

## INITIAL RESPONSE OF BOLIVIA

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

Following are the responses of the Government of the Republic of Bolivia to the questionnaire approved by the Committee of Experts

La Paz, August 2002

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The responses to the questionnaire are accompanied by the following information sent to the Organization of American States (Jorge Garcia):

Official Gazette of Bolivia: Law 2027 Civil Service Statute

Official Gazette of Bolivia: Supreme Decree 26115

Official Gazette of Bolivia: Supreme Decree 25749

Official Gazette of Bolivia: Supreme Decree 26237

Official Gazette of Bolivia: Law 26257

Official Gazette of Bolivia: Law 2341

Law 1178 (SAFCO Law), Office of the Comptroller General of the Republic (and decrees)

Official Gazette of Bolivia: Law 2028

Official Gazette of Bolivia: Superintendency of the Civil Service

Statutes and Regulations of the Social Control Mechanism Created by the Law on Dialogue

#### 1. BRIEF DESCRIPTION OF THE LEGAL AND INSTITUTIONAL SYSTEM OF THE REPUBLIC OF BOLIVIA

Since its founding, Bolivia has been a unitary republic. The Constitution declares that the form of government is representative democracy, and that the State is divided into three branches: legislative, executive, and judicial.

The President of the Republic is elected by universal suffrage for a term of five years, together with the Vice President. By constitutional provision, the President conducts the executive function jointly with the ministers of State and reports to the National Congress on the State of the administration at the first regular session of Congress.

The Congress consists of two chambers, the Senate and the House of Deputies, which also have a mandate of five years. Among the principal powers of the legislative branch are: consideration and approval of laws of the Republic, and oversight over the activities of the executive and other autonomous bodies such as the municipal governments, as well as broad powers to request information from all public entities of the State.

The judicial branch consists of the Supreme Court of Justice (12 Justices), the Constitutional Tribunal (Five Magistrates) and the Judicial Council (four Councilors). All these officials are elected by Congress for a term of 10 years.

Bolivia is divided geographically into nine departments, in which the executive branch is represented by departmental prefects under a system of decentralized administration. The departmental prefectures also include a departmental Council, with representatives of the municipalities in each province. These representatives do not have to belong to a political party, and many of them are outstanding local citizens.

The State structure includes the municipal governments, of which there are 314, administering provincial sections. The Constitution recognizes the independence of municipal governments, which are constituted by popular vote. Municipal governments consist of a mayor and the municipal Council, the composition of which depends on the number of inhabitants. By constitutional provision, municipal autonomy extends to normative, executive and administrative and technical matters within the jurisdiction and territorial competence of each municipality.

Moreover, the Constitution provides for other institutions that make up the Bolivia State, as follows:

The *Ministerio Público* (Office of the Attorney General), the purpose of which is to take legal action, to defend the legality and interests of the State and society, and to oversee the work of the judicial police. It conducts its tasks through commissions appointed by the legislative chambers, through the Attorney General, and other officials.

The Public Defender, whose principal function is to oversee and protect the rights and guarantees of individuals in relation to administrative activity of the entire public sector, and to ensure the defense, promotion and dissemination of human rights.

Office of the Comptroller General of the Republic, which is the senior oversight body of the Bolivian State. The Comptroller General is appointed by the President of the Republic from a list presented by the Senate. The Comptroller General holds office for 10 years and cannot be removed from office. According to the Constitution, the office of the Comptroller General is part of the executive branch.

## **II. CONTENTS OF THE QUESTIONNAIRE**

### **CHAPTER ONE**

#### **MEASURES AND MECHANISMS REGARDING STANDARDS OF CONDUCT FOR THE CORRECT, HONORABLE, AND PROPER FULFILLMENT OF PUBLIC FUNCTIONS (ARTICLE III, 1 AND 2 OF THE CONVENTION)**

##### **1. General standards of conduct and mechanisms**

- a. Are there standards of conduct in your country for the correct, honorable and adequate fulfillment of public functions?*

Response. The political Constitution of Bolivia provides, in Article 43, that public servants must serve exclusively the interests of the nation, and not private interests or those of political parties, and requires that a law be passed creating a Civil Service Statute, which was approved by means of Law 2027. In addition, there are the regulations approved by Supreme Decree 25749. Those rules govern all the duties and prohibitions to which public servants are subject in providing service to the government.

These provisions make it mandatory to respect prevailing rules and standards, to observe efficiency and effectiveness in the handling of public resources, and to present a sworn statement of assets and income.

It should also be noted that Article 12 of the Civil Service Statute establishes the principle that public activity must be inspired by the principles and ethical values of integrity, impartiality, probity, transparency, responsibility, and functional efficiency. Article 13 provides that public entities must adopt a code of ethics, to which all public servants are subject. Currently, that provision is in the course of implementation.

