics Compliance Program should be evaluated for this group who did not take or sign up for it.

[418] With respect to ethics training activities, during the on-site visit it was reported that the annual goal set by the Institutional Anti-corruption Plan is to train 1,000 employees. This goal was surpassed on August 30, 2015 when 2,089 government officials from 23 SUNAT organizational units were trained.

[419] – Based on the information provided after the on-site visit with respect to the Secretariat for Public Management of the Office of the President of the Council of Ministers, from January to October 2015, 334 government officials from different entities of the three levels of government were trained in the application of the Civil Service Ethics Code. There were also awareness-raising activities about Open Government (Transparency and Public Ethics) in which 329 officials participated.

[420] The Committee believes that the foregoing information is relevant to show that the public entities selected by the country under review have obtained results in applying the provisions and/or

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156 See Peru’s response to the Fifth Round questionnaire, p. 82. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf)

measures related to instruction for government personnel to ensure adequate understanding of their responsibilities and the ethical standards governing their activities.

[421] This notwithstanding, the Committee considers it appropriate to make a number of observations:

[422] First, the Committee notes that budget limitations have affected the expansion and even the very existence and/or frequency of ethics training both in MINJUS as well as SUNAT. For example, in the case of MINJUS, activities are restricted to Lima and Callao. At the same time, SUNAT has not managed to go forward with its “Ethics Compliance Program” for new personnel who started working there after September 2014. The Committee will formulate a recommendation in this regard (see recommendation 1.4.8 in Chapter III of this report).

[423] Second, as was stated in the previous section, the Committee believes that it is important that there be an effort to have statistical data on issues such as the results of activities conducted, in order to verify that the goal of understanding ethical standards has been achieved and that public servants’ questions about the scope and interpretation of such ethical standards be addressed in order to identify challenges and adopt, where appropriate, corrective measures (see recommendation 1.4.9 in Chapter III of this report).

[424] Finally, the Committee believes that for the country under review it would be beneficial for the public entities selected, as well as other entities, to have manuals, guidelines, or other kinds of instruments to provide guidance to public servants on the appropriate performance of their duties and to alert them to the risks of corruption inherent to the discharge thereof, as well as the scope and interpretation of the ethical standards governing their activities and the consequences for public service and for the wrongdoers of violating such standards (see recommendation 1.4.10 in Chapter III of this report).

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

[425] Pursuant to the analysis conducted in the sections above, the Committee formulated the conclusions and recommendations below regarding implementation in the country under review of the provisions set forth in Article III(3) of the Convention:

**[426] The Republic of Peru has considered and adopted measures aimed at creating, maintaining, and strengthening instruction for personnel of the public entities selected, which ensure adequate understanding of their responsibilities and the ethical standards that govern their activities, in accordance with section 1 of Chapter III of this report.**

[427] In light of the comments set forth in said section, the Committee suggests that the country under review consider the following recommendations:

- 1.4.1. Include, as part of the content of the SUNAT directive on the minimum information to be contained in the orientation process, the provisions or other measures that it deems appropriate to make everyone who becomes a civil servant in Peru aware of the risks of corruption inherent to the performance of their duties, as well as the consequences and penalties for involvement in acts of corruption (see paragraph 390 in section 1.2 in Chapter III of this report).



- 1.4.2. Adopt the measures necessary so that the entities that fall outside the scope of Law 30057 may also use in their respective orientation programs the minimum criteria established in the directive approved by SERVIR and raise awareness in their respective programs about the risks of corruption inherent to the performance of their duties, as well as the consequences and penalties for involvement in acts of corruption (see paragraph 391 in section 1.2 in Chapter III of this Report).
- 1.4.3. Establish simplified, streamlined procedures so that any government official may go to the Secretariat for Public Management [*Secretaría de Gestión Pública*] of the Office of the President of the Council of Ministers (SGP/PCM) in order to obtain information or resolve doubts about the scope or manner of interpreting the ethical standards that govern their activities (see paragraph 392 in section 1.2 in Chapter III of this report).
- 1.4.4. Define clearly which office or entity is responsible for taking and answering queries about the Ministry of Justice and Human Rights (MINJUS) Code of Ethical Conduct, and establish simplified, streamline procedures so that any government official may pose questions and receive answers to such questions (see paragraph 394 in section 1.2 in Chapter III of this report).
- 1.4.5. Develop tools to verify that MINJUS personnel have an adequate understanding of the ethical standards governing their activities, seeking to use modern communication technology for such purposes (see paragraph 395 in section 1.2 in Chapter III of this report).
- 1.4.6. Define the office within the National Superintendency of Customs and Tax Administration (SUNAT) that is responsible for taking and answering queries about its Code of Ethics, and establish simplified, streamlined procedures so that any government official may pose questions and receive answers to such questions (see paragraph 398 in section 1.2 in Chapter III of this report).
- 1.4.7. Continue using tools like the “Ethics Compliance Program” to verify that SUNAT personnel have an adequate understanding of the ethical standards governing their activities, especially through the use of modern communication technology (see paragraph 401 in section 1.2 in Chapter III of this report).
- 1.4.8. Adopt the appropriate measures to ensure the necessary resources to expand and/or continue with ethics training and awareness-raising on the risks of corruption inherent to the performance of duties in the case of personnel working for both MINJUS and SUNAT (see paragraph 422 in section 1.3 in Chapter III of this report).
- 1.4.9. Supplement the statistical data from MINJUS, SUNAT, and SGP/PCM with information that refers to aspects such as the results of activities conducted to confirm that the goal of understanding ethical standards has been reached, as well as to addressing public servants’ questions about the scope and interpretation of such ethical standards, in order to identify challenges and adopt, where appropriate, corrective measures (see paragraph 423 in section 1.3 in Chapter III of this report).