*b. Are there mechanisms to enforce compliance with the above standards of conduct?*

Response. The Bolivian legal and administrative system provides for the determination of responsibilities for the violation of legal rules governing the conduct of public servants. Article 28 of Law 1178 provides that any public servant is accountable for the results of his performance of the functions, duties and attributes assigned to his position, and Article 29 establishes administrative responsibility when the action or omission of public servants contravenes the rules governing the public service. This class of responsibility is determined by internal procedures in each entity, and penalties range, according to the gravity of the offense, from a fine of up to 20% of monthly remuneration to suspension for a maximum of 30 days, and finally to dismissal. The rules of internal proceedings are governed by Supreme Decrees 23318-A (Regulations Governing the Responsibility of Public Servants, Article 13 and FF.), 26237 (amending Supreme Decree 23318-A), and 26319 (Regulations Governing Appeals in the Civil Service).

*c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At the present time there are no statistics available.

d. Not applicable

## **2. Conflicts of interest**

*a. Are there standards of conduct in your country regarding the prevention of conflicts of interest in the performance of public functions?*

Response. So far, the rules in this area are insufficient. Nevertheless, we may mention that the Constitution (Articles 50 and 89) establishes a system of incompatibilities for national representatives and for the President and Vice President of the Republic, respectively. In addition, the Civil Service Statute establishes incompatibilities for public servants in general. Administrative Resolution SSC-002/2002 of the Superintendency of the Civil Service has established the procedure to be followed for exceptional authorization of the exercise of public duties in case of incompatibility by family or marital relationship.

b. *Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

Response. Yes, the legal and administrative system provides for determining liabilities for the violation of regulations governing the public service, as indicated in the response to section b. of question 1. This disciplinary régime applies to public servants who contract or appointed persons who are in a position of incompatibility, and also to those persons, as provided by law.

c. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time there are no available statistics on this matter.

d. Not applicable

### **3. Conservation and proper use of resources entrusted to public officials in the performance of their functions**

a. *Are there standards of conduct in your country that govern the conservation and proper use of resources entrusted to public officials in the performance of their functions? If yes, briefly describe them, indicating aspects such as to whom they apply and whether there are exceptions, and list and attach a copy of the related provisions and documents.*

Response. Law 1178 (Article 1) provides that administrative and control systems must be applied in the public service, for the purpose, among others, of ensuring that any public servant, without distinction as to grade, assumes full responsibility for his acts, and that he is accountable not only for the use made of public resources entrusted to him, but also for the way they are used and for the results of their use. On the basis of this rule, basic standards have been issued governing the systems of administrative organization, budget, personnel management, administration of goods and services, the treasury and public credit, accounting, and governmental control.

In addition, there are provisions restricting public expenditure under the budget for each fiscal year, budgetary execution standards, and standards governing the limitation of public expenditure.

b. *Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

Response. The Bolivian legal and administrative system determines responsibility for violating regulations governing the conduct of public servants. Article 28 of Law 1178 provides that any public servant is accountable for the results of the performance of his functions, duties and attributes. Those rules established four classes of responsibility relating to the exercise of public office: civil responsibility, criminal responsibility, administrative responsibility, and executive responsibility. With respect to the last class of responsibility, it should be noted that it applies to senior executives, and is based on an evaluation of the management of public entities.

c. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time there are no available statistics on this matter.

d. Not applicable

**4. Measures and systems requiring public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware**

*a. Are there standards of conduct in your country that establish measures and systems governing the requirement that public officials report to appropriate authorities acts of corruption in public office of which they are aware? If yes, briefly describe them, indicating aspects such as to whom they apply and if there are any exceptions, and list and attach a copy of the related provisions and documents.*

Response. There is no specific provision referring to acts of corruption. Nevertheless, under Article 35 on Law 1178, public servants are required to report to the public ministry any cases that come to their knowledge where there is an indication that a crime has been committed. As well, failure to report such cases is treated as a crime pursuant to Article 178 of the criminal code.

*b. Are there mechanisms to enforce compliance with the above standards of conduct? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

Response. There are no mechanisms for verifying compliance with the reporting obligation of civil servants, except in cases where criminal investigation finds dereliction of the duty to report, in which case criminal proceedings will be undertaken.

*c. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time there are no statistics available on this matter.

d. Not applicable

## **CHAPTER TWO**

### **SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, 4)**

*a. Are there regulations in your country establishing methods for registering the income, assets and liabilities of those who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public? If yes, briefly describe them, indicating aspects like to whom they apply and when the declaration must be presented, the content of the declaration, and how the information given is verified, accessed, and used. List and attach a copy of the related provisions and documents.*

Response. Yes. The Civil Service Statute, based on the provisions of Article 43 of the Constitution, establishes the obligation of all public servants, without distinction, to submit an express declaration of their assets and income. These declarations are subject to the principles of universality, periodicity and transparency, and I mandatory. The supervisory office for the sworn declaration of assets and income is the Office of the Comptroller General of the Republic. Supreme decree 26257 regulates that system, establishing two categories of public servants. Category A covers elected and freely appointed officials, senior executives of public entities, senior managers, and all public servants in certain public entities, including the Office of the Comptroller General, the Attorney General's Office, the Ministry of Finance, and the National

Police. Category B includes all other public servants. According to Article 8 of that decree, declarations submitted by public servant in category A are made public, in summary form, at the web site of the Comptroller General of the Republic: [www.cgr.gob.bo](http://www.cgr.gob.bo)

The declaration of assets must be submitted before a person takes up a position, at the conclusion of a working relationship, on a periodic basis (at the request of the Comptroller General), or voluntarily. With respect to the contents, we have submitted Article 12 of Supreme Decree 26257.

*b. Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time, 67,892 public servants have submitted statements of assets, of whom 40,392 are in category B., and 19,500 in category A (source: Comptroller General of the Republic). The number for category A represents nearly all such officials, of whom there are about 20,000 in the country as a whole. They submitted their declarations in the first half of this year. The number for category B. represents approximately one-third of public servants in that category, who have until October to fulfill his obligation.

Publication by the Internet, and the ability of the public to access all sworn statements, represents a step forward in transparency so that everyone will be aware of the assets and income of public servants upon taking up and leaving a working position, or during their tenure of that position.

### **CHAPTER THREE**

#### **OVERSIGHT BODIES**

*a. Are there oversight bodies charged with the responsibility of ensuring compliance with the provisions stated in Article III (1), (2) and (11)? If yes, list and briefly describe their functions and characteristics, and attach a copy of the related provisions and documents.*

Response. The Superintendency of the Civil Service exercises functions under sections 1 and 2 of Article III. That institution was created by the Civil Service Statute Law for the purpose of supervising the system and management of the administrative career in public entities covered by the statute. Its functions include promoting the adoption of codes of ethics. There is still no senior oversight body responsible for section 11.

*b. Briefly state the results that said oversight bodies have obtained in complying with the previous functions, attaching the pertinent statistical information, if available.*

Response. At this time there are no statistics available on this matter.

*c. If no such oversight bodies exist, briefly indicate how your State has considered the applicability of Article III (9) of the Convention.*

Response. Currently, the Vice President of the Republic is examining possible mechanisms for combating corruption, and ways of strengthening specialized institutions with legal powers to prevent, investigate, prosecute and punish illegal acts by public servants.

## CHAPTER FOUR

### PARTICIPATION BY CIVIL SOCIETY (ARTICLE III, NUMBER 11)

#### 1. General questions on the mechanisms for participation

- a. *Are there in your country a legal framework and mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

Response. The Municipalities Act approved by law 2028 establishes Oversight Committees as a form of social control, representing organized civil society before municipal governments. Those committees are empowered to oversee municipal budget execution and to evaluate the policies, plans, projects and programs of the municipal government.

The Dialogue Law recognizes the mechanism of social control, consisting of representatives of organized society, and their capacity to oversee the expenditure of HIPC sources (statutes and regulations attached).

- b. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time there are no available statistics on this matter. However, there have been some initial evaluations in cases where Oversight Committees took little action because they were stacked with party members or nominated by the very mayors they were supposed to oversee.

- c. *If no such mechanisms exist, briefly indicate how your State has considered the applicability of measures within your own institutional systems to create, maintain and strengthen the mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption, in accordance with Article III (11) of the Convention.*

Response. Currently, the Vice President of the Republic is examining mechanisms to be established for combating corruption, and systems to expand participation by institutions and individuals of organized society.

#### 2. Mechanisms for access to information

- a. *Are there mechanisms in your country that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions? If so, describe them briefly, and indicating, for example, before which entity or agency said mechanisms may be presented and under what criteria the petitions are evaluated. List and attach a copy of the related provisions and documents.*

Response. Article 5 of the regulations approved by Supreme Decree 23318-A apply the principle transparency to the acts of public servants, by virtue of which public entities are required to provide information already processed to any individual or group that so requests and has a legitimate interest. It also provides that any limitation or reservation on transparency must be specific for each class of information, and not general, and that it must be expressly established by law.

There are two legislative bills pending to facilitate access to information, but they have not yet been approved, nor debated by civil society.

- b. *Briefly state the results that have been obtained in implementing the above standards and mechanisms, attaching the pertinent statistical information, if available.*

Response. At this time there are no available statistics on this matter.