- 1.4.10. Prepare manuals, guidelines, and other types of instruments to guide public servants on appropriately performing their duties and to alert them to the risks of corruption inherent to complying with their responsibilities, in addition to the scope and interpretation of ethical standards that govern their activities and the consequences that violation of such standards entails for public service and for the wrongdoers (see paragraph 424 in section 1.3 in Chapter III of this report).

## **2. THE STUDY OF FURTHER PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN PUBLIC SERVICE (ARTICLE III(12) OF THE CONVENTION)**

### **2.1. THE STUDY OF FURTHER PREVENTIVE MEASURES THAT TAKE INTO ACCOUNT THE RELATIONSHIP BETWEEN EQUITABLE COMPENSATION AND PROBITY IN [PUBLIC] SERVICE**

[428] In its response to the questionnaire, the country under review explained that “...*To draft Law 30057, the Civil Service Law and its Regulations, approved by Supreme Decree 040-2014-PCM, many studies were conducted—which were used as internal working documents at SERVIR—<sup>157</sup> on the general disarray that existed regarding compensation and income in the Peruvian State’s human resources management and its impact on the motivation of public servants.*”

[429] *Therefore, one of the objectives of the Civil Service Law is to help bring order to the regulatory disarray and confusion surrounding the terms of employment for public servants, such as the compensation system (increases in compensation, incentives, bonuses, and benefits of all kinds).*

[430] *Along those lines, the civil service reform has provided that economic compensation should be determined in a systematic manner, avoiding isolated measures that give rise to technical inconsistencies or interpretations that are contrary to a uniform model.*

[431] *The current disarray in compensation makes the payment system inequitable. First, there are several wage items of different natures and calculation bases that distort the pay of public servants and make government payroll management inefficient. What is more, the levels of compensation vary depending on the entity, which causes distortions within entities. Increasing compensation through the creation of items like bonuses and allowances, among others, would exacerbate the problem even more.*

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<sup>157</sup> During the on-site visit, SERVIR representatives highlighted the following studies conducted or considered in the preparation of Law 30057 and its Regulations: (1) *El Servicio Civil Peruano: Antecedentes, marco normativo actual y desafíos de la reforma* [The Peruvian Civil Service: Background, Current Legislative Framework, and Challenges to Reform] (<http://files.servir.gob.pe/WWW/files/biblioteca/SERVIR%20-%20EI%20servicio%20civil%20peruano.PDF>); (2) Armstrong, M. & Murlis, H., 2005. *Reward Management – A Handbook of Remuneration Strategy and Practice*, 5th Edition. London, UK: Kogan Page; (3) Australian Public Service, 2011. *Job family model*. Sydney, Australia: Commonwealth of Australia; (4) Ministry of the Economy and Finance, 2011. *Estudio del sistema de remuneraciones en el sector público del Perú* [Study of the compensation system in Peru’s public sector]. Lima, Peru: MEF; (5) OECD, 2008. *The State of Public Service*. Paris, France: OECD Publications; (6) Reid, G., 2007. *Public Administration Salary Setting: Principles and Mechanisms for Satisfying Them*. Work document; and (7) *Diagnóstico Institucional del Servicio Civil en América Latina: Perú* [Institutional Assessment of the Civil Service in Latin America: Peru] ([https://publications.iadb.org/bitstream/handle/11319/7152/ICS\\_TN\\_Diagnostico\\_institucional\\_del\\_servicio\\_civil\\_Peru.pdf?sequence=1](https://publications.iadb.org/bitstream/handle/11319/7152/ICS_TN_Diagnostico_institucional_del_servicio_civil_Peru.pdf?sequence=1))

*This issue is addressed in the civil service reform, by establishing clear rules (i.e., with regard to compensation) for employees of the public administration.*

[432] *In short, the benefits the Civil Service Law offers with regard to remuneration are greater pay equity, higher income through annual Christmas and holiday bonuses and compensation for seniority, and higher pensionable earnings.”*

## **2.2. ESTABLISHMENT OF OBJECTIVE AND TRANSPARENT CRITERIA TO DETERMINE COMPENSATION FOR PUBLIC SERVANTS**

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

[433] The Republic of Peru has a set of provisions aimed at laying out objective and transparent criteria to determine compensation for public servants, among which the following are noteworthy:

[434] – Law 30057 of July 2013 (Civil Service Law) and its General Regulations (Supreme Decree 040-2014-PCM of June 13, 2014), which establishes the legal framework for regulating compensation, establishing its structure, general rules, sources of financing, rules of payment, among other aspects.

[435] In keeping with the provisions of Article 28 of Law 30057, compensation consists of earnings and benefits that the entity provides to the civil servant to pay for the provision of services to the entity, according to the position held. Its objective is to recruit, maintain, and develop a corps of effective civil servants who help to achieve institutional objectives.

[436] Article 29 of Law 30057 stipulates that compensation is structured through financial and non-financial compensation. The latter consists of the benefits granted to motivate and increase civil servants’ competitiveness. These benefits are not freely available to the civil servant nor do they constitute an economic advantage.

[437] At the same time, financial compensation, in accordance with Article 31 of Law 30057, is annual in nature and is composed of the valuation solely including:

[438] “(a) *Base Salary. Direct financial component of a category of positions.*

[439] (b) *Adjustments. Provided to the position depending on the entity and based on criteria of hierarchy, responsibility, budget supervised, personnel directly supervised, impact of decisions made, or amount of government resources that such decisions involve.*

[440] (c) *Vacation. Financial compensation based on vacation entitlement.*

[441] (d) *Annual Bonuses. Financial compensation for Christmas and national holidays.*

[442] *Additionally, if to perform one’s duties there are unusual situations due to conditions involving geographic accessibility, altitude, danger to life, legal risk, or actual service abroad, prioritized valuation may be included. This valuation is approved through a supreme decree endorsed by the Ministry of Economy and Finance. This compensation is limited to the time the conditions of the assignment last.*

[443] (...) 31(3) *The pay scale for positions considers only the items provided for under 31(1)(a) and (b) above.*

[444] 31(4) *The distribution of the valuation of the base salary according to [job] family and the adjustments are approved pursuant to a supreme decree endorsed by the Ministry of Economy and Finance, in coordination with SERVIR (...)*

[445] Furthermore, Article 30 of that same Law sets forth general rules for compensation and describes the following four guiding principles:

[446] “(a) *Competitiveness: The compensation system seeks to attract and retain suitable personnel in the Peruvian Civil Service.*

[447] (b) *Fairness: Jobs performed in similar positions but with different demands, responsibilities, or complexity are entitled to different financial compensation. Jobs performed in similar positions and conditions are entitled to similar compensation.*

[448] (c) *Internal consistency: Compensation within the same entity is to be in keeping with the demands, responsibilities, and complexity of the position.*

[449] (d) *Inter-governmental consistency. Compensation for similar positions in the public administration is to be comparable between entities. This rule is applied taking into account the level of responsibility and competencies of the entity. (...)*

[450] – Compensation Regulations of Law 30057, approved by Supreme Decree 138-2014-EF, published on June 13, 2014, which specifies and supplements regulation of compensation in a more detailed manner, establishing rules for the valuation and regulation of financial compensation, and determination of non-financial compensation. Rules are set out for valuation of the positions of career civil servants, support staff, and senior management.

[451] According to Article 6 of the aforementioned Compensation Regulations, the valuation of financial compensation is the mechanism for determining the amount allocated to a specific position and what is due, as a monetary payment for the provision of service to the civil servant holding such position.

[452] The determination of that amount entails the valuation of the position, which is to be validated by the Ministry of Economy and Finance through its Directorate General of Public Resources Management, based on the entity’s proposal.

[453] To draw up the proposal, the entity should take into account the following:

[454] – The amount of the base salary valuation that corresponds to the position will be determined considering the characteristics and conditions thereof, as well as those of the entity itself, in keeping with what is established in the tables in Annexes 1 to 15 of the Compensation Regulations,<sup>158</sup> according to a specific kind of entity.

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<sup>158</sup> Compensation is determined bearing in mind the maximum amount that is indicated in the relevant tables contained in Annexes 1 to 15 of the Compensation Regulations. Said amount is found in the box where the row

[455] – Articles 7, 9, and 11 of these Regulations will also be taken into account to determine said amount, depending on whether it is a senior management, career civil servant, or support staff post.

[456] – The amount for the adjustments valuation will be established for each position considering the provisions of Articles 8, 10, or 12, depending on whether it is a senior management, career civil servant, or support staff post.

[457] – If the position in question should be assigned the prioritized valuation referred to in the last paragraph of Article 31(31)(1) of the Law, the corresponding amount will be added to the valuation of the position.

[458] The sum of the base salary valuation, adjustments valuation, and prioritized valuation, where the latter is appropriate, constitutes the financial compensation allocated for the position. This compensation will be paid to the civil servant who holds such position, in accordance with the provisions of Article 31(31)(2) of the Law.

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

[459] The Committee has reviewed the provisions that refer to establishment of objective and transparent criteria to determine compensation for public servants, based on the information available to it. As can be seen, these provisions are relevant for purposes of the Convention.

[460] Notwithstanding the foregoing, the Committee deems it appropriate to make a number of observations in this regard:

[461] First, the committee notes that the Compensation Regulations of Law 30057 are an appropriate step in establishing criteria for determining public servants' financial compensation. This is in contrast to the current state of disarray and discretion and the "scant transparency" of the current compensation system described in the study, "*El Servicio Civil Peruano: Antecedentes, marco normativo actual y desafíos de la reforma*" [*The Peruvian Civil Service: Background, Current Legislative Framework, and Challenges to Reform*],<sup>159</sup> prepared by SERVIR in 2012.

[462] Nevertheless, the Committee notes that Annexes 1 to 15 of the aforementioned Compensation Regulations indicate the maximum amounts for the base valuation of financial compensation for the respective position.

[463] The Committee believes it is important for relevant measures be taken to ensure that the base valuation amounts for a post be determined in a consistent manner during the progressive implementation process of Law 30057 (see recommendation 2.2.3.1 in section 2.2.3 of Chapter III of this report).

[464] The Committee further highlights that it would be advisable for the country under review to promote, through the appropriate authorities, the inclusion of objective criteria to determine the

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defined by evaluating the position based on its characteristics or conditions intersects with the column determined by evaluating the kind of entity and the category of the post.

159 Available in Spanish at: [files.servir.gob.pe/WWW/files/biblioteca/SERVIR%20-%20El%20servicio%20civil%20peruano.PDF](http://files.servir.gob.pe/WWW/files/biblioteca/SERVIR%20-%20El%20servicio%20civil%20peruano.PDF)

remuneration of public servants in the departments and entities not covered by Law No. 30057 and its Compensation Regulations (see recommendation 2.2.3.2 in section 2.2.3 of Chapter III of this report).

### 2.2.3. Conclusions and recommendations

[465] Based on the analysis conducted in the paragraphs above regarding the State's implementation of the provisions set forth in Article III(12) of the Convention, the Committee hereby formulates the following conclusions and recommendations.

[466] **The Republic of Peru has considered and adopted measures aimed at establishing objective and transparent criteria to determine compensation for public servants in keeping with what is stated in section 2 of Chapter III of this report.**

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

2.2.3.1 Adopt the relevant measures to ensure that the base salary valuation amount for a position is determined in a consistent manner during the progressive implementation of Law 30057 (see paragraph 464 in section 2.2.2 in Chapter III of this report).

2.2.3.2 Promote, through the appropriate authorities, the inclusion of objective criteria to determine the remuneration of public servants in the departments and entities not covered by Law No. 30057 and its Compensation Regulations (see paragraph 464 in section 2.2.2 in Chapter III of this report).

## IV. BEST PRACTICES

[468] In keeping with the provisions of Section VI of the *Methodology* for follow-up on implementation of the recommendations formulated and provisions reviewed in the Second Round, and for review of the Convention provisions selected for the Fifth Round adopted by the Committee, best practices identified by the country under review are noted below. Peru wished to share these practices with other countries that are States Party to the MESICIC as it believes such practices could be beneficial for them:

- With respect to Article III(8) of the Convention:

[469] **“Activities of the Central Unit for Victim and Witness Protection and Assistance [*Unidad Central de Protección y Asistencia a Víctimas y Testigos*] (UCAVIT) of the Public Prosecution Ministry: External dissemination events, video broadcasts of oral trial hearings, and assistance networks,”**<sup>160</sup> which consist of the following:

[470] *External dissemination events:* Participatory chats, informative chats, seminars, etc., participation in public and citizen outreach sessions. The target audiences were public servants and government officials from different public institutions in the prosecution district: Municipalities, police stations, schools, Local Education Management Units [*Unidades de Gestión Educativa Local*] (UGEL),

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160 See the standard form annexed to Peru's response to the Fifth Round questionnaire, pp. 88-89. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf).

the Office of the Ombudsman, neighborhood associations, the press, and civil society in general. The issues addressed were the benefits of the victim and witness protection and assistance program and protection and assistance measures for victims and witnesses, as they also apply to whistleblowers who report crimes of corruption among government officials. Special emphasis was given to, *inter alia*, police protection measures, identity protection, free legal advice, and psychological assistance for beneficiaries of the program.

[471] *Video broadcast of oral trial hearings*: This is done as part of the legal advisory services offered to beneficiaries of the program. They are shown a video of an oral trial in which there is questioning of a witness or expert witness, as the case may be, which points out merely procedural details to be followed so that their rights are protected and they may make a spontaneous and proper contribution.

[472] *Assistance Networks*: The UCAVIT and Departmental Units [*Unidades Departamentales*] (UDAVITs) work jointly in a coordinated manner with different institutions—for example with the Ministry of Justice’s “ALEGRA” (Free Legal Assistance), shelters, public health institutions, etc.—where beneficiaries may receive assistance, if necessary, and the relevant follow-up is done regardless of whether the measure provided for by the prosecutor continues to be executed.

[473] This is considered a best practice as it does not treat witnesses as a mere means of proof; it humanizes the work of the prosecutor and of these protection units as bodies that support the office of the prosecutor. This prevents the victimization of whistleblowers who report crimes of corruption committed by public officials.

- With respect to Article III(3) of the Convention:

[474] – “**Implementation of Basic, Intermediate, and Advanced Training Modules for Auditors**” [*Implementación de los Módulos de Entrenamiento para Auditores Básico, Intermedio y Avanzado*]<sup>161</sup> by the Office of the Comptroller General of the Republic (CGR) and its National Oversight Academy [*Escuela Nacional de Control*] (ENC). This activity consists of designing and executing these Training Modules, which offer a model of comprehensive training and instruction that responds to the CGR’s professional development needs.

[475] For the design of the curriculum and the respective syllabi, the ENC invited CGR experts in government oversight and public management, as well as other external specialists, to participate.

[476] As of June 2015, eight Basic Training Modules for Auditors were conducted, providing training to 1,150 CGR professionals nationwide. Moreover, design of the Intermediate and Advanced Modules is underway and they will be launched once they are approved by the Office of the Comptroller’s Executive Committee.

[477] This is considered a best practice because the training program design with Training Modules for Auditors by level (Basic, Intermediate, and Advanced) contributes to organizational efforts to modernize the Office of the Comptroller and the National Oversight System via a model of training and instruction that autonomously enables it to have duly trained and educated professionals to exercise government oversight as part of CGR strategic guidelines and policies. These efforts likewise contribute to the process of ongoing training of professionals, not only so they may discharge their duties in an

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161 See the standard form annexed to Peru’s response to the Fifth Round questionnaire, pp. 90-104. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_resp.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_resp.pdf).

optimal manner, but also so they can develop skills that support their personal growth and aid in their professional duties.

[478] Furthermore, during the on-site visit, CGR and ENC representatives talked about the wide array of educational products the ENC offers, with particular emphasis on their specialization programs and new programs for prevention in the fight against corruption in Peru.<sup>162</sup>

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162 See the presentation made by the National Oversight Academy during the on-site visit. Available in Spanish at: [http://www.oas.org/juridico/PDFs/mesicic5\\_per\\_pan\\_7\\_cgr\\_bue\\_pra\\_ins\\_pers.pdf](http://www.oas.org/juridico/PDFs/mesicic5_per_pan_7_cgr_bue_pra_ins_pers.pdf)



# ANNEX I

## **AGENDA OF THE ON-SITE VISIT TO THE REPUBLIC OF PERU**

<b><u>Tuesday, September 8, 2015</u></b>	
8:00 am – 8:30 am <u>Place:</u> <i>Sheraton Hotel</i>	<b>Coordination meeting between the representatives of the Subgroup member states and the Technical Secretariat</b>
9:00 am – 9:30 am <u>Place:</u> <i>Conference Room ‘Acuerdo Nacional’ of the Office of the President of the Council of Ministers (PCM) Jr. Carabaya Cdra. 1 S/N - Lima</i>	<b>Coordination meeting between the country under review, the Subgroup member states, and the Technical Secretariat</b>
9:30 am – 1:30 pm <u>Place:</u> <i>Conference Room ‘Acuerdo Nacional’ of the PCM</i>	<b>Meetings with civil society organizations and/or, <i>inter alia</i>, private sector organizations, professional associations, academics, or researchers</b>
	<p><b><u>Topics:</u></b></p> <ul style="list-style-type: none"> <li>• <b>Systems for hiring public servants and their training and compensation.</b></li> <li>• <b>Systems for government procurement of goods and services.</b></li> <li>• <b>Systems for protecting whistleblowers who report acts of corruption and definition of offenses involving such acts.</b></li> </ul> <p><b><u>Participants:</u></b></p> <p><b><u>General topics:</u></b></p> <p><b><i>Working Group against Corruption (GTCC)</i></b></p> <ul style="list-style-type: none"> <li>• <i>Gladys Andrade Navarro, Legal Advisor</i></li> <li>• <i>Victor Álvarez Perez, Head of the Legal Department, National Coordinator for Human Rights</i></li> <li>• <i>Katherine Morales, Peru Solidarity Forum</i></li> </ul> <p><b><i>Peruvian Press Council</i></b></p> <ul style="list-style-type: none"> <li>• <i>David Álamo García, Coordinator</i></li> </ul> <p><b><u>Systems for protecting whistleblowers who report acts of corruption and definition of offenses involving such acts</u></b></p> <p><b><i>Researchers:</i></b></p> <ul style="list-style-type: none"> <li>• <i>Yván Montoya Vivanco, Coordinator of the Anti-corruption Project, Institute for Democracy and Human Rights (IDEHPUCP)</i></li> <li>• <i>Julio Arbizu Gonzáles, Executive Director of the Centro Liber and former anti-corruption government solicitor</i></li> </ul> <p><b><u>Systems for government procurement of goods and services</u></b></p>

	<p><b>National Confederation of Private Enterprise Institutions (CONFIEP)</b></p> <ul style="list-style-type: none"> <li>• Viveca Amoros Kohn, General Counsel</li> </ul> <p><b>National Industry Association</b></p> <ul style="list-style-type: none"> <li>• Raúl Sadiás Haettenschweiler, Director</li> <li>• Alfonso Aguilar Calvo, General Counsel</li> </ul> <p><b>Lima Chamber of Commerce</b></p> <ul style="list-style-type: none"> <li>• Mario Mongilardi Fuchs, Chair of the State Procurement Committee</li> </ul>
3:00 pm – 5:30 pm <u>Place:</u> Conference Room 'Acuerdo Nacional' of the PCM	<b>Meetings with public authorities</b>
3:00 pm – 5:30 pm	<p><b>Panel 1: Systems for protecting whistleblowers who report acts of corruption.</b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up on the Second Round recommendations:</b> <ul style="list-style-type: none"> <li>• Progress in implementing recommendations pending satisfactory consideration.</li> <li>• New developments in matters that are the subject of recommendations.</li> <li>• Difficulties for their implementation.</li> </ul> </li> <li>• <b>New developments:</b> <ul style="list-style-type: none"> <li>• Legislative framework</li> <li>• Technological developments</li> <li>• Results</li> <li>• Information on best practices (Public Prosecution Ministry)</li> </ul> </li> </ul> <p><u>Participants:</u></p> <p><b>Public Prosecution Ministry (Office of the Attorney General)</b></p> <ul style="list-style-type: none"> <li>• Cesar Zanabria Chávez, Senior Coordinating Prosecutor for the Offices of the Prosecutor Specialized in Corruption Offenses</li> <li>• Rosario Lopez Wong, Senior Coordinating Prosecutor for the Central Unit for Victim and Witness Assistance</li> <li>• Iván Melgar Cáceres, Senior Assistant Prosecutor for the First National Superior Office of the Prosecutor Specialized in Corruption Offenses involving Public Servants</li> </ul> <p><b>Office of the Comptroller General of the Republic (CGR)</b></p> <ul style="list-style-type: none"> <li>• Rosmary Cornejo Valdivia, Manager of the Corruption Prevention Department</li> <li>• Edmundo Guardia Yzaguirre, General Supervisor, National Complaint Management System (SINAD)</li> <li>• Patricia Gutierrez Briones, Advisor, Corruption Prevention</li> <li>• Oscar Galdo Gómez, Advisor, Technical Cooperation</li> </ul>

5:30 pm – 6:15 pm	<b>Informal meeting<sup>163/</sup></b> between the representatives of the Subgroup member states and the Technical Secretariat.
<b><u>Wednesday, September 9, 2015</u></b>	
9:30 am – 5:30 pm <u>Place:</u> Conference Room ‘ <i>Acuerdo Nacional</i> ’ of the PCM	<b>Meetings with public authorities</b>
9:30 am – 12:30 pm	<p><b><u>Panel 2: Systems for government procurement of goods and services.</u></b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up on the Second Round recommendations:</b> <ul style="list-style-type: none"> <li>• Progress in implementing recommendations pending satisfactory consideration.</li> <li>• New developments in matters that are the subject of recommendations.</li> <li>• Difficulties for their implementation.</li> </ul> </li> </ul> <p><u>Participants:</u>  <b>Government Procurement Oversight Body (OSCE)</b> <ul style="list-style-type: none"> <li>• Patricia Alarcón Alvizuri, <i>Director of Oversight</i></li> <li>• Carla Flores Montoya, <i>Deputy Legislative Director of the Technical Legislative Directorate</i></li> <li>• Elizabeth Calderón de la Barca, <i>Deputy Director of the SEACE Platform</i></li> <li>• Christian Chocano Davis, <i>Supervisor of Process Improvements and Standardization of the Technical Legislative Directorate</i></li> <li>• Miguel Caroy Zelaya, <i>Chief of the Economic Studies Office</i></li> <li>• Ana Cristina Velásquez, <i>Advisor to the Office of the Executive President</i></li> </ul> </p>
12:30 pm – 2:00 pm	Lunch
2:00 pm – 4:30 pm	<p><b><u>Panel 3: Systems for government procurement of goods and services</u></b></p> <ul style="list-style-type: none"> <li>• <b>New developments:</b> <ul style="list-style-type: none"> <li>• Legislative framework</li> <li>• Technological developments</li> <li>• Results</li> </ul> </li> </ul> <p><u>Participants:</u>  <b>Government Procurement Oversight Body (OSCE)</b> <ul style="list-style-type: none"> <li>• Patricia Alarcón Alvizuri, <i>Director of Oversight</i></li> <li>• Helmer Suca Ancachi, <i>Director of the Electronic Government Procurement System (SEACE)</i></li> <li>• Elizabeth Calderón de la Barca, <i>Deputy Director of the SEACE Platform</i></li> <li>• Isabel Vega Palomino, <i>Deputy Director of SEACE Project Development</i></li> </ul> </p>

163. The second paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states: “...At the conclusion of the meetings on each day of the on-site visit, the Technical Secretariat shall organize an informal meeting with the members of the Subgroup, to exchange preliminary points of view on the topics addressed at those meetings...”

	<ul style="list-style-type: none"> <li>• <i>Carla Flores Montoya, Deputy Legislative Director of the Technical Legislative Directorate</i></li> <li>• <i>Christian Chocano Davis, Supervisor of Process Improvements and Standardization of the Technical Legislative Directorate</i></li> <li>• <i>Isaías Reátegui Ruiz Eldredge, Advisor to the Office of the Executive President</i></li> </ul> <p><b>Office of the Comptroller General of the Republic (CGR)</b></p> <ul style="list-style-type: none"> <li>• <i>Paco Toledo Yallico, Central Manager of Investment Control</i></li> <li>• <i>Rosmary Cornejo Valdivia, Manager of the Corruption Prevention Department</i></li> <li>• <i>Violeta Santín Alfageme, Manager of Disciplinary Proceedings</i></li> <li>• <i>Patricia Gutierrez Briones, Attorney for the Corruption Prevention Department</i></li> <li>• <i>Cesar Delgado Contreras, Attorney for the Legal Department</i></li> </ul>
4:30 pm – 5:30 pm	<p><b>Panel 4: Categorization of acts of corruption</b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up on the Second Round recommendations:</b> <ul style="list-style-type: none"> <li>• Progress in implementing recommendations pending satisfactory consideration.</li> <li>• New developments in matters that are the subject of recommendations.</li> <li>• Difficulties for their implementation.</li> <li>• Technical cooperation needs.</li> </ul> </li> <li>• <b>New developments:</b> <ul style="list-style-type: none"> <li>• Results</li> </ul> </li> </ul>
	<p><u>Participants:</u></p> <p><b>Public Prosecution Ministry (Office of the Attorney General)</b></p> <ul style="list-style-type: none"> <li>• <i>Cesar Zanabria Chávez, Senior Coordinating Prosecutor of the Offices of the Prosecutor Specialized in Crimes of Corruption</i></li> <li>• <i>Francisco Alarcón Solís, Provincial Assistant Anti-Corruption Prosecutor</i></li> <li>• <i>Iván Melgar Cáceres, Senior Assistant Prosecutor for the First National Superior Office of the Prosecutor Specialized in Corruption Offenses involving Public Servants</i></li> <li>• <i>Cristopher Freyre Hernández, Administrative Assistant</i></li> </ul> <p><b>Judiciary</b></p> <ul style="list-style-type: none"> <li>• <i>Victor Prado Saldarriaga, Tenured Senior Judge of the Ad Hoc Criminal Chamber of the Supreme Court</i></li> <li>• <i>Fanny Uchuya Donayre, Advisor to the Office of the President of the Judiciary</i></li> </ul> <p><b>Office of the President of the Council of Ministers (PCM)</b></p> <ul style="list-style-type: none"> <li>• <i>Carlos Villena Changanahui, Advisor to the Directorate of the High Level Anti-Corruption Committee (CAN)</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>José Luis Medina Frisancho, Advisor to the Directorate of the High Level Anti-Corruption Committee (CAN)</i></li> </ul>
5:30 pm. – 6:15 pm	<b>Informal meeting</b> between the representatives of the Subgroup member states and the Technical Secretariat
<b><u>Thursday, September 10, 2015</u></b>	
9:00 am – 5:30 pm <i>Place: Conference Room 'Valer' of the PCM</i>	<b>Meetings with public authorities</b>
9:00 am – 10:45 am	<p><b><u>Panel 5: Systems for hiring public servants</u></b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up on the Second Round recommendations:</b> <ul style="list-style-type: none"> <li>• Progress in implementing recommendations pending satisfactory consideration.</li> <li>• New developments in matters that are the subject of recommendations.</li> <li>• Difficulties for their implementation.</li> </ul> </li> <li>• <b>New developments:</b> <ul style="list-style-type: none"> <li>• Legislative framework</li> <li>• Technological developments</li> <li>• Results</li> </ul> </li> </ul> <p><u>Participants:</u></p> <p><b><i>National Civil Service Authority (SERVIR)</i></b></p> <ul style="list-style-type: none"> <li>• <i>Cynthia Su Lay, Manager of Civil Service Management Policies</i></li> <li>• <i>Brenda Bellido Gomero, Consultant for the Office of Civil Service Management Policies</i></li> <li>• <i>Ysabel Murga Pinillos, Technical Cooperation Coordinator for the Office of Planning and Budget</i></li> </ul> <p><b><i>Judiciary</i></b></p> <ul style="list-style-type: none"> <li>• <i>Iván Sequeiros Vargas, Tenured Senior Judge of the Superior Court of Justice of Lima</i></li> <li>• <i>Pedro Manuel Tapia Alvarado, General Manager</i></li> </ul>
11:00 am – 12:45 pm	<p><b><u>Panel 6: Systems for hiring public servants (cont.)</u></b></p> <ul style="list-style-type: none"> <li>• <b>Follow-up on the Second Round recommendations:</b> <ul style="list-style-type: none"> <li>• Progress in implementing recommendations pending satisfactory consideration.</li> <li>• New developments in matters that are the subject of recommendations.</li> <li>• Difficulties for their implementation.</li> </ul> </li> <li>• <b>New developments:</b> <ul style="list-style-type: none"> <li>• Legislative framework</li> <li>• Technological developments</li> <li>• Results</li> </ul> </li> </ul>

	<p><u>Participants:</u></p> <p><b>National Civil Service Authority (SERVIR)</b></p> <ul style="list-style-type: none"> <li>• Brenda Bellido Gomero, Consultant for the Office of Civil Service Management Policies</li> <li>• Ysabel Murga Pinillos, Coordinator for Cooperation</li> </ul> <p><b>Judiciary</b></p> <ul style="list-style-type: none"> <li>• Iván Sequeiros Vargas, Tenured Senior Judge of the Superior Court of Justice of Lima</li> <li>• Pedro Manuel Tapia Alvarado, General Manager</li> </ul>
12:45 pm – 2:00 pm	Lunch
2:00 pm – 3:45 pm	<p><b>Panel 7: Instruction for personnel of public entities to understand their responsibilities and the ethical standards that govern them.</b></p> <ul style="list-style-type: none"> <li>• Legal framework, programs, competent offices, and technology use</li> <li>• Results</li> <li>• Difficulties</li> <li>• Information on best practices (CGR)</li> </ul> <p><u>Participants:</u></p> <p><b>Ministry of Justice and Human Rights</b></p> <ul style="list-style-type: none"> <li>• Mariel Herrera Llerena, Chief of the Office of Human Resources</li> <li>• Betty Marrujo Astete, Chief of Office of Planning and Budget</li> </ul> <p><b>National Superintendency of Customs and Tax Administration (SUNAT)</b></p> <ul style="list-style-type: none"> <li>• Carlos Rafael Chirinos Gómez, Manager of Employment Management</li> <li>• Álvaro Bouroncle Rodríguez, Chief of the Office for Ethics Strengthening and the Fight against Corruption</li> <li>• Rocío Izaguirre Centeno, Office for Ethics Strengthening and the Fight against Corruption</li> <li>• Alfonso Guerrero Ulloa, Supervisor of the Division of Contract Management and Personnel Information</li> </ul> <p><b>Office of the Comptroller General of the Republic (CGR)</b></p> <ul style="list-style-type: none"> <li>• Rosmary Cornejo Valdivia, Manager of the Corruption Prevention Department</li> <li>• Violeta Santín Alfageme, Manager of Disciplinary Proceedings</li> <li>• Rosario Cerdán Urtecho, Director of the National Oversight Academy</li> <li>• Patricia Gutierrez Briones, Attorney for the Corruption Prevention Department</li> <li>• Cesar Delgado Contreras, Attorney for the Department [sic]</li> <li>• Oscar Galdo Gómez, Advisor to the Technical Cooperation Department</li> </ul> <p><b>National Civil Service Authority (SERVIR)</b></p> <ul style="list-style-type: none"> <li>• Brenda Bellido Gomero, Consultant for the Office of Civil Service Management Policies</li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Ysabel Murga Pinillos, Technical Cooperation Coordinator for the Office of Planning and Budget</i></li> </ul> <p><b>Secretariat for Public Management (SGP)</b></p> <ul style="list-style-type: none"> <li>• <i>Victor Guerra Villegas, Advisor</i></li> <li>• <i>Sandra Inga Toledo, Advisor</i></li> </ul>
4:00 pm. – 5:30 pm	<p><b>Panel 8: Study of prevention measures that take into account the relationship between equitable compensation and probity in public service.</b></p> <ul style="list-style-type: none"> <li>• Studies conducted.</li> <li>• Objective and transparent criteria to determine public servants' compensation.</li> </ul> <p><u>Participants:</u>  <b>National Civil Service Authority (SERVIR)</b></p> <ul style="list-style-type: none"> <li>• <i>Brenda Bellido Gomero, Consultant for the Office of Civil Servant Management Policies</i></li> <li>• <i>Ysabel Murga Pinillos, Technical Cooperation Coordinator for the Office of Budget and Planning</i></li> </ul>
5:30 pm – 6:15 pm	<b>Informal meeting</b> between the representatives of the Subgroup member states and the Technical Secretariat.
6:15 pm – 7:00 pm	<b>Final meeting</b> <sup>164/</sup> between the representatives of the country under review, the Subgroup member states, and the Technical Secretariat.

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164. The third paragraph of provision 20 of the *Methodology for Conducting On-Site Visits* states: "...At the end of the on-site visit, a meeting shall be held, to be attended by the Subgroup experts, the Technical Secretariat, and the Lead Expert of the country under review and/or the official appointed in his or her place in accordance with provision 10, second paragraph, of this Methodology. That meeting shall identify, if necessary, the information that, exceptionally, the country under review is still to submit through the Technical Secretariat and the deadline by which it is to do so, and it shall also coordinate any other pending matters arising from the on-site visit."

**CONTACT AUTHORITY OF THE COUNTRY UNDER REVIEW FOR COORDINATION  
OF THE ON-SITE VISIT AND REPRESENTATIVES OF THE MEMBER STATES OF THE  
PRELIMINARY REVIEW SUBGROUP AND THE MESICIC TECHNICAL SECRETARIAT  
WHO PARTICIPATED:**

**COUNTRY UNDER REVIEW:**

**PERU**

**José Ávila Herrera**

Lead Expert of Peru on the MESICIC Committee of Experts  
Director General of the High-Level Anti-Corruption Commission (CAN)  
Office of the President of the Council of Ministers (PCM)

**Eloy Alberto Munive Pariona**

Advisor to the Office of the General Coordinator  
The High-Level Anti-Corruption Commission (CAN)  
Office of the President of the Council of Ministers (PCM)

**MEMBER STATES OF THE PRELIMINARY REVIEW SUBGROUP:**

**MEXICO**

**Jaime Abraham Cerdio Moisés,**

Deputy Director General of Transparency and Accountability Studies and Policies  
Secretariat of the Civil Service

**Valentina Valdez Jasso**

Director of Anti-Corruption Conventions  
Secretariat of the Civil Service

**NICARAGUA**

**César Guevara**

Technical Secretariat of the Program for Good Public Management  
Office of the Solicitor General of the Republic

**MESICIC TECHNICAL SECRETARIAT**

**Luiz Marcelo Azevedo**

Legal Officer of the Department of Legal Cooperation  
OAS Secretariat for Legal Affairs