### **3. Mechanisms for consultation**

- a. *Are there mechanisms in your country for those who perform public functions to consult civil society and non-governmental organizations on matters within their sphere of competence, which can be used for the purpose of preventing, detecting, punishing, and eradicating public corruption? If so, briefly describe them and list and attach a copy of the related provisions and documents.*

Response. There are no mechanisms for these purposes.

- b. Not applicable

### **4. Mechanisms to encourage active participation in public administration**

- a. *Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the process of public policy making and decision making, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them and list and attach the related provisions and documents.*

Response. Currently, the Vice President's office has an anticorruption unit the functions of which include establishing mechanisms for participation by civil society and nongovernmental organizations in combating corruption.

- b. Not applicable

### **5. Participation mechanisms for the follow-up of public administration**

- a. *Are there mechanisms in your country to facilitate, promote, and obtain the active participation of civil society and non-governmental organizations in the follow-up of public administration, in order to meet the purposes of preventing, detecting, punishing and eradicating acts of public corruption? If so, briefly describe them, and list and attach a copy of the related provisions and documents.*

Response. Apart from the oversight committees referred to above, there is no other mechanism for participation by civil society and nongovernmental organizations. The social control mechanism has a limited scope of activity, and has as yet not reported on the results of its work.

- b. Not applicable, because of the situation described. It should be noted, however, that the Dialogue Law provides for mechanisms that will allow society to participate in monitoring public policies and in formulating plans and projects.

## ASSISTANCE AND COOPERATION (ARTICLE XIV)

### 1. Mutual Assistance

- a. *Briefly describe your country's legal framework, if any, that establishes mechanisms for mutual assistance in processing requests from foreign States that seek assistance in the investigation and prosecution of acts of corruption. Attach a copy of the provisions that contain such mechanisms.*

Response. There is no specific legal framework, but the creation of the Financial Investigations Unit (UIF) of the Ministry of Finance has assisted in discovering fraudulent bank accounts of corrupt officials from neighboring countries.

- b. *Has your government presented or received requests for mutual assistance under the Convention? If so, indicate the number of requests that it has presented, explaining how many of them have not been answered and how many have been denied and for what reason; indicate the number of requests that it has received, explaining how many of them have not been answered and how many have been denied and for what reason; mention the average time it has taken your country to answer said requests and the average time in which other countries have responded, and indicate whether you consider these intervals reasonable.*

Response. There are no records on this matter.

- c. *If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (1) of the Convention.*

Response. There is no definitive response.

### 2. Mutual technical cooperation

- a. *Does your country have mechanisms to permit the widest measure of mutual technical cooperation with other States Parties regarding the most effective ways and means of preventing, detecting, investigating, and punishing acts of public corruption, including the exchange of experiences by way of agreements and meetings between competent bodies and institutions, and the sharing of knowledge on methods and procedures for citizen participation in the fight against corruption? If so, describe them briefly.*

Response. There are no formal mechanisms, but contacts have been initiated to exchange experience by means of agreements, such as between the Institutional Development Program and the anticorruption office of Argentina. The Technical Unit on Corruption, under the Office of the Vice President, has initiated contacts to establish a network for exchanging experience.

- b. *Has your government made requests to other States Parties or received requests from them for mutual technical cooperation under the Convention? If so, briefly describe the results.*

Response. No information available.

- c. *If no such mechanisms exist, briefly indicate how your State has implemented the obligation, in accordance with Article XIV (2) of the Convention.*

Response. There is no definitive response on this point.

- d. *Has your country developed technical cooperation programs or projects on aspects that are referred to in the Convention, in conjunction with international agencies or organizations? If so, briefly describe, including, for example, the subject matter of the program or project and the results obtained.*

Response. The Integrity Plan has developed some aspects for strengthening institutional relations among public officials from the fourth category up. An evaluation of the PRI was conducted at the beginning of the year, but the change of government revealed some gaps that will have to be evaluated again. For more information, see the web site of the Office of the Vice President of the Republic of Bolivia, [Vice-pres@gob.bo](mailto:Vice-pres@gob.bo)

We have been working with the World Bank, the Inter-American Development Bank, UNDP, and the Dutch and Danish cooperation agencies.

## **CHAPTER SIX**

### **CENTRAL AUTHORITIES (ARTICLE XVIII)**

#### **1. Designation of Central Authorities**

- a. *Has your country designated a central authority for the purposes of channeling requests for mutual assistance as provided under the Convention?*

Bolivia has not designated a central authority for purposes of channeling requests for mutual assistance as provided under the Convention.

#### **2. Operation of Central Authorities**

Not applicable.

### **III. INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE**

